



## **Envisioning LGBT Refugee Rights in Canada: Is Canada a Safe Haven?**

### **Executive Summary**

#### **Overview**

This report is an initiative of Envisioning Global LGBT Human Rights, Canada Research Team in partnership with: Africans In Partnership Against AIDS, Alliance For South Asian AIDS Prevention, Black Coalition for AIDS Prevention, Egale Canada Human Rights Trust, Ontario Council of Agencies Serving Immigrants, Pride Uganda Alliance International, Rainbow Health Ontario, The 519 and York University.

The report examines the experiences of LGBT refugee claimants and refugees living in the Greater Toronto Area and the experiences of community service providers working with these communities, over the period from 2012 - 2014. A total of 92 asylum seekers and refugees participated in this study.

Canada is one of 42 states that have granted asylum to individuals on the basis of persecution owing to sexual orientation or gender identity; and, it has a history of being a world leader in progressive asylum policy. However, according to the United Nations High Commissioner of Refugees (UNHCR), of industrialized nations that receive applications for asylum, Canada has slipped from a ranking of 5<sup>th</sup> in 2010 to 15<sup>th</sup> in 2014.

The research for this report has been conducted during the period prior to and following significant changes to Canada's refugee policy, implemented in December 2012 as the Protecting Canada's Immigration System Act. The Act resulted in a number of changes with significant impacts on refugees and immigrants overall, and our research indicates that these changes have also had a particular and disproportionately negative impact on LGBT claimants.

The report points to the need for a larger vision of systemic change with regard to the refugee determination system for LGBT asylum seekers, as well as to support services for LGBT asylum seekers and refugees. Especially in the areas of settlement, housing, employment, access to healthcare, mental health services and counselling, there is a great need for services that are respectful and knowledgeable of the unique issues that LGBT refugees face.

## **Key Findings and Recommendations**

The report highlights the following areas of concern, and makes 37 recommendations that can be used to develop policies, and assist service providers.

**1) Resettlement:** *Very few LGBT asylum seekers are able to get to Canada and many are currently living in highly dangerous circumstances as at-risk populations in refugee camps.*

- Recommendation 3: “The UNHCR should prioritize expedited processing of at-risk LGBT refugees for resettlement in Canada and ensure that this process will not subject them to breach of confidentiality potentially compromising their safety and security.”
- Recommendation 4: “Canadian consulate staff working in refugee camps and in Canadian consulates should be trained to recognize persons in need of protection on the basis of their LGBT status and work to ensure their safety in refugee camps.”

**2) Claims Process:** *LGBT refugees arriving in Canada navigate a complex claims process within a limited time frame that severely limits a claimant’s ability to gather documentation necessary for their claim.*

In December 2012 the Protecting Canada’s Immigration System Act drastically shortened the timelines of the refugee determination process for all claimants, which has had a particularly negative impact on LGBT claimants. The emphasis on proving sexual and/or gender identity (SOGI) is extremely stressful and traumatising and can be an affront to dignity. Many LGBT refugees live in silence due to extreme persecution and violence. *Policy and decision makers need to focus their decisions on LGBT refugee claims on threat of persecution rather than on proving LGBT identity.*

- Recommendation 6: “The central question for decision-makers should be on proving the threat of persecution on the grounds of SOGI, not on proving identity. Although this principle can encounter practical challenges during implementation, it nevertheless is the right course of action because fairly assessing the SOGI of claimants in a refugee proceeding is often impossible. Not all refugee claimants have access to the kinds of information needed to prove their SOGI due to persecution in their home country, lack of a supportive community and lack of access to resources.”
- Recommendation 8: “The report provides several instances whereby Western/Eurocentric cultural norms appear to be the standard used to define SOGI. Such norms are not universal, and refugee claimants originating from non-Western and non-European cultures cannot be expected to know or subscribe to them. The Immigration and Refugee Board (IRB) should recognize such biases and make a conscious effort to avoid them.”

**3) Settlement in Canada:** *There are clear gaps in settlement and support services for LGBT refugees.*

It is difficult for claimants to access information on the asylum process, access legal support, and obtain safe housing and other necessary social services like health care, mental health services and counselling. Finding employment was one of the top priorities for the participants, and they identified barriers. LGBT refugees experience a high degree of violence and social trauma, and there is a need for counselling and mental health services with specialized training on LGBT refugee issues to support LGBT refugees.

**Housing.**

- Recommendation 17: “Hostel and shelter service providers need to be responsive to the unique and specific housing needs of LGBT refugee claimants, especially to ensure the safety and security of Transgender/ Transsexual/ Two-spirited people.”
- Recommendation 19: “The Province of Ontario needs to ensure that all municipalities make access to affordable housing, including shelter services, a priority for LGBT refugees in particular, given their extensive vulnerabilities.”

**Employment:**

- Recommendation 22: “We urge that employers, unions, regulatory bodies and government agencies heed the Ontario Human Rights Commission’s recommendation to consciously and actively work to remove the ‘Canadian experience’ barrier that places refugees at a disadvantage and which the OHRC clearly identifies as a discriminatory practice.”

**Mental Health:**

- Recommendation 24: “The federal government needs to reinstate the Interim Federal Health Program (IFHP) as per the judgment of the federal court.”
- Recommendation 25: “The federal and provincial governments need to increase resource allocations to counselling and mental health support services that are sensitive to, and aware of, LGBT asylum seeker issues in order to improve access to services pre, during and post the Basis of Claim (BOC) process, given the traumatizing effect this has on the mental health of many LGBT refugee claimants.”

**4) Service Providers:** *Service providers working with LGBT refugees often work in precarious circumstances due to underfunding, lack of core funding, and strained resources and staffing.*

While a number of LGBT specific services have been developed to support LGBT refugees, more education and awareness of the specific issues affecting LGBT refugees is needed in immigration and refugee services in general. Recent policy changes coupled with budget cuts have severely undermined initiatives to develop and maintain needed services in this area. Increased funding and education and training on the unique issues faced by LGBT asylum seekers and refugees is needed to support community services working in refugee support services, as well as legal and settlement services.

- Recommendation 32: “Mainstream settlement and resettlement service organizations for immigrants and refugees need to provide ongoing training for staff, volunteers, interns and members that addresses homo-bi-transphobia using an anti-oppression lens. With training and better funding mainstream services can more readily provide services for LGBT populations.”
- Recommendation 34: “Specialized LGBT services for asylum seekers and refugees need to be better funded and resourced to meet the high demand for such services.”

**5) Intersections of Oppression:** *Homo-bi-transphobia intersect with discrimination based on race, gender, class, ability and religion to create deeply personal and complex experiences.*

These intersecting issues need to be addressed in considering support services and to assess to what extent LGBT refugees can find a safe haven in Canada. Policy and decision makers as well as services supporting LGBT refugees need to look at LGBT asylum issues using a critical race analysis that considers how experiences of homo-bi-transphobia intersect with experiences of racism.

- Recommendation 23: “All levels of government, human rights agencies and employers, unions, regulatory bodies and government agencies need to draw attention to and address racism in the work setting and how this disproportionately affects racialized refugees, including LGBTs, who are further stigmatized.”

### **Need for Further Research**

Finally, while much work is being done by organizations in the Global South to advance LGBT rights, there is on-going resistance to change and the emergence of new laws that criminalize so-called ‘promotion’ of homosexuality, which impacts community leaders and organizations working within LGBT communities. This requires on-going research and monitoring in terms of Canada’s international responsibilities to support human rights as well to provide safe haven for people fleeing persecution due to sexual orientation, gender identity or political belief.

### **About Envisioning Global LGBT Human Rights**

Envisioning Global LGBT Human Rights is an international research project involving 31 community partners in 12 countries, funded by the Social Services and Humanities Research Council of Canada (SSHRC) 2011-2016.

This is the third report on LGBT asylum in Canada by the Envisioning Global LGBT Human Rights project, following a preliminary report, *Envisioning LGBT Refugee Rights in Canada: Exploring Asylum Issues* (June 2012), and *Envisioning LGBT Refugee Rights in Canada: The Impact of Canada's New Immigration Regime* (June 2014).

Three information sheets were released by Envisioning in January 2015:

1) *Making an LGBTI Refugee Protection Claim in Canada*, contains information and resources on the claims process, both general and specific to LGBT persons.

(Available in: English, French, Arabic, Russian and Spanish.)

2) *Mental Health Challenges for LGBT refugees in Canada*, surveys common stressors and resulting mental health challenges.

3) *Lesbian and Gay Refugee Issues: A Review of Federal Court Jurisprudence*, contains an outline of appeal decisions over the past 10 years that have overturned rejections of lesbian and gay asylum claims. It analyzes the key themes behind the rejections, such as reliance on stereotypical markers of gay and lesbian identity.

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