



Submission by ILGA North America to the UN Human Rights Committee

The State party should ensure that its public policies are such as to ensure that sufficient resources and mechanisms are in place for the implementation of its legislative framework to combat discrimination at all levels of the State. It should also conduct extensive campaigns to educate and sensitize the general public and to provide training for members of the public sector that will promote acceptance and respect for diversity. In particular, the State party should:

- (a) Strengthen its strategies to fight against crimes motivated by homophobia and transphobia;*
- (b) Implement criminal law provisions aimed at combating homophobic and transphobic crimes, punish perpetrators with appropriate penalties and facilitate the reporting procedure for hate crimes;*
- (c) Define incitement to violence on grounds of sexual orientation or gender identity and expression as a criminal offence;*
- (d) Introduce a mechanism to monitor cases of violence against members of aboriginal communities who are lesbian, gay, bisexual, transgender, intersex, queer or two spirit persons and undertake all necessary measures to prevent those cases, prosecute the perpetrators and compensate the victims;*
- (e) Strengthen its efforts to provide effective protection against harassment, violence and discrimination based on sexual orientation and gender identity and expression within the educational system, including through awareness-raising campaigns and education of public officials;*
- (f) Review its national legislation to ensure that discrimination on the grounds of gender identity and expression is prohibited;*
- (g) Amend legislation and regulation with a view to ensuring that: (1) any medical treatment should be provided in the best interests of the individual with his/her consent, should be limited to those medical procedures that are strictly necessary, and should be adapted to his/her own wishes, specific medical needs and situation; (2) any abusive or disproportionate requirements for legal recognition of a gender reassignment are repealed;*
- (h) Ensure that the families of same sex couples are granted the same rights accorded to those of heterosexual couples, in particular in the context of adoption and assisted reproductive technology.*

1. Hate crimes (Articles 2 and 26)

- Hate crimes directed toward Canada's lesbian, bisexual, trans, intersex, queer identified and 2 Spirited persons¹ (LGBTQI2S) are a serious, yet often unknown and poorly understood problem within Canada
- According to Statistics Canada, between 2010 and 2011, hate crimes motivated by sexual orientation increased by 10%, representing 18% of all hate crimes in Canada
- The rise in hate crimes motivated by sexual orientation stands in sharp contrast to other types of hate crimes, which decreased in the last reporting period
- For example, hate crimes motivated by race or ethnicity decreased by 4%, and those motivated by religion decreased by 17%
- The most likely hate crimes to involve violent offences were those motivated by sexual orientation (65%)
- Victims of sexual-orientation motivated hate crime tended to be younger, with 50% under age 25
- The increasing rates of violent hate crimes directed towards LGBTQI2S persons has received little response from the Federal government

Source: Allen, Mary, and Jillian Boyce. "Police-reported Hate Crime in Canada, 2011." *Juristat* (July 11, 2013). <http://www.statcan.gc.ca/pub/85-002-x/2013001/article/11822-eng.htm>.

Recommendation:

The State party should ensure that its public policies are such as to ensure that sufficient resources and mechanisms are in place for the implementation of its legislative framework to combat discrimination at all levels of the State. It should also conduct extensive campaigns to educate and sensitize the general public and to provide training for members of the public sector that will promote acceptance and respect for diversity. In particular, the State party should:

- (a) Strengthen its strategies to fight against crimes motivated by homophobia and transphobia;*
- (b) Implement criminal law provisions aimed at combating homophobic and transphobic crimes, punish perpetrators with appropriate penalties and facilitate the reporting procedure for hate crimes;*
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2. Discrimination and violence against LGBTQI2S members of the aboriginal community (Articles 2 and 26)

- Aboriginal Canadians who identify as LGBTQI2S face unacceptably high levels of violence and discrimination.
- A report produced by the National Aboriginal Health Organization (NAHO) found LGBT and Two Spirited Aboriginal youth are two times more likely to face assault than heterosexual Aboriginal youth.
- Homophobia often drives youth off of reservations and from rural communities into the city, where they may or may not have support systems in place
- These youth are often in search of the acceptance they were unable to find in their home communities. Without proper resources and support it is easy to become street-involved and become part of high-risk communities.

Recommendation:

The State party should introduce a mechanism to monitor cases of violence against members of aboriginal communities who are lesbian, gay, bisexual, transgender, intersex, queer or two spirit persons

¹ People of the two spirits are indigenous North Americans who are traditionally respected in their communities and identify as LGBTI. Two-spirited peoples are known to play key social roles in their communities.

and undertake all necessary measures to prevent those cases, prosecute the perpetrators and compensate the victims;

3. Violence, harassment and discrimination in schools (Articles 24 and 26)

- LGBTQI2S students face high levels of discrimination in Canadian schools
- In the first national survey of its kind, Egale Human Rights Trust, Canada's National LGBTI organization, found that 70% of participating students reported hearing homophobic comments every day in schools
- 74% of trans students, 55% of sexual minority students, and 26% of non-LGBTQI2S students reported having been verbally harassed about their perceived sexual orientation or gender expression
- More than one in five (21%) LGBTQI2S students reported being physically harassed or assaulted due to their perceived sexual orientation or gender identity
- Almost 64% of LGBTQI2S students reported feeling unsafe in Canadian schools*
- These deeply concerning statistics inspired our Safe Schools Campaign, and underscored that safe schools must be a component of any strategy to improve LGBTQI2S rights
- The Government should introduce multi-faceted campaigns, such as those created by Egale, include teacher training sessions, working with school boards and provincial/territorial ministries to create safer schools and more inclusive policies
- In several jurisdictions, public opinion hostile to LGBTQI2S persons has led political figures, as well as education trustees, to restrict our access to provide resources for LGBTQI2S students and staff
- Elsewhere, some provinces and territories claim that a problem does not exist

**Source: Taylor, et al (2011). Every class in every school: The first national climate survey on homophobia, biphobia, and transphobia in Canadian schools. Final report. Toronto, ON: Egale Canada Human Rights Trust. Situation in Canadian Schools*

Recommendation:

The State Party should strengthen its efforts to provide effective protection against harassment, violence and discrimination based on sexual orientation and gender identity and expression within the educational system, and launch a campaign to raise awareness amongst the public officials and the general population with a view to combating social prejudice.

4. Discrimination against trans persons (Articles 2, 16, 17 and 26)

- Protections for trans people in Canada remain limited and vary by jurisdiction
- Unlike other minority groups, transgender, transsexual, gender-variant and Two Spirit Canadians do not have protections under the Charter of Rights and Freedoms because they are not currently recognized as an identifiable group; nor is gender identity and expression protected in the Canadian Human Rights Act.
- Bill C-279 would amend the Canadian Human Rights Code to include gender identity and expression as a prohibited ground of discrimination, however the bill remains stalled in the Canadian Senate
- Greater success at the provincial/territorial level: Manitoba, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Ontario, and Prince Edward Island include gender identity and expression within their human rights legislation Trans Inclusion
- Canadians identifying as trans living outside of Montreal, Toronto, and Vancouver have insufficient access to knowledgeable medical specialists
- Trans people are currently required to undergo sex reassignment surgery (SRS) before they are legally able to change the sex listed on their passports; a similar criterion used in the provinces for individuals wishing to change the sex designation on their birth certificates (Ontario excluded)

- By requiring trans people to undergo SRS prior to changing official documents, Canadian jurisdictions violate the inherent right of trans people to determine their own identity for themselves without undue state-imposed restrictions and regulations
- The legal and legislative barriers faced by trans persons often result in limited access to meaningful employment, with many turning to sex-work as a means for subsistence

Recommendation:

The State party should:

- Review its federal and provincial legislation to ensure that discrimination on the grounds of gender identity and expression is prohibited*
- Amend legislation and regulation with a view to ensuring that: (1) any medical treatment should be provided in the best interests of the individual with their consent, should be limited to those medical procedures that are strictly necessary, and should be adapted to their own wishes, specific medical needs and situation; (2) any abusive or disproportionate requirements for legal recognition of a gender reassignment are repealed.*

5. Family and reproductive rights (Articles 2, 17 and 23)

- Same-sex couples in Canada face unique forms of discrimination when attempting to found families
- Current laws privileges heterosexual couples if parents choose to employ assisted reproductive technology (ART); same-sex couples face various administrative processes, legal uncertainties, and financial costs, associated with adoption procedures not faced by heterosexual couples
- MSM are effectively prevented from accessing ART because they are forbidden to donate sperm as a result of Health Canada policies

Recommendation:

The State Party should ensure that the families of same sex couples are granted the same rights accorded to those of heterosexual couples, in particular in the context of adoption and assisted reproductive technology.

6. Wider context of discrimination against LGBTQI2S persons

a. Homelessness: Research Findings

- LGBTQI2S youth are greatly overrepresented in Canada's homeless population
- In Toronto, 21% of the city's homeless youth identify as LGBTQ (Toronto's Street Needs Assessment, 2013); we expect that similar levels of homelessness exist in other Canadian cities
- These youth consistently report feeling trepidation at accessing existing services for fear of victimization Homelessness
- There are many causes associated with homelessness, though many are unique to LGBTQI2S Youth
- For example, many youth are "kicked out" because of their sexual orientation or gender identity and expression
- Youth from outside major urban centres are often attracted to urban gay scenes; and trans youth may come to seek supportive medical practitioners and/or surgical assessment
- A lack of inclusion in schools is also a contributing factor: until schools become more inclusive, youth will continue to drop out, and will struggle to find meaningful employment with limited educational credentials
- A large swathe of the shelter system remains homophobic
- Canada is in urgent need of a national housing strategy that explicitly recognizes and accommodates the needs of LGBTQI2S Youth.

b. LGBTQ2S Youth Suicidality

- Homelessness and familial rejection take an excruciating toll on mental health and overall wellbeing. According to Statistics Canada, suicide is the second leading cause of death among Canadians aged 15-24 (Statistics Canada, 2008)
- Every year, an average of 500 Canadian youth take their own lives (Statistics Canada, 2008)
- We know, moreover, that suicidal ideation and behaviour are disproportionality prevalent among LGBTQ youth in comparison to their non-LGBTQ peers
- For example, a recent Ontario study of trans people revealed that 43% of respondents had made previous suicide attempts (Trans Pulse Ontario, 2010)

c. Suicidality

- Recent studies conclude that the relationship between bullying and suicide is stronger for lesbian, gay, and bisexual youth than for their heterosexual peers (Kim and Leventhal, 2008)
- A study focused on Manitoba and Northwestern Ontario revealed that 28% of transgender and Two Spirit people had attempted suicide at least once (Taylor, 2007)
- 47% of trans youth in Ontario thought about suicide, and 19% had attempted suicide in the proceeding year (Scanlon et al, 2010) Suicidality
- It is imperative that the Canadian government develop a national strategy to combat youth suicide that explicitly recognizes the unique challenges faced by LGBTQI2S persons
- In order to help further research and awareness on this important topic, Egale is working closely with Ontario Coroners to develop a youth suicide protocol that includes specific measures to consider the potential that identity and expression may, or may not have, been implicated as a contributing factor.

d. Seniors

- Many LGBTQI2S seniors came into adulthood and maturity having internalized the belief that they are inherently sick, deviant, abnormal, or sinful, which has had profound and lasting effects
- In 2010, a 77 year old LGBTQ Canadian, born in 1933, would have been: - 36 when sodomy was partially decriminalized in 1969 - 40 when the American Psychiatric Association de-listed homosexuality as a mental illness in 1973 - 48 when the first cases of HIV/AIDS were discovered in 1981 - 62 when the Supreme Court of Canada constitutionally banned discrimination based on sexual orientation in Egan v. Canada (1995) - 72 years old when same-sex marriage became federal law in 2005 Seniors
- This history has a profound effect on baseline mental health, family connectedness, kinship networks, economic security, and sense of self worth
- Our research has revealed that many LGBTQI2S seniors fear accessing home, community, and long-term care
- LGBTQI2S seniors are five times less likely to use seniors' services than the population at large. Homophobia continues to be a daily reality for many seniors living in long-term care facilities and elders are often forced to return to the closet when seeking care.

ILGA North America Co-Chairs

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Source: Egale Canada Human Rights Trust

ILGA North America is a region of ILGA (the International Lesbian, Gay, Bisexual, Trans and Intersex Association), a world-wide network of local and national organizations dedicated to achieving equal rights for LGBTI people everywhere. Founded in 1978, ILGA enjoys consultative status at the United Nations where it speaks and lobbies on behalf of 1200 members organisations.