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LGBTQ+ AT RISK ABROAD: CANADA'S CALL TO ACTION

Report of the Standing Committee on Citizenship and Immigration

Borys Wrzesnewskyj
Chair

JUNE 2017

42nd PARLIAMENT, FIRST SESSION

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has the honour to present its

TWELFTH REPORT

Pursuant to its mandate under Standing Order 108(2), the Committee has studied the 2011 LGBTQ Refugee Pilot Project and has agreed to report the following:

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LGBTQ+ AT RISK ABROAD: CANADA'S CALL TO ACTION

PREAMBLE

On 4 October 2016, the House of Commons Standing Committee on Citizenship and Immigration (hereafter referred to as "the Committee" or "CIMM") adopted a motion to undertake a study of the 2011 Government of Canada pilot project for refugees in need of protection on the basis of sexual orientation, or gender identity or expression (SOGIE). The motion stated that the Committee examine the "feasibility of extending, expanding, and/or renewing a pilot project of this nature" and report its findings to the House.[1]

INTRODUCTION

The Committee first heard about the pilot project to resettle refugees persecuted on the basis of their SOGIE during its study on immigration measures to protect vulnerable groups. On 19 July 2016, Christine Morrissey from Rainbow Refugee appeared before the Committee[2] and described how Immigration, Refugees and Citizenship Canada (IRCC) and Rainbow Refugee work together to support the private sponsorship of LGBTQ+[3] [lesbian, gay, bisexual, transgender, queer and other gender or sexual minorities] refugees.

The Committee held two meetings on the topic of the LGBTQ+ refugee pilot project on 3 May and 15 May 2017, heard from 14 witnesses, including officials from IRCC, and received seven written submissions.

This report begins with an overview of Canada's refugee system, including how resettlement priorities are established. It then looks at the 2011 Government of Canada refugee resettlement pilot project. The next two sections outline the unique risks and challenges faced by LGBTQ+ refugees. Finally, the last section considers certain areas of improvement such as supporting LGBTQ+ refugees by stabilizing the project and making it a regular program with multi-year funding. The Committee's recommendations, presented throughout the report, aim to strengthen Canada's efforts in supporting and protecting the rights of LGBTQ+ individuals internationally.

1 House of Commons Standing Committee on Citizenship and Immigration [CIMM], *Minutes of Proceedings*, 4 October 2016.

2 CIMM, *Evidence*, 1st Session, 42nd Parliament, 19 July 2016, 1200 (Christine Morrissey, Special Adviser, Rainbow Refugee).

3 The acronym 'LGBTQ+' is used in this report to reference all people with diverse gender identities and experiences of sexual orientation.

BACKGROUND

A. Canada's Refugee System

The objectives of Canada's immigration policy are articulated in the *Immigration and Refugee Protection Act*[4] (IRPA). One of those objectives is to offer a safe haven to persons with a well-founded fear[5] of persecution as well as those at risk of torture or cruel and unusual treatment or punishment.

The Canadian refugee system is comprised of two streams: the Refugee and Humanitarian Resettlement Program for people who need protection from outside Canada and the In-Canada Asylum Program for people making refugee protection claims from within Canada.

Under the Refugee and Humanitarian Resettlement Program, refugees are resettled to Canada through: the federal Government-Assisted Refugee (GAR) Program; with the assistance of civil society groups through the Private Sponsorship of Refugees (PSR) Program; or through the Blended Visa Office–Referred Program, which combines government and private support. According to the 2017 Immigration Levels Plan tabled in Parliament, the targeted number of resettled refugees in 2017 is 25,000: 7,500 individuals through the GAR program; 16,000 resettled refugees through the PSR program; and 1,500 individuals resettled through the Blended Visa Office–Referred Program.[6]

In order to be eligible for resettlement in Canada as a refugee, a person must meet the criteria of the 1951 United Nations Convention relating to the Status of Refugees[7] (1951 Convention): he or she must have a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion. Further, the person must be outside his or her country of nationality or habitual residence and not able to find protection there.

In addition, the Immigration and Refugee Protection Regulations stipulate that those outside their country who are "seriously and personally affected by civil war, armed conflict or massive violation of human rights" are eligible for refugee resettlement.[8] The regulations also state that the applicant must be without a reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada.[9] Finally, the

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4 *Immigration and Refugee Protection Act* [IRPA], S.C. 2001, c. 27, s. 3.

5 For a definition of the principle of well-founded fear see Immigration and Refugee Board of Canada, "Chapter 5–Well-Founded Fear," *Interpretation of the Convention Refugee Definition in The Case Law,* 31 December 2010. Overall, the issue is not whether the claimant had good reason to fear persecution in the past, but whether, at the time the claim is being assessed, the claimant has good grounds for fearing persecution in the future.

6 Government of Canada, *Notice: Supplementary Information 2017: Immigration Levels Plan*, 31 October 2016.

7 United Nations High Commissioners for Refugees [UNHCR], Convention and Protocol Relating to the Status of Refugees.

8 *Immigration and Refugee Protection Regulations*, SOR/2002-227, s. 147.

9 *Immigration and Refugee Protection Regulations*, SOR/2002-227, s. 139.

applicant must normally show potential to become successfully established and must meet admissibility criteria related to medical condition and security screening.

In 1993, the Supreme Court of Canada ruled[10] that sexual orientation is to be considered a "social group" within the context of determining convention refugee status. The court defined a "particular social group" as: (1) groups defined by an innate, unchangeable characteristic; (2) groups whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake the association; and (3) groups associated by a former voluntary status, unalterable due to its historical permanence.

The Supreme Court of Canada has not yet studied whether gender identity persecution falls within the category of persecution based on membership in a particular social group or political opinion. However, Canada's Federal Court overturned[11] an Immigration and Refugee Board of Canada (IRB) decision in 2003 because the IRB did not consider that the claimant was transgender or that she may face discrimination on the basis of her gender identity if forced to return to her country of origin. This decision was also important because the court noted that the claimant was hesitant to acknowledge her gender identity to immigration officials for fear of persecution. This is a common barrier for LGBTQ+ claimants from countries where persecution is prevalent.[12]

1. Resettlement Priorities

Immigration, Refugees and Citizenship Canada visa officers stationed overseas determine if an individual is eligible for resettlement and admissible to Canada. Designated referral organizations, primarily the United Nations High Commissioner for Refugees (UNHCR) refer refugees to IRCC for consideration, while others are referred by private sponsors.

The UNHCR prioritizes resettlement for people who are particularly vulnerable and/or facing an imminent risk, and sometimes refers the entire refugee population in a given country, if warranted.[13] The UNHCR and the international community recognize that resettlement places should be given to individuals experiencing both urgent unfolding conflicts and protracted refugee situations, where the refugees have been displaced for many years. The UNHCR also states that as a result of their real or perceived sexual orientation, gender identity, gender expression or sexed bodies, LGBTQ+ persons are at heightened risk of violence, abuse, discrimination and exploitation when they are first displaced, during transit, and after they arrive in a country of asylum.[14] LGBTQ+ persons

10 *Canada v. Ward*, [1993] 2 S.C.R. 689.

11 *Hernandez v. Canada*, [2003] F.C.J.

12 Sharalyn Jordan and Chris Morrissey, "On What Grounds? LGBT Asylum Claims in Canada. Special Issue on Sexual Orientation and Gender Identity and the protection of forced migrants," *Forced Migration Review,* no. 42, April 2013, p. 14.

13 For more on UNHCR resettlement priorities, see UNHCR "Chapter Six: UNHCR resettlement submission categories," in *UNHCR Resettlement Handbook*, 2011.

14 For more on UNHCR efforts to protect LGBTQ+ persons, see UNHCR "Lesbian, gay, bisexual, transgender and intersex (LGBTI) persons" in *UNHCR Emergency Handbook*.

therefore require specific protection responses and may require specific forms of humanitarian assistance. An official from IRCC pointed out that "under Canada's government-assisted refugee program, the [UNHCR] is responsible for identifying and referring for resettlement to Canada the most vulnerable refugees"[15] which includes individuals fleeing persecution based on their gender and/or sexual orientation.

The Canadian government identifies priorities for refugee settlement, both in terms of particularly vulnerable groups and specific refugee populations. For example, the government has a long-standing program for women at risk[16] and, between November 2015 and January 2017, the government spearheaded the Syrian refugee resettlement initiative[17]. The 2011 pilot project to resettle refugees persecuted on the basis of their sexual orientation and/or gender identity also falls under the resettled refugees stream.

In recent years, the government has shifted from a global resettlement program to a more targeted approach that includes multi-year commitments to particular refugee groups.[18] According to IRCC, the combination of multi-year commitments and yearly targets provides opportunities for both planning and flexibility to meet emerging needs.[19] In addition, multi-year group resettlement commitments allow IRCC to realize administrative efficiencies and provide consistency for receiving communities, which can tailor orientation information and other supports to the refugees being resettled.[20] However, IRCC and organizations such as UNHCR continue to value global resettlement programs because these ensure "that resettlement is responsive as a mechanism of individual protection."[21]

Private sponsors may have different priorities for resettlement because the refugees put forward often have family connections in Canada or are from a particular group or region.

B. 2011 Refugee Resettlement Pilot Project

On 24 March 2011, the Government of Canada announced a new partnership with Rainbow Refugee Society to deliver a pilot sponsorship project to resettle refugees persecuted on the basis of their sexual orientation and/or gender identity. Rainbow Refugee, a community-based organization that supports people seeking refugee

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15 CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1540 (David Manicom, Associate Assistant Deputy Minister, Strategic and Program Policy, Department of Citizenship and Immigration).

16 See UNHCR, "Country Chapter CAN: Canada, by the Government of Canada, October 2016, p. 9.

17 Government of Canada, *Welcome Refugees: Key Figures*. Officials informed the Committee that sexual orientation is a key vulnerability used for identifying refugees for resettlement in Canada, and LGBTQ+ were prioritized as part of the Syrian operation. IRCC's response to a request for information made by CIMM on 3 May 2017 (Rempel 1).

18 Immigration, Refugees and Citizenship Canada [IRCC], *Evaluation of the Resettlement Programs (GAR, PSR, BVOR and RAP)*, July 2016, p 15.

19 IRCC, *Evaluation of the Resettlement Programs (GAR, PSR, BVOR and RAP)*, July 2016, p 13.

20 IRCC, *Evaluation of the Resettlement Programs (GAR, PSR, BVOR and RAP)*, July 2016, p 15.

21 IRCC, *Evaluation of Government Assisted Refugees (GAR) and Resettlement Assistance Program (RAP)*, March 2011, p. xii.

protection in Canada because of persecution based on sexual orientation, gender identity, gender expression or HIV status[22], is responsible for enlisting other groups to work with them as private sponsors of LGBTQ+ refugees. The partnership established that IRCC provides income support to the sponsored refugees for three months, while the sponsors fund nine months of income support. The sponsorship group provides settlement and emotional support for a 12-month period.

By working with "Canadian LGBTQ communities in 15 municipalities across Canada, from Halifax to Winnipeg to Salt Spring Island,"[23] Rainbow Refugee sponsored 75 individuals[24] under the Rainbow Refugee Assistance Program (RRAP) since the program's inception.[25] IRCC has provided an initial funding of $100,000 for the first three years of the pilot project.[26] However, officials from IRCC clarified that a total of $250,000 was allotted to the pilot project from March 2011 to March 2018 and that to date "$156,000 has actually been used"[27] to sponsor 79 persons[28].

WHAT THE COMMITTEE HEARD

A. Risks for LGBTQ+ Refugees

The unique risks faced by LGTBQ+ individuals were raised by witnesses who cited examples of individuals rejected by their families, turned out of their homes, refused housing by landlords, and targeted by community organizations and the police. One witness claimed that gay men who are fired from their jobs are often forced into sex work.[29] As Lisa Hébert, Coordinator of Capital Rainbow Refuge, explained:

> [T]hey face potential persecution from multiple sources, including the state, militarized groups, their own community, and for many, their own families. This sector has a very high instance of family violence. When they flee, they go to nearby countries that also criminalize. There they face the same threats. Unlike other refugees, they can't turn to the state, or their community, or family for support, so they tend to be very alone. Unspeakable tragedies happen. Cases we've sponsored have dealt with terrible attacks

22 For more information, see Rainbow Refugee, *About Rainbow Refugee*.

23 CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1645 (Sharalyn Jordan, Board Chair, Rainbow Refugee).

24 Ibid.

25 Rainbow Refugee and Capital Rainbow Refuge refer to the pilot project as Rainbow Refugee Assistance Project (RRAP).

26 According to the written submission by Rainbow Refugee, the pilot project was funded by IRCC for three years, but it has since been renewed three times.

27 CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1620 (David Manicom).

28 Officials provided more detailed information in regards to the 79 individuals: 57 persons have been resettled, 18 persons have not landed yet, and there were four persons whose cases were withdrawn. CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1545 (David Manicom).

29 CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1545 (Kimahli Powell, Executive Director, Rainbow Railroad).

> while on the run like stabbing, kidnapping, torture, death threats, jail, assault, sexual assault, and motherhood from rape.[30]

Witnesses reminded the Committee that LGBTQ+ individuals face criminal sanctions in 72 countries around the world and that, in eight of these countries, same-sex intimacy is punishable by death.[31] They also pointed to recent targeted attacks in Chechnya, Bangladesh, Indonesia, Jamaica and Uganda.[32] Sadly, those who flee to neighbouring countries may experience equally violent conditions there, as is the case of the nearly 500 Ugandan LGBTQ+ asylum seekers brought to the Committee's attention who fled to Kenya and have experienced a high incidence of rape and physical assault in Kenyan refugee camps.[33]

B. Barriers for LGBTQ+ Refugees

1. Self-Identifying as LGBTQ+

The Committee learned that self-identifying as LGBTQ+ involves challenges and risks. Cultural and language differences may result in many applicants not identifying as lesbian, gay, bisexual, trans, intersex, or queer but instead use language appropriate to their own culture.[34] In addition, asylum seekers may not admit their LGBTQ+ identity to all service providers, some of whom are anti-LGBTQ+, and some are advised by service providers not to admit their sexual identity initially, in order to reduce risk. As a result of these challenges, LGBTQ+ individuals seeking protection in Canada are sometimes perceived by IRB members as having inconsistent stories. The contradiction was summarized by the challenges facing Iranian LGBTQ+ individuals fleeing to Turkey:

> [T]hey said in Iran we have to deny our sexual orientation in order to survive, and in Turkey suddenly we have to prove our sexual orientation in order to be safe.[35]

2. Application Procedures and Processing Times

The Committee heard of challenges faced by those fleeing LGBTQ+ persecution. Given the widespread persecution faced by LGBTQ+ persons in certain regions, the Committee learned of situations where individuals were afraid or unable to register with the UNHCR in countries of first asylum where laws put them at risk of jail or death.[36] One witness stated: "For many reasons, LGBTQ+ refugees do not know or trust that the

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30 CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1635 (Lisa Hébert, Coordinator, Capital Rainbow Refuge).

31 CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1545 (Kimahli Powell).

32 CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1650 (Sharalyn Jordan).

33 CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1550 (Kimahli Powell).

34 Dignity Initiative, "Limitations of Language", *A Call to Action: How Canada can Defend and Promote Human Rights for LGBTI People Around the World.* Note: This document was part of the documents provided to the Committee by Maurice Tomlinson, Senior Policy Analyst, Canadian HIV/AIDS Legal Network.

35 CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1640 (Arsham Parsi, Executive Director, Iranian Railroad for Queer Refugees).

36 CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1635 (Lisa Hébert).

UNHCR would protect them."[37] Janet Altshool, Representative of LEGIT Vancouver, told the story of a transgendered woman from Lebanon who, after fleeing to Athens, was told by the UNHCR that she was not allowed to register with them.[38] This demonstrates that it is difficult for individuals to get help[39] or even to know where to get help. In Europe, the Dublin Regulation states that European Union Member States such as Greece are responsible to examine the application of asylum seekers seeking international protection under the 1951 Convention.[40]

For vulnerable persons fleeing to Canada, they could be provided with temporary resident permits which are used for urgent cases involving immediate risk.[41]

Several witnesses pointed to the lengthy times for processing sponsorship applications under the pilot project as a barrier to protection. Ms. Hébert noted that processing times have increased to as much as four to seven years in many countries.[42] The Nairobi visa office in Kenya was noted as having a particularly slow processing time.[43] Such lengthy waiting times place LGBTQ+ individuals at risk, as they often lack family supports, lack employment or other means of financial survival, and live in fear and isolation. The lengthy wait times not only increase the risk of exposure and physical danger from others, but also may have other tragic consequences.[44] The Committee was told that, in the last two years, 21 LGBTQ+ refugees being supported by Iranian Railroad for Queer Refugees attempted suicide in Turkey, of which five were successful.[45] It was explained that this was the result of the lengthy wait times in the face of isolation and violence:

> The main reason was they could not wait there any longer. They didn't have family support. Usually, they are being abandoned by their families and they don't have any support. They cannot work in Turkey because they don't have a work permit and they are victims of homophobia even in Turkey and are being discriminated by other groups of refugees like other Iranian refugees or other Syrian refugees. A lot of gay Syrian refugees are being raped at the camp.[46]

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37 CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1650, (Sharalyn Jordan).

38 CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1545, (Janet Altshool, Representative, LEGIT Vancouver).

39 Capital Rainbow Refuge, *Written Submission*, p. 7.

40 For more information see the Official Journal of the European Union, *Regulation (EU) No 604/2013 of the European Parliament and of the Council,* 26 June 2013.

41 For more information, see CIMM, *Evidence*, 42nd Parliament, 1st Session, Meeting No. 24, 19 July 2016, 1145 (Gloria Nafziger, Refugee and Migrant Coordinator, Toronto Office, Amnesty International); CIMM, *Evidence*, 42nd Parliament, 1st Session, Meeting No. 25, 19 July 2016, 1455 (Chantal Desloges, Lawyer, Desloges Law Group); and 1505 (Janet Dench, Executive Director, Canadian Council for Refugees).

42 CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1635 (Lisa Hébert).

43 CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1720 (Sharalyn Jordan).

44 CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1715 (Soubhi M., Member, Rainbow Refugee).

45 CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1635 (Arsham Parsi).

46 Ibid.

The Committee also heard that while Canadian visa officers and UNHCR representatives were generally professional, there were instances where a lack of understanding of the challenges and trauma faced by LGBTQ+ individuals presented barriers to accessing protection.[47] Some refugees are not able to obtain a UNHCR certificate, others are not registered by the UNHCR in the country where they reside and some refugees are too afraid to register with the UNHCR because they fear that "knowledge of their sexual orientation could be leaked, leading to their arrest or persecution."[48]

As a result of these challenges, the Committee recommends the following:

RECOMMENDATION 1

That Immigration, Refugees and Citizenship Canada commit to reducing processing times for resettlement to no more than 12 months for refugees at serious risk and strengthening ways to provide timely assistance to refugees facing immediate risk such as through the Urgent Protection Program and the use of Temporary Resident Permits.

RECOMMENDATION 2

That Immigration, Refugees, and Citizenship Canada in partnership with the UNHCR encourage advanced sexual and gender diversity training for both Canadian and UNHCR officials, support a review of operational procedures to identify any institutionalized discrimination against LGBTQ+ individuals seeking protection and support efforts to assess risks related to SOGIE in the vulnerability screening process.

3. Resettlement needs of LGBTQ+ Refugees

Witnesses described the needs of recently arrived LGBTQ+ refugees and the critical importance of tailored supports during the resettlement process. Often LGBTQ+ newcomers are traumatized, the result of physical abuse and long periods of fear experienced as they waited for their application to be processed.[49] Many have left families and support networks behind. While many organizations described the continued need for the RRAP, they also stressed the need for resettlement services geared to LGBTQ+ newcomers to ensure their successful integration into Canadian society.[50]

To address need for resettlement services geared to LGBTQ+ newcomers, the Committee recommends as follows:

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47 Ontario Council of Agencies Serving Immigrants, *Written Submission*, p. 2.

48 Capital Rainbow Refuge, *Written Submission*, p. 7.

49 Egale Canada Human Rights Trust, *Written Submission*, p. 5.

50 CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1710 (Arsham Parsi); Egale Canada Human Rights Trust, *Written Submission*, p. 7.

RECOMMENDATION 3

That Immigration, Refugees and Citizenship Canada conduct a needs assessment to identify the settlement needs of LGBTQ+ newcomers, including those arriving under the Rainbow Refugee Assistance Program.

4. Internally Displaced Persons

One form of persecution experienced by LGBTQ+ individuals is targeted attacks within their home country. These individuals cannot find safety within their own country and they cannot, under international law, claim asylum or the protection of the UNHCR in their own country.[51] Witnesses mentioned Chechnya, Saudi Arabia, Syria, Iraq and Brazil as examples of where LGBTQ+ individuals are persecuted.[52] One witness drew the attention of the Committee to the fact that "in a city in northern Brazil earlier this year, a transwoman was dragged into the street, beaten, and brutally murdered while onlookers filmed it and posted it on Facebook."[53]

LGBTQ+ individuals who can travel would be required to access Canadian missions in neighbouring countries to apply for refugee protection. However, this would present several challenges and risks. In countries with anti-gay laws, many are fearful of self-identifying. For example, locally engaged staff at the mission could potentially identify them in the community. However, Canadian missions do monitor urgent protection situations to be "able to respond appropriately, given the individual case"[54].

Internally displaced persons may also flee to Canada to make an in-country refugee claim, which requires them to have travel documents, including a visa, and financial resources that are beyond many. The problem is compounded by their sexual identity:

> Requiring persons to flee to Canada almost requires them to be rich before they can be a refugee. They have to prove that they have assets tying them to their home country and that they do not need to flee. The catch-22 is that many persons who are as vulnerable as I have described, especially if you are trans, you will not be getting a stable job that will allow you to acquire these ties.[55]

Because of the unique challenges faced by LGBTQ+ asylum seekers, the Committee recommends as follows:

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51 CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1600 (Donald Cochrane, Senior Director, International Region, Department of Citizenship and Immigration).

52 CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1715 (Lisa Hébert); CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1645 (Chad Wilkinson, Director, Rainbow Foundation of Hope).

53 CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1645 (Chad Wilkinson).

54 CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1555 (David Manicom).

55 CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1655 (Maurice Tomlinson, Senior Policy Analyst, Canadian HIV/AIDS Legal Network).

RECOMMENDATION 4

That Immigration, Refugees and Citizenship Canada continue to partner with civil society organizations in Canada, such as Rainbow Refugee Society, to help identify, assess, and facilitate the expedited processing of LGBTQ+ individuals fleeing persecution.

5. Legacy Refugee Claims

The Committee heard that there are approximately 7,000 individuals who applied for refugee status prior to major reforms in 2012 and remain in limbo.[56] These people with "legacy claims" live with uncertainty and instability and face challenges settling and finding employment. Witnesses urged the Committee to draw the government's attention to those waiting to learn the status of their refugee claims. Consequently, the Committee recommends as follows:

RECOMMENDATION 5

That the Immigration and Refugee Board accelerate and streamline the processing of legacy refugee claims and that the Government of Canada collaborate with the IRB to find efficiencies and additional resource needs for the IRB so that they can effectively process the legacy refugee claims.

6. Risk of Fraudulent Refugee Claims

The Committee was interested to hear witnesses explain the degree of risk of fraudulent LGBTQ+ refugee claims, where some may seek to claim LGBTQ+ identity in order to circumvent regular refugee processes and wait times. Witnesses were quick to dispel such concerns. Ms. Altshool of LEGIT Vancouver pointed out that since the organization was established in 1992 they have helped thousands of people and have had only one case that was not a genuine LGBTQ+ case.[57] As she noted, "it's much easier to claim you're straight and not risk being beaten and persecuted and hated by the people in a refugee camp than it is to say you're gay".[58] As Michael Tutthill, of Rainbow Resource Centre added:

> I'm not quite sure why anyone would want to, given the persecution that they would face back home or here. If someone lies and gets deported, that's a pretty big risk to take in terms of being labelled as LGBT when you return to your home country.[59]

Witnesses advised the Committee that the federal government could also protect the refugee program from fraudulent claims by working with LGBTQ+ organizations on the

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56 CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1710 (Maurice Tomlinson).

57 CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1610 (Janet Altshool).

58 Ibid.

59 CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1610 (Michael Tutthill, Executive Director, Rainbow Resource Centre).

ground. Such groups are knowledgeable of the local LGBTQ+ community and culture and have access to supporting evidence.[60]

7. Lack of Information

The Committee heard that accessing information about immigration to Canada was a further barrier. Eka Nasution, Director of Rainbow Foundation of Hope, described his own experience of seeking information on the IRCC's website, which he found complicated. In the end, he sought help in making a refugee claim from an LGBTQ+ organization that referred him to a Canadian lawyer.[61] This lack of clear information was also a problem for specific information related to LGBTQ+ refugees. One witness pointed out that the RRAP has never been on the IRCC's website and that some churches were not aware of its existence and had to be convinced that it is really a pilot project funded by IRCC.[62]

The Committee also learned that apart from individuals assisted under the RRAP, the IRCC did not have the ability to determine how many LGBTQ+ refugees applied for refugee status in Canada and were accepted each year. Consequently, IRCC officials were unable to inform the Committee about the overall results of attempts to assist LGBTQ+ individuals seeking safety and asylum. As such, the Committee recommends:

RECOMMENDATION 6

That Immigration, Refugees and Citizenship Canada conduct a SOGIE analysis of its existing policies, and assess the feasibility of implementing a system to track the number of LGBTQ+ refugees that Canada accepts annually, without compromising the security, safety and privacy of the individual.

8. Medical Inadmissibility

The *Immigration and Refugee Protection Act* does not allow foreign nationals or permanent residents to enter or remain in Canada if they are found inadmissible on one of the grounds established in Division 4 of the Act.[63] Section 38 of IRPA provides that health grounds may be a cause of inadmissibility, if a person's health is likely to be a danger to public health, is likely to be a danger to public safety, or might reasonably be expected to cause excessive demand on health or social services.[64] However, section 38(2) of IRPA outlines that certain individuals such as Convention refugees or protected persons are

60 CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1655 (Maurice Tomlinson).

61 CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1640 (Eka Nasution, Director, Rainbow Foundation of Hope).

62 CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1710 (Lisa Hébert).

63 IRPA, S.C. 2001, c. 27, s. 34 to 42. There are 11 grounds for inadmissibility: security, violation of international human rights, serious criminality, criminality and organized criminality, health grounds, financial grounds, misrepresentation, cessation of refugee protection, non-compliance with the Act and accompanying a family member who is inadmissible.

64 IRPA, S.C. 2001, c. 27, s. 38.

excluded from that provision.[65] Immigration officers, as well as medical officers, are instructed on how to interpret IRPA and the Regulations[66] through guidelines established in policy manuals or operational bulletins[67].

However, witnesses said that the current regulations concerning medical inadmissibility present a barrier to LGBTQ+ individuals. According to witnesses, LGBTQ+ individuals with HIV, often the result of rape or being forced into sex work in order to survive, are not eligible under current immigration regulations.[68] While those coming to Canada as refugees are exempted under section 38(2) of IRPA, those applying under other immigration streams face onerous inadmissibility provisions based on medical conditions, regardless of economic circumstances or access to private insurance[69]. As a result, LGBTQ+ individuals may feel that they have no option but to access Canada through the refugee process, which in turn imposes other challenges on themselves and their families and has other consequences for the Canadian immigration system:

> [M]edical inadmissibility separates families, it does not facilitate family reunification, and it is not a process that is in line with the immigration objectives, which are to secure the best quality migrants to Canada. We're in fact denying good quality migrants access to Canada.[70]

One witness clarified that a person who arrives as a "HIV refugee" receives treatments once they are granted refugee status.[71] It does not seem to be a particularly onerous process once the person has been granted status. However, according to the witness, the challenge has been getting them status.[72]

The Committee was advised that the medical inadmissibility provision was discriminatory, violating the *Canadian Charter of Rights and Freedoms* and the *UN Convention on the Rights of Persons with Disabilities* by discriminating against persons based on their disability.[73]

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65 IRPA, S.C. 2001, c. 27, s. 38(2).

66 *Immigration and Refugee Protection Regulations,* SOR/2002-227, s.29 to 40.

67 Government of Canada, *Medical refusals and inadmissibility*.

68 CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1625 (Maurice Tomlinson); CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1545 (Kimahli Powell).

69 CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1625 (Maurice Tomlinson). In Lorne Waldman's *Immigration Law and Practice, Second Edition,* page 5-204, there is jurisprudence that is contradictory to the evidence. "In *Campanioni v. Canada,* the Court set aside a decision of the Appeal Division that had upheld an inadmissibility finding on excessive demands to social services. The applicant had HIV and required medication. However, he had insurance that covered the costs of medication. The Court held that the officer erred in failing to assess the impact of the insurance on excessive demands."

70 CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1700 (Maurice Tomlinson).

71 CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1710 (Maurice Tomlinson).

72 Ibid.

73 Canadian HIV/AIDS Legal Network, *Written Submission*, p. 2.

Because the medical inadmissibility provisions discriminate against LGBTQ+ immigrant applicants, pushing those seeking to flee anti-LGBTQ+ countries into claiming asylum status, the Committee recommends as follows:

RECOMMENDATION 7

That Immigration, Refugees and Citizenship Canada review its medical inadmissibility and excessive demand provisions to ensure that the rights of LGBTQ+ and HIV+ individuals and others are upheld.

HOW TO BETTER ADDRESS THE NEEDS OF LGBTQ+ REFUGEES

A. What Canada is Doing Well and Areas of Improvements

The Committee heard that the use of the PSR stream, with federal government support, to bring LGBTQ+ refugees to Canada is beneficial for several reasons. Private sponsors help vulnerable LGBTQ+ newcomers, many of whom are isolated and suffering trauma, navigate Canadian systems and programs and provide a support network into the LGBTQ+ community[74]. This is particularly helpful, as such refugees often lack the natural community support provided by their own ethnocultural communities in Canada, which may harbour anti-LGBTQ+ sentiment.[75] Such support in Canada is also helpful to sexual and gender minorities who may face discrimination as they seek employment, housing, education and health care. One witness emphasized how that support helped her start a life in Canada:

> We received tremendous support from day one with all emotional and financial assistance with CRR [Capital Rainbow Refuge] and partial settlement funds from Rainbow RAP. We were under sponsorship for a year and since then we both are working and pursuing higher education.[76]

The Committee also heard that the new IRB guidelines *Chairperson's Guideline 9: Proceedings before the IRB involving sexual orientation and gender identity and expression* was considered a positive measure in addressing many of the concerns that LGBTQ+ refugee claimants and advocates had when appearing before the Immigration and Refugee Board.[77]

The Committee learned that Canada compares favourably to other countries in addressing the needs and rights of LGBTQ+ individuals. One witness summarized the international landscape:

> Everybody has good points and bad points. We are certainly very pleased with the constitutional framework that South Africa has, for example, but the challenge has been

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74 CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1635 (Lisa Hébert); CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1700 (Eka Nasution).

75 CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1600 (Michael Tutthill).

76 CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1630 (Witness 1, Program Participant, Canadian Citizen, Capital Rainbow Refuge).

77 CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1555 (Michael Tutthill).

> operationalizing that. There's a need for more domesticated sensitivity training. Canada has a very good program in terms of sensitivity training for certain groups like police, which has been exported around the world. The protection of trans individuals on paper looks great in Argentina and also India, but there's also a high rate of murder of trans individuals. I would say that there is not one model for a best practice.[78]

However, Kimahli Powell, Executive Director of Rainbow Railroad, informed the Committee that the Netherlands provides financial assistance to LGBTQ+ refugees immediately upon arrival, in contrast to Ontario's policy of requiring a six week waiting period to access Ontario Works.[79]

1. Need for the Rainbow Refugee Assistance Program

The Committee also heard of the benefits of the pilot project and RRAP's success to date. Currently, the federal government contributes three months of income support, as well as start-up funds for each individual, with sponsors providing income support for a further nine months. Another advantage is that Rainbow Refugee enlists other groups to work with them as private sponsors of LGBTQ+ refugees. One of those groups is the Sponsorship agreement-holder (SAH). The SAH signs an agreement with IRCC outlining the allocations, obligations and commitments of both parties to sponsor refugees abroad and can authorize other groups in the community to sponsor refugees under its agreement.[80] These groups are known as constituent groups.

As one witness noted, there are several advantages to this structure:

> Canadians get great value for a small investment of public funds. Holders of sponsorship agreements are willing partners because their allocations are not impacted. The SAHs ensure fiduciary responsibilities are met and contribute decades of sponsorship know-how. RRAP circles bring passion, sweat equity, and lived LGBTQ know-how. We all become better at welcoming LGBTQ refugees in the process.[81]

However, the Committee heard that support for LGBTQ+ refugees could be strengthened by stabilizing the project, making it a regular program with multi-year funding.[82] This would enable the program: to grow sustainably; to facilitate its promotion; to build fundraising capacity; allow it to share emerging best practices with other groups; help

78 CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1710 (Maurice Tomlinson).

79 CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1620 (Kimahli Powell).

80 Capital Rainbow Refuge, *Written Submission*, p. 7.

81 CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1650 (Sharalyn Jordan).

82 CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1710 (Witness 1); CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1710 (Lisa Hébert); CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1710 (Chad Wilkinson); CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017; 1710 (Eka Nasution); CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1710 (Sharalyn Jordan); CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1710 (Soubhi M.); CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1555 (Michael Tutthill); CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1615 (Kimahli Powell); Ontario Council of Agencies Serving Immigrants, *Written Submission*, p. 2.

support resettlement organizations; and to provide more trusted sponsorship of individuals experiencing long processing timelines.[83]

The need for support to LGBTQ+ refugees is not decreasing and indeed several witnesses told the Committee that the numbers of LGBTQ+ individuals seeking their help was increasing. Mr. Powell stated that his organization had received 700 requests for assistance in 2016 and that they had received 100 requests from Chechnya in the past month alone.[84] Further, he noted that Kenya, which has a reputedly slow Canadian processing centre, has over 500 LGBTQ+ applications in process.[85]

Because of the success of the project, the need for greater program stability, and the continued need for targeted support to LGBTQ+ refugees, the Committee recommends as follows:

RECOMMENDATION 8

That Immigration, Refugees and Citizenship Canada make the Rainbow Refugee Assistance program a regular, fully promoted, on-going program with multi-year funding, and be expanded to increase the number of LGBTQ+ and HIV+ individuals who can be assisted each year.

RECOMMENDATION 9

That Immigration, Refugees and Citizenship Canada continue collaboration with Sponsorship Agreement Holders and continue to determine that individuals brought to Canada under the Rainbow Refugee Assistance Program be counted outside of the SAH allocations.

RECOMMENDATION 10

That Immigration, Refugees and Citizenship Canada ensure that key elements of the Rainbow Refugee Assistance Program are maintained such as (1) Sponsorship Circles, (2) matching and mentorship, (3) application troubleshooting, and (4) collaboration with experienced civil society and settlement groups in Canada.

RECOMMENDATION 11

That Immigration, Refugees and Citizenship Canada consider developing a multi-year agreement with the UNHCR in collaboration with civil society organizations in Canada, such as Rainbow Refugee Society, to increase the resettlement of LGBTQ+ individuals fleeing

83 CIMM, *Evidence*, 1st Session, 42nd Parliament, 3 May 2017, 1650 (Sharalyn Jordan).

84 CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1545 (Kimahli Powell).

85 CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1550 (Kimahli Powell).

persecution based on sexual orientation, gender identity and gender expression.

RECOMMENDATION 12

That the Government of Canada maintain or increase the Privately Sponsored Refugee and Blended Visa Office Referred levels to ensure the continued sponsorship of individuals fleeing persecution based on sexual orientation, gender identity or expression which will support decreasing processing times.

RECOMMENDATION 13

That Immigration, Refugees and Citizenship Canada and Global Affairs Canada work with non-governmental organizations and civil society groups, such as Rainbow Refugee Society, to develop a strategy on LGBTQ+ individuals fleeing persecution.

B. Need for Advocacy

The Committee learned that Canada has been supportive of LGBTQ+ rights and has supported LGBTQ+ advocates in other countries. For instance, the Committee heard that the Canadian High Commission in Jamaica has supported local LGBTQ+ rights organizations and that the Canada Fund for Local Initiatives has been used to support projects for persons living with HIV.[86] The High Commission has also been working with the UNHCR and other governments to ensure the fair, equitable and sensitive processing of LGBTQ+ refugees and those seeking help. However, witnesses pressed the Committee to ensure that the government furthered its efforts[87], stating that this was both the humane course of action for those living in hiding in their own countries as well as in the interests of Canada and other asylum-granting countries:

> The fact is, if the advocates are able to address the human rights challenges in their home countries, this will stymie a lot of the ripple effect which we are, in fact, trying to cauterize. For example, if advocates in country are able to campaign for equality, we would not have the need to find additional resources to support persons who have to flee because of their refugee status. We need to be supporting the advocates in country who are trying to do things like changing hearts and minds, like … challenging anti-gay laws, and confronting religious bigots. We need to be doing that so we don't have to end up spending the money at the back end.[88]

The Committee agrees that Canada should continue to increase its efforts to support and protect the rights of LGBTQ+ individuals internationally, and therefore recommends as follows:

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86 CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1630, 1705 (Maurice Tomlinson).

87 Ontario Council of Agencies Serving Immigrants, *Written Submission*, p. 1.

88 CIMM, *Evidence*, 1st Session, 42nd Parliament, 15 May 2017, 1705 (Maurice Tomlinson).

RECOMMENDATION 14

That the Government of Canada continue to defend LGBTQ+ rights on the world stage and use diplomatic channels to work toward eliminating institutionalized homophobia, biphobia and transphobia.

RECOMMENDATION 15

That the Government of Canada work to re-establish global funding initiatives to LGBTQ+ advocacy organizations in Canada and abroad.

CONCLUSION

Overall, the Committee appreciates the need for the Rainbow Refugee Assistance Program as well as the need for greater program stability and for targeted support to LGBTQ+ refugees. The Committee wishes to see this program become a regular, on-going program, with multi-year funding. The Committee acknowledges all the witnesses who appeared or contributed to this study, in particular the individuals who shared their personal stories of struggle.

LIST OF RECOMMENDATIONS

RECOMMENDATION 1

That Immigration, Refugees and Citizenship Canada commit to reducing processing times for resettlement to no more than 12 months for refugees at serious risk and strengthening ways to provide timely assistance to refugees facing immediate risk such as through the Urgent Protection Program and the use of Temporary Resident Permits. 8

RECOMMENDATION 2

That Immigration, Refugees, and Citizenship Canada in partnership with the UNHCR encourage advanced sexual and gender diversity training for both Canadian and UNHCR officials, support a review of operational procedures to identify any institutionalized discrimination against LGBTQ+ individuals seeking protection and support efforts to assess risks related to SOGIE in the vulnerability screening process. 8

RECOMMENDATION 3

That Immigration, Refugees and Citizenship Canada conduct a needs assessment to identify the settlement needs of LGBTQ+ newcomers, including those arriving under the Rainbow Refugee Assistance Program. 9

RECOMMENDATION 4

That Immigration, Refugees and Citizenship Canada continue to partner with civil society organizations in Canada, such as Rainbow Refugee Society, to help identify, assess, and facilitate the expedited processing of LGBTQ+ individuals fleeing persecution. 10

RECOMMENDATION 5

That the Immigration and Refugee Board accelerate and streamline the processing of legacy refugee claims and that the Government of Canada collaborate with the IRB to find efficiencies and additional resource needs for the IRB so that they can effectively process the legacy refugee claims. 10

RECOMMENDATION 6

That Immigration, Refugees and Citizenship Canada conduct a SOGIE analysis of its existing policies, and assess the feasibility of implementing a system to track the number of LGBTQ+ refugees that Canada accepts annually, without compromising the security, safety and privacy of the individual. 11

RECOMMENDATION 7

That Immigration, Refugees and Citizenship Canada review its medical inadmissibility and excessive demand provisions to ensure that the rights of LGBTQ+ and HIV+ individuals and others are upheld. 13

RECOMMENDATION 8

That Immigration, Refugees and Citizenship Canada make the Rainbow Refugee Assistance program a regular, fully promoted, on-going program with multi-year funding, and be expanded to increase the number of LGBTQ+ and HIV+ individuals who can be assisted each year. 15

RECOMMENDATION 9

That Immigration, Refugees and Citizenship Canada continue collaboration with Sponsorship Agreement Holders and continue to determine that individuals brought to Canada under the Rainbow Refugee Assistance Program be counted outside of the SAH allocations. 15

RECOMMENDATION 10

That Immigration, Refugees and Citizenship Canada ensure that key elements of the Rainbow Refugee Assistance Program are maintained such as (1) Sponsorship Circles, (2) matching and mentorship, (3) application troubleshooting, and (4) collaboration with experienced civil society and settlement groups in Canada. 15

RECOMMENDATION 11

That Immigration, Refugees and Citizenship Canada consider developing a multi-year agreement with the UNHCR in collaboration with civil society organizations in Canada, such as Rainbow Refugee Society, to increase the resettlement of LGBTQ+ individuals fleeing persecution based on sexual orientation, gender identity and gender expression 15

RECOMMENDATION 12

That the Government of Canada maintain or increase the Privately Sponsored Refugee and Blended Visa Office Referred levels to ensure the continued sponsorship of individuals fleeing persecution based on sexual orientation, gender identity or expression which will support decreasing processing times. 16

RECOMMENDATION 13

That Immigration, Refugees and Citizenship Canada and Global Affairs Canada work with non-governmental organizations and civil society groups, such as Rainbow Refugee Society, to develop a strategy on LGBTQ+ individuals fleeing persecution. 16

RECOMMENDATION 14

That the Government of Canada continue to defend LGBTQ+ rights on the world stage and use diplomatic channels to work toward eliminating institutionalized homophobia, biphobia and transphobia. 17

RECOMMENDATION 15

That the Government of Canada work to re-establish global funding initiatives to LGBTQ+ advocacy organizations in Canada and abroad. 17

APPENDIX A
LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
Capital Rainbow Refuge	2017/05/03	58
Lisa Hébert, Coordinator		
Witness 1, Program Participant Canadian Citizen		
Department of Citizenship and Immigration		
Donald Cochrane, Senior Director International Region		
Jean-Marc Gionet, Director Refugee Affairs		
David Manicom, Associate Assistant Deputy Minister Strategic and Program Policy		
Rainbow Foundation of Hope		
Eka Nasution, Director		
Chad Wilkinson, Director		
Rainbow Refugee		
Sharalyn Jordan, Board Chair		
Soubhi M., Member		
Canadian HIV/AIDS Legal Network	2017/05/15	61
Maurice Tomlinson, Senior Policy Analyst		
Iranian Railroad for Queer Refugees		
Arsham Parsi, Executive Director		
LEGIT Vancouver		
Janet Altshool, Representative		
Rainbow Railroad		
Kimahli Powell, Executive Director		
Rainbow Resource Centre		
Michael Tutthill, Executive Director		

APPENDIX B
LIST OF BRIEFS

Organizations and Individuals
Canadian HIV/AIDS Legal Network
Capital Rainbow Refuge
Egale Canada Human Rights Trust
Ontario Council of Agencies Serving Immigrants
Rainbow Foundation of Hope
Rainbow Refugee

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* (Meetings Nos. 58, 61, 64 and 68) is tabled.

Respectfully submitted,

Borys Wrzesnewskyj
Chair

Dissenting Report of Her Majesty's Official Opposition
The Conservative Party of Canada

2011 LGBTQ Refugee Pilot Project Study

David Tilson, Member of Parliament for Dufferin – Caledon

Michelle Rempel, Member of Parliament for Calgary Nose Hill

Bob Saroya, Member of Parliament for Markham – Unionville

BACKGROUND

The Standing Committee on Citizenship and Immigration briefly considered the issue of LGBTQ+ refugees during this Spring 2017. In particular, it studied the 2011 Rainbow Refugee Assistance Program (RRAP) pilot project, through which the government offers three months of support to LGBTQ+ refugees who are brought in with the collaboration and support of private sponsors. This program has been renewed every year since its introduction in 2011 by then Minister of Citizenship, Immigration, and Multiculturalism, Jason Kenney. The Committee heard from civil society groups who have sponsored refugees through the Rainbow Refugee Assistance Program, refugees themselves, and department officials.

As witnesses were quick to point out, 73 countries in the world today criminalize queer sexualities and gender diversity. In 13 of those jurisdictions, the death penalty applies for such crimes.[1] Beyond the institutionalized homophobia and transphobia, hate crimes occur frequently, including murders, and they are rarely reported or prosecuted in many countries. LGBTQ+ individuals are not typical asylum seeker; they are often victimized by their own families and communities, by their home governments, and are even at risk in the countries of first asylum.[2] Furthermore, they are highly vulnerable once they leave their home communities and are often unable or afraid to access UNHCR support, often because they are internally displaced and therefore do not meet the definition of a conventional refugee.[3]

Despite its precarious funding model and lack of long term government support, the Rainbow Refugee Assistance Program has had a significant impact. Through RRAP, 75 individuals have been welcomed to Canada, more than 800 people in Canada have been involved in direct sponsorship, and thousands more have volunteered indirectly.[4] As was clear from the witness testimonies, this is a program that punches well above its weight; it requires little government support and effectively capitalizes on the generosity and passion of Canadians to build a

[1] CIMM, Rainbow Refugee Board of Directors, *Written Submission*, p. 5.
[2] CIMM, Rainbow Refugee Board of Directors, *Written Submission*, p. 5.
[3] CIMM, Capital Rainbow Refuge, Written Submission, p. 11.
[4] CIMM, Rainbow Refugee Board of Directors, *Written Submission*, p. 7.

sustainable, reliable process for LGBTQ+ refugees that follows them from their home communities all the way through their integration in Canadian society.

Nobody should be persecuted or tortured for who they love or for living their own personal truth. Canada has to make that statement permanent, not just through tweets and nice words, but through programs such as Rainbow RAP.

REASONS FOR A DISSENTING REPORT

It is the opinion of the Conservative Members that the recommendations in the report tabled by this Committee had numerous deficiencies. As seen from the widespread outcry of Canadians over the current persecution of gay men in Chechnya, the Canadian public is demanding a proactive response to this issue.

This dissenting report therefore provides recommendations to address the deficiencies in the report tabled by the Committee. In particular, we would like to emphasize the following themes:

- Canada's refugee system does not reflect current realities
- On-going need to address internally displaced persons
- Lack of information

Canada's refugee system does not reflect current realities

A reoccurring issue that this Committee has heard in its studies is that Canada's refugee system does not reflect the current realities of conflict. Today, international drivers of instability are increasingly non-state actors, as is demonstrated by the atrocities committed by the so-called Islamic State. Our immigration systems need to be updated to reflect the current global context as they were developed in a different era.

One witness directly addressed this issue of non-state actors and their impact on LGBTQ+ persons. In their brief, Capital Rainbow Refuge describes the impact of current realities in international conflict with their quote, "LGBTQ refugees face potential persecution from multiple sources, including the state, militarized non-state actors or their own communities, and, for many, their own families"[5].

Canada's refugee systems must adapt to these realities. The most vulnerable suffer because of outdated processes. This need to adapt was demonstrated through the special Yazidi refugee program, created by the government after great pressure from the opposition and Canadian public.

Canada must adapt it systems so that in times of emergency, we can swiftly respond without the need for applying political pressure.

Given these realities, we recommend:

[5]CIMM, Capital Rainbow Refuge, Written Submission, p. 11.

1. **That the Government develop a plan to significantly reduce processing times when faced with demonstrated emergent situations of the four atrocity crimes or targeted state sanctioned persecution against religious, sexual, and ethnic minority groups, and that this plan be tabled in Parliament by June 2018.**

On-going need to address internally displaced persons

Furthermore, the current realities of international conflict have also meant that the needs of internally displaced persons are not adequately met by Canada's current refugee systems. Not only has this challenge proved a problem in cases like that of the Yazidi genocide survivors, it was also noted by witnesses to be an issue for LGBTQ+ persons as well. The Ontario Council of Agencies Serving Immigrants made clear in their briefing that more needs to be done to help LGBTQ+ IDPs. This Council recommended that IRCC:

> "Develop and implement initiatives to resettle internally displaced LGBTQIA+ persons, particularly those facing elevated risk in their current geographic location because of sexual orientation and gender identity and expression. Development of such a program should be undertaken in consultation with experienced and knowledgeable civil society organizations."[6]

It is clear that Canada's systems are not adequately responding to internally displaced persons, including members of the LGBTQ+ community. In order to review emergent cases of persecution, outside of the time constraints of the Standing Committee of Citizenship and Immigration, we recommend:

2. **That the Standing Orders of the House of Commons be amended to establish a Standing Subcommittee of the House of Commons Standing Committee on Citizenship and Immigration to study the internal displacement of persons around the world and Canada's potential responses thereto.**

Lack of Information

The Committee heard that accessing information about immigration to Canada was a further barrier. Eka Nasution, Director of Rainbow Foundation of Hope, described his own experience of seeking information on the IRCC's website, which he found complicated. In the end, he sought help in making a refugee claim from an LGBTQ+ organization that referred him to a Canadian lawyer[7]. This lack of clear information was also a problem for specific information related to LGBTQ+ refugees. One witness pointed out that the RRAP has never been on the IRCC's website and that some churches were not aware of its existence and had to be convinced that it is really a pilot project funded by IRCC[8].

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[6] CIMM, Ontario Council of Agencies Serving Immigrants, *Written Submission*, p.2.

[7] CIMM, Evidence, 1st Session, 42nd Parliament, 3 May 2017, 1640, (Eka Nasution, Director, Rainbow Foundation of Hope).

[8] CIMM, Evidence, 1st Session, 42nd Parliament, 3 May 2017, 1710, (Lisa Hébert, Coordinator, Capital Rainbow Refuge)

To address these gaps in information provided, the Committee recommends as follows:

3. **That Immigration, Refugees and Citizenship Canada amend its website, to ensure that information and procedures related to immigration and in particular refugee applications is clear and easily understood and that information related to the Rainbow Refugee Assistance Program is provided.**

Recommendations

1. **That the Government develop a plan to significantly reduce processing times when faced with demonstrated emergent situations of the four atrocity crimes or targeted state sanctioned persecution against religious, sexual, and ethnic minority groups, and that this plan be tabled in Parliament by June 2018.**
2. **That the Standing Orders of the House of Commons be amended to establish a Standing Subcommittee of the House of Commons Standing Committee on Citizenship and Immigration to study the internal displacement of persons around the world and Canada's potential responses thereto.**
3. **That Immigration, Refugees and Citizenship Canada amend its website, to ensure that information and procedures related to immigration and in particular refugee applications is clear and easily understood and that information related to the Rainbow Refugee Assistance Program is provided.**

Supplementary Report by the New Democratic Party of Canada

Following the incredibly valuable work that the Standing Committee on Citizenship and Immigration undertook during an emergency study on *Immigration Measures for the Protection of Vulnerable Groups* during the summer of 2016, it was clear that an additional study needed to be undertaken on the 2011 LGBTQ Refugee Pilot Project. The New Democratic Party welcomed the opportunity to do so, and hoped for strong recommendations in the report for the government to solidify and strengthen its commitment to providing asylum to individuals who face discrimination, violence, and persecution, among other hardships, solely on the basis of the sexual and/or gender identity.

The testimony members of the committee had the opportunity to hear was at times difficult, but showcased the incredible dedication of organizations in Canada and abroad who were undertaking to help individuals rebuild their lives in safety, and these efforts need to be applauded.

The New Democratic Party supports the recommendations in the main report, but additionally urges the government to take further actions in three areas.

<u>The Immigration and Refugee Board (IRB)</u>

In the main report, it is recommended that the government work with the IRB to find efficiencies and additional resource needs to effectively process the legacy refugee claims. Given the global context of unprecedented levels of forced displacement, it is important for the IRB to continue to increase its ability to efficiently hear and rule upon refugee claims, as Canada will continue to be seen as a safe haven for asylum seekers – as it should – and this will result in continued increased levels of claims before the IRB. However, all the efficiencies in the world cannot make up for under funding. In the 2016-17 Report on Plans and Priorities – Part III, IRB Chair Mario Dion wrote:

> "In 2016-17, the Board's ability to reallocate funding internally will be severely limited, particularly if the Board is faced with sustained increases at the RPD. As a result, commitments made by the Board in relation to refugee claims that are no subject to statutory time frames, such as the remaining 6,500 legacy claims, will have to revisited unless additional temporary funding is made available."[i]

The need for more resources was acknowledged by the Minister of Immigration, Refugees and Citizenship during his appearance before this Committee on March 20, 2017. During that meeting he was questioned by NDP MP Jenny Kwan about the legacy claims and he stated that, "I think the approach should be efficiencies plus extra resources."[ii]

During this study, Committee members had heard poignant testimony from Maurice Tomlinson of the Canadian HIV/AIDS Legal Network regarding the impact of the IRB's inability to process legacy claims and the further impact to the system as a whole.

> "The person who arrives as an HIV refugee is put into the system and is supported once they are granted refugee status. I would say that the current model works well. I am not aware of it being a particularly onerous process once the person has been granted status. The challenge has been getting them status. Thankfully, the process that has been introduced has been helped, but you still have persons who are legacy individuals in limbo. Their ability to find work, settle, and those kinds of things, has complicated their ability to access care and well-being. I would say that an urgent need is to address those legacy individuals."[iii]

Funding constraints and Board vacancies have led the IRB to accumulate a backlog of over 24,000 cases, and this backlog is increasing by 1,000 cases per month. It was recently reported in the media that internal documents suggest that if these issues are not addressed, claims could eventually end up taking 11 years to process as a result of these backlogs, making every claim the equivalent of a legacy claim. It is the NDP's strongest belief; additional resources are needed to ensure the integrity of Canada's immigration and asylum system is not jeopardized.

Recommendation 1:

That following the identification of additional resources needs at the IRB, IRCC address those funding shortfalls by providing additional funding dedicated to the elimination of the legacy claims and the current claim backlog.

Internally Displaced Persons (IDPs)

During the 2016 *Vulnerable Group* and echoed during testimony for this study, a significant portion of LGBTQ individuals who are in need of protection and resettlement are internally displaced persons (IDPs). In the case of the LGBTQ community, this is often because individuals whose country of origin puts them in need of protection in the first place, be that due to outright criminalization of their existence, social discrimination etc. are often neighboured by countries with similar laws or social practices. This means that individuals might find themselves at increased risk should they leave their country of origin to make a convention refugee claim because not only will they find themselves persecuted in the second country, but they will now be without any supports they might have had in their country of origin. Furthermore, it is critical that there be a mechanism to address emergent cases or persecution outside processing time constraints of CIMM.

Janet Altshool, a representative from LEGIT Vancouver stated, "Internally displaced people are a huge issue I'm seeing. Yes, more funding is needed, and yes, there should

be a special category."[iv] This was echoed by Sharalyn Jordan, Board Chair of Rainbow Refugee who said,

> "We do need a specialized program for the internally displaced. Sexual orientation and gender identity and expression need to be considered in the vulnerability factors for that. This program should involve consultation and collaboration, resourced collaboration, with civil society organizations that have the know-how, the knowledge, and the connections to do this work."[v]

Without a mechanism to address these facts, members of this community will continue to lack adequate access to asylum. As this issue is growing globally for LGBTQ community members and others, the NDP again urgently recommends the government develop such a mechanism, echoing a recommendation made in the supplementary report on *Vulnerable Groups*.

Recommendation 2:

That, pursuant to Standing Order 108(1), the Committee establish a subcommittee of the House of Commons Standing Committee on Citizenship and Immigration to study the issue of internally displaced persons in order to determine how Canada can best respond to the increasing trend of internal displacement and the growing role of non-state actors in global displacement. That the Subcommittee be comprised of 7 members. That the Subcommittee report its findings to the Committee.

<u>Immigration Levels Plans and Targets</u>

During this study, witnesses were concerned that because refugees resettled through the pilot project are included under the current ceiling level that Canada accepts each year, encouraging an increase of LGBTQ refugees would mean a reduction in other refugee categories, many of whom are also facing urgent and life-threatening circumstances. Many of the witnesses appearing before the Committee also spoke to having the capacity to do more, should resources be made available for them to take further actions. Kimahli Powell, Executive Direction of Rainbow Railroad stated,

> "Rainbow Railroad is pleased to partner with national organizations such as Rainbow Refugee and Capital Rainbow Refuge. However, we also receive requests from rural communities across the country that have the heart and organizing capacity to sponsor individuals by need resources."[vi]

Sharalyn Jordan stated as well that, "There is clearly the capacity. You've heard about the fundraising capacity. There is desire to do more. We want to be given the opportunity."[vii]

Therefore it is of the opinion of the New Democratic Party that it is critical that the government go beyond the recommendation in the main report to "maintain or increase" Privately Sponsored Refugee (PSR) and Blende Visa Office Referred (BVOR) levels.

Recommendation 3:

That LGBTQ Refugees that are resettled through the Rainbow Refugee Assistance Program be counted outside of the sponsorship agreement holders (SAH) allocations and that the increased levels of LGBTQ refugees do not have a negative effect on other Canada immigration and refugee program levels.

Conclusion

The Committee heard loud and clear from witnesses appearing during this study that more needs to be done to protect individuals who are persecuted for their sexual orientation or gender identity. Fortunately, what was equally loud was that are there are credible, well established, knowledgeable, and globally connected organizations here today that are doing the work, and both want to and are able to do more. At this point in time, they simply lack the stable and adequate resources to expand their efforts. In addition to the recommendations contained in the main report, the New Democratic Party strongly urges the government to act on the three recommendations contained here. The humanitarian expertise and spirit in Canada is something that should be fostered and encouraged. Unleashing the potential of our community driven organizations will not only save more lives, but will create and build more sustainable and close-knit communities here. LGBTQ individuals abroad face unjustifiable persecution of their existence in far too many countries across the globe; fortunately, Canada is not one of them. Some of the witnesses appearing before the committee were themselves LGBTQ community members who came to Canada to rebuild their lives in safety. As the Committee heard, they are doing everything in their power to provide this opportunity to others, and to work with their organizations in those countries to end this discrimination. Allowing these organizations to do more will not only allow more individuals to find safety in Canada, but sow the seeds for the elimination of this discrimination abroad.

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[i] "2016-17 Report on Plans and Priorities – Part II", Immigration and Refugee Board of Canada, 2016 http://www.irb-cisr.gc.ca/Eng/BoaCom/pubs/Pages/rpp1617PartIII.aspx
[ii] CIMM, Evidence, 1st Session, 42nd Parliament, 20 March 2017, 16:05
[iii] CIMM, Evidence, 1st Session, 42nd Parliament, 15 May 2017, 17:10
[iv] CIMM, Evidence, 1st Session, 42nd Parliament, 15 May 2017 16:15
[v] CIMM, Evidence, 1st Session, 42nd Parliament, 3 May 2017, 17:15
[vi] CIMM, Evidence, 1st Session, 42nd Parliament, 15 May 2017, 15:40
[vii] CIMM, Evidence, 1st Session, 42nd Parliament, 3 May 2017, 17:00