

HIV/AIDS and Immigration: Frequently Asked Questions

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Are foreigners currently required to take an HIV test before being allowed into Canada? Almost all immigrants and refugees are, but visitors generally are not.

- On 15 January 2002, HIV was added to the list of routine tests included in the medical examination that foreigners who plan on staying in Canada for 6 months or longer must undergo. HIV testing is performed on all applicants who are 15 years of age or older, as well as on children who have received blood or blood products or whose mother is known to be HIV positive, and on all potential adoptees.
- Visitors who plan on staying in Canada for 6 months or less do not usually have to take a medical exam. However, if Canadian immigration officials think that a particular visitor might have a medical condition that could pose a danger in Canada or place excessive demands on Canadian health services, they may require the visitor to take a medical exam. The exam could include an HIV test.

Are people with HIV/AIDS allowed to come into Canada? Canadian immigration law is currently in transition: a new Immigration and Refugee Protection Act is set to replace the old Immigration Act in the spring of 2002.

Under both the old and the new laws, short-term visitors with HIV are usually allowed to enter Canada.

As to immigrants and refugees, the situation will change with the new legislation. Under the old law, refugees with HIV who appear at the border or who are in Canada have been allowed to stay, but immigrants and refugees who are outside Canada have generally not been allowed entry into Canada. Under the new law, most people with HIV will still be unable to immigrate to Canada. However, HIV-positive refugees and HIV-positive spouses, common-law partners, and children of a Canadian citizen or permanent resident will be allowed to come to Canada.

- According to both the old *Immigration Act* and the new *Immigration and Refugee Protection Act*, foreigners can be refused entry into Canada based on their medical condition if they are likely to be a threat to public health or safety or if they would

place excessive demands on government services. Since 1991, Canada has not considered people with HIV to be threats to public health and safety. *Although there was some suggestion that this policy might change, then Minister of Citizenship and Immigration Elinor Caplan confirmed in June 2001 that refugees and immigrants with HIV still won't be considered to be threats to public health and will not be excluded on that basis.*

- Therefore, Canada generally only excludes people with HIV if they can be expected to place an excessive burden on publicly funded health and social services.
- Short-term visitors with HIV, unless they are very ill, are not expected to place any demands on government health and social services, so they are generally allowed to come into Canada.
- Under the old law, refugees with HIV who appeared at the border or who were in Canada could not be expelled or turned away from the country. This policy was in conformity with international law. Their HIV status was not a bar to admission into Canada as a refugee.
- Refugees with HIV applying from outside the country, along with immigrants, were generally found "medically inadmissible" on the ground that they would place excessive demand on health and social services.
- Persons found medically inadmissible were able to apply for a minister's permit, allowing them to remain in Canada for a temporary period. In most provinces and territories, people on Minister's permits were not eligible for publicly insured health and social services.
- The new law exempts refugees, whether inside or outside Canada, as well as sponsored spouses, common law partners, and children of Canadian citizens or permanent residents from inadmissibility based on "excessive demand." Since people with HIV are not (at least not generally) considered to be threats to public health and will not be excluded on that basis, this means that refugees and *certain* close family members of Canadian residents will not be denied entry to Canada based on their health condition if they are HIV positive.
- For all other immigrants, a case-by-case assessment will be made about whether the person "might reasonably be expected to cause excessive demand on health or social services."

If we let people with HIV/AIDS come into Canada, are we putting the health of Canadians at risk? No. HIV is not an airborne virus, and it cannot be transmitted by casual contact. Canadians can and must protect themselves from contracting HIV by engaging in safer sex practices, by refraining from sharing injection equipment, and by ensuring that donated blood and plasma are carefully screened. The entry of immigrants with HIV/AIDS creates no direct and unavoidable risk to the health of the general public.

- In fact, if we excluded persons with HIV from the country on public health grounds, we would send a wrong message to Canadians - that measures at the border are an effective way to keep HIV out of the country and to protect Canadians. This could create a false sense of security that might discourage people from avoiding risky

behaviour, when maintaining safe practices is really the only way to avoid contracting HIV.

- Furthermore, a policy that sees immigrants with HIV as threats to public health in and of themselves, regardless of their behaviour, unfairly stigmatizes all people with HIV in Canada as “dangers to society,” and unfairly stigmatizes immigrants as “carriers of disease.”

But we already require would-be immigrants to undergo tests for tuberculosis and syphilis and then exclude anyone who tests positive.

Why should HIV be treated differently? HIV can and must be distinguished from tuberculosis and syphilis.

Unlike HIV, tuberculosis is an airborne disease that can be transmitted casually. Allowing immigrants with TB into the country poses an immediate and demonstrable threat to the Canadian public that justifies denying them entry into the country. Furthermore, both tuberculosis and syphilis can be cured, and so people who are tested will be excluded only temporarily. If people with HIV were excluded on public health grounds they would be permanently kept out of the country – yet no useful public health purpose would be served.

Shouldn't Canada refuse immigrants with HIV because they will place demands on our already overburdened health care system and use services that other Canadians need?

No, at least not automatically. *Many* would-be immigrants with HIV will make greater contributions to Canadian society than their medical condition would cost. Because of new treatments, many persons with HIV lead longer and potentially very productive lives during which they can make significant social and economic contributions to society. Even though the new treatments can be expensive, there will be many cases in which an immigrant's economic contribution will be greater than the cost of those treatments, particularly since the cost of treatment will vary from person to person. Furthermore, if we do not consider the social contributions that immigrants make to Canadian society, we risk treating immigrants as valuable only insofar as they are “cost-effective.”

In addition, sometimes there are compelling compassionate and humanitarian reasons to allow a person to immigrate to Canada even if he or she would place demands on our health and social services. For example, an applicant with HIV may have close family members in Canada, or he or she may be a refugee with no permanent place to live. Therefore, prospective immigrants should not be excluded simply because they have HIV (or any other disease that could place demands on Canada's health and social services). In every individual case, all the contributions the individual immigrant could make to Canadian society, as well as any humanitarian and compassionate reasons, should be weighed against the potential demands that might result from the immigrant's medical condition. Because of the difficulty of predicting costs of treatment of HIV infection in the very long term, the period over which potential demand is assessed should not exceed five years at the most.

What is wrong with mandatory HIV testing? Even if we do not exclude all would-be immigrants with HIV, doesn't it make sense to test them anyway? Mandatory HIV testing is now a routine part of the medical examination that

everyone seeking long-term entry to Canada must undergo. But there are several problems with mandatory testing. First, immigrants are now the first group of people on whom mandatory HIV testing is imposed by Canada (Canadians are, in most cases, protected from involuntary testing under the *Charter of Rights and Freedoms*). This stigmatizes all prospective immigrants and those immigrants already living in Canada. In addition, it is wrong to single out HIV for testing when other diseases might impose equal or greater costs on public services but that are not tested for. More and more tests, particularly genetic screening tools, are becoming available that may allow the prediction of diseases that are likely to develop. If we mandate HIV testing of immigrants, are such genetic tests also justified? Will we test all people with every test that is available and choose only those immigrants who will live the longest and be the healthiest?

Another important problem with HIV testing is that since it is often conducted by doctors outside Canada, it can be difficult to ensure that appropriate standards for informed consent, pre- and post-test counseling, and confidentiality are observed.

What should Citizenship and Immigration Canada (CIC) do?

- Although mandatory HIV testing of immigrants is not warranted, now that CIC has instituted a broad program of mandatory testing, it must ensure that appropriate standards of pre-and post-test counseling are observed.
- CIC should ensure that its policy of not generally excluding persons with HIV or AIDS from Canada *on public health grounds* is applied appropriately. Officers assessing a foreign national's health condition should be told that only individuals who would refuse to practice safe sex while at the same time concealing their HIV status from their partners or persons with HIV who would purposely seek to infect others should be excluded on public health grounds. Their implementation of this policy should be monitored regularly
- CIC must ensure that, in practice, people with HIV/AIDS (who are not exempted from medical inadmissibility based on "excessive demands") are all individually assessed and not quasi automatically prevented from immigrating on the basis of "excessive demands" on health or social services. Demands should be considered "excessive" only when the expected cost of government services estimated over a short period exceeds the estimated financial contribution that the applicant will make over the same period, and also outweighs the potential social contribution that the individual is expected to make.

Where can I find more information on HIV/AIDS and immigration? On the website of the Legal Network at www.aidslaw.ca/Maincontent/issues/immigration.htm or by contacting Ralf Jürgens at ralfj@aidslaw.ca.

Copies of this question and answer sheet are available on the website of the Canadian HIV/AIDS Legal Network at www.aidslaw.ca/Maincontent/issues/immigration.htm. Reproduction is encouraged, but copies may not be sold, and the Canadian HIV/AIDS Legal Network must be cited as the source of this information. Ce feuillet d'information est également disponible en français.

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