



Executive Summary

Envisioning LGBT Refugee Rights in Canada: The Impact of Canada's New Immigration Regime

This report is an initiative of Envisioning Global LGBT Human Rights, an international research project involving 31 community partners in 12 countries, working to advance social justice, equality and global human rights for lesbian, gay, bisexual and transgender (LGBT) people. Envisioning is focused on research and analysis of the criminalization of LGBT people in Commonwealth countries and resistance to criminalization, one aspect of which is to seek asylum elsewhere. The project also confronts legal barriers and strictures to the advancement of human rights for LGBT individuals and communities. Envisioning emphasizes the involvement of community partners in defining and developing research goals and the co-production of knowledge.

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This report, written by Rohan Sajjani, focuses on the impact on LGBT asylum seekers in Canada of Bill C-31, which took effect in December 2012, now in force as the *Protecting Canada's Immigration System Act* ("the Act").

The analysis is based on research gathered between October 2013 and June 2014, as well as information from interviews with key informants, including lawyers, academics and service providers who specialize in LGBT asylum issues.

This report follows Envisioning's June 2012 preliminary report entitled "Envisioning LGBT Refugee Rights in Canada: Exploring Asylum Issues," written by Nick Mulé and Erika Gates-Gasse. (Envisioning Global LGBT Human Rights, 2012). That report was based on a roundtable with a diverse group of Toronto-based agencies serving LGBT refugees. It discussed the experiences of clients and the challenges they face with the refugee determination process and accessing services. One "Action Item" arising from the roundtable called for a better understanding of the impact of changes to Canada's immigration and refugee policy (Envisioning Global LGBT Human Rights, p. 12-13). The present report attempts to address this "Action Item". The 2012 document anticipated the legislative changes in the Act, while the present document examines and responds to them.

Contents

The report begins with an examination of Canada's international obligations, regarding both asylum seekers and LGBT persons. International standards bear particularly heavily on this issue due to the nature of refugee law, as it pertains to inter-state forced migration, and the

polarization regarding the rights of non-traditional sexual and gender expressions around the world.

Second, the report examines Canadian refugee jurisprudence and standards regarding LGBT asylum seekers. These claims have a history of relying on certain notions of sexuality and gender identity, notions that animate and underpin many of the latent issues in this area of law and policy.

Third, the report examines the changes to Canada's refugee laws under the new Act, and the particular impact of these changes on LGBT asylum seekers. This analysis understands the new regime as decidedly anti-immigrant and anti-refugee on the whole. Moreover, certain mechanisms within it pose particular problems for LGBT asylum seekers owing to their unique cultural position, identity processes including erasure, and widespread marginalization.

Fourth, the report examines resettlement and sponsorship of refugees who are unable to reach Canada without support. This examination reveals the ability of government sponsorship, but not private sponsorship, to provide certain benefits, such as mental health coverage; this ability should inform government sponsorship grants. It also exposes the present Conservative government's disingenuous use of the resettlement program to off-load governmental responsibility to provide international protection onto civil society.

Finally, the report examines refugee health care and the recent cuts to the Interim Federal Health Program. There are serious human rights implications of these cuts, including maternal and child health rights. The cuts are one manifestation of the Conservative government's anti-refugee attitude. Through an examination of LGBT asylum seekers as a population of increased mental health risk, this section also underscores the interconnectedness of human rights, specifically the right to health, upon which the realization of all other rights is dependent.

Themes Emerging from the Research

First of all, the changes under the Act contain a spate of questions relating to, and outright violations of, human rights law: both domestically, as guaranteed by the Canadian *Charter of Rights and Freedoms* and internationally under multiple ratified instruments and established principles.

Secondly, the changes indicate that Canada's Conservative federal government has taken the country from a leader in protecting the rights of asylum seekers to a nation that is decidedly unwelcoming. While refugee numbers globally continue to climb, Canada's claim and grant rates have sharply declined relative to other host similarly situated receiving states (UNHCR, 2014). Canada is failing in its obligations to all refugees.

Thirdly, the particular narratives of sexual and gender minorities continue to challenge refugee adjudication in both official and unofficial policies and patterns. While refugee law remains one of the very few instances in which the state officially considers an individual's sexual or gender identity in the granting of rights, there remains a gap among decision makers regarding certain truths and experiences of LGBT people. This gap has very real effects for LGBT asylum seekers, including in relation to credibility assessment, evidentiary burdens and designations of so-called "safe" countries of origin.

Recommendations:

Recommendation #1

Canada's refugee regime should be brought into compliance with international standards, particularly in regard to UNHCR Guideline No. 9 from 2012. Canada's obligations under the Guideline require changes to law and policy in regard to: evidentiary matters and claimants' testimony; case-by-case evaluation, especially where information is lacking on country conditions; excessive reliance on credibility assessment; use of stereotyping; and *sur place* claims.

Recommendation #2

The Designated Country of Origin (DCO) construct should be abolished. However, if it is deemed necessary, the process should be modified so that an independent group of experts determines the DCO list, guided by clear, consistent criteria. The system should be transparent and objective, including the ability to designate certain groups within countries as exempt from the designation based on particular human rights challenges faced by sub-populations within designated states, such as LGBT individuals and other groups.

Recommendation #3

DCO claimants should have access to the Refugee Appeals Division.

Recommendation #4

Asylum decision makers in Canada should avail themselves of training and education on the specific challenges faced by LGBT asylum seekers. These endeavours should include an understanding of queer theory and should disturb prevailing notions of LGBT identity, behaviour and cultural signifiers. The government should regularly make such training available and continue to partner with LGBT rights groups in its design and delivery.

Recommendation #5

The Chairperson of the Immigration and Refugee Board should consult with experts to develop and promulgate an official Guideline, similar to existing Guidelines, on the concerns, needs and issues faced by LGBT asylum seekers, as well as offering best practices for overcoming them during adjudication.

Recommendation #6

LGBT community groups should prioritize Sponsorship Agreement Holder (SAH) designation, and the government should facilitate this process. Working in cooperation with existing SAHs, the LGBT community should lead the way in creating new, non faith-based SAH organizations. In addition, future funds pledged for LGBT asylum seekers should be

available directly to G5s and Community Sponsors as well as SAHs.

Recommendation #7

The redundant requirement for a final interview for sponsored refugees who already hold Convention status through UNHCR should be removed.

Recommendation #8

The government's process regarding the Visa-Office Referred list should be made clear, and it should allow referrals from relevant civil society groups.

Recommendation #9

The Interim Federal Health Program cuts should be reversed. In the interim, the federal government should cease bureaucratically blocking the efficacy of the Ontario Temporary Health Program and other provincial health programs serving asylum seekers. The grave vulnerability for maternal and child health among DCO claimants must be addressed immediately to restore compliance with international and domestic human rights law.

Information Sheets and Final Report

In response to needs identified through its community partnerships, Envisioning Global LGBT Human Rights has produced three Information Sheets related to this report. These were synthesized from information within the report, as well as information gathered in its development and from other Envisioning research. In mid-2015, the final report in the series "Envisioning LGBT Refugee Rights in Canada" will be published. It is based on data gathered through focus groups with LGBT asylum seekers, refugees and service providers, along with additional research conducted with the assistance of community partners.

The Information Sheets and the present report can be found at:

<http://envisioninglgbt.blogspot.ca/p/publicationsresources.html>

Information Sheet:

Making an LGBTI Refugee Protection Claim in Canada

Contains: information and resources on what is involved in making a refugee protection claim in Canada, geared specifically toward LGBTI persons.

Primary Audience: individuals who are considering seeking asylum in Canada due to persecution, violence or threats because they are lesbian, gay, bisexual, transsexual, transgender or intersex (LGBTI), or because others perceive them to be.

Information Sheet:

Mental Health Challenges for LGBT Asylum Seekers in Canada

Contains: survey of common stressors and resulting mental health challenges encountered by LGBT asylum seekers in Canada. Based on research data gathered by Envisioning Global LGBT Human Rights in India, Africa, the

Caribbean, and Canada as well as a broader literature review.

Primary Audience: service providers who work with this population

Information Sheet:

Lesbian and Gay Refugee Issues: A Review of Federal Court Jurisprudence

Contains: outline of Canadian Federal Court appeal decisions over the past 10 years that have overturned rejections of lesbian and gay asylum claims. Challenges unique to these asylum seekers are analyzed. (Note: Claims based on bisexuality or gender identity are not covered here, since the jurisprudence is different and specific treatment is necessary.)

Primary Audience: guidance for adjudicators of lesbian and gay claims seeking to ensure that their decisions avoid or survive judicial review; reference for asylum seekers and counsel in preparing gay and lesbian claims.