

AIDS/HIV and Medical Inadmissibility Issues

Canadian immigration policy on AIDS/HIV is under attack on two fronts. The Reform Party calls for mandatory HIV testing of all immigrants and visitors ("visitors" includes tourists, students, and temporary workers) to Canada. AIDS and disability groups are pushing for a more compassionate assessment. Meanwhile, the previous government proposed amendments to the legislation on medical inadmissibility still under consideration which I will discuss in a later article.

All immigrants and certain, but not all, visitors require medical exams. The Immigration Act gives Medical Officers two grounds to identify medical inadmissibility, namely "danger to public health or to public safety", or that someone "would cause or might reasonably be expected to cause excessive demands on health or social services". There is no routine HIV testing as part of the medical exam. However, a Medical Officer may request HIV testing, where as a result of medical history or physical findings, there is suspicion of HIV infection. An applicant for immigration, other than a successful refugee claimant, who tests positive for HIV is medically inadmissible on grounds of excessive demands. If the person is only visiting Canada, the decision to permit or refuse entry is made at the discretion of the immigration officer. Anyone determined to be medically inadmissible may apply for a Minister's Permit. The issuing of a Minister's Permit is completely discretionary. It is valid for a maximum of three years but may be extended repeatedly or revoked with notice, at any time.

Guidelines to Medical Officers on May 8, 1991 made it clear that short term visitors with HIV do not represent a danger to public health. Despite this, there have still been problems.

On December 29, 1991, Craig Rowe, a gay, black, U.S. citizen living with HIV was on train from New York City to Montreal for a three day holiday. Mr. Rowe had private medical insurance, a return ticket, and looked quite healthy. A Canadian customs officer searched Mr. Rowe's luggage and found HIV medication. An Immigration Officer boarded the train and in front of other passengers, asked Mr. Rowe if he had AIDS. Mr. Rowe admitted he did. The Immigration Officer removed Mr. Rowe from the train and placed him in detention. Immigration Officers eventually told Mr. Rowe that he was medically inadmissible to enter Canada and that if he wished to challenge the decision they required a medical assessment and that he could wait up to three weeks in a regular jail cell with criminals for the assessment to be done. The other alternative presented to Mr. Rowe was that he withdraws his application and return home to New York by bus (at his own expense). Mr. Rowe naturally "chose" to withdraw.

So, what should you be aware of if you are a non-Canadian living with HIV crossing the border? First, homosexuality is not a grounds for prohibition to Canada and discrimination on the grounds of sexual orientation is prohibited. That is not to say that you might not encounter a homophobic Customs or Immigration Officer, but they are not entitled to question you about your sexual orientation. They do have the right to ask you

questions about your health and what you are bringing with you. You can choose not to answer such questions and not enter Canada. You may request to be questioned in private. Any medications you bring should be in original containers with proof of a physician's prescription for all prescription drugs. If possible, bring proof of private health care coverage or that you have sufficient personal funds with you in case you became ill while in Canada. Customs have taken a hard line dealing with any kind of sexually explicit materials and some officers could consider even AIDS educational material to be obscene.

The Canadian Charter of Rights and Freedoms gives certain protections to anyone in Canada. You have the right not to be arbitrarily detained or imprisoned. If you are detained by a Customs or Immigration Officer, you have the right to be informed promptly of the reasons for the detention and of your right to call a lawyer. They must give you a reasonable opportunity to exercise that right and provide you with access to a telephone.

On May 12, 1994, I participated in a meeting in Vancouver which included federal officials from Customs, Immigration, and Health and representatives from AIDS groups and other interested parties to discuss problems persons living with HIV encounter at the border and how Customs and Immigration could better respond by implementing training programs that educate their officers about HIV and makes clear that homophobia and AIDSphobia will not be tolerated. A similar meeting occurred three days earlier in Ottawa. Immigration and Customs Officers are granted tremendous discretionary authority and only through such programs and continued community input can unnecessary harassment of persons living with HIV at the border be eliminated. Any border harassment should be reported to AIDS support groups or to the Immigration Committee of the Lesbian and Gay Rights Section of the B.C. Branch of the Canadian Bar Association.

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