



March 25, 2022

RE: Review of BC Corrections' contract with Canada Border Services Agency (CBSA)

Dear Members of the BC Corrections Policy Review Committee:

Please consider this submission from Rainbow Refugee in your review of BC Corrections current contract with Canada Border Services Agency. We are grateful for the opportunity to provide our perspective and appreciate your careful consideration.

Rainbow Refugee supports and advocates with refugees seeking protection from persecution based on sexual orientation, gender identity or expression, sex characteristics (SOGIESC) or HIV status. Since 2001 we have supported and empowered LGBTQI refugees to navigate the refugee system and rebuild their lives here in British Columbia. We add our voice to the calls from Human Rights Watch, Amnesty International, legal scholars and LGBTQI communities across the country when we urge you to end BC Corrections' contract with Canada Border Services Agency (CBSA).

Over the past decade, Rainbow Refugee has witnessed with alarm the use of increasingly punitive border and immigration controls by CBSA. Expanded powers to detain potential refugees for longer periods have not been balanced with oversight or review. CBSA's actions have life and death consequences. Yet, to date, CBSA has no independent civilian oversight. This was promised in 2015 by then Minister of Public Safety Ralph Goodale, but no concrete progress has been made.

Canada's use of prolonged and indefinite immigration detention has been criticized by the UN as a violation of basic human rights and the rights of migrants. Federal and Provincial Supreme Courts have been harshly critical of the lack of independence and justice in the immigration detention review system. For example, the Ontario Supreme Court has called the system Kafkaesque (Fine, Globe & Mail, August 2017). In the current immigration enforcement system, refugees and other migrants are subject to punitive measures and deprivation of basic rights without the protections of public oversight or the legal protections of the criminal system.

Rainbow Refugee has provided outreach to LGBTQI refugees in Immigration detention in both the Immigration Holding Centre (IHC) and provincial jails. The difference in conditions has profound impacts on their access to justice and mental health. The IHC attempts to use a residential model and is accessible to visits by NGOs. In the provincial jails, refugees are subject to surveillance and restrictions of a criminal incarceration system.

We are deeply concerned that LGBTQI refugee claimants in detention, particularly those in provincial jails, face extremely high barriers to accessing legal counsel and due process. We have seen that CBSA

has used its enforcement power to gather questionable evidence against LGBTQI refugee claimants, to unnecessarily prolong detention and to rush deportations of LGBTQI refugees before they have had access to due process.

LGBTQI refugee claimants detained in provincial jails have difficulties contacting or speaking confidentially with lawyers who are LGBTQI competent and knowledgeable of the specific issues LGBTQI forced migrants face. Provincial jails are located far from the downtown Vancouver hearing rooms for refugee and immigration matters. People in immigration detention in Maple Ridge or Abbotsford jails face 4-hour drives, often hand cuffed and shackled, in the early morning hours before their hearings. For all displaced persons in detention, and in particular for survivors of SOGIESC persecution, these hours in transit cause intense distress and can trigger trauma responses. This in turn can undermine their chance of giving accurate, straightforward testimony at their refugee hearing.

CBSA's practices for detaining and questioning refugee claimants represent potential breaches of the Canadian Charter of Rights and Freedoms, Human Rights Codes and International Human Rights Law. For example, while under CBSA authority one of our members, a young woman who had fled a country that uses torture and capital punishment against LGBTQI people, was placed for 72 hours in an isolation cell with no clothing, no mattress and no blanket, apparently as a form of "suicide prevention." She was not connected with medical or psychological supports. She was questioned extensively over 18 hours without breaks for food or rest. She was then held in a provincial jail where she could not access competent legal counsel. The transcripts from these interviews were used at her hearing to discredit her and she lost her refugee claim. She was at risk of being returned to a country where she faced arrest, torture and potentially death. Fortunately, she was eventually connected with competent counsel and Rainbow Refugee. The Federal Court and the Refugee Appeal Division upheld her claim. This young woman had come to Canada in hopes of safety, and instead she was subjected to cruel, inhumane and degrading treatment and had her rights violated repeatedly. Her experience of incarceration left her with symptoms of depression and post-traumatic stress. We are sharing this anonymized example with consent and would be willing to provide further detail to corroborate if needed.

Further, we have concerns about the safety of LGTBQI migrants in detention, particularly those who are Trans and Gender Diverse (TGD). Among LGBTQI refugees, TGD are at increased risk of violence by State, family and society at large. TGD refugees are less likely to arrive with full identity documents and are therefore more likely to be detained. The risks of harassment and violence while in detention is increased by the intersections of racism, homophobia or transphobia. We have seen that measures designed to create safety for TGD people, such as administrative segregation, can in practice exacerbate stigma, isolation and risk.

We are aware of instances where TGD refugees in immigration detention who have asked for gender affirming medical care, such as hormone therapy, are instead transferred to provincial jails under the argument that immigration detention does not know how to comply with these requests. Once in provincial jail, their need for gender affirming care is treated as a mental health concern and they are segregated. Community based alternatives to detention can provide shelter and supports that are far more respectful and responsive.

As an organization that works with LGBTQI refugees from many different regions, we have noticed patterns of systemic racism in both the likelihood and length of detention. We see that LGBTQI migrants from African countries are more likely to be detained and detained longer than people from other regions.

Rainbow Refugee advocates for an intersectional interpretation and implementation of human rights. We are gravely concerned about the disproportionate and specific harms created when systemic racism, homophobia, transphobia and sexism interact. We have witnessed the distinct and increased harms to women, TGD people and people of colour that occur when refugees are incarcerated in jails.

We share these concerns in hopes that you will give weight to the experiences of LGBTQI refugee claimants in your decision. The ramifications of BC Corrections' cooperation with CBSA are profound—lives, human rights and safety are at stake. Until CBSA has independent civilian oversight and reforms its practices, contracting with CBSA to use provincial jails for immigration detention risks making BC Corrections and its staff complicit with human rights abuses.

In the long term, Rainbow Refugee advocates for Community-Based alternatives to detention. Seeking refugee protection is a right, and people seeking refuge protection should not be subject to detention. While these alternatives are developed, the Province of British Columbia must uphold the human rights of migrants residing here. As a critical step in making the province a place of meaningful safety and belonging for LGBTQI people seeking refuge in Canada, we urge you to end the practice of jailing people in immigration detention in BCs Corrections system.

In solidarity,



Sharalyn Jordan, PhD (She/Her)
Board Chair
Rainbow Refugee
sjordan@rainbowrefugee.ca



Aleks Dughman-Manzur, JD. LL.M. (They/Them)
Co-Executive Director: Programming & Advocacy
Rainbow Refugee
aleks@rainbowrefugee.ca