

Egale Issue Brief

Bill C-31, Protecting Canada's Immigration System Act

[View the full text of the Act here.](#)

On 16 February 2012, the Minister of Citizenship, Immigration and Multiculturalism introduced Bill C-31, the *Protecting Canada's Immigration System Act*. The proposed Act would amend the *Immigration and Refugee Protection Act*, the *Balanced Refugee Reform Act*, the *Marine Transportation Security Act* and the *Department of Citizenship and Immigration Act*. The effects of these amendments may be significant for lesbian, gay, bisexual and trans refugee claimants. The following analysis summarizes the pertinent changes and their potential implications.

Summary of Changes

Under the proposed legislation, the Minister of Citizenship and Immigration will have the power to designate a country as a "safe country of origin." Originally, this designation was to be subject to a positive recommendation from a panel of experts. However, the proposed changes remove the requirement that a panel make a positive recommendation and leave that determination solely to the Minister.

Refugee claimants from countries that have been designated as safe will lose certain rights:

- Refugee claims from designated countries will be done in an expeditious fashion, taking place sooner than claims made by persons from other countries. The changes proposed in Bill C-31 reduce the processing time from 171 days to 45 days, in comparison to the 216 days allotted for countries that are not designated as safe. This will result in significantly less time to prepare the claim.
- Refugees from "safe countries" will be barred from appealing a negative decision to the Refugee Appeal Division (which conducts an independent review of the merits of the decision), an avenue that is available to claimants from other countries. The safe country list effectively results in the pre-judgment of claims.
- Originally, under the new legislation, the removal of a failed refugee would be stayed pending judicial review of the decision. However, this stay of removal will not apply if a failed claimant is from a designated safe country.
- While not in the original draft of the legislation, the changes currently proposed would permit the Immigration and Refugee Board (IRB) to find that a person has ceased to be a protected person or Convention Refugee and therefore rescind their permanent resident status.

While the *Balanced Refugee Reform Act* would have enacted provisions for the designation of safe countries, the changes currently proposed severely limit the rights accorded to claimants from those countries, making this a far greater concern.

Implications for LGBT Claimants

The lesbian, gay, bisexual and trans community stands to be disproportionately affected by the proposed changes because some of the countries that produce the largest number of claims based on sexual orientation will undoubtedly be considered safe. Mexico, for instance, has come under fire for producing high numbers of bogus refugee claims and will likely be determined a safe country. However, in recent years Mexico represents the largest number of claims brought before the IRB that were based on sexual orientation. The same is true of Costa Rica.

There is also cause for concern in regard to Humanitarian and Compassionate Applications.

The current legislation allows for discretionary exemptions for foreign nationals who are inadmissible or do not meet the requirements of the Act, taking into account humanitarian and compassionate factors. Under the proposed legislation, a failed refugee claimant cannot make a Humanitarian and Compassionate Application concurrently with a refugee claim nor will a failed refugee claimant be permitted access to a Humanitarian and Compassionate Application for 12 months following a final negative decision of the IRB. Given the expedited process for persons from designated countries, this would effectively remove access to a Humanitarian and Compassionate Application. The concern with respect to the LGBT community is that often refugee claims are turned down on the basis that the harm feared does not rise to the level of persecution, but rather is more akin to discrimination or harassment. These factors may contribute to a positive Humanitarian and Compassionate Application even where they are not sufficient to ground a refugee claim.

Effectively, the overall impact of the proposed legislation is likely to be a substantial reduction in the number of LGBT claimants who are successful in their applications. The additional barriers that would be established by these amendments will be significant.