

BILL C-6

An Act to amend the *Citizenship Act* and to make consequential amendments to another Act

Submission to Standing Committee

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Introduction

We applaud the government's introduction of Bill C-6 with the aim of restoring and fostering a diverse, fair and inclusive Canada. We ask the Standing Committee to take this opportunity to strengthen Bill C-6's reforms by making small but necessary amendments to the *Citizenship Act*¹ ("Act") that would better align the Act's provisions on grant of citizenship knowledge and language requirements with our equality rights at section 15 of the *Canadian Charter of Rights and Freedoms*² ("Charter"), our human rights enshrined in the *Canadian Human Rights Act*³ ("CHRA"), in the *International Convention on Civil and Political Rights*⁴ ("ICCPR"), and in the *Convention on the Rights of Persons with Disabilities*⁵ ("CRPD").

This brief outlines why section 5(3) of the Act should be broadened to allow for waivers of knowledge and language requirements⁶ for granting citizenship as a form of disability accommodation. We also recommend amendment to section 5(1)(e) of the Act to delete the current condition that the knowledge test be taken in one of Canada's official languages. Lastly, we encourage the Standing Committee to recommend that Immigration, Refugees and Citizenship Canada ("IRCC") develop rights-based policies on accommodation within the citizenship application process. These policies will better guide IRCC operations in their duty to accommodate citizenship applicants with disabilities pursuant to the Charter, CHRA, ICCPR and CRPD.

Please note - the recommendations discussed in this brief are not representative of all barriers that applicants with disabilities face under the Act. We welcome the opportunity to further discuss additional concerns with the Standing Committee.

¹ *Citizenship Act*, RSC 1985, c C-29 ("Act").

² *Canadian Charter of Rights and Freedoms*, s.15, Part 1 of the *Constitution Act, 1982*, being scheduled B to the *Canada Act, 1982* (U.K.), 1982, c.11. ("Charter").

³ *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, s. 5. ("CHRA").

⁴ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Article 26, available at: <http://www.refworld.org/docid/3ae6b3aa0.html> [accessed 13 April 2016] ("ICCPR").

⁵ UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 13 December 2006, A/RES/61/106, Annex I, Articles 5, 9, 12, 18, and 29, available at: <http://www.refworld.org/docid/4680cd212.html> [accessed 13 April 2016] ("CRPD").

⁶ *Citizenship Act*, *supra* note 1 at s. 5(1)(d) and 5(1)(e).

Summary of Recommendations

RECOMMENDATION 1: ARCH urges the Standing Committee to recommend that Bill C-6 include the following proposed amendment to section 5(3) of the Citizenship Act: “The Minister may, in their discretion, after having reviewed a person’s particular circumstances, waive on compassionate grounds or waive for any person who requires a waiver as accommodation for their disability-related needs” and to put this provision under the heading of “Waiver by Minister on compassionate grounds or Disability Accommodation”.

RECOMMENDATION 2: In addition to the already proposed age change outlined at (6)(e) of Bill C-6, the amendment to paragraph 5(1)(e) of the *Act* should further read: “if under 55 years of age at the date of his or her application, demonstrates ~~in one of the official languages of Canada~~ that he or she has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship.

RECOMMENDATION 3: ARCH recommends that the Standing Committee recommend that IRCC develop a comprehensive equality-based policy on accommodating citizenship applicants with disabilities.

Current *Citizenship Act* Provisions and Policies Fail to Accommodate Persons with Disabilities

A. Factual Examples of Experiences

ARCH Disability Law Centre (“ARCH”) assists many clients with disabilities who face discrimination through lack of accommodations provided by government entities. When our clients apply for citizenship, they face discrimination most often during the knowledge test-taking process and the manner in which they must ask for waivers from meeting the knowledge or language requirements. Common types of accommodations our clients require in the knowledge test process include:

- More time to complete the test
- Alternative test taking site/space
- Clear language and simplification of test terms
- Presence of a support person in the test taking room
- An interpreter to translate the knowledge test questions
- Ability to take test on a computer
- Waiver of requirement to take the test or prove language proficiency

Accommodation requests are often based on limitations associated with mental health disabilities that are linked to an applicant’s status in Canada as a protected person. Applicants have often experienced torture and subsequent trauma as part of their persecution by governments, institutions and individuals. The applicant may now have limitations in relation to feelings of fear, anxiety, low self-worth, poor memory and inability to focus - especially in test taking circumstances with government officials moderating the test site. Non protected person applicants requiring accommodation may experience similar limitations linked to both mental and physical health disabilities.

Working with applicants, we have observed the following barriers regarding the current legislative structure and IRCC's failure in its duty to accommodate:

- IRCC is unresponsive to accommodation and/or waiver requests notwithstanding clear requests submitted by applicants with supporting evidence including IRCC's 'Request for Medical Opinion form'. All clients we have assisted received the same notice from IRCC to attend for an in-person written knowledge test, regardless of their individual accommodation requests, needs and capabilities.
- Applicants are repeatedly scheduled for the knowledge test despite their written submissions for a waiver and explicit request to not be scheduled for a test because of their disability related limitations and health consequences of attending.
- There are unreasonable delays in receiving the 'Request for Medical Opinion form'. When making accommodation requests, our clients have been informed that their application fits within the "irregular" category and that processing times will be longer due to irregularity.
- Clients reporting high levels of stress when receiving a notice to attend a test site. Clients report exacerbated symptoms of their mental health conditions in consideration of having to attend the test site. Some clients fear that they are at risk of being deported, and all clients that subsequently fail the test report deteriorating mental health profoundly affecting their daily lives.
- Clients referred to us by physicians at St. Michael's Hospital have highlighted the increased health risks when applicants do not receive the accommodations they require. Referring physicians confirm that their patients are experiencing deterioration of their mental and physical health as they are subject to the current application process.
- Following the *Act's* provisions, our clients are forced to apply for a waiver from proving knowledge and language competencies on the grounds of "compassion" rather than as an accommodation for their disability. This process runs contrary to established human rights law.

B. The Law – How the current *Citizenship Act* and IRCC policies related to knowledge and language requirements effects the legal rights of persons with disabilities applying for citizenship

Section 15 of the *Charter*, section 5 of the *CHRA* and section 26 of the *ICCPR* protect persons with disabilities' right to equality, which includes the right to reasonable accommodation to realize this right. Section 15 of the *Charter* states:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.⁷

Section 5 of the *CHRA* states:

It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public

(a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or

(b) to differentiate adversely in relation to any individual, on a prohibited ground of discrimination.⁸

Article 26 of the *ICCPR* reads:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁹

The *Convention on the Rights of Persons with Disabilities*¹⁰ contains a host of articles explaining our state obligations to persons with disabilities as they relate to citizenship laws, including article 5 equality and non-discrimination rights, article 9 accessibility

⁷ *Charter*, *supra* note 2 at s. 15

⁸ *CHRA*, *supra* note 3 at s. 5.

⁹ *ICCPR*, *supra* note 4 at Article 26.

¹⁰ *Convention on the Rights of Persons with Disabilities*, *supra* note 5 at Articles 5, 9, 12, 18 and 29.

guarantees, article 12 equal recognition before the law, article 18 liberty and movement and nationality, and article 29 right to participate in political and public life.

Leading case law identifies the meaning of accommodation. In *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, the Supreme Court of Canada noted:

The concept of reasonable accommodation recognizes the right of persons with disabilities to the same access as those without disabilities, and imposes a duty on others to do whatever is reasonably necessary to accommodate this right.¹¹

During the citizenship application process, IRCC is obliged to provide individualized accommodation to applicants to the point of undue hardship. Applicants with disabilities may require accommodation at any part of the process. Specific accommodations may be required to satisfy the grant of citizenship requirements of having adequate knowledge of one of the official language of Canada¹² and further, adequate knowledge of Canada and of the responsibilities and privileges of citizenship.¹³

The adequate knowledge requirement for grant of citizenship is currently measured by applicants taking a written citizenship test in one of the official languages. Some individuals with disabilities require accommodation during the citizenship test-taking process, while others require accommodation by way of an exemption from the test-taking process altogether.

If requesting a full exemption from the knowledge or language proficiency requirement, then applicants with disabilities must currently make their request under section 5(3) of the *Citizenship Act* where a Minister may grant waivers for these citizenship requirements on compassionate grounds.¹⁴

¹¹ *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, [2007], 1 SCR 650 at para. 121.

¹² *Citizenship Act*, *supra* note 1 at s. 5(1)(d).

¹³ *Citizenship Act*, *supra* note 1 at s. 5(1)(e).

¹⁴ *Citizenship Act*, *supra* note 1 at s. 5(3)

Despite the provisions in IRCC policies,¹⁵ an applicant requesting accommodation short of a waiver is faced with a standardized process that is not tailored to their individual needs. IRCC's unresponsiveness to individual requests results in excessive delay and the perpetuation of disadvantage experienced by applicants with disabilities. These experiences, also outlined in the factual examples above, arise as a result of incomplete legislation and are exacerbated by the frailties of policy construction and implementation with a weak human rights framework.

C. Aligning the *Citizenship Act's* waiver provisions and IRCC's accommodation-related policies with Section 15 *Charter* and *CHRA* equality and accommodation rights

Although the Minister's ability to grant waivers for knowledge and language requirements is beneficial for many applicants with disabilities who cannot satisfy these requirements, the basis on which they are offered is problematic. Offering waivers to applicants with disabilities only on the basis of compassionate grounds fails to respond to the rights of persons with disabilities to request accommodation by way of a waiver. Other jurisdictions have created clear and inclusive language with the purpose of accommodating applicants with disabilities. For example, the United States' *Immigration and Nationality Act* specifically waives the language and knowledge requirements for naturalization if required by an applicant identifying with a disability.¹⁶ In order to uphold the values of inclusivity and to reduce barriers to citizenship for individuals with disabilities, the *Citizenship Act* requires amendment specific to waiver requests.

¹⁵ Immigration, Refugees and Citizenship Canada, *When is a language and/or knowledge hearing not required?* in "Citizenship waivers: Medical opinions" online: <http://www.cic.gc.ca/english/resources/tools/cit/admin/decision/medic.asp> [accessed 13 April 2016] and Immigration, Refugees and Citizenship Canada, *Knowledge testing for applicants with special needs* in "Citizenship grants: Citizenship knowledge testing" online: <http://www.cic.gc.ca/english/resources/tools/cit/grant/test.asp> [accessed 13 April 2016].

¹⁶ *Immigration and Nationality Act*, 8 U.S.C § 312.

RECOMMENDATION 1: ARCH urges the Standing Committee to recommend that Bill C-6 include the following proposed amendment to section 5(3) of the Citizenship Act: “The Minister may, in their discretion, after having reviewed a person’s particular circumstances, waive on compassionate grounds or waive for any person who requires a waiver as accommodation for their disability-related needs” and to put this provision under the heading of “Waiver by Minister on compassionate grounds or Disability Accommodation”.

Another key amendment that will assist the development of an inclusive and fair citizenship application process is the removal of requiring that the adequate knowledge test be demonstrated *in one of the official languages of Canada*. Requiring the knowledge test to be taken in one of the official languages is a recent amendment to the *Citizenship Act*, and one that has been criticized outside of the disability community on previous occasions.¹⁷ Applicants with disabilities may disproportionately be disadvantaged by this new and more onerous testing requirement. The ability to use language translation may be necessary as accommodation for the applicant.

RECOMMENDATION 2: In addition to the already proposed age change outlined at (6)(e) of Bill C-6, the amendment to paragraph 5(1)(e) of the Act should further read: “if under 55 years of age at the date of his or her application, demonstrates ~~in one of the official languages of Canada~~ that he or she has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship.

Lastly, ARCH urges the Standing Committee to recommend that the IRCC engage in a robust review of their policies related to disability accommodation in the citizenship application process.

¹⁷ In their April 2014 Submission to the Standing Committee on *Bill C-24 – Strengthening Canadian Citizenship Act*, the National Immigration Law Section of the Ontario Bar Association (“OBA”) responded to the government’s recent amendments requiring the test to be taken in one of Canada’s official languages. In their submission, the OBA argued that this requirement amounted to a second language test, precluding applicants with low-literacy and not necessarily facilitating an accurate assessment of the applicant’s knowledge of Canada. See: <https://www.cba.org/CMSPages/GetFile.aspx?guid=101fdebf-5af8-4ab4-acc7-154959d32876> [accessed 13 April 2016].

Current IRCC policies and standard procedures do not reasonably fulfill IRCC’s duty of providing accommodation to applicants with disabilities. For example, providing an option of “attempting the test” fails to adequately uphold IRCC’s duty to accommodate individual applicants.¹⁸ A blanket policy and template procedure does not reasonably fulfill IRCC’s duty of non-discrimination to persons with disabilities requesting accommodation. The policy governing the use of the “Request for Medical Opinion form”¹⁹ may also require scrutiny to ensure that applicant’s requesting waivers for reasons linked to their disabilities are not asked to divulge irrelevant or unnecessary personal health information as a condition to receiving appropriate accommodations. Applicants with disabilities have a right to receive individualized responsiveness to accommodation requests, and we invite further consultation on an inclusive policy that achieves compliance with these important constitutional standards.

RECOMMENDATION 3: ARCH recommends that the Standing Committee recommend that IRCC develop a comprehensive equality-based policy on accommodating citizenship applicants with disabilities.

Conclusion

The *Citizenship Act* and relevant IRCC policies currently perpetuate unnecessary barriers for applicants with disabilities to satisfy the language and knowledge requirements for becoming a Canadian citizen. The Standing Committee has an opportunity to ensure that the *Citizenship Act* is in line with Canada’s domestic and international commitments to human rights principles. ARCH urges the Standing Committee to recommend broadening the criteria for obtaining a waiver to include persons with disabilities requiring the waiver; removing the official languages criteria at the knowledge test for all applicants; and for IRCC to review and develop comprehensive equality-based accommodation policy in the citizenship regime. These

¹⁸ See: Immigration, Refugees and Citizenship Canada, *Knowledge testing for applicants with special needs* in “*Citizenship grants: Citizenship knowledge testing*” *supra* note 15.

¹⁹ Immigration, Refugees and Citizenship Canada, *When is a language and/or knowledge hearing not required?* in “*Citizenship waivers: Medical opinions*” *supra* note 15.

recommendations would significantly reduce barriers to full political participation for persons with disabilities in Canada.

About ARCH

ARCH Disability Law Centre (“ARCH”) is a specialty legal clinic dedicated to advancing the equality rights of persons with disabilities. ARCH provides legal services to help Ontarians with disabilities live with dignity and participate fully in our communities. ARCH provides free and confidential legal advice and information to people with disabilities in Ontario. Through our Provincial mandate, we work with Ontarians with disabilities and disability communities providing direct legal representation, we conduct law reform activities, and policy and community development work. We also provide public legal education to persons with disabilities and continuing legal education to the legal community. ARCH maintains a website at www.archdisabilitylaw.ca.

Please do not hesitate to contact ARCH should you have any questions or desire further clarification.

ARCH DISABILITY LAW CENTRE