April 11, 2002

Roy Romanow
Commissioner
Commission on the Future
of Health Care in Canada
P.O. Box 160, Station Main
Saskatoon, SK S7K 3K4

Dear Mr. Romanow,

Re: "Bonding" for Medical Services for Immigrants

I write on behalf of the National Citizenship and Immigration Law Section of the Canadian Bar Association concerning potential immigrants to Canada who are inadmissible for medical reasons under the *Immigration Act*. We urge your Commission to recommend that provincial and territorial health authorities grant such immigrants the option of posting a bond for payment of anticipated medical costs. This will, among other things, facilitate the admission of immigrants into Canada and assist in the reunification of families.

Under section 19(1)(a)(ii) of the current *Immigration Act*, people are not admissible to Canada if they suffer from any disease, disorder, disability or other health impairment which might reasonably be expected to cause excessive demands on health or social services. Under section 38(1)(c) of the new *Immigration and Refugee Protection Act*, which has been given Royal Assent but is not yet in force, a foreign national is inadmissible on health grounds if his or her health might reasonably be expected to present an excessive demand on health or social services.

Proposed Regulation 32(1) under the new *Act* would define excessive demand as a demand on health or social services for which the anticipated costs would likely exceed average Canadian *per capita* health services and social services costs for five consecutive years. If there is evidence that significant costs are likely to be incurred beyond that period, then the time frame could be extended to no more than ten consecutive years. The proposed regulation would also define excessive demand to include a demand on health or social services that would increase the rate of mortality and morbidity in Canada by denying or delaying the provision of those services to Canadian citizens or permanent residents.

The proposed regulations define health services as those for which the majority of the funds are contributed by governments. They include the services of family physicians, medical specialists, nurses, chiropractors and physiotherapists, laboratory services and pharmaceutical or hospital care. Social services mean any social service intended to assist a person in functioning

physically, emotionally, socially, psychologically or vocationally and for which the majority of the funds are contributed by governments. Government contribution includes funding through publicly-funded agencies and direct or indirect financial support to a person. Social services falling within this definition include 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.

An immigrant who suffers from a serious health impairment is therefore inadmissible to Canada. Under the present regulations, that person's dependents are also inadmissible, whether or not they intend to accompany the person. Thus, if a Canadian sponsors his or her parents and accompanying siblings, but one sibling is medically inadmissible, the whole family is inadmissible, even if the medically inadmissible sibling does not wish to come to Canada. Proposed regulations would extend inadmissibility where the principal applicant and the inadmissible non-accompanying dependent have cohabited for at least the previous year.

Neither the immigrant nor a sponsoring Canadian family member is allowed to pay for their medical treatment to overcome their inadmissibility. This system creates hardship by preventing family reunification exclusively on health grounds, and needs to be reformed. One solution is to allow immigrants or their sponsors to post a bond for medical services to overcome their inadmissibility.

The Manitoba government permits bonding agreements between a person sponsoring a medically inadmissible family member and the Manitoba Department of Health. These agreements provide that a bond will be posted to cover medical expenses anticipated from the family member's condition. If and when those expenses are incurred, the bond is invoked. Where a conclusion of excessive demand is based on anticipated cost only, the bonding process removes the foundation for finding that the immigrant would incur excessive demand. In such cases, there would be no cost to the Canadian taxpayer. At the moment, this program does not exist in other provinces.

In assessing admissibility outside Manitoba, the federal government does not consider the ability of medically admissible persons or their family members to pay for government funded health or social services. This has been subject to adverse comment from the Federal Court of Canada. In *Wong v. Minister of Citizenship and Immigration*, the Court observed, without deciding the issue:

> There does seem to be an incongruity between admitting someone as a permanent resident because he has significant financial resources but refusing to take into account those same resources when assessing the admissibility of a dependent.[1]

---

[1] IMM-3366-96, January 14, 1998, paragraph 32 (Fed T.D.).

At first blush, it might appear that our proposal discriminates against those who do not have the financial ability to post a bond. However, the entire system of independent (non-refugee) immigration, including sponsorships, is based on a person's financial resources. A child cannot sponsor a parent unless the child meets the low income cut off figure. The sponsorship form requires the sponsor to undertake to reimburse welfare authorities for the cost of welfare incurred by the parent for ten years after arrival. It is an anomaly, and illogical, that those very same means and that very same willingness to reimburse are irrelevant for medical costs.

Excessive demand is tied to services for which the majority of funds are contributed by governments. If an immigrant needs health or social services which are privately funded, then the person will be admissible, despite the medical condition, provided the person is willing and able to pay for those services. Ability to pay becomes relevant once payment is possible.

Indeed, visitors are allowed in for elective surgery for which they will pay. It is anomalous that those without an interest in immigrating to Canada are allowed to pay for elective surgery in Canada but those who want to be reunited with their relatives in Canada are denied entry because they are eligible for elective surgery but are not allowed to pay for it.

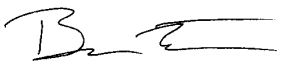
Our proposal would not affect refugees, who can already enter the country if they would otherwise be medically inadmissible. Similarly, under the new *Immigration and Refugee Protection Act,* our proposal would not apply to sponsored spouses, common-law partners and children who will not be subject to the "excessive demand" standard.

Denial of family reunification has economic and social costs. Canadians denied ongoing relationships with their families may work less efficiently because they are less well integrated. Denial of family unity can impact on the emotional and even physical health of Canadians. Family unity is just as important, perhaps more so, for family members with a disability as for those who are able-bodied. If cost is an appropriate consideration, then both cost and benefit should be considered.

The denial of family reunification is aggravated by the large number of elective procedures that are medically insured and the tendency for doctors to use these procedures. In determining whether there will be excessive demand for a specific health or social services, immigration doctors do not look at what the applicants for immigration say they will elect. Rather, immigration doctors look at what is the standard practice in the Canadian context. However, this standard Canadian medical practice often involves procedures — for example gall bladder removal — which are frequently not medically necessary. Canadians should not be denied family
reunification because the health system covers unnecessary medical services or because there is a pattern of unnecessary recourse to a service that is essential in only a few cases.

If you have any questions or concerns about the above, please do not hesitate to contact us through Tamra Thomson, Director, Legislation and Law Reform at (613)237-2925, ext 137, or by email at tamrat@cba.org.

Yours truly,



Ben Trister
Chair
National Citizenship and Immigration Law Section