

The 2015 Federal Election

Policy Questionnaire

Part 1: Domestic Laws, Policies, and Programs

1. What is your position on gender identity protections in the Canadian *Human Rights Act* and *Criminal Code*?

Background

Bill C-279, otherwise known as the Gender Identity Bill, was delayed and ultimately failed to pass through the Senate during the last parliamentary session. Previously, the bill passed the House of Commons in March, 2013 with cross party support. The bill proposed to amend the *Canadian Human Rights Act* and *Criminal Code* to include gender identity as a protected ground of discrimination. More specifically, the bill would accomplish three things:

- It would amend the prohibited grounds of discrimination under the *Canadian Human Rights Act*, explicitly making it illegal to discriminate on the basis of gender identity
- It would amend the *Criminal Code*, making it illegal to advocate genocide, or willfully and publicly incite hatred on the basis of gender identity; and
- It would amend the *Criminal Code*, requiring judges to increase a sentence for a crime when there is evidence that the crime was motivated by bias, prejudice or hatred on gender identity

2. What is your position in the introduction of an “X” designation in Canadian passports?

Background

Most applicants seeking to change the sex designation on their passport to align with their gender identity must first undergo gender-affirming surgery. Access to, and the eligibility requirements for, publicly-funded gender-affirming surgery vary widely across the country.¹ In many jurisdictions, wait times to receive an initial assessment can be well over a year.² Moreover, many Canadians identifying as transgender do not wish to pursue surgical transition. Indeed, “surgical transition is a matter of individual choice, when accessible, and should not be misinterpreted as necessary to legitimize one’s gender identity.”³

International legal requirements for machine readable travel documents permit the use of “X” designated passports. The International Civil Aviation Organization (ICAO), a specialized UN agency responsible for global aviation security, requires that a passport holder be identified by one of three sex initials – “M” “F” or “X,” on the travel document.⁴ However, ICAO regulations do not require passport holders to undergo surgical transition to change their sex designation.

Recently, Australia and New Zealand have introduced changes to their sex identifiers on passports to be more representative of transgender citizens. In both countries, a third sex designation of “X” (intersex, or indeterminate/unspecified) has been added as an alternative to “M” (Male) or “F” (Female) identifiers. In New Zealand, applicants are required to complete a statutory declaration indicating which sex identifier they wish displayed on their passport.⁵ In Australia, applicants seeking to change their sex designation in

¹ Gerald Hunt and Michael Pelz, “Transgender Rights in Canada: Legal, Medical, and Labour Union Activities,” In Thomas Köllen ed, *Sexual Orientation and Transgender Issues in Organization – Global Perspectives on LGBT Workforce Diversity* (Vienna: Springer, forthcoming)

² *Ibid.*

³ Egale Canada, *Policy Paper: “Sex Inscriptions” on the Canadian Passport*. (Toronto: Egale Canada, 2013), http://egale.ca/wp-content/uploads/2013/01/extra_1558.pdf

⁴ *International Civil Aviation Organization*, “Machine Readable Travel Documents,” Document 9303, Part 3. Vol. 1, 3d ed. (Montreal, QC: International Civil Aviation Organization, 2008); Canada is a party to the ICAO and must abide by its regulations.

⁵ Department of Internal Affairs/Te Tari Taiwhenua (New Zealand), *Information about Changing Sex/Gender Identity*; see: <https://www.passports.govt.nz/Transgender-applicants>

their passports, or to select an “X” designation, are required to provide a letter from a medical practitioner. In neither country is gender-affirming surgery required.⁶

3. What is your position on the status of the Court Challenges Program?

Background

The Court Challenges Program was established by the federal government to provide funding for groups and individuals seeking to advance their equality and language rights under the *Canadian Charter of Rights and Freedoms*. The Program was important to enable disadvantaged communities to further their constitutional right to equality and to enable all Canadians to have equal access to justice. In 2006, the federal government cancelled the Court Challenges Program.

4. What is your position on age of consent laws in Canada?

Background

Canadian age of consent laws currently discriminate against Canada’s GBT community. Under Canadian Criminal law, the age of consent for vaginal intercourse is 16 years old whereas the age of consent for anal intercourse is 18 years of age. Furthermore, for anal intercourse, both the younger and older party are liable for an offence, whereas, for vaginal intercourse, only the older party can be charged. This inconsistency was challenged in the Ontario Court of Appeal in 1995, which ruled that the unequal age of consent violated the anti-discrimination clause guaranteed in the *Charter*. The Quebec Court of Appeal reached a similar decision in 1998, as did Alberta in 2002 and British Columbia in 2003. Nevertheless, the relevant section remains in the *Criminal Code*.

While the law can no longer be applied in Quebec, Ontario, Alberta, and British Columbia, it can still be exercised in other jurisdictions. Moreover, the Parliament of Canada’s failure to abrogate a provision repeatedly signaled to be discriminatory sends a negative message to the LGBT community.

5. Do you support the Federal Court ruling of July 23, 2015 which found the Designated Country of Origin (DCO) provisions unconstitutional?

Background

⁶ Department of Foreign Affairs and Trade (Australia), *Sex and Gender Diverse Passport Applicants*; see <https://www.passports.gov.au/web/sexgenderapplicants.aspx>:

In 2012, the passage of Bill C-31 made significant changes to Canada's immigration processes. Among the many changes brought in by Bill-C31, the introduction of Designated Countries of Origin (DCOs) is particularly worrisome for sexual and gender minority refugee applicants. DCOs are chosen by the Minister of Immigration and Citizenship, with the requirement that countries on the list are democratic states which respect human rights and safeguard freedom of speech and assembly.⁷ Applicants from DCOs see their refugee claims fast-tracked; usually heard within 30 days as opposed to the usual 45 days. In addition, applicants from DCO's do not have the option to appeal IRB decisions to the Refugee Appeal Division (RAD).⁸

A key challenge is that many countries that are ostensibly democratic (*and* on the DCO list) such as Mexico or Romania, have poor track records when it comes to protecting LGBT citizens. Formal democratic institutions and human rights protections do not necessarily equate to equitable treatment for LGBT persons.

The vast majority of LGBT applicants are forced to hide their identities in their country of origin, and face tremendous difficulty assembling documentation and convincing IRB officials of their sexual orientation or gender identity – particularly in the condensed timeframe if their country is on the DCO list.

In July 2015 the Federal court ruled DCO provisions unconstitutional.

6. Do you support enhanced LGBTQ-inclusivity training for Immigration and Refugee Board (IRB) and Canada Border Services Agency Employees (CBSA)

Background

A recent study on the experiences faced by new immigrants to Canada observed that enhanced LGBTQ-inclusivity training for IRB and frontline CBSA staff is necessary. For many applicants, including those from DCO countries which face shorter processing times, disclosing sexuality or gender variance is a difficult and time-consuming process. Often, hiding non-traditional identities is a learned and internalized survival strategy in their country of origin. LGBTQ inclusivity training, with a particular focus on *why* disclosing LGBTQ identities is a sensitive process for many applicants, will help frontline staff with their questioning, and empower them to recognize and support legitimate asylum claims.⁹

⁷ The current list of Designated Countries of Origin is available at: <http://www.cic.gc.ca/english/refugees/reform-safe.asp>

⁸ As highlighted in the Envisioning Global LGBT Human Rights Project, the UN High Commissioner for Human Rights (UNCHR) has stated that “appeal provisions are vital to safe country frameworks in states’ refugee law, specifically because of the generalized nature of safe country designations.” (UNHRC, 1991). See Envisioning Global LGBT Human Rights, *Envisioning LGBT Refugee Rights in Canada: The Impact of Canada’s New Immigration Regime*, (Toronto: York University, 2014), 16

⁹ See *Envisioning Report*.

7. Do you support a national housing strategy for LGBTQ youth?

Background

LGBTQ youth are significantly over-represented in Canada's homeless population. National and international studies have indicated between 20-40% of homeless youth identify as LGBTQ. The most recent City of Toronto Needs Assessment indicates that 21% of Toronto's homeless youth identify as LGBTQ, as compared to 2-4% of the general population.¹⁰ Previous research has indicated that approximately 30,000 Canadian youth access shelter services every year, meaning that over 6000 of those (assuming 20% identify as a sexual or gender minority), are LGBTQ.¹¹ Other jurisdictions, including in the United States and the UK, have begun developing housing strategies explicit to the needs of LGBTQ youth.¹² LGBTQ youth homelessness has also been acknowledged as a serious problem in Australia.¹³

8. What is your opinion on the advocacy ban for charities in Canada?

Background

Many registered charitable organizations in Canada are deeply concerned about increasingly politicized tax-audits conducted by the Canadian Revenue Agency (CRA). Under the *Income Tax Act* (ITA),

¹⁰ 2013: Street Needs Assessment Results (Toronto: City of Toronto, 2013), 24, <http://www.toronto.ca/legdocs/mmis/2013/cd/bgrd/backgroundfile-61365.pdf>.

¹¹ A. Smith et al., *A Picture of Health: Highlights from the 2008 BC Adolescent Health Survey* (Vancouver, BC: McCaery Centre Society, n.d.), 12.

¹² For information about a housing project supported by the U.S. Department of Housing and Urban Development in Harris County, Texas and Hamilton County, Ohio, see: "Preventing Homelessness in Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) Youth. *American Institutes for Research*, February 2015: <http://www.air.org/project/preventing-homelessness-lesbian-gay-bisexual-transgender-and-questioning-lgbtq-youth##durso>; See also: <https://truecolorsfund.org/2015/02/10/lgbtq-prevention-initiative/>; In the UK, see Brighton and Hove's *Housing Strategy 2015*: <http://www.brighton-hove.gov.uk/content/housing/general-housing/housing-strategy-201>; Lewisham's Youth Homelessness Prevention Strategy: <https://www.lewisham.gov.uk/mayorandcouncil/aboutthecouncil/strategies/Documents/SecureFuturesYHStrategy.pdf>; See also Stonewall Housing: <http://www.stonewallhousing.org/support.html>

¹³ "See, Violence, Harassment and Bullying and Homelessness", *Australian Human Rights Commission*: <https://bullying.humanrights.gov.au/violence-harassment-and-bullying-and-homelessness#Heading129>

registered charities are permitted to allocate up to 10% of their resources to political activities (such as lobbying or advocating changes to current legislation).

The work of charities greatly strengthens Canadian democracy, through the provision of timely public policy advice, and raising awareness of important issues and challenges facing our country.¹⁴ An open letter signed by eighteen major registered charities observes that “...the extent to which elections are informed and motivated by citizens engaging with each other on issues they care about is an indicator of the overall health of our political system.”¹⁵ Egale’s recent calls for a national suicide prevention strategy for LGBTQ youth, greater legal protection for transgender citizens, and a more robust Canadian commitment to strengthening human rights for LGBT persons abroad are examples of our contributions to public policy debates.

However, the dramatic rise in the number of politicized audits targeting environmental, public policy, and human rights organizations critical of government policy has led to ‘an advocacy chill.’ In particular, “charities have reported taking greater caution in their communication, and voluntarily reducing their public profile for fear of being targeted for an audit.”¹⁶ Self-censorship for fear of a politicized tax-audit is a hallmark of non-democratic regimes, and has a no place in Canada.¹⁷

Indeed, Canada was recently censured by the UN Human Rights Committee for failing to uphold the provisions of the *International Covenant on Civil and Political Rights* (ICCPR) by targeting charities promoting human rights.¹⁸

¹⁴ See “Open Letter: Enhancing the role of charities in public policy debates in Canada, request for a platform commitment,” February 10, 2015; available at: <http://voices-voix.ca/en/news/open-letter-enhancing-role-charities-public-policy-debates-canada-request-platform-commitment>

¹⁵ *Ibid.*

¹⁶ A research backgrounder published by *Voices-Voix* notes that there are currently 52 audits of registered charities in Canada, and that the CRA’s budget to investigate charities has increased substantially. See: <http://voices-voix.ca/en/facts/profile/canadian-charities-and-canada-revenue-agency>

¹⁷ Over 400 academics recently signed an open letter responding to the audit of the Canadian Centre for Policy Alternatives, a leading national think-tank. See Dean Beeby, “Academics’ open letter calls for moratorium on political tax audits,” *CBC News*, September 14, 2014; <http://www.cbc.ca/news/politics/academics-open-letter-calls-for-moratorium-on-political-tax-audits-1.2765967>

¹⁸ Canada was criticized by the UN Human Rights Committee in its Concluding Observations (114th Session) of the state’s compliance with the *International Covenant on Civil and Political Rights* (ICCPR). To see the concluding observations, visit: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16262&LangID=E>

Part 2: International Engagement

Q. Do you support Canada's playing a larger role, financially, in supporting LGBT human rights globally?

Background

According to media reports, approximately \$900,000 was distributed to LGBT organizations globally through Canadian foreign assistance; often via the Canada Fund for Local Initiatives (CFLI). However, this amount is significantly less than many of Canada's funding partners. Total United States foreign aid in support of LGBT human rights has reached approximately US\$23 million annually, while many European national development agencies provide millions of Euros annually through dedicated funds, including principally The Netherlands, Sweden, Norway, and, as a non-state body, the European Union.¹⁹

Q. What role do you envision Canadian Embassies and High Commissions playing in support of human rights for LGBT persons? Are they in need of additional specific LGBT advocacy resources?

Background

Canadian Embassies and High Commissions are key partners in strengthening sexual and gender minority rights in countries where LGBT rights are under attack or poorly understood. Behind the scenes engagement with elected officials, as well as outreach and partnership with local LGBT communities and organizations is an effective strategy to advance human rights for LGBT persons. Such an approach represents the best of Canadian diplomacy.

However, despite the best efforts of many diplomats, our Embassies and High Commissions often lack the resources and tools to develop robust LGBT human rights promotion strategies and guidelines. In some cases, frontline embassy staff are unfamiliar with the legal and social environment facing LGBT persons at their posting – or worse, are homophobic. Dedicated training for DFATD staff as well as easily accessible resources can help alleviate these challenges and make Canada's commitment to LGBT rights both more tangible and effective.

¹⁹ *Non-Paper*, Global LGBTI Human Rights Donors' Conference, Washington DC, 2014; European figures are estimates.

Q. Do you support the appointment of dedicated LGBT policy advisors at DFATD?

Background

In recent years, there has been no more than one dedicated official working on LGBT rights at the Department of Foreign Affairs, Trade and Development (DFATD), leaving sexual and gender minority rights programming scattered across multiple portfolios and divisions, and with limited bandwidth.²⁰ A group of dedicated policy advisors could serve as a central site for information, program development, and outreach to external stakeholders, such as national and international LGBT civil society organizations, and international human rights bodies, including the UN Human Rights Council and the Organization of American States (OAS) Rapporteurship on LGBTI rights. In addition, the team of policy advisors can effectively monitor global developments in LGBT human rights, update Canadian missions as necessary, and ensure accurate and comprehensive LGBT-specific travel advice for Canadian citizens.

Q. Would you strengthen Canada's engagement in support of human rights for LGBT persons at Multinational Institutions? If so, how?

Background

In recent years, several multinational institutions have begun engaging directly in support of LGBT rights, primarily through gathering data, publicity campaigns, urging states to decriminalize same-sex sexual activity, and demanding the cessation of all violence against sexual and gender minorities. Thematic reports from the UN Human Rights Council²¹, as well as a landmark UN resolution in 2011²², have underscored and clarified that LGBT rights are enshrined within various international legal instruments and treaties. The Organization of American States (OAS), as well as the European Union and Council of Europe (CoE) are also active in their support of LGBT rights. More recently, the African Union issued an

²⁰ See also Edward Jackson, Ian Smillie, and Stephen Brown, "Lesbian, Gay, Bisexual and Transgender Rights: A Call for Canadian Leadership," *The McLeod Group*, 2013, available at: <http://www.mcleodgroup.ca/wp-content/uploads/2013/02/LGBT-March.pdf>

²¹ Report of the United Nations High Commissioner for Human Rights, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, A/HRC/19/41, (17 November 2011), available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/170/75/PDF/G1117075.pdf?OpenElement>; Report of the United Nations High Commissioner for Human Rights, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, (4 May 2015), available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/29/23&referer=/english/&Lang=E

²² United Nations General Assembly, Human Rights Council Resolution 17/19, *Human Rights, sexual orientation and gender identity*, A/HRC/RES/17/19, (14 July 2011), available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/148/76/PDF/G1114876.pdf?OpenElement>

important statement calling for an end of state-sponsored discrimination against sexual and gender minorities.²³

Mirroring the growing global division in human rights for LGBT persons, however, has been a concerted effort to halt multinational engagement with sexual orientation and gender identity rights. Particularly egregious have been efforts to pass resolutions on protecting traditional values and heteronormative conceptions of the family, including at the most recent session of the UN Human Rights Council.

²³ African Commission on Human and People's Rights, 275: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity, 55th Ordinary Session, available at: <http://www.achpr.org/sessions/55th/resolutions/275/>