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Interpreting the other other : assessing refugee claims based on sexual orientation in an anti-refugee climate

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INTERPRETING THE *OTHER* OTHER: ASSESSING REFUGEE CLAIMS BASED ON SEXUAL
ORIENTATION IN AN ANTI-REFUGEE CLIMATE.

by

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A Major Research Paper
presented to Ryerson University

in partial fulfillment of the requirements for the degree of

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in the Program of
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ABSTRACT

This paper investigates some of the challenges in the Canadian refugee determination system facing the fair assessment of refugee claims based on sexual orientation. Relying on the United Nation's Convention definition of refugee, Canada interprets the section "membership of a particular social group," to apply to individuals fearing persecution due to their sexual orientation. This paper reveals the complex nature of refugee determination in cases based on sexual orientation and how decision-makers' Eurocentric conceptions of sexuality, race, gender and nationality, as well as a general anti-refugee climate impede the neutrality of assessment. Relying on personal narratives of those involved with the refugee assessment process, such as past refugee claimants and refugee lawyers, this study reveals the complexity of problems that are inherent in the IRB. Incorporating a critical race perspective allows us to see the damaging effects of Eurocentrism when evaluating multiple identities, such as racialized sexual minorities.

Key words:

Immigration and Refugee Board, sexuality, race, refugees, Canada

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CHAPTER 1: INTRODUCTION

1.1- Refugee Claims Based on Sexual Orientation in Canada

Canada's refugee determination system is often heralded as one of the best in the world. However, the current climate surrounding the issues of refugees in many First World nations such as Canada, tend to focus on issues of security and border control. There is a perception that refugees are flooding Canada's borders and there has been a significant push to monitor the borders and restrict the flows (Castles, 2002, Macklin, 2003, 1996, Pratt, 2005, 1995, Razack, 1998, Sharma, 2006, Wilson, 1995).

There is a disconnect between refugee policy on paper and in practice. Canada is in a contradictory position. On the one hand, Canada has been one of the leading countries in the world to use an expanded interpretation of refugee definition to include people persecuted on the basis of gender and sexual orientation. On the other hand, Canada monitors its borders and attempts to restrict refugee flows. A better understanding of what constitutes a Convention refugee and how Canada employs this definition is needed.

The United Nations Convention definition of "refugee" is an individual who is "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear, is unwilling to avail himself of the protection of that country" (Office of High Commissioner of Human Rights, 1951). Canada and other countries use this definition to shape their refugee policies. This definition of a refugee has been challenged continuously since its inception in 1951. The

continuous evolution and changing perception of the term “refugee” affects its mode of application in Canadian law (Hathaway, 1991).

Canada deploys its own interpretation of the Convention’s definition of “membership of a particular social group.” This section of the Convention’s definition is utilized by Canada’s Immigration and Refugee Board (IRB) to apply to individuals fleeing their country because they are facing persecution based on their gender, family, or sexual orientation (Hathaway, 1991). In attempting to maintain the image of a compassionate and liberal democracy, Canada interprets the Convention’s definition of a refugee to include individuals who are persecuted based on their sexual orientation. At the same time, however, the Canadian refugee policy seems to be conflicted in dealing with perceptions of refugees as ‘system abusers’ who supposedly strain the welfare system. In this current situation the Immigration and Refugee Board decision makers’ are unequipped and unqualified to determine cases based on sexual orientation. When you take into account the dilemma of interpreting multiple identity markers such as race, sexuality, gender and nationality the issue becomes even more complex. In legal discourse, assessing credibility and identity relies on fixed notions or definitions to determine the validity of a claim or argument. How does one prove that they are gay or lesbian, persecuted in their home country and that if returned to their country the state cannot protect them?

This paper seeks to reveal the complex nature of determining refugee claims based on sexual orientation and how decision-makers’ Eurocentric conceptions of sexuality, race, gender and nationality impedes the neutrality of assessment. The situation is not so clear cut and numerous factors enter into the equation of determining

claims such as country quotas, perceptions of ‘safe countries’ and arbitrary power of IRB members. This study will create the complex picture of determining claims based on sexual orientation in Canada in an effort to highlight areas of contention and improvement. Focusing primarily on issues of race and sexuality I will flesh out problematic areas of the determination system that may appear to be ‘fair,’ ‘compassionate’ or ‘equitable.’

The following section of this introduction will discuss the methodological approaches deployed in this study, including a discussion of storytelling and writing experience for marginalized groups. This section will also address the barriers I encountered conducting primary research, such as the recruitment process of participants for interviews. As well, there is a brief section where I position myself within the research through a self-reflexive approach.

This study seeks to illustrate the inherent complexities in the assessment of refugee claims based on sexuality. Canada’s current refugee determination system, the Immigration and Refugee Board (IRB), is taking a restrictive and monitoring approach to ‘managing’ refugee flows. This project will reveal how such an approach impedes the neutrality of assessment. It will also explore the prevalence of Eurocentric conceptions of sexuality, race, gender and nationality and how these definitions can be damaging to the decision-making process. This area of research is underdeveloped and calls for further investigation. The current research on refugee claims based on sexual orientation operates within a human rights discourse, focusing specifically on sexuality rather than incorporating a critical theoretical perspective that examines the interconnectedness of race, sexuality and nationality (Fairbairn, 2005, Millbank, 2005, 2002, Miller, 2005,

Walker, 2003, 1996). These studies lacked the voices of those individuals directly involved with the refugee assessment process, such as past claimants or refugee lawyers. I aim to fill in these gaps by utilizing a critical perspective in analyzing race and sexuality, to illustrate through interviews with past refugee claimants and refugee lawyers the complexities of assessing refugee claims in Canada's anti-refugee climate. Also, relying on critical race and queer theory literature, I analyze these interviews to reveal the current problems with the IRB's assessment of claims based on sexual orientation.

1.2- Data Collection

This research project is exploratory and follows a qualitative approach which includes a literature review and semi-structured interviews with open and closed ended questions. I will also rely on documents published online, such as cases presented in "RefLex," the IRB's online database of past refugee cases. Examining cases from this medium in my past research has greatly informed the interpretation I make of the specific cases Chapter 4 focuses on. As well, my perspective is informed from my previous work as a legal assistant at a refugee law office in Toronto that predominantly represents claimants with cases based on sexual orientation. This work experience exposed me to numerous refugee cases of sexual orientation and enabled me to attend a number of IRB hearings. The literature review discusses the current research in this area. It also provides a theoretical framework stemming from critical race and queer perspectives.

A non-probability, snowball sample was used to recruit participants. I asked past refugee claimants and refugee lawyers to take part in interviews and then asked those interviewed to refer me to other lawyers and refugee claimants. I initially came into contact with the first refugee lawyer when I worked at his law office in the spring of 2007.

This initial contact referred me to past clients of his and to another refugee lawyer. I contacted these individuals by email, briefly explaining my research project and the set-up of the interview. However one of the challenges I faced was finding past claimants who were willing to be interviewed. After contacting approximately seven or eight past refugee claimants only two were willing to be interviewed. This recruitment process was rather time-consuming and created a setback in my research. I had not allotted enough time for this recruitment as I thought it would be rather straightforward. Therefore, I could only interview a total of four informants, two male past refugee claimants and two male refugee lawyers.

I would like to address the problematics of having all male participants for this study. As a novice researcher I encountered numerous landmines that were scattered along the path of recruiting participants. When I initially took up this research project I intended on having an equal male to female ratio of participants in my study. I wanted to examine the gendered differences in refugee cases based on sexual orientation. What I did not realize at this point was how difficult it would be for me to recruit female participants. Without the voice of female participants the efficacy of my research is limited. I acknowledge this and had my time lines been longer I may have been able to interview female participants. I also acknowledge that proceeding with this research may reinforce notions of male-privilege or dominance; however this is not my aim.

The original contribution of this MRP emerges from data collected through face-to-face, in-depth interviews. Each interview lasted between 60 to 80 minutes; this time frame included reviewing and signing the consent form with the informants, as well as the interview component. Three of the four informants were fully fluent in English, thus

there was no difficulty in revising the consent or comprehending the interview questions. However, one of the informant's English was about intermediate level and he had some difficulty in understanding the questions. This meant that I had to explain the questions more simplistically and clearly in order for him to comprehend.

1.3- Reflexivity & Positioning

In the past few decades there has been a considerable movement within postmodern feminism and anthropology to account for the positioning of the researcher within their writing (Clifford 1986, Kaplan 1984, Myerhoff & Ruby 1982). These notions of reflexivity and positionality deserve discussion as I would like to account for my own reflexivity and positioning within my research project. To define reflexivity I will use Myerhoff and Ruby's definition, "reflexivity is the process by which an anthropologist understands how her social background influences and shapes her beliefs and how this self awareness pertains to what and how she observes, attributes meanings, interprets action and dialogues with her informants." (Wasserfall, 1997: 152) Therefore, as researchers we must account for our own positioning and what we bring to the field and be aware how this affects our interactions with our research subjects. It is also important to be aware of how our positioning affects our interpretations of the data we collect and the authorship we have in documenting the data.

My interest in this area stems from my academic and social activist background. During my undergraduate degree in Social & Cultural Anthropology I became interested in issues pertaining to gender and sexuality. This led to my involvement with feminist and queer communities in St. John's, Newfoundland. As a member of these communities I gained valuable knowledge and experience in understanding serious issues facing these

groups and I learned of ways to challenge dominant society. When I began the graduate program in Immigration and Settlement Studies, I quickly became interested in refugee issues and pieced my background interests with my newfound interests to focus on this topic. After researching and writing two term papers concerning the topic of gay refugees in Canada I decided to pursue this even further for my MRP topic.

Upon further research and volunteering at a refugee law office in downtown Toronto, that primarily deals with claims based on sexual orientation, I began writing this paper. Witnessing first-hand the issues facing refugee claimants whose claims were based on sexual orientation I wanted to highlight the problematic process these individuals go through to have their claims accepted. After a few trips to the IRB to sit in on hearings I felt an even deeper urgency to pursue this research project. I felt presenting the stories and experiences of past refugee claimants and refugee lawyers would create an avenue to have their voices heard.

My approach in writing this paper is rather unique and I realize that it may not be accessible to the general population, due to its highly theoretical nature. However, this is just an initial attempt at researching this issue, which is why I feel it is important to theorize on the larger power structures that are at play during the refugee determination process, such as race and sexuality. I must now account for my own positioning and the effects it has on my research.

As a queer, white, university educated, Canadian male, I have had many opportunities that the men in the study do not. My privileged social position, including my race, my gender, my class and my citizenship, as well the fact that I was raised in Canada, am fluent in English, have friends in the Greater Toronto Area, and have

knowledge of refugee determination system, provided me with a different perspective and experience than my participants. I was aware of my positioning in conducting interviews and I realize that it may have affected the types of answers my participants provided. I realize that a number of the questions I asked I had pre-determined answers which I was expecting my participants to say. However, their answers were not the same and they provided me with more information or areas of analysis that I had not anticipated.

I realize that I am yet another white male researcher writing about issues of race. During this research process I have been having an internal struggle with my positioning and the role my voice will play in writing about racialized subjects. Who am I to truly understand what it feels like to be a person of colour? I try to compare it with my own oppression, such as being queer in a heterosexist society. However, this is not a proper way of understanding oppressions. Challenging dominant power constructs such as whiteness and heterosexism is the best possible route. Working together with our allies we can highlight the oppressions these systems of power perpetuate and find ways of challenging and dismantling them. I do not intend my neutrality to be assumed because I am a white male researcher with an Anglo name, although I am aware that this may happen. I intend for my research to speak for itself and to bring forth the voices that may be suppressed by dominant systems of knowledge. I aim for my privilege to be used in a way that does not reinforce whiteness or patriarchy but to challenge the foundations from which these power structures are formed.

1.4- The Necessity for Storytelling and Narratives for Marginalized Groups

Joan W. Scott's discussion of 'experience' in her and Judith Butler's edited book "Feminists Theorize the Political" provides an insightful theoretical understanding of

writing about 'experience' (Scott, 1992). Scott calls attention to the presumed foundational norms of history that shape conceptions of experience. Many researchers in the social sciences use experience of marginalized groups to present stories that have normally been suppressed. However, doing so, as Scott points out, reinforces the very structures that suppress these stories of alterity or oppression. It highlights the other without questioning how the other came to be defined as 'the other'. Nor do such approaches examine the role of ideological structure in their production of meaning or defining the other. Presenting these experiences of marginalization without questioning the discourse of their histories reproduces the dominant ideologies that maintain their marginalization. Making visible experiences of 'othered' groups exposes the existence of systems that repress them, but it in no way addresses or questions the inner workings or mechanics of such repressive systems. Scott calls for attention to the historical processes that, 'through discourse, position subjects and produce their experiences' (Scott, 1992: 25). She succinctly states,

It is not individuals who have experience, but subjects who are constituted through experience. Experience in this definition then becomes not the origin of our explanation, not the authoritative (because seen or felt) evidence that grounds what is known, but rather that which we seek to explain, that about which knowledge is produced. To think about experience in this way is to historicize it as well as to historicize the identities it produces (Scott, 1992: 26).

Attempting to understand the operations and discursive processes of how identities are defined, ascribed, resisted or embraced is crucial to begin theorizing on experience.

I aim to understand how dominant ideological structures such as heterosexuality, whiteness, or patriarchy, operate to create the experiences of my informants and how they operate to produce their identities. Questioning the existence of dominant ideological

structures is more effective in challenging their legitimacy than simply highlighting their repressive existence. In the analysis chapter of this study, through interpretive analysis and relying on the reviewed bodies of literature, I bring into question the existence of the power structures and how they operate in the lives of my informants. The ‘experiences’ of a refugee lawyer and of a Ugandan refugee are quite different. A thorough analysis of how these structures operate to benefit those in privileged positions and to restrict those in vulnerable positions reveals how experience is created through these ideological structures and thus how identities are produced. This is not to say that these informants have no agency. However, their avenues of agency are quite different depending on their social and political positioning.

The purpose of presenting their personal stories in chapter four is to let these voices stand on their own, and to create a snapshot of the lives of these individuals. Each story creates new knowledge that may otherwise be suppressed. As well, the claimant must present her or his personal narrative, prior to the hearing, for the IRB member to scrutinize and analyze. This narrative is used by the IRB member to compare what the claimant says in the hearing room. The member meticulously examines the claimant’s narrative to highlight any inconsistencies with what he or she may say in the hearing. To present the stories in a different context (within an academic paper) I seek to show how sometimes a ‘legal understanding’ of a story is quite different than when a reader hears the story in a paper. When examining a claimant’s story in a legal context, much of the subjectivity and emotionality tends to fall to the wayside, to make room for an objective reading that seeks to highlight ‘errors’ or ‘inconsistencies.’ Therefore, in the paper these stories will stand on their own, open for the readers’ own interpretation. In addition, in

the analytical chapter, I will provide my own interpretive analysis of these stories in effort to highlight how legal readings of these stories tend to oversee problematic areas that require further investigation.

Sherene Razack (Razack, 1998) discusses the significance and power that storytelling can have in challenging established systems of knowledge. The usefulness of storytelling for social change is worthy of discussion as it holds great potential to challenge or oppose established systems of knowledge. For Michel Foucault, suppressed knowledge leads 'to the experience of the world that is not admitted into dominant knowledge paradigms.' (cited in Razack, 1998: 36) As Sherene Razack notes,

Storytelling is central to strategies for social change in two apparently different sites: law and education. In law, there is a lively debate on 'outsider jurisprudence,' Mari Matsuda's useful phrase for 'jurisprudence derived from considering stories from the bottom. (Razack, 1998: 36)

For storytelling to function as a form of resistance, Razack thinks we must overcome at least one difficulty: that of bridging the different positioning 'between the teller and the listener, between telling the tale and hearing it.' (Razack, 1998: 36) Minh-ha Trinh T. addresses common assumptions concerning the method of storytelling as focusing primarily on subjectivity, whereas it is seldom "understood as sentimental, personal and individual horizon as opposed to objective, universal, societal, limitless horizon; often attributed to women, the other of man, and natives, the other of the west." (cited in Razack, 1998: 36) The benefits of storytelling can be quite numerous; however we must still be aware that there are inherent dangers involved with this methodological approach. As Razack notes, when we as researchers take up the stories of oppressed groups and utilize the methodological tool of storytelling we must pay attention to the

“interpretive structures that underpin how we hear” (Razack, 1998: 36) and how we use these stories.

Razack discusses the role storytelling can play in law and how it can act as a method of interrogation which places context back into law. She states,

Storytelling in law, then, is an intellectual movement that is ‘a rebellion against abstractions.’ Its purpose is to interrogate the space between the knower and the thing known; its function is one of putting the context back into law. ... Concretely, it is an interrogation of how courts come to convert information into fact, how judges, juries and lawyers come to ‘objectively’ know the truth: ‘Those whose stories are believed have the power to create fact. (Razack, 1998: 37)

She also notes how legal rules and conventions only cater to the dominant group and suppress the stories of marginalized groups.

The fiction of objectivity, for example, obscures that key players in the legal system have tended to share a conceptual scheme. Thus judges who do not see the harm of rape or of racist speech are considered to be simply interpreting what is before them. They are not seen to possess norms and values that derive directly from their social location and that are sustained by such practices as considering individuals outside of their social contexts. Stories of members of marginalized groups must therefore ‘reveal things about the world that we *ought* to know.’ These stories are ‘a means of obtaining the knowledge we need to create a just legal structure.’ Matsuda argues forcefully that ‘those who have experienced discrimination speak with a special voice to which we should listen.’ Stories, in the context of law, bring feeling back into jurisprudence, and they tend to work from experiential understanding. (Razack, 1998: 38)

A problem that occurs when stories are told by individuals of oppressed groups to individuals of the dominant group- mostly middle class, heterosexual, white men, who may not fully understand the stories as they may not be oppressed themselves. These stories of oppression fall on the ears of privileged individuals who may misinterpret or misunderstand the stories and reverse the oppression, arguing that it does not exist in order to affirm their own positions of power and privilege. In the case of IRB members,

they are hearing these stories of discrimination and oppression by mostly racialized sexual minorities, if the member is a middle-class, heterosexual white male how does he interpret these individuals stories? If the member hears about ten similar stories of persecution faced by sexual minorities every week does he not become desensitized or jaded by these stories? Razack explains,

Storytelling as a methodology in the context of law runs up against the problem of the dominant group's refusal to examine its own complicity in oppressing others. The power of law's positivism and the legal rules that underpin it are willing accomplices in this denial of accountability (Razack, 1998: 40).

An example of this can be seen in the reliance on empirical data in refugee hearings based on sexual orientation. The reliance on 'documentary evidence' in these hearings are crucial for uncovering the 'truth,' such as reports on the political or social climate of the claimant's country, photos of same-sex partnerships or photos of the claimant in gay bars, police or medical reports of abuse. This 'evidence' provides empirical data to the judge that influences his decision of determining a client's claim of persecution. A client's personal narrative alone is not evidence enough to prove her or his persecution based on lesbian or gay identity.

1.5- Organization of the Paper

The next chapter will review the changes in immigration and refugee law and policy that allowed for such claims to be assessed. It will contextualize the current refugee determination system in Canada and how it relates to claims based on sexual orientation. The third chapter reviews the relevant bodies of literature related to this area of research. I highlight gaps in the research and connect the literature to my topic to draw on theoretical understandings of race, imperialism, sexuality and nationhood. The fourth

chapter of this paper presents two personal narratives of past refugee claimants I provide an in-depth interpretive analysis of these stories. I also refer to information provided by two refugee lawyers who I interviewed to explore some of the claims I make. This chapter reveals the problematic nature of assessing refugee claims based on sexual orientation and how those individuals involved in the assessment process are affected by misconceptions of race, sexuality, and nationhood. In the case of IRB members, this can sometimes impede the neutrality of their decisions and ultimately result in negative claims for genuine claimants. I conclude the paper in chapter five with a discussion of the major themes and findings throughout this study and highlight areas in need of further research, as well as recommendations for those involved with the refugee determination system.

CHAPTER 2: REFUGEE LAW, POLICIES, AND PRACTICES

This chapter provides us with a look into the refugee determination process in Canada. An overview of the system reveals the complex process of making a refugee claim while highlighting the limitations and restrictions that are inherent within the system. First, a discussion of conceptualizing refugees in global, political, and social frameworks it needed to understand their experiences. Once we gather an understanding of the international picture of refugee issues, I will focus on the Canadian situation.

2.1: Providing Protection in an Exclusionary Climate

It has been over fifty years since the birth of the Geneva Convention. Nation states have evolved but are still facing dilemmas of forced migration. The United Nations High Commission on Refugees (UNHCR) reports that the burdens for protecting and accepting refugees still remain and are, in fact, heightened with numerous wars and crises around the world (Feller et al., 2003). There are still many longstanding refugee situations that have not been resolved since the Cold War. Host nations have developed discretionary refugee determination systems to ‘handle’ the problem; however, sharing responsibility of offering protection remains a constant dilemma. Many Western nations have become more concerned with monitoring their borders and issues of security, rather than providing needed protection. A problem of ‘sharing the burden’ seems to arise and is complicated with xenophobia and issues of terrorism, post-9/11. These concerns tend to overshadow the central issue of offering protection to individuals who are forced to flee their countries (Feller et al., 2003).

Stephen Castles (2002) discusses the apparent ‘global migration crisis’ and how this phenomenon seems to be exaggerated within Western more developed countries.

Recent statistics reveal that only 2-3 per cent of the world's population are migrants, and yet international migration is treated as a panic. This so-called 'migration crisis' which is considered a serious issue in the North, seems to be more of an ideological and political nature. There is a deep concern that a higher flow of migrants from the South to the North will damage Northern economies and strain their social service systems. Increased migration poses a threat to nation-state sovereignty, 'since flows of investment, trade and intellectual property are inextricably linked with movements of people' (Castles, 2002: 188). This 'migration crisis' can be attributed to the large disparities between North and South, in specific relation to economic conditions, social well-being, and human rights. Refugees are seen in Western countries as 'flooding the borders' and posing a threat to social and national security. However, when examining recent international statistics on refugee-receiving countries, the countries with the highest number of refugees are poorer developing countries. Western developed countries such as Canada are not even in the top ten list of refugee-receiving countries (Castles, 2002). So why is there such a panic concerning the 'flood' of migrants to Western borders? I assert that Western nations want to choose immigrants rather than having to accept refugees coming to their borders. If Western nations had no responsibility to accept refugees arriving at their borders they could 'control' the flow of migrants through a complex system that weeds out 'undesirables' and streamlines 'desirables.'

One specific group of migrants are refugees, which both Castles (2002) and Pratt (2005), argue are portrayed by right-wing politicians as 'economic migrants in disguise' rather than genuine victims of persecution. Pratt also discusses the restrictive policies that Canada put in place during the 1980s, such as Bill C-55 and Bill C-84 that greatly

impeded the arrival of many refugees thus reducing the rate of refugee claims in Canada (Pratt, 2005). This can apply to individuals seeking protection in Canada who are facing persecution due to their sexual orientation. They are often perceived as constructing bogus claims just to gain Canadian citizenship and benefit from Canada's welfare system. The IRB members act as gatekeepers whose role is to screen out claims perceived as bogus. They must be convinced that the claimant is genuinely gay and has a well-founded fear of persecution. In order to keep Canadians 'safe' and screen out system abusers IRB members must use their discretion in assessing claims. Unfortunately, as my study reveals, their discretion tends to be biased and based on Eurocentric assumptions of sexuality and race.

Immigration officials and Canadian politicians use a contradictory rhetoric in regards to refugee issues. On the one hand, they emphasize the importance of providing protection for refugees who fear persecution; while on the other hand, they claim that Canadian citizens are victims of 'bogus refugee system abusers.' The government legitimizes their restrictive refugee practices through the reproduction of a generalized rhetoric that seeks to protect Canadian citizens from 'system abusers' and to create a refugee determination system that better serves 'genuine' refugees in need of Canada's protection. Such an approach allows the government to create and implement policies that restrict certain groups and benefit others. Those who tend to be restricted are refugees who are deemed as unable to contribute to the economy, while those who benefit are those deemed as able to contribute to the economy. With a strong

neo-liberal¹ agenda Canada maintains its power to decide who is 'worthy' or 'deserving' of Canada's protection. Implicit in this neo-liberal assessment is how well the potential refugee can contribute to the Canadian economy. In addition to economic considerations, assessments are also based on politically related considerations. For example it could be related to issues that are still remaining from the Cold War. This Western neo-liberal agenda places migration and refugee issues into a criminal and public safety discourse, which requires the government to police its borders to keep out 'intruders' and 'terrorists.' Creating such fear in citizens will allow for public support and legitimacy in implementing exclusionary and restrictive refugee policies, all in the name of 'public safety.'

Canada seems to be stuck in a contradiction of maintaining its humanitarian obligations while at the same time protecting its borders and keeping out 'system abusers' or bogus refugee claimants and maintaining public safety. Assessing refugee claims based on sexual orientation takes place within such an anti-refugee climate. How does this play out in the refugee hearing rooms? Canada is not fully equipped to assess refugee claims based on sexual orientation. This study reveals how misconceptions of race, sexuality and nationhood held by deciding IRB members can affect the neutrality of assessment, thus resulting in negative decisions for genuine claimants.

¹ The neoliberal orthodoxy can be represented as a generalized belief that the state and its interventions are obstacles to economic and social development. This belief may be broken down into a number of more specific propositions: that public deficits are intrinsically negative; that state regulation of the labour market produces rigidities and hinders both economic growth and job creation; that the social protection guaranteed by the welfare state and its redistributive policies hinders economic growth; and that the state should not intervene in regulating foreign trade or international financial markets (Clark, 2002: 771).

2.2- Refugee Policy and Claims Based on Sexual Orientation in Canada

Canada's Immigration and Refugee Protection Act (IRPA) was enacted in 2002, replacing the Immigration Act of 1976. (Department of Justice, 2007) Outlined in this new legislation are the objectives and applications of Canada's refugee policy.

Subsections 2(a) and (b) of the IRPA state that two of these objectives are:

(a) to recognize that the refugee program is in the first instance about saving lives and offering protection to the displaced and persecuted;

(b) to fulfill Canada's international legal obligations with respect to refugees and affirm Canada's commitment to international efforts to provide assistance to those in need of resettlement.

As stated in IRPA, Canada is legally bound to uphold its responsibilities for offering protection to people in need.

The Refugee Protection Division (RPD) is of particular importance in this study as this is the division that assesses claims based on sexuality. The RPD determines whether the applicant falls under the category of 'Convention refugee,' as claims based on sexuality normally fall under this classification (Immigration and Refugee Board of Canada: An Overview, 2006: 9). Canada uses the section of the convention definition, "membership in a particular social group" to apply to those seeking refugee status based on sexual orientation. Therefore, lesbians and gay male refugee applicants or other queers must self-identify as belonging to this specific "social group." It is worth noting, this was the fifth and last section included in the original Convention definition. Lorne Waldman (2006) explains further that it "was introduced with little explanation by the Swedish delegate as a last minute amendment to the Refugee Convention.... While it has been argued that the category served to clarify elements in the other four Convention

grounds and that, therefore, only social groups which could fall within one of the other grounds would be recognized” (Waldman, 2006: 8.316).

In 1993 the Supreme Court of Canada demarcated the interpretation of a particular social group after the *Ward* decision (Messamore, 2002). Although this case was not related to gender or sexuality, it indicated that the interpretation of belonging to a “particular social group” needed to be expanded. The claimant in the *Ward* decision was a man from Northern Ireland who was a former member of an Irish terrorist group, and was sentenced to death for assisting with the escape of hostages. The case challenged the expansion of a “particular social group” to include his membership with a particular political group. This specific case outlined three categories that would constitute a “particular social group.” It was clearly specified that individuals fearing persecution based on gender, linguistic background, or sexual orientation were considered a social group based on their immutable characteristic. This ruling defined sexual orientation discrimination as a violation of human rights similar to discrimination based on sexism, racism, religion and other forms of discrimination. This resulted in sexual orientation being treated as an “immutable personal characteristic” whereby a gay or lesbian refugee applicant can be classified as belonging to a particular social group. Consequently, sexual minorities who experience a “well founded fear of persecution” based on one of the five outlined categories in the Convention, fall under the category of membership in a “particular social group.” (Messamore, 2002: 213-214) This explicit definition of “membership of a particular social group,” created an avenue for sexual minorities fleeing persecution to seek asylum in Canada. Each refugee claim must undergo the following refugee determination process as outlined by the IRB.

According to the IRB, refugee determination usually follows a systematic process. It is imperative to note that in this systematic process, the decision is made by a single IRB member, rather than a panel or committee. This legal process of assessing refugee claims establishes the framework of how Canada accepts or rejects refugee claims based on sexuality. A further discussion regarding the determination of refugee status is necessary to understand the restrictive nature of the refugee assessment in Canada.

2.3: Refugee Application and Determination Process

Refugee status determination in Canada is an inherently difficult process. The enactment of the Immigration and Refugee Protection Act (IRPA) in 2002 has made this process even more difficult. The new act created a Refugee Appeals Division (RAD), but it has yet to be enacted. This means that unlike other countries with refugee determination systems, such as the United States, the United Kingdom, France, the Netherlands, and South Africa, Canada does not allow denied claimants an appeal on the merits of their case (Canadian Council for Refugees, 2007). IRPA also made changes regarding the number of IRB members in a hearing. The previous act of 1976, *The Immigration Act* had an appeals division in addition to having at least two members for each refugee hearing. With the implementation of IRPA, the IRB has attempted to streamline the refugee assessment process by reducing the number of IRB members to one and delaying the enactment of the Refugee Appeals Division (RAD). There has been much criticism made by stake-holders regarding the delay in enacting the RAD. These stake-holders who work with refugee communities argue that the current system is restrictive and arbitrary. No appeals division and only a single IRB member making decisions on refugee claims results in a biased system that allows for a greater margin of

error. If an IRB member were to make a mistake in the hearing and deny a claim, then this individual opinion of the IRB member can have a devastating effect on the refugee claimant's life. In some refugee cases it is a matter of life or death if the claimant is returned to their country. With no avenue for appeals, these denied claimants may be forced into dangerous situations all based on a single IRB member's decision. The current system leaves much room for error in judgment.

In December of 2004, the US and Canada implemented the Safe Third Country Agreement. Under this agreement, the US and Canada declares the other country safe for refugees, meaning the refugee claimant must make their claim in which ever country they first arrive. This also means that the government will not accept most claims made at the US-Canada border. The aim of this agreement is to prevent those who made claims in the US to come to Canada and file another claim, as few asylum seekers leave Canada to make a claim in the US. A central feature of this agreement is the assumption that the US is a safe country for all refugees, which is not the case. US immigration and refugee policies are much more restrictive than those of Canada (Hathaway, 2005: 293-294,327, Macklin, 2003). This act creates an even more restrictive system for refugees. These measures that have been put in place since the legislation of IRPA in 2002 are symbolic of the general anti-refugee climate that is felt in Canada and in other Western nations. Citizenship and Immigration Canada (CIC) defends its motives for enacting the Safe Third Country Agreement and the delay in implementing the RAD. In regards to the Safe Third Country Agreement, CIC feels that it will make the refugee determination process more efficient and stronger for refugee claimants. In response to their delay in implementing the RAD, they state there are other options available to those with denied

claims, such as Pre-Removal Risk Assessment, Judicial Review or a Humanitarian and Compassionate Grounds Application (H&C) (Citizenship and Immigration Canada, 2006).

The process for making a refugee claim is quite complex and complicated. A claim can be made by notifying an immigration officer at any port of entry to Canada, at a Canada Immigration Centre or at a Canada Border Services Agency (CBSA) office. The refugee claimant will be interviewed by an immigration officer to determine if she or he is eligible. If the officer determines the claim to be legitimate then she or he will send it to the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB). If the officer is unable to make a decision on the claim within three days it will be automatically sent to the IRB for consideration (Immigration and Refugee Board, 2007).

The refugee claimant may be ineligible if they fall under any of the following outlined circumstances: “has already been granted refugee protection in Canada or in another country, has previously been refused refugee protection in Canada, came to Canada from, or through, a designated safe third country where you could have claimed refugee protection, or is a security risk, have violated human or international rights, have committed a serious crime or have been involved in organized crime” (Immigration and Refugee Board, 2007). If the claim is determined eligible the claimant will receive information regarding the process and receive a Personal Information Form (PIF). They must provide all details of their personal life. It is this form that becomes their personal narrative. This narrative should state the claimant’s personal history and detail the persecution they have experienced or risk experiencing in their home country. This form must be completed within 28 days.

Once the PIF is returned to the IRB they review it and decide on the method of assessing the claim. This determination is informed by a number of factors such as the claimant's country of origin, and the nature of the claim itself. The IRB then assigns the claim to one of the following assessment processes: "a fast-track expedited process, a fast-track hearing, or a full hearing" (Immigration and Refugee Board, 2007). For the sake of this study I will focus on the last two options, 'fast-track hearings and full hearings' as it is these that apply to the specific cases of my research. The IRB explains these types of hearings as:

Fast-track hearings are held for claims that appear to be simple because they may be decided on the basis of one or two issues. A Refugee Protections Officer (RPO) does not attend these hearings.

Full hearings are held for claims that involve more than two issues and may be complex. Full hearings follow the IRB tribunal process. In a limited number of cases, Minister's counsel participates in the hearing to argue against the claim on behalf of CIC. A RPO may assist the member to ensure that all relevant evidence is presented. Representatives of the United Nations High Commissioner for Refugees (UNHCR) may observe the hearing (Immigration and Refugee Board, 2007).

The three determination processes are supposedly non-adversarial, meaning that no one will argue against the claim. The IRB member or the RPO will ask the claimant questions about the facts supporting the claim; this is done to establish the truth of the claimant's story.

If the IRB determines the claimant meets the definition of a Convention refugee and is entitled to refugee protection in Canada, the individual may apply to CIC to become a permanent resident. If the claim is denied, the claimant may ask the "Federal Court of Canada for leave, or permission for judicial review of the IRB decision. If permission is granted and the judicial review is allowed, the claim is returned to the RPD

for re-hearing. Minister's counsel may also apply for leave, or permission, for a judicial review of any IRB decision. Unsuccessful claimants may have other options, such as requesting a pre-removal risk assessment from CIC" (Immigration and Refugee Board, 2007).

It is very difficult for a denied refugee claimant to gain permission for a judicial review. If they in fact gain this permission, the judicial review only examines errors in the implementation of law, not on the merit of the case. Its main objective is to maintain the proper usage of refugee law; therefore unless there were serious breaches of the IRB member's utilization of the law nothing can be done. (Amnesty International Canada, 2007) The Pre-Removal Risk Assessment (PRRA) also has a very low success rate, again this is knowledge I gained from my field research. The objective of the PRRA is to inform the CIC that there is a serious risk facing the denied claimant if they are to return to their home country. The PRRA must clearly show that imminent danger awaits the claimant once they return. The only evidence considered by CIC is new or different evidence that was not presented in the refugee hearing at the IRB. (Citizenship and Immigration Canada, 2007a) The last alternative for a failed claimant is a Humanitarian and Compassionate Grounds Application (H&C). This application should detail the failed claimant's established status in Canada, such as their contribution to the country from employment or education. The H&C application does not prevent the failed claimant from deportation. They can still be deported while awaiting the decision of the application. The application can take many years to be processed and can be quite costly. Again, positive decisions on H&C applications are quite rare. (Citizenship and Immigration Canada, 2007b)

The previous discussion regarding the refugee determination process in Canada reveals how complex and difficult it is to have a claim accepted. This discussion presented the overview of the policies regarding the assessment process. However, I would like to focus specifically on what takes place in the hearing room to determine if a claim is accepted. The following analysis section will discuss personal stories of past claimants and refugee lawyers that have been through the refugee determination process. Understanding the criteria of meeting the Convention's definition of refugee is a difficult and tedious process. The claimant must meet four outlined objectives in order for the IRB member to qualify them as a Convention refugee. These series of 'tests' are used to substantiate the claimant's fear of persecution. This is similar to the tests used in cases based on gender persecution as well (Macklin, 1996). The claimant must meet the following four criteria: -have a "well-founded fear of persecution...due to their membership in a particular social group.", -proven credibility, lack of state protection from their home country, -and finally they must prove that moving to another city or area in their country will not protect them, referred to as Internal Flight Alternative (IFA) (UNHCR, 1992).

A single IRB member decides if the claimant passes these 'tests' outlined by the IRB. This process is quite difficult and is used by IRB members to 'weed out' 'inauthentic' claims. This method applies a 'guilty until proven innocent' mentality. The cases I review in chapter four reveal how these criteria can be contrary to Canadian policy that promises to help those who are in genuine need of protection. If the claimant does not pass all four 'tests' then they risk having their claims rejected and in some cases may face death, torture or other serious forms of persecution. Before I discuss these

cases I will present my literature review to present the necessary knowledge and theoretical framework to engage in a critical interpretive analysis.

CHAPTER 3: LITERATURE REVIEW

This chapter will examine and engage with bodies of literature that relate to refugee claims based on sexual orientation. I will first take a look at what has been written on this topic to highlight the gaps in research. Much of the current research surrounding claims based on sexual orientation predominantly focus on policy issues or comparative analyses of Western refugee-receiving countries, such as Australia, Canada, United States, United Kingdom and New Zealand. The research in this area is lacking a strong theoretical analysis, specifically from critical race and sexuality perspectives. Many of these scholars address issues of sexuality and the problematics involved with heterosexist assumptions about queer identities, but fail to address issues of race and its relation to sexuality. As well, much of the research on this topic did not include primary research. Although there were case analyses, these studies lacked personal interviews with past refugee claimants or refugee lawyers (Fairbairn, 2005, Millbank, 2005, 2002, Miller, 2005, Walker, 2003, 1996).

This literature review will address the following questions: What research has been done on issues concerning refugee determination of claims based on sexual orientation and what is lacking in this research? What role does race, culture and nationality play in the refugee assessment process and how does it play out in claims based on sexual orientation? What are the connections between citizenship and sexual orientation and how does this affect claims based on sexual orientation? How do the complexities facing queer racialized identities create a more holistic framework for assessing claims based on sexual orientation? A framework that includes queers of colour.

Utilizing a critical race perspective where sexual orientation is identified as the basis for a claim will reveal that there may not only be homophobic biases, but also Eurocentric biases that are present within the IRB. We will see how these biases impede the neutrality of decision-making. This literature review will address my central theme of how decision-makers' Eurocentric conceptions of sexuality, race, gender and nationality impede their neutrality of assessment, particularly in an anti-refugee climate. The first section of this literature review will briefly discuss the current scholarship that has been undertaken in this area, pointing out gaps and areas for future research. I will then discuss bodies of literature that are useful in shaping my theoretical discussions surrounding the interconnections between discursive systems of power that affect the refugee determination process such as, heterosexism, race, class, patriarchy, and gender. Scholars such as Sherene Razack (1998), Wesley Crichlow (2004), Rinaldo Walcott (1999, 1997) Awad Ibrahim (2003) Judith Butler (2004, 1990), Martin F. Manalansan (2003, 2002) and Michel Foucault (1978, 1972) provide insights into race and sexuality that prove to be valuable when examining claims based on sexual orientation. Sherene Razack's research on refugee claims based on gender persecution provides the theoretical tools for understanding the dangers involved with Eurocentric conceptions of race. Walcott, Foucault, Butler, and Ibrahim's conceptions of 'body politics' present the framework through which I can theorize racialized bodies within the refugee determination system. Such racialized bodies must operate within larger power structures that limit their agency and construct norms they must adhere to in order for their claims to be accepted. Manalansan's discussion of the significance of citizenship and transnationalism for queer racialized subjects highlights the complexities facing queer

refugee claimants. Wesley Crichlow's and G.A.T.'s (Gay Asians Toronto) studies provide insight into addressing the marginalization of racialized queers within the dominant white queer community and their struggle for voice. Applying these theoretical perspectives to the refugee determination process for claims based on sexual orientation will provide insight to the challenges facing those involved with the assessment process.

Chapter four of this paper will present two personal narratives of past refugee claimants and provide an interpretive analysis that links these narratives to the theoretical discussions presented in this chapter.

3.1- Current Research on Refugee Claims Based on Sexual Orientation

As previously stated, much of the research that has been conducted on refugee claims based on sexual orientation addresses the larger context, focusing primarily on policy or comparative analyses of refugee determination systems (Fairbairn, 2005, Millbank, 2005, 2002, Miller, 2005, Walker, 2003, 1996). Jenni Millbank (2005, 2002) focuses predominantly on Western refugee-receiving countries, such as Australia, the United States, the United Kingdom, New Zealand and Canada. Millbank's 2005 study examines Britain's late response in accepting refugee claims based on sexuality, in comparison to other Western refugee-receiving countries. Even though the UK decided in 1999 to accept eligible Convention refugees facing persecution due to their sexual orientation, the British decision-makers hold strong to the belief that it is the claimant's duty to protect themselves by hiding their sexuality. As well, the British government fails to recognize that countries with criminal sanctions for queer relationships are persecutory. Millbank contends that Britain's response to refugee claims based on sexual orientation resonates with the 1956 Wolfenden Report, which referred to the 'solution' to

the ‘problem’ of homosexuality is privacy (Millbank, 2005, 115). This study provides my project with a wider context of understanding how other Western countries assess claims based on sexual orientation. This information informs my research to create a wider understanding of the issues.

Millbank’s 2002 study discusses her research on decisions made by refugee tribunals on claims that were based on homosexuality in Canada and Australia, between January 1994 and April 2000. She looked at one hundred and twenty-seven Canadian decisions. Of these decisions the number of lesbian claimants was drastically lower than those of gay men, only 18 of the one hundred and twenty-seven. However, the lesbian claimants had a higher success rate than that of gay men; in fact they had a 66 per cent success rate, while gay men had a 52 percent success rate. The success rate overall was 54 per cent (Millbank, 2002). In comparing the two countries she noted that there was a higher success rate of refugee claims based on sexuality in Canada than Australia. In her opinion, Canada’s refugee hearings were more empathetic than those of Australia’s. However, this does not mean that Canada’s refugee determination process is ideal for assessing claims based on sexuality.

Only one of these studies focuses specifically on Canada. Bill Fairbairn’s (2005) study focuses on the role of Canada’s Inter-Church Committee on Human Rights in Latin America (ICCHRLA) in relation to the Immigration and Refugee Board’s (IRB) assessment process for claims based on sexual orientation. The ICCHRLA is a human rights organization that aims to address systemic violations committed against lesbians and gay men in Latin American countries. Fairbairn is involved with this organization and was an expert witness in two refugee hearings that were based on sexual orientation.

He reviewed the two cases pointing out some problems he noticed within the hearings. Fairbairn notes that IRB members felt that documentation provided by LGBT² groups was not objective therefore it was not credible information. Fairbairn hits a critical issue here that is felt in many discussions concerning refugee claims based on sexual orientation: the issue of 'credible information' or 'documentary evidence.' IRB members prefer to rely on larger organizations that are not LGBT oriented, such as Amnesty International, UNHCR or U.S. Department of State Reports on Human Rights. This supposed bias of LGBT organizations discredits the work that is done by such organizations. It is usually these organizations that have the most updated information regarding LGBT social situations within specific countries, as it is their primary mandate. Larger organizations such as Amnesty International or the UN address all human rights issues, not specifically LGBT issues. Therefore, their information may be lagging behind LGBT organizations as they have a larger mandate to fill. The problems involved with 'proper' or 'credible' documentary evidence appears within my own research. IRB member's reliance on credible evidence, normally provided by Amnesty or the UN, reveals biases towards LGBT organizations. These decision-makers ought to give a higher degree of credibility to LGBT organizations as they provide valuable information that these larger umbrella human rights groups may be missing.

Millbank (2005, 2002), Miller (2005) and Walker's (2003, 1996) studies were mostly comparative analyses of refugee determination systems in Australia, Canada, the U.S., the U.K. and New Zealand. The main objectives of these studies were analyzing specific ways in which refugee law operates in determining claims based on sexual

² The acronym 'LGBT' refers to Lesbian, Gay, Bisexual, and Transsexual identities.

orientation. I will briefly touch on Miller's and Millbank's work to highlight themes that are present within my own research.

Alice Miller's (2005) study has an activist approach which focuses on global sexual rights discourse and the how refugee law can be misused for marginalized sexual minorities. She examines how the United States, Australia and Canada's refugee determination systems utilize refugee law in assessing claims based on sexual orientation. Examining the global impact of assessing refugee claims based on sexual orientation, Miller becomes concerned with what this means for queer rights internationally. Primarily concerned with the discourse of law and sexuality she points out the potential of producing a legally defined singular 'gay identity.' (Miller, 2005) She thinks that such an approach can be damaging as it does not take into account diverse forms of sexuality. My own research, discussed in chapter four, reveals the damaging effects of defining 'genuine' gayness in legal discourse.

A problem with these comparative analyses is that one system tends to overshadow the other as appearing more 'liberal' or 'accepting' of sexual minorities. In such a 'competitive discourse', issues of responsibility towards refugees and a critical perspective on the supposed stronger system fall to the wayside. Scholars such as, Fairbairn (2005), Millbank (2005, 2002), Miller (2005), Walker (2003, 1996) exclude the voices of those directly involved with the refugee determination process such as past claimants or refugee lawyers and rely solely on case reports presented by Canada's Immigration and Refugee Board (IRB) or Australia's Refugee Review Tribunal (RRT). As well, they lacked a critical race analysis which is crucial for understanding the racialized climate of refugee determination systems.

3.2- The Imperialist Gaze: The Role of Race, Culture and Nationality in Refugee Assessment

Critical race perspective provides additional tools for examining the refugee assessment process. Understanding the role of race and how it is constructed within refugee hearings reveals how Eurocentric conceptions of sexuality can be quite damaging to claimants. A more holistic understanding of race and sexuality is needed within the IRB. IRB members must be made to be aware of their privileged Western positioning and be cognizant of the imperialist connotations that may be present in granting refugee status. In Western countries the refugee determination process is a highly racialized and gendered event. There is an ongoing relationship between the powerful and the powerless where race and ethnicity are the focal points of this relationship. This discourse defines the differences around assumed civilizational differences and values. However, rather than making power differences explicit, the discourse tries to hide them. Within this relationship the powerful are usually from privileged white First world countries, while the powerless are from less privileged Third world racialized countries (Razack, 1998).

I use the notion of the 'imperialist gaze' and discuss it here as it constructs the racialized and sexualized subject within the refugee hearing room. Numerous critical race scholars rely on the notion of the 'gaze' to explain racialized events. I draw on these scholars and refer to 'the gaze' as a relationship involving both the *viewed*, usually those from the First World, and the *viewer*, usually those from the Third World, who are located within specific historical and social contexts. They are engaged in an ongoing performative discourse where their actions are interconnected within the confines of a

rigid binary labeled as 'one' and the 'Other.' In this relationship, the *viewer* ascribes meaning to the *viewed* that derive from dominant power discourses of race, class, colonialism, gender and sexuality. These dominant power discourses are defined by the First World and meaning is ascribed by the First World as well. This relationship of *viewing* involves the process of Othering within a scopic regime. Within this scopic regime the place of the Other is of significance for how he/she responds to the 'the gaze'. The Other becomes the object of the dominant *viewer's* gaze and negotiates his/her place from the naming and grammatical discourse of the *viewer*. Therefore, those from Third World countries construct conceptions of themselves through the naming of First World countries. For example, the term 'refugee' often invokes perceptions in Western minds of poor 'undesirable' migrants from Third World countries. This naming and defining of 'refugee' has strong imperialist and racist connotations. The refugee is already named in the First World and named in a negative light. Speaking in terms of racism and racist discourse, a production of knowledge emerges in order for this relationship of naming and meaning ascription to exist. This production of knowledge, Goldberg (1990) would argue, stems from the structures of racist discourse. The role of the gaze and its racist or imperialist connotations are used by critical race scholars to deconstruct racialized events (Ibrahim, 2003, Walcott, 1999, 1997, Razack, 1998, Goldberg, 1990).

In racialized discourses on sexual orientation, what is produced, distributed and exchanged is not simply truth, but claims or representations of the truth. Foucault's (1978, 1972) notions of dominant productions of knowledge is useful in understanding racialized discourses on sexual orientation. Dominant systems of knowledge or power such as heterosexim or whiteness utilize these 'proclaimed' truths and gather their

‘legitimacy’ from historical, political, traditional modes of mutual comprehension. These ‘proclaimed’ truths of, for instance, gayness or persecution, rely heavily on Western definitions. There is no room for difference or diverse conceptions of sexuality. The IRB’s measurement or assessment of gayness relies on Eurocentric definitions of what constitutes a gay individual. Such conceptions assume a ‘proclaimed’ truth of gayness that is legitimized by the histories and political struggles of dominant white gay communities. The ongoing assessment of refugees between the West and Third World nations is entrenched with racist undertones, whereby the West assesses the racialized Third World based on its proclaimed ‘truths’ of genuine gayness or persecution. These proclaimed truths result in Eurocentric assumptions of gayness, leaving no space for cultural variations of sexualities.

The imperialist gaze is present within refugee hearings based on sexual orientation. In order for a claimant to have his or her claim accepted they must portray their country as barbaric or backwards, lacking all respect for human rights particularly rights for sexual minorities. It cannot be individual persecution, but rather targeted towards a whole social group such as that of homosexuals. This is quite similar to Razack’s (1998) discussion regarding claims based on gender persecution. Razack notes how individuals who are making claims based on gender persecution must portray their own country as barbaric, a high prevalence of domestic violence and a lack of ‘proper’ protection for women within government law and policies. If the decision-makers consider the country in question as ‘socially inferior’ to Canada then they can ‘save’ the persecuted individual (Razack, 1998). In my brief encounter with the IRB in Toronto, claimants who can portray their country as ‘morally’ or culturally’ inferior’ to Canada

have a greater chance of having their claim accepted. The claimants must prove that their country is lacking behind Canada in advocating for human rights issues, particularly relating to sexual orientation. It presents a racialized framework of the vulnerable 'backward' Third World refugee in need of Canada's benevolent First World saving. A 'savior discourse' is dangerous as it is imbued with imperialist assumptions.

The next section examines the relationship of citizenship and transnationalism for queer racialized identities. It will discuss how these identities challenge dominant norms of citizenship through challenging Western norms of sexuality, nationality and belonging. Relying on conceptions of performance and belonging, this section illustrates how citizenship is a social construction that is performed by bodies responding to nationalistic norms.

3.3- Transnational Queer Identities: 'Crisis of Citizenship'

Citizenship and transnationalism are of significant importance for queer racialized subjects. Through citizenship, queer bodies negotiate and renegotiate their sense of belonging through modes of performance. Examining refugees whose claims are based on sexual orientation can elucidate such discourses of 'belonging' and 'performance.' Using Butler's (2004, 1990) and Walcott's (1999, 1997) conceptions of performance, I would argue that citizenship is a process of performance as well, in which subjects enact dominant 'nationalist' norms to appear as the proper normative citizen. This places queer racialized bodies in another discourse of power, where they perform in reaction to dominant citizenship norms. Queer refugees are engaged in these discourses of power and react in to dominant norms of queer sexuality and citizenship that may at times contest or reinforce such norms. Ibrahim's (2003) notions of being and becoming are

also beneficial in this discussion. The processes of being and becoming are a gradual adaptation of dominant norms of specific groups, enacted by an individual to fit the meaning of a specific identity. Two examples of a number of situations that require a change in identity may require transitioning from one citizenship to another or one religion to another. It can also be a conscious or unconscious process of changing identities. For example, in IRB hearings claimants must qualify as genuinely gay in order to have their claim accepted. The definition of 'gayness' that is utilized by the IRB is constructed by Eurocentric norms of sexuality. These Eurocentric norms of 'gayness' refer to a dominant white middle-class male queer identity. However, those individuals seeking refugee status based on persecution due to their sexuality are coming from various cultures that do not adhere or meet these Eurocentric norms of queer or gay identity. In order for a claimant to have a positive decision claimants are inclined to perform the 'appropriate' Eurocentric or Western norms of queer identity in order to gain citizenship status in Canada. Those who challenge these norms of queer Western identity risk having their claim accepted and must attempt to conform to the Western standards.

The concepts of globalization and transnationalism are central to the discussion of transnational queer identities. Manalansan states, "The processes of globalization and transnationalism have complicated, if not transformed, the ways subjects create a sense of belonging and identity." (Manalansan, 2003: 13) He claims, we can no longer view identity as a static category, such as Canadian, Filipino or gay, rather we must understand it as a multiplicity rather than in essentialist terms. Notions of nationhood are being challenged based on traditional claims of the nation as securing belonging and a sense of citizenship. He refers to this shift as a "crisis of citizenship." We can no longer

conceptualize identity, place and belonging as sensibly connected in the discourse of globalizing tendencies, but people who are moving are not free-floating agents who are unattached to any form of identity or place. Therefore queer diasporic subjects must face these realities and learn to negotiate and renegotiate what constitutes 'home.' Queer refugee claimants are caught in this process of negotiation and must come to terms with what constitutes 'home.' This is interesting, as they must prove that their country of origin cannot properly take care of them as they face persecution as a sexual minority. I would speculate that this must shift their sense of belonging as they attempt to reposition themselves in their potential new home, Canada. These ideas of performance and citizenship relate to the understandings of the anthropological notions of cultural citizenship. Manalansan explains:

Cultural citizenship, therefore, is constituted by unofficial or vernacular scripts that promote seemingly disparate views of membership within a political and cultural body or community. Citizenship requires more than the assumption of rights and duties; more importantly, it also requires the performance and contestation of the behaviour, ideas, and images of the proper citizen (Manalansan, 2003: 14).

With this in mind, it can be understood that queer diasporic individuals enact citizenship through performance and contestation. Again, relying on Butler's (2004, 1990) notions of performance, citizenship is an ongoing process of becoming.

This can also be linked to Ibrahim's (2003) discussion of becoming, in an ongoing process of 'building memory of experience.' The construction of this memory forms conceptions of what is to be the "proper" citizen. In the context of queer refugees this means they are constructing notions of what it means to be a 'gay Canadian.' In the refugee hearing they perform as a persecuted Third World sexual minority who is seeking

Canadian citizenship. To gain access to this citizenship they must sacrifice their own citizenship and be willing to 'become' an openly gay Canadian. I would speculate that perhaps they just wanted to avoid persecution in their own country, yet in order to escape this persecution they must gain Canadian citizenship through the asylum process. In order for them to gain this status they must 'perform' the proper role desiring to be an 'openly gay Canadian.' This is problematic as it signals a unifying queer Canadian identity that is constructed by Eurocentric norms and practices produced by the dominant White queer community. It does not allow space for multiple queer identities. Many refugee claimants are performing multiple identities of citizenship, race and sexuality and the IRB ought to be aware of these interconnections. The interconnections of race and sexuality are crucial for understanding the complexities facing queer refugee claimants. These identity markers should not be examined separately as competing discourses, rather we should study their interconnectedness. We should examine their interconnections, not to reveal, as Fumia (2004) cautions, their commonalities but rather to highlight how discourses are mutually constituted. I will address the interconnectedness of race and sexuality in identity formation and how viewing these as competing discourses can be problematic for the queer transnational subject.

3.4- The Hybrid Sexual Other: Recognizing Difference in Racialized Groups

The struggle for queer racialized minorities' voices to be heard and to enter into dominant political discourse is a growing battle. These 'minorities within minorities' engage in multiple discourses of power that shape their identities. These discourses create dilemmas for many sexual minorities in having to choose their 'battles' to 'engage' with the dominant discourse. Usually a stronger unified voice tends to overshadow issues

of sexuality to be replaced with larger concerns of the specific racialized group (Crichlow, 2004). This formation of a unified ethnic minority voice tends to create 'core' traits of that group that are used as identity markers signifying a commonality among the entire group. These identity markers are formed and designated through societal systems of power such as gender, sexual orientation class, and politics. Creating a unified voice sometimes leads to the exclusion of certain groups within an ethnic minority, such as sexual minorities. This exclusion or silencing of voices is worth noting as it pertains to those racialized sexual minorities seeking refugee status in Canada. It illustrates the multiple barriers racialized sexual minorities face coming to Canada, not just in the refugee determination system but also in their ethnic communities. This discussion reveals the limited space for racialized individuals to voice their concerns or issues in Canada and how issues voiced by those individuals in power, usually white middle-class men, remain at the forefront.

The terms, 'gay' and 'queer' produce stereotypical images of a population that is white, effeminate, weak and affluent for many Black men in the Caribbean and in North America (Crichlow, 2004). These terms do not match their own sociopolitical and cultural histories that are embedded with issues of colonialism, racism, sexism and imperialism. The term 'queer' has been embraced by same-sex activists in white Western society as term of identity social practice, and political activism. 'Queer' has been 'reclaimed' or used by white men to affirm a positive identity and social practice. This use of the term is meant to reverse past negative connotations and reaffirm positive ones. It has also been treated as an 'ethnic group' by some same-sex activists, supporting the argument with the creation of a flag, annual Gay Pride events across North America and

Europe and a distinct politicized language (Crichlow, 2004: 34-35). This discussion is useful for signaling how misinterpretation of gayness can occur within the IRB. It is the whiteness of “gay” and “queer” identities that sometimes cause problems in the interpretation of gayness by the IRB.

This relates to notions of the imperial gaze and how the positioning of these men is situated within white dominant queer discourse. I would argue that the Black bodies of “buller men” and “batty bwoys”³ fall under the eyes of power- whereby their position in society is spoken for either by the Black heterosexual community, where they must hide their sexuality to fall into the ‘normative’ Black collective consciousness’, or by the homogenizing white gay community, which universalizes same-sex experiences in a Eurocentric discourse and excludes or silences the experiences of “buller men” and “batty bwoys.”

Dominant sexual minority discourses in North American practices a form of cultural imperialism, which homogenizes all experiences of same-sex people. Crichlow (2004) contends that this is done by utilizing universalized frames of reference as though they pertained to all forms of same-sex naming and same-sex oppression. A strong example of reinforcing and utilizing this same-sex naming and same-sex oppression is the IRB. The IRB tends to interpret a general term or definition through a Eurocentric lens, thus limiting expansion of definitions. Therefore, the IRB is not able to comprehend diverse or cultural forms of sexualities.

³ Crichlow (2004) uses the terms buller men and batty bwoys to refer to men who engage in same-sex relations in various Caribbean countries. It has derogatory connotations; however, Crichlow intends to use these terms to challenge dominant racial and sexual discourses by marking the presence of English-speaking African-Caribbean and African-Canadian men who engage in same-sex relations in Canada.

Issues of racism and homophobia are serious problems that are widespread in Canadian society. There are common assumptions made regarding the queer community, that they are 'accepting of all sexual minorities' or that 'oppressed people understand other forms of oppression.' Unfortunately these assumptions are not the reality in Toronto's queer community (G.A.T., 1996). These misconceptions can be damaging as they are utilized in rhetoric of Canada as being a humanitarian and compassionate country, which masks serious issues facing Canada's queer communities. The 'imperial' refugee discourse that permeates the IRB attempts to portray Canada as more assumedly tolerant with higher civilizational values than Third World nations. Racialized minorities within Toronto's queer community face mainstream media and advertising that do not reflect their own lives and culture. The prominent images presented in queer mainstream media depict conceptions of 'ideal attractiveness' that is represented by members of the dominant white population. Images of the 'ideal gay man' as young, muscular, blond hair and blue eyed men are splattered on various posters throughout Toronto's Gay Village. Gay men of colour see these images and feel inadequate in realizing they can never conform to these norms of attractiveness. These images do not properly represent the queer population in Toronto. There are thousands of people of colour within the queer community; however mainstream media tends to exclude these people from representing the community (G.A.T., 1996). This reveals the racism that exists within Canada's largest queer community. This community is supposedly the most diverse in Canada; however, it still struggles with issues of racism. These racist issues filter into the adjudication process of the IRB, as it constructs its notions of 'gay identity' from the messages it receives from the local queer community and from media representations of

this community. These messages represent the dominant white gay community, and exclude the voices and concerns of people of colour.

The IRB must be aware of the diverse cultural understandings and meanings attached to sexuality when assessing refugee claims and to realize that dominant 'Canadian' definitions of homosexuality are not universal and may exclude various culturally specific understandings of homosexuality. Singular, ethnocentric notions of homosexuality and of how it is culturally/socially expressed may result in the exclusion of legitimate claims due to the IRB's Eurocentric lens of assessment. This theoretical discussion reveals the complex multiple identities that are negotiated through systems of oppression such as racism and heterosexism. Refugee claimants who make claims of persecution due to their sexuality operate within these discourses and their conceptions of race and sexuality are rather subjective and multiple. It is for these reasons that IRB decision-makers need to be aware of the multiple identities that refugee claimants negotiate and renegotiate, particularly when they are going through the refugee determination process. Their conceptions of race and sexuality may not fall under the implicit pre-determined definitions of these identity markers used by the IRB to measure genuine "gayness" or "refugeeness." This can be quite detrimental to the acceptance of their claims.

The next chapter provides an interpretive analysis of my primary research. I analyze two personal narratives with past refugee claimants to reinforce the previous discussions. The narratives are of two male refugee claimants, one with a negative decision and one with a positive decision. I will compare these two stories to reveal the complexities and problematics inherent in the IRB's assessment process. These stories

will act as a basis for discussions of larger issues that are commonly experienced within the IRB. I use these stories to illustrate the use of 'tests,' as discussed in chapter two, utilized by the IRB to assess refugee claims. These series of 'tests' evaluate the four criteria highlighted in the Convention's definition. The claimant must meet the following four criteria: -have a "well-founded fear of persecution...due their membership in a particular social group.", -proven credibility, lack of state protection from their home country, -and finally they must prove that moving to another city or area in their country will not protect them, referred to as Internal Flight Alternative (IFA). (UNHCR, 1992) I base my assumptions and speculations on my own field research which involved me reviewing numerous cases first-hand, as well as sitting in on IRB hearings. Also, I reinforce these assumptions with cases I have previously reviewed in past research. I will now present the two stories of Mario and Isaac. These names are pseudonyms to provide anonymity for the informants. Even though I present the personal narratives in a condensed version summarized in my own words, I use their voices in quotes throughout the analysis.

CHAPTER 4- PERSONAL STORIES AND ANALYSIS

-Mario's Story-

Mario came from a poor family in Managua, Nicaragua. He said he had no rights within his family because his father was very dominating and that he could not live an open life as a gay male. He said that he felt he was gay, or different from the rest of the boys, since he was seven years old. His father told him when he was a kid that if he or his brothers were gay he would kill them. Scared of what would happen if his father learned of his sexuality, Mario decided to leave Nicaragua. When he left, he knew that he never wanted to go back, he did not want to see his family again. He is currently in minimal contact with his mother.

Mario traveled through Central America working at various jobs until he saved enough money to reach Mexico. This was over a period of two years. He left Mexico when he was fourteen years old and entered the United States. He wanted to leave Mexico because he felt it was the same as Nicaragua for its similar views and treatment of homosexuals. He swam across the Rio Grande from Mexico to the United States.

When Mario arrived on the American side of the river U.S. Immigration officials found him and brought him to jail. Mario had to stay at an immigration detention centre for minors until he escaped, as he was about to be deported back to Nicaragua. After this Mario went to Miami, Florida, and stayed there for a total of four years. While in Miami, he stayed with a conservative Christian family and worked full-time.

Mario came to Canada at the age of nineteen. He asked for refugee status immediately upon entering the country. He told them about the severe domestic violence he experienced in Nicaragua, but not his sexual orientation. He was not comfortable to disclose that. After a short while, an immigration officer decided that he was eligible to make a refugee claim based on the violence he had experienced in his family.

Mario's refugee hearing took place in Toronto in the Fall of 2005. The hearing was via a tele-monitor with an IRB member in Calgary. After hearing Mario's claim, the IRB member denied him refugee status because she did not believe that he was gay. Mario has received two stay of removal orders. During this time he has prepared two Pre-Removal Risk Assessments (PRRA), a Judicial Review, as well as a Humanitarian and Compassionate Grounds Application (H&C). His first PRRA was rejected in 2006. After which he changed his legal counsel, this was in the winter of 2007. His current lawyer has just received notification that Mario's second PRRA has been rejected. This means that Mario's deportation order is imminent as his last stay of removal order expires in early August 2007, unless the Minister of Immigration intervenes and grants him status based on humanitarian and compassionate grounds.

Due to the stress of his immigration case and his recurring memories from his abusive past he regularly sees a counselor and takes medication to subdue symptoms of anxiety and stress. He is constantly bombarded by horrible nightmares and thoughts of worry throughout the day. Mario feels it is too much responsibility and stress for him to handle. As he stresses, "It is not something new, it's old. It's been since I was a kid, since I was seven. I'm just so tired. Sometimes I just feel like giving up."

Isaac's Story

Isaac was born in Kampala, Uganda in eastern Africa. He is in his early twenties and has a university education. Isaac is an HIV/AIDS and social justice activist and has been involved with community work both in Africa and Canada. He grew up in a strict Catholic family and attended Catholic schools until university. He was mostly raised by his mother as his father passed away when he was young. Isaac knew he was gay since puberty. During this time, he began sexually experimenting with other boys.

Isaac described a significant incident that occurred during his time in high school. He told a story where he was accused of having sex with other males in his dormitory as condoms were found in his and a male friend's belongings. This resulted in his expulsion from school. Isaac felt this incident caused him to keep his sexuality private as he felt if people knew that he was gay then he would be persecuted. While at university Isaac focused on his studies and his HIV/AIDS advocacy work. He traveled to numerous countries in Africa and Europe for HIV/AIDS conferences. During this time Isaac also had some relationships with other men, but they were all discreet as he feared public persecution. He also attended a few social events that were organized by an underground gay and lesbian organization at his university. Isaac referred to one event that was sabotaged by undercover police officers who beat and arrested his friends, but Isaac managed to escape.

Another incident that Isaac referred to resulted in his imprisonment and flight from Uganda. Isaac explained that he was speaking at an HIV/AIDS advocacy meeting in Uganda about inclusion of all those individuals who suffer from the disease. He publicly stated that this includes gays and lesbians, who also deserve proper medication and treatment. As Isaac stated, gays and lesbians cannot access healthcare services for HIV/AIDS treatment in Uganda due to stigma and discrimination. Therefore, his public statement resulted in a disgruntled audience who responded to his opinion with anger and disgust. Shortly after this event, Isaac was beaten and arrested by the police. After a few weeks in prison Isaac feared for his life and managed to bribe his way out of prison with money and cigarettes. At this time, Isaac realized that he had to leave the country as he felt his life was in serious danger. He decided to escape to Canada, as he was to attend the World AIDS conference in Toronto in 2006. Isaac bribed an immigration officer at the borders of Uganda and Kenya for a visa to Canada. Shortly after, he flew to Toronto.

Isaac arrived in Canada in late 2005. He made a refugee claim based on his sexual orientation. Isaac also found an experienced refugee lawyer who predominantly represents clients whose claims are based on sexual orientation. He only waited for a period of six months for his refugee hearing. During this period he worked closely with his lawyer to build his claim and became involved with HIV/AIDS and gay rights activist communities in Toronto. Isaac felt his claim was strong as he had a lot of evidence to prove his persecution, as well his HIV-positive status placed him at a greater risk. His hearing only lasted about ten minutes and resulted in a positive decision. Isaac is now a permanent resident of Canada, a local HIV/AIDS rights activist and will be attending the University of Toronto in the Fall of 2007.

4.1- Interpretive Analysis

These two refugee claimants' stories present two very different scenarios with both positive and negative decisions. In order to highlight the commonalities and differences that resulted in opposite decisions for the deciding IRB members I would like to spend some time comparing these two cases. I would like to begin with an analysis of their backgrounds before arriving in Canada revealing the very different lived realities for these two men.

Mario's story is a story of struggle, journey and survival, one that spans a timeframe of ten years. His familial circumstances were quite different than those of Isaac's. They were so bad that he had to leave his family while he was still a child. This is not to say that Isaac had a much easier upbringing, but Isaac did not indicate any mention of abuse or harassment by family members. As well, he did not want to leave his country until he was in his early twenties. Mario spent his teenage years moving from shelter to shelter or home to home, with no sense of security. He felt he was always fleeing or running from some fear. He also had no family support or formal education during this time. He could not avail of resources from family or friends and had to work to survive. Mario states,

My life was very difficult as a child. I left my family so young. I was only twelve years old. I didn't know where to go. I just wanted to leave my family and Nicaragua. I had no house, no family, nothing when I left. I was always moving from place to place.

This placed him in a different social class than Isaac. Isaac was educated and supported by his family and did not have to work to survive. This meant that they had two completely different experiences of growing up. These varying experiences shaped their

social understandings of the world and placed them in very different positions. Isaac grew up in Uganda, while Mario grew up in Central America and the United States. They faced different struggles and different barriers, even though, they both sought refugee protection due to persecution based on their sexual orientation.

Isaac became very political and active in his university life to join in the struggle for HIV/AIDS awareness, while Mario lived a conservative Christian lifestyle that did not address any activist concerns. This is not to say that it made it easier for Isaac to come to terms with his sexuality, but he was exposed to human rights issues that Mario was not. Isaac's university education enabled him to travel and see other parts of the world and to converse and discuss issues with other sexual minorities, which was very limited and risky. This helped shape his understandings of social and political issues and how other sexual minorities live their lives throughout the world. Mario was not exposed to such issues. He lived in a conservative religious environment that discouraged any discussion of sexual minorities. Mario states,

When I stayed with the family in Miami it was very difficult. I attended church with them every week. I knew that I had to keep my sexuality a secret because their religion disagreed with homosexuality. It was very hard for me.

Isaac also lived in an environment that condemned same-sex behaviour as his story reveals, which is ultimately why he had to flee his country. However, in his experiences he was exposed to gay culture and had same-sex relationships despite the risks. Mario did not have these avenues available to him and thus could not engage in any type of relationship with queers or queer culture.

In examining this a little deeper I realized that due to Mario's undocumented status in the United States he was restricted in the types of relationships he could develop.

He was much more vulnerable as he was in a country with no rights, could not speak the native language fluently, had no social structure be it family or friends, and had no educational background which could help change his social or class positioning.

However, Isaac was in his home country and received the rights of a native Ugandan, could speak the native language, had social support of family and friends and had an education which enabled him to be in a higher class position than Mario. Therefore, Isaac had more options available to him to explore his sexuality, while Mario was much more restricted and could not explore his sexuality due to the conservative environment in which he lived. Isaac still had difficulty in revealing his sexuality, but still accessed avenues of agency for tapping into the queer community at his university. He explains,

While at university I found this underground gay organization and ah it was being lead by some of my colleagues who were in primary, but then they were a couple of years higher than me. So, I tried to ask more information about how things worked, not wanting to reveal my sexual identity to them, not until one time we met in the kinda bi-weekly meeting.... So, I joined that university support group, but I didn't go for all the meetings because I feared to be identified at one time.

Relying on information I gained in my field work, as well as in my past research, I can speculate and suggest reasons why Mario's claim was rejected while Isaac's was accepted. Also, in my field work I had direct access to Mario's case and reviewed the decision provided by the deciding IRB member. I would like to analyze how Mario's and Isaac's backgrounds might have been interpreted in their refugee hearings and how it affected their claims.

4.2- Issues of Credibility

A common problematic area that tended to reappear in my interviews with the two refugee lawyers is regarding misconceptions of homosexuality. When some IRB

members assess claims based on sexual orientation they rely on stereotypical assumptions of how a gay person ought to look or act. This creates stereotypical definitions of gay men as appearing flamboyant and effeminate, while lesbians are assumed to be butch and have a masculine demeanor. In Mario's written decision provided by the IRB member, she said that he did not 'appear' to be gay, stating that he appeared rather masculine. This statement is strongly infused with stereotypical assumptions of how a gay man 'should look.' In the mind of this IRB member, she assumed that gay men must not appear as masculine, but rather as feminine.

These stereotypical assumptions of homosexuality are prevalent within the IRB, as I have come across a number of cases in previous research where members' assumptions of homosexuality have resulted in negative claims. One of these cases was Fernando Enrique Rivera, a gay male refugee claimant from Mexico whose claim was rejected because the member felt he was too 'butch' to be gay. (King, 2004) Supporting her decision, IRB member Milagros Eustaquio wrote in her report, "Effeminate gestures come naturally and unconsciously..... If [Rivera] were indeed visibly effeminate, I do not think it is likely he would have been able to easily land a job with the 'macho' police force in Puerto Vallarta." (King, 2004: 30) This clearly shows the IRB's discriminatory understanding and stereotyping of Rivera's experience as a gay man. Rivera refused to act more effeminate to strengthen his claim as he did not want to pretend to be something he is not. "I know some gay refugees who put on lipstick and dressed effeminately for their hearings because they thought it would help their case.... But that is not who I am." (King, 2004: 30)

In the two interviews with the refugee lawyers they stated that in their experience they have witnessed many IRB members not questioning a claimant's homosexuality if they appear stereotypically gay. Therefore, one of the lawyers said he sometimes counselled his clients who do not appear stereotypically gay to dress and act more stereotypically gay for their hearings. For men he would recommend that they dress in pink or bright colours, wear lipstick or sometimes even dress in drag, while for women he would ask them to appear more masculine and dress less effeminately. This is highly problematic as such behaviour reinforces these stereotypical assumptions of what it is to 'look gay or lesbian.' It does not account for diversity of homosexual identities. However, if the lawyer wants to win the case he must work within such a system rather than contest or challenge the system as it can result in a negative decision.

Credibility played a significant role in Mario's case, so much so, as it was the determining factor for his rejected claim. Ultimately the IRB member for Mario's hearing rejected his claim because she did not genuinely believe that he was gay. This was explained in the written decision provided to Mario's legal counsel. This means that Mario failed the 'credibility test,' therefore he could not proceed to further 'tests' such as Internal Flight Alternative (IFA) or State Protection. There were other factors that affected this decision; however, lack of credibility was the deciding factor for his denied claim. The two refugee lawyers I interviewed both cited that determining a claimant's credibility relies on the IRB member's perceptions of what it means to be gay or lesbian. They stated that these conceptions are arbitrary because they depend on the particular member's understanding of homosexuality. I would assert from speaking with Mario, Isaac, and the two lawyers that much of the IRB member's conceptions of gayness are

rooted in Western notions and stereotypes of what it is to be gay. This can be quite problematic as credibility plays such a significant role in the determination process. If the member misconceives of diverse forms of sexuality and varying cultural representations then they can make a negative decision for a genuine claimant.

A comprehensive understanding of the complexities and diversities of sexual identities is crucial for those decision-makers who assess claims based on sexual orientation. In the case of Mario, stated in the written decision, the member felt that he did not ‘look gay’ and that if he was gay he would have engaged in same-sex relationships while he was a teenager in the United States. What the member failed to realize here was Mario’s vulnerability while living in the U.S. He lived in a very conservative Christian environment that condemned same-sex relationships, so it was impossible for Mario to pursue such relationships. As well, due to his hostile upbringing he was socialized to hide his sexuality as he felt it would bring him persecution. It is also very problematic to assume that you must engage in same-sex relationships while you are a teenager to qualify as being genuinely gay. If an individual did not engage in heterosexual relationships while they were a teenager would we assume they were not straight? This, I contend, is a double standard based on heterosexist ideologies, and part of the reason is that under an imperial gaze of individual IRB member you are assumed straight until proven gay. This method of determining genuine gayness is highly problematic as it relies on heterosexist assumptions. It is also Eurocentric in the way that the member measures gayness by determining it on relationships and sex. It assumes that all cultures conceive of relationships the same way as Canada, not taking into account the varying types of relationships and how religion, social class, or race affect these types of

relationships. Also, not understanding how different countries and cultures have different understandings of sexualities can blind sight areas of vulnerability that may restrict an individual from engaging in same-sex relationships.

4.3: The Problematics of a Homogenous 'Queer Identity'

IRB members ought to have a comprehensive understanding of sexual minorities and the diversity inherent within such identities. Both of the lawyers I interviewed referred to the problem of a homogenous understanding of 'gay identity' that is held by many IRB members as well as lawyers. This singular understanding can be quite damaging to potential claimants and it is also based on stereotypical Western assumptions of what it means to be gay. I would like to refer to a particular case that one of the lawyers, Albert, spoke about. Albert is a pseudonym for reasons of anonymity.

Albert told a story of a past male client from Iran and highlighted the problematic areas that happened in this case. He pointed out that issues of credibility are always front and centre in refugee hearings. He thought that it was especially true with this case, as the client was from Iran and the documentary evidence on this specific country was explicit in detailing serious state persecution of homosexuals in this country. In preparing his client's case he felt that building up the client's credibility would be central in having his claim accepted, therefore he worked with the client in detailing his life history as a homosexual living in Iran. However, since Albert was still new at practicing law, he was under the supervision of a senior lawyer who advised him to have the client become familiar with Toronto's gay scene on Church Street and to document himself in various gay bars. The senior lawyer's reasoning for this was from his past experience IRB members would ask clients about Toronto's gay scene and ask the clients about what

bars they would frequent to test their credibility. Albert gave his client this advice and told him to go to some of the bars on Church Street. The client felt quite uncomfortable about this as he said he does not go to bars and is rather shy. Albert understood his client's position but had to insist that he at least go once to say that he has been there and so he could name a few bars if the IRB member were to ask him about them in his hearing. The client listened to this advice and went to Church Street, but only to a coffee shop where he sat and read a local gay magazine. When Albert asked the client why he only went to the coffee shop, the client responded by saying "I do not like bars and I am very shy, I just could not go to the bars so I went to the coffee shop."

This story is interesting because it reveals some IRB members' criteria for credibility as representative of a claimant's involvement with Toronto's gay bar scene. As Albert informed me it seems that some members have a 'cookie-cutter' story of proving their gayness by discussing their frequent trips to gay bars in Toronto's gay village. This story also helps us to understand why Isaac was accepted as a refugee, due to his public involvement with Toronto's gay community. This 'mainstream' story of gaylife seems to be quite common in the IRB member's method of assessment. If a client does not mention their involvement with Toronto's gay bar scene then they may jeopardize the acceptance of their claim. This method of assessment is quite problematic as it assumes all gay individuals frequent the bars on Church Street. For IRB members whose only exposure to 'gaylife' is in the hearing room, this may be quite damaging, as their method of measuring gayness relies on a pre-determined story and the client must meet all outlined objectives to qualify as genuinely gay, one of these being his or her knowledge of Toronto's gay bars. It is also important to note that these homogenous

conceptions of 'gaylife' can be quite exclusionary and leaves no room for conceiving of 'gaylife' outside of this mainstream model. These common assumptions about gay lifestyles are not comprehensive and ought to be properly deconstructed.

As discussed in chapter three, the Gay Asians Toronto (G.A.T.) (1996) compilation of personal stories describe the lived experiences of racism within Toronto's queer community. It also addresses the issue of mainstream gay culture that values Eurocentric and Western norms. Advertisements that display only muscular white, blond hair, blue eyed models create images of ideal beauty that many gay men feel pressured to live up to. However, the problem is that such advertisements are not representative of the community they are targeting. Dominant understandings of 'gaylife' filter into the broader heterosexual Canadian community and create stereotypes of how a gay person ought to act, look or sound.

This understanding of 'playing' or 'performing' the gay identity relates to Butler's (2004, 1990) and Walcott's (1999, 1997) theoretical discussions of the body and performance and Ibrahim's (2003) process of being and becoming. Butler (2004, 1990) and Walcott (1999, 1997) suggest that dominant systems of knowledge produce conceptions or norms that people feel they must enact to match a specific identity. Ibrahim (2003) suggests that individuals are in processes of being and becoming. These processes are a gradual adaptation of dominant norms of specific groups, enacted by an individual to fit the meaning of a specific identity. This process can be conscious of unconscious, but is directly influenced by messages produced through dominant systems of knowledge such as mainstream media, schools or religion. Therefore, if we apply these conceptions to sexualities I would suggest that dominant systems of knowledge also

produce conceptions of what a 'gay identity' ought to entail. These systems influence the way gay individuals conceive of their own identities, and they act in relation to these messages to fit the model of a 'gay identity.' Such 'body performances' exhibit Westernized conceptions of how a gay person should look or behave. These dominant systems of knowledge affect larger institutions for their conceptions of a 'gay identity,' such as the IRB.

Those individuals within the refugee determination process, including the IRB members, lawyers and claimants, are all affected by these messages that are produced by these dominant systems of knowledge. These messages infiltrate their conceptions of what constitutes a gay person thus limiting the diversity of gay identities. Manalansan (2003, 2002) and Crichlow (2004) also address these issues in chapter three with their discussions of transnational queer identities and hybrid sexual identities. Manalansan (2003, 2002) argues that transnational queers challenge dominant conceptions of citizenship and enact a form of 'cultural citizenship,' which challenges dominant norms regarding nationality, sexuality or race. Crichlow (2004) argues that racialized sexual minorities have difficulty having their voices heard within the dominant queer community or in their own ethnic groups. This lack of space places these individuals in marginal positions where they struggle in choosing what issues they want to address. They often have to choose either joining with their ethnic community or the queer community but not both. Their discussions highlight the importance of recognizing diversity within the gay community and to reveal the pressures that racialized queers face in Canada. Recognizing systems of power that dissolve multiple identities to be visible simultaneously is crucial in assessing claims based on sexual orientation.

To refer back to Isaac again, he told me the reason he thought his claim was accepted so quickly was because he was fully prepared and had his story almost memorized. He said he had to remember all of the important dates that he listed in his Personal Information Form (PIF) so that he did not make any mistakes when asked questions about the narrative in the hearing. As well, Isaac's story is pretty straightforward and he had documented his past same-sex relationships in Uganda with photographs and affidavits. He had proof of his involvement with HIV/AIDS activism and well as proof of police persecution. He also came directly to Canada from Uganda, proving that his fear of persecution to be well-founded. This would be considered an ideal case. Isaac explains his case,

So for me I submitted like evidence to show that yes, my life is at risk. Yes, I am gay. These are the photos of my boyfriend and also because I left my boyfriend home, that I also had to hookup with you know some guys around, and ah I had to present photos. So, including the work that I was doing in the community. So, at the hearing when we got there, because some people were telling me it could take two hours or three hours, twenty-five minutes, a half an hour, or the whole day. So, I was really scared but I'm like you know this is me. It's me explaining, so when I got there I thought it was a full court you know, then they tell you the judge or the member, sometimes you get scared. But, I was there with the lawyer, me and the member and it took only 10 minutes.

Albert feels that counsel ought to be prepared to fully 'spell it out' to the board member when it comes to specific instances of racial, cultural or sexual difference. If counsel thinks the board member may have difficulty understanding or interpreting a part of the client's story then he or she must be able to clearly articulate or create a discussion of this issue. For example, if counsel feels that the client may not fit these stereotypical notions of what it is to be gay then he or she should be prepared to say, "Okay, let's talk about it, why don't you like going to gay bars?" Or "Why don't you listen to Cher or

Madonna?” This will reveal to the board member that there are diverse forms of sexuality and that they do not fit this one mainstream ‘gay identity’ that seems so pervasive in Western culture.

I would have to ask, should it only be the counsel’s responsibility to be aware of these issues and to properly discuss them? Shouldn’t the IRB member be aware of the seriousness of these issues considering they hold the ultimate power of accepting or rejecting the claim? If we are claiming to be this nation of ‘difference’ and ‘multiplicities’ and diverse sexualities and we accept refugee claims based on sexual orientation should we not be aware of the dynamics involved in assessing diverse sexual identities? Shouldn’t the IRB members be aware of these issues if they are the ones deciding who is persecuted based on their sexual orientation? To me, this reveals a lot about our refugee determination system and its ability to properly assess claims based on sexual orientation. The deciding members should have a very strong anti-oppressive framework and be aware of the multiple forms of oppression that are at play for minorities, not just sexuality, how race, class and gender also compound to higher levels of persecution and how these markers of identity can create ‘different’ or non-Western definitions of what it is to be gay, female or black. The members ought to be aware of how these diversities shape the client’s conceptions of what it is to be gay and how sometimes their definitions of ‘gayness’ are not the same as Canada’s. Assuming so, results in imperialist assumptions about race and sexuality and that these people ought to measure up to western standards of what it means to be gay and persecuted.

4.4: The Place of Race, Culture and Nationality in the Hearing Room

Sherene Razack's discussion of the Imperialist gaze in refugee hearings of gender persecution as well as David Theo Goldberg's discussion of the gaze, provides us with relevant analysis for understanding the role of imperialism within both Isaac's and Mario's hearings. Razack argues that refugee hearings in the IRB are highly racialized events that are constructed on imperialist assumptions of First and Third world nations. (Razack, 1998) As well, Goldberg (1990) asserts that conceptions of the West as superior (a view which is held by a number of IRB members) shape the relationship between whites and 'racialized others,' whereby stereotypical assumptions of race and Third world nations are inherent in the white man's gaze or conceptualizing of the other. This racist gaze can be seen in a number of IRB hearings and I would argue that they were present within Mario's and Isaac's hearings.

In both cases, racist assumptions were part of the determination however; they may have not been explicit. Through reviewing the documentation provided by counsel as well as the IRB's documentation on Nicaragua and Uganda, the IRB members felt that these countries did not value the rights of homosexuals and did not offer them protection. In Mario's case, the documentation provided by both counsel and the IRB explain Nicaragua as a highly patriarchal culture with a strong 'machista' culture that thrives off subordinating women and homosexuals. Had the IRB member believed Mario was gay, this information regarding Nicaragua may have helped Mario have his claim accepted. These notions of Nicaragua are highly imperialistic, sexist, heterosexist and racist which unfortunately are used to help Mario receive refugee status.

In Isaac's case, the documentation provided portrayed Uganda as a very conservative Catholic society with strong traditionalist norms and rigid gender roles that highly condemned homosexuality. Both Mario's and Isaac's lawyers had to present their countries as barbaric and hostile towards homosexuals (apparently the opposite of Canada) in order to have their claims accepted. In all cases based on sexual orientation part of counsel's job is to portray their claimant's country as so backward and hateful to all homosexuals, to prove that the country in question cannot provide the claimant protection and that if the claimant were returned to their country they would be persecuted. Such a system of determination relies on assumptions of Third world countries as incapable of human rights and lacking of social morals, this is rather problematic as it can easily slip into racist assumptions. This logic assumes 'culture' to be a closed entity with no diversity or heterogeneity amongst its people. Creating such assumptions and reinforcing them to win refugee cases poses serious problems that are entrenched with heterosexist, sexist, racist and imperialist connotations.

This encounter between the First world and Third world, as Razack terms it, within the hearing room ought to be problematized or critically analyzed to highlight how imperialist assumptions about a country can reinforce racist ideologies. However, this issue is quite contentious, as an experienced refugee lawyer pointed out in our interview. He thinks that we have to be careful when discussing an equitable refugee system and then critique it as this critical 'cultural relativist' rhetoric can be picked up by conservatives to argue against offering international protection that is offered by the Geneva Convention. He states:

You can't call for an accessible and equitable refugee system and then when the very nature of international protection requires, regardless of the grounds, a

decision that says stuff in your own country, or the discourse in your own country or the mechanisms in your own country or the understanding of human rights in your country of origin are so lacking and so deficient that you have to resort to international protection by coming to Canada. ... You can't say that women or queers or people living with HIV or people fearing persecution because of their politics of religion should be able to get protection in Canada and then when Canada gives the protection say your being racist or your being imperialistic or your being culturally superior by doing so. So the whole concept of international protection to some degree or the other does require that kind of analysis. So you have to make choices of what you want and we need to be careful. To be honest with you the Reform party now manifest by the Federal conservatives have all made this argument. Oh we shouldn't be judging other people and what they do in their own your countries. How would we like it if somebody comes to us and tells us you shouldn't be doing this or you shouldn't be doing that. So it has actually been used by reactionary right-wing elements to try and deny people international protection and remember that the Convention definition and the whole Geneva Convention comes out of the event of the Second World War and the need for international protection. (Interview date: July. 5th, 07)

According to this lawyer there seems to be a conundrum concerning the criticism of the determination system if we bring in issues of imperialism and race, as the rhetoric may be used negatively to reinforce conservative views. However, I do not agree that because we are offering international protection we have no responsibility to provide reasons for our decisions. This is what I am scrutinizing in this study. With a system as discretionary and arbitrary as the IRB, it ought to be monitored very closely for biases and discrimination. This is why we must remain critical and question the system, so that it is more equitable and that the system has to defend its decisions. The conservatives may use this rhetoric negatively to bolster their anti-refugee arguments, but it does not mean that this discourse surrounding responsibility should not take place. The foundation from which the Geneva Convention was formed relies on Eurocentric definitions. This is still felt in today's policies regarding what it means to be persecuted or what constitutes 'well-founded fear,' or what is deemed a 'safe country.' These

decisions are based on Eurocentric assumptions that translate into 'international law.'

But who has the power for making these decisions? Are those who are most affected by these decisions involved in the policy making processes? This is not the case. Those elites from Western nations define who they allow into their borders and define what it means to be persecuted.

We must also remain critical of the lack of transparency that is inherent in the IRB. For instance, the lack of statistics regarding the number of claims based on sexual orientation. I attempted to find these statistics but to no avail. I asked one of the refugee lawyers if he knew of the statistics and he stated,

No, because apparently the refugee board doesn't keep numbers based on sexual orientation, either in terms of the number of cases or their determination. So it's pretty hard to give numbers. (Interview date: July.5th/07)

I then asked him to guess overall numbers from his own experience as a refugee lawyer. He said that it is a difficult thing to do because it depends on the country of origin. For instance, he referred to having a higher acceptance rate for Mexican claimants 5 years ago than now. He felt a number of things affect this variable such as specific social and political country conditions. I assert these assessments made by the IRB regarding the numbers of claims are concerted efforts to restrict flows from particular countries. These assessments are imbued with Eurocentric notions, border security and neo-liberal agendas.

Relying on the Convention's definition, nations such as Canada, shape their immigration and refugee policies through a complex process that is influenced by their political or trading relationships with other nations. Referring back to Castles (2002) Macklin (2003, 1996) and Pratt's (2003) discussion in the second chapter, the current securing and monitoring of Western nations' borders are a result of the perceived threat

of migration from Third World nations. Northern nations, such as Canada, are concerned that large flows of migrants from the South will challenge their economic supremacy. Therefore, Canada tries to restrict refugee flows by creating specific policies that increases the difficulty of making a refugee claim. One of these policies is the safe third country agreement, as discussed in the policy analysis in the second chapter. Canada defines the United States as a 'safe third country,' which implies that the United States upholds the same values as Canada in respecting and properly utilizing the Convention's definition. Determining a safe country is a complex process that considers refugee flows, political and social situations within a specific context that heavily relies on Eurocentric assumptions and definitions. A claimant's country of origin is of utmost importance when determining a refugee claim. Canada's interpretation of other countries social and political situations greatly affect its notions of safe or unsafe which are based on Eurocentric assumptions.

It is clear that the IRB's conception of a 'safe country' such as the United States, the U.K. or Australia greatly affects their decisions. Eurocentric ideologies affect identifying 'safe countries.' Western countries are commonly deemed as 'safe countries' because the IRB feels they share similar values and laws as Canada concerning human rights practices. Assuming these countries provide the same rights as Canada is quite problematic, as it assumes all Western nations share the same values and offer protection to sexual minorities, which is not the case.

CHAPTER 5: CONCLUSION

This study examined the complicated and complex refugee determination system in Canada, with a specific focus on refugee claims based on racialized sexual orientation. Contextualizing refugee laws, policies and practices in Canada enables us to approach the issue of assessing refugee claims based on sexual orientation with the necessary framework for proper analysis. The anti-refugee rhetoric that is pervasive in the current discourse surrounding refugee issues in many Western countries, such as Canada, tends to focus on issues of security and border control rather than focusing on providing compassionate and equitable refugee determination systems. Canada is caught in a contradictory position which results in a disconnect between the policy on paper and in practice. Attempting to fulfill its humanitarian obligations set out in the Convention, Canada assesses refugee claims of persecution such as sexual orientation, while at the same time it monitors its borders and attempts to restrict refugee flows. The changes in policies over the past few decades such as the introduction of IRPA, has created an even more biased and flawed system. With a single deciding member, no appeals division and limited recourse, such as pre-removal risk assessments (PRRA) or humanitarian and compassionate grounds (H&C)--both with low acceptance rates-- the Immigration and Refugee Board (IRB) has created a determination system that leaves refugees with little agency or power. Focusing on restriction and security removes the humanitarian and compassionate aspects inherent in the Convention. If IRB members are concerned with restricting refugee flows then their focus is not in the proper place. They tend to lose sight of the subjective experience of refugees. Such an approach may manifest into a 'guilty until proven innocent' mentality, which is quite dangerous. Refugee claimants'

lives are put on trial where they must prove themselves as worthy of Canada's protection. In numerous cases they must 'sell-out' their country and culture in order to have their claims accepted. Refugee claimants have to present their own country as barbaric, ignorant to human rights, or culturally inferior for Canada to grant its benevolent protection. This method of assessment reinforces imperialist ideals and speaks with a rhetoric of Eurocentrism. These notions of security, imperialism and Eurocentrism impede the neutrality of assessing refugee claims

In such a restrictive and Eurocentric climate how can Canada properly assess refugee claims based on sexual orientation? Many IRB members' conceptions of gay or queer identities may be based, at best, on messages they receive from 'mainstream media and queer culture.' If they rely on interpretations from dominant queer norms, it can prove to be detrimental to racialized refugee claimants. Critical race scholars point out that the conception of a homogeneous 'gay identity' excludes those from other marginalized groups, particularly people of colour. (Crichlow, 2004, Manalansan, 2003) Dominant queer norms in Canada commonly represent the views of white middle-class men, as this voice tends to overshadow more marginalized queer groups such as women, persons with disabilities, Aboriginal two-spirited, transgender/sexual, bisexuals and people of colour. When assessing claims based on sexual orientation IRB members utilize a 'cookie-cutter' model of a gay identity that does not properly represent their claimants. These IRB members rely on Eurocentric and heterosexist assumptions of queer sexualities. A more holistic understanding of diverse sexualities is needed, that takes into account differences of race, culture and nationality.

This paper reveals the complex nature of determining refugee claims based on sexual orientation and how decision-makers' Eurocentric conceptions of sexuality, race, gender and nationality impedes the neutrality of assessment. Relying on personal narratives of those involved with the refugee assessment process, such as past refugee claimants and refugee lawyers, reveal the complexity of problems that are inherent in the IRB. A review of the current research on assessing claims based on sexual orientation illustrates the need for a more critical approach to examining the issue that does not operate from a human rights discourse. This approach ought to rely on a critical race perspective that highlights problematic areas that may not be so apparent on initial analysis. Relying on the theoretical frameworks of critical race scholars such as Razack (1998), Ibrahim (2003) and Goldberg (1990) enabled me to illustrate the prevalence of Eurocentrism in the refugee assessment process and its inherent dangers. The interconnectedness of sexuality and race as markers of identity is crucial to properly theorize on the assessment process. Viewing sexuality and race as similar or competing discourses renders invisible how they lend meaning to each other. This study displays the complexities of assessing refugee claims based on sexual orientation in such a restrictive climate. To create a better system for assessing claims based on sexual orientation I provide the following recommendations.

A better system is needed to evaluate or determine claims based on sexual orientation, one that has an appeals process, more than one deciding body and more successful alternatives for denied claims. Proper training is needed for IRB members that address issues such as, diverse sexualities, the significance of culture and nationality, and concerns of vulnerability. A more holistic approach is needed for determining claims,

one that incorporates a thorough review of a claimant's history and how their history relates to their vulnerability. There ought to be a shift away from a strong legalistic assessment.

Assessing identity is a complex issue, one that does not fit properly into specific legal categories that rely on binaries such as masculine heterosexual/feminine homosexual. Room must be given for understanding the fluidity of sexuality. It cannot be defined by a standardized test or model. IRB members, Refugee Protection Officers, and refugee lawyers ought to be aware of the implicit imperialist notions that are inherent in Canada granting refugee status and realize how their actions or decisions may reinforce such notions. Eurocentric definitions of sexuality, race, gender and nationality should be criticized and more holistic and diverse understandings of these identity markers ought to be utilized.

This study presents only a snapshot of the complexities inherent in determining refugee claims based on sexual orientation. Research in this area is highly underdeveloped as it is a fairly recent area of study. Future research could examine some of the following questions: What impact does gender have in the assessment of refugee claims based on sexual orientation? What alternatives are there for assessing refugee claims that deal with identity issues? Does the assessment process have to exist within a legal discourse? The *Gender Guidelines* are meant to create a higher degree of sensitivity for board members in assessing gender persecution refugee claims, would the creation of a 'Gender Identity and Sexual Orientation Guidelines' be useful in sexual minority refugee cases? What specific policy changes could be made that would create a more equitable system that is sensitive to the needs of sexual minorities?

The journey for refugees is a long and troublesome experience that for some may seem to never end. Hearing the personal stories of two individuals who went through the process reveals how restrictive Canada's refugee determination can be. I would like to end this study by returning to their stories. I will close with the final words Isaac said in the interview when asked about his recommendations for the IRB. I feel it speaks volumes, as his voice is one of many individuals who are seeking or has sought refugee status in Canada's current anti-refugee climate. Isaac states, "They [the IRB] need to know that gender, sexuality or people's differences and even people's cultural backgrounds are all different. Where we are coming from and where we are going. So, we just need to look at the person as a person and then also we can give them a chance."

Appendix

Ryerson University Consent Agreement

Interpreting the Other Other: Assessing Refugee Claims Based on Sexual Orientation in an Anti-Refugee Climate.

Overview: You are being invited to participate in a research study. Before you give your consent to be a volunteer it is important that you read the following information and ask as many questions as necessary to be sure that you understand what you will be asked to do.

Investigator: The Principal Investigator on this study is Shawn Dicks. He is a Graduate student in the Immigration and Settlement Studies program at Ryerson University.

Purpose: The purpose of this study is to explore the refugee determination process of claims based on sexual orientation in Canada. Through interviews and research the project hopes to reveal barriers that may prevent real claims from being accepted. A single IRB member makes the decision of either accepting or rejecting the refugee claim. This means there can be error in judgment, especially when judging sensitive claims that deal with identity and sexuality. These interviews will highlight common problem areas and will provide recommendations and advice for the IRB and potential refugee claimants.

Description: I am asking you to participate in an interview that will last between 30 and 45 minutes. The interview will be tape recorded to help with storing the information you provide, although if you prefer to have the tape turned off at any point I will do so. In that case, I will directly write what you have to say. Tapes will be kept until the end of August 2007 or until transcription is complete and verified, whichever comes first. Transcriptions will be held by myself for a period of 18 months and then destroyed. Beyond indicating that you are either a past refugee claimant or a refugee law professional, no other personally identifying information about you will be included in the transcription.

Experimental Procedures: None of the questions or procedures used in this study is experimental in nature. The only "experimental" aspect of this study is the gathering of information for the purpose of analysis.

Risk: There is minimal risk or discomfort associated with this study. If you are not used to being interviewed the process might make you a bit nervous, but my purpose is to learn from what you have to say about this issue so we will make every attempt to reduce any sources of anxiety.

Benefits: The areas of potential benefit of the study are in

- helping future or potential refugee claimants who are making claims based on sexual orientation to become aware of areas or actions that may result in a rejected claim and
- developing a set of suggestions based on the experience of past refugee claimants and refugee law professionals for best practices in responding to this issue

Confidentiality: As noted above, you will not be personally identified. Any identifying information on the tape will be removed when transcription occurs. The tapes themselves will be destroyed no later than the end of August 2007 after transcriptions have been completed and verified. Transcripts will be securely retained by the Principal Investigator for up to 18 months to

allow analysis and review. Transcription of the tapes will be done by the Principal Investigator. No one else will have access to the audiotapes.

Compensation: You will be compensated for transportation costs with TTC tokens.

Voluntary Participation: Your participation in this study is voluntary. Your choice of whether or not to participate will not influence your future relations with the Immigration and Refugee Board, Citizenship and Immigration Canada, Ryerson University or any immigration/refugee related agencies. If you decide to participate, you are free to withdraw your consent and stop your participation at any time without penalty or loss of any benefits. At any point in the study you may refuse to answer any particular question or stop participation altogether.

Consent for audio taping of the interview: As noted above, the interview will be audio taped to help with transcription. Consent for audio taping may be considered as separate from consent to take part in the interview. If our consent includes audio taping, please indicate by signing your initials here

_____.

As noted previously, you may also request that audio taping be stopped at any point during the interview.

Use of results: The findings of this study may be used for publication, conference presentations and/or instructional purposes.

Your access to results: A copy of the report of the results will be made available to you at the end of the study. You may either contact the Principal Investigator or add your email address to the end of this consent form.

Questions: If you have any questions about the research now, please ask. If you have questions later about the research you may contact the Principal Investigator, Shawn Dicks, at 647.262.8748 or by email at sdicks@ryerson.ca.

If you have questions about your rights as a participant in this study you may contact the Ryerson Research Ethics Board c/o the Office of Research Services at Ryerson University, 350 Victoria Street, Toronto, ON M5B 2K3.

Agreement: Your signature below indicates that you have read the information in this agreement and that you have had a chance to ask any questions you have about the study. Your signature also indicates that you agree to be in the study and have been told that you can change your mind and withdraw your consent to participate at any time. You have been given a copy of this agreement.

You have been told that by signing this consent agreement you are not giving up any of your legal rights.

Name of Participant (Please Print)

Email (optional) for copy of report

Signature of Participant

Date

Signature of Investigator or Interviewer

Date

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