

Canada: Discrimination and Violence against LGBTQI2S Persons with Disabilities



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Persons with Disabilities for
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1.0 Executive Summary

Founded in 1995, Egale Canada Human Rights Trust (Egale) works to improve the lives of lesbian, gay, bisexual, trans, queer, intersex, and Two Spirit (LGBTQI2S)¹ people in Canada and to enhance the global response to LGBTQI2S issues by informing public policy, inspiring cultural change, and promoting human rights and inclusion through research, education and community engagement. Egale’s vision is a Canada, and ultimately a world, without homophobia, biphobia, transphobia, and all other forms of oppression so that every person can achieve their full potential, free from hatred and bias.

The State party should ensure that its public policies and legislation related to persons with disabilities are explicitly attentive to the heightened risks, barriers, and lack of access LGBTQI2S persons with disabilities experience. Such policies and legislation should also ensure that sufficient resources and effective mechanisms are in place to strengthen methods of gathering empirical evidence. In particular, the State party should:

- (a) Explicitly address intersectional forms of oppression and inequality that directly affect persons with disabilities – including but not limited to race, ethnicity, sexual attraction, gender identity, class, and ability – such that public policy and legislation takes compounded experiences of marginalization and discrimination into account;
- (b) Take an inclusive approach to gender that goes beyond a binary understanding of male and female or man and woman when creating or implementing gender-based protections and measures for persons with disabilities, such that policies or legislation make explicit mention of trans, intersex, Two Spirit, non-binary, and gender diverse people;
- (c) Fund specialized housing initiatives that meet the specific needs of LGBTQI2S youth while also being accessible to persons with disabilities of all kinds;
- (d) Adopt a more expansive understanding of diverse gender identities in order to recognize how they interact with issues faced by persons with disabilities;

¹The acronym ‘LGBTQI2S’ is used here to reference all people with diverse gender identities and experiences of attraction (sexual orientation), including those who identify as lesbian, gay, bisexual, trans, Two Spirit, intersex, queer or questioning. The terms LGBTIQ2S, LGBTI, queer and sexual and gender minorities will be used interchangeably throughout this paper. However, the terms gay, lesbian, bisexual, transgender, intersex or Two Spirit people will be used to refer to specific identities and populations.

- (e) Make a concerted effort to produce studies that reflect the experiences of gender diverse and gender non-binary persons on a larger scale, especially focused on LGBTQI2S persons with disabilities;
- (f) Include LGBTQI2S persons in research pertaining to the justice system, alongside research on incarceration rates of racialized persons and persons with disabilities, in order to evaluate their experiences and the specific compounded barriers faced by those with intersecting marginalized identities;
- (g) Increase publicly funded legal assistance, support, and representation for LGBTQI2S persons with disabilities to access their rights as they are at a greater risk of experiencing violence and homelessness due to a lack of public services (such as housing, mental health or employment services) which support this intersection in marginality;
- (h) Ensure public resources that are intended for employment for persons with disabilities are used for that purpose and benefit of those persons with disabilities, particularly individuals with multiple intersecting marginalizations;
- (i) Increase federal and provincial social assistance provisions for persons with disabilities, especially LGBTQI2S persons with disabilities, so they can meet and go beyond Canada's low-income cut off, providing them with the resources to transcend poverty and homelessness;
- (j) Ensure that all large scale data collection includes and prioritizes the collection of information relevant to the intersections of Indigenous peoples with disabilities, children with disabilities, youth and adults living in health-related and penal institutions with disabilities, as well as LGBTQI2S youth and adults with disabilities;
- (k) Amend the *Immigration and Refugee Protection Act*, as it holds conflicting principles with regards to potential refugee claimants who are LGBTQI2S persons with disabilities. The discriminatory barriers this legislation creates for refugees and immigrants with disabilities is exacerbated by this conflict in admissible grounds and lack of acknowledgement of intersecting identities;
- (l) Collect national-level data which quantifies the proportion of persons with disabilities living in residential institutions versus those who access community-based services, with explicit attention paid to the portion of this population that identifies as LGBTQI2S; and

- (m) Ensure that persons with disabilities, including those who are LGBTQI2S, are not institutionalized, and make a concerted effort to close large institutions and cease the acceptance of new admissions to institutions.

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2.0 Intersectionality: LGBTQI2S Persons with Disabilities

- When considering the rights of persons with disabilities, it is crucial to meaningfully acknowledge that multiple identities (such as race, ethnicity, sexual attraction, gender, class, and ability) represent an individual's lived experience within international human rights discourse.
- An intersectional approach recognizes that the implementation of universality within the public sphere of policies, laws, and social services fails to acknowledge the manner in which individuals hold multiple marginalized identities, as many of these systems and institutions are often constructed by those with privileged identities that are removed from the experience of marginalization. This is especially the case for LGBTQI2S people with disabilities.
- This submission to the United Nations' Committee on the Rights of Persons with Disabilities acts as a supplement to the submission by the Canadian Civil Society Parallel Report Group. Taking an intersectional approach, Egale supports and upholds the information and recommendations within that submission, while presenting further recommendations here to emphasize that persons who identify with marginalized sexual attractions, gender identities, gender expressions, and abilities face compounded barriers to their rights.
- Specifically, LGBTQI2S communities experience similar barriers to equal access, representation, and protection as persons with disabilities in the following areas: human rights legislation; gender-based violence and harassment; access to justice; abuse; interactions with police; work and employment; housing and homelessness; and mental health.
- Canadian research pertaining to the prevalence of persons with disabilities who identify as LGBTQI2S is lacking.
- Although US based research findings cannot be directly transposed into a Canadian context, LGBTQI2S people in both the US and Canada experience similarly negative social climates and barriers to inclusion. For this reason, and due to the lack of Canadian research

of these intersecting communities, we must assume that LGBTQI2S persons with disabilities in Canada experience comparable rates of discrimination and inequality. Two US based research analyses demonstrate the significant rate of disability among LGBTQI2S people and communities:

- American lesbian, gay, and bisexual adults are more likely to have a disability than their heterosexual counterparts, even when controlled for age and other variables (Fredriksen-Goldsen, Kim, & Barkan, 2012).
- American sexual minority women with disabilities are more likely to have post-traumatic stress disorder than sexual minority women without disabilities (43% vs. 14%, respectively). Sexual minority women with disabilities also report more experiences of discrimination than their able-bodied peers (Eliason, Martinson, & Carabez, 2015).

RECOMMENDATION

The State party should ensure that its public policies and legislation related to the rights of persons with disabilities are explicitly attentive to the compounded barriers experienced by LGBTQI2S persons with disabilities. Such policies and legislation should also ensure that sufficient resources and effective mechanisms are in place to strengthen the gathering of empirical data. In particular, the State party should:

- (a) Explicitly address intersectional forms of oppression and inequality that directly affect persons with disabilities – including but not limited to race, ethnicity, sexual attraction, gender identity, class, and ability – such that public policy and legislation takes compounded experiences of marginalization and discrimination into account; and
- (b) Take an inclusive approach to gender that goes beyond a binary understanding of male and female or man and woman when creating or implementing gender-based protections and measures for persons with disabilities, such that policies or legislation make explicit mention of transgender, intersex, Two Spirit, non-binary, and gender diverse people.

3.0 Issues at the Intersection (Articles 5, 6, 13, 16, 27, 28, and 31)

Article 5: Equality & non-discrimination

Egale's vision is a Canada, and ultimately a world, without homophobia, biphobia, transphobia and all other forms of oppression so that every person can achieve their full potential, free from hatred and bias.

- As the Canadian Civil Society Parallel Report Group’s submission states, Indigenous persons with disabilities face discrimination in complex and intersecting ways, including experiencing higher rates of unemployment, lower rates of education, and socio-economic marginalization. And while the State body is beginning to make policy changes to address the issues Indigenous persons with disabilities face, there has been minimal progress made towards addressing the intersecting forms of discrimination faced by Two Spirit individuals as well as all LGBTQI persons with disabilities.
- Specifically, in a Canadian study on mental health needs among sexual minority women and trans persons, trans and bisexual participants were both twice as likely (2.4 times and 1.8 times, respectively) to report unmet needs for mental healthcare as compared to heterosexual and cisgender women. This study likewise demonstrates that sexual minority women and transgender people with unmet health needs, specifically untreated depression, are significantly associated with reports of systemic exclusion from healthcare (Steele et al., 2016).
- Additionally, Canada has limited specialized housing initiatives that meet the needs of LGBTQI2S individuals, especially youth who make up “25-40% of the youth homeless population, compared to only 5-10% of the general population” (Gaetz, Donaldson, Richter, & Gulliver, 2013).
- Effective access to healthcare and housing are areas where LGBTQI2S communities and persons with disabilities both face significant discrimination. For those LGBTQI2S individuals with disabilities, these forms of discrimination become compounded.

Article 6: Women and disabilities

- Gender diverse and non-binary persons confront various societal barriers and discrimination based on their gender identity that, while in some ways are similar to women and girls, are ultimately unique. While the State body is making progress in regards to including various gender identities in policies and legislation, it is imperative that a more expansive understanding of diverse gender identities is established in order to recognize how they interact with issues faced by persons with disabilities.
- For example, a higher percentage of gender diverse and Two Spirit individuals will experience physical and/or sexual violence than cisgender women (Scheim et al., 2013).
- Beyond Ontario, there is no concerted effort by the State party to produce empirical evidence that reflect the experiences of gender diverse and gender non-binary persons on a larger scale. Lacking are studies, both provincially/territorially and nationally, that

examine the lived experiences of persons with intersecting marginalized identities and the impact of discrimination, particularly as it relates to LGBTQI2S persons with disabilities.

Article 13: Access to Justice

- Persons with disabilities may require accommodations to ensure effective access to the justice system, whether as direct or indirect participants, in all legal proceedings including investigative and other preliminary stages. Likewise, LGBTQI2S persons, especially youth, encounter similar barriers to accessing justice due to barriers in understanding judicial proceedings and discrimination within the judicial system. For individuals at the intersection of these communities, these barriers become compounded.
- LGBTQI2S people and communities are disproportionately incarcerated within the US. An analysis by Meyer et al (2017) identified that 42.1% of women in prison and 35.7% of women in jail identify as sexual minorities while Grant et al (2011) identified that 21% of trans women and 10% trans men will be incarcerated in their lifetime, compared to just 5% of the general cisgender population.
- The State party must include LGBTQI2S persons in research examinations of the justice system, alongside research on incarceration rates of racialized persons and persons with disabilities, in order to evaluate their experiences and the specific compounded barriers they face.

Article 16: Freedom from exploitation, violence and abuse

- While there is no available data quantifying the violence which LGBTQI2S persons with disabilities face in Canada, it can be inferred that there is an increased risk of violence for people at the intersection of these identities because of the increased rates of violence among both populations individually.
- Gender diverse people also experience various forms of violence on the basis of gender identity and gender expression, with another Trans PULSE study revealing that 20% of all trans Ontarians “had been physically or sexually assaulted for being trans, and another 34% had been verbally threatened or harassed but not assaulted” (Bauer & Scheim, 2015).
- While not taking disability into account, studies highlight the increased risk of violence which LGBTQI2S people face in schools. Canadian studies report that 78% of trans students feel unsafe at school (Taylor et al., 2011) and 64% of LGB students report feeling unsafe at school compared to 15% of non-LGBT peers (Benibgui, 2010).

- Approximately 20% of police-reported hate crimes in 2013 were motivated by hatred of sexual orientation, and hate crimes motivated by sexual orientation were more likely to be violent (66%) than those motivated by hatred of race/ethnicity (44%) or religion (18%) (Allen, 2016).
- LGB women with disabilities are at increased risk of experiencing incidents of discrimination in comparison to their able-bodied peers (Eliason et al., 2015).
- As the submission by the Canadian Civil Society Parallel Report Group discusses, there is a lack of publicly funded legal assistance, support, and representation for women with disabilities to access their rights, keeping these women in poverty and preventing them from accessing supports. This marginalization is further compounded for women who are LGBTQI2S and gender diverse people, as they are at a greater risk of experiencing discrimination, violence and homelessness due to a lack of public services (such as housing, mental health or employment services) which support this intersection in marginality.

Article 27: Work and employment

- Gender diverse and gender non-binary persons face significant discrimination within the workplace. An Ontario-based study by the Trans PULSE Project found that, among trans Ontarians, 18% have been turned down for employment because they are trans, 13% have been fired for being trans, and 15% have faced lack of acceptance by their co-workers (Bauer et al., 2011).
- In addition to direct discriminatory experiences, trans people experience structural barriers to employment as systems are not designed for the possibility of trans experience. For example, nearly half of trans Ontarians are unable to obtain employment references or academic transcripts with their correct name, pronoun, and/or sex designation (Bauer & Scheim, 2015).
- LGBTQI2S individuals who are able to obtain employment experience heightened rates of violence and harassment in the workplace. Approximately 90% of transgender and gender variant employees in the US report experiencing workplace harassment and/or violence stemming from their gender identity and expression, and approximately 47% of LGB workers have experienced workplace harassment and/or violence based on their sexual attraction (Catalyst, 2015).
- While there is no available Canadian data which investigates the relationship between disability, LGBTQI2S identities and employment, it can be inferred that individuals who identify within this intersection experience compounded marginalization as both social

groups experience poverty at disproportionate rates (Bauer, Travers, Scanlon, & Coleman, 2012), as well as barriers to gaining and maintaining employment (Council of Canadians with Disabilities, 2013).

- As the submission from the Canadian Civil Society Parallel Report Group discusses, the Government of Canada allocates \$222 million annually to provincial and territorial governments for the development and delivery of programs and services to expand employment opportunities for persons with disabilities through Labour Market Agreements for Persons with Disabilities (LMAPDs). Though LMAPDs resources are intended for employment, the funding is often reallocated to health, leaving employment services for persons with disabilities with diminished resources.

Article 28: Adequate standard of living and social protection

- LGBTQI2S individuals experience homelessness and housing instability at significantly higher rates than their heterosexual and cisgender counterparts. This representation is particularly high among youth, as LGBTQI2S youth represent between 25-40% of homeless youth and trans and gender diverse people are two times more likely to experience poverty and homelessness than the general population (Rain City Housing, 2017). These figures are assumed to be even higher, as many youth who identify as LGBTQI2S fear for their safety if they disclose information related to identity and/or attraction upon requesting housing support (Gaetz, Dej, Richter, & Redman, 2016).
- Persons at the intersection of disability and LGBTQI2S identities are particularly vulnerable to homelessness and housing instability as there is a lack of services which are both accessible and inclusive of diverse sexual attractions and gender identities.
- LGBTQI2S communities and persons with disabilities often live in poverty, well below the income cut-off (LICO). According to one Ontario based analysis, 34% of trans individuals live in poverty with household incomes below the LICO (Bauer et al., 2012). These rates are similar to persons with disabilities with approximately 20% living below the LICO (Council of Canadians with Disabilities, 2013).
- As the submission by the Canadian Civil Society Parallel Report Group discusses, the current federal and provincial social assistance provisions for persons with disabilities is insufficient to meet the LICO, even for those who are able to work part-time. This is similarly the case for LGBTQI2S people and communities. As these social assistance programs fail to meet the cost of living, individuals lack the resources to transcend poverty and homelessness.

Article 31: Statistics and data collection

- While Canada has an established federal data collection body (Statistics Canada), a federal human rights body (Canadian Human Rights Commission), as well as human rights commissions for each individual province and territory, concerns remain about the lack of data – particularly disaggregated data – around the experiences of people who have intersectional identities.
- As the submission from the Canadian Civil Society Parallel Report Group discusses, the federal government has committed to the Data and Information Strategy (DIS) in 2010 regarding the collection of data concerning Canadians with disabilities and these questions have been used in the collection of Census data, the General Social Survey, Canadian Income Survey, and in the 2012 Canadian Survey on Disability as well as the upcoming 2017 Canadian Survey on Disability. However, this data fails to capture the intersections of Indigenous peoples with disabilities, children with disabilities, youth and adults living in health-related and penal institutions with disabilities, as well as LGBTQI2S youth and adults with disabilities.

RECOMMENDATIONS

The State party should ensure that its public policies and legislation pay explicit attention to the intersecting experiences of LGBTQI2S persons with disabilities in the social contexts where they face significant barriers, discrimination, and violence. In order to implement effective legislation, the State party should make it a priority to support further research on LGBTQI2S persons with disabilities within a Canadian context and throughout all provinces and territories. Moreover, the State party should:

- (a) Fund specialized housing initiatives that meet the specific needs of LGBTQI2S youth while also being accessible to persons with disabilities;
- (b) Adopt a more expansive understanding of diverse gender identities in order to recognize how they interact with issues faced by persons with disabilities;
- (c) Make a concerted effort to produce empirical evidence that reflect the experiences of gender diverse and gender non-binary persons on a larger scale, especially focused on LGBTQI2S persons with disabilities;

- (d) Include LGBTQI2S persons in research investigations of the justice system, alongside research on incarceration rates of racialized persons and persons with disabilities, in order to evaluate their experiences and the specific compounded barriers faced by those with intersecting marginalized identities;
- (e) Increase publicly funded legal assistance, support, and representation for LGBTQI2S persons with disabilities to access their rights as they are at a greater risk of experiencing violence and homelessness due to the lack of public services (such as housing, mental health or employment services) which support this intersection in marginality;
- (f) Ensure public resources that are intended for employment for persons with disabilities are used for that purpose and benefit those persons with disabilities who are marginalized in other ways;
- (g) Increase federal and provincial social assistance provisions for persons with disabilities, especially LGBTQI2S persons with disabilities, so they can meet and go beyond Canada's low-income cut off, providing them with the resources to transcend poverty and homelessness; and
- (n) Ensure that all large scale data collection includes and prioritizes the collection of information relevant to the intersections of Indigenous peoples with disabilities, children with disabilities, youth and adults living in health-related and penal institutions with disabilities, as well as LGBTQI2S youth and adults with disabilities.

4.0 Issues with Conflicting State Policies (Articles 18, 19 and 21)

Article 18: Liberty of movement and nationality

- The federal *Immigration and Refugee Protection Act* (S.C. 2001, c. 27) is the guiding legislation that shapes Canadian immigration standards. Within this legislation, there are conflicting policies which are particularly problematic when intersectional identities, specifically LGBTQI2S identities and persons with disabilities, are considered.
- Section 96 of the *Immigration and Refugee Protection Act* defines the eligibility criteria for Convention Refugees as a “person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, (a) is outside each of their countries of nationality and is unable or, by

reason of that fear, unwilling to avail themselves of the protection of each of those countries; or (b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country” (Immigration and Refugee Protection Act, 2001).

- Based on a ruling by the Supreme Court of Canada, reference to “membership in a particular social group” includes the grounds of sexual orientation (Supreme Court of Canada, 1993) and gender identity (*Hernandez v. Canada (Minister of Citizenship and Immigration)*, 2007).
- Section 38 of the *Immigration and Refugee Protection Act*, which highlights grounds that would make individuals inadmissible to immigrate to Canada, states that a “foreign national is inadmissible on health grounds if their health condition might reasonably be expected to cause excessive demand on health or social services” (Immigration and Refugee Protection Act, 2001). This clause directly impacts the admissibility of persons with disabilities, as the *Act* frames health conditions as a demand on service provision.
- Therefore, the *Immigration and Refugee Protection Act* holds conflicting principles with regards to potential refugee claimants who are LGBTQI2S persons with disabilities. The discriminatory barriers this legislation creates for refugees and immigrants with disabilities is exacerbated by this conflict in admissible grounds and lack of acknowledgement of intersecting identities.

Article 19: Living independently and being included in the community

- Historically, LGBTQI2S identities have been defined by the American Psychiatric Association (APA) through the Diagnostics and Statistical Manual (DSM) as diagnoses and pathologies. This connects to a larger history of the institutionalization of those pathologized by the DSM, including LGBTQI2S people (Drescher, 2015).
- At present, there is no available National-level data which quantifies the proportion of those with disabilities living in residential institutions versus those who access community-based services, let alone the proportion of this population which identifies as LGBTQI2S. This lack of available data highlights the institutional oversight by the State party.
- As the submission by the Canadian Civil Society Parallel Report Group highlights, there is some data provincially, but it is not consistently available in all provinces, leaving large gaps in knowledge which could otherwise inform public policy.

- While empirical evidence is not available, we can infer that there is an overrepresentation of LGBTQI2S people with disabilities in residential institutions based on their increased prevalence of having a disability (Fredriksen-Goldsen et al., 2012), overrepresentation in prisons and jails (Meyer et al., 2017), and increased experiences of homelessness (Gaetz et al., 2016).
- The Canadian Civil Society Parallel Report Group submission discusses that support within communities and the social participation as a result of this support are key areas of concern for individuals with disabilities across Canada. We support and uphold all of the recommendations stated in the submission by the Canadian Civil Society Parallel Report Group.

RECOMMENDATION

The State party should ensure that any policies or legislation that could affect or apply to both LGBTQI2S communities and persons with disabilities are amended to remove any conflicting principles which inconsistently recognize the rights of marginalized groups and fail to acknowledge persons with intersecting identities. In particular, the State party should:

- (a) Amend the *Immigration and Refugee Protection Act*, as it holds conflicting principles with regards to potential refugee claimants who are LGBTQI2S persons with disabilities. The discriminatory barriers this legislation creates for refugees and immigrants with disabilities is exacerbated by this conflict in admissible grounds and lack of acknowledgement of intersecting identities;
- (b) Make an effort to collect national-level data which quantifies the proportion of persons with disabilities living in residential institutions versus those who access community-based services, which explicit attention paid to the portion of this population that identifies as LGBTQI2S; and
- (c) Ensure that persons with disabilities, including those who are LGBTQI2S, are not institutionalized, and make a concerted effort to close large institutions and cease the acceptance of new admissions to institutions.

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