

# Refugee Claimants Questions to Ask your Lawyer:



Canadian HIV/AIDS Black, African  
& Caribbean Network

January 2014

This information sheet is for persons living with HIV in Canada who are thinking of making a refugee claim or who have already made a refugee claim.

A **refugee claim** is a way that you can ask to stay in Canada because of serious problems that you have in your country, including facing a risk of persecution, a risk to life, a risk of torture, or a risk of cruel and unusual punishment or treatment. "Persecution" means serious mistreatment that can include physical harm, a denial of basic human rights, or a denial of human dignity.

There are other ways of staying in Canada legally other than making a refugee claim. Some of these other ways are also discussed in this information sheet.

## Do I need to have a lawyer or legal representative?

It is important to have a lawyer to help you with any type of application to stay in Canada. If you do not have an immigration or refugee lawyer, you can find a lawyer by asking people such as:

- organizations that support refugees and immigrants in your community
- organizations that support people living with HIV/AIDS in your community
- the organization that regulates lawyers in your province or territory.

If you cannot afford to pay a lawyer, you can find out if free services are available to you by contacting the legal aid authority in your province or territory. Free legal services may not be available in all provinces or territories.

## Important Questions for you to discuss with your lawyer

### 1: Should I talk about my HIV status in my refugee claim and in my refugee hearing?

If you or other HIV-positive people have serious human rights problems in your country and are often discriminated against, this may be a ground for your refugee claim to be successful. You can ask your lawyer about how your HIV may make your refugee claim stronger. We do not believe your HIV will ever

## Legal Aid Centres

*Many Provincial Legal Aid Centres have regional offices information for the central offices is provided here.*

### British Columbia

Legal Services Society  
400-510 Burrard Street  
Vancouver BC, V6C3 A8  
(t) 604 408 2172  
Toll Free: 1 866 577 2525  
General Inquiries  
(t) 604 601 6000  
<http://www.lss.bc.ca>

### Alberta

Legal Aid Alberta  
Provincial Office  
Revellion Building  
400, 10320 102 Avenue  
Edmonton, AB T5J 4A1  
(t) 780 644 4971  
<http://www.legalaid.ab.ca>

### North West Territories

Legal Services Board of the NWT  
P.O. Box 1320  
Yellowknife NT  
X1A 2L9  
(t) 867 873 7450  
[www.justice.gov.nt.ca/legalaid/index.shtml](http://www.justice.gov.nt.ca/legalaid/index.shtml)

### Quebec

Commission des services juridiques  
2 Complexe Desjardins  
East Tower, Suite 1404  
Montreal, QC H5B 1B3  
(t) 514 864 2351  
[www.csj.qc.ca](http://www.csj.qc.ca)



With special thanks to:



make your refugee claim weaker.

Even though your immigration medical examination includes an HIV test, your HIV test results will not become part of your refugee claim unless you want the result to be included. The refugee claim process is confidential, so stating that you are HIV-positive in your refugee claim does not result in public disclosure of your status. However if your refugee claim goes to the judicial review process in the Federal Court, then your lawyer must take steps to protect your confidentiality because Federal Court matters are usually public.

## **2: What if I cannot get health care for HIV in my country?**

Generally, you will not be accepted as a refugee if the only reason for your refugee claim is that you cannot get adequate medical treatment in your country. However, if you are not given medical treatment because of discrimination, you may be accepted as a refugee. You could also be accepted as a refugee if you can show that you would not be given HIV treatment in your country because of your race, religion, political opinion or another personal characteristic like sexual orientation.

If the only reason you do not want to return to your country is because of inadequate medical treatment, you can file an application for permanent residence on Humanitarian and Compassionate grounds.

You should ask your lawyer about the best option for you based on the situation in your country and your experiences.

## **3: What kind of evidence will I need about my HIV status or HIV in my country?**

Each case is different. You will probably need a letter from a doctor to confirm that you have HIV. You may need evidence to show that people living with HIV are discriminated against in your country or that there are problems getting HIV health care in your country. You may ask your lawyer what kind of evidence you need. You should ask if your lawyer will be getting the evidence or if your lawyer expects you to get evidence.

## **4: Can I get health care for HIV in Canada while my refugee claim is processed?**

Refugee claimants are eligible for some health care benefits under the Interim Federal Health Program (IFHP), including medications and doctors visits for HIV care and treatment. You can talk to your lawyer to learn how to apply for and renew your IFHP benefits. Some provinces have special health care programs for refugee claimants and some refused refugee claimants.

## **5. Can I continue to get health care for HIV if my refugee claim is refused?**

A refugee claimant whose claim is refused is still covered by IFHP and can access HIV health care until the date of deportation. You may ask your lawyer how to renew your benefits.

## **6. How much time will you spend preparing for my refugee hearing?**

Your lawyer must spend time with you to prepare your case. You can ask your lawyer in advance how he or she will help you prepare. To prepare for your refugee claim, your lawyer should explain to you what will happen at the hearing, what kinds of questions you will be asked, and what the weaknesses and strengths of your case are.

## **7. What is the biggest weakness in my case?**

To prepare for your case, whether it is a refugee claim or another type of case, you may ask your lawyer what the biggest weakness or problem in your case is. You may ask your lawyer what he or she is doing to overcome the

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Legal Services Society  
400-510 Burrard Street  
Vancouver BC, V6C3 A8  
(t) 604 408 2172  
Toll Free: 1 866 577 2525  
General Inquiries  
(t) 604 601 6000  
[www.lss.bc.ca](http://www.lss.bc.ca)

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**Alberta**  
Legal Aid Alberta  
Provincial Office  
Revellion Building  
400, 10320 102 Avenue  
Edmonton, AB T5J 4A1  
(t) 780 644 4971  
[www.legalaid.ab.ca](http://www.legalaid.ab.ca)

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**Saskatchewan**  
Legal Aid Saskatchewan  
#502 - 201 21st Street East  
Saskatoon, SK S7K 0B8  
(t) 306 933 5300  
Toll Free: 1-800-667-3764  
[www.legalaid.sk/gov](http://www.legalaid.sk/gov)

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**Manitoba**  
Legal Aid Manitoba  
Administration Office  
4th Floor - 287  
Broadway  
Winnipeg MB R3C 0R9  
(t) 204 985 8500  
Toll Free: 1 800 261 2960  
[www.legalaid.mb.ca/](http://www.legalaid.mb.ca/)

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**Nunavut**  
Maliiganik Tukisiiniakvik  
P.O. Box 29  
Iqaluit NU  
X0A 0H0  
Toll free: 1 866 202 5593

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**Ontario**  
Legal Aid Ontario  
Refugee Law Offices  
50 Dundas Street West  
Suite 202  
Toronto, ON M5G 2H1  
(t) 416 977 8111  
General Inquiries  
(t) 416 598 8867  
Toll Free: 1 866 641 8867  
<http://www.legalaid.on.ca>

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weakness, and how you can help.

### **8. Can I appeal if my case is refused?**

There are different ways to appeal for every type of case. The deadlines to start appeals are usually very short. If your case is refused, you need to act very quickly. You should ask your lawyer:

- *what your appeal options are;*
- *what the time limit is to start the appeal;*
- *if you will need a new lawyer;*
- *how much an appeal will cost; and*
- *if legal aid is available if you cannot afford to pay.*

You should also ask your lawyer about any other options you have to stay in Canada.

### **9. What if I get married or live with someone in a relationship for one year or more?**

If you get married to a Canadian citizen or permanent resident, or you live with a Canadian citizen or permanent resident in a relationship for over one year, you may have more options to apply to stay legally in Canada. You may be eligible to be “sponsored” in a “sponsorship application”. You may ask your lawyer what type of application is best, how much it costs, and when the best time to make the application is. Getting married or living with a Canadian will not automatically let you stay in Canada. To get legal status in Canada based on the marriage or relationship, you need to make an application. You should get advice from your lawyer before you make any decisions.

### **10. What if I have children born in Canada or other family members in Canada who have legal status?**

Having children born in Canada or other family members in Canada who have legal status may give you more options to apply to stay legally in Canada. You may be eligible to make a “Humanitarian and Compassionate” grounds applications. You can talk to your lawyer about what type of application is best for you, how much it costs, and when you should make the application. Having children born in Canada or having other family members in Canada with legal status will not automatically let you stay in Canada.

### **11. I have been given a date to leave Canada. What can be done?**

If you have already been given a date to leave Canada, there are very few options and you will need to take action immediately. You should ask your lawyer about requesting a “deferral of removal” from Canada Border Services Agency and/or applying to the Federal Court of Canada to order that your deportation be temporarily stopped.

### **12. If my refugee claim is refused or I withdraw it, will I be able to return to Canada in the future?**

Depending on how quickly you leave Canada after your refugee claim is refused or withdrawn, you may never be able to return to Canada without special permission. You can ask your lawyer about how quickly you must leave Canada in order to be able to return in the future.

### **13. What should I do if I think my lawyer is not representing me well or is discriminating against me?**

You deserve to have a good quality lawyer who understands the legal issues in your case and who has enough time to prepare and work with you.

If you are paying your lawyer yourself, you have a right to change your lawyer at any time, for any reason. However, if you have a hearing date set or a

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**New Brunswick**  
New Brunswick Legal Aid  
Services Commission  
500 Beaverbrook Court,  
Suite 501  
Fredericton, NB E3B 5X4  
(t) 506 444 2776  
(e) info@legalaid.nb.ca  
www.legalaid.nb.ca

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**Nova Scotia**  
Nova Scotia Legal Aid  
2830 Agricola Street  
Halifax, NS B3K 4E4  
(t) 902 420 3450  
Toll Free: 1 866 420 3450  
www.nslegalaid.ca

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**Newfoundland and  
Labrador**  
Legal Aid Commission  
Suite 300, 251 Empire Ave  
St. John's, NL A1C 3H9  
(t) 753 7860  
Toll free: 1 800 563 9911  
www.legalaid.nl.ca

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**Prince Edward Island**  
(Legal Aid In PEI does not cover  
Refugee claims)  
PEI Association for Newcomers  
49 Water Street,  
Charlottetown, PEI  
C1A 1A3  
(t) 902 628 6009  
www.peiinc.com

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**Yukon**  
Yukon Legal Services Society  
2131 Second Avenue  
Suite 203,  
Whitehorse, Yukon  
Y1A 1C3  
(t) 867 6675210  
Toll Free: 1-800-661-0408  
ext 5210  
(e) administration  
@legalaid.yk.ca  
www.legalaid.yk.ca/

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### **Disclaimer:**

*This factsheet is intended to  
provide general information  
and should not be  
considered as legal advice*

deadline, it may not be possible to get a new hearing date or get an extension of time just because you have changed lawyers. If you have already paid your lawyer money to represent you, you may not be able to have your money refunded (it will depend on the agreement you made with your lawyer).. You should get legal advice before changing lawyers to see how it may affect your case.

If your lawyer is being paid through legal aid, you may have the right to ask to change lawyers. You should contact the legal aid authority that is paying your lawyer to find out if it is possible to change lawyers. You will need to explain in detail why you are not happy with your lawyer.

If you feel your lawyer is discriminating against you or treating you differently because you are HIV-positive, you can make a human rights complaint against the lawyer. The human rights laws of every province and territory in Canada prohibit lawyers from discriminating against their clients based on a client's HIV status. You can also complain about the lawyer to the association that regulates lawyers in the province or territory where you are living.

## Additional Resources

### Canadian HIV/AIDS

Legal Network  
1240 Bay Street,  
Suite 600  
Toronto, Ontario  
M5R 2A7  
(t) 1 416 595-1666  
info@aidslaw.ca  
www.aidslaw.ca

### Citizenship and Immigration Canada

Toll Free: 1 888 242 2100  
(Canada Only)  
<http://www.cic.gc.ca/>

### HIV/AIDS Legal Clinic Ontario

65 Wellesley Street E,  
Suite 400, Toronto, Ontario  
M4Y 1G7  
(t) 416 340 7790  
Toll Free: 1 888 705 8889  
(Ontario Only)  
talklaw@halco.org  
www.halco.org

## CHABAC Regional Representatives

*The Canadian HIV/AIDS African Caribbean and Black Network (CHABAC) is a national network of stakeholders who are committed to responding to issues related to HIV and AIDS in Canada's African Caribbean and Black Communities. For more information on how to get involved contact your regional CHABAC representative.*

### Ontario Toronto

Valerie Pierre-Pierre  
Director  
African and Caribbean Council  
on HIV/AIDS in Ontario  
v.pierrepierre@achho.ca  
(t) 416 977 9955 ext. 292

### Wangari Tharao

Programs and Research Manager  
Women's Health In Women's  
Hands  
Wangari@whiwh.com  
(t) 416 263 4870

### Shannon Ryan

Executive Director  
Black Coalition for AIDS  
Prevention  
s.ryan@black-cap.com  
(t) 416 977 9955 ext. 227

### Ottawa

**Hector Addison**  
Community Developer  
Somerset West Community  
Health Centre  
haddonson@swchc.on.ca  
(t) 613 688 2766

### Manitoba

Winnipeg  
CHABAC@icad-cisd.com

### New Brunswick

**Fredericton**  
Deidre Smith  
Support Programs Manager  
AIDS New Brunswick

Deidre@aidsnb.com  
(t) 1800 561 4009 ext. 103

### Nova Scotia

Halifax  
Lori Root  
Research Officer  
Nova Scotia Advisory  
Commission on AIDS  
lori.root@gov.ns.ca  
902 424 6802

### Alberta

**Calgary**  
Robert Bardston,  
Individual Member  
robert.bardston@gmail.com  
**Edmonton**  
Tsion Demeke Abate  
Community Education  
Facilitator  
HIV Edmonton  
tsion.d@hivedmonton.com  
(t) 780 488 5742 ext. 229

### Quebec

**Montreal**  
Janice Dayle  
Individual Member  
janice.dayle@mail.mcgill.ca