

# CANADIAN NEWS

This section provides brief reports of developments in legislation, policy, and advocacy related to HIV/AIDS in Canada. (Cases before the courts or human rights tribunals in Canada are covered in the section on HIV in the Courts – Canada.) The coverage is based on information provided by Canadian correspondents or obtained through scans of Canadian media. Regular correspondents are listed on page 2; information about occasional correspondents is provided with their contribution. Address correspondence to David Garmaise, the editor of Canadian News, at [dgarmaise@rogers.com](mailto:dgarmaise@rogers.com).

See **Global Access to Treatments** for an article on the results of the AIDS VAX B/B vaccine trial, which included participants from Canada.

## Mandatory HIV Testing Used to Bar Potential Immigrants

Last year Canada turned away 75 people with HIV/AIDS because the federal government said that they would place excessive demands on publicly funded services. Another 207 people with HIV/AIDS were allowed to enter Canada, mainly because of exemptions to the excessive-demand provisions. HIV/AIDS organizations have objected to the government's policy of mandatory HIV-antibody testing of potential immigrants and have expressed concerns about the way in which excessive demand is calculated.

In 2002, Citizenship and Immigration Canada (CIC) refused to allow 75 people with HIV/AIDS to enter Canada on the grounds that they would place excessive demands on the country's health and social services systems. However, another 207 people with HIV/AIDS were allowed in.<sup>1</sup> Mandatory HIV-antibody testing of applicants for permanent residence

was instituted on 15 January 2002. (Most short-term visitors are not tested.)

Under both the new Immigration and Refugee Protection Act,<sup>2</sup> which came into effect on 28 June 2002, and the previous Immigration Act, foreign nationals can be refused entry into Canada if they have a medical condition that would place excessive

demands on government services. Under the new Act, there are several categories of people who are exempt from the excessive-demand provisions, including refugees, whether applying inside or outside Canada; and certain sponsored applicants for permanent residence in the family class – specifically spouses, common-law partners, and dependent children.<sup>3</sup>

The old Act did not contain any exemptions to the excessive-demand provisions. However, many refugees and sponsored family-class applicants who were HIV-positive were allowed in on compassionate grounds.

## Interpretation of Excessive Demand

Demand is considered “excessive” if the estimated financial burden the individual would place on health and social services is greater than that of the average Canadian.<sup>4</sup> Estimated costs are calculated over a five- or ten-year period from the date of the person’s latest medical examination. The cost for the average Canadian, which is determined from data provided by the Canadian Institute for Health Information, was set at \$3572 for 2002. The figure changes each year.

CIC officials have indicated that applicants for permanent residence who are HIV-positive and are currently on antiretroviral medication

People with HIV who are applying for permanent residence and who are currently on antiretroviral medication will be found to be medically inadmissible.

(whether or not they are in good health) will be found to be medically inadmissible. This is because the costs of the medication exceed those of the average Canadian and are paid for out of public funds (usually by provincial and territorial governments).<sup>5</sup>

According to CIC officials, applicants for permanent residence who are HIV-positive, are in good health, and are not on antiretroviral medication would not be considered likely to place excessive demands on Canada’s health and social services, so their HIV status would not be a barrier to entering Canada. Applicants for per-

manent residence who are HIV-positive, are not in good health, but are not taking antiretroviral medication, would likely be declared medically inadmissible because immigration medical officials would conclude that the applicants may start taking antiretroviral medications within a few years of arriving in Canada.<sup>6</sup>

Many Canadian HIV/AIDS organizations have expressed their opposition to mandatory HIV-antibody testing of people seeking to enter Canada. They argue that any potential benefits of testing are outweighed by its potential harms. These organizations are also opposed to a system that bars potential immigrants living with HIV/AIDS based on a determination of excessive demand that includes the costs that would be incurred to treat them but that does not take into account their potential contributions to Canadian society.<sup>7</sup> The CIC has indicated that it is prepared to review how excessive demand is calculated.<sup>8</sup>

Because of the exemptions to the excessive-demand provisions, there are a significant number of people with HIV/AIDS entering Canada as permanent residents. Some concerns have been expressed about whether these people are being put in touch with HIV/AIDS services in Canada and whether these services are able to meet the needs of this population.

Shaun Mellors, an HIV-positive man who was declared medically inadmissible but was then granted a Temporary Residence Permit (TRP) to enable him to take up a two-year position with an international HIV/AIDS organization in Toronto,<sup>9</sup> saw his application to the Ontario government for health insurance coverage accepted. However, there have been reports of other people in similar circumstances in Ontario being denied

coverage, so Ontario’s policy is not clear. It is up to the provinces and territories to decide whether people admitted under TRPs will be covered under their health insurance plans.

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For more information on how Canada’s immigration law and regulations affect people with HIV/AIDS, see the set of questions and answers, Canada’s Immigration Policies as They Affect People Living with HIV/AIDS, on the Network’s website ([www.aidslaw.ca/Maincontent/issues/Immigration/immigrationFAQ2003\\_part1.htm](http://www.aidslaw.ca/Maincontent/issues/Immigration/immigrationFAQ2003_part1.htm)).

– David Garmaise

<sup>1</sup> L Priest. HIV test used to bar potential immigrants. *Globe and Mail*, 24 February 2003, at A5.

<sup>2</sup> Immigration and Refugee Protection Act, SC 2001, c 27 at s 38(1). The text of the Act is available on the CIC website via [www.cic.gc.ca/](http://www.cic.gc.ca/).

<sup>3</sup> *Ibid* at s 38(2).

<sup>4</sup> Immigration and Refugee Protection Regulations, SOR/2002-227, s 1(1)(a). The text of the Regulations is available on the CIC website via [www.cic.gc.ca/](http://www.cic.gc.ca/).

<sup>5</sup> Personal communication between the author and Dr Brian Gushalak, Director General, Medical Services Branch, CIC.

<sup>6</sup> *Ibid*.

<sup>7</sup> For an analysis of this and other immigration issues, see A Klein. *HIV/AIDS and Immigration: Final Report*. Montréal: Canadian HIV/AIDS Legal Network, 2001; and B Hoffmaster, T Schrecker. *An Ethical Analysis of the Mandatory Exclusion of Immigrants Who Test HIV-Positive*. Halifax: The Names Project, 2000. Both reports are available on the Network’s website via [www.aidslaw.ca/Maincontent/issues/immigration.htm](http://www.aidslaw.ca/Maincontent/issues/immigration.htm).

<sup>8</sup> Meeting between representatives of the International Council of AIDS Service Organizations and officials from several government departments, including CIC, 4 November 2002.

<sup>9</sup> See D Garmaise. Canada refuses to issue a visa to an HIV-positive worker on antiretroviral drugs. *Canadian HIV/AIDS Policy & Law Review* 2002; 7(2/3): 24-25.