

Making an LGBTI Refugee Protection Claim in Canada

INTRODUCTION

If you are facing persecution, violence or threats because you are lesbian, gay, bisexual, transsexual, transgender or intersex (LGBTI), or because others perceive you to be, and you are considering seeking protection in Canada - this guide is intended to provide information on what is involved with making a refugee protection claim in Canada.

Have you been attacked, threatened or persecuted based on your sexual orientation or gender identity? Have you been denied your basic human rights? Is your home country unable or unwilling to protect you? In accordance with international law, Canada can protect you. For 20 years, Canada has granted refugee protection to people who face persecution based on their sexual orientation or gender identity.¹

TIPS FOR LGBTI PEOPLE SEEKING ASYLUM IN CANADA

1. IN YOUR HOME COUNTRY

- The process of obtaining refugee status in Canada is complex. About half of LGBTI refugee claimants in Canada are unsuccessful and may be sent back to their home country.
- Leaving your home country to seek refugee protection in Canada can cause significant mental stresses, financial costs, and physical risks.
- If you leave your country and return again during the refugee claim process, you may have to explain why you returned to a country where you feel unsafe.
- Newcomers to Canada may find life extremely challenging even after a successful refugee claim. Refugees face barriers to finding housing, going to school, obtaining recognition of educational or professional accreditation, or finding work. Language and cultural differences, poverty, low-wage work, and discrimination all impact quality of life for people who come to Canada as refugees. There are organizations that can provide support and practical resources, but even with help, making a refugee claim and living in a new country is extremely challenging.

¹ The information herein is meant as guidance only. It is not a substitute for independent legal advice. It is guaranteed neither authoritative nor absolute. The asylum process is complex and constantly changing, with no guarantees of success. Asylum seekers should seek independent legal advice whenever possible. Nothing in this document should be taken to encourage, aid, abet or condone any illegal activity, including illegal entry into Canada.

- **Timelines vary.** The entire asylum process can take as little as six weeks, or several months.
- Research the asylum process in the Canada. The following resources provide detailed information about what to expect during the asylum process, including timelines:
 - **An overall guide to the asylum process:**
www.irb-cisr.gc.ca/Eng/RefClaDem/Pages/ClaDemGuide.aspx
For information in French, click Français at the top right corner of the page.
 - **A visual flowchart of the process**
<http://ccrweb.ca/sites/ccrweb.ca/files/key-timelines-c-31.pdf>
 - **How to prepare for your hearing:**
refugeehearing.cleo.on.ca/before-your-hearing/
<http://www.kinbrace.ca/ready-guide/>
 - **An explanation of the new refugee system in Canada (including timelines):**
www.fcjrefugeecentre.org/wp-content/uploads/2012/12/Claiming-Refugee-Protection-Under-the-New-System-.pdf
- Before travelling to Canada, determine whether you are from a “Designated Country of Origin” (www.cic.gc.ca/english/refugees/reform-safe.asp). Asylum seekers from these countries may have more difficulty gaining refugee protection due to shorter timelines and fewer options in their claim.
- If you have lived with a same-sex or opposite-sex partner for at least a year, you will be recognized as common-law partners in Canada in your refugee claim. If you travel to Canada alone, leaving your partner behind to join you later, you must mention your partner and your children, if any, in your refugee claim, so they can join you later if your claim is successful.
- Consult a lawyer as soon as possible. Lawyers cannot help people leave their countries or obtain travel documents to Canada. However, some lawyers will provide information and a legal opinion on your case by email. The organizations listed below can provide recommendations.
- You will need to testify and provide evidence about two aspects of your refugee claim:
 1. that you fear persecution, and
 2. that this persecution is based on your real or perceived sexual orientation or gender identity.
- Documents will help support your claim. If it is safe to do so, obtain documentation to support your claim before leaving your home country. Official or notarized documents are preferable, but not required. The following documents may help support your claim:
 - documentation from LGBTI or human rights organizations in your home country or in the surrounding region, verifying your involvement with the LGBTI community or verifying that you have suffered persecution due to your sexual orientation or gender identity
 - letters from friends and family members confirming your LGBTI identity and the abuse you may have faced
 - letters from your past romantic or sexual partners confirming your relationships

- police records or reports of any incidents of violence or harassment
- medical records of any injuries sustained as a result of anti-LGBTI violence
- employment and educational records
- **It may be dangerous to obtain or travel with these documents!** Do not try to bring these documents to Canada if doing so puts you in danger. If it is safe to do so, and you have the ability, ask friends or family members to mail these documents to you after you have arrived in Canada. Include the envelopes of mailed documents (or copies of the envelopes) with your claim, because the postmark will show the date. Alternatively, and if you have the ability, create electronic copies of documents and email them to yourself, or store them securely online.

2. ARRIVING IN CANADA

- If possible, arrive directly to Canada from your country of origin. If you travel through another country, for example the United States, you will not be able to make a refugee claim at a Canadian border. There are a few exceptions to this law; for example, people who have close family living in Canada can make a refugee claim at a US/Canada border.
- If possible, you may prefer to make your refugee claim in Toronto, Montreal or Vancouver. These cities have the most LGBTI-specific refugee services, as well as supportive LGBTI communities.
- Refugee claimants have to claim refugee status immediately upon entering Canada, unless they have some other legal means of entry (e.g. student visa, professional visa, tourist visa, etc.). However, these travel documents can be difficult to obtain. If you do not have one of these, you will have to claim refugee status at your Port of Entry (e.g. inside the airport).
- **It is important to tell the immigration officer the reason you need to make a refugee claim.** If you are uncomfortable talking about your sexual orientation or gender identity, you can ask for a private interview room. You may also ask for an interpreter. Interpreters in Canada must keep your information private and confidential.
- If you are able to enter Canada legally without claiming refugee status (e.g. student visa, professional visa, tourist visa, etc.), you can make an “in-land” claim later at a government office.
 - The advantage of making an “in-land” claim is that you have more time to find a lawyer and start putting together your case.
 - However, waiting more than a few days between entering the country and making your “in-land” claim can disadvantage your claim. You should find a lawyer, or an LGBTI-friendly organization that can refer you to one (see below), as soon as possible.

3. DETENTION

- Canada Border Services can detain refugee claimants only if there are identity or security concerns:
 - People who arrive without proper identity documents can be detained until their identity can be verified.
 - If immigration officials have concerns regarding security, asylum seekers can be detained.
- If you are detained, remember that seeking asylum is not a crime. Even in detention, you have rights:
 - You should be given the paperwork to start a refugee claim.
 - You can ask to call Legal Aid and request a refugee lawyer.
 - You will meet with a lawyer called a “duty counsel” who represents you. Duty counsel lawyers may not know refugee law, but they may be able connect you with a refugee lawyer.
 - In some parts of Canada there are detention centers specifically for immigration detention. In others, asylum seekers are detained in regular jails. In either case, **the government must protect your safety in detention.**
 - Trans people should be detained in accordance with their own gender identity, if that is their wish.
 - Separate detention cells may be used if this is the safest option.
 - Your identity as LGBTI should be respected, and not used to discriminate against you.
 - If you meet resistance from detention officials, make every effort to document your experience, and inform a lawyer if possible.

4. SHELTER AND SUPPORT

- If you do not have somewhere to stay when arriving in Canada, there are free homeless shelters in most major Canadian cities. The organizations listed below can help you find temporary shelter. In Toronto and Vancouver you can call the Canadian Red Cross from the airport to find shelter for the first night and other information. (‘First Contact’ program, see below for phone numbers).
- **Contact LGBTI-friendly community organizations as soon as possible** (see below). These organizations can help you get involved with local LGBTI groups, social activities and volunteer work. Photos or letters showing that you participate in LGBTI community events in Canada can be used as evidence supporting your LGBTI identity. These groups may also be able to help you find a lawyer, as well as housing, healthcare, education and employment services that are LGBTI-friendly.
- **Find a lawyer.** Having a lawyer significantly improves your chances of obtaining refugee status. The community organizations listed below can help you locate a lawyer in your area who is familiar with LGBTI refugee issues.
- **Apply for Legal Aid.** Legal Aid is a program that can help you pay for legal services if you don’t have any savings or income. Refugee claimants are eligible for Legal Aid in

most parts of Canada. There are limits to the amount of money or services you may receive through Legal Aid.

- Seek health and mental health care.
 - Refugee claimants in Canada can get certain healthcare services at little or no cost.
 - Register with a family doctor or community health centre. Major Canadian cities have refugee-specific healthcare clinics. If it takes time to find a doctor, you can go to a walk-in clinic.
 - Persecution in your home country or stresses travelling to Canada may have affected your mental and physical health. It is very common for people to feel anxious or distressed after experiencing violence and leaving their countries. Tell the doctor about any mental or emotional health concerns you have (e.g. difficulties sleeping, trouble concentrating, nightmares). The doctor may be able to provide you with support or connect you to other services.
 - The weeks before the hearing can be very emotionally difficult. Working with a doctor, counsellor, psychologist or other healthcare provider can help you cope during this difficult time.
 - Your healthcare records can also serve as evidence during the claim process. Make sure to report to your doctor any injuries or ailments related to violence or trauma suffered in your country of origin. Describe any changes in your mental health to your doctor. Health records in Canada are private and confidential. This means only people to whom you give permission can read them.
- **It is illegal to discriminate on the basis of sexual orientation in Canada.** Gender identity is also covered in some legislation, although not fully protected. All public services, including all healthcare providers, should treat you with respect. However, service providers may not have had training on LGBTI issues and their attitudes may vary. Local LGBTI organizations (see below) can refer you to LGBTI-positive healthcare.
- As a refugee claimant, if you need money to live, you may be able to get social assistance. The amount is small, and covers very basic living expenses. For example, through Ontario Works the basic amount is \$626 per month.
- Most cities have food banks or food co-ops with free or low cost food.
- **You may apply for a work permit.** Refugee claimants do not have to pay a fee for a work permit. Settlement organizations can help you with the application. However, people from Designated Countries of Origin (see above) cannot apply for work permits.

5. DURING CLAIM PROCESS

- Tell your lawyer about your sexual orientation or gender identity as soon as possible, so your claim can be accurate from the beginning. Most lawyers in Canada are supportive of LGBTI rights; however, make sure to ask your lawyer whether they have experience preparing sexual orientation or gender identity claims. If they don't, ask if they can recommend a lawyer who does. If you have difficulty with your lawyer, ask the community organizations listed below for support, or to help you find a new lawyer.

- If anything changes during the claim process (for example, you discover new information supporting your claim) tell your lawyer immediately. The sooner you inform officials of changes to your claim, the better chance you have at a fair decision.
- The refugee claim process can be very stressful. You may be asked to give details about your life that are personal and difficult. In Canada, officials are legally required to respect your well-being. Never be afraid to make your discomfort known to your lawyer or officials. If the process proves very stressful, seek mental health services through the organizations listed below.
- Finding a sense of community and belonging in Canada can be very helpful in dealing with the stress and challenges of making a refugee claim. There are social programs, faith-based or spiritual organizations and LGBTI newcomer support groups where you can meet others dealing with similar situations (see below). You may prefer connecting with members of your national, ethnic or cultural community, if it is safe to do so. Whatever your preference, there are options.

6. AFTER BEING GRANTED OR DENIED REFUGEE STATUS

- If your claim is successful:
 - The community organizations listed on page 7 provide support for LGBTI newcomers to Canada, including information and/or services to help with housing, healthcare, employment and education.
 - There are certain programs to help newcomers find work in their trained professions; however, there can be many obstacles to doing this.
 - You will be able to apply for Permanent Resident status and eventually Canadian citizenship.
- If your claim is unsuccessful:
 - LGBTI claims are often misunderstood by decision makers, and are often successfully appealed. If your claim is unsuccessful, discuss the possibility of appeal with your lawyer. Make sure your lawyer is aware of recent Federal Court decisions regarding LGBTI asylum claims. See the Information Sheet “Lesbian and Gay Refugee Issues: A Review of Federal Court Jurisprudence”. (<http://envisioninglgbt.blogspot.ca/p/publicationsresources.html>).
 - Two other options are “Humanitarian and Compassionate” applications and “Pre-Removal Risk Assessments”. Neither of these options is available until one year after a negative refugee decision. Discuss these options with your lawyer to see if they are right for you.
- Regardless of the success of your claim, the asylum process can be very stressful. Often the impact is not felt for months or years afterwards. The community organizations below can connect you with professionals to help you deal with this stress.
- In Canada, all government officials, as well as many private service providers (including employers and landlords), are required by law to respect the human rights of all citizens. **This means they cannot deny you services or treat you differently based on your sexual orientation or gender identity.** If you ever suspect unfair treatment or discrimination, there are organizations that will help you protect your rights (for example,

each province has a human rights commission that hears human rights complaints and is entrusted to protect the human rights of its residents).

COMMUNITY ORGANIZATIONS SERVING LGBTI ASYLUM SEEKERS

Below is a list of selected community organizations that serve LGBTI asylum seekers in Halifax, Montreal, Toronto, and Vancouver. For more information and other agencies in all provinces across Canada, also consult:

<http://www.settlement.org> (Ontario)

http://www.settlement.org/sys/faqs_detail.asp?faq_id=4000684 (other provinces)

<http://www.immigration-quebec.gouv.qc.ca> (Québec)

Canadian Council for Refugees / Conseil canadien pour les réfugiés <http://ccrweb.ca/en/lgbt> (all provinces)

CANADA-WIDE

- Rainbow Railroad
www.rainbowrailroad.ca
- Iranian Railroad for Queer Refugees
+1-416-548-4171
www.irqr.net

HALIFAX, NOVA SCOTIA

- Rainbow Refugee Association of Nova Scotia
+1-902-453-6191
rainbowrefugee.ns@gmail.com
rrans.wordpress.com

MONTREAL, QUÉBEC

- AGIR (Action LGBTQ avec immigrants et réfugiées)
info@agirmontreal.org
www.agirmontreal.org

TORONTO, ONTARIO

- Canadian Red Cross
+1-416-480-2500 or dial toll free at 1-866-902-4993
www.redcross.ca
firstcontactontario@redcross.ca
- The 519 Church Street Community Centre
+1-416-392-6874 (general)
+1-416-355-6787 (Newcomer Settlement Services)
SettlingIn@the519.org
www.the519.org

- Access Alliance Multicultural Health and Community Services
+1-416-324-8677
www.accessalliance.ca
- Africans in Partnership Against AIDS
+1-416-924-5256
+1-416-644-1650
info@apaa.ca
www.apaa.ca
- Alliance for South Asian AIDS Prevention
+1-416-599-2727
info@asaap.ca
www.asaap.ca
- Black Coalition for AIDS Prevention
+1-416-977-9955
info@black-cap.com
www.blackcap.ca
- Metropolitan Community Church of Toronto
+1-416-406-6228
www.mcctoronto.com
refugees@mcctoronto.com
- Parkdale Community Health Centre
+1-416-537-2455
www.pchc.on.ca
- Positive Spaces
www.positivespaces.ca

VANCOUVER, BRITISH COLUMBIA

- Canadian Red Cross
+1-604-787-8858 or dial toll free at 1-866-771-8858
www.redcross.ca
firstcontactbc@redcross.ca
- Rainbow Refugee Committee
info@rainbowrefugee.ca
www.rainbowrefugee.ca
- QMUNITY
+1-604-684-5307
www.qmunity.ca
- Vancouver Association for Survivors of Torture
+1-604-299-3539
referrals@vast-vancouver.ca
www.vast-vancouver.ca

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