



Status, Access & Health Disparities:

A Literature Review Report on Relevant Policies and Programs Affecting People Living with HIV/AIDS who are Immigrants, Refugees or Without Status in Canada



Committee for Accessible AIDS Treatment

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A Literature Review of Relevant Policies and Programs
To Improve Access to Services
for Immigrant and Refugee PHAs
June 2006**

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About CAAT

Committee for Accessible AIDS Treatment (CAAT) was founded in 1999 specifically in response to the profound barriers faced by immigrant, refugee and non-status PHAs in accessing health services. CAAT is made up of a wide network of newcomer and immigrant PHAs, service providers from legal, health and HIV/AIDS service sectors. In 2000, CAAT undertook the “Action research to improve health and legal service access for PHAs who are immigrants, refugees or without status in Canada” project that identified the needs, challenges and potential strategies to address the barriers faced by its target populations. CAAT has worked in partnerships with different community partners to implement all three of the key recommendations of the research. These include the development of accessible legal information on HIV & Immigration; the service access training project at Regent Park Community Health Centre and the HIV Medication Access Program (HMAP) at Toronto People with AIDS Foundation.

Acknowledgements

This report was prepared by:

Matthew Perry

With editorial input from the CAAT Policy Advisory committee:

Alan Li

Amy Casipullai

Avvy Go

Catharine Allan

Charlene Welsh

Lynn Muir

Michael Battista

Victor Inigo

Special thanks to:

OACHA Health Access Working group members:

Aklilu Wendaferew

Esther Cloutier

Esther Tharao

Fanta Ongoiba

Frank McGee

James Murray

Llewellyn Goddard

Robert Remis

Stan Read

& Regent Park Community Health Centre

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List of Acronyms

ASO	AIDS Service Organization
CAAT	Committee for Accessible AIDS Treatment
CBSA	Canadian Border Security Agency
CHC	Community Health Centre
CIC	Citizenship and Immigration Canada
CPP	Canada Pension Plan
EI	Employment Insurance
HIA	Health Insurance Act
IFH	Interim Federal Health
IRB	Immigration and Refugee Board
IRPA	Immigration and Refugee Protection Act
ODB	Ontario Drug Benefit Act
ODSP	Ontario Disability Support Program
OHIP	Ontario Health Insurance Plan
OW	Ontario Works
PHA	Person Living with HIV/AIDS
PRRA	Pre-Removal Risk Assessment
SHRA	Social Housing Reform Act
TRP	Temporary Resident Permit
WSIB	Workplace Safety and Insurance Board

Executive Summary

This document focuses on access to services for immigrant, refugee and non-status HIV-positive individuals in Ontario through examination of legislation, regulations and policy relevant to specific areas. The purpose of the document is to identify areas for further development in advocacy aimed at improving the quality of life and Canadian experience for these individuals. It is hoped that the long-term result of this work will be to identify and undertake systemic change in order to address barriers and improve access to services for immigrant, refugee and non-status individuals in Canada.

The paper seeks to examine the legislative and policy structures/systems in the following broad categories:

- Immigration (including ability to sponsor, Temporary Resident Permits, Medical Inadmissibility and Fees).
- Health care (including diagnostic, primary care, specialists, provincial health insurance coverage, dental, medication, role of public health).
- Social Assistance
- Social (subsidized) housing
- Education (public and post-secondary)
- Employment (including access to work permits, Canada Pension Plan, Employment Insurance, Workplace Safety and Insurance Board)

In some instances, legislation, policy and practice in two different areas may work at cross-purposes. It is the intention of this paper to identify these circumstances in order that they may be properly addressed and reduce the severity or eliminate the barriers faced by immigrant, refugee and non-status PHAs attempting to access services.

Legislation and policy are dynamic instruments, and significant change can occur rapidly. Regulations may be changed in Cabinet by the governing party and do not require the formal processes associated with introducing new legislation. Policy may be changed literally overnight in order to address pressing issues. While this creates difficulties in creating completely accurate and up-to-date reviews of policy and legislation, this situation also creates possibilities for advocates to identify possible solutions and advocate for their implementation.

Immigration

The greatest difficulties, confusion and stress encountered by HIV-positive immigrants, refugees and non-status individuals stem from their navigation of Canada's immigration system. The Immigration and Refugee Protection Act (IRPA), its regulations and Citizenship and Immigration Canada (CIC) policies create a complicated path through which PHAs must navigate and negotiate. The confusion is often compounded by the need for PHAs to also negotiate their health concerns and access to care and treatment for themselves and their family members.

Particular difficulties in respect of immigration include the way in which CIC determines who is medically inadmissible for entry into Canada based on their definition of “excessive demand” on health or social services. Costs have been modeled on a ten-year time span and compared with the health costs of “average” Canadians. Initial modeling is based on antiretroviral treatment guidelines which have since been updated. Other significant issues faced by PHAs negotiating the immigration system are processing times and the fees associated with the many stages in moving to permanent resident status. While HIV-positive refugees and HIV-positive spouses, common-law partners and most dependent children who are sponsored are exempt from the excessive demand criteria, other PHA immigrants are prevented from becoming Permanent Residents because of their HIV status. Their only recourse is usually to make a Humanitarian and Compassionate (H&C) application for landing which usually takes a minimum of 14 months to pass through its initial stage of processing and involves significant fees and legal advice. Even if successful, the outcome is a Temporary Resident Permit (TRP) which must be maintained for at least three years, renewed regularly with payment of fees, and does not confer any eligibility for health coverage. Refugee claimants who are not successful have an appeal right which is very rarely successful, a Pre-Removal Risk Assessment (PRRA) or the H&C process as recourse.

The Safe Third Country Agreement with the United States which came into effect in December 2004 requires that refugees arriving in Canada via the U.S. be returned to the US to seek asylum in that country first. This has resulted in a significant drop in the number of refugee claims made at land crossings and likely includes a number of PHA claimants who are likely to face even greater barriers in relation to their HIV status in the U.S.

Health Care

Access to affordable, insured health care is a primary concern for PHAs. For immigrant, refugee and non-status PHAs, this access is extremely limited, and often not available at all. Those who are trying to navigate the immigration system are often so preoccupied with that process that they are unable to simultaneously navigate and negotiate their health care needs as well. There is often a heavy reliance on community-based supports in the form of AIDS Service Organizations and social workers in HIV clinics. However, even these supports are often not sought as PHAs are fearful of disclosing their health status to anyone because of the potential negative impact on their immigration status.

The Ontario Health Insurance Plan (OHIP) is not available to those with temporary status in Canada, with rare exception. This effectively places many immigrant, refugee and non-status PHAs outside of any affordable health care and treatment. Exclusion from OHIP also results in exclusion from the Trillium Drug Program which can assist with the cost of HIV medications. As a result of unclear legislation and policy, many Canadian-born children who are in fact eligible for OHIP coverage do not have such coverage. Third-party advocacy and legal support are often required to secure this coverage for these children. Exclusion from OHIP eligibility also means that any hospitalization will result in often insurmountable medical bills for PHAs.

The Interim Federal Health (IFH) program does provide essential health care and treatment to refugee claimants and continues until such time as the Pre-Removal Risk Assessment. This is a significant benefit to individuals who qualify. IFH eligibility is very narrow. A failed refugee

claimant who makes a humanitarian and compassionate application for permanent residence will lose eligibility of IFH. Temporary Resident Permit holders are not eligible for IFH. IFH eligibility is time limited and can and does expire. Many PHAs are not aware of this fact and therefore have to re-apply to extend their eligibility and incur financial, and health costs as a result.

Community Health Centres (CHCs) are often the main and only source of ongoing health care and treatment available to non-insured PHAs. The ability of CHCs to provide this care is limited by financial constraints. CHCs spend considerable time negotiating services on behalf of PHA clients.

Finally, Designated Medical Practitioners (DMPs) authorized by CIC to conduct immigration medical examinations have been repeatedly and consistently identified as a source of stress and concern by PHAs and service providers. Anecdotal evidence suggests a lack of training and ability with respect to standard guidelines and standards for testing and diagnosing HIV infection. Public Health agencies have also been identified as a source of concern from the perspective of PHAs as they conduct their legislated role of disease prevention.

Social Assistance

Many PHAs in Ontario rely on social assistance as a result of the poverty experienced by people living with HIV/AIDS. This is certainly true for many immigrant and refugee PHAs. PHAs without status in Canada have no access to eligibility for social assistance. Interactions between social assistance programs and the immigration process also have a significant impact on PHAs.

The Immigration and Refugee Protection Act contains provision about financial inadmissibility. Those who do, or are expected to rely on social assistance for financial support can be deemed financially inadmissible to Canada and denied permanent resident status on that basis. In addition, receipt of social assistance may prevent a family member from sponsoring a relative under the family class. If any family member who is sponsored ends up on social assistance during the sponsorship agreement, the sponsor is required to repay all social assistance received by them before they can sponsor again.

At the same time, social assistance provides essential access to benefits needed by many immigrant and refugee PHAs. In addition to financial assistance for basic needs and housing, social assistance also provides access to drug benefits and in some cases, dental benefits as well. This access is crucial for those who are not eligible for OHIP or the Interim Federal Health Program. Other benefits include the Special Diet Allowance, the Community Start-Up and Maintenance Benefit and the Extended Health Benefit. While these benefits are particularly important for holders of Temporary Resident Permits who are not eligible for IFH or for OHIP, TRPs holders risk being inadmissible on financial grounds when they apply for landing after three years because of their reliance on social assistance.

Finally, administration of social assistance programs is split between the provincial and municipal levels of government. The OW and ODSP programs are administered differently and are subject to different legislation, regulations and policy. It is extremely confusing and difficult to communicate with program officials. Suspension of benefits can happen instantly and with

little explanation, creating additional stress and negative health outcomes. Levels of benefits are insufficient for expenses, particularly in urban centres where newcomers are most likely to live, language barriers create additional complications.

Housing

The main focus of this report is on access to subsidized, or Rent Geared to Income (RGI) housing for PHA immigrants, refugees and those without status. RGI housing in Ontario, and in Toronto specifically, currently has a waiting list in the range of 10 years, depending on circumstances. Provincial legislation governs the operation of RGI housing. Eligibility is limited based on immigration status. Citizens, applicants for landing, and refugee claimants are all eligible to apply for RGI housing. Current legislation and policy, however, does not appear to permit holders of Temporary Resident Permits to apply for RGI housing. Finally, a removal order against any individual member of the household that has become enforceable currently results in the entire household losing eligibility for RGI housing.

For many PHAs, access to affordable housing is a key determinant of health. Policy with respect to priority placement on the waiting list currently requires medical documentation of a life expectancy of less than two years. This can be difficult for PHAs negotiating the immigration process as they are trying to minimize the impact of HIV for CIC, while emphasizing its impact for access to housing. Domestic abuse is another criterion for priority placement in housing. Documentation of abuse, however, may result in breakdown of sponsorship which could jeopardize an application for permanent residence. This has the potential to encourage PHAs living in abusive circumstances to remain in dangerous living situations and forego safer living arrangements in order to preserve their immigration process.

Finally, the Tenant Protection Act (TPA) and the Ontario Human Rights Code provide protections to renters outside of the RGI process regardless of immigration status, and can prevent discrimination based on race, ancestry, place of origin, citizenship and receipt of public assistance.

Education

Access to publicly funded education is a significant concern for newcomer parents with school-age children, immigrants and refugees who wish to complete high school education and those seeking to pursue post-secondary education after their arrival in Canada.

As a general rule, publicly funded education is available to school-age children regardless of immigration status. Status will be a factor in whether some fees are payable to the school board, though these boards have broad discretion in exempting the payment of fees, and most of the circumstances commonly encountered by PHA immigrants, refugees and without status are captured by these exemptions. The greatest difficulty lies with access to appropriate information and advocacy to ensure that children are enrolled in school.

Recent incidents in Toronto involving the Toronto District School Board have resulted in the adoption by the TDSB of a “Don’t Ask, Don’t Tell” policy with respect to information about

immigration status. This is as a result of actions by the Canadian Border Services Agency in detaining children at school in order to apprehend their non-status parents.

Access to financial support for post-secondary education in the form of loans does depend significantly on immigration status. While citizens, permanent residents and protected persons are eligible for the Ontario Student Assistance Program, those on TRPs, study and work permits, visitors, applicants for permanent residence, refugee claimants and those without status are barred. This effectively limits ability of these individuals, particularly TRP holders, from acquiring education and qualifications that would improve employability and reduce the likelihood of reliance on social services and health care. Access to graduate study awards and bursaries is similarly limited.

Employment

Stability of employment and protections against discrimination are important issues for PHAs in the workforce. Again, this is particularly true for immigrant, refugee and non-status PHAs who require income to survive and pay for care and treatment.

Current immigration policy with respect to work permits presents some barriers for PHAs. Work permits require a medical examination in limited circumstances, but are sometimes issued only as restricted permits for PHAs. These restricted permits indicate on their face that there are medically-based restrictions on occupation and could include conditions to restrict work with children, in food preparation or health care settings. While policy has been clarified to indicate that a diagnosis should not be printed on the permit, the presence of restrictions, with no medical basis, can and does present unnecessary barriers to employment for PHA immigrants and refugees.

The Human Rights Code does afford protections in respect of discrimination in employment, however, these are illusory at best for those without status who are unlikely to seek protection. While the Employment Standards Act, Workplace Safety and Insurance Act, and Occupational Health and Safety Act do not necessarily exclude those without status from their jurisdiction, those without status are extremely unlikely to seek protection under these laws for fear of exposure. This results in a number of non-status PHAs working in unsafe and exploitative work environments without effective protection.

Finally, the Canada Pension Plan and Employment Insurance programs are limited in their availability to those who have valid status to work in Canada. These programs also require a valid Social Insurance Number in order to make contributions. Without valid contributions, there is no benefit available under these programs. Some PHAs who have lived without status in Canada have in fact contributed to these programs under false SINs for many years are not able to access these benefits when needed.

Recommendations

The following represent a preliminary list of potential recommendations arising from the review of legislation and policy in the above-noted areas. This list is by no means intended to be

exhaustive. The information in this document is intended to provide the information necessary to further develop and act upon recommendations which may arise from its review.

Immigration

PHAs without status in Canada should be permitted to regularize their status in Canada through means beyond the humanitarian and compassionate provisions.

Rationale: The H&C process is insufficient and inefficient and does not provide an effective way for non-status individuals to regularize their status in Canada. Most non-status individuals live and work in Canada with no access to services and very tenuous and fragile lives. PHAs without status are exponentially disadvantaged by this lack of access. A regularization program should be implemented which is comprehensive and does not automatically deny status to individuals with health conditions. Healthy PHAs with access to services are able to function and contribute to their communities and to Canada.

‘Don’t ask, don’t tell’ policies be adopted by law enforcement and municipal and provincial governments in order to reduce barriers to access for emergency services, education and emergency services and reduce vulnerability of immigrants in situations of domestic violence.

Rationale: Individuals with tenuous or no immigration status routinely refuse to access services, or avail themselves of emergency and protective services because they fear deportation as a result of coming to the attention of official structures and being reported to immigration. Those facing domestic violence are more likely to keep quiet and endure the violence, risking death in order not to jeopardize their immigration process. A don’t ask, don’t tell policy would increase the safety and reduce risks faced by immigrants without status.

The excessive demand policy should not be based on a 10-year window of costs and should more closely reflect current Treatment Guidelines for antiretroviral treatment.

Rationale: Medical research into care and treatment for HIV changes rapidly. There is no way to accurately predict the costs in the future and therefore there is a disproportionately negative effect on HIV positive individuals caught by the excessive demand provisions. Immigration policy with respect to HIV and excessive demand was based on 2002 guidelines for antiretroviral treatment. These guidelines were updated in 2005 and establish different parameters for the initiation of treatment which has a downward influence on the estimates for costs for antiretroviral treatment because of revisions to viral load and CD4 indicators for initiation of treatment.

The excessive demand definition should include consideration of the economic and social contributions of immigrants and refugees.

Rationale: PHA newcomers contribute to the communities in which they live. Economic contributions include income tax and sales tax. Social contributions are difficult to quantify but have significant impact.

The Right of Permanent Residence Fee should be eliminated.

Rationale: The RPRF currently constitutes a barrier to newcomer PHAs who have difficulty accessing \$490 in order to complete their landing process and secure permanent resident status. This financial burden has a disproportionate impact on PHAs whose access to insured health services and medications depends on payment of the fee.

The costs of processing fees for immigration should be eliminated or reduced.

Rationale: While there may be some justification for cost recovery on the part of CIC, the current levels of fees for humanitarian and compassionate applications, permanent resident applications, and particularly the costs associated with regularly renewing and maintaining TRPs should be reduced in order to reduce the financial strain on individuals already marginalized by their lack of access to services and their immigration status.

Processing times for all types of applications should be reduced.

Rationale: The government has effectively acknowledged that processing times are too slow and that significant backlogs exist. Increases in funding which would facilitate the faster processing of applications would reduce stress levels for PHA immigrants and refugees. Liberal government funding announced prior to the election indicated this would occur, but the recent change in government leaves this open to question.

Health Care

Eligibility for the Interim Federal Health Program should be continued for failed refugee claimants who have made an application for landing on humanitarian and compassionate grounds.

Eligibility for the Interim Federal Health program be made available to individuals granted Temporary Resident Permits and in the Permit Holders Class.

Rationale: Individuals on Temporary Resident Permits and those whose H&C applications have been allowed to proceed have successfully established that there are reasonable grounds to allow them to remain in Canada. For PHAs, normally the only impediment to landing is the excessive demand provisions of the IRPA. Individuals who are able to maintain their TRPs for three years will be landed and become eligible for OHIP. It makes little sense to allow individuals to remain in Canada because of H&C considerations while at the same time denying them access to essential care and services, thereby potentially limiting their ability to work through deteriorating health and increasing the likelihood of reliance on social assistance for access to medication. Given the large numbers of individuals enrolled in the insurance program, the costs associated

would be spread among a large group and the costs may be kept lower. In addition, the legislation currently allows CIC to exempt individuals from any provision of the Act or Regulations based on humanitarian and compassionate grounds pursuant to section 25.

Grant eligibility for the Interim Federal Health program to all individuals whose claim for protection has been referred to the IRB without expiry until the person is determined to be a protected person or until the conclusion of the PRRA process.

Rationale: This would eliminate the need to set arbitrary expiry dates for IFH eligibility and would ensure that those eligible for IFH will not fall outside of eligibility for the program. This will eliminate inconsistencies in eligibility for the program and the loss of access to care and treatment as a result of missed communication.

Allow holders of Temporary Resident Permits access to OHIP and the Trillium Drug Program.

Rationale: TRP holders who are medical inadmissible will be landed provided they can maintain their TRPs for three years. Denying them access to timely, affordable health care during this period increases the likelihood that they will depend on other forms of public assistance in order to survive. Allowing access to OHIP and therefore to the Trillium Drug Program would permit these individuals to maintain their health, and be more likely to participate in the workforce, thereby continuing to integrate with and contribute to Canadian society. CIC policy clearly indicates that consultation occurs with the provinces when considering the issuance of a TRP. Work is required with provincial health policy makers to examine the possibility of extending eligibility for OHIP to TRP holders. A second, less appealing option would seek provincial health policy support for a call on the federal government to extend eligibility for IFH to TRP holders.

Designated Medical Practitioners be trained and monitored for delivery of pre and post HIV test counselling and CIC facilitate a process whereby DMPs are provided with sufficient accurate information to make effective referrals for immigrants and refugees who test positive for HIV.

Rationale: DMPs are often the first contact for PHAs in Canada with respect to HIV. A lack of time and resources makes it unlikely that DMPs have knowledge of or access to information regarding medical and community resources for HIV positive immigrants. CIC can play a role by providing time and funding to improve the training, monitoring and support to DMPs to lessen the risk of PHAs failing to be linked to effective, appropriate and supportive resources in health care and community.

Encourage the development of expertise in HIV/AIDS primary health care among Community Health Centres and their health care partners by facilitating cooperation and coordination among CHC interdisciplinary teams

Rationale: CHCs are ideally structured to meet the needs of PHA newcomers through the provision of culturally appropriate interdisciplinary care. Enhancing the capacity of CHCs to work internally and within their communities to better serve and refer PHA clients, including non-insured clients will improve health outcomes, reduce stress and facilitate the transition of PHA newcomers to Canada while improving access to quality health care.

Social Assistance

Expand access to the drug and dental cards through the Extended Health Benefit to permit more PHAs on TRPs to work while retaining access to the drug and dental card.

Rationale: For many PHAs who require medical treatment, but are otherwise in good health, access to the drug and dental card through social assistance would allow them to engage in employment. This would reduce the number of PHAs who rely on social assistance for income support in addition to the drug and dental cards. This process would not remedy the lack of access to health care services however.

Ensure continuation of drug and dental card coverage in cases where benefits are suspended for minor issues like a failure to provide information.

Rationale: Suspension of the drug and dental card have serious implications for PHAs who rely on social assistance for access to medication. Often this reliance is results from categorical ineligibility for provincial health insurance. Social assistance programs can and should develop a method to make suspension of the drug or dental card a method of last resort when dealing with alleged failures to comply with program requirements.

Housing

Eliminate the legislation requirement that an enforceable removal order against one member of a household results ineligibility for RGI for the entire household.

Rationale: This provision currently results in a loss of housing for an entire household based on the particular immigration status of only one member. While an argument may be made with respect to ineligibility for that one member, this should not jeopardize the affordable housing of all members of the household. Given the difficulties encountered by PHA newcomers and their negotiation of the immigration system, this policy may have a disproportionate impact on PHAs who may find themselves in situations with enforceable removal orders as a result of a lack of access to good legal information, advice or representation.

Permit TRP holders to be added to the waiting list for subsidized housing.

Rationale: PHAs on TRPs are normally required to maintain their TRP status for three years before they may be landed. The inability to apply for RGI housing means that these PHAs must maintain themselves in more expensive housing AND find funds to pay for medications and health care treatment, or else access social assistance. RGI housing would permit these individuals to minimize impact on social services through work and contribution of 30% of their income to the cost of housing.

Education

Protected persons (Convention refugees and persons in need of protection) should be eligible for the full range of financial supports for post-secondary education, including bursaries and grants.

Rationale: Protected persons have a full legal status in Canada. Recent policy changes to the Ontario provincial and federal student loans programs have extended eligibility to protected persons. There is no justifiable reason why access to grants and bursaries provided through these same structures should not be available to protected persons. Access to financial support for education will increase the capacity of newcomers to establish themselves in Canada through viable employment.

Employment

Employees with no status should be expressly included in workplace protection legislation in order to prevent exploitation of undocumented workers by employers.

Rationale: Employers who exploit undocumented workers, or employees without immigration status can create situations of extreme danger and risk for PHAs with no status. Expressly including these workers would prevent employers from operating unsafe workplaces and working conditions. Combined with a don't ask/don't tell policy, this would protect the safety of individual workers while minimizing the negative impact on vulnerable individuals.

Introduction

This document focuses on the issue of access to services for immigrant, refugee and non-status HIV-positive individuals in Ontario. The document examines legislation, regulations and policy relevant to the specific areas as a preliminary step to identifying areas for further development in advocacy aimed at improving the quality of life and Canadian experience for these individuals. It is hoped that the long-term result of this work will be to identify and undertake systemic change in order to address barriers and improve access to services for immigrant, refugee and non-status individuals in Canada.

This paper's focus is on the situation of HIV positive newcomers, with or without status, living in Ontario. Policies and legislation concerning provincially mandated services (social assistance, education, social housing and health care services, workplace safety and insurance) differ from province to province across Canada. Policies and legislation for which the federal government maintains primary responsibility (employment insurance, Canada Pension Plan, immigration) are substantially consistent across the country, with some minor regional differences.

The paper seeks to examine the legislative and policy structures/systems in the following broad categories:

- Immigration (including ability to sponsor, Temporary Resident Permits, Medical Inadmissibility and Fees).
- Health care (including diagnostic, primary care, specialists, provincial health insurance coverage, dental, medication, role of public health).
- Social Assistance
- Social (subsidized) housing
- Education (public and post-secondary)
- Employment (including access to work permits, Canada Pension Plan, Employment Insurance, Workplace Safety and Insurance Act)

In some instances, legislation, policy and practice in two different areas may work at cross-purposes. It is the intention of this paper to identify these circumstances in order that they may be properly addressed and reduce the severity of, or eliminate, the barriers faced by immigrant, refugee and non-status PHAs attempting to access services.

It is important to note that legislation and policy are dynamic instruments and significant change can occur very rapidly. Regulations may be changed in Cabinet by the governing party and do not require the formal processes associated with introducing new legislation. Policy may be changed literally overnight in order to address pressing issues. While this creates difficulties in creating completely accurate and up-to-date reviews of policy and legislation, this situation also creates possibilities for advocates to identify possible solutions and advocate for their implementation.

Methodology

Relevant legislation and policy documents have been read and reviewed in order to provide an accurate picture of the current state of the rules and regulations affecting HIV-positive newcomers to Canada. In addition, focus group interviews were conducted with eight HIV positive newcomers, five front-line support workers serving HIV positive newcomers, one HIV primary care physician, a hospital-based social worker, as well as discussions with individuals responsible for policy within the provincial and federal governments and the community health and public health sectors.

The legislation and policies were reviewed in each of the identified areas in order to determine how programs and legislation are intended to function. The interviews with newcomer PHAs, service providers and policy workers are intended to provide some information about how the legislation and policies are actually experienced by those most directly impacted.

At the end of the paper, areas where gaps between policy and practice or intention and outcome exist have been highlighted, and potential solutions or directions for action identified for further development.

Immigration Status

Throughout this document reference is made to immigrant, refugee and non-status People with HIV/AIDS (PHAs). It is important for readers to understand the distinctions in immigration status because of the impact of status on access to services. Depending on an individual's route to Canada, a PHA may move through a range of statuses, from refugee to temporary resident to sponsored immigrant, before they attain permanent resident status.

Immigrants

Immigrants are individuals who have come to Canada, or are applying to come to Canada as permanent or temporary residents. These applications are normally made from outside the country, prior to arrival and take the form of an application for permanent residence. The immigrant category includes those coming to Canada as skilled workers (independent immigrants) and who are attempting to meet the requisite number of points required in Citizenship and Immigration Canada (CIC)'s point system, as well as individuals who are sponsored by a family member who already has status in Canada (sponsored immigrants). The Immigrant category also includes individuals coming to Canada under the Live-In Caregiver program who, after working for two years as a live-in caregiver, are permitted to apply for permanent resident status and remain in Canada. Immigrants who are successful in their applications become Permanent Residents, and are then permitted to apply for Canadian citizenship.

Immigrants who are somewhere in the process of acquiring permanent resident status are often considered "temporary residents". This category of immigrants also includes those who are in Canada with temporary status (students, temporary workers, visitors and Temporary Resident Permit holders). These are individuals who have been granted visas to permit them to enter

Canada to study, to work, or to visit. With few exceptions, these types of temporary immigration status prohibit access to social supports and services.

Refugees

Refugees are individuals who are seeking asylum in Canada. While some individuals are identified as refugees in their countries of origin and are eligible for financial support to facilitate their travel to and establishment in Canada, most refugees initiate their refugee claims upon arrival in Canada. Claims may be made at the port of entry to Canada upon arrival, or following arrival in Canada. The majority of claims are made at the port of entry. Refugee claimants must first be deemed to have a claim eligible to be heard by the Immigration and Refugee Board (IRB), a process that usually occurs within a number of days of arrival. From this point forward their official status is “refugee claimant”. This status lasts until a hearing is held before the IRB and a decision is made. If successful, the individual is determined to be either a Convention refugee (“a person who is outside of their country of nationality or habitual residence and who is unable or unwilling to return to that country because of a well-founded fear of persecution for reasons of race, religion, political opinion, nationality or membership in a particular social group”), or a person in need of protection (“a person in Canada whose removal to their country of nationality or former habitual residence would subject them to the possibility of torture, risk to life, or risk of cruel and unusual treatment or punishment”). Collectively, successful refugees are considered “protected persons” and have the right to remain in Canada and have access to most publicly funded services. The vast majority of protected persons apply for permanent resident status as soon as they are able.

Persons whose refugee claims are denied are subject to removal orders. They may be able to appeal for a review of the finding of ineligibility or to apply for permanent resident status on humanitarian and compassionate grounds. In any case, prior to removal these individuals are eligible for a Pre-Removal Risk Assessment (PRRA) immediately prior to removal, in order to determine if circumstances in their country of origin are such that they should now be afforded protection in Canada and not returned.

Non-Status

Non-status individuals are those without legal immigration status in Canada. These are generally individuals whose eligibility to enter or remain in Canada has expired and who have either exhausted, or not initiated any of the processes through which they might gain or regain legal status in Canada. A great number of these individuals may have had warrants issued against them by CIC in order to carry out removal. These individuals, particularly non-status PHAs, are among the most vulnerable because their lack of status places them outside of eligibility for practically all and every form of social support. These individuals face enormous barriers to services because interaction with officials may result in immigration taking action against them.

Immigration

Rules and regulations governing the immigration system in Canada are extremely detailed and very confusing. Many newcomers to Canada, whether immigrants, refugees or non-status, face significant systemic barriers because of difficulties in understanding the process and rules and their route through them. Newcomers are often unaware of the ways in which municipal, provincial and federal levels of government interact. Many newcomers, particularly refugees, arrive from countries where they have faced persecution as a result of interaction with government. For PHAs in particular, the time required to navigate the immigration system can be extremely distressing. Combined with a lack of understanding of the process, there are significant negative implications for their health:

“when they come in, they’re all so stressed about this issues. And because of the stress levels, and because they’re so depressed and stressed about that [immigration] particular issue, they don’t really care about themselves even though they have all these medication issues which we have to deal with right away. And even though as support workers you try to push them to, you know, take care of yourself, you take a long process, but they’re just not relaxed and they come to the office and you need to calm down, you know and you have to sit down with them for a couple of hours just to calm them down.”

[ASO Support Worker]

“Immigration is really important, and this is their priority before anything else. Even if they know they are HIV positive. [...] and then they start looking after their health.”

[ASO Support Worker]

Legislation and Policy

The relevant statutes are the *Immigration and Refugee Protection Act* (IRPA) and regulations. There is an extensive collection of policies and operational documents which impact on newcomer PHAs. The documents establish the main framework through which PHAs are able to enter and remain in Canada, as well as define the ways in which they may be excluded from services and removed from the country. Particular areas of concern are medical inadmissibility and definitions of excessive demand, the Interim Federal Health plan, sponsorship, other grounds of inadmissibility, failed refugee claims, the humanitarian and compassionate (H & C) application process, appeals, access to legal services and the Pre-Removal Risk Assessment.

The IRPA establishes a number of grounds that render individuals inadmissible to Canada. One of these is based on the medical condition of the individual. Medical inadmissibility presents the single greatest difficulty for PHAs entering Canada. Since January 15, 2002 every immigrant and refugee seeking status in Canada is required to undergo an HIV screening test as part of the immigration medical examination. IRPA establishes that you are inadmissible to Canada if you have a health condition that is a threat to public health; a threat to public safety or that is likely to cause excessive demand on the health or social services in Canada. By policy, HIV-infection is not considered to be either a risk to public health or a risk to public safety in and of itself. It is,

however, usually considered to be a condition that is likely to cause an excessive demand on health and social services if the person were admitted to Canada.

Health services are “any health services for which the majority of the funds are contributed by governments, including the services of family physicians, medical specialists, nurses, chiropractors and physiotherapists, laboratory services and the supply of pharmaceutical or hospital care.” **Social services** are “any social services, such as home care, specialized residence and residential services, special education services, social and vocational rehabilitation services, personal support services and the provision of devices related to those services, (a) that are intended to assist a person in functioning physically, emotionally, socially, psychologically or vocationally; and (b) for which the majority of the funding, including funding that provides direct or indirect financial support to an assisted person, is contributed by governments, either directly or through publicly-funded agencies.” **Excessive demand** is defined as “(a) a demand on health services or social services for which the anticipated costs would likely exceed average Canadian per capita health services and social services costs over a period of five consecutive years immediately following the most recent medical examination required by these Regulations, unless there is evidence that significant costs are likely to be incurred beyond that period, in which case the period is no more than 10 consecutive years; or (b) a demand on health services or social services that would add to existing waiting lists and would increase the rate of mortality and morbidity in Canada as a result of the denial or delay in the provision of those services to Canadian citizens or permanent residents.” **Social assistance** is defined as “any benefit in the form of money, goods or services provided to or on behalf of a person by a province under a program of social assistance, including a program of social assistance designated by a province to provide for basic requirements including food, shelter, clothing, fuel, utilities, household supplies, personal requirements and health care not provided by public health care, including dental care and eye care.”

These definitions are important and are set out in full here because they figure prominently in the difficulties encountered by PHA immigrants, refugees and those without immigration status. They have particular impact with respect to eligibility for PHA immigrants, refugees and non-status individuals for services like health care and the ability to sponsor family members or to be sponsored by them. Some of these issues will be discussed in some detail in the sections on Health Care and Social Assistance.

A Note about Numbers

The Federal government maintains and publishes annual statistics with respect to HIV infection and AIDS cases. The most recent available report details numbers for the calendar year 2004. In the course of compiling this information, the Public Health Agency Canada sought statistical information from Citizenship and Immigration Canada to determine the flow of individuals into Canada who were HIV positive. This information is much more readily available since the implementation of mandatory HIV screening in January 2002. According to reported statistics, “between January 15, 2002 and December 31, 2004, 1,474 applicants tested positive for HIV during their IME [Immigration Medical Exam]. Of these, 918 were identified via testing in

Canada, and 556 were identified outside of Canada.¹ In most provinces and territories, for the HIV screening conducted in Canada, positive HIV test reports are handled in the same manner as all other positive HIV tests and are included in provincial/ territorial HIV reporting to the Centre for Infectious Disease Prevention and Control of the Public Health Agency of Canada (PHAC). In September 2004, CIC introduced reporting to provincial/ territorial health authorities of HIV cases, medically examined overseas, who have entered Canada.”

Given that every immigrant and refugee claimant was subject to a medical examination during this period that required a mandatory HIV screening test, we are not talking about significant numbers in the context of overall immigrants and refugees during this period. This statistical information will provide assistance in developing policy recommendations and assist in estimating potential costs if advocating expanded IFH eligibility, for example.

Medical Inadmissibility

The most relevant policy document with respect to HIV and medical inadmissibility is entitled “Operational Processing Instruction 2002-004: Medical Assessment of HIV Positive Applicants”. This document contains the most detailed discussion of CIC’s analysis of the demand that PHAs are expected to place on health and social services. The estimation of this demand forms the basis for deeming PHA immigrants who are not otherwise exempt inadmissible to Canada.

This policy is based on treatment guidelines in effect at the time (2002) recommending that antiretroviral (ARV) treatment be initiated if a person has a CD4 count of less than 350 and/or a viral load (VL) greater than 55,000 copies/ml. In addition, the treatment guidelines provided that any individual with an AIDS-defining illness should be started on ARV regardless of CD4/VL levels. The policy indicates that only individuals with CD4 counts of more than 500 and viral loads below 55,000 would be medically admissible, if other health conditions are unremarkable. Costs are calculated for PHAs at an average of \$1000 per month if they are on ARV therapy, and assume lab costs and doctor visits four times per year. It estimates the medical visit at \$30, a lab fee of \$30, plus an additional fee of \$150 each for CD4 and VL tests. These costs are measured against a benchmark average of \$3000 per year for a Canadian resulting in a five-year cap of \$15,000 or a 10-year cap of \$30,000. The policy argues that the majority of PHAs will certainly exceed these caps (and normally will apply the ten year cap) if they require ARV for 18 months in that 10-year period.

It is interesting to note that the guidelines for ARV have changed, and effective 2005, they have been modified to indicate initiation of ARV for CD counts below 200 and/or VL counts greater than 100,000 copies/ml. ARV initiation is still recommended for any individual with an AIDS defining illness to be started regardless of CD4/VL levels. The change in the ARV guidelines means that pressure could be brought to bear on CIC to update their policy with respect to PHA applicants, resulting in fewer PHAs being found medically inadmissible based on excessive

¹ Centre for Infectious Disease Prevention and Control. “HIV/AIDS Epi Updates”. Public Health Agency of Canada, December 2005. p. 10

demand. In addition, total health care spending per person in Canada was \$4078 for 2004, the most recent statistics available. This further supports the position that CIC's criteria for the consideration of excessive demand for PHAs is out of date.

CIC legislation and policy specifically exempts certain individuals from the excessive demand component of medical inadmissibility provisions of the legislation. These individuals are considered excessive demand exempt (EDE). Sponsored spouses, common-law partners, conjugal partners and dependent children are exempt from the excessive demand criteria. Individuals with successful refugee claims are also exempt from the excessive demand provisions.

This leaves any potential PHA immigrant in the skilled worker class (formerly known as independent immigrants), business class immigrants, live-in caregivers and family class immigrants who are not spouses, partners or dependent children in the position of being refused permanent resident status in Canada on the basis of their HIV status.

Finally, it should be noted that in addition to arguably being out of date, the excessive demand criteria do not take into account any of the economic and social contributions of PHA newcomers over the same five or ten year period and therefore fail to consider the real cost of granting permanent resident status to PHAs. The Canadian HIV/AIDS Legal Network proposed to the Federal government in 2002 that the 10-year excessive demand window is overly long, and that it is extraordinarily difficult to predict medical and treatment advances that might reduce the cost of care for PHAs.² While the parliamentary committee agreed with this position, the excessive demand criteria were not changed in the final legislation and the 10 year window remains.

Humanitarian and Compassionate Consideration

The IRPA contains a specific provision allowing for consideration of applications for permanent residence based on humanitarian and compassionate grounds (H&C). The H&C process is based on section 25 of the IRPA which provides that upon application by a foreign national, the minister can grant permanent resident status to someone deemed inadmissible, or exempt that person from any requirement of the Act or regulations, "if it is justified under humanitarian and compassionate considerations, taking into account the best interests of a child directly affected or by public policy considerations."

The H&C process is currently the main method by which non-status individuals may be eligible to regularize their status by applying for permanent resident status from within Canada. The only other avenue available to non-status PHAs is by being sponsored by an eligible spouse or common-law partner with whom he or she is living in Canada.

² Canadian HIV/AIDS Legal Network. *Questions & Answers: Canada's immigration policy as it affects people living with HIV/AIDS* 23 June 2005. 16 Feb. 2005.
<<http://www.aidslaw.ca/Maincontent/issues/Immigration/ImmigrationQ&A2005.pdf>>

Essentially, the H&C process permits individuals to apply for permanent resident status even if they have not followed the proper process. The general rule is that immigrants must apply for permanent resident status from outside of the country. For failed refugee claimants, this would normally mean that they would have to wait until they were removed from Canada before initiating an application to immigrate to Canada. Under the H&C rules, someone whose refugee claim has been refused, and who remains in Canada, can apply for permanent resident status on H&C grounds.

Current policy with respect to H&C applications considers the existence of undue, underserved or disproportionate hardship to the individual if they were to return to their country of origin. In addition, CIC will consider the degree to which an individual has become established in Canada. Establishment is considered based on criteria such as stable employment, existence of family in Canada, involvement in community, level of skills and education, whether the person has upgraded their skills, and existence of language skills in French or English.

The most serious difficulty for PHAs is that under current policy, the ability to meet H&C grounds does not currently overcome the provisions for medical inadmissibility. An individual can successfully establish H&C grounds for consideration of their application for permanent residence, but the PR status will be denied based on the excessive demand rules because of the person's HIV status. This is the case in spite of the fact that section 25 of the IRPA permits the Minister to waive the medical inadmissibility provisions for PHAs who seek landing through the H&C process.

Under current practice, someone who makes an H&C application is subject to a two-step process. First, consideration is given to whether their application for permanent resident status be allowed to proceed despite the fact that they are not applying in the normal fashion (from outside Canada). This is the step in the process that requires an individual to demonstrate that there are humanitarian and compassionate reasons to exempt them from the normal rules. The second stage involves establishing that they are otherwise eligible to become permanent residents. For PHAs, this second stage often presents the most significant obstacle. Their health status makes them medically inadmissible for landing due to excessive demand rules. Their only hope at this stage is to qualify for a Temporary Resident Permit and to maintain this status until they may become landed.

A June 2006 CIC Operational Bulletin 021 specifies that CIC officers must consider exempting any applicable criteria or obligation of the IRPA, including inadmissibilities, when the individual has specifically requested such an exemption or it is clear from the information that the individual is seeking such an exemption. Unfortunately, the bulletin further indicates that the authority of CIC officers to exempt individuals from provisions of the Act does not extend to inadmissibilities based on health. In these cases, the bulletin indicates that the entire case should be forwarded to the Direction of Case Review at National Headquarters. If the decision maker at headquarters believes there are sufficient grounds and grants the exemption, a stay of removal is

in place, and the applicant is permitted to apply for a work and/or study permit. Of note is the fact that the bulletin reiterates that a Temporary Resident Permit is still an option.³

Many individuals and organizations in support of a more efficient process to regularize the immigration status of non-status individuals are told that the H&C process meets these criteria. The reality is, however, that the H&C process is extremely long, complicated, expensive and places the health of PHAs in serious jeopardy.

CIC's official processing time for H&C applications is 13 to 14 months, though this is only the processing time to the first stage of the application – namely the decision whether to allow the application to proceed to consideration of the granting of permanent resident status. In reality, the H&C process often takes a number of years to be processed. In addition, the H&C process does not automatically stay any removal proceedings against an individual. Therefore, a PHA making an H&C application for landing because of a failed refugee claim, or because they've lost legal status while in Canada, may face being removed from Canada before a decision is made on their application. H&C applications also require the payment of a fee of \$550 per adult applicant, and \$150 per child. Finally, even where the H&C is granted, and the application proceeds to consideration of PR status, PHAs are denied that status based on the excessive demand rules and must then seek a Temporary Resident Permit and subsist without health care on this temporary status until three years have passed and they can apply for permanent resident status as a member of the Permit Holder class.

Temporary Resident Permits

The result for PHA immigrants of being found medically inadmissible is normally to be denied permanent resident status. However, CIC policy states that these individuals have the right to request permanent resident status based on humanitarian and compassionate (H&C) grounds, discussed above.

If successful, they are still barred from landing due to medical inadmissibility, but may be issued a Temporary Resident Permit (TRP). Criteria for issuance are that the need to enter or remain in Canada is compelling and sufficient to overcome the risk; the risk to Canadians or Canadian society is minimal; and the need for the presence in Canada outweighs the risk.

According to Citizenship and Immigration Canada, 13,598 TRPs were issued in calendar year 2004. Of this number, 189 were extensions of TRPs about to expire. It is important to note that only 137 TRPs, or 1% of these TRPs were issued to individuals whose ground of inadmissibility was related to health grounds (threat to public health, public safety or excessive demand on health and social services).⁴

³ Citizenship and Immigration Canada. *Operational Bulletin 021 – June 2006: Interim Instructions to CIC officers concerning the examination of H&C applications (in Canada)*. Citizenship and Immigration Canada. 7 June 2006.

⁴ Citizenship and Immigration Canada. *Annual Report to Parliament on Immigration 2005*. Ottawa: Minister of Public Works and Government Services Canada, 2005; 33.

TRPs are issued for one year at a time, and in exceptional cases for longer periods, but the maximum is three years. A TRP allows an individual to remain in Canada. TRPs issued because someone is medically inadmissible are specifically coded such that these persons are ineligible for provincial health insurance. There is no right to leave and return to Canada unless the TRP specifically states this is permitted. PHAs on TRPs who wish or need to leave Canada for a period of time MUST ensure that they apply for and receive a variance on the terms of the TRP in order to be able to re-enter. Failing to do so would result in a loss of any status in Canada and the requirement to start again at the beginning (including starting a fresh three year period). If a PHA is able to maintain a valid TRP for three years, and has not become inadmissible on any other ground, then they shall be landed provided they have applied for landing. Finally, TRPs may be cancelled at any time, without prior notice.

CIC policy *IP1, Temporary Resident Permits*, indicates that TRPs on health grounds are issued using the following criteria for risk assessment:

- is there a communicable or contagious disease, considering any threat to the traveling public and community of destination?
- Can concerned officials and the public be protected or forewarned of a person with a health risk?
- How severe is the person's anticipated need for health or social services in relation to the demand by Canadian residents?
- What is the cost of treatment or care?
- How will these costs be covered by a T[emporary] R[esident]?
- What arrangements are there to cover treatment, care and other costs?
- Will the TR need follow-up care at home or in Canada? If it's not available at home, will this prevent them from returning to country of origin?
- In permanent resident cases, is the person likely to become self-supporting?
- Is there a risk the person will require public assistance?

(CIC Policy IP 1)

This policy specifically considers TRP holders inadmissible on health ground who may require continuous public assistance. The policy indicates that “If [medically inadmissible permit holders] are likely to need public assistance continuously, they are high-risk candidates for permits.”

CIC policy on TRPs also specifically mentions the role of provincial health authorities in consideration of whether or not to issue a permit. The policy indicates that “[i]t is left to each R[egional] H[ead] Q[uiarters] to devise the liaison procedures with their provincial counterparts”. If the provincial authorities have been consulted and do not favour permit issuance, the delegated authority “must consider this position when weighing all the factors. This may result in refusal of the permit.” This policy provision would seem to indicate that CIC is still free to issue permits even if the province has indicated it is not favourable.

However, there is significant emphasis in the TRP policy documents reminding immigration officers that granting a permit means a much higher likelihood that the person will eventually become a permanent resident, so to be ‘mindful’ of that. Renewals of permits must be sought in order to avoid any break in continuity. If there is a break, then CIC is careful about the issuance

of a new permit. If there are additional grounds, or a new ground of inadmissibility – for example, financial inadmissibility – there is always discretion to issue another permit based on the new ground. It may mean starting a new (5 year) waiting period if the issue is financial. According to policy, a new permit sought after expiry of an old one would definitely result in a break in continuity.

In addition, the policy on TRPs requires that all family members on a TRP (their own individual TRPs) must also make their own individual applications for PR status as members of the permit holder class. This was the effect of a policy change in August 11, 2004. If accepted into the permit holder class, the applicant does not have to pay the Right of Permanent Residence Fee (RPRF) provided they are a dependent of another member of the permit holder class who has already submitted an application for PR. Applications prior to August 11, 2004 will permit all persons to be processed through the single PR application. After, they will need to be individual applications. TRPs can also be cancelled at any time. Policy provides that there should be notification to the individual of the cancellation, with reasons, and an opportunity for representations on the issues – there is no formal procedural hearing about this. The representations could be written, or a meeting with the officer. Finally, and perhaps of most impact to PHAs, the TRP policy sets out specific codes for permits (92, 91, 90 for health inadmissibility). These code numbers are used by OHIP to limit eligibility for health insurance.

At the end of three continuous years on a TRP due to medical inadmissibility, an individual can apply for landing and will be landed unless they are inadmissible on other grounds. One of these grounds of inadmissibility is financial, meaning specifically that they must not be in receipt of social assistance. This creates significant barriers for PHAs, who may have had to rely on social assistance primarily for access to the drug and dental card in order to survive. These individuals are not eligible for [Interim Federal Health](#), are not eligible for provincial drug coverage, and until they can get off of social assistance, are not admissible as permanent residents. These are among the more vulnerable PHAs who have legal status in Canada, but no access to health care. A significant number of these individuals may be those who rely on programs like the HIV Medication Access Project (HMAP). It would be useful to try to determine the immigration status of HMAP users in order to verify this information.

Sponsorship / Family Class

A significant number of PHAs who come to Canada are sponsored by family members. The normal process for sponsorship is that a permanent resident or Canadian citizen applies to sponsor an eligible family member and the eligible family member makes an application for permanent residence from outside Canada. (see below under [Spouse or Partner in Canada Class](#) for in-Canada sponsorships)

Significant legislative and policy changes brought in with the IRPA improved the situation for many PHAs, but problems persist. The most significant change was the exemption of sponsored spouses, common-law partners, conjugal partners and dependent children from the excessive demand criteria. If a PHA in one of these categories is sponsored in their application for

permanent resident status, then they will be medically assessed based only on their risk to public health and public safety. However, current CIC policy states that HIV infection is not considered to present a public health risk. HIV is not considered to present a risk to public safety unless the person is a sexual offender.

Sponsored spouses, common-law partners, conjugal partners and dependent children are termed “excessive demand exempt” or “EDE”. Any sponsored relative who is a PHA outside of these categories, however would be denied permanent resident status due to medical inadmissibility. In these cases, the only option is for the sponsor to appeal, or for the denied PHA to apply for permanent resident status on humanitarian and compassionate grounds. If successful the status achieved would be a TRP, not permanent resident status, meaning no access to publicly funded health care or medication.

Sponsorship applications, other than the in-Canada class, are processed by first making a decision with respect to the eligibility of the sponsor. On application, the sponsor must indicate whether they wish the application to proceed in the event they are found not eligible to sponsor. If they say no, that is the end of the process. If they say yes, then the Permanent Residence applications of the sponsored family members are processed, and may be considered using H&C grounds. The right of appeal is only available to a sponsor once a decision has been made to refuse a permanent residency application. Appeals are not available where the reason for refusal is because of serious criminality, human rights violations, security, serious or organized criminality; because of misrepresentation except when it’s a spouse, common-law partner or dependent child; or when the sponsor discontinued or withdrew sponsorship.

Sponsorship undertakings are generally for three years for spouses/partners and 10 years otherwise. In the case of dependent children, the length of the sponsorship depends on the number of years it will take before the child is 22, and if over 22, whether they are in school and still dependent on their sponsor.

In cases where domestic abuse may be involved, the three-year sponsorship undertaking is an improvement over the 10-year period, however there remain concerns for the safety of individuals who are subject to the inherent dependency created by sponsorship agreements.

Significant problems persist, however. One systemic barrier has to do with the ability of the Canadian citizen or permanent resident to qualify as a sponsor. There is a legislative barrier to being a sponsor if you are in receipt of social assistance, unless it is by reason of disability. The provinces and CIC have information sharing agreements whereby receipt of social assistance by anyone subject to a sponsorship undertaking is communicated by the provinces to CIC. Effectively this means that an application by a Canadian citizen or permanent resident to sponsor their relative will be denied if they are in receipt of Ontario Works benefits. Potential sponsors in receipt of Ontario Disability Support Program benefits would not necessarily be automatically denied the ability to sponsor.

Sponsors are also required to meet “minimum necessary income” levels in order to sponsor a family member, unless that family member is a spouse, common-law partner, conjugal partner or dependent child. For these cases, the financial test is not applied against the sponsor, but the

sponsored relative could still be denied permanent resident status on financial grounds at the port of entry or at the case processing center if CIC is of the opinion that they will not be able to support themselves and their family members or that adequate arrangements have not been made for their care and support. It could still be possible for someone on Ontario Works to sponsor a family member if they indicate that they want the application to proceed despite ineligibility as a sponsor. In these cases, the application for permanent residence by the sponsored relative would be assessed on H&C grounds.

If any sponsored family member begins to receive social assistance at any time covered by the sponsorship undertaking, the sponsorship is deemed to be in default. This means that the sponsor is now in debt to the provincial and federal governments and is required to repay all social assistance amounts received by their sponsored relative during the period covered by the undertaking. Failure to do so would mean an inability for that person to sponsor anyone in the future until the debt is repaid. The default occurs whether the sponsored relative starts to receive Ontario Works OR Ontario Disability Support Program benefits.

There are particular concerns raised in these situations where the failure of the sponsorship undertaking results from a breakdown in the relationship as a result of domestic violence. The IRPA bars anyone from becoming a sponsor if they have been convicted of an offence of a sexual nature, or an attempt or a threat to commit such an offence, against any person, or an offence resulting in bodily harm, an attempt or threat of bodily harm to a relative of the sponsor, the sponsor's spouse or common-law/conjugal partner or any of their family members. This ban applies unless a pardon has been granted, or five years have elapsed since the completion of a sentence. Other issues related to domestic violence are that a sponsorship undertaking is not nullified when it breaks down by reason of violence. There is a statement in policy that indicates that where the breakdown is by reason of violence that "CIC will work with the provinces to develop guidelines for suspending collection in documented cases of abuse. Notwithstanding that a case had been suspended for reasons of abuse, the sponsor would remain in default until the debt had been recovered to the satisfaction of the province concerned, should the latter seek to collect."

Spouse or Partner In-Canada Class

The existence of the Spouse or Partner In-Canada Class also has an impact for PHAs. This class of sponsorship permits sponsorships to occur where the spouse or partner is already in Canada. Initially, a spouse or partner could only qualify to be sponsored in this class if they had legal temporary status at the time of application (work or study permit, visitor permit, temporary resident permit). However, in a policy change from February 2005, CIC modified the rules to permit in-Canada class sponsorships to occur even in situations where the spouse or partner does not have legal status in Canada – including those whose status has expired, or those without status.⁵ This policy change is likely to positively benefit a number of PHAs who find themselves

⁵ Citizenship and Immigration Canada. *CIC Canada: Change in Policy: Sponsorship of Spouses and Common-Law Partners from within Canada*. 18 February 2005. 22 August 2005. <<http://www.cic.gc.ca/english/sponsor/faq-spouse.html>>

without status in Canada because it permits these individuals to be sponsored in the event that they develop a conjugal relationship with a Canadian citizen or permanent resident without having to leave Canada. It also permits these individuals to be included in the class of persons who are exempt from the excessive demand criteria of medical inadmissibility.

CIC policy documents indicate that “lack of status” includes individuals who have overstayed a visa, visitor record, work permit or student permit; who have worked or studied without being authorized to do so under the Act; who have entered Canada without the required visa or other document required under the regulations; and persons who have entered Canada without a valid passport or travel document (provided valid documents are acquired by the time CIC seeks to grant permanent residence).

CIC policy clearly indicates that “lack of status” does **not** include any other inadmissibilities such as a failure to obtain permission to enter Canada after being deported; persons who have entered Canada with a fraudulent or improperly obtained passport, travel document or visa and who have used the document for misrepresentation under IRPA (i.e. they have been granted temporary or permanent resident status already based on these fraudulent documents); and persons under removal orders or facing enforcement proceedings for reasons other than the above-noted lack of status reasons.

Unlike sponsorship applications from outside Canada, the sponsor has no right of appeal from a negative decision of an in-Canada sponsorship.

Protected Persons (Refugees)

A number of important provisions impact on PHAs who are refugees or protected persons. First and foremost is that though subject to a medical examination and HIV screening, PHA refugees and protected persons are excessive demand exempt (EDE). This means they are not subject to the excessive demand criteria for health inadmissibility if their claim is successful and they are found to be persons in need of protection. A second important legislative provision is that a person seeking asylum who does not meet the narrower definition of a Convention refugee may still meet the definition of a “person in need of protection”, a category which includes persons who face a risk of torture or cruel and unusual treatment in their country of origin. A severely limiting provision in the legislation from the perspective of PHAs, is that the risk faced by that person **cannot** be based solely on “the inability of that country to provide health or medical care.” This effectively means that PHAs in countries where care and treatment is inadequate or unavailable cannot be determined to be persons in need of protection on that basis alone.

If eligible to have their claim referred to the Refugee Protection Division (RPD), however, PHAs do have access to health services and medication through eligibility for the Interim Federal Health plan. The legislation states that CIC has three working days in which to determine eligibility for a claim to be referred to the Immigration and Refugee Board for consideration. Claims are eligible to be referred unless the person:

- is already a refugee,
- has had a claim already rejected by the board,

- had a prior claim determined ineligible to be referred to the RPD, or was withdrawn or abandoned
- has been found to be a Convention refugee by another country and can be sent/returned to that country
- came to Canada directly or indirectly from a “safe third country” designated in the regulations (a country where they could have, but did not claim refugee status, like the U.S.)
- is determined to be inadmissible on grounds of security, human/international rights, serious or organized criminality.

A claim is deemed to be referred after three days if the officer has not already done so, unless it is suspended in order to consider security risks. The referral is what triggers eligibility for the Interim Federal Health Plan. IFH documents are then provided to the claimant. Claimants are eligible to apply for work and/or study permits and dependent minor children are permitted to attend school without study permits. There is also an exemption from the processing fee for these permits. The permit applications can be made once the Personal Information Form (PIF) has been submitted, and the medical examination has been completed.

Policy on IFH coverage indicates that refused refugee claimants awaiting removal (presumably those who have not yet had a PRRA or have had a failed PRRA and are about to be removed); and those found to be protected persons under the PRRA are eligible for IFH. Policy indicates that IFH should only be approved for shorter periods and extended if and as necessary.

The Safe Third Country Agreement

The Safe Third Country agreement with the United States came into effect in December 2004. Essentially it means that if refugees present themselves at a port of entry to claim refugee protection and have arrived via the U.S. they will be returned to the U.S. and instructed to claim refugee protection there. Exceptions to this rule include individuals who can establish that they have a family member who is a Canadian citizen, permanent resident, refugee/protected person, is currently on a valid study or work permit, or has applied for refugee protection and there has not been a determination or final refusal. The definition of family member for these purposes is quite broad and includes spouse/partner, sons, daughters, parents, legal guardians, siblings, grandparents, grandchildren, aunts, uncles, nieces, and nephews (does not include in-laws).

In a report from December 2005, the Canadian Council for Refugees found that the Safe Third Country Agreement has resulted in a significant drop in the number of refugees able to make a claim at the Canadian border. The report indicates that the number of claims at the land border crossings into Canada in 2005 is only 51% of the total for 2004, and the number of claimants seeking refuge in Canada is lower than at any time since the mid-1980s. The CCR, along with Amnesty International and the Canadian Council of Churches launched a legal challenge in December 2005 asking the Federal Court to overturn the designation of the United States as a safe third country in the *Immigration and Refugee Protection Act* because the US does not meet its obligations under the Convention on Torture and the Refugee Convention and that as a result, Canada violates its own obligations under these instruments and the Charter rights of refugees by turning them back to the U.S.

Pre-Removal Risk Assessment

The Pre-Removal Risk Assessment is an important mechanism for individuals who have failed to qualify as Convention refugees or persons in need of protection. The PRRA is intended as a last look at the conditions in the country of origin to determine if there is currently a risk of persecution as defined in the *Geneva Convention*, a danger of torture or a risk to life or a risk of cruel or unusual treatment or punishment.

Individuals going through the PRRA process are eligible for IFH coverage.

Generally, anyone who is subject to a removal order which is in force is permitted to apply for a PRRA. This includes:

- Failed claimants, or those who withdrew or abandoned their claims
- Those making repeat claims more than 6 months after their departure from Canada (i.e. someone who came back, made a new refugee claim, which is ineligible to be considered by the IRB because they were previously determined ineligible by the IRB, but who can make a PRRA claim during the removal process).
- Those ineligible to have their claim heard by the IRB
- All others who wish to make a claim for protection before being removed from Canada and have never previously made a claim for protection
- Repeat PRRA claimants.

For someone who has been through the PRRA before, only new evidence can be considered in the hearing. As a general rule, PRRA decisions are final and are not/cannot be revisited. Abandonment or withdrawal of a PRRA results in rejection of the PRRA. This means that if a person fails to show up at a PRRA hearing, and misses the second chance at the hearing, they are rejected. A person who leaves Canada ahead of the PRRA hearing is deemed to have abandoned the process and the application is therefore rejected. In the normal course, applying for a PRRA within the 15-day time limit will automatically stay a removal until the process is completed. The stay of removal will not apply if the application comes more than 15 days after being invited to apply.

The PRRA policy also states that the risk to life must not be caused by the inability of the country of return to provide adequate health or medical care.

Processing Times

A consistent barrier for PHA immigrants, refugees and those without status is the length of time involved in the immigration process. Application processing times are often extremely long. PHA applications are often more complicated as a result of the medical inadmissibility issue and therefore processing can be extremely stressful. PHA immigrants often find it difficult to concentrate on their health while they are navigating the immigration system.

CIC regularly publishes statistics on its processing times for various applications. Statistics from February, 2006 indicate between 13 and 14 months for the processing of H&C applications for permanent resident status.⁶ It should be noted, however, that this time frame is only for the first stage of approval (determining that H&C factors are sufficient to proceed with the application). The processing and granting of permanent resident status will take additional time beyond this.

The former Liberal government announced funding of \$700 million over five years, of which \$418 million is intended to “allow for an increase in operational capacity for federal departments to more efficiently process applications and start to reduce processing times.” The results of the recent election, however, leave in doubt whether these funds are in fact forthcoming and will result in the intended reduction in processing times.

Fee Structure & Immigration Loans

One other significant issue for PHA immigrants and refugees has to do with the cost recovery process. CIC defines fees in two broad ways: fees, which are application and processing fees, and “rights fees” which are the Right of Permanent Residence Fee (RPRF – formerly known as the Right of Landing Fee, or ROLF, and more commonly known as a ‘head tax’) and the Right of Citizenship Fee (ROCF). These last two are refundable if those statuses are not conferred on the individual.

Virtually every immigration process requires the payment of fees for processing. These fees present considerable barriers. A chart of fees is available and is attached in [Appendix C](#). Of interest are policies, legislation and regulations that govern the circumstances under which these fees may be reduced or waived, or supported through loans from CIC. Of particular note for PHAs is that there is no exception to the payment of the fee for individuals on TRPs who are applying to become permanent residents as members of the permit holders class (after three continuous years on a TRP because of health inadmissibility). This fee is \$325. If it can’t be paid, then the process is delayed and landing is not conferred until it can be paid. This is a processing fee. If paid and the application proceeds, the RPRF of \$490 is still payable for PR status will be conferred. TRPs themselves are subject to the payment of a fee of \$200. This fee must be paid every time the TRP is applied for (they are usually issued for one year periods), and for each person. TRP holders are permitted to apply for work and study permits, but they must pay the fees associated with those permits as well (\$150 and \$125 respectively, or \$75 to renew/extend each one if the application is made before expiry). H&C applications are subject to a fee of \$550 for the principal applicant, \$550 for each family member who is 22 or older, or under 22 and married; and \$150 for each dependent child under 22. These costs are similar to the costs for sponsoring. The sponsor must pay \$75 to be assessed as a sponsor, plus \$475 for the principal sponsored person, plus as above for the H&C fees.

⁶ Government of Canada. *CIC Canada: Application Processing Times* 13 Feb. 2006. 18 Feb. 2006.
<<http://www.cic.gc.ca/english/departement/times/process-in.html#table>>

If a work, study or visitor authorization expires, an application can be made within 90 days to restore temporary status, but this fee is \$200, and the fee for the new permit must be paid as well.

Protected persons are exempt for most of these fees, most importantly the RPRF. Members of the permit holders class who apply (\$325) for landing after renewing their TRPs three times (\$200x3=\$600) and their work authorizations (\$150 + renewal @ \$75 each time) must also come up with the \$490 before than can be issued permanent resident status.

CIC does manage a loans program intended to help reduce the impact of financial barriers. However, eligibility for these loans is quite limited. The majority of loans are approved for Convention refugees and their family dependants, and members of the Humanitarian-protected persons abroad classes who come to Canada, either with government assistance or through private group sponsorships, as part of the Annual Refugee Plan. Loans are not generally available or approved to assist with the payment of the kinds of fees noted above, and which present the most pressing financial barriers for PHA immigrants and refugees. The one loan which may be important to PHAs concerns the RPRF. Policy indicates that this loan may be applied for by sponsors in order to help with the costs of the RPRF for sponsored relatives. This may present difficulties however because the sponsor is also trying to establish with CIC that they are capable of supporting their sponsored family members. Policy does state that: “For instance, in the case of a member of the family class, the sponsor must satisfy a designated officer that sufficient financial resources exist on behalf of the person(s) being sponsored, and must demonstrate that they have the ability to meet the basic needs of sponsored persons without relying on social assistance. To request an immigration loan in order to fulfill the sponsorship undertaking could contravene the terms of the agreement, except in the case of a spouse and dependent children under 22 years of age.” Further consideration of loan applicants on social assistance states: “A loan applicant who is receiving some form of social assistance should not be automatically disqualified from receiving a loan. A designated officer should assess the loan application according to the particular circumstances of the case. The assessment should clearly examine the reasons behind the applicant’s need for social assistance such as whether the social assistance is a long-term or a temporary situation, and whether the loan applicant is making a real effort to return to the labour market. Long-term recipients of social assistance must not be provided loans until it is clear that the recipients will be capable of repaying the loan in the very near future (less than one year).”

Non-Status Individuals

Individuals in Canada without valid immigration status are generally excluded from almost all processes. The biggest challenge for these individuals is finding a way to try to bring themselves within some kind of valid status in order to normalize their status in Canada. Obviously, this is difficult, stressful, and presents significant risk for the individual. For PHAs the difficulty, stress and risk are escalated by the need to secure access to health care. The fear of exposure also limits the ability and willingness of non-status individuals to seek a whole range of services, and inhibits victims of crime and witnesses to crime from coming forward for fear that police will report them to immigration officials and they will be detained and/or deported.

Under the current provisions of IRPA, there are few ways that an individual in Canada without status can legally try to regularize their immigration status. One is to come to the attention of immigration through a humanitarian and compassionate application for permanent resident status. Such an application has an extremely low success rate (estimated by the STATUS campaign to be less than 5%).⁷ The only other way that a very limited number of non-status individuals may be eligible to regularize their status is by being sponsored by a spouse or common-law partner from within Canada. In these cases, their loss of status must meet specific criteria in order to be able to allow them to make the sponsored spouse or partner application. (see [Spouse or Partner In-Canada Class](#), above for more information).

Individuals without status are not eligible for social assistance unless they can bring themselves within eligibility by coming to the attention of CIC, being reported and made subject to removal and then being unable to leave Canada on their own. Non-status individuals may also be eligible to have a PRRA conducted before they are removed, and in this way may be able to gain protected person status. Such possibilities however are extremely complicated and should not be undertaken without consulting with a legal expert on the matter.

Public campaigns such as the Status Campaign, and Don't Ask, Don't Tell Toronto are other possibilities for improving the circumstances of non-status PHAs in Canada. The STATUS campaign and others like No One Is Illegal (NOII) are campaigns focused on raising public awareness of the contributions of non-status individuals to Canadian society and a movement to help regularize the status of these individuals. The work of these various campaigns is currently having some measure of limited success. News reports from February 2006 indicate that the Toronto Police Services Board has considered and supports a policy for the Toronto Police Service which would prevent officers from asking victims and witnesses of crime about their immigration status. The City of Toronto is in the process of considering the implementation of a don't ask, don't tell policy with respect to all city services, with the exception of access to social services. The Toronto District School Board adopted a similar policy in the 2006. A number of US cities including New York have already implemented such policies in order to lessen the marginalization and risk factors for non-status individuals. Many non-status PHAs would benefit greatly from positive changes in immigration legislation/policy with respect to non-status individuals.

Impact of Criminality and Domestic Violence

Among the factors that make an individual inadmissible to Canada as a permanent or temporary resident is the factor of serious criminality. Provisions in the legislation and policy stipulate that criminal inadmissibility may be overcome if a pardon has been issued, or if sufficient time has elapsed since the completion of any sentence associated with the conviction.

Criminality may be a serious concern for PHAs who have any status less than Canadian citizen because permanent resident status may be cancelled, and removal occur if a permanent resident

⁷ Khandor, Erika., et al. *The Regularization of Non-Status Immigrants in Canada 1960-2004: Past Policies, Current Perspectives, Active Campaigns*. November 2004. 29

is convicted of a crime in Canada which is punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed; or in the case of a foreign national, by way of indictment, or of two offences under any Act of Parliament not arising out of a single occurrence.

Essentially, this means that criminal activity in Canada can result in an inadmissibility report being produced in respect of that individual. If enforced, this would result in removal from Canada, and loss of permanent resident status. It is worth noting that any criminal convictions associated with *Cuerrier* and *Williams* type offences would certainly qualify under the provisions above, and, upon conviction, would likely result in loss of permanent resident status.

As noted earlier in the discussion on public health, the impact of criminality may have an unintended negative consequence for sponsored PHAs. A breakdown in the sponsorship agreement, or withdrawal of the offer of sponsorship may result in the PHA no longer qualifying for the Excessive Demand Exempt category because they are no longer the sponsored spouse, common-law or conjugal partner of a citizen or permanent resident. As a result, there is a risk that individuals will remain in abusive circumstances without reporting incidents to police in order to avoid any potential impact on their immigration proceedings.

Health Care

For the purposes of this paper, health care is meant to include a discussion of access to a range of health care services for PHA refugees, immigrants and non-status individuals. Health care includes primary care, specialists, diagnostic testing, hospitalization, provincial health insurance coverage, dental, medication and the role of public health.

Legislation & Policy

The relevant statutes in this area include the *Health Insurance Act (HIA)* which governs access to and eligibility for the **Ontario Health Insurance Plan (OHIP)**, the *Ontario Drug Benefit Act (ODB)* which governs access to and eligibility for the **Trillium Drug Program**, and the *Health Protection and Promotion Act (HPPA)*, particularly with respect to the roles and duties of local public health authorities.

In addition to the above-noted statutes, there are a number of policy and operational documents which impact on the experiences of PHA newcomers and non-status individuals. These include operational materials regarding OHIP and Trillium, as well as the OHIP schedule of benefits for dental care. The provincial *STD Control Protocol*, revised in 2005, also provides direction to public health authorities with respect to the handling and management of HIV/AIDS cases. Finally, the *Immigration and Refugee Protection Act (IRPA)*, its regulations and especially Citizenship and Immigration Canada's policies and programs with respect to the *Interim Federal Health (IFH)* program have a significant impact on the ability of PHA immigrants, refugees and non-status individuals to access health care services.

Ontario Health Insurance Plan (OHIP)

OHIP is Ontario's provincially-managed health insurance program. OHIP provides insured coverage to eligible recipients for such services as visits to family doctors, specialists, costs associated with diagnostic tests and hospitalization. OHIP does not provide coverage for dental care or for medications except in specific, limited circumstances. For example, only emergency dental care may be covered, and the cost of medications is only covered during periods of hospitalization or prescribed home care.

As a general rule, access to the health care benefits of OHIP is limited by immigration status. Individuals without valid immigration status are not eligible for publicly funded health care. The *HIA* indicates that "residents of Ontario" are eligible for OHIP. The regulations under the *HIA* define "resident" to include a citizen, landed immigrant, refugee, or an applicant for landing who has received their approval-in-principle (technically "who has been confirmed by the federal Department of Citizenship and Immigration as having satisfied the medical requirements for landing"). The regulations set out which types of Temporary Resident Permits (TRPs) confer eligibility for coverage under the provincial plan. All the TRP codes that refer to people who are inadmissible due to excessive demand on health and social services are specifically excluded from this list, making PHAs on TRPs ineligible for OHIP. As a result, PHAs whose refugee claims were denied and who are making humanitarian and compassionate (H&C) applications;

those who are sponsored in the non-Excessive Demand Exempt (EDE) categories; those who are independent immigrants; or those who are non-status are specifically excluded from eligibility for OHIP.

Additional criteria to satisfy OHIP that one is a resident of Ontario concern length of stay in Ontario. A general provision creates a three-month waiting period for OHIP eligibility after arriving in Ontario. According to the regulations, Convention refugees, and those who have made refugee claims which have been deemed eligible to be heard, and against whom no removal order had been executed are exempt from the three month waiting period and may be eligible as soon as they apply.

The main way immigrant, refugee and non-status PHAs are excluded from coverage under provincial health care is through the regulations to provincial health insurance statutes. Interestingly, foreign workers who hold a work permit valid for at least six months, and which states both the name of the employer and the occupation may be eligible for OHIP coverage. For individuals who meet these criteria, but who also hold a Temporary Resident Permit with an ineligible case type code, it is unclear whether OHIP eligibility assessors will consistently look beyond the work authorization and declare the individual ineligible based on their TRP status. Only a few of them may be temporarily covered under the provisions for IFH.

Canadian-born Children of OHIP-Ineligible Parents

One area of particular concern to PHA newcomers concerns OHIP eligibility for Canadian-born children of individuals in Canada with no eligibility for OHIP. This is a very common situation encountered by PHAs who are in Canada with no status, or here on a Temporary Resident Permit and whose children are Canadian citizens because they are born here.

It is the policy of the Ontario Ministry of Health and Long-Term Care that Canadian-born children are eligible for OHIP, and an application for a health card can and should be made to OHIP as soon as possible after their birth. The Ministry of Health and Long-Term Care will require documentation, including identity documents for the parent and the child as well as any documentation relating to the parents' immigration status. Normally, OHIP eligibility will be granted for the Canadian-born child for a period of one year, and is renewable. Unfortunately, this process can be very difficult to navigate, and for non-status parents, presents the difficulty of having to identify themselves to a government authority with information relating to their presence in Canada without status. Advocacy from front-line agencies is often required in these situations, despite clear direction from the Ministry about the eligibility of the child.

Trillium Drug Program

One of the most significant barriers faced by immigrant, refugee and non-status PHAs in Canada is access to the medications required to treat their HIV infection. The cost of anti-retroviral medications far exceeds the ability of most PHAs to pay and as a result many PHAs forgo medication or have only a limited ability to access the medicines they require.

The Trillium Drug Program was created as a result of organized community pressure in order to assist individuals who live with “catastrophic illness” and have excessively high drug costs as a result. The program is designed to cover the cost of medications if they exceed a set percentage of a household’s income. Many PHAs rely on the Trillium Drug Program, including individuals who have private insurance, but who have difficulty making the co-payment established under their policy. The Trillium Drug program is outlined in the general regulation under the Ontario Drug Benefit Act. Those eligible for the program pay a deductible in quarterly installments and have the remainder of the cost of their medications covered. All medications listed on the Ontario Drug Formulary are funded under the program, and in the case of HIV medications, are on the Facilitated Access List of HIV/AIDS drugs.

The first criterion for eligibility for the Trillium Drug Program is that the individual must be eligible to be insured under the provisions of the Health Insurance Act. Therefore, access to Trillium-funded medication is limited to those individuals who are able to establish eligibility for OHIP. Immigration status has a direct impact on eligibility for medications through the Trillium Drug Program.

Eligibility for Trillium is established in the legislation by designating classes of individuals who are eligible. The only other way in which individuals who are not OHIP-eligible can be eligible for coverage under the ODB is through the provisions of section 2(2) of the general regulation under the ODB which states that persons who are in receipt of drug benefits under the *Ontario Works Act*, or the *Ontario Disability Support Program Act* are also considered eligible under the Act.

PHAs in Ontario who are OHIP-eligible are also eligible for coverage under the Special Drugs Program. The Special Drugs Program covers the cost of certain common HIV medications – AZT, ddI, ddC and pentamidine. If an individual is not eligible for OHIP coverage, these medications are not available without cost.

Hospitalization

Hospitals are required to admit a patient through emergency departments if failing to do so would likely jeopardize life. However, for individuals who are barred from eligibility for provincial health insurance, they will be billed for all services rendered during their stay. Similarly, any health care sought at a walk-in clinic or regulated health care provider will result in a charge to the patient. The costs of medications during hospitalization are borne by the hospital, but may be included in the billing sent to the patient following release.

“For the past few months, we’ve been getting a lot of calls from hospitals with these people who have no status ending up in hospital and I think it costs the hospital much more than to have them go to a clinic. I think that the government needs to look at that because by not giving them access, they end up getting sicker and sicker and longer time in isolation in hospital, and longer time in hospital and then they put them on medication... they must get something somehow, so why wait until it’s too late and it costs you so much.”

[ASO service provider]

Many PHA newcomers avoid interacting with health care professionals. This is especially true for those who are not eligible for insurance and have not normalized their immigration status. As a result these individuals are often extremely ill when they do finally seek medical care, usually through emergency services in hospitals. As noted below, the added stress of the financial burden for PHAs can become overwhelming:

“My personal experience, I was two weeks admitted in hospital and the bill was approximately \$36,000, and if I would have signed the documents, today I would be in debt. It was thanks to the social worker [from the HIV Clinic at the hospital], he saved my life on that day, and it was taken away. But I still do go through this problem. I have one bill that was sent to the credit department for \$400 dollars and they are asking me to pay it little by little.”

[PHA newcomer – female]

As indicated above, some hospitals do have HIV clinics housed within them and often these clinics employ social workers. Many PHA newcomers identify these individuals as key players in establishing connections to services, and in negotiating the complicated health care and immigration systems through a complex network of inter-agency connections and advocacy.

“My best referral was through the social worker at Sick Kids. She referred me. The best resource, I would say is the social worker of any hospitals.”

[PHA newcomer – female]

Generally, the costs for hospitalization are established by each hospital’s Board of Governors. The cost can vary significantly from one institution to the next. The social work staff within hospitals are frequently the main players in negotiating with agencies and PHAs concerning the cost of care. Relationships between Community Health Centres and hospitals often depend specifically on the interpersonal relationships developed on a case-by-case basis and often make the difference for non-insured PHAs in their ability to access hospital based care without incurring insurmountable debt.

Community Health Centres

Community Health Centres (CHCs) are funded by the Ministry of Health and Long Term Care and are administered by community-based boards of directors. CHCs are based on a community response to the provision of health care. CHCs are mandated to serve specific catchment areas or populations, and therefore may be inaccessible for some PHAs in uninsured circumstances. The policy and procedure manual provided to all CHCs specifically identifies priority populations as those with one or more of the following characteristics:

- *face barriers to accessing an appropriate range of primary care services (e.g. geographic isolation, or cultural or language barriers); and/or*

- *A higher burden or risk of ill health due to socio-economic status, age, environmental factors, social isolation, mental health issues, or other health determinants.*⁸

The policy manual also sets out the provisions of the CHC service model, which includes a statement that “CHCs' services are made available regardless of a client’s health card status”.

To meet this component of the service model, CHCs have limited funds in their funding allocations that permit them to provide service to non-insured refugees and refugee claimants. The refugee non-insured fund is a discrete budget allocation requiring quarterly reporting. The amount of funding available is determined based on historical usage patterns of the fund, and if CHCs exhaust their allocation of the fund prior to the end of the fiscal year, and additional MOHLTC funds are available, the fund may be replenished. The non-insured fund is often insufficient to meet the needs of CHCs whose client population includes higher numbers of newcomers with HIV. This is particularly the case for CHCs whose catchment area includes populations arriving from countries with high a prevalence of HIV infection.

The funds in the Non-Insured fund are specifically designated to cover the costs associated with health care services and diagnostics for individuals who do not have access to other sources of funding for health care. There are no funds available to offset the costs associated with hospitalization, other than for diagnostic services. These costs must be accessed elsewhere, and as noted above, are often the subject of negotiation between hospitals and the community agencies, including CHCs, who serve them. These negotiations are usually informal and depend on the development of good personal connections between CHC and hospital staff, developed over time. Once established, these relationships often make possible the provision of hospital services to non-insured clients on a case-by-case basis.

A November 2005 publication by the Association of Community Health Agencies (AOHC) focused on the practices of HIV/AIDS care by CHCs across Ontario. The document indicates that of 18 CHCs surveyed, 8 indicate that they provide HIV primary health care. All 18 CHCs offered anonymous HIV testing to clients, indicating that a number of PHAs may first deal with knowledge of their status through CHCs and will likely rely on CHCs to provide care and/or to refer them to appropriate care services. Included in the recommendations of this publication are a call for local hospitals to take up and champion the issue of immigrant and PHA refugees, including developing formal arrangements between CHCs and hospitals to facilitate access to care for PHAs with no coverage.⁹ (AOHC, 2005).

A November 2005 announcement by Ontario’s Minister of Health indicated that CHCs will be expanded over the next three years with 22 new CHCs and 10 new satellite locations across the province, as well as additional funding to increase staffing at existing CHCs. One new CHC and

⁸ Ontario Ministry of Health and Long Term Care. *Community Health Centre: Policy & Procedure Manual*. Toronto: Ministry of Health and Long Term Care. Dec. 2001. 6

⁹ Association of Ontario Health Centres. *HIV/AIDS Prevention, Care, Treatment and Support: Best Practices in Community Health Centres*. Toronto: Association of Ontario Health Centres, 2005.

8 satellites are located in Toronto, which receives fully 50% of all immigrants to Canada.¹⁰ These improvements will clearly benefit those who face barriers to accessing health care for a number of reasons, including ineligibility for health insurance.

Interim Federal Health Program

The Interim Federal Health Program (IFH) is a federally-funded health insurance program intended to provide access to essential health care, treatment and medication for individuals going through the refugee determination process. Figures for the fiscal year 2004-2005 estimate that IFH provided prescription drugs to approximately 90,423 individuals at a total cost of about \$5.3 million.¹¹ The program is essentially intended to cover the individual until such time as they are either eligible for provincially funded health care, or they are found not to be eligible to remain in Canada and are removed. IFH exists pursuant to a 1957 Order in Council. IFH is also available to individuals in the Pre-Removal Risk Assessment (PRRA) process; individuals detained by Citizenship and Immigration Canada (CIC); and protected persons, including those in the Humanitarian-Protected persons abroad classes.

Individuals may be eligible for IFH if they fall into one of the above categories and if they are not able to pay for health care services and are not covered by a private or public health plan. The determination of whether an individual is unable to pay for health care services is left solely to the discretion of the immigration officer processing an individual's refugee claim. In practice, however, most refugee claimants are granted eligibility for the Interim Federal Health program as a matter of course.

Eligible for IFH are:

- Refugee claimant & in-Canada dependent children unless
 - Not eligible to have a claim heard
 - Abandoned or withdrawn refugee claim
- Pre-Removal Risk Assessment applicants during the in-Canada part of the process.
- A failed refugee claimant while still legally in Canada **unless they are granted the right to apply for landing** [meaning they have made a humanitarian and compassionate grounds application for landing and the application has been allowed to proceed, but a decision has not yet been made].
- Protected person determined in Canada and in-Canada dependent children for the duration of the qualifying waiting period for provincial health care (max three months)
- All refugees and persons in similar circumstances selected abroad.
- Detainees

¹⁰ "McGuinty Government Expanding Community Health Centres". *MOHLTC New Releases*. 10 Nov. 2005. 6 Jan. 2006. <http://www.health.gov.on.ca/english/media/news_releases/archives/nr_05/nr_111005.html>

¹¹ Government of Canada. Government Response to the Eleventh Report of the Standing Committee on Public Accounts – Management of Federal Drug Benefit Programs. 4 February 2006. <http://www.parl.gc.ca/infocomdoc/38/1/paribus/commbus/house/PACP/govresp/GR1994781/PACP_Rpt11_GvtRsp-e.htm#Intro>

Repeat immigration medicals requested under IRPA are covered under IFH.

One immediate difficulty relates to the fact that if a failed refugee claimant decides to make an application for permanent residence based on humanitarian and compassionate grounds, they lose eligibility for coverage under the IFH, because they cease to meet the criteria of being “a failed refugee claimant while still legally in Canada unless they are granted the right to apply for landing.” Essentially, this places failed refugee claimants in the difficult position of having to decide whether to simply await their Pre-Removal Risk Assessment and hope that they will be successful in gaining status at that time, while being allowed to maintain eligibility for the Interim Federal Health program, or to make an application for permanent residence on Humanitarian & Compassionate grounds and give up eligibility for IFH. If a PHA decides on the latter course of action, they must produce the funds required to pay for the H&C application (\$550). If they are successful in their H&C application, then the best possible outcome is the issuance of a Temporary Resident Permit (TRP) which will specifically exclude them from eligibility for OHIP. The TRP will require payment of a fee. In addition, the TRP is normally issued for only one year at a time, so there will be additional costs associated with renewing the permit. If the permit is successfully renewed and maintained for three years, a PHA may then apply for landing. The cost for the application will be \$325. If landed, the right of landing fee of \$490 must also be paid.

The policy covering IFH states that the officer will determine the status of the refugee claim, ask a claimant whether they are in a position to pay for health care or are eligible for private or public health insurance. If the claimant needs coverage and the officer is satisfied that the applicant is otherwise qualified, eligibility is granted without further investigation.

Health care benefits available under IFH are:

- Essential health services for the treatment and prevention of serious medical/dental conditions (includes immunizations and other vital preventative care);
- Essential prescription medications, and non-prescription life-saving medications;
- Contraception, prenatal and obstetrical care; and
- The immigration Medical Examination for those unable to pay for it.

Most medical services and medications required by PHAs are covered under the IFH.

IFH eligibility is usually conferred at first contact. If inland, IFH eligibility is printed right on the acknowledgement of Convention refugee claim or the “Determination of eligibility pursuant to paragraph 100(1) form”. “Eligibility” in these cases refers to the eligibility of the claim to be referred to the Refugee Protection Division to be heard. An “Interim Federal Health Certificate of Eligibility” is used for clients who are in the Convention refugee abroad class, source country class and country of asylum class, as well as for Convention refugees determined in Canada. Convention refugees are immediately eligible for provincial health care in Ontario, Quebec Newfoundland, Yukon and the Prairie provinces.

The IFH certificate of eligibility would also be issued to a baby born in Canada to a Convention refugee or a refugee claimant; refused refugee claimants awaiting removal or protected persons

under the PRRA. CIC policy indicates that IFH eligibility can be extended for the time believed necessary, but never more than 12 months at a time. Many newcomers are unaware of the ability to extend, or the process by which to extend their IFH eligibility. This can result in significant delays in accessing treatment for newcomer PHAs who are in fact IFH eligible. There is little reason why those who are deemed eligible to have a refugee claim referred to the IRB should not have IFH approved until such time as they are determined to be protected persons, or until the conclusion of the Pre-Removal Risk Assessment process.

Claims on IFH are submitted by the health care provider, and are sent directly to the Interim Federal Health program. Timeliness of service and ability to access the full extent of the benefit often depends on the sophistication of the health care provider's skill at submitting claims and advocating for their patient. Policy indicates that claims submitted directly by clients will not be honoured.

There is an interesting provision in the IFH policy entitled "Consideration of medical validity extension for in-Canada cases". It refers to the validity of immigration medical exams, normally valid for a maximum of 12 months. The policy indicates that the standard for medical validity for a medical exam is 12 months, but concerns have been expressed about expired medical validity for in-Canada applicants. In response, CIC set up a procedure to deal with these situations. Medical Services Branch (MSB) will give consideration to extending medical validity for certain in-Canada cases. The officer refers the case to MSB at a special email address. Officers are asked only to send cases in which the examination was conducted in the last 24 months from the date of the request for extension. The MSB reviews and will respond with a decision within 10 working days. If it is extended, it will generally be for a period of twelve months from the date of the request for an extension. This policy could be useful in situations where clients may have seroconverted in the time after their arrival in Canada and since their last medical examination.

Access to IFH makes a huge difference in the lives of PHA newcomers and their ability to secure ongoing medical care:

"Once you have IFH, you have doctors that would write letters on your behalf or help you out, but when you have no status, it's really hard. Because we have a lot of clients who have no status and we will try to get them a doctor. And of course we know about the community health centre, but when you try to get in the community health centre, they ask about the address. Once you're not in the catchment area, so they don't take them, so that's very problematic."
[ASO Service Provider]

Designated Medical Practitioners

Citizenship and Immigration Canada certifies a number of Designated Medical Practitioners (DMPs) to provide specific health care services related to the immigration and refugee process.

As mentioned earlier, all immigrants and refugees are subject to a medical examination. This examination must be conducted by a DMP. DMPs are located around the world and in Canada.

Of particular concern to immigrant and refugee PHAs is the role DMPs play in conducting the mandatory HIV screening test component of the medical examination. The standard protocol for HIV testing includes the provision of pre- and post-test counselling to patients. This includes securing informed consent from patients to conduct the HIV screening test, a discussion of the nature of the test and the possible outcomes, as well as in-person communication of the results and a post-test counselling session explaining the results of the test. CIC's *Designated Medical Practitioner Handbook* states that DMPs conducting an immigration medical examination will:

*provide applicants having an HIV test with HIV pre-test counselling. Ensure HIV positive applicants receive post-test counselling and sign the acknowledgement of HIV post-test counselling form.*¹²

The handbook goes on to indicate that “[i]t is considered the standard of medical practice and an obligation, that a DMP counsel individuals having an HIV test, both before and after the results are available.”¹³ The appendices of the handbook provide detailed instructions on both pre- and post-test counselling as well as the HIV post-test counselling form mentioned above. The form asks clients to confirm that they received HIV post test counselling from the DMP.

It is clear, however, that this process is not being followed at all. PHAs, service providers and Public Health workers interviewed for this report uniformly indicated that the standard of care provided by DMPs was very poor in respect of HIV testing.

One PHA stated that the DMP simply stated

“you have to find yourself a doctor because you’re HIV positive”.

Others stated that:

“[The doctor] called me – he said that there was a problem. He just told me [my HIV status]. I was depressed. I was shocked. I was in denial. So, it was like my head was going to like explode”

[PHA newcomer – female]

“What happened to me was, The doctor, he calls me, and on the phone he’s telling me, you’re HIV positive”

[PHA newcomer – male]

¹² Medical Services Branch, Citizenship and Immigration Canada. *Designated Medical Practitioner Handbook*. Ottawa: Citizenship and Immigration Canada, 2003. 19.

¹³ Ibid. 48.

*“the doctor did not have respect for the people who come in there”
[PHA newcomer – male]*

Service providers from AIDS Service Organizations also confirm that DMPs are failing in their duties, and have little or no information to provide to clients to support them in accessing health care services to deal with their HIV status.

“It is mandatory already that they have to do the pre- and post-testing counselling, but it’s not happening and... it’s in the policy but it’s not happening. And... there doesn’t seem to be anybody who is ensuring that it’s happening. So, whose overseeing these medical doctors to say, did pre- and post- test counselling happen? How did it happen and where were they referred to? And so, there needs to be some overseeing of that process. Because most of my clients say it didn’t happen. Or they got a phone call saying, by the way, you’re positive. And that’s it. And then they’re left with this news with no idea where to go. And then it starts them off with this feeling of going underground instead of sort of starting them off on the right note on where you can access... giving them some really positive encouragement that... It starts off really bad. And then you’re picking up pieces for a long time. I think it should be mandatory that if they’re going to do the immigration medical then they need to know how to deal with immigrants, they also know about pre and post test counselling and they need to know where to refer them. That three things are very important.”

[ASO Service Provider]

Public Health

The relevant statutes are the *Health Protection and Promotion Act (HPPA)*, and its regulations. This legislation gives public health the authority to manage public health issues, including the surveillance of HIV infection. In addition, the *Sexually Transmitted Diseases (STDs): STD Control Protocol – Revised 2005* produced by the Mandatory Health Programs and Services Programs of the Infections Diseases Branch of the Ontario Ministry of Health and Long-Term Care outlines specific practice and policy for public health authorities dealing with HIV in the province.

One major function of public health involves the oversight of partner notification and contact tracing when individuals test positive for HIV antibodies. Given the immigration requirement of an HIV screening test as part of the medical examination, there is a high level of interaction between public health authorities and PHA newcomers. This relationship can often be difficult, particularly for newcomers who are concerned about maintaining confidentiality and interaction with official/government authorities. For newcomers who are sponsored, there can be even greater difficulties because of the requirement for partner notification and concerns that disclosure of status may result in a withdrawal of the sponsor’s support.

Public health legislation requires that physicians and laboratories report cases of HIV infection to their local medical officer of health, and this triggers the public health process of contact tracing

and partner notification, necessitating contact with the individual. It is clear from discussion with a number of individuals – PHAs, and public health employees -- that Designated Medical Practitioners who conduct the immigration medical and HIV screening test rarely, if ever, effectively meet the guidelines for pre- and post-test counselling. Most often, the public health authorities receive notification from the laboratory, confirm with the DMP who conducted the medical examination and find that they are expected to undertake the follow up.

The STD protocols, which include management of cases of HIV infection, make no distinction between those with or without status, or in different categories of immigration classification. A preliminary and informal discussion with a public health manager confirmed that there is no formal information sharing arrangement between the sexual health departments and CIC. In one example where an individual known to be HIV positive and not yet landed was continually reported to public health as engaging in unprotected sex with others without informing them of their HIV status, advice was sought from CIC about whether they expected or wanted that information to be communicated to them. In that case, CIC officials indicated that they did not want or expect that information.

Public Health authorities also have the ability to impose legally binding orders on individuals who are engaging in actions that may present a risk to the public health. These orders (“Section 22 Orders”) can have broad requirements including ordering individuals not to have sexual intercourse, limiting individuals to certain types of sexual contact, ordering individuals to use condoms, ordering individuals to disclose their HIV status to any partners, regardless of the type of sexual activity or the use of condoms, and ordering individuals to report to public health on a scheduled basis and inform the local public health authority of any change of address. Failure to meet any of these requirements could result in a provincial offence. Conviction of a provincial offence usually results in a fine or imprisonment of six months or less. Individuals subject to a provincial offence are not eligible for legal aid to provide a lawyer for their defence.

Fear and mistrust of public health authorities has a significant impact on PHA newcomers. It can be very difficult for PHA newcomers to understand the role of different levels of government with respect to the management of HIV infection and to understand what level of communication occurs between these levels. In particular, PHA newcomers are fearful of the impact of their interaction with public health authorities about their health status on the outcome of their immigration proceedings.

“public health is supposed to be there to assist people, but they really scare them.”

[ASO Support Worker]

“And then [public health] found out he was married and then they said, well you have to tell your wife and he said no. So he had to disclose to them that his marriage was not legit... And they said well you have tell her because if you don't tell her then we're going to tell immigration that your marriage was not consummated or was for convenience, or whatever, whatever. So, it was like... it's a nightmare. Like this guy was threatening to kill himself because he didn't want the woman to know. In the end, public health did tell her and then she went

and spread it to the whole community. So they use a lot of threats and I think that what they're doing is problematic because when people go out in support groups and talk about the system, the public health system, then other people who may hear may not be forthcoming and forthright and go toward them for help because they realize that they're not.... That's what [public health] want to accomplish, but in the end they're hindering it by doing... by getting all heavy-handed."

[ASO support worker]

Concerns have also been expressed about circumstances involving PHAs who move out of one public health jurisdiction to another. Some individuals receive repeated follow up from public health when a file is transferred and a new jurisdiction contacts the client to engage in repeated follow up activity.

"And I called public health and I said what is happening? And they said, no, no, this is not supposed to happen, we don't know how this happened. And we would follow up, follow up and nobody seems to know what is going on and the information was leaked. And on more than one occasion. If they do it, then say we do it and this is because we're public health."

[ASO Support Worker]

Contact tracing and partner notification can also have a differential impact on newcomer PHAs based on gender. Because sponsorship is one of the most secure ways for PHA immigrants to gain permanent resident status, and because family sponsorship happens very frequently between spouses, there is great personal risk for women in disclosing their status to their spouses. Where women are being sponsored by their permanent resident or Canadian citizen spouses, they may be concerned that disclosure of their HIV status might result in a withdrawal of the sponsorship. Such an occurrence would result in a loss of the excessive demand exemption from medical inadmissibility and may result in a failure to secure permanent resident status and access to insured medical services. While public health has an obligation to conduct partner notification and contact tracing, it needs to be aware of the far-reaching impact of disclosure for sponsored immigrants.

Social Assistance

Social assistance and immigration have a long history of interconnectedness in the lives of newcomers. Poverty, illness and other barriers to employment can create a situation where newcomers are required to access social assistance in order to become established in Canada. This is particularly the case in light of the inadmissibility provisions of the *Immigration and Refugee Protection Act (IRPA)* that reference financial inadmissibility as a result of receipt of social services (s. 39 of the IRPA). Both the *Ontario Works Act (OWA)* and the *Ontario Disability Support Program Act (ODSPA)* contain provisions that require applicants/recipients to pursue available resources and specifically mention resources available under a sponsorship undertaking as available resources.

Social assistance programs are the responsibility of the provincial government. Responsibility for administration of the program in Ontario is split between the provincial and municipal governments across the province. Ontario Works (general welfare) is funded on a cost-sharing basis between municipalities and the province, and is administered by the municipality. Depending on the size of the municipality, specific policy may be developed at the municipal level for administration of the program that differs from the provincially-set policy for the program. The Ontario Disability Support Program, by contrast, is funded and administered directly by the provincial government. It is intended to provide financial support to individuals who are disabled. The policies for ODSP are uniform across the province, though the level of strict adherence to policy can differ from office to office, and from caseworker to caseworker.

Many PHA newcomers to Canada find it necessary to interact with social assistance at some point in their establishment in Canada due to financial need. Financial need is established by demonstrating income lower than the cut-off for the program. While the primary purpose of both ODSP and OW are to provide financial support to individuals who are in financial need, for many newcomer PHAs not eligible for health insurance, the greatest benefit may in fact be access to drugs and dental care.

Of particular concern is the interaction between the IRPA and the social assistance legislation. A major focus is identifying circumstances and situations where the requirements of the immigration and refugee process have a direct or indirect negative impact on the other for newcomer PHAs. Of interest are the rules, regulations and policies with respect to access to medication and dental care through the Drug Benefit available to recipients of social assistance.

Legislation and Policy

The relevant statutes in this area include the *Ontario Works Act (OW)* and its regulations, the *Ontario Disability Support Program Act (ODSP)* and its regulations. In addition, there are numerous policy directives under both the *OWA* and the *ODSPA* which impact directly on the lives of PHA newcomers and non-status individuals. Particular information is provided below.

Relevant Social Assistance Policies are listed below:

Ontario Works Policy Directives:

- 25.0: Immigrants, Refugees, Deportees, September 2001 (this policy has not been updated since Sept 2001)
- 31.0 Provision of Benefits
- 43.1: Absence from Ontario (September 2001)
- Unpublished: OW Bulletin 2002-15 (aka ODSP Bulletin #013-2002, Aug. 6, 2002) New Federal Immigration Legislation – Preliminary Information
- Unpublished: OW Bulletin 2004-05 (aka ODSP Bulletin 2004-04, May 25, 2004) Sponsorship Debt Calculation
- City of Toronto Social Services Immigrants Policy (January 2000)

ODSP Policy Directives:

- 2.5: Tourists, Immigrants, Refugees and Deportees
- 2.4: Absent from Ontario
- 9.1 Extended Health Benefits
- Bulletin #013-2002, Aug. 6, 2002 (aka OW Bulletin 2002-15) New Federal Immigration Legislation – Preliminary Information
- Unpublished: ODSP Bulletin 2004-04, May 25, 2004 (aka OW Bulletin 2004-05) Sponsorship Debt Calculation

General Eligibility

As a general rule, access to social assistance is limited to individuals who are in financial need, are legally resident in Ontario and have some demonstrated intention to live and remain here. This therefore includes all refugees and immigrants but specifically excludes tourists and visitors. While there is no specific reference in legislation, regulation or policy to ‘non-satus’ individuals being ineligible for social assistance, it is clear that eligibility is intended to be limited to individuals who are somewhere in the official immigration process (application pending), or who have been unsuccessful and are scheduled for removal. Individuals who are subject to deportation are not eligible unless they can establish that they are unable to leave due to circumstances beyond their control. The specific references in policy and legislation indicate that if an individual has made an application for permanent residence, or a claim for refugee status, they may be eligible for assistance. There is also a specific reference in both the OW and ODSP Acts providing that an individual who may have a deportation order or enforceable removal order against him or her but who has made an application for permanent residence under the humanitarian and compassionate (H&C) provisions may be eligible for assistance.

Both OW and ODSP have specific rules that relate to the availability and amount of social assistance provided to individuals who are sponsored immigrants (usually under the family class). These individuals face additional restrictions on access to, and the amount of assistance because of the existence of the undertaking of the sponsor, who agreed to provide for them. Historically, undertakings were generally for ten years. In 2002, the *IRPA* limited undertakings for spouses and partners to three years. Effectively, individuals who wish to sponsor family

members are barred from doing so if a prior sponsorship undertaking is still in effect, OR if the person they previously sponsored received social assistance during the term of the undertaking AND they have not repaid all of the assistance received to the relevant provincial government.

An additional and long-standing barrier in relation to social assistance for immigrants and newcomers was the “deemed sponsorship deduction”. Under these provisions, individuals who were sponsored, but who required social assistance, had \$100 deducted from their benefits even if they had established that they were not receiving any support from their sponsor – i.e. the sponsorship had effectively broken down. This provision was recently removed through amendments to the ODSP and OW acts in December 2004 and the deduction is no longer made to the assistance of the sponsored person (obviously this applies in cases where sponsored individuals meet all other requirements for assistance).

One other limitation with respect to social assistance deals with restrictions on the length of time that an individual may be outside of the province before their assistance is cancelled. For OW, the rule is seven days, for ODSP there is a thirty-day limit. These time frames **may** be extended, but only with the approval of the office. This restriction may impact particularly on newcomers who may be required to travel to their country of origin in the event of family issues, deaths, or other emergencies.

The IRPA makes a number of specific references to social assistance and in this way creates specific limitations in respect of eligibility for permanent residence status and to the ability of individuals to sponsor members of the family class to join them in Canada. In addition to the existence of financial circumstances as a ground for inadmissibility under the legislation, there are financial requirements that must be met before someone can be sponsored. The IRPA specifically states that a sponsor cannot qualify if they are in receipt of social assistance. The only exception to this provision is if the receipt of social assistance is by reason of disability. Essentially, no person in receipt of OW benefits would be successful in an application to sponsor, unless they were able to proceed with a humanitarian and compassionate application and be successful in convincing the overseas visa officer that the sponsorship should be permitted. A person in receipt of ODSP would not be automatically barred from becoming a sponsor. As sponsorship is an important route for many PHAs to status in Canada, the ability of a relative who is a Canadian citizen or permanent resident to qualify as a sponsor has a direct impact on PHAs.

Positive aspects that should be noted include the fact that most PHAs who are in financial need are able to qualify medically for the Ontario Disability Support Program, which qualifies under the IRPA as social assistance “by reason of disability” because individuals must demonstrate that they meet the ODSPA definition of disability.

Sponsorship Debt

The other significant issue with respect to social assistance for newcomers who have been sponsored or are sponsors themselves has to do with defaulted sponsorship debt recovery. If a person sponsored under an undertaking receives social assistance, then the sponsorship is

automatically in default, and the sponsor is required to repay the total amount of any social assistance received by their sponsored relatives while the undertaking is in effect to the provincial government. The debt incurred is a debt both to the province and the federal governments, who are both involved in the enforcement of the collection. Information sharing agreements between provincial governments and CIC result in regular notification by social assistance to CIC when an individual subject to a sponsorship undertaking begins to receive social assistance. In these cases, OW and ODSP have developed a policy governing the calculation of the debt owed by the sponsor to the provincial government. The debt relates only to those individuals who were named in the sponsorship undertaking, and only for periods where they received income support/social assistance during the effective period of the undertaking. It is important to note from the perspective of PHAs that the debt owed relates to income support received, but not to **all** the benefits received. In addition to the basic needs and shelter allowances, benefits which are included in the debt include any back-to-school, winter clothing, personal needs and Northern allowances received, as well as funds for special diet. Fortunately, **not included** are the value of benefits provided under Mandatory Special Necessities, which include the drug and dental cards, and the community start up allowance.

In cases where there is documented family violence, social assistance policy states that this fact should be flagged and included with the notification to CIC about sponsorship default. Social assistance policy indicates that “CIC will not pursue recoveries in these cases.” Sponsors will still be considered to be in default and will be barred from future sponsorships. In situations where there are allegations of abuse, this is also to be included in the notification to CIC.

Benefits

While receipt of social assistance clearly has a number of negative implications for PHAs who are navigating the immigration process, it is important to note that for many it is the only way to survive, and can also provide a significant amount of support. Social assistance provides benefits essential to the well-being of PHAs that extended beyond income support. Eligibility for ODSP or OW also provides access to the Community Start Up and Maintenance Benefit, which provides additional emergency funds for the establishment of a household in the community, or for assisting recipients to maintain their housing should they encounter financial difficulties.

Drug & Dental Cards

Eligibility for ODSP and OW provides income support, as well as access to other essential benefits including a drug card and, in the case of ODSP, a dental card providing access to dental care. Limited allowances for such items as eyeglasses and assistive medical devices are also available.

PHAs in receipt of social assistance invariably emphasize the importance of the drug card, and thereby access to medication, as of primary importance to them. For some, access to drugs is more important than income support:

“... it’s been good to have a little income and be able to have a home and be able to attend to my condition.”

[PHA newcomer]

“The greatest help is we are getting our medication.”

[PHA newcomer]

This is even moreso the case for PHA newcomers without access to provincial health insurance.

“My question is this. Okay, for example, I am under ODSP. But immigration is questioning why I should be under disability. But I do not have health coverage, I’m HIV positive and I need my medication which I can’t afford... even my wages can’t afford. So, isn’t that common sense?... Being a single parent with two kids and a son who is HIV positive, you can’t sustain, you see? You can’t support in a country, I mean in a city like this paying \$1000 for rent, food and everything and you have to pay \$2000 for medication? It’s ridiculous.”

[PHA newcomer on a Temporary Resident Permit]

Many recipients of social assistance also encounter regular and ongoing difficulties in understanding both the process and the rules associated with receipt of social assistance. On a practical level, communication with social services can be extremely difficult and frustrating. It is very difficult to speak with the same person more than once, and this results in increased likelihood of misunderstandings and confusing messages. One PHA newcomer put it this way:

“Social service is the worst. Just to communicate. To get somebody that you can communicate with and they don’t disappear on you and they come back promptly with answers. You know, it’s difficult...I don’t talk to them [social assistance] any more. I just go to my worker [at PWA or ACT]”

[PHA newcomer]

Finally, one of the most common concerns for PHAs on social assistance involves the cancellation of the drug and dental card without notice. Suspension of benefits occurs often when clients have failed to provide a piece of information or to respond to mail. For newcomers, mail from social assistance may be incomprehensible due to language and/or literacy issues. Lack of communication may also result in confusion with respect to the requirements for ongoing eligibility. Most often, benefits are easily reinstated once the required information is received or located. However, interruption of the drug card has a disproportionate impact on clients. It may be possible for social assistance programs to enable suspension of monetary benefits where the reason is a failure to provide information without interrupting the drug card and therefore causing interruptions in access to life-sustaining treatment.

Special Diet Allowance

Both ODSP and OW contain provisions for a “special diet allowance” which provides additional funds to purchase the food necessary to maintain better health. Recent changes to the special

diet provisions have placed some limit on access, particularly for PHAs. December 2005 changes to the special diet policy have resulted in diet amounts linked to health conditions. There is a diet amount specific to HIV/AIDS but it depends on the ability to demonstrate a certain percentage of weight loss associated with the condition. The policy indicates clearly that diets approved as a result of weight changes are not to be reviewed on a regular basis, and that weight gain is not indicative of the need to cease the allowance. However, these changes are likely to result on a decrease in the amount of special diet funds available to PHAs. There are also employment start-up allowances that can help with the costs associated with starting new employment.

Extended Health Benefit

The extended health benefit is a provision within both ODSP and OW programs that provides for the continuation of the drug and dental card when someone has income high enough to place them outside of eligibility for social assistance. The EHB essentially provides a way to move off of social assistance and into the workforce without automatically losing the supports provided through access to medication.

Generally, to be eligible for continuation of the drug card, you must establish that the cost of your medications/dental care is more than the amount of excess income. Availability of this program has made it possible for a number of PHAs who depend on the drug and dental cards to maintain their health to be able to accept employment. Changes in May 2005 resulted in significant improvements for OW recipients. The Extended Employment Health Benefit provides that individuals leaving OW for employment can retain access to the drug card for up to six months, or until they are eligible for the employer's health plan. If there is no such health plan, the health benefit may be extended for an additional six months. It should be noted however that prescription drugs are not covered during the second six-month extension. It is anticipated that individuals will access the Trillium Drug Program for drug costs, and can access supports to cover the cost of the Trillium deductible from the EEHB. This would have a detrimental impact on non-insured PHAs because ineligibility for OHIP would preclude access to the Trillium Drug Program

Finally, there are some benefits that may be available through municipally-managed programs under cost-sharing agreements with the province. OW is a municipally-delivered and managed program. As such, larger centres like Toronto have developed their own policies and programs. In the case of Toronto, for example, the city has established a Hardship Fund that may sometimes provide funding for medically necessary services for individuals who may not be eligible for OW (for example, individuals without status) – though this would be a very rare occurrence.

Housing

The primary focus for housing is an examination of the impact of immigration status on access to social housing. Social housing is defined as housing for which government subsidy is available in order to help defray the costs associated with shelter. Subsidized housing is usually referred to as “Rent Geared to Income” housing, or RGI. Access to secure and affordable housing is a key determinant of health for PHAs. This is particularly important for newcomer PHAs who are negotiating not only the health care system, but also attempting to establish themselves in a new country and negotiate the immigration system at the same time.

Responsibility for the management of subsidized housing in Ontario falls to the provincial government, with administration of the housing maintained by the municipal level of government. Rules and regulations concerning eligibility for housing are set by the province.

Legislation & Policy

The relevant statutes in this case are the *Social Housing Reform Act* (SHRA) and its regulations, particularly the regulation on Rent-Geared to Income housing (O.Reg.298/01). The Ontario *Human Rights Code* also establishes protections with respect to discrimination in accommodation (housing), including on the grounds of citizenship. The *Tenant Protection Act* (TPA) governs rental accommodation in Ontario. Of particular concern to most newcomers is the waiting list time for affordable housing – however it is in a person’s best interest to apply for housing as soon as possible because the waiting list is so long.

Eligibility for Rent Geared to Income Housing

The legislation provides that refugee claimants, Canadian citizens, and permanent residents are all eligible for RGI housing. Further, in a 2004 amendment, the category of those eligible to be placed on the waiting list and into RGI housing was expanded to include those who had made an application for permanent resident status, and who were awaiting a determination on their application. Currently the legislative requirements are that each member of the household be either a Canadian citizen, someone who has made an application for landing as a permanent resident, or someone who has made a refugee claim. This wording would therefore include those who have been determined to be permanent residents and persons in need of protection. There is no legislative barrier to individuals who are refugee claimants. Eligibility for the list, and housing, would also include those who are seeking landing on H&C grounds, as they would have made an application for landing.

The wording of the legislation, however, may effectively exclude a number of PHAs who are in Canada on Temporary Resident Permits – normally failed refugee claimants or sponsored family members who are eligible to remain in Canada, but who are inadmissible on health grounds. PHAs on TRPs who remain continuously in possession of a valid TRP for at least three years can apply for permanent resident status, and in this way bring themselves into eligibility for social housing. The concern is whether there is eligibility to be placed on the waiting list and into housing if available, in the intervening three years. There may also be concerns that if a TRP

holder were in an RGI unit at the time that they applied for permanent resident status, that they could be deemed to be in receipt of a form of social assistance as a result of the rent subsidy – however there is nothing specific in the housing policy documents nor in the immigration policy documents reviewed which would indicate this is the case. This may be clarified through interviews with stakeholders.

In addition, eligibility for RGI housing requires that at least one member of the household be 16 years of age or older and is able to live independently. Finally, there must not be a removal order against any member of the household that has become enforceable. Section 48 of IRPA states that a removal order is enforceable if it has come into force and has not been stayed. Sections 49 through 52 govern the rules about when a removal order is in force. A removal order is enforceable on the latest of: as soon as it is made if there is no appeal, at expiry of limit for appeal if an appeal is allowed and has not been made, at conclusion of appeal if appeal is made and not successful. For refugee claimants, removal orders are conditional, and come into force on the latest of: the day a finding of ineligibility because the reasons for which the person sought refugee protection have ceased to exist; 7 days after any other reason for a claim being ineligible, 15 days after the claim is rejected by the Refugee Protection Division if no appeal is made; and 15 days after notification that the claim is deemed abandoned or withdrawn. Therefore, once one of these dates is reached and the removal order has become enforceable for even one member of the household the entire household is technically no longer eligible for RGI housing.

RGI housing is income-tested. It requires that sponsored immigrants seek financial support (income) from their sponsors, or to establish to the housing provider's satisfaction that the income is not available. Residents are also required to inform their housing providers if there has been a change in their immigration status (for example, if a removal order has become enforceable). It is not clear at this stage whether there is an active information sharing agreement between RGI housing providers and CIC. What is clear is that there are provisions within the *SHRA* to allow for such information sharing. The legislative provisions are broad and basically allow for information sharing agreements with respect to the collection, use and disclosure of information with various departments, ministries and agencies of Canadian federal, provincial and territorial governments.

Impact of HIV Status

HIV status may have some impact on placement on the waiting list for rent geared to income housing. In the example of Toronto specifically, individuals may be placed in special priority if their health condition is such that they are likely to die within the next two years. In order to establish this criterion and be placed in priority sequence for housing, an individual must provide medical evidence of a life expectancy of less than two years and satisfy the housing provider of the validity of this information. In practice, housing providers require a qualified physician to verify the 24-month life expectancy.

This often places PHA newcomers in a difficult situation. PHAs are often trying to establish with CIC that their HIV status should not be an impediment to their approval for landing in

Canada and therefore wish to emphasize their ability to contribute to Canada through working. One of the ways PHAs can become more quickly and securely established in Canada, and to maintain their health is through access to affordable housing. In order to access the affordable housing, they must establish to another level of government that their health is so poor that they are likely to be dead within two years. The net result is that few immigrant PHAs will qualify for subsidized housing.

Impact of Criminality or Domestic Violence

Documented instances of criminality or domestic violence may have an impact on eligibility for and/or ability to remain in RGI housing. In addition, in cases where violence is an issue, it may be possible for individuals to have priority placement on waiting lists. The SHRA contains provisions for the establishment of a list for “Special Priority Housing”. It states that special priority households are those involving abuse of a household member by another member of the household or a sponsor (immigration). “Abuse” is defined as an incident of physical or sexual violence against an individual, an incident of intentional destruction of or intentional injury to an individual's property, or words, actions or gestures that threaten an individual or his or her property, and "abused" and "abusing" have a corresponding meaning.

To be eligible for placement on the special priority housing list, a person must establish that a member of the household has been subject to abuse from another individual; and that the abusing individual

- is or was living with the member or
- is sponsoring the member as an immigrant; and
- the abused member intends to live permanently apart from the abusing individual.

The regulations also provide guidance with respect to what constitutes evidence of abuse. The regulations state that evidence in records prepared by the following persons must be accepted into consideration by the decision maker: doctor, lawyer, law enforcement officer, member of the clergy, teacher, guidance counsellor, an individual in a managerial or administrative position with a housing provider, a ***community health care worker, social worker, social service worker, victim services worker, settlement services worker, or a shelter worker*** [emphasis added].

Evidence of abuse can be:

- a record of intervention by the police indicating that the member was abused by the abusing individual;
- a record of physical injury caused to the member by the abusing individual;
- a record of the application of force by the abusing individual against the member to force the member to engage in sexual activity against his or her will;
- a record of undue or unwarranted control by the abusing individual over the member's daily personal and financial activities;
- a record of words, actions or gestures by the abusing individual that threaten the member or his or her property including, but not limited to, the following:
 - threatening to physically harm the member or another member of the household,
 - threatening to destroy or injure the member's property,
 - intentionally killing or injuring pets,

- threatening to remove the member's children from the household,
- threatening to prevent the member from having access to his or her children,
- forcing the member to perform degrading acts.

For PHAs subject to sponsorship undertakings where such acts of abuse arise, there will be the additional concerns associated with the breakdown of the sponsorship. While CIC will take into consideration the reasons for the breakdown, the stress associated with the breakdown of a relationship which forms the basis for the sponsored family member's application for permanent resident status is significant.

Tenant Protection Act

The *Tenant Protection Act* (TPA) governs the laws with respect to rental housing in Ontario. The TPA requires that the provisions of the Ontario Human Rights Code be upheld. There are no requirements under the TPA that an individual have certain citizenship or immigration status in order to avail themselves of the operation of the act in relation to private rental housing.

Human Rights Protections

The Ontario *Human Rights Code* (OHRC) also provides some limited protections for immigrants, refugees and non-status individuals with respect to housing. In particular OHRC prohibits discrimination on the basis of race, ancestry, places of origin and citizenship, among others, including receipt of public assistance with respect to accommodation. However, landlords are allowed to review prospective tenants and consider them based on credit check, income and rental history – this may present an unfair position for newcomers seeking housing in the non-RGI sector.

Education

This section is focused on the legal right of immigrant, refugee and non-status individuals to access education for themselves (if they are of school age, or interested in adult and post-secondary education), or for their children.

Legislation and Policy

The relevant statute is the *Education Act* (EA) and its regulations. Also relevant are the *Immigration and Refugee Protection Act* and Regulations as they relate to access to student visas for PHAs who intend to or are seeking to study in Canada, and the legislation and policies governing the Ontario Student Assistance Program and the Canada Student Loans program.

Education for Children

The general rule is that publicly funded education is available to children who are of school age, regardless of the immigration status of their parents. In situations where the parents are visitors it is more difficult to get children into schools. A significant amount of discretion is afforded to the individual school board with respect to admission and the collection or waiver of fees for non-resident students.

The *Education Act* contains specific provisions with respect to eligibility for attendance in public schools in relation to immigration status. The general provision is that individuals with no status or only temporary status must be charged a fee in order to attend public school, subject to exceptions. Most situations under which PHAs and their children exist in Canada are covered by the exceptions, meaning that their children are eligible to attend publicly funded schools without the payment of fees.

Children can attend school without paying fees if the child, his or her parent or someone else with lawful custody of him or her is in Canada

- under a Temporary Resident Permit;
- claiming refugee protection or is determined to be a protected person;
- waiting for a decision in an application for permanent residence and their parent or legal guardian is a citizen resident in Ontario; OR,
- if their parent/guardian is in Canada under a work permit, or waiting for a determination of an application for a work permit;
- and is a PR, or is awaiting determination of a PR application;
- and is a religious worker under s 186 of the IRPA regulations; or
- under a study permit and is a full-time student at university/college/institution getting funding from the government of Ontario; or under an agreement with a university outside Canada and teaching at a university in Canada.

The *Education Act* also specifically states that: “A person who is otherwise entitled to be admitted to a school and who is less than eighteen years of age shall not be refused admission

because the person or the person’s parent or guardian is unlawfully in Canada.” While this section does not necessarily guarantee that the student is exempt from the requirement to pay fees, it does guarantee that that individual shall not be refused admission because their parent or guardian is unlawfully in Canada. The Ontario government has even issued a policy document specifically on this issue. It clearly says that: “Where the child is otherwise entitled to be admitted to a school, the fact that the child or the child’s parents are unlawfully in Canada should not be a barrier to the child’s admission. In other words, no children should be excluded from school merely because they or their parents are unlawfully living in Canada.” This process can be difficult – parents often have difficulty in advocating for their children to be enrolled, despite the existence of the policy requiring schools to admit the children. Often the difficulty stems from a lack of understanding of policy at the local school level, in spite of board level and legislative protections for children of parents with no status.

Education for Adults

The other major area of policy with respect to education concerns what education is available and accessible to adults. The main provisions in this regard are study permits under the IRPA, as well as federally-funded language and settlement education programs. These programs are available to individuals who qualify as a result of their particular immigration status, and formal, funded programs may not be accessible to those without status.

Study permits for post secondary education can be sought both inland and before arrival. Refugee claimants, and persons found to be in need of protection may be granted study permits, but must have a valid permit in order to study. Normally evidence of enrolment/acceptance and ability to pay fees is determined before issuance of a permit. No medical is required to secure a study permit, unless the person has spent six consecutive months in the last year in a designated country, or will be working in occupations that bring the person into close contact (more than 3 hours a day and/or risk of exchange of bodily fluids) with people such as:

- Health sciences workers
- Teachers
- Domestic workers
- Home care workers for children, the elderly and the disabled
- Day-nursery employees
- Camp counsellors

Access to Student Loan Programs

The other area of concern is eligibility for funding to attend post-secondary institutions. Student loans are provided through partnerships between the federal and provincial governments. Loans and grants, when approved combine funds through Canada Student Loans and, in the case of Ontario, the Ontario Student Assistance Program (OSAP). Financial support is made up of a combination of loans and grants to students pursuing post-secondary education at an approved educational institution. Eligibility for OSAP however, is specifically limited to Canadian citizens, permanent residents and persons already granted Protected person status. Protected

persons were only permitted to access OSAP starting in 2004. OSAP loans are therefore not available to individuals on TRPs, those on study permits, work permits, visitors, applicants for permanent residence, refugee claimants or those without status. If there is a sponsorship agreement in place, the sponsors of the student seeking financial assistance may be required to contribute to the costs of education. Bursaries for post-secondary education are also limited to those who are citizens or permanent residents. These restrictions make it more difficult for newcomers to acquire the education and qualifications that would improve their employability and thereby reduce the likelihood of dependence on social services and health care.

Graduate study awards are generally available only to permanent residents and citizens, but may also be available to an annual limit of 50 individuals pursuing post-graduate (masters or doctoral) level studies at specific institutions or programs and temporarily in Canada as study permit holders. (O.Reg 772, as amended). Similarly, study grants, intended to provide financial support for students with particular needs (disabilities, women pursuing doctoral studies) are limited to citizens and permanent residents. Both study awards and study grants are not available to protected persons who have not yet become permanent residents.

Finally, all bursary, awards and loan programs in Ontario contain rules requiring applicants to have resided in Ontario for a set period of time, usually 12 months prior to the start of the academic program.

The restrictions placed on access to funding for post-secondary education create difficulties for newcomer PHAs who wish to improve their academic qualifications and improve their employability. Because levels of education, and efforts to upgrade and improve academic qualifications may be considerations in H&C applications, these restrictive policies should be revisited.

Employment

Stability of employment and access to protections against discrimination are among the greatest concerns of PHA newcomers. Non-status PHAs are the most vulnerable in the area of employment because their lack of status creates the potential to be exploited by employers and makes it very unlikely that the individual would seek help or advice in these situations for fear of being exposed to immigration and being removed from Canada.

PHAs in general face significant stress in relation to employment as a result of stigma and discrimination. Human rights and employment-related legislation provide some protection, but can be difficult to enforce in a timely manner and rarely effectively address the barriers faced by these individuals that are based on their health status. Non-status individuals are often unaware of any legal protections available to them in the employment context, or are unwilling or unable to avail themselves of these protections.

Legislation and Policy

The relevant statutes here are the *Employment Standards Act (ESA)*, *Canada Pension Plan (CPP)*, the *Employment Insurance Act (EI)* and the *Workplace Safety and Insurance Act (WSIA)*.

The *Immigration and Refugee Protection Act* (IRPA) and regulations also apply with respect to access to work permits.

Work Permits

Dealing first with the capacity to work, the general rule is that Canadian citizens and permanent residents are permitted to work. Other than those individuals, a work permit is generally required before engaging in work. Volunteer activities are not considered work for the purposes of immigration. Some specific occupations do not require permits, but they are quite limited in scope. As a general rule, work permits do not require medical examinations, though some temporary foreign workers are required to undergo medicals. These are individuals seeking work permits for longer than six months who have resided or stayed for at least six consecutive months in the one year period before seeking entry to Canada in countries listed on CIC's Designated Country/Territory List. It also includes anyone, regardless of the length of the permit requested, who will be working in occupations in which the protection of public health is essential. These are occupations that bring the person into close contact (more than 3 hours a day and/or risk of exchange of bodily fluids) with people such as:

- Health sciences workers
- Teachers
- Domestics
- Home care workers for children, the elderly and the disabled
- Day-nursery employees
- Camp counsellors

Work permits may be issued on a very specific basis. This is the case for permits that name an employer and state the occupation. In addition work permits may be "open unrestricted" or "open restricted". PHAs may encounter difficulties with work permits if they are issued in the "open restricted" category as the work permit will specifically state that the individual is restricted in occupation and may include information directly on the permit, accessible to employers, indicating certain restrictions with employment. A common example in the past has been authorizations that state the permit holder should not work in food preparation or in health care settings, or with children. A July 2005 update to the CIC Foreign Workers Manual clarifies that any medically-based restrictions should be printed on the permit, but that the condition which gives rise to the restrictions is not to be printed on the permit. Though the policy expressly indicates that the diagnosis will not be printed on the work authorization, it is likely that a potential employee with specific restrictions regarding health care settings, food preparation and children could face intrusive questions or may risk not being hired as a result of these restrictions. There is no basis in medical science for these restrictions. While HIV positive health care workers and physicians who are not immigrants or refugees are encouraged by their professional associations to disclose their HIV status to the association, there is no legal obligation upon them to do so. There should therefore be no such restriction placed on authorized workers who have temporary status in Canada.

Some work permits do provide access to health care, however. As discussed above under health care, Ontario's Health Insurance Act states that individuals who have entered into a contract or

agreement of employment and is issued a work permit which names the Canadian employer, states the prospective occupation, and is issued for a period of at least six months are eligible for coverage under the Ontario Health Insurance Plan. When cross-referenced with the IRPA provisions regarding medical testing for work permits, it is evident that the provincial government is relying on the fact that the federal provisions for work permits mentioned above will successfully screen out individuals who are likely to be heavy users of the provincial health care system.

Human Rights Code

Ontario's *Human Rights Code* (the *Code*) establishes the right to equal treatment in goods, services and facilities for all persons in Ontario, and prohibits discrimination on a number of grounds, including the ground of citizenship. The *Code* also prohibits unequal treatment on the ground of citizenship and disability in the context of employment, and contracts. Finally the *Code* prohibits harassment in employment on the grounds of citizenship and disability.

The protections are extremely important for PHAs, and would apply regardless of immigration status. As mentioned above, however, the difficulty for non-status PHAs is generally associated with the vulnerability of their positions and fears associated with coming to the attention of any officials or authority.

ESA, WSIB, EI, CPP,

General employment-related legislation, including the *Employment Standards Act*, setting out the minimum requirements for employers in relation to vacation, leave, wages, hours of work, etc. in Ontario would apply to all immigrant and refugee employees. The legislation defines employee as "a person...who performs work for wages". "Person" is further defined to include trade union, but is not restricted to those with specific or valid immigration status. The same applies for workers under the *Workplace Safety and Insurance Act*, and the *Occupational Health and Safety Act*.

As noted above, while those without immigration status and/or without proper work authorization are not necessarily excluded from the protections from these laws, their illegal work or lack of status make it extremely unlikely that they would seek protection under these laws for fear of exposure. This essentially results in the increased vulnerability and marginalization of non-status PHAs who work in order to survive and attempt to pay for the medicines and medical care they require.

Other employment-related concerns involve eligibility for Employment Insurance benefits and the Canada Pension Plan benefits. These plans are more specifically restricted to individuals who have a valid work authorization and have secured a Social Insurance Number (SIN). They also have stringent eligibility requirements. In the case of EI, these requirements involve having completed a specified number of hours of insurable employment (on which contributions have been made) before being able to make a claim. In addition, there is a requirement for the receipt of EI benefits that you be ready, willing and able to work. Not having proper authorization for

work (a valid work permit) would mean an individual is unable to meet that requirement. The rules and regulations with respect to the SIN stipulate that you have to have one in order to be employed legally. Individuals other than citizens and permanent residents who are authorized to work are eligible for a SIN upon application. For everyone issued a SIN who is not a citizen or permanent resident, the SIN will begin with the number “9” and will expire on either the date of expiry of the work authorization, or two years from the date that CIC issued an authorization allowing that person to remain in Canada. The maximum possible validity of a “9” series SIN is 5 years from date of issue.

Negative Policy & Legislative Interactions

This section aims to identify areas of particular concern where the impact of legislation and policy from different systems has a particular negative impact on newcomer PHAs.

HIV & Immigration

- Eligibility for IFH needs to be made available to TRP holders and not eliminated for failed refugees making applications for landing on H&C grounds. Currently, applying for landing on H&C grounds does not stay removal and eliminates eligibility for IFH. This policy effectively places a disproportionately negative impact on PHAs whose refugee claim has failed and are seeking to attain permanent resident status through the H&C process. The same individual would retain eligibility for IFH until their Pre-Removal Risk Assessment anyway. Better yet, why not extend it and allow eligibility for TRP holders so that they are OHIP eligible – this would then permit them to access Trillium and ensure payment of the deductible and make it more likely that they would be able work and remain healthy.
- While the creation of Excessive Demand Exempt categories of individuals has significantly improved the circumstances of some HIV positive immigrants, those on TRPs are still adversely impacted by the medical inadmissibility provisions. The structure of the current system basically requires that PHAs avoid interaction with the health care system at all costs for at least three years. The only options available for those who are in need of medication are either through the drug access associated with social assistance, through clinical trials of medications, or through ad-hoc access programs like the HMAP. The only access to primary care happens through out-of-pocket payment, or treatment through Community Health Centres.
- TRP holders are usually granted their permits because there are sufficient reasons to justify their continued presence in Canada. The practice of not providing these individuals with access to provincial health insurance makes little sense. If TRP holders were permitted access to OHIP, they would in turn have access to both the Trillium Drug Program and the Special Drugs Program, as well as primary care. This access is likely to improve health outcomes and prevent these individuals from waiting until their health deteriorates to the point where more expensive care and hospitalization are required. With access to health care improved, these individuals would then be more likely to pursue employment, and live in better health until such time as they may be landed. One TRP holder described this difficulty as follows:

“I got a letter from Immigration. The question was, oh, you were granted a work permit. Why aren’t you working? So, I replied to them honestly. I said, not that I do not want to work... I do want to work. But the problem is as a single mum with two kids, I cannot afford to buy my own medication. That was just what I had to say.”

[PHA newcomer – female]

Health Care & Immigration

The interaction of provisions for access to OHIP/Trillium Drug Program, the Temporary Resident Permit holder status, and the Interim Federal Health program mean that PHAs are caught in the cracks between all three. TRP status is usually attained through the H&C process. TRP status disqualifies individuals from OHIP and Trillium and the H&C process disqualifies individuals from IFH. One or the other of OHIP/Trillium or IFH should be made available to PHAs during their move to permanent resident status.

Social Assistance & Immigration

Because many newcomer PHAs are placed in positions where they must rely on social assistance at some point in the process of establishing themselves in Canada, the interaction of these two programs bears considerable attention.

- Accessing social assistance often has a negative impact on the ability to successfully become landed.
- There is an inherent conflict present in the fact that individuals who have been granted Temporary Resident Permits because they are medically inadmissible to Canada are also not eligible for health insurance either through the provincial health plan, or through the federal government's Interim Federal Health plan.
- HIV positive TRP holders are at the same time denied access to health insurance, and subject to a denial of permanent resident status based on their reliance on social assistance.

The conflict between social assistance and immigration is well defined in the words of one PHA in receipt of social assistance and currently on a Temporary Resident Permit:

“ I got a letter from Immigration. The question was, oh, you were granted a work permit. Why aren't you working? So, I replied to them honestly. I said, not that I do not want to work... I do want to work. But the problem is as a single mum with two kids , I cannot afford to buy my own medication. That was just what I had to say.”

This inability to access medications without being in receipt of social assistance is a considerable stressor for this individual. The stress is compounded by knowing that once she has held a TRP for three years, she may face difficulties in being landed because of her receipt of social assistance – which was necessitated by CIC's decision not to make IFH available to TRP holders.

Housing & Immigration

The main issue concerns the fact that if a removal order becomes enforceable against any one member of a family in RGI housing the entire household become ineligible for housing. The main issue is the fact that ineligibility for one member of the household currently results in

ineligibility for all members of the family -- this makes no sense and is illogical. If required, is the best solution not then to make the ineligible member ineligible? That seems more logical.

Also, restrictions in terms of life expectancy might be modified to make them more sensible. I.E. individuals who will live longer than 2 years, if they have housing, as opposed to only have a life expectancy of less than two years.

Recommendations

Immigration

PHAs without status in Canada should be permitted to regularize their status in Canada through means beyond the humanitarian and compassionate provisions.

Rationale: The H&C process is insufficient and inefficient and does not provide an effective way for non-status individuals to regularize their status in Canada. Most non-status individuals live and work in Canada with no access to services and very tenuous and fragile lives. PHAs without status are exponentially disadvantaged by this lack of access. A regularization program should be implemented which is comprehensive and does not automatically deny status to individuals with health conditions. Healthy PHAs with access to services are able to function and contribute to their communities and to Canada.

‘Don’t ask, don’t tell’ policies be adopted by law enforcement and municipal and provincial governments in order to reduce barriers to access for emergency services, education and emergency services and reduce vulnerability of immigrants in situations of domestic violence.

Rationale: Individuals with tenuous or no immigration status routinely refuse to access services, or avail themselves of emergency and protective services because they fear deportation as a result of coming to the attention of official structures and being reported to immigration. Those facing domestic violence are more likely to keep quiet and endure the violence, risking death in order not to jeopardize their immigration process. A don’t ask, don’t tell policy would increase the safety and reduce risks faced by immigrants without status.

The excessive demand policy should not be based on a 10-year window of costs and should more closely reflect current Treatment Guidelines for antiretroviral treatment.

Rationale: Medical research into care and treatment for HIV changes rapidly. There is no way to accurately predict the costs in the future and therefore there is a disproportionately negative effect on HIV positive individuals caught by the excessive demand provisions. Immigration policy with respect to HIV and excessive demand was based on 2002 guidelines for antiretroviral treatment. These guidelines were updated in 2005 and establish different parameters for the initiation of treatment which has a downward influence on the estimates for costs for antiretroviral treatment because of revisions to viral load and CD4 indicators for initiation of treatment.

The excessive demand definition should include consideration of the economic and social contributions of immigrants and refugees.

Rationale: PHA newcomers contribute to the communities in which they live. Economic contributions include income tax and sales tax. Social contributions are difficult to quantify but have significant impact.

The Right of Permanent Residence Fee should be eliminated.

Rationale: The RPRF currently constitutes a barrier to newcomer PHAs who have difficulty accessing \$490 in order to complete their landing process and secure permanent resident status. This financial burden has a disproportionate impact on PHAs whose access to insured health services and medications depends on payment of the fee.

The costs of processing fees for immigration should be eliminated or reduced.

Rationale: While there may be some justification for cost recovery on the part of CIC, the current levels of fees for humanitarian and compassionate applications, permanent resident applications, and particularly the costs associated with regularly renewing and maintaining TRPs should be reduced in order to reduce the financial strain on individuals already marginalized by their lack of access to services and their immigration status.

Processing times for all types of applications should be reduced.

Rationale: The government has effectively acknowledged that processing times are too slow and that significant backlogs exist. Increases in funding which would facilitate the faster processing of applications would reduce stress levels for PHA immigrants and refugees. Liberal government funding announced prior to the election indicated this would occur, but the recent change in government leaves this open to question.

Health Care

Eligibility for the Interim Federal Health Program should be continued for failed refugee claimants who have made an application for landing on humanitarian and compassionate grounds.

Eligibility for the Interim Federal Health program be made available to individuals granted Temporary Resident Permits and in the Permit Holders Class.

Rationale: Individuals on Temporary Resident Permits and those whose H&C applications have been allowed to proceed have successfully established that there are reasonable grounds to allow them to remain in Canada. For PHAs, normally the only impediment to landing is the excessive demand provisions of the IRPA. Individuals who are able to maintain their TRPs for three years will be landed and become eligible for OHIP. It makes little sense to allow individuals to remain

in Canada because of H&C considerations while at the same time denying them access to essential care and services, thereby potentially limiting their ability to work through deteriorating health and increasing the likelihood of reliance on social assistance for access to medication. Given the large numbers of individuals enrolled in the insurance program, the costs associated would be spread among a large group and the costs may be kept lower. In addition, the legislation currently allows CIC to exempt individuals from any provision of the Act or Regulations based on humanitarian and compassionate grounds pursuant to section 25.

Grant eligibility for the Interim Federal Health program to all individuals whose claim for protection has been referred to the IRB without expiry until the person is determine to be a protected person or until the conclusion of the PRRA process.

Rationale: This would eliminate the need to set arbitrary expiry dates for IFH eligibility and would ensure that those eligible for IFH will not fall outside of eligibility for the program. This will eliminate inconsistencies in eligibility for the program and the loss of access to care and treatment as a result of missed communication.

Allow holders of Temporary Resident Permits access to OHIP and the Trillium Drug Program.

Rationale: TRP holders who are medical inadmissible will be landed provided they can maintain their TRPs for three years. Denying them access to timely, affordable health care during this period increases the likelihood that they will depend on other forms of public assistance in order to survive. Allowing access to OHIP and therefore to the Trillium Drug Program would permit these individuals to maintain their health, and be more likely to participate in the workforce, thereby continuing to integrate with and contribute to Canadian society. CIC policy clearly indicates that consultation occurs with the provinces when considering the issuance of a TRP. Work is required with provincial health policy makers to examine the possibility of extending eligibility for OHIP to TRP holders. A second, less appealing option would seek provincial health policy support for a call on the federal government to extend eligibility for IFH to TRP holders.

Designated Medical Practitioners be trained and monitored for delivery of pre and post HIV test counselling and CIC facilitate a process whereby DMPs are provided with sufficient accurate information to make effective referrals for immigrants and refugees who test positive for HIV.

Rationale: DMPs are often the first contact for PHAs in Canada with respect to HIV. A lack of time and resources makes it unlikely that DMPs have knowledge of or access to information regarding medical and community resources for HIV positive immigrants. CIC can play a role by providing time and funding to improve the training, monitoring and support to DMPs to lessen the risk of PHAs failing to be linked to effective, appropriate and supportive resources in health care and community.

Encourage the development of expertise in HIV/AIDS primary health care among Community Health Centres and their health care partners by facilitating cooperation and coordination among CHC interdisciplinary teams

Rationale: CHCs are ideally structured to meet the needs of PHA newcomers through the provision of culturally appropriate interdisciplinary care. Enhancing the capacity of CHCs to work internally and within their communities to better serve and refer PHA clients, including non-insured clients will improve health outcomes, reduce stress and facilitate the transition of PHA newcomers to Canada while improving access to quality health care.

Social Assistance

Expand access to the drug and dental cards through the Extended Health Benefit to permit more PHAs on TRPs to work while retaining access to the drug and dental card.

Rationale: For many PHAs who require medical treatment, but are otherwise in good health, access to the drug and dental card through social assistance would allow them to engage in employment. This would reduce the number of PHAs who rely on social assistance for income support in addition to the drug and dental cards. This process would not remedy the lack of access to health care services however.

Ensure continuation of drug and dental card coverage in cases where benefits are suspended for minor issues like a failure to provide information.

Rationale: Suspension of the drug and dental card have serious implications for PHAs who rely on social assistance for access to medication. Often this reliance is results from categorical ineligibility for provincial health insurance. Social assistance programs can and should develop a method to make suspension of the drug or dental card a method of last resort when dealing with alleged failures to comply with program requirements.

Housing

Eliminate the legislation requirement that an enforceable removal order against one member of a household results ineligibility for RGI for the entire household.

Rationale: This provision currently results in a loss of housing for an entire household based on the particular immigration status of only one member. While an argument may be made with respect to ineligibility for that one member, this should not jeopardize the affordable housing of all members of the household. Given the difficulties encountered by PHA newcomers and their negotiation of the immigration system, this policy may have a disproportionate impact on PHAs who may find themselves in situations with enforceable removal orders as a result of a lack of access to good legal information, advice or representation.

Permit TRP holders to be added to the waiting list for subsidized housing.

Rationale: PHAs on TRPs are normally required to maintain their TRP status for three years before they may be landed. The inability to apply for RGI housing means that these PHAs must maintain themselves in more expensive housing AND find funds to pay for medications and health care treatment, or else access social assistance. RGI housing would permit these individuals to minimize impact on social services through work and contribution of 30% of their income to the cost of housing.

Education

Protected persons (Convention refugees and persons in need of protection) should be eligible for the full range of financial supports for post-secondary education, including bursaries and grants.

Rationale: Protected persons have a full legal status in Canada. Recent policy changes to the Ontario provincial and federal student loans programs have extended eligibility to protected persons. There is no justifiable reason why access to grants and bursaries provided through these same structures should not be available to protected persons. Access to financial support for education will increase the capacity of newcomers to establish themselves in Canada through viable employment.

Employment

Employees with no status should be expressly included in workplace protection legislation in order to prevent exploitation of undocumented workers by employers.

Rationale: Employers who exploit undocumented workers, or employees without immigration status can create situations of extreme danger and risk for PHAs with no status. Expressly including these workers would prevent employers from operating unsafe workplaces and working conditions. Combined with a don't ask/don't tell policy, this would protect the safety of individual workers while minimizing the negative impact on vulnerable individuals.

Appendix A: PHA Focus Group Interview Questions

FOCUS GROUP QUESTIONNAIRE

Introduction. The Committee for Accessible AIDS Treatment is developing a policy discussion guide which examines current legislation and policy which affects the ability of immigrant, refugee and non-status PHAs to access services like health care & medication, education, employment, housing and social assistance. We have completed a look at the existing laws and policies and are now seeking information about the lived experiences of immigrant, refugee and non-status PHAs when accessing, or trying access these services. The information gathered from these sessions will then be included in the final discussion paper. The information you provide will help us to identify where policies and real-life experiences do not match, and to identify areas of concern not currently addressed by policy and legislation. In addition, we intend to generate a list of recommendations for improvements to policy and legislation to address these gaps and concerns.

All of the information gathered today will be anonymous. You will not be identified in any way in the paper. We will include general information regarding the number of people we speak with, your current status in Canada, and your gender.

General Information

- Gender: Male Female Transgendered
- Immigration Status: (check all that apply)
- Canadian Citizen
 - Permanent Resident
 - Convention Refugee
 - Refugee Claimant awaiting decision
 - Refused refugee claimant
 - Applicant for Permanent Residence on Humanitarian & Compassionate Grounds
 - Temporary Resident Permit holder
 - Work Permit Holder
 - Study Permit Holder
 - Visitor
 - Without official status
 - Other _____
 - Don't know
- Route to Canada:
- Immigrant
 - worker
 - student
 - visitor
 - live-in caregiver
 - sponsored relative
 - adopted
 - Refugee
- Years in Canada:
- 0-2 More
 - 3-5
 - 6-8

1. As a PHA newcomer to Canada, what would you identify as your most urgent needs?
2. As a PHA newcomer, what services exist for you?
 - a. How did/do you find services for you as a PHA?
 - b. How did/do you find services as a newcomer?
 - c. Was it difficult to find services as an HIV-positive newcomer?
 - d. Where do you get information about services available for you?
3. What has your experience been with getting accurate information about
 - a. Health care?
 - b. Social assistance?
 - c. Housing?
 - d. Employment?
 - e. Education?
 - f. Immigration?
4. What has your experience been with accessing health care?
 - a. How do you access health care?
 - b. How do you pay for health care?
 - c. Have you been denied access to health care?
 - d. Interaction with public health authorities in Canada?
5. What has your experience been with accessing social assistance?
 - a. Have you applied for social assistance?
 - b. Have you faced any difficulties in accessing social assistance?
 - c. Have you experienced any immigration difficulties because of social assistance?
 - d. Have you experienced any social assistance difficulties because of immigration?
 - e. Has social assistance been helpful? Is yes, what has been most helpful?
6. What has your experience with public housing?
 - a. Have you applied for public (subsidized) housing?
 - b. Have you faced any difficulties in accessing housing?
7. What has your experience been with accessing employment?
 - a. Have you looked for work or been employed in Canada?
 - b. How have you accessed employment services?
 - c. Have you accessed Employment Insurance? Workplace Safety Insurance benefits?
8. What has your experience been with accessing education?
 - a. For yourself?

- b. For your children?
 - c. For other family members?
 - d. Have you tried to access financial support for post-secondary education?
9. What has your experience been dealing with Immigration?
- a. Getting information from Immigration?
 - b. Getting legal information or support and representation?
 - c. Covering the costs of the immigration process?
 - d. Understanding your status and what services you have the right to access?
 - e. Dealing with Immigration medical doctors (designated medical practitioners) in Canada? Overseas?
10. What services that you have accessed have been effective? Why?
11. What needs to be in place for services to become more accessible?

Appendix B: Service Provider Focus Group Interview Questions

FOCUS GROUP QUESTIONNAIRE

Introduction. The Committee for Accessible AIDS Treatment is developing a policy discussion guide which examines current legislation and policy which affects the ability of immigrant, refugee and non-status PHAs to access services like health care & medication, education, employment, housing and social assistance. We have completed a look at the existing laws and policies and are now seeking information about the lived experiences of those working with and supporting immigrant, refugee and non-status PHAs when accessing, or trying access these services. The information gathered from these sessions will then be included in the final discussion paper. The information you provide will help us to identify where policies and real-life experiences do not match, and to identify areas of concern not currently addressed by policy and legislation. In addition, we intend to generate a list of recommendations for improvements to policy and legislation to address these gaps and concerns.

All of the information gathered today will be anonymous. You will not be identified in any way in the paper. We will include general information regarding the number of people we speak with, your occupation, and your gender.

General Information

Gender: Male Female Transgendered

Field of Work: (check all that apply)

- support worker in an AIDS Service Organization (ASO)
- support worker in an immigrant serving organization (ISO)
- support worker in a community health centre (CHC)
- Social worker in a community-based agency
- Social worker in a hospital-based clinic
- Nurse in a hospital clinic
- Nurse in a community health centre
- Registered Nurse Extended Class in a hospital clinic
- RNEC in a community health centre
- Physician in a hospital clinic
- Physician in private practice
- Physician in a community health centre
- Lawyer in private practice
- Lawyer in a community legal clinic/legal clinic
- Immigration consultant
- Naturopath
- Pharmacist
- Other _____

1. As someone working with PHA newcomers to Canada, what would you identify as their most urgent needs?
2. As a PHA newcomer, what services exist for you?
 - a) How did/do you find services for you as a PHA?
 - b) How did/do you find services as a newcomer?
 - c) Was it difficult to find services as an HIV-positive newcomer?
 - d) Where do you get information about services available for you?
3. What has your experience been with getting accurate information for yourself or your clients about
 - a) Health care (including medication/treatment)?
 - b) Social assistance?
 - c) Housing?
 - d) Employment?
 - e) Education?
 - f) Immigration?
4. What has your experience been with helping your clients access health care?
 - a) How do they access health care?
 - b) How do they pay for health care?
 - c) How do you assist in securing health care for your clients?
 - d) What has your experience been with the interaction of public health authorities with PHA clients?
5. What has your experience been with helping your clients access social assistance?
 - a) Have you helped clients apply for social assistance?
 - b) Have you faced any difficulties in accessing social assistance on behalf of your clients?
 - c) Have your clients experienced any immigration difficulties because of social assistance?
 - d) Have your clients experienced any social assistance difficulties because of immigration?
 - e) Has social assistance been helpful to your clients? If yes, what has been most helpful?
 - f) Do you have comments regarding particular social assistance policies? Suggestions for change/improvement?
6. What has your experience with helping your clients access public housing?
 - a) Have you helped clients apply for public (subsidized) housing?
 - b) Have you faced any difficulties in helping your clients access housing?
 - c) Do you have comments regarding particular public housing policies? Suggestions for change/improvement?

7. What has your experience been with helping clients access employment?
 - a) Have your clients needed help looking for work or becoming employed in Canada?
 - b) How have your client's accessed employment services?
 - c) Have they tried to access Employment Insurance with your help? Workplace Safety Insurance benefits?
 - d) Do you have comments regarding particular employment related policies? Suggestions for change/improvement?

8. What has your experience been with helping your clients access education?
 - a) For themselves?
 - b) For their children?
 - c) For other family members?
 - d) Have you tried to help clients access financial support for post-secondary education?
 - e) Do you have comments regarding particular educational policies? Suggestions for change/improvement?

9. What has your experience been dealing with Immigration?

10. What has your experience been helping clients deal with Immigration?
 - a) Getting information from Immigration?
 - b) Getting legal information or support and representation for your clients?
 - c) Covering the costs of the immigration process?
 - d) Understanding your clients' status and what services they have the right to access?
 - e) Dealing with Immigration medical doctors (designated medical practitioners) in Canada? Overseas?
 - f) Do you have comments regarding particular immigration policies? Suggestions for change/improvement?

11. What services that you have accessed have been effective? Why?

12. What needs to be in place for services to become more accessible for you and/or your clients?

Appendix C: Fee Schedule for Citizenship and Immigration Services

Fee Schedule for Citizenship and Immigration Services

A number of cost recovery and administrative fees are payable by applicants for processing applications of various types and for certain citizenship and immigration procedures. However, all fees are subject to change without notice. In general, fees are payable at the time of application. Please check with your nearest Citizenship and Immigration Canada office or Canadian mission abroad for confirmation.

Note: All amounts are in Canadian dollars.

1. CITIZENSHIP

Citizenship Fees	
Right to be a Citizen	\$100
<i>Change of Citizenship</i>	
Grant of Citizenship	\$100
Retention of Citizenship	\$100
Resumption of Citizenship	\$100
Renunciation of Citizenship	\$100
<i>Citizenship Status Documents</i>	
Proof of Citizenship	\$75
Search for Record of Citizenship	\$75

2. APPLICATIONS FOR VISAS AND PERMITS

Permanent Resident Visas	
<i>Family Class applicants</i>	
Sponsorship application (per application)	\$75
Principal applicant	\$475
Principal applicant, if less than 22 years of age and not a spouse or common-law partner (including a dependent child of the sponsor, a child to be adopted and an orphaned brother, sister, niece, nephew or grandchild)	\$75
A family member of the principal applicant who is 22 years of age or older, or is less than 22 years of age and is a spouse or common-law partner	\$550

A family member of the principal applicant who is less than 22 years of age and is not a spouse or common-law partner	\$150
Note: Fees assessed for principal applicants and family members under the Family Class are payable, along with the sponsorship fee, when the sponsor files the sponsorship application.	
<i>Investor, Entrepreneur or Self-employed Persons Class applicants</i>	
Principal applicant	\$1,050
A family member of the principal applicant who is 22 years of age or older, or is less than 22 years of age and is a spouse or common-law partner	\$550
A family member of the principal applicant who is less than 22 years of age and is not a spouse or common-law partner	\$150
<i>Other classes of applicants</i>	
Principal applicant	\$550
A family member of the principal applicant who is 22 years of age or older, or is less than 22 years of age and is a spouse or common-law partner	\$550
A family member of the principal applicant who is less than 22 years of age and is not a spouse or common-law partner	\$150
Temporary Resident Visas	
Single entry to Canada	\$75
Multiple entry	\$150
Note: The total will not exceed \$400 per family, provided that the family members all apply at the same time and place.	
Work Permits	
Work permit	\$150
Note: This fee is per person, but the total amount will not exceed \$450 in the case of a group of three or more performing artists and their staff who apply at the same time and place.	
Study Permits	
Study permit	\$125

3. FEES FOR APPLICATIONS
TO REMAIN IN CANADA AS A
PERMANENT RESIDENT

Spouse or Common-law Partner in Canada Class	
Sponsorship application (per application)	\$75

Principal applicant	\$475
A family member of the principal applicant who is 22 years of age or older, or is less than 22 years of age and is a spouse or common-law partner	\$550
A family member of the principal applicant who is less than 22 years of age and is not a spouse or common-law partner	\$150
Note: Fees assessed under the Spouse or Common-law Partner in Canada Class are payable, along with the sponsorship fee, when the sponsor files the sponsorship application. Refunds will be issued only if the sponsor withdraws the sponsorship application before processing of the application has begun. The \$75 sponsorship fee will not normally be refunded.	
Other applicants	
Principal applicant	\$550
A family member of the principal applicant who is 22 years of age or older, or is less than 22 years of age and is a spouse or common-law partner	\$550
A family member of the principal applicant who is less than 22 years of age and is not a spouse or common-law partner	\$150
Permit Holders Class	
Applicant	\$325
Application under Section 25 of the Act*	
Principal applicant	\$550
A family member of the principal applicant who is 22 years of age or older, or is less than 22 years of age and is a spouse or common-law partner	\$550
A family member of the principal applicant who is less than 22 years of age and is not a spouse or common-law partner	\$150
*Under this section, the Minister of Citizenship and Immigration may grant permanent resident status to an inadmissible foreign national based on humanitarian and compassionate considerations or public policy considerations.	

4. RIGHT OF PERMANENT RESIDENCE FEE (RPRF)

For the acquisition of permanent resident status	\$490
This fee is payable by principal applicants (with some exceptions) and accompanying spouses and common-law partners. It must be paid before the immigrant visa is issued overseas or before the applicant becomes a permanent resident in Canada.	

The following applicants are not required to pay this fee:
 dependent children of a principal applicant or sponsor, a child to be adopted, or an orphaned brother, sister, niece, nephew or grandchild; and protected persons, including Convention refugees.

5. OTHER APPLICATIONS AND SERVICES

Extension of Authorization to Remain in Canada as a Temporary Resident	
Application processing fee	\$75
Restoration of Temporary Resident Status	
Application processing fee	\$200
Permanent Resident Cards*	
Application processing fee	\$50
Renewal or replacement of lost, damaged or stolen card	\$50
Certification and replacement of an immigration document	
Application processing fee	\$30
Application for a travel document A31(3)*	
Application processing fee	\$50
*Permanent residents outside Canada who do not have a Permanent Resident Card or, until December 31, 2003, an Immigration Record of Landing can apply for a travel document so that they may return to Canada.	
After-hours examination	
For entry into Canada, outside of normal service hours (payable at time of examination)	\$100*
*For the first four hours of the examination; \$30 for each additional hour or part thereof.	
Alternative means of examination	
Application processing fee	\$30
Immigration statistical data	
Application processing fee	\$100*
*For the first 10 minutes or less of access to the Department's database in order to respond to such a request; \$30 for each additional minute or less of access.	
Determination of rehabilitation	
Application processing fee, if inadmissible on the grounds of serious	\$1,000

criminality	
Application processing fee, if inadmissible on the grounds of criminality	\$200
Authorization to return to Canada	
Application processing fee	\$400
Repayment of removal expenses	
To the U.S.A. and St. Pierre and Miquelon	\$750
To any other country	\$1,500

Source: Citizenship & Immigration Canada.
<http://www.cic.gc.ca/english/applications/fees.html#swpf>

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