Queer and Trans Migrations

Dynamics of Illegalization, Detention, and Deportation

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O Canada

HIV Not Welcome Here

RYAN CONRAD

I'm sitting in the examination room of a medical clinic in suburban Ottawa, awkwardly fumbling with a laminated sheet of paper. I'm anxious. I never go to the doctor, a likely result of not having health insurance most of my adult life before coming to Canada to study at nearly 30 years old. I'm convinced the patch of psoriasis on my elbow or the unmistakable vitiligo on my face will give away that I have immune system problems. And then there's the ten-inch scar on my stomach—how do I prove I was the live donor in a liver transplant operation when I was 21 and not the sick patient who needed the life-saving operation because of an undetected genetic disorder? I'm about to receive a medical examination by a doctor approved by the federal government to determine my admissibility for permanent residence in Canada. Would all of these visible markers of illness mark me unfit to become a full-time resident in the country where I've already been living the last six years as a graduate student? Or perhaps there's something in my blood not visible to the unaided eye? The document in my hands is a wordy flow chart mired in '90s aesthetics, and worse, '80s language. The document is titled *Blood test for AIDS* and declaims: "For people *over 15 years of age*, AIDS testing is a *mandatory* part of the Canadian immigration examination" (emphasis original).

I knew before I arrived at the clinic that I would be undergoing a mandatory and explicitly not anonymous HIV test—there's no such thing as an AIDS test—and that it would be grounds for barring me from immigrating as "medically inadmissible" if I tested positive. Would-be HIV-positive immigrants to Canada are considered too great a financial burden based on a macabre administrative formula that deems anyone requiring annual care (medication, doctor's appointments, blood work, hospitalization, social services, etc.) in an excess of $6,655 to be inadmissible. Being a vocal queer activist and scholar, the ban on

HIV-positive immigrants as medically inadmissible was one of the first things I learned about the immigration process from an acquaintance that worked at Immigration Québec. When he learned I was exploring the process of becoming a Permanent Resident (the Canadian equivalent of a U.S. Green Card), my serostatus was his first question. He was aware of my activism advocating for queer youth, rural queers, sex workers, prisoners, and people living with HIV/AIDS in Maine, and he knew that I taught HIV/AIDS-themed courses in my university's burgeoning Sexuality Studies program in Montréal. It was a fair question to ask given his context for me as a loud and proud sexual liberationist, and it would have saved me a lot of time wasted had I been HIV-positive. Up to that point, I had never tested positive, so I sit in the doctor's office, prepared but anxious, mentally reviewing my sexual encounters over the previous six months and how "safe" each encounter had been.

The doctor is kind and friendly. She ignores my skin conditions, remarks how unusual it is to meet a live organ donor, and then explains the blood tests and X-rays I need to take to prove my good health. She asks if I have any high-risk factors for HIV and I hesitate. She then asks if I use injection drugs or if I am a homosexual. I chuckle a little at the medical language and roll my eyes at the conflation between sexual identity and risk-taking behaviors. I tell her I'm gay, although for the most part I self-identify as a fag. I'm just trying to manage the situation as amiably as possible as my future is in her hands. We share more friendly banter before she sends me off to do my blood tests and to pay the $200 fee for the ten-minute physical exam. While the provincially administered health care system in Canada is public and universally covers its citizens and permanent residents, temporary foreign workers like me pay for everything.

The United States, on the other hand, has no public health care system to speak of, thanks to the handiwork of plutocrats, spineless politicians, and a unique brand of hyper-individualism I am glad to have left behind years ago. Strangely enough, because of the moralistic approach to health care in the United States where everything is maximally privatized and contingent on employment status, the change President Obama made in 2010 lifting the more than two decades long ban of HIV-positive immigrants had no fiscal implications for a nonexistent public health care system.[1] Simply because the United States does not hold the health of its citizens as a common public good, the serostatus of immigrants is no longer of any immediate consequence. Once you arrive, you can either pay for your prohibitively expensive medical care yourself or go die somewhere, preferably out of sight. The wonders of individual choice in the United States.

Canada too, has gone through variations of its current HIV immigration ban since it began "common-sense" testing of all applicants in 2002.[2] The most recent change was brought about in 2018 when the Liberal government made a procedural adjustment to temporarily increase the medical inadmissibility cap from

$6,655 to $19,965 annually. This allows some immigration applications to proceed but only at the discretion of the immigration officer reviewing the file because many medications alone still cost upward of $15,000/year in Canada.[3] This was preceded by HIV/AIDS activists in 2005 who challenged the federal government to change its policies requiring the disclosure of HIV status when applying for an entry visa, even if only entering the country for short-term temporary visits. The catalyst for this change was the upcoming XVI International AIDS Conference that was to be held the following year in Toronto and the need to ensure no participants would be barred from attending.[4] The banning of HIV-positive people from entry prior to the 2010 change under the Obama administration was the reason that the International AIDS Conference, which began in Atlanta, Georgia, in 1985, had not been hosted in the United States for more than two decades. Despite these changes over the last two decades, the only way to ensure that HIV-positive immigrants are not discriminated against at the border is to end mandatory testing as part of the immigration process.

Beyond the barring of HIV-positive immigrants in Canada, there are other historical and present-day laws regulating the movement of HIV-positive people—namely HIV quarantine laws debated by state and provincial governments and the criminalization of HIV nondisclosure, exposure, and transmission. Bill 34, a piece of quarantine legislation that sought to intern people living with HIV/AIDS on an island off the coast of Vancouver, of the then-Social Credit Government of British Columbia spurred numerous demonstrations by the People with AIDS Society and the Coalition for Responsible Health Legislation in the late '80s Vancouver, which set the stage for the emergence of ACT UP/Vancouver shortly thereafter. The province of Ontario's Chief Medical Officer of Health (1987–1997), Richard Schabas, also became a frequent target of Toronto's AIDS ACTION NOW! and the Prostitutes' Safe Sex Project in the early '90s after recommending the reclassification of HIV as a virulent disease in order to more easily quarantine sexually active HIV-positive people through Section 22 of the *Ontario Health Promotion and Protection Act*.[5] The criminalization of HIV nondisclosure, where an HIV-positive person does not share their serostatus with sexual partners regardless of actual risk of transmission, has been ongoing in Canada since the early '80s. Unlike the United States where there are HIV-specific laws that specifically criminalize nondisclosure, exposure, and transmission in more than half of U.S. states, Canada uses sexual assault law to prosecute most cases.[6] Today, Canada is a global leader in prosecutions and convictions for HIV nondisclosure that have disproportionately affected racialized people and recent immigrants.[7] Furthermore, criminal convictions in both the United States and Canada, whether serostatus-related or not, are grounds for labeling immigrants as "criminally inadmissible" and deporting them.[8] While quarantine and nondisclosure laws targeting citizens are not the same as laws targeted at would-be

immigrants, they represent the lengths to which the state has gone and continues to go in order to regulate the movement of HIV-positive people within and at its borders.

In Canada, the matter at the heart of the present-day ban on HIV-positive immigrants is the "excessive demand" they would supposedly place on the publicly funded health care system. Yet the policy is incoherent as it applies only to certain classes of immigrants in Canada's increasingly privatized immigration system.[9] Accepted refugees and spouses of citizens or permanent residents can be HIV-positive and immigrate to Canada without being considered an "excessive demand" on the health care system. But economic immigrants coming through Canada's much-admired Express Entry program—the vast majority of immigrants to Canada today, including myself—are still subject to the "excessive demand" provision of the *Immigration and Refugee Protection Act*.

While I support the wholesale abandonment of the ablest and discriminatory "excessive demand" provision that frames people with illnesses and/or disabilities solely as non-contributing leeches, we are at a unique juncture where the specific demand to drop HIV from the list of diseases that bars one from immigrating to Canada seems plausible. HIV medications, the life-saving and prohibitively expensive protease inhibitors that have been on the market for twenty years, are finally losing their patent protections and cheaper generics are beginning to enter the market. While I'm not callous enough to claim pills are the only health care needs of people living with HIV, it is one of the most expensive components of care and often cited as the "excessive burden" on the health care system. Furthermore, nearly all provinces where almost 90 percent of Canadians reside, are offering low to no-cost Pre-Exposure Prophylaxis (PrEP) to their residents as part of their provincially administered public health care.[10] It is hard to argue that HIV-positive people constitute an "excessive demand" on the health care system when the very same drugs prescribed to keep HIV at undetectable levels in the blood of HIV-positive people are now being prescribed to HIV-negative people through a growing number of the publicly funded provincial health care systems as a prevention strategy. In fact, the *Canadian Medical Association Journal* published guidelines for PrEP nationwide in November 2017, encouraging its use across the country as an additional biomedical tool for reducing seroconversion among those at high risk.[11] How can we continue to justify barring HIV-positive would-be immigrants because they're too expensive to treat, while encouraging the widespread use of the very same treatments for HIV through the publicly funded health care system on HIV-negative Canadians? It's not only incoherent, but discriminatory and unethical.

While the Canadian HIV/AIDS Legal Network and other groups like the HIV/AIDS Legal Clinic Ontario have done the impressive work of doing research,

creating reports, lobbying government, and holding press events to challenge the neoliberal logic of the "excessive demand" provision in Canadian immigration law, I still yearn for the direct action tactics that these groups do not engage. When do we occupy the offices of the Minster of Health and the Minister of Immigration, Refugees and Citizenship? When do we dog the Prime Minister at every public event for upholding stigmatizing serophobic immigration laws while accepting international recognition for being immigrant- and refugee-friendly? When do we confront HIV/AIDS service organizations about prioritizing PrEP for HIV-negative Canadians while remaining silent on the exclusion of HIV-positive immigrants? When do we ransack the offices of AIDS profiteers over the extension of intellectual property rights regarding life-saving medications in trade deals like the Trans-Pacific Partnership (TPP) and the Canada-European Union Trade Agreement (CETA)? And is there a place for HIV/AIDS justice work in the thinly stretched migrant justice movement already under attack by newly emboldened anti-immigrant white supremacists like the Cultural Action Party of Canada, Canadian Coalition of Concerned Citizens, Storm Alliance, The Northern Guard, and La Meute?

I'm still trying to find my activist footing in a new city while I wait for my permanent residency application to wind its way through the six-to-nine-to-twelve months of bureaucratic hell it must clear. In the United States, my activism was bombastic and in your face, landing me in jail twice on minor charges—but in my precarious position as a temporary foreign worker in Canada (and even as a future-permanent resident who can still be stripped of legal status and deported for criminal convictions), my activism is more cautious. This has made it challenging to find the kind of all-in activist community I was a part of back in Maine, let alone engage in the kind of collective direct action for which I yearn. Furthermore, the nation's capital is notoriously professionalized, where activists and activist work are co-opted by the state and nongovernmental organizations at a record pace—or worse, before it even starts. The recent relaunching of the Ottawa chapter of No One Is Illegal gives me hope that I'll still find my people here, but HIV/AIDS justice work appears nonexistent in a city where service provision rules the day. And queer organizing work in Ottawa? Let's just say with an estimated 26,400 dead from HIV-related illness in Canada,[12] dance parties are not enough.

Notes

1. For a brief overview of the fight to lift the ban on HIV-positive immigrants in the United States, see Karma R. Chávez, *Queer Migration Politics: Activist Rhetoric and Coalitional Possibilities* (Urbana: University of Illinois Press, 2013), 1–4. For a longer take on race, gender, sexuality, disease, and immigration in the United States, see Erica Rand, *The Ellis Island Snow Globe* (Durham: Duke University Press, 2005).

2. Emily McBain-Ashfield, *"Generosity Has Its Limits": Debates on HIV/AIDS and Medical Inadmissibility in Canada during the 1990s* (Master's Thesis, University of Ottawa, 2018).

3. Deborah Yoong et al., "Public Prescription Drug Plan Coverage for Antiretrovirals and the Potential Cost to People Living with HIV in Canada: A Descriptive Study," *CMAJ Open* 6, no. 4 (November 27, 2018).

4. Canadian HIV/AIDS Legal Network, "Recent Changes to Visitor Visa Process Affecting Entry into Canada for People Living with HIV/AIDS" (Toronto), June 23, 2005.

5. To learn more about the activist response to HIV quarantine legislation in Canada, see the Vancouver and Toronto transcripts from the AIDS Activist History Project's oral history archive: https://aidsactivisthistory.ca/interviews/vancouver-interviews/; https://aidsactivisthistory.ca/interviews/toronto-interviews/.

6. For a more detailed overview of HIV nondisclosure laws and related activism in the United States, visit the Sero Project: www.seroproject.com. For a more detailed overview of sexual assault law and HIV criminalization in Canada, visit the Canadian HIV/AIDS Legal Network's documentary *Consent: HIV Non-Disclosure and Sexual Assault Law* (2015), www.consentfilm.org.

7. Eric Mykhalovskiy, Colin Hastings, Chris Sanders, Michelle Hayman, and Laura Bisaillon, "Callous, Cold and Deliberately Duplicitous: Racialization, Immigration and the Representation of HIV Criminalization in Canadian Mainstream Newspapers," November 22, 2016. Available at SSRN: https://ssrn.com/abstract=2874409; Colin Hastings, Cécile Kazatchkine, and Eric Mykhalovskiy, *HIV Criminalization in Canada: Key Trends and Patterns*, report (Toronto: HIV/AIDS Legal Network, 2017).

8. Amira Hasenbush and Bianca D. M. Wilson, *HIV Criminalization against Immigrants in California*, publication (Los Angeles: Williams Institute, 2016); *Immigration and Refugee Protection Act*, SC 2001, c 27, s 36.

9. For a brief overview of privatization in Canadian immigration policy, see Audrey Macklin, "European Politicians Envy Canada's Points System for Migrants. But How Well Has It Worked?" *The Guardian*, March 24, 2015, theguardian.com/commentisfree/2015/mar/24/european-politicians-envy-canada-immigration-points-system.

10. Vik Adhopia, "Ontario to Cover HIV Prevention Pill under Public Health Plan," *CBC News*, September 22, 2017, www.cbc.ca/news/health/hiv-prep-coverage-1.4302184; Cherise Seucharan, "'We've Been Waiting for This for a Long Time': B.C. to Fund HIV-Prevention Drug," *CBC News*, December 28, 2017, www.cbc.ca/news/canada/british-columbia/province-announces-hiv-drug-coverage-1.4467003.

11. Darrell H. S. Tan et al., "Canadian Guideline on HIV Pre-Exposure Prophylaxis and Non-occupational Post-Exposure Prophylaxis," *Canadian Medical Association Journal* 189, no. 47 (November 26, 2017), http://www.cmaj.ca/content/189/47/E1448.

12. Public Health Agency of Canada. *Summary: Estimates of HIV Incidence, Prevalence and Proportion Undiagnosed in Canada, 2014.*