

## Critical Primary-Source Literature Review on the Mental Health factors of the LGBQ Asylum Claim

The academic literature on the mental health challenges of LGBTQ-identifying refugees are very limited. This is due to the relative size of this subpopulation and the great stigma regarding mental health as a whole in both Canada and the United States. But both the LGBTQ (Lesbian, Gay, Bisexual, Transgender, and Queer) and Refugee populations in both countries have been researched extensively and the high mental illness burden in both populations is well documented. This lack of research in this target population may have left a potential epidemic of PTSD and depression within an extremely vulnerable subgroup untouched. Migration Policy and LGBTQ Advocacy non-governmental organizations (NGOs) within the U.S. and Canada have tried to address this lack of data through analyses and briefings on the legal issues of processing asylum claims based on sexuality; the source and variety of mental illnesses LGBQ Asylum seekers can face; and, researched best practices and advice for adjudicators, interviewers, and mental health care practitioners. This literature review seeks to synthesize the available primary-source data provided by deeply involved and well-informed NGOs in lieu of academic research to prompt further analysis into these critical issues. The organizations analyzed include: Rainbow Health Ontario, Forced Migration Review, Immigration Equality, the Migration Policy Institute, EGale, along with Laurie Berg and her research team.

Both Canada and the U.S. have legal precedents allowing for an asylum claim based solely on sexuality, however, in reality, the application of the legal interpretation of homosexuality and the “particular social group” clause creates many difficulties for LGBQ asylum seekers. Swetha Sridharan of the Migration Policy institute (MPI), a nonpartisan Think-Tank in D.C., provides legal context on this issue. First, MPI stresses the fact that the acceptance of asylum claims from LGBQ individuals is relatively new. The Immigration and Nationality act of 1917 defined gay men and lesbian women as “mentally or physically defective” and therefore unfit for entry into the U.S., and the succeeding acts in 1952 and 1965 only made this ban more explicit under the language of “sexual deviance.” With an amendment and court case in 1990 LGBQ asylum seekers were allowed asylum but several key issues still remain: usual tests for asylum are inapplicable for LGBQ identities; homosexual conduct was not sufficient for a claim and seen as a taboo subject; the definition for homosexually themed persecution set forth by legal precedent varies and is unstable; and, many adjudicators still confront the subject with bias. If you focus on the homosexual identity over homosexual acts it then becomes possible to utilize the three asylum tests of immutability, association, and recognizability. That is, that the characteristics that define an applicant’s membership cannot be changed; the applicant associates visibly with the larger group and group identity, and the possession of said characteristics make the applicant recognizable to others of the same group. In legal terms under these tests homosexuality constitutes a “Particular Social Group (PSG),” much like a small ethnic tribe, or controversial religious denomination. However, homosexuality does not map cleanly onto heteronormative US and Canadian law and can pose significant issues in regards to making a successful application.

Laurie Berg and her team at the University of Technology in Australia unpacks the fallacies of these three tests of Asylum in regards to Gender-Sexual minorities. She proves that to stay within the acceptable bounds of this test LGBQ asylum seekers must create an acceptable western-centric gay identity narrative, a sense of group membership in places where LGBTQ networks may be besieged or nonexistent, an immutable same-sex sexual life, and a narrative of the development of a gay or lesbian identity completed the day you enter the courtroom. Not only are these assumptions invalid, she asserts, but they are unfair, they do not prove a homosexual identity and places unnecessary burdens on people who due to persecution cannot live their true identity. The three tests of asylum ignore the fluidity of sexuality, the continuity of “coming-out,” and the variety of the expression of sexual identity. Beyond that, these tests downright erase the possibility of a bisexual application due to questions of the immutability of their sexual identity, their recognizability as a social group, and a lack of a legal interpretation and definition under American law. For much of Canada the situation is the same, the organization EGale presents, the legalization of LGBT Asylum is slightly earlier, but Canada also uses a reiteration of the “Particular Social Group” legal concept with the express addition of a clause (Section 16, Guideline 8) in their Immigration and Refugee Protection act that specifically identifies LGBT-identities as a PSG. In addition, there are legal precedents in Canada that honor the fluidity of sexuality, bisexuality, and the process of coming out, however, this doesn’t change the reality that many cases do not apply these precedents.

Rainbow Health Ontario, an LGBT advocacy organization based in Canada, goes on to illustrate the mental health issues that arise from simply being LGBQ in the country of origin and the country of asylum, and in the asylum process itself, in a synthesis report of prevailing literature. The main takeaway is isolation, LGBTQ Asylum seekers are isolated from social support, social services, and healthcare, due to the intersection of gender, culture, sexuality, and sometimes race. Many times they cannot turn to their own communities or family for help and are deeply “closeted” about their sexuality due to stigma and past violence. Ergo, both LGBTQ individuals and asylum-seekers are at heightened risk for PTSD, depression, dissociation, and anxiety disorders. LGBTQ asylum-seekers may choose not to get help due to the fear of being outed or labeled. Worse yet, in the hands of an untrained adjudicator or interviewer, the process of asylum itself can present new, unwarranted trauma for LGBTQ applicants. LGBTQ applicants can find their past persecution invalidated and scorned; they can be subjected to the violence of being assigned a gender or identity; they can be forced to conform and retract the most salient parts of their painful life experiences, and made to relive past trauma and unresolved disorders, to which, they are given no treatment or help for.

Luckily, the organizations Forced Migration Review (FMR) and Immigration Equality provides some amelioration for this ongoing violence between governing bodies and their accidental victims. FMR and Immigration Equality have created a set of guidelines for policymakers, adjudicators, and mental health care practitioners that go beyond engaging the issues in policy shown above. For instance, Forced Migration Review, a weekly journal published by the Refugee Studies Centre in the Oxford Department of International Development, creates a narrative of “community.” Scott Portman and Daniel Weyl of FMR suggests that mental health practitioners identify champions of the LGBT Refugee community to

talk about their issues in support groups for new refugees and make LGBT Asylum more mainstream in their daily practice and engagements with other refugee communities. In another FMR article by Joanne Ahola and Ariel Shidlo, it's suggested that adjudicators of LGBT asylum cases use commonly displayed feelings of shame and fear as forms of credibility in the adjudication of "closeted" LGBTQ cases.

Immigration Equality, a U.S. based LGBTQ immigrant advocacy organization, takes a different approach by telling stories, in-turn synthesizing many of the organization's direct experiences and prevailing literature to give adjudicators, interviewers, and healthcare professionals, nuance in the more complex issues regarding LGBTQ identities. The organization uses the story of an Egyptian applicant to show how homosexuality can exist outside the LGBT framework; the story of an Uzbekistani applicant to discuss why applicants may show apprehension, fear, or even silence, in the face of authority; the story of a Nigerian applicant show why applicants may be estranged from verifiable sources of proof like family and friends; and, a Venezuelan applicant to demonstrate the unique intersectionality gender, sexuality, and culture can take in persecution. Immigration Equality also provides helpful solutions to adjudicators, including citing the credibility of the applicant as a measure of whether an LGBT claim is dubious instead of the claim itself. Approaching uncomfortable topics with grace and kindness, not focusing on previous marriages or the one-year filing deadline, but rather the "changed circumstances clause" and reinterpreting it as a space for the coming out process. Laurie Bern provides us with a strong conclusive statement, in paraphrase, the biggest barrier between hurting LGBTQ populations asylum-seekers and the mental health care they need within these western countries is the strict, biased, unforgiving interpretation of the LGBT identity. The forceful recreation of the western-centric legal and cultural interpretation of sexuality in these asylum-seekers fleeing persecution is an added violence, another source of mental illness, compounded on top of the mental burdens these refugees encounter in their old homes and their new homes. The least that can be done, is to provide special care during the asylum process regarding LGBTQ issues.

Despite the wonderful, summative nature of the presented documents on current LGBTQ Asylum discourse, this dataset still lacks the rigor of a purely academic dataset and it's open to unique problems because of it. These organizations, fail qualitatively and quantitatively to address the issue of causality regarding mental illness, asylum, and isolation, in LGBTQ refugees. The mechanism serves only as an anecdote and is not experimentally or statistically proven as of yet. Since these are all conjectures the true reality is unknown. Finally, due to existing partnerships and an overall lack of data there appears to be only one voice on this critical issue, no opposition, no dissent, which is worrying for any field. Future analyses must have academic rigor, there simply must be proven causal pathways of mental burden to inform policy and intervention. However, what this analysis does provide is a glimpse into an unknown reality, a possible mechanistic pathway for disease that requires direct government intervention, and a wonderful hardworking array of people and teams dedicated to the work. And it leaves some questions to be answered, is there bias in asylum law as is, what is the ideal measure for a sexuality-based claim, and how can we grasp what is truly going on with LGBT Refugees?

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