

Canada: Discrimination and Violence against Lesbian, Bisexual, and Transgender Women and Gender Diverse and Two Spirit People on the Basis of Sexual Orientation, Gender Identity and Gender Expression



**Prepared for:**

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**Submitted by:**

Egale Canada Human Rights Trust in partnership with the International Lesbian, Gay, Bisexual, Trans and Intersex Association - North America Region (ILGA-NA)

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## 1.0 Executive Summary

The State party should ensure that its public policies and legislation related to gender and sexual-based violence are explicitly attentive to the heightened risks lesbian, bisexual, and transgender (LBT) women, especially Indigenous women and women with multiple marginalized identities, as well as gender diverse and Two Spirit people face with regard to violence. Such policies and legislation should also ensure that sufficient resources and effective mechanisms are in place to strengthen methods of reporting, responding to, and monitoring instances and rates of sexual violence against these high-risk communities. In particular, the State party should:

- (a) Introduce mechanisms aimed at responding to survivors of sexual violence from the above mentioned communities in ways that eschew heteronormative and cisnormative assumptions;
- (b) Implement legal provisions aimed at holding higher education institutions and the Canadian Armed Forces accountable to creating effective processes and procedures related to reporting and responding to sexual violence;
- (c) Conduct extensive campaigns to educate the general public and train public-serving agencies on the realities of sexual violence within the impacted communities and effective ways to respond and support survivors of sexual violence;
- (d) Facilitate trauma informed reporting procedures for acts of sexual violence, especially on campuses, and implement more effective prosecutorial measures in cases of sexual violence, punishing perpetrators with appropriate penalties including hate crimes when applicable;
- (e) Facilitate effective and appropriate healthcare access and support for survivors of sexual violence that meets their comprehensive needs including but not limited to survivors' sexual, mental, physical, and reproductive health, particularly within victim services, hospitals, and community agencies;
- (f) Facilitate trauma informed reporting procedures for LBT women and gender diverse and Two Spirit persons that prioritize the safety and security of survivors;
- (g) Train first responders, healthcare professionals, shelter and support service workers, child welfare workers, and victim services on effective response methods and mechanisms that eschew heteronormative and cisnormative assumptions regarding domestic and intimate partner violence (D/IPV);
- (h) Ensure that gender identity and gender expression are included as protected grounds in human rights legislation across all levels of the State, and as such ensure that transgender women as well as gender diverse and Two Spirit individuals are fully protected in their right to work;
- (i) Distinguish sexual harassment and sexual violence in labour policy and legislation to ensure employers and perpetrators are held accountable in proportion to the offence;

- (j) Decriminalize sex work and conduct full and open consultations with sex work advocates to determine the most effective occupational safety measures for transgender women, and gender diverse and Two Spirit persons who engage in sex work;
- (k) Explicitly differentiate sex work from trafficking and exploitative prostitution;
- (l) Introduce appropriate mechanisms for reporting sexual violence that respect sex work as an occupation and eschew heteronormative and cisnormative assumptions surrounding sex work as an industry;
- (m) Train healthcare professionals and victim services on appropriate and trauma informed response procedures to sexual violence in the context of sex work, specifically as it involves transgender and Indigenous women, and gender diverse and Two Spirit individuals;
- (n) Consult directly with intersex communities, activists, and agencies to determine the most effective and necessary means of support to eradicate discrimination and violence against intersex people.

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## 2.0 Sexual Violence (Articles 2, 5, 24 and General Recommendation 19)

- Lesbian, bisexual, and transgender (LBT) women, as well as gender diverse and Two Spirit people encounter discrimination, stigmatization, and traumatic experiences of violence at disproportionately higher rates than their heterosexual and cisgender counterparts. These experiences are motivated by intolerance, fear or hatred of the person's diversity in attraction, gender identity, and/or gender expression in every social context: homes, schools, communities, religious and spiritual centres, public spaces, and health institutions.
- According to the Trans PULSE Project, which researches the social determinants of health for transgender and gender diverse individuals in Ontario, 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" (G. R. Bauer & Scheim, 2015).
- Moreover, many trans people "did not report these assaults to police; in fact, 24% reported having been harassed by police" (G. R. Bauer & Scheim, 2015).
- A Trans PULSE Project study on gender diverse and Two Spirit Indigenous persons found that "most (73 per cent) had experienced some form of violence due to transphobia, including 43 per cent ( $n = 13$ ) who reported experiencing physical and/or sexual violence" (Scheim et al., 2013).

- Similar research efforts and statistics from provinces and territories across Canada are noticeably absent, indicating the need for all levels of government to support community agencies in their efforts to gather this data and address these issues effectively.
- The risk of experiencing sexual violence on university and college campuses increases for women who experience multiple forms of identity-based marginalization. Specifically, “those who face higher risks are Aboriginal women, women with disabilities and transgender individuals” (Gunraj, 2014).
- Likewise, the risk of experiencing sexual violence in the Canadian Armed Forces (CAF) is disproportionately high for women, who make up only 14.57% of all officers (Deschamps, 2015). Among individuals who accessed the Sexual Misconduct Response Centre in the CAF, 49% were women (Deschamps, 2016). If these rates reflect similar statistics in other areas, we can assume that women and gender diverse individuals who are marginalized in multiple ways are even more adversely affected.

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## RECOMMENDATION

The State party should ensure that its public policies and legislation related to gender and sexual-based violence are explicitly attentive to the heightened risks lesbian, bisexual, and transgender women, especially Indigenous women and women with multiple marginalized identities, as well as gender diverse and Two Spirit people face with regard to violence. Such policies and legislation should also ensure that sufficient resources and effective mechanisms are in place to strengthen methods of reporting, responding to, and monitoring instances and rates of sexual violence against these high-risk communities. In particular, the State party should:

- (a) Introduce mechanisms aimed at responding to survivors of sexual violence from the above mentioned communities in ways that eschew heteronormative and cisnormative assumptions;
- (b) Implement legal provisions aimed at holding higher education institutions and the Canadian Armed Forces accountable to creating effective processes and procedures related to reporting and responding to sexual violence;
- (c) Conduct extensive campaigns to educate the general public and train public-serving agencies on the realities of sexual violence within the above mentioned communities and effective ways to respond and support survivors of sexual violence;
- (d) Facilitate trauma informed reporting procedures for acts of sexual violence, especially on campuses, and implement more effective prosecutorial measures in cases of sexual violence, punishing perpetrators with appropriate penalties including hate crimes when applicable;

- (e) Facilitate effective and appropriate healthcare access and support for survivors of sexual violence that meets their comprehensive needs including but not limited to survivors' sexual, mental, physical, and reproductive health, particularly within victim services, hospitals, and community agencies.

### **3.0 Domestic and Intimate Partner Violence (Articles 5, 14, 16 and General Recommendation 19)**

- Sexual violence and D/IPV response services under-recognize those outside of a cisgender, heterosexual relationship. As a result, LBT women, and gender diverse and Two Spirit persons (as well as gay, bisexual and transgender men) often do not report sexual violence and/or D/IPV, or face discrimination and further trauma by doing so.
- While prevalence differs widely within the literature, several investigations estimate that nearly 50% of all same-sex relationships involve some degree of D/IPV (Parry & O'Neal, 2015).
- According to Statistics Canada, “women who self-identified as lesbian or bisexual were significantly more likely than heterosexual women to report violence by a current or previous spouse in the previous five years (20.8% versus 6.1%)” (Sinha, 2013).
- Although Statistics Canada lacks estimates for non-spousal violence rates for lesbian and bisexual women, overall non-spousal violence rates from 2012-2013 for those women who self-identified as gay, lesbian, or bisexual “were nearly five times the rate for those who self-identified as heterosexual” (Sinha, 2013).
- According to the Canadian Labour Congress's (CLC) survey on domestic violence and the workplace, “Aboriginal respondents, respondents with disabilities, and those indicating a sexual orientation other than heterosexual (e.g., lesbian, gay or bisexual) were particularly likely to have reported experiencing DV in their lifetime” (Canadian Labour Congress, 2014).
- Moreover, the CLC survey reported that transgender people are almost twice as likely to report ever experiencing D/IPV compared to their cisgender counterparts (Canadian Labour Congress, 2014).
- Nonetheless, like sexual violence rates more generally, there is a dearth of Canadian research data on D/IPV for lesbian, bisexual, and trans women as well as gender diverse and Two Spirit persons.

- However, according to the Williams Institute’s review of existing research on intimate partner violence among LGBT people, “transgender people may confront similar levels, if not higher levels, of IPV as compared to sexual minority men and women and cisgender people. Findings of lifetime IPV among transgender people for purposive studies range from 31.1% to 50.0%” (Brown & Herman, 2015).
- Extrapolating from the Williams Institute’s research, we can assume that the prevalence of D/IPV for LBT women, and gender diverse and Two Spirit people in Canada occurs at a similar rate, and that these communities remain at a high-risk of experiencing violence from their partners and families.

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## RECOMMENDATION

The State party should ensure that its public policies and legislation pay explicit attention to the risks lesbian, bisexual, and transgender women as well as gender diverse and Two Spirit people face in situations of domestic and intimate partner violence. In order to implement effective legislation, the State party should make it a priority to support further research on D/IPV among these high-risk communities within a Canadian context and throughout all provinces and territories. Moreover, the State party should:

- (a) Facilitate trauma informed reporting procedures for LBT women and gender diverse and Two Spirit persons that prioritize the safety and security of survivors;
- (b) Train first responders, healthcare professionals, shelter and support service workers, child welfare workers, and victim services on effective response methods and mechanisms that eschew heteronormative and cisnormative assumptions regarding D/IPV.

## 4.0 Occupational Violence (Articles 5, 11 and General Recommendation 19)

- Systemic homophobia, biphobia, transphobia, and racism create challenging circumstances for LBT women, and gender diverse and Two Spirit individuals in employment and the workplace.
- The Trans PULSE Project notes that “the lack of trans-positive attitudes as well as trans-inclusive policies within workplaces presents access barriers to employment and creates unhealthy and unsafe work environments. Of trans Ontarians, 18% had been turned down for a job because they were trans. 13% say they were fired for being trans and another 15% were fired from their jobs, but were unsure if it was because they were trans” (G. Bauer et al., 2011).

- Research data on occupational violence and workplace harassment for LBT women, and gender diverse and Two Spirit people is lacking, especially in a Canadian context, demonstrating the need for stronger governmental support for community agencies' advocacy work in the area of employment.
- Nonetheless, international data tells us that LGBTQ employees are less likely to report incidents of workplace harassment and/or violence due to lack of appropriate policies and procedures (Catalyst, 2015).
- Approximately 47% of LGB workers have experienced workplace harassment and/or violence based on their sexual attraction (orientation) (Catalyst, 2015).
- Approximately 90% of transgender and gender variant employees report experiencing workplace harassment and/or violence stemming from their gender identity and expression (Catalyst, 2015).

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## RECOMMENDATION

The State party should ensure that gender identity and gender expression are included as protected grounds in human rights legislation across all levels of the State, and as such ensure that transgender women as well as gender diverse and Two Spirit persons are fully protected in their right to work. The State party should also distinguish sexual harassment and sexual violence in labour policy and legislation to ensure employers and perpetrators are held accountable in proportion to the offence. Moreover, the State party should conduct extensive campaigns to educate the general public and industry leaders on the necessity and benefits of gender-inclusivity in the workplace.

### 5.0 Sex Work (Articles 5, 6 and General Recommendation 19)

- Current legislation regarding sex work in Canada, specifically Bill C-36 The Protection of Communities and Exploited Persons Act, places LBT women, and gender diverse and Two Spirit people who engage in sex work in harmful and unsafe circumstances.
- Specifically, sex workers from these communities are unable to benefit from health and safety regulations, labour laws, and human rights protections. As individuals already marginalized in the area of employment, LBT women and gender diverse and Two Spirit people are harshly affected by legislation criminalizing sex work.
- According to the Canadian Public Health Association's systemic review of sex work studies, "the lifetime prevalence of physical and sexual violence, either in the workplace

or outside of it, ranged from 45% to 75% for sex workers” (Canadian Public Health Association, 2014).

- While there is limited Canadian-based research on the number of self-identified lesbian, bisexual, and trans women sex workers as well as gender diverse and Two Spirit sex workers, demographic data from the 2014 International Symposium on the Sex Industry in Canada found 77% of sex workers identify as women, and 6% as genders other than men or women, including those who see themselves as transgender or as gender-fluid. Moreover, 38% identified as bisexual or bi-curious, 6% as gay or lesbian, and 11% reported other sexual orientations (Benoit et al., 2014).
- Moreover, the Canadian Public Health Association has noted that “Indigenous women are among the most marginalized populations in Canada and are overrepresented as sex workers. . . . Broadly speaking, First Nations, Inuit and Métis women in Canada experience rates of violence 3.5 times higher than non-First Nations, Inuit and Métis women – a risk further heightened for First Nations, Inuit and Métis sex workers” (Canadian Public Health Association, 2014).
- There is likewise a dearth of Canadian-based research on the rates of trafficking among LBT and Indigenous women, as well as gender diverse and Two Spirit people. All levels of the government should provide support to community agencies to further research trafficking in these communities, especially as it relates to the National Inquiry into Missing and Murdered Indigenous Women.
- For LBT and Indigenous women, as well as gender diverse and Two Spirit people, sex work remains a means of survival.

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## RECOMMENDATION

The State party should decriminalize sex work and conduct full and open consultations with sex work advocates to determine the most effective occupational safety measures for transgender women, and gender diverse and Two Spirit persons who engage in sex work. In particular, the State party should:

- (a) Explicitly differentiate sex work from trafficking and exploitative prostitution;
- (b) Introduce appropriate mechanisms for reporting sexual violence that respect sex work as an occupation and eschew heteronormative and cisnormative assumptions surrounding sex work as an industry;
- (c) Train healthcare professionals and victim services on appropriate and trauma informed response procedures to sexual violence in the context of sex work, specifically as it

involves transgender and Indigenous women, and gender diverse and Two Spirit individuals.

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.

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