



UNDERSERVED COMMUNITIES RESEARCH

LGBTQ+ MIGRATION POPULATION

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Introduction

The purpose of this tool-kit is to identify the impacts and relevance of the recent refugee system changes to LGBTQ+ migrating individuals. This tool-kit addresses problems that are expected to result from the changes and problems that have already been identified with the recent changes. The research below is based on LGBTQ+ community research initiatives and data collected at FCJ Refugee Centre.

Please note that this tool-kit **does not** aim to explain all the recent changes to the refugee system.

For a clarification of all the changes in the refugee system please see <http://www.fcjrefugeecentre.org/canadas-refugee-process/>

Changes that impact Most LGBTQ+ Claimants

- **Expedited Timelines:**

Bill C-31 *Protecting Canada's Immigration System Act* makes provision for standard case hearings to occur within 60 days.¹ LGBTQ+ individuals seeking refugee status after December 15, 2012 need to be aware of expedited timelines, which may detrimentally impact their claims. The timeline applied to a claim depends on the manner of entry (port or inland); however, regardless of the manner of entry it should be noted that the new timelines process the refugee claim faster than the previous timeline.

The timeline changes are relevant to LGBTQ+ claimants because the expedited timelines may undermine the ability of LGBTQ+ claimants to present their case. Specifically, the rushed timelines to process the refugee claim, with steps requiring individuals to identify as LGBTQ+, may not give the claimant enough time to comfortably express their status. It is important to remember that many LGBTQ+ individuals have left countries where they have been arrested, imprisoned, assaulted, or tortured because of their sexuality or gender identity.²

In addition to placing psychological pressure on the claimants the new timelines also challenge LGBTQ+ claimants as they will find themselves with limited time to obtain competent counsel, to gather the required evidence for their claim, and to prepare themselves for the hearing.³ Keep in mind that proving sexual orientation or gender identity may be time consuming as it might have been something the claimant had tried to keep a secret beforehand. There have already been cases where refugee claimants have been sent back to harm because they have been unable to demonstrate that the harms they face constitute persecution.

- **Cessation Clause:**

¹ The Bill received Royal Assent on 28-06-2012.

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=5697417&File=24&Col=1>

² <http://rainbowrefugeecanada.wordpress.com/opposing-bill-c-31-on-refugee-rights-day-april-4-2012-media-release/>

³ Dr. Sharalyn Jordan cited in <http://rainbowrefugeecanada.wordpress.com/opposing-bill-c-31-on-refugee-rights-day-april-4-2012-media-release/>

The recent changes to the Immigration and Refugee Protection Act include a cessation clause that allows the government to take away the status of permanent residents if the government deems that they are no longer in need of protection.⁴ Given that every individual's LGBTQ+ persecution is complex and unique, the danger with this clause is that the government has clarified that they will examine conditions of the countries of origin to decide whether the reasons of persecution have ceased to exist.⁵ This criterion is problematic for LGBTQ+ permanent residents as it leaves them with conditional acceptance based on the acceptance of LGBTQ+ individuals in their country of origin. This generalizes a claimant's individual problem and connects it to their country of origin rather than analyzing the actual conditions of every individual claim. Regardless of how long they have been living in Canada every LGBTQ+ accepted refugee claimant, who is a permanent resident, is left vulnerable to the cessation clause.⁶

- **New Limits on Humanitarian and Compassionate (H&C) applications:**

The refugee changes eliminate the safety net of applying for permanent residency based on H&C grounds for 12 months after an Immigration Refugee Board decision.⁷ These applications can no longer be made concurrently to a refugee claim. In addition to the expedited timeline problems this will aggregate the problems LGBTQ+ claimants already face as it leaves LGBTQ+ claimants with less options of acquiring permanent residence status regardless of their integration to Canadian society.

- **New limits on Pre-Removal Risk Assessment (PRAA)**

The refugee changes eliminate the availability of applying to PRAA to claimants who receive a negative decision for 12 months. This limit will aggregate the problems LGBTQ+ individuals already face as it leaves LGBTQ+ claimants with less options of acquiring permanent residence status apart from the refugee stream even though they may still face harm in their country of origin. Although the PRAA allows new evidence to substantiate a claim of danger, resolving some problems relevant to LGBTQ+ persons connected to expedited timelines, the 12 month barrier implies that a claimant will be deported before he/she has time to apply for PRAA.

Changes that impact DCO (Designated Countries of Origin) LGBTQ+ Claimants

- **Designating countries as “safe” does not address the complexity of oppression faced by LGBTQ+ members:**

The Minister of Citizenship and Immigration's discretion to designate countries as safe does not account for the various types of persecution faced by many LGBTQ+ individuals. In particular, the criteria for designating countries do not include an analysis on LGBTQ+ issues but rather focuses on examining the political condition of the state (e.g. most democratic states are

⁴ Immigration and Refugee Protection Act s 40.1 (2), s 108 (1) (e)

⁵ ccrweb.ca/files/ccrbriefc31.pdf

⁶ http://www.xtra.ca/public/National/Placing_LGBTQ_refugee_lives_at_risk-11759.aspx

⁷ <http://www.cic.gc.ca/english/refugees/inside/h-and-c.asp>

considered “safe”).⁸ This type of analysis does not take into account the possibility that even if state protection is offered, extreme forms of persecution on LGBTQ+ persons can still exist. For instance, South Africa recognizes same-sex marriage; however, human rights organizations report that there are ten cases a week in which lesbians have been targeted for “corrective rape” and police have done nothing to investigate.⁹

- **Expedited Timelines for DCO LGBTQ:**

The Minister of Immigration has the discretion to designate “safe countries”¹⁰, detentions can be arbitrary without true regard to the treatment of LGBTQ+ in their countries or origin based on the assumption that they generally are democratic and follow human rights conventions. DCO LGBTQ+ will have their claim fast tracked and no access to appeal.¹¹ The CCR argues that these changes to the law makes “refugee protection in Canada dangerously vulnerable to political whims, rather than ensuring a fair and independent decision about who is a refugee”¹².

- **More limits on H&C and PRAA**

LGBTQ+ claimants who are designated as coming from DCOs have more limits placed on them when applying for H&C applications and PRAA. Specifically, those designated as coming from DCO countries have a 5 year ban on applying for H&C applications and a 36 month ban on applying to PRAA.¹³ Considering that LGBTQ+ claims of persecution have no necessary connection to the designation of their country of origin as “safe” these limits unreasonably prevent designated LGBTQ+ people from gaining Canadian protection.

Changes that impact Designated Foreign National LGBTQ+ Claimants

- **Increased use of mandatory detention**

Every individual that is designated an “irregular arrival” will be detained. This could include LGBTQ+ asylum seekers, opening the possibility that those detained for their sexual orientation or gender identity in their countries of origin will be face more detention in Canada.¹⁴ This adds arbitrary trauma to the asylum seeker. Additionally, once detained the LGBTQ+ asylum seekers must explain why they are seeking refugee status to a number immigration officers. Exposing one’s sexual orientation or gender identity may increase their exposure to homophobia and transphobia while detained.¹⁵

⁸ http://www.xtra.ca/public/National/Placing_LGBTQ_refugee_lives_at_risk-11759.aspx

⁹ <http://rainbowrefugeecanada.wordpress.com/opposing-bill-c-31-on-refugee-rights-day-april-4-2012-media-release/>

¹⁰ S. 109.1(1)

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=5697417&File=24&Col=1>

¹¹ <http://dailyxtra.com/canada/ideas/placing-lgbtq-refugee-lives-at-risk>

¹² <http://ccrweb.ca/en/refugee-reform>

¹³ <http://www.cic.gc.ca/english/refugees/inside/h-and-c.asp>

¹⁴ http://www.xtra.ca/public/National/Placing_LGBTQ_refugee_lives_at_risk-11759.aspx

¹⁵ *ibid*



Sources

Immigration and Refugee Protection Act s 40.1 (2), s 108 (1) (e)

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