

Immigration and HIV Testing: What you need to know

Citizenship and Immigration Canada requires a medical exam for all immigrants and refugees. The medical exam includes a screening test for HIV for everyone over the age of 15. If you are under 15, but have an HIV-positive parent, have received blood or blood products or are going to be adopted in Canada, you will also be tested for HIV. On most applications for status in Canada, you will be asked if you have any serious illnesses. If you say no and later Immigration finds out that you lied, Immigration could try to remove you from Canada.

Being HIV positive can be a problem if you want to become a permanent resident of Canada. Canada's immigration law says some people are "inadmissible" to Canada. This means you are not allowed to come into or stay in Canada. There are different kinds of "inadmissibility". For example, you could be inadmissible because of a criminal record (criminal inadmissibility), or because you have a medical problem (medical inadmissibility). Medical inadmissibility means you would be a danger to public health or safety, or that you would cause too much demand on Canada's health and/or social services (excessive demand). HIV is not considered a danger to public health or safety, but is usually seen to cause excessive demand on health and/or social services.

Q: I'm HIV positive. Can I get permanent status in Canada?

A: It depends on how you come to Canada. Successful refugees, sponsored spouses, partners and dependent children can be landed despite "medical inadmissibility". Others might be able to stay as "temporary residents", usually if they have shown that there are strong humanitarian and compassionate reasons for them to remain in Canada.

Q: I need some legal help with Immigration. Where can I go?

A: There are many lawyers who know a lot about immigration. There are a few who specialize in immigration and HIV. If you can't afford a lawyer, you might be able to get Legal Aid assistance for some matters. Legal Aid certificates are available for refugee hearings, sponsorship and deportation appeals and detention reviews. Some Community Legal Clinics also offer some help with immigration matters. The HIV & AIDS Legal Clinic (Ontario)

might be able to help you find a lawyer and direct you to community resources who can help you with health care.

Q: I'm in Canada and I have no status. I just found out I'm HIV positive. Where can I go for help?

A: Phone a legal clinic or HALCO for assistance in getting legal help.

If you need urgent medical care, you could go to the emergency room at a hospital. A hospital is required to admit you if your life would be endangered by a refusal to admit you. You will, however, get a bill for the services provided by the hospital.

You might also be able to get some medical care through your local Community Health Centres (CHCs). Many CHCs are able to see a limited number of people who do not have health insurance but who need medical attention.

Some hospitals have HIV clinics. Many of these clinics have social workers who can help connect you to community resources and legal help.

Q: I'm worried about telling my lawyer or my local settlement agency about my HIV status. Should I?

A: It is natural to worry about disclosing your status, but there are protections for your privacy. You should know that information you share with your lawyer is confidential and "privileged". That means that they can't tell other people without your consent. You should also know that there is a difference between immigration consultants or agents and lawyers. Consultants and agents are **not** lawyers. Immigration consultants must be regulated by the Canadian Society of Immigration Consultants (CSIC) in order to get paid to represent people in immigration matters, or to give immigration advice. If they are regulated members of the CSIC, they are required to meet their professional standards regarding client confidentiality. If your consultant is NOT a member of the CSIC, then they do not have the same professional rules regarding confidentiality of information. Immigration lawyers are required to meet the Rules of Professional Conduct of the Law Society of Upper Canada, which includes client confidentiality.

Workers at HIV clinics in hospitals and at AIDS Service Organizations are very aware of concerns about confidentiality. It may be helpful to talk to them and ask for names of lawyers or legal help where you can freely discuss issues related to HIV. It is important to have a lawyer you are comfortable sharing all of your information with. This will ensure that your lawyer can do the best job of preparing your case.

Below is a list of ways people come to Canada and what effect their HIV status will have:

Q: I am making a refugee claim in Canada. Will HIV stop me from becoming a permanent resident?

A: No. If you are found to be a "protected person" (either as a Convention refugee or a person in need of protection), the "excessive demand" rules do not apply to you. To become a permanent resident, you must make your application for permanent residence within 6 months of being found to be a protected person, or else the medical inadmissibility rules could be used against you.

Q: Who can sponsor me to become a permanent resident of Canada?

A: You can be sponsored by family members under the "family" class. A sponsor must be a Canadian citizen or permanent resident, and must be at least 18 years of age. Family class sponsors can be a spouse/partner, child, parent, or grandparent. A sponsor must also satisfy Immigration that they can be financially responsible for you for the period of the sponsorship. A sponsor cannot be on social assistance unless it's because of a disability. A sponsor must meet a "minimum income requirement" to sponsor you, unless you are their spouse/partner or dependent child.

Q: I am being sponsored by my spouse/partner or parent who is a Canadian citizen or permanent resident. Will HIV stop me from becoming a permanent resident?

A: No. If you are being sponsored by your spouse, common-law or conjugal partner, the excessive demand rules will not apply to you, and you could be landed.

- You are spouses if you are legally married.

- You are common-law partners if you have lived with your partner for at least a year in a conjugal relationship. Common-law partners can be of the same or opposite sex.
- You are conjugal partners if you live in different countries, but have been in a conjugal relationship for at least one year. Conjugal partners can be of the same or opposite sex.

If you are a **dependent child** being sponsored to Canada by your parent, (biological or adoptive) the excessive demand rules will not apply to you.

- You are a dependent child if you are **under 22** years of age, and not a common-law partner or spouse of someone else. There are some exceptions to the rules about dependent children. Seek legal advice if you have any questions.

The sponsored person usually applies from outside Canada. But if you are a spouse or common-law partner who is already here in Canada and want to be sponsored you can apply as a member of the "Spouse or Common-Law Partner In Canada" class. Your sponsor has to agree to be financially responsible for you for a period of time. For spouses or partners, the time is 3 years. For dependent children, the time is 10 years or until they reach 25 years old, whichever is sooner. If the dependent child is 22 or older, it's for three years. All other sponsorships are for 10 years.

Q: I am being sponsored by another family member, or a group of individuals (for example, at my church). Will HIV stop me from becoming a permanent resident?

A: If you are sponsored by someone other than your spouse, common-law or conjugal partner, or parent (if you are a dependent child), the excessive demand rules will apply to you and you might not be able to become a permanent resident because of your HIV status.

If you are denied, your **sponsor** can appeal the decision, and include humanitarian and compassionate reasons in the appeal. If you are successful, you may be landed or granted a Temporary Resident Permit.

Q: I am coming to Canada to study or to work. Will HIV stop me from getting a student permit or a work permit?

A: You will have to have a medical exam, including an HIV test, if you have spent more than 6 months of the year before your application in a 'designated country', and you intend to stay in Canada for longer than six months when you apply for a student permit or a work permit. If you are found to be HIV positive, you might be considered medically inadmissible and your visa would be denied. Citizenship and Immigration Canada (CIC) keeps a list of designated countries on its website at <http://www.cic.gc.ca/english/visit/dcl.html> .

If your stay is for less than six months, or you're coming from a country not on the designated country list, you will probably not need to have a medical exam.

Q: I am coming to Canada to visit. Will HIV stop me from getting a visitor's visa?

A: If your stay in Canada is for more than six months, you will have to have a medical examination, including an HIV test, if you have spent six or more months of the year before your application in a "designated country". Normally, if your stay is for less than six months, you do not have to have a medical examination and HIV will not prevent you from visiting Canada. You may be required to have a medical if you are very sick when you arrive, even if your stay is for less than six months.

Q: What is a Temporary Resident Permit?

A: A Temporary Resident Permit (TRP) can be given to you if Immigration finds that you are not admissible to Canada, but there are strong enough reasons to allow you to enter and stay in Canada. It used to be called a "minister's permit". TRPs are usually valid for one year, and can be renewed. If you're on a TRP because you are medically inadmissible, you can apply to be landed after three years on a TRP. As long as you have not become inadmissible for another reason (for example, some criminal convictions, reliance on social assistance), Immigration will grant you permanent resident status. Individuals in Canada on a TRP are **not** eligible for OHIP .

ACCESSING MEDICAL CARE WHILE IN CANADA

Q: Where can I get medical care in Canada?

A: Access to medical care depends on your status in Canada. If you have made a refugee claim and it has been acknowledged by Canadian immigration, you

should be eligible for the Interim Federal Health (IFH) program. The IFH program will pay for essential and emergency health services, emergency dental conditions; birth control, prenatal and obstetrical care; essential prescription medications; and costs of your Immigration medical examination by a Designated Medical Practitioner. If you are eligible for IFH, it will say it right on your immigration document. The IFH program is only available to Convention refugees and refugee claimants. The IFH is not available if you are sponsored or in Canada as a visitor, student or worker, or on a Temporary Resident Permit.

If you are successful in your refugee claim you will be eligible for coverage under the Ontario Health Insurance Plan (OHIP). OHIP will cover the cost of visits to doctors and other medical care, including tests, but will not cover the cost of medications. For successful refugee claimants, OHIP coverage will start as soon as your application is processed. You can apply for coverage as soon as you have been determined to be a Convention refugee or a person in need of protection. If you need help with the cost of medications, you could also apply to the Trillium Drug Program. The Trillium program is only available if you are already eligible for OHIP.

People on Temporary Resident Permits are not eligible for OHIP or Trillium.

Q: Can I get HIV medications in Canada?

A: Access to HIV medications will depend on your status in Canada. If you are eligible for IFH (see above), that program will cover essential medication. If you are here as a visitor, or student, you will have to pay for your own medications or have private insurance.

If you are getting social assistance from Ontario Works (OW) or Ontario Disability Support Program (ODSP) you will also get a drug card. This drug card will cover the cost of most HIV medications. Some people are able access drugs through drug trials offered by drug companies. Get in touch with your local AIDS Service Organization to find out about other resources that may be available.

Q: Can I get financial assistance in Canada?

A: In Ontario, you might be eligible for income assistance under the Ontario Works or Ontario Disability Support Program. If you are a refugee

claimant, you are eligible to apply for assistance once you have made your claim. If Immigration is taking a long time to acknowledge your claim, contact a local legal clinic for help in gathering proof that you made the claim so that you can apply for assistance sooner. If you are on a Temporary Resident Permit, you can apply for social assistance, but it may affect your chances of being landed after three years. Being on assistance might mean that you will be denied permanent residence status until you can get off of assistance. Visitors, students and temporary workers are not eligible for social assistance.

The chart below shows what health care you can get depending on your immigration status:

Immigration Status	Eligible for OHIP	Eligible for Trillium Drug Program	Eligible for Social Assistance (includes drug & dental card)
Canadian Citizen	Yes Eligible for full OHIP 3 months after becoming resident in Ontario.	Yes Drug coverage possible through Trillium Drug Program	Yes (but if sponsorship agreement in place, will have to go to sponsor first)
Permanent Resident	Yes Eligible for full OHIP 3 months after becoming permanent resident and applying for OHIP	Yes Drug coverage possible through Trillium Drug Program	Yes (if sponsorship agreement still in effect, will have to go to sponsor first)
Visitor	No (Community Health Centres, but usually only after 6 months in Canada)	No	No
Worker	No (some temporary foreign workers are eligible for OHIP)	No	No
Student	No	No	No
Temporary Resident Permit Holder	No (Community Health Centres only)	No	Yes
Protected Persons	Yes Eligible for full OHIP after	Yes Drug coverage	Yes

	your application is processed	possible through Trillium Drug Program	
Convention Refugee/Person in need of Protection	Yes. (will be eligible for OHIP as soon as your OHIP application is processed.)	Yes. (can apply for Trillium as soon as OHIP eligible).	Yes
Refugee/person in need of protection Claimant	No (Eligible for Interim Federal Health Program (IFH) until claim is finally decided)	No (Eligible for Interim Federal Health Program (IFH) until claim is finally decided)	Yes (will need to show proof that claim has been made)
No status	No (Community Health Centres only)	No	No

CONTACTS AND RESOURCES:

HIV & AIDS LEGAL CLINIC (ONTARIO) (HALCO):
416-340-7790 or 1-888-705-8889 or www.halco.org

COMMITTEE FOR ACCESSIBLE AIDS TREATMENT:
Victor Inigo (416) 364-2261 Ext. 2277

Legal Aid Ontario (416) 979-1446 or 1-800-668-8258 or www.legalaid.on.ca