



## **A Brief Concerning Bill C-11**

Submitted during consultations held by the  
Standing Committee on Citizenship and Immigration

Presented by the  
**Fédération des femmes du Québec (FFQ)**  
with the  
**Coalition des familles homoparentales du Québec (CFHQ)**  
**Concertation des luttes contre l'exploitation sexuelle (CLES)**  
**Regroupement québécois des Centres d'aide et de lutte contre**  
**les agressions à caractère sexuel (RQCALACS)**  
**Table des groupes de femmes de Montréal (TGFM)**

**27 May 2010**

## **GROUPS PARTICIPATING IN THE BRIEF**

### **Fédération des femmes du Québec**

The Fédération des femmes du Québec (FFQ) works closely with other groups to transform social gender relationships in all areas of human activity. It is a non-partisan organization that plays a collaborative and mobilizing role within the women's movement.

The FFQ is committed to ensuring that the government promotes and guarantees a true democracy where all people can be full citizens. As an advocate for women's rights, the FFQ challenges any system or practice that results in or supports violence, poverty, domination, intolerance, discrimination and exclusion. The FFQ promotes and bases its activities on the values of equality, fairness, dignity, justice, social solidarity and respect for the individual.

The FFQ is an umbrella group for some 175 member associations and 600 individual members throughout Quebec.

### **Coalition des familles homoparentales**

The Coalition des familles homoparentales (CFH) campaigns for the legal and social recognition of same-sex parenting. This bilingual group of lesbian, gay, bisexual and trans-identified (LGBT) parents and future parents focuses on sharing information and resources, and organizing social activities for parents and children.

Established in 1998, the CFH grew out of the merger of two well-known not-for-profit agencies: the Association des mères lesbiennes du Québec and Groupe Papa-Daddy. The CFH currently has close to 1,000 member families throughout Quebec.

The organization works with the media and government agencies to increase the legal and social recognition of families headed by LGBT parents. It raises the profile of these families and improves public awareness of the circumstances they face. The CHF also develops new resources for elementary and secondary schools, daycare centres, doctors' offices, and community and social services agencies in order to increase public awareness of its families and family structures.

## **Concertation des luttes contre l'exploitation sexuelle**

Concertation des luttes contre l'exploitation sexuelle (CLES) is a coalition of agencies and individuals that oppose the sex trade. The organization is made up of rape crisis centre staff, outreach workers, sociologists, students, feminist anti-globalization activists, women affected by prostitution and other people concerned about this issue. We believe that a world without prostitution is possible if we give proper support to the women involved in prostitution and oppose the people who exploit them. We maintain working relations with other feminist groups dedicated to abolishing prostitution in British Columbia, Europe and the United States.

Established in November 2004, CLES raises public awareness and carries out activities based on the experiences and accounts of women affected by prostitution in order to debunk the myths surrounding the sex trade and show its links with other acts of violence against women.

## **RQCALACS**

The Regroupement québécois des Centres d'aide et de lutte contre les agressions à caractère sexuel (RQCALACS) was established in 1978 and is an umbrella organization representing 24 sexual assault support centres (CALACS) across Quebec. These centres assist women and teens who are the victims of sexual assault. The RQCALACS offers a forum where the centres' representatives can meet, exchange information, receive training, and share their work and concerns.

The centres' activities can be grouped into three main areas: 1) direct support to victims and families; 2) prevention and awareness; and 3) advocacy.

## **The Table des groupes de femmes de Montréal**

The Table des groupes de femmes de Montréal is a regional cooperative group established in March 1996. It is dedicated to advocating for and defending women's interests from a feminist perspective of equality between the sexes. The Table is active in the areas of our social, political, economic and cultural lives that could affect the quality of life of Montréal women.

The agency is involved in the following areas, in particular: women's health and their representation within local and regional health authorities; violence against women; job discrimination, particularly for women facing dual discrimination; regional development and women's representation on decision-making bodies; the status of women within municipal organizations; and the participation of handicapped women in civic life and their access to the Table's activities. One of the organization's strengths is its membership, composed of some 50 groups. These groups include local women's groups, women's committees from organized labour, and community and social groups. The size of its membership and the diverse areas represented allow the Table to draw from a wide range of experiences, concerns and points of view.

## INTRODUCTION

As advocates for the rights of women, and lesbian, gay, bisexual and trans-identified (LGBT) people, our organizations would like to appear before the Standing Committee on Citizenship and Immigration to discuss Bill C-11.

Several organizations have emphasized the need to improve the refugee determination system, particularly the length of time required to process some claims.<sup>1</sup> We support the development of a more rapid system—provided that it does not compromise refugees' basic rights—and we welcome the introduction of an appeal division in Bill C-11.

However, we are extremely concerned about the other provisions of Bill C-11. According to Minister Kenney, the amendments would accelerate the refugee determination process and ensure Canada accepts “bona fide” refugees. At first glance, shortening processing times appears to be a good way to deal with the many complaints about the slowness of the refugee program. However, we do not believe that the changes will address the long delays and, to make matters worse, they could compromise the rights of women and LGBT people. This bill and the rhetoric surrounding it promote xenophobic attitudes that threaten Canada's tradition of welcoming newcomers.

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<sup>1</sup> See, for example, the brief submitted by the Canadian Council for Refugees concerning Bill C-11. For information on wait times and their impact on refugee claimants, see Diallo and Lafrenière (2007), Lacroix (2004) and Rousseau et al. (2002).

## **A TWO-TIER SYSTEM THAT THREATENS THE RIGHTS OF WOMEN AND SEXUAL MINORITIES**

Bill C-11 would implement an appeal division. However, if it is actually implemented, the division would serve only those people from designated “safe” countries.

The proposed amendments would establish a two-tier system in which some claimants would not have access to the appeal division because of their nationality or country of origin. Minister Kenney introduced the concept of “designated countries” in paragraph 109.1(1) under the pretext of shortening processing times.<sup>2</sup> Claimants from these countries, which the Minister himself called “safe countries,” could not appeal a decision of first instance. This situation raises many serious issues.

To begin with, this distinction conflicts with the basic principles in the United Nations Convention relating to the Status of Refugees (article 3) and the *Canadian Charter of Rights and Freedoms*<sup>3</sup> (section 15), which clearly establish the right to equality. The proposed amendment would discriminate based on claimants’ country of origin.

In addition, Bill C-11 would affect women and the LGBT community in particular. In many countries that the Canadian government considers “safe,” and where human rights are recognized in law, women and people belonging to sexual minorities still face persecution and serious violations of their basic rights. In many cases, the government refuses to protect them or is unable to provide adequate protection.

Spousal abuse, honour crimes, genital mutilation, the systematic use of rape as a weapon of war, forced marriage, forced sterilization and commercial sexual exploitation represent the many acts of violence and persecution that are imposed almost exclusively on women. It is also commonplace for government forces to threaten or commit actual acts of violence. Even women from designated “safe” countries are not free from these attacks on their rights.<sup>4</sup> In some of these countries, discrimination and violence are open or even legally sanctioned, while in others, they are more

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<sup>2</sup> We would like to thank the Centre des femmes immigrantes de Montréal for these references and for its thorough review of Bill C-11.

<sup>3</sup> Asylum seekers and refugee claimants are covered by the Charter. In 1985, the Supreme Court ruled that the Charter applies to anyone in Canada regardless of status.

<sup>4</sup> In its 2009 report, Amnesty International identified countries such as South Africa, Brazil, Mexico and Nicaragua as places where gender-related violence and human rights violation occur. Reding (2003) examined acts of violence suffered by sexual minorities and acts unrelated to gender identity in Latin America. Roy (2008) analyzed the legal environment and respect for the rights of sexual minorities in source countries for Quebec immigrants.

concealed.

The LGBT community faces the same issues. Because of their sexual orientation or their sexual and gender identity, thousands of people face imprisonment, rape, torture, legal action, police violence, hate crimes, threats, constant insults and verbal assaults, and limited access to health services, jobs and housing. Here again, the concept of a “safe country” is ambiguous since many countries with an established system of rights are unable to protect sexual minorities.<sup>5</sup> Even if women and LGBT people have a minimum level of legislative protection, their lives can still be endangered through government actions, social stigma and rejection.

[...] the lack of legislation criminalizing these acts does not necessarily mean that the acts are socially acceptable and supported by widespread homophobia or even sanctioned by various groups. [Moreover,] the existence of legislation protecting sexual minorities from discrimination and violence does not mean that this legislation is applied by the authorities. Therefore, both the legal context and the social context had to be examined to determine the possible impacts of the legislation and the social dynamics that are sometimes divergent from the law.<sup>6</sup>  
[TRANSLATION]

Furthermore, several countries that recognize same-sex marriage do not recognize *families* headed by LGBT parents. Mexico is one country where gay and lesbian couples are fairly well accepted in certain environments. A member of the Coalition des familles homoparentales is a refugee claimant from Mexico. This lesbian mother lost custody of her child following a decision by Mexico’s Third Family Court based on her sexual orientation. The court found that

[...] the homosexual environment harms the child and greatly increases the risk of her becoming homosexual as well, all of which proves and substantiates the fact that the mother’s lesbian relationship has a negative impact on the child’s education and healthy development [...] and justifies the requested change in custody to prevent any negative repercussions for the child. (Note from Katherine: insert a footnote for the source. It is the same as footnote 6. Just write “Idem.”) [TRANSLATION]

This ruling was handed down late in 2008, despite the fact that such respected organizations

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<sup>5</sup> Amnesty International (2009) also reported that countries such as Senegal, Russia, Syria and Egypt do not protect sexual minorities. Human Rights Watch (2009) regularly highlights the shortcomings of these and other countries that could be described as “safe.”

<sup>6</sup> Olivier Roy. *Réalités juridiques et sociales de l’homosexualité et de la transsexualité dans les principaux pays d’origine des nouveaux arrivants au Québec*. Direction des politiques et programmes d’intégration, de régionalisation et de relations interculturelles, ministère de l’Immigration et des Communautés culturelles. June 2008.

as the American Psychological Association, American Academy of Child and Adolescent Psychiatry, American Academy of Pediatrics, American Anthropological Association and American Medical Association had determined in 2005 that parents' sexual orientation had no impact on children's well-being and that gays and lesbians were fully able to raise children.

The lesbian mother involved in the above-mentioned case was also the victim of verbal, physical and sexual abuse by her ex-husband, and was put at a disadvantage because her family rejected her sexual orientation for religious and cultural reasons and refused to testify on her behalf.

In this case, as in many others, social rejection and systemic discrimination can cause LGBT people to flee their country, even when it is considered "safe."

In 1993, Canada was one of the first countries to make gender-based persecution grounds for claiming refugee status. Although Canada was at the forefront at the time, Immigration and Refugee Board (IRB) officers are reluctant to consider gender as grounds for persecution, and true recognition remains an issue for groups such as ours. This situation has a major impact on the processing of refugee claims and the ability of existing organizations to assist female refugees. The government's proposed amendments could make things even more difficult for women in need of protection, particularly since claimants from countries considered "democratic" and "peaceful" must now submit even more evidence. Refugee protection and human rights workers agree that cases from these countries are extremely sensitive and require close attention. Claimants from "safe" countries would never be given the opportunity to provide additional evidence at the appeal stage.

In practice, women and LGBT people from "safe" countries would face discrimination because the IRB would not consider their country to be dangerous. This assumption undermines the credibility of their claim from the outset. The situation is unacceptable, and we would like to stress that refugee determinations must be based on an individual's threat of persecution and not a broad decision about a country or region. **The decision must be based on a thorough evaluation of each individual's circumstances.**

Lastly, we want to point out that nowhere in Bill C-11 does the Canadian government explain the criteria for determining what constitutes a designated country or a "safe" country. The Minister of Citizenship, Immigration and Multiculturalism seems to have free reign to decide which country or part of a country will be on the list. The FFQ and many



other groups fear that the selection may depend on political or economic considerations rather than our commitment to refugee protection. Would countries known for human rights abuses be included on the list because they are Canada's economic partners? Would countries be considered "safe" if they have established procedures for protecting rights but still cannot truly protect women and sexual minorities? Will countries be able to exert diplomatic pressure to receive designated status? The refugee determination process should be based on the impartial review of individual cases, but it could quickly become politicized. In amending the current immigration and refugee protection legislation, Minister Kenney seems to have forgotten that the objective is to protect human lives: oppressed women and LGBT people could be denied their human rights and sent back to a life of persecution.

## **RUSHED AND INADEQUATE FIRST HEARINGS**

Under subsection 11(2) of Bill C-11, an interview would be held to gather information within eight days of the refugee claim being referred to the IRB, and a hearing would be scheduled within 60 days of the interview.<sup>7</sup> The goal is to shorten the time leading up to the first hearing, which can take an average of 1 to 18 months.

Attending a hearing in 60 days would put many refugee claimants at a disadvantage, particularly victims of sexual assault, torture, attacks based on sexual orientation or sexual and gender identity, and other such acts. Asylum seekers need time to establish relationships of trust with the other people involved in the determination process (lawyers, refugee workers, IRB officers) and to feel at ease in a new country. To be able to testify or confide in someone with confidence and without fear for their safety or that of their family, they need to know the people hearing their story and to understand the refugee system, their rights, the legislation and its application. In the case of sexual violence or violence based on sexual orientation or sexual and gender identity, people may not be able to speak freely to lawyers, refugee workers or other key players in the refugee process because of post-traumatic shock, memory loss, shame or socialization. In addition, many people belonging to sexual minorities have grown up in cultures where homosexuality is both invisible and social unacceptable. That is why refugee claimants usually find it very difficult to talk about their experiences and their sexual orientation.<sup>8</sup>

Claimants may feel threatened by authority figures because they were abused by government authorities in their country of origin or during the immigration process. From this perspective, it is unrealistic to hold a hearing in 60 days.

Moreover, it can be very difficult to gather together all the documents necessary to support a refugee claim. These documents can range from marriage licences and affidavits from family members or friends, to reports by experts on the legal situation in country, the rights of women and sexual minorities, etc. All of these documents could be required or strongly recommended in order to prove that claimants face persecution or risk. As claimants are now living in a new environment, two months is not enough

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<sup>7</sup> We would like to thank the Centre des femmes immigrantes de Montréal for these references and for its thorough review of Bill C-11.

<sup>8</sup> See Miller (2005) on difficulties in disclosing sexual orientation during the immigration process. See Berg and Millbank (2009), Amnesty International (2008), and Rousseau et al. (2002) on the impact of making an incoherent statement because of shame, trauma, disclosure of sexual orientation, or immigration officials' attitudes.

time for them to gather all the documents and find someone to represent them. As for claimants receiving an interview in eight days, this opportunity to be heard quickly is misleading. Eight days is barely long enough to allow refugee claimants to get used to their new circumstances. The interview would be useless at best and quite possibly devastating: the lack of evidence or incomplete evidence could lead IRB officers to make bad decisions. Clearly, it is preferable to give claimants enough time to prepare their documents properly than to correct errors or oversights during the appeal process, an opportunity which some claimants would be denied.

## **NO FURTHER HUMANITARIAN CONSIDERATION**

Bill C-11 bars claimants from applying for humanitarian consideration for 12 months unless they are stateless or from a country under moratorium.

The ability to apply for humanitarian consideration is essential for those refugee claimants who are more difficult to categorize. The standard case is consideration of the best interests of children, pursuant to the UN Convention on the Rights of the Child. If a woman's refugee claim is rejected, she could be considered and accepted on humanitarian grounds if the safety or development of her child is at risk.

## **REFORM FOR THE WRONG REASONS**

During a tour prior to the tabling of Bill C-11, Minister Kenney emphasized the need to reform the Canadian refugee system because of the thousands of "false refugees" who are accepted and the bogus claims made in Canada. The Minister and his government clearly considered "true refugees" to be those sponsored and selected abroad, and "false" refugees to be those claiming refugee protection at the Canadian border. Both types of refugee claims are totally legitimate. This negative representation of refugees is dangerous and fuels xenophobia toward refugees, immigrants and racialized people in general. Given that this is such an important subject, we feel it is critical to appeal to people's intelligence and to highlight the facts. Instead, the Canadian government's rhetoric seems designed to hide its ideology-based decisions and errors, and to blame an easy target: refugees and asylum seekers.

The granting of refugee status is based on a very complicated international definition.

People who live in fear, who feel persecuted or in danger and decide to leave their country to seek refugee protection are not necessarily aware of the full definition. Refugee claimants are often grappling with desperate and complex situations, and have reasonable grounds for trying to protect their lives and their family. Many such people are refused refugee protection because they do not correspond exactly to a definition that is widely considered to be narrow. That does not mean they are defrauding or abusing the system. Use of the term “false claimants” shows not only a lack of sensitivity but also a misunderstanding of the circumstances facing refugee claimants and of international refugee protection principles.

The government also states that the reform is designed to relieve a clogged refugee determination system. As expressed through Bill C-11, this sudden desire to act is occurring at the expense of refugees’ rights. What is even more shocking is that the backlog stems from the current government’s policies: it has refused to appoint more staff or board members to the IRB, resulting in more delays and a slower system. The government now claims that drastic measures must be implemented through an expedited process, but this process does not take into account the rights of refugees. The FFQ and other signatories to this brief would like to reiterate that refugees have the right to be treated fairly and impartially, and they should not be made to pay for the government’s bad decisions.

## **FURTHER CONCERNS**

As we have stated previously, the government's comments about refugees are alarming. By suggesting that refugee claimants are abusing the system, are too numerous or too expensive, the government is challenging Canada's tradition of accepting newcomers. It also discredits refugees by putting them in the same category as abusers rather than people needing protection. The refugee system now seems to be viewed from a security perspective and is increasingly becoming an extension of border services and a means of managing migration. We are concerned by this exploitation of the refugee determination system: we believe that the IRB must go back to being a human rights tribunal rather than a border surveillance mechanism.

Given Canada's tradition of welcoming immigrants and refugees, any major changes to immigration have always involved broad public consultations. This time, the Harper government has unilaterally decided to draft and table Bill C-11 without consulting the many agencies that have proven expertise in immigration and refugee protection matters. It was not until Bill C-11 was tabled in the House of Commons that stakeholders had their first opportunity to study and be consulted on these major changes. We believe that the bill requires a comprehensive review to examine the full range of its repercussions before it receives approval in principle in the Commons. We also wonder about the current government's view of democracy when, in this matter and in many others, it deliberately decides to ignore or silence potential critics. When it comes to an issue as sensitive as determining refugee status, democracy demands debate, consultation and negotiation.

Furthermore, other major changes relating to immigration policy continue to require debate and consultation. We are particularly concerned by the following:

- the decrease in the number of refugees accepted by Canada, a number that could decline even further with the imposition of visa requirements for certain countries and the proposed changes in Bill C-11;
- the increase in the number of temporary workers over permanent immigration. These workers offer cheap labour, have limited rights and, more and more, are predominantly women;
- Canada's refusal to protect ALL of its citizens abroad; and
- the signing of the Safe Third Country Agreement with the United States.

## CONCLUSION

In conclusion, while we are pleased with the establishment of an appeal division, we believe that Bill C-11 includes features that threaten the rights of refugee claimants. As a result, we support the following changes to the bill recommended by the Canadian Council for Refugees:<sup>9</sup>

1. Delete the reference to interviews in the bill, specifically the interview eight days after the filing of a refugee claim and the hearing 60 days after the initial interview.
2. Delete provisions concerning designated countries of origin.
3. Delete amendments barring refugee claimants from applying for humanitarian consideration. Instead, authorize the IRB to approve a refugee claim on humanitarian grounds.
4. Delete the proposed amendments adding subsection 25(1.3) to IRPA (provision excluding sections 96 and 97 factors from humanitarian decisions).
5. Amend the Act so that RPD and RAD members are appointed for a fixed term by the Chair of the IRB. The Chair would be required to appoint only the most highly qualified candidates recommended by a selection committee, according to clear criteria established in law. Candidates could be from inside or outside the public service.

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<sup>9</sup> The Council's brief on C-11 is available at <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4564195&Language=E&Mode=1&Parl=40&Ses=3>. [TRANSLATOR'S NOTE: The Internet address provided by the FFQ did not work and so I have substituted the address on the parliamentary website where the brief is posted.]

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