

# HIV Testing and Short-term Entry to Canada: Recommendations for human rights-based reform

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## 1 Admissibility to Canada of people living with HIV/AIDS

Under Canadian immigration law, someone may be deemed “medically inadmissible” to Canada if s/he

- is likely to be a danger to public health or safety, or
- might reasonably be expected to cause excessive demand on publicly financed health or social services.

People living with HIV/AIDS (PHAs) are not considered a danger to public health or safety. Canada does not bar either short- or long-term entry of PHAs on this basis.

PHAs are also unlikely to be denied short-term entry (i.e. for less than six months) based on expected demand on health or social services. However, PHAs applying for longer-term entry (e.g. permanent residence, multi-year student or worker visas) are likely to be deemed inadmissible on this basis. (This does not apply to refugee claimants or to certain family members who are sponsored for permanent residence by a Canadian citizen or permanent resident.)

## 2 HIV disclosure and testing

Citizens of most countries in Asia, Africa, Latin America and the Caribbean need a visa to enter Canada as “temporary residents” (i.e. as visitors, students or workers).

The temporary resident visa application does not require disclosure of HIV-positive status, nor is mandatory HIV testing routinely required of short-term visitors.

Applicants for short-term entry to Canada are not usually required to have a medical examination. Government instructions to visa officers state that it would be “rare” for a visa applicant living with HIV/AIDS to be required to have a medical examination for short-term entry, and “rarer still” that a PHA would be assessed as medically inadmissible.

However, all people seeking entry to Canada on a short-term basis *may* be subject to an immigration medical examination

- if their stay will exceed six months, or
- if they are “obviously ill” upon arrival at the port of entry.

Every examination includes HIV testing, regardless of the reason for the examination. Citizenship and Immigration Canada (CIC) is reviewing this policy.

## 3 Recommendations

Routine HIV testing as part of every immigration medical exam infringes privacy in cases where the results are unnecessary or irrelevant. To better respect human rights, Canada should amend its immigration policy, as follows:

- CIC should develop a checklist of clinical indications that may warrant HIV testing. Physicians conducting exams should be required to identify the specific reason(s) for including an HIV test.
- For temporary resident visa applications, HIV testing should be done only if warranted by clinical indications *and* if the person could reasonably be expected to impose excessive demand on health or social services if HIV-positive, given the length of stay in Canada.

- CIC should ensure that HIV testing is done only with informed consent, and that physicians provide pre- and post-test counselling.

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