



IMMIGRATION AND REFUGEE ISSUES

Trans immigrants and refugees in British Columbia have:

The right to access services (including immigration, refugee, sponsorship, settlement, and ESL programs) **free from discriminatory harassment or violence** because we are trans.

A service worker or program cannot refuse to serve us because we are trans. When we disclose our gender identity, service providers (including interpreters) must not make comments or jokes meant to humiliate or offend us.

The right to **sponsor or be sponsored** as a spouse, common-law partner, or conjugal partner regardless of gender identity.

The right to **change the gender marker on our citizenship certificate** without gender affirming surgery.

The right to **privacy in our home**.

Officers aren't allowed to enter our home unless they have a warrant allowing them to do so. If we are undocumented (in Canada without the authorization of the government), the officer must also have an immigration arrest warrant.

The right to **keep our identity private** as we go about our business.

Activist Spotlight

Many trans migrants flee discrimination and violence in their home countries only to face discrimination and violence for being both 'illegal' and trans in British Columbia. As an activist with No One Is Illegal, Alex (featured above) provides support to people who are trying to resettle in Canada. He encourages trans activists to include trans migrants in their fight for justice. Visit our website to find out more about Alex's work.

A Canada Border Service Agency (CBSA) officer cannot randomly stop us on the street and ask for identification without having some grounds to believe we have committed an immigration offence. We may choose to identify ourselves with our name, address, and date of birth because officers can arrest someone without immigration status if they don't believe we have identified ourselves correctly. (Officers can randomly stop us and ask for ID if we are driving a car or riding a bike.)

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The right to **protection from search and seizure**. This means unless we are detained, arrested, or crossing the border into Canada, we do not have to let police or Canada Border Service Agency (CBSA) officers search our body or possessions (including our car). Officers must have a warrant or our consent.

Although trans people have these rights, it can be very difficult to stand up for our rights if we are undocumented. If you are at risk of being detained or deported, it is important to develop a safety plan, so that you know what you would do if an immigration officer stops you or comes to your home.

No One Is Illegal's "Migrants Know Your Rights" can help you make a plan. You can download your free copy through a link on our website.

The **Rainbow Refugee Committee** is a support group for LGBTQ refugee claimants. They meet twice a month in Vancouver and can help you understand the refugee process. See www.rainbowrefugee.ca.

Frequently Asked Questions

Can I apply for refugee status if I fear being persecuted in my home country for being trans?

Yes. You must be able to prove that what trans people face in your home country is persecution, and not just discrimination. For examples of what may count as persecution related to being trans, please see our website.

Is there an official list of countries that Canada uses to assess refugee claims based on trans-related persecution?

No. Decisions are made on a case-by-case basis.

I cannot make a case that I am persecuted in my home country. Is there another way to get permanent residence in Canada?

Yes. You may file an application for permanent residence on humanitarian and compassionate grounds (H&C). You must be able to show that you would face 'unusual and undeserved or disproportionate hardship' if you were to leave Canada, or have other strongly compelling reasons that justify you being allowed to stay in Canada permanently. If you filed an unsuccessful refugee claim, you must wait 12 months before filing an H&C claim. A person cannot have a refugee claim and an H&C application in process at the same time.

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If I am put in a prison for immigration reasons, will I be placed according to my gender identity?

Generally, you will be placed in sex-segregated facilities based on your genitals. This is discriminatory, but until this policy is contested under human rights law it will continue to happen. If you are placed in a prison that is not the same as your felt gender and is against your wishes, you can call Prisoners' Legal Services for help at 1-866-577-5245. For more information about your rights in prison, see www.transrightsbc.ca.

Can refugees get healthcare coverage for trans-related medical treatment?

Yes. If your refugee claim has been accepted or if your refugee claim is in process, you can get healthcare coverage for hormone readiness assessments, hormone therapy, and limited counselling. You can only get coverage for gender-affirming chest, breast, and genital surgeries if your refugee claim has been accepted.

For information on organizations and resources that can help you stand up for your rights, please visit transrightsbc.ca

The Catherine White Holman Centre and the VCH Transgender Health Information Program produced this document as general legal information. It was reviewed by The Law Office of barbara findlay, QC and is current as of July 2015. It is not legal advice, as each situation is unique.