

1-1-2007

Determining a refugee's identity by means of categorical principles : the role of evidence in the refugee determination process : a case study of the Immigration & Refugee Board Documentation Centre

Adrienne C. Smith
Ryerson University

Follow this and additional works at: <http://digitalcommons.ryerson.ca/dissertations>

 Part of the [Public Affairs, Public Policy and Public Administration Commons](#)

Recommended Citation

Smith, Adrienne C., "Determining a refugee's identity by means of categorical principles : the role of evidence in the refugee determination process : a case study of the Immigration & Refugee Board Documentation Centre" (2007). *Theses and dissertations*. Paper 287.

This Major Research Paper is brought to you for free and open access by Digital Commons @ Ryerson. It has been accepted for inclusion in Theses and dissertations by an authorized administrator of Digital Commons @ Ryerson. For more information, please contact bcameron@ryerson.ca.

51793423 X
JV
7282
.565
2007

**DETERMINING A REFUGEE'S IDENTITY BY MEANS OF CATEGORICAL
PRINCIPLES: THE ROLE OF EVIDENCE IN THE REFUGEE
DETERMINATION PROCESS**

A CASE STUDY OF THE IMMIGRATION & REFUGEE BOARD DOCUMENTATION CENTRE

by

Adrienne C. Smith
BA, McGill University, 2006

A Major Research Paper
presented to Ryerson University

in partial fulfillment of the requirements for the degree of

Masters of Arts
in the Program of
Immigration and Settlement Studies

Toronto, Ontario, Canada, 2007

© Adrienne C. Smith 2007

PROPERTY OF
RYERSON UNIVERSITY LIBRARY

UMI Number: EC53681

INFORMATION TO USERS

The quality of this reproduction is dependent upon the quality of the copy submitted. Broken or indistinct print, colored or poor quality illustrations and photographs, print bleed-through, substandard margins, and improper alignment can adversely affect reproduction.

In the unlikely event that the author did not send a complete manuscript and there are missing pages, these will be noted. Also, if unauthorized copyright material had to be removed, a note will indicate the deletion.

UMI[®]

UMI Microform EC53681

Copyright 2009 by ProQuest LLC

All rights reserved. This microform edition is protected against unauthorized copying under Title 17, United States Code.

ProQuest LLC
789 East Eisenhower Parkway
P.O. Box 1346
Ann Arbor, MI 48106-1346

Author's Declaration

I hereby declare that I am the sole author of this major research paper.

I authorize Ryerson University to lend this paper to other institutions or individuals for the purpose of scholarly research.


Signature



I further authorize Ryerson University to reproduce this paper by photocopying or by other means, in total or in part, at the request of other institutions or individuals for the purpose of scholarly research.


Signatu

DETERMINING A REFUGEE'S IDENTITY BY MEANS OF CATEGORICAL PRINCIPLES: THE ROLE OF EVIDENCE IN THE REFUGEE DETERMINATION PROCESS

A CASE STUDY OF THE IMMIGRATION & REFUGEE BOARD DOCUMENTATION CENTRE

© Adrienne C. Smith, 2007

Master of Arts
Immigration and Settlement Studies
Ryerson University

ABSTRACT

This project considers the role that evidence plays in determining a refugee's identity within Canada's refugee adjudication process. Its main contention is that Canada's refugee determination system works within a framework that values legalistic and categorical principles, which ignore the complexity of a refugee's identity. Since Canada's refugee system excludes claimants who do not fit designated categories, it encourages them to modify their identity in order to meet the strict criteria for qualification. This project is based on interviews with individuals involved in the refugee process, including refugee decision-maker (s), community activist (s) and refugee lawyer (s). Using important historical and contextual analysis, this paper demonstrates the restrictive nature of refugee definitions and policies that act as barriers that exclude claimants. Moreover, the role of institutions within the Immigration and Refugee Board also operate to restrict claimants. A case study on the IRB Documentation Centre illustrates how evidence, as the determining factor of identity, is one specific method of restricting claimants.

Key words: refugees; identity; evidence; restrictions; IRB Documentation Centre

ACKNOWLEDGEMENTS

The author is greatly indebted to Dr. Tariq Amin-Khan for his supervision on this project. His advice and suggestions played an integral role in the shape and outcome of this research paper. The input of Professor Aparna Sundar is also deeply appreciated. As well, the author wishes to thank Dr. Myer Siemiatycki as a constant source of support for his students and for developing a program that encourages research on refugee issues.

The author wishes to thank the many editors from Montreal to Saskatoon that helped to add further clarity and comprehension to this paper. Their valuable input made the ideas and arguments expressed in this project come to life. In addition, the unwavering support of colleagues (O.R), friends (D.W, L.J), and family (A.L, M.S, R.S, D.S, M-C.S) serve as a constant reminder of the importance of research such as this.

Lastly, the opinions and information provided by all informants that contributed to this project had a lasting impact on the author and act as source of inspiration to continue research in this area.

TABLE OF CONTENTS

GLOSSARY OF TERMS AND ACRONYMS.....	vii
INTRODUCTION.....	1
SECTION 1: LITERATURE REVIEW.....	7
SECTION 2: METHODOLOGY.....	15
SECTION 3: PROBLEMATIZING ‘IDENTITY’ IN THE CONVENTION DEFINITION AND REFUGEE DETERMINATION SYSTEM	
3.1 Aspects of Importance: Canada’s Refugee Determination System.....	18
3.2 The Importance of Identity in the Convention Refugee Definition.....	20
3.3 Canada’s Interpretation of the Convention Definition.....	22
3.4 The Social Construction of the ‘Racialized Refugee’.....	23
3.5 The Function of the “Racialized Refugee” in the Canadian Adjudicative Process....	25
SECTION 4: DICTATING REFUGEE LAW AND POLICY IN CANADA: THE INFLUENCE OF POLITICAL AND PUBLIC PRESSURES	
4.1 Ideology-Infused Acceptance: Political Refugees Fleeing Soviet Satellite Nations in the Post-1945 Era.....	30
4.2 Tactical Admissions Based on Political Objectives: Prioritizing the Economy in the 1950s and 1960s.....	31
4.3 Changes to the Racial and Geographical Composition of Refugees: A Shift in Public Perceptions in the 1970s and 1980s.....	32
SECTION 5: CONTEXTUALIZING PRESENT ISSUES FOR CLAIMANTS: HOW SECURITY, CONTROL AND FAIRNESS RESULT IN BLOCKED ACCESS	
5.1 Pre-Emptive State Control: Restricting Refugees Prior to Flight.....	39
5.2 Restricting Refugee Claimants in the Name of “Security Measures”: The Safe Third Country Agreement.....	40

SECTION 6: QUESTIONING RELIABILITY, ACCURACY AND INFLUENCE: A CASE-STUDY OF THE IRB DOCUMENTATION CENTRE

6.1 Legalistic Categorization infused with Racialization: IRB Control over a Refugee's Identity.....	45
6.1.1 The Severity of a One-Member Panel on the Classification of Identity.....	46
6.2 The Need for Reliable Evidence: "The Burden of Proof" and the Development of the Documentation Centre.....	47
6.3 The Paradox of Canada's Humanitarian Role with "Effective" Decision-Making....	49
6.3.1. The Development of the Documentation Centre as a Key Element of the New Direction of the Refugee System.....	50
6.3.2. The Failed Recommendations of 'The Plaut Report': Separating Political Patronage from Refugee Protection.....	52
6.4 The Objectives and Mandate of the IRB Documentation Centre.....	55
6.5 Problematizing the Research Practices at the IRB Documentation Centre.....	56
6.5.1 How the Misuse of Information Allows for the Categorization of Identity: The Influence of Refugee Protection Officers.....	57
6.5.2 A Spectrum of Bias: From RPOs to "Expert" Researchers.....	59
6.5.3 Racialized Community Experts and the Discounting of Non-Governmental Sources.....	62
6.5.4 The Authoritative Weight of Documentation Centre Research	65
6.5.5 The Circulation of Outdated Information: The Responsibility of Board Members, Documentation Centre Staff, RPOs and Counsel in Preventing Inaccuracies.....	68
6.6 Recommendations by the 'Players' in the Refugee Determination Process.....	71
CONCLUSIONS.....	74
REFERENCES	

GLOSSARY OF TERMS

Fact-Finding Mission: An investigative mission undertaken by the Research Directorate whereby qualified researchers are sent to the country under discussion to gather information. Researchers conduct primary research and gather evidence for the Research Directorate and Documentation Centre for use in refugee hearings.

Immigration & Refugee Board [IRB]: Canada's quasi-judicial system responsible for deciding refugee claims.

Immigration & Refugee Board Documentation/Resource Centre [IRBDC]: Under the jurisdiction of the Research Directorate, the Centre acts as the "IRB's library" to provide information and resources on all aspects important to the refugee determination process. This includes: National Documentation Packages, Issue-Papers, published reports and any other information relevant to the refugee process.

Information-Requests [RIR]: Information requested by individuals in the refugee determination process from the IRB Research Directorate. UNHCR's Refworld CD-ROM also informs requests.

IRB Board Member: IRB employee responsible for deciding a claimant's case, after a thorough analysis of all available evidence and information. It is important to note that a single Board member is responsible for deciding if a claim is accepted or rejected.

IRPA: Immigration and Refugee Protection Act

Issue-Papers/Extended Responses: In-depth research reports produced by the Research Directorate on specific issues in the refugee determination process. Board members, counsel, claimants or others may request research. Research Directorate experts, fact-finding missions, or other sources inform the responses. Past issue papers may be used as information in a refugee hearing.

National Documentation Packages [NDPs]: A collection of documents on a country's background information including history, political structure, human rights situations, security conditions and other relevant information in determining refugee cases. Packages are subject to regular updates and reviews by Research Directorate staff.

Refugee Protection Officers [RPOs, formerly Refugee Hearing Officers]: IRB employee that investigates the relevant background information to a claimant's case. RPOs are responsible for ensuring all relevant and available evidence is presented to the Board. RPOs also engage in questioning the claimant so Board members do not appear impartial.

Research Directorate: A research program developed to meet evidentiary and information needs of the refugee determination process. Provides wide-range of information from migration to human rights issues under the jurisdiction of the IRB. Services include: Information-Requests, Fact-Finding Missions, Resource [Documentation] Centre etc.

UNHCR: United Nations High Commissioner for Refugees

UNHCR Convention: 1951 Geneva Convention relating to the Status of Refugees

UNHCR Handbook: 1988 Handbook, on Procedures and Criteria for Determining Refugee Status

INTRODUCTION

The premise that objective, current and reliable information is essential to good decision-making is central to the philosophy that inspired the creation of the Research Directorate of the Immigration and Refugee Board of Canada and continues to govern its activities. The provision of Country of Origin research to all parties in the refugee protection determination process makes a valuable contribution to informed decision-making and the integrity of Canada's refugee protection system.¹

Evidence determines the credibility, legitimacy, and eventually the identity of the claimant in question. The responsibility of the Research Directorate of the Immigration & Refugee Board to the integrity of the refugee determination process is substantial, as authoritative evidence can sway the decision-maker and provide fuel for either accepting or rejecting a claimant's story. As the paragraph above indicates, the Research Directorate is an authoritative source for a wide range of information on country conditions and human rights situations in a claimant's country. The information coming from the Research Directorate, including Issue Papers and National Documentation Packages,² makes up a significant contribution to the evidence presented in a refugee's hearing. Hence, it becomes imperative to test the accuracy, reliability and influence of the information from the Research Directorate. The Immigration and Refugee Board Documentation Centre is a main source of information for the Research Directorate and will hereby be referred to as the Documentation Centre, the IRBDC or simply, the Centre.

Canada's refugee determination system underwent significant changes in the late 1980s in order to address an increase in persons claiming protection in Canada. The new

¹ Immigration & Refugee Board of Canada. About Research. http://www.irbcisr.gc.ca/en/research/about_e.htm. (accessed July 5, 2007).

² See Glossary of Terms

refugee system included the development of a quasi-judicial tribunal to conduct oral hearings to assess all the components of a refugee claim, including evidentiary matters. Alongside the development of the Immigration & Refugee Board (IRB), a research centre was set up to compile background information to help better assess the validity of claims. Canada, as a signatory of the *Geneva Convention*, was compelled to provide a resource centre for both decision-makers and claimants in order to fulfill stipulations set out in the *UNHCR Handbook*. The *Handbook* discusses two principles that became part of the basis for the development of a resource centre. The *Handbook* states that “claimants are not in a position to obtain relevant objective evidence” and that “objective evidence will be a determinant in the bulk of refugee cases.”³ The sovereignty of Canada’s refugee determination system meant that the enactment of the resource centre also influenced the need to restore credibility and integrity to the system through the facilitation of accurate and fair decisions.

The need to produce accurate and fair decisions is maintained by the strict methodologies and mandate of the Immigration & Refugee Board. These principles reflect its affiliated institutions, such as the Research Directorate and Documentation Centre. This relationship shows the propensity of these institutions to align with the current IRB methods that focus on strict legalistic methods of determining identity and credibility. This mandate leaves very little room for accepting the fluid identity that characterizes forced migrants. An emphasis on the specificities of the refugee judicial process, including a strict refugee definition and static refugee identity, forces the claimant to morph her situation of persecution into a designated category. The Research

³ United Nations High Commissioner for Refugees. 1988. *Handbook, on Procedures and Criteria for Determining Refugee Status*, Geneva: Office of the UNHCR, Section 196

Directorate, which is responsible for shaping the evidentiary matters of the hearing, is a party to these categorical principles. In this way, the refugee identity and the specificity of the claimant's condition or situation may be dissolved to fit a designated category.

This research undertakes to show how these institutions construct and subsequently categorize the elements of a refugee identity for the purpose of maintaining a system that excludes claimants who do not fit into a particular category. These categories facilitate the ability of institutions to racialize and construct the refugee claimant in opposition to the decision-making tribunal and the nation-state that governs it. The practices of the Research Directorate are laden with similar issues that serve to increase the control of the adjudicators in the refugee determination system over the fate of the claimant. Information that is overly generalized, biased or applied wrongly in the refugee hearing is indicative of the strong potential for making incorrect decisions, as well as the fact that decisions based on false information are indeed made. This not only threatens the credibility and integrity of the refugee system, but also highlights the lack of agency the refugee claimant has in determining her future.

The approach undertaken in this paper is meant to emphasize the importance that refugee policy and historical context, such as the current climate of emphasized border security, can have on the experience of a refugee claimant under the scrutiny of Canada's refugee determination process. Therefore, it is important to notify the reader that each section will begin with a brief historical explanation of the context and background to the issue under discussion. The first section will explore a review of key literature on the topic, with a focus on identity and postcolonial theorists. This first section will clearly show that this paper uses critical race theory to approach these issues. This evaluative

lens draws attention to the concepts of essentialism, racialization and identity that mainstream researchers tend to skip over when framing the problems associated with the refugee determination system. It also serves as a reminder that the players in the refugee determination process need to be mindful of race, identity and other common stereotypes that can generalize the characteristics of the refugee population.

Section Two will explain the methodology that is utilized to support the claims of this paper. This approach includes a description of the multiple methods employed, including interviews with key informants and the resulting analysis in the form of a case study of the Research Directorate's Documentation Centre. The information gathered from community experts, academic scholars and government informants provides a wide range of data from which to ascertain the following conclusions.

Section Three discusses aspects of importance surrounding refugee definition and the refugee determination process. These discussions help to prove the first claim of this research, that a refugee claimant is slotted into the legalistic framework of the Convention definition and Canada's domestic refugee law (*Immigration & Refugee Protection Act*) to be disqualified from claiming protection in Canada. This section also lays out the theoretical position of the paper, through discussions of how the term "refugee" is constructed in opposition to the Canadian state. The argument being that the construction of the term "refugee" carries its own identity that is racialized and creates barriers for the claimant to be excluded from the process of refugee determination. It should be clarified that while the paper does not go into the racialization of Eastern and Southern Europeans by the system, the concern here is largely with the racialization of non-white refugees.

Section Four seeks to contextualize the claims of this paper. This includes an important historical analysis of the role that Cold-War ideologies and the favouritism of political refugees have played in the development of Canadian refugee policies. These policies continue to have significant influence on the principles of the refugee process and the formation of a refugee's identity as the deciding factor in the acceptance of a claim. As well, a related context is that refugee policy has not differed significantly from a mandate that has historically advocated for control and restriction on all persons coming to Canada.

Section Five aims to expand on the above claims, using contemporary examples to show state tactics that are aimed at restricting the inflow of refugees. This includes an analysis of pre-emptive state controls, such as visas and carrier sanctions. A portion of this section is devoted to an analysis of the effects of the *Safe Third Country Agreement* and the resulting blocked access of persons in need of protection. The above arguments help to demonstrate the current viewpoint of the Immigration & Refugee Board and how little has been done to address the situation of blocked access to the refugee determination system.

Section Six is the Case Study of the Research Directorate's Documentation Centre. This section discusses the inaccuracies of the Centre's information base, and the existence of incorrect information and biases in the evidence presented from the Research Directorate. The main claim is that the misuse of information in the refugee process brings into question the legitimacy behind the judgments passed by adjudicators, refugee protection officer's (RPOs) and others. The above inaccuracies damage the credibility of Canada's refugee determination process. It is argued here that evidentiary matters in the

refugee process are an element in restricting the inflow of persons seeking protection in Canada.

The claims made in this paper are strongly influenced by the informants that were willing to speak on the issues presented. The lack of secondary sources for many of the claims is due to the secretive nature of the Immigration & Refugee Board and the lack of scholarly publications that address the issues, among them, the influence of the Research division on refugee claim decisions. While other researchers have addressed the influence of identity on the refugee determination process,⁴ almost no work has been done to account for the influence of the Documentation Centre on the refugee determination process. In this sense, this research breaks new ground. However, this research is exploratory, and the primary research undertaken here is meant to open discussions on the possibility of expanding future research in the area. In the current wave of the Western states' clear desire to encourage further restrictions on the inflow of refugees, coupled with the looming UNHCR forecasts of a continuous rise of persons seeking protection, the last step in a refugee's long journey deserves considerable scrutiny.

⁴ See Lacroix, Marie. 2004, Dauvergne, Catherine. 2005.

Section 1.1: Literature Review

There is a noticeable gap in existing literature that discusses the role of identity within the refugee determination process. For instance, there is little discussion surrounding the construction of a refugee's identity by the state in order then to reject individuals based on this criterion. The lack of acknowledgement by institutions within the refugee system of the concept of a fluid, uncategorized identity presents major barriers for claimants when seeking protection in Canada under the *1951 Convention* definition. The existing literature that explores the construction of a refugee's identity is informed by a variety of disciplines and perspectives. The perspective taken in this research project will be interdisciplinary, with an emphasis on a political science approach. For organizational purposes, the literature reviewed is discussed in order of date of publication. As I move from older to more recent publications, one overarching theme emerges showing how the field of refugee studies has shifted from an emphasis on the conformity and predictability of the refugee experience, to one that places importance on recognition of the multifaceted composition of a refugee identity. In this sense, the push to standardize policy without much sensitivity to the heterogeneity of refugee identities is a source of concern. A gap in our understanding of the effect that institutions within the refugee determination process can have on perpetuating the current need to classify the refugee experience in legalistic terms is addressed throughout this analysis.

The development of the current refugee process arose in a context that assumes the ability to determine a claimant's identity through documents and information provided by the Research Directorate of the Immigration & Refugee Board. This project addresses this wrongful conclusion by negating the assumption that identity can be easily

classified and subsequently categorized. Older literature on refugee studies commonly discussed the predictability of the refugee experience, as is evident in an early publication of the *International Migration Review* written by Barry N. Stein and Silvano M. Tomasi who emphasized that "...refugee behavior may be scientifically perceived as distinctly consistent and notably predictable...there is a refugee experience and that this experience produces what may be termed refugee behavior".⁵ These authors perpetuate the idea that refugee studies must focus on the consistencies and patterns in the refugee experience. Early articles within scholarly journals had significant impact on the direction of refugee studies, as well as the development of the refugee determination process at the time. As a result of the views of respected theorists, research in the field of refugee studies continuously omitted the value placed on the fluidity of a refugee's identity and experience.

This paper relies on the work of critical race theorists and postcolonial scholars to inform a position that argues against the categorization of identity. A fluid identity is commonly positioned as incompatible with the institutional process that decides refugee claims. Literature that examines how the construction of an identity may be used to portray individuals as incompatible with the state or dominant group, due to race, citizenship or country of origin will provide a framework for this research project.⁶

The social constructivist approach employed in this essay will provide a framework to argue how identity is perceived by institutions such as the IRB, as static and unchanging, as opposed to fluid, complex, and dependent on historical and social context. This project supports the work of Frances Henry and Carol Tator that shows

⁵ Stein, Barry N. and Silvano M. Tomasi. 1981. Forward. *International Migration Review*, Vol.15 (Spring/Summer), p.6

⁶ See Thobani, Sunera. 2007.

how Canadian laws and institutions have been instrumental in the construction and establishment of 'otherness'. The arguments put forth by Henry and Tator describe the "entrenched discrimination in a society's institutions and value systems" that has significant influence on the process of racialization by the state and its operation in state institutions.⁷ An additional contribution of Henry and Tator is the claim that discriminatory laws are being used "for reinforcing commonsense notions embedded in the dominant cultural system."⁸ In direct relation to this project, the arguments illustrate how negative public perceptions towards refugees have a tendency to legitimize the restrictive functions of Canadian institutions. For instance, the IRB system seeks to racialize refugees and relies on discriminatory laws and cultural systems to perpetrate its influence.

The common use of stereotypes and essentialist cultural traits by the IRB, when determining the credibility of a refugee claim, mean that it is imperative to discuss the effect this has in the refugee determination process. The essentialist approach used by the IRB to determine, for example, a claimant's racial identity presumes "that race and ethnicity is something given, ascribed at birth, deriving from the kin-and-clan structure of human society and hence something more or less fixed and permanent."⁹ This approach presumes that a claimant must be able to present a racial identity that is easily definable, provable through evidence and subsequently categorized into the Convention refugee definition. The work of Edward Said and other postcolonial theorists provides the framework to refute this approach and explain and critique its appearance within the

⁷ Tator, Carol and Frances Henry. 2006. *Racial Profiling in Canada*. Toronto: University of Toronto Press, p. 44

⁸ Ibid. p.39

⁹ Isajiw, Wsevolod W. 1999. *Understanding Diversity: Ethnicity and Race in the Canadian Context*. Toronto: Thompson Educational Publishing Inc., p.66

refugee determination process. Said's work provides a central theoretical grounding from which to discuss the ways in which refugee claimants are positioned in opposition to the dominant institutions within the Canadian refugee determination system, based on skewed interpretations of culture. A major theme in *Orientalism* (1978) shows how Western scholars have morphed, interpreted and explored the cultures and identities of the Orient only in relation to the West. Said theorizes that the identity of cultures around the world have been constructed as 'exotic'-'weak' and -'other', while Western culture is portrayed as having a strong and rational identity.¹⁰ The literature of Edward Said provides a foundation from which to assess how Canadian institutions construct a refugee's identity as the other-resulting in a lack of agency for the claimant to self-identity. Additional publications by Said, including *Culture and Imperialism* (1993) and *Covering Islam* (1981), provide additional works of reference to measure the construction of the refugee identity through a Western lens and the problems surrounding this limited view.

Within the literature discussing the construction of identity there are many points of contention among theorists. One of the most common positions proposes the idea of dichotomous, oppositional populations based on race, religion or other identity traits. This position rejects the construction of identity and its shifting characteristics as dependent on context and instead argues that identity is fixed and easily generalized. This position is best articulated in an article written by Samuel Huntington titled "The Coming Clash of Civilizations."¹¹ This article shows a past resurgence of academic work that re-enforces notions of essentialism through the use of cultural stereotypes that

¹⁰ Said, Edward W. 1979. *Orientalism*. New York: Random House Publishing.

¹¹ Huntington, Samuel P. 1993. The Coming Clash of Civilizations. In the *New York Times*, June 6, 1993

position individuals as either part of the West or against it. The unprecedented popularity of Huntington's work is indicative of the effects that cultural stereotypes have had on institutions within the refugee determination process.

The second portion of this literature review examines a variety of works that act as key sources of secondary research. The first of these works, by authors Eduardo Arboleda and Ian Hoy, helps frame and contextualize the assertions in Section Three that discuss the opposing positions surrounding the interpretation of the Convention refugee definition. Arboleda and Hoy highlight how the attempted universality of the term "refugee" provided by the Convention definition has not been realized, as most nation-states interpret and apply the definition differently.¹² This project adds to the above argument by expanding on the problems surrounding the strict interpretations of the Convention definition that can act as a barrier to persons seeking protection under Convention status. Arboleda and Hoy propose many problems with the current interpretation of the Convention definition. However, they fail to highlight the difficulties that arise when applying the Convention definition to refugees with grounds for persecution that are not easily categorized. This research project provides a more comprehensive understanding of how the Convention definition fails to reflect a majority of refugee experiences. Additionally, the authors fail to address the inherent problems within the Convention definition itself, and instead focus on the problems associated with its interpretation. This project addresses this gap by highlighting the problems with the Convention definition that serve to exclude a majority of refugees from even qualifying under its strict stipulations.

¹² Arboleda, Eduardo and Ian Hoy. 1993. The Convention Refugee Definition in the West: Disharmony of Interpretation and Application. In *International Journal of Refugee Law*. Vol. 5 (1)

A focus on the fluidity of a refugee's identity and the unpredictability of her migration experience is a core concept in this paper that is supported by the work of refugee studies scholar, Liisa H. Malkki. Malkki criticizes the previous focus of the field of refugee studies that tended to discount the importance of individual identity. Malkki's article titled "Refugees and Exile" is critical of previous refugee studies scholars in her assertion that "unstable social phenomena may be imagined as essential 'traits' and 'characteristics' attached to, or emanating from, individual persons. Instead of being content with seeing commonalities and differences in the socio-historical processes that produce refugees, researchers tend to seek to fix and make permanent something 'essential' about these processes."¹³ Malkki criticizes how the dominant discourse in refugee studies has rejected the fluidity of refugee migration by focusing on theorizing the formation of an essential refugee experience. This project credits the work of Liisa H. Malkki for providing an approach that questions the construction of identity, by institutions such as the IRB, for the purpose of categorization.

Lastly, a discussion of contemporary refugee law and policies, with a focus on the role of identity within these applications, is essential to future discussions of the refugee determination process. The work of author Catherine Dauvergne provides the foundation for an assessment of the contemporary role of identity both in the *1951 Convention* definition and the Canadian refugee determination process. Her pivotal work, titled *Humanitarianism, Identity and Nation* provides one of the first comprehensive assessments to gauge the importance of identity within Canada's refugee system. Dauvergne successfully argues that a refugee's identity is "pre-constructed" in order

¹³ Malkki, Liisa H. 1995. Refugees and Exile: From 'Refugee Studies to the National Order of Things. In *Annual Review of Anthropology*, Vol. 24, p.495-523

conveniently to slot a claimant's case into the refugee legal system.¹⁴ Additionally, she shows that a static identity as a key component of a successful refugee claim provides a solid foundation from which to question the role of the Documentation Centre in regulating the refugee influx. Dauvergne's focus on the legalistic nature of the refugee determination process, the role it plays in the construction of identities and the recognition that identity exists outside of refugee law are the basis for many claims made within this project.

Given that many arguments made within this paper are established on the basis of legalistic concepts, a body of literature that examines both the logistics of international refugee laws and Canada's domestic refugee laws provides an important cornerstone to the analysis presented in this paper. The contributions of James Hathaway,¹⁵ who has written extensively on the rights of refugees under international law and Lorne Waldman,¹⁶ who examines how the Convention refugee definition has been interpreted through Canadian case law, will offer thorough explanations of the legal rights of the claimant and the role of identity within international and domestic law.

Throughout this literature review, there are many gaps in understanding the role that identity plays within the refugee determination process. An obvious exclusion is the role that the powerful actors (including Board members, refugee protection officers, Documentation Centre researchers, etc.) play in forming a claimant's identity, which is then presented within the hearing. This research is meant to be an outlet for those working within the refugee system to voice their opinion and perspective on the influence

¹⁴ Dauvergne, Catherine. 2005. *Humanitarianism, Identity and Nation: Migration Law in Canada and Australia*. Vancouver: UBC Press, p.9

¹⁵ Hathaway, James C. 2005. *The Rights of Refugees Under International Law*. New York: Cambridge University Press

¹⁶ Waldman, Lorne. 2001. *The Definition of Convention Refugee*. Markham: Butterworths Canada Ltd.

of these actors. Giving voice to individuals who are or were in control of constructing a refugee's identity provides invaluable insight into the depth of the influence of identity within the refugee determination process.

Section 2.1: Methodology: Multiple Strategy Case Study Approach

The research approach used in this project aimed at gathering qualitative information from multiple sources to show the influence of the Documentation Centre on the refugee determination process. A case study approach is used to gather evidence to provide a strong foundation from which to analyze the focus of identity categorization within the institutions of the refugee system. This approach is supported by an extensive literature review, secondary source analysis and in-depth interviews.

Since a variety of issues are explored in this research project, a multiple strategy case study approach is taken to best utilize the strengths of each method for the purpose of gathering all of the important information needed.¹⁷ Section Six of this paper discusses the case study of the Research Directorate's Documentation Centre. The units of analysis that form the base of this research project are in the form of an organization (the Research Directorate at the IRB) and the individuals (counsel, refugee protection officers, Board members, researchers) that shape the procedures of the refugee process. An examination of the objectives of the Documentation Centre provides the reader with an opportunity to foresee obvious problems with its mandate and how it gives the proposed claims various amounts of authoritative weight. Finally, the expertise of individuals closely associated with the workings of the IRB Research Directorate provides further assurance of accuracy and reliability.

Given the nature of this research, a cross-sectional study was undertaken to show the influence of the Documentation Centre on the refugee adjudication process. As such, the findings and conclusions of this study are qualitative in nature. In addition, time

¹⁷ Babbie, Earl and Lucia Benaquisto. 2002. *Fundamentals of Social Research*. Scarborough, Ontario: Thomson Canada Limited, p. 95

constraints have meant that conducting interviews with a wide-range of informants was not possible. In total, five interviews were conducted ranging from 30 minutes to 1.5 hours, dependent on the level of participation desired by the informant. However, the quality of the information provided by all informants resulted in achieving the goal of gaining significant insight into the influence of the Documentation Centre on the refugee determination process.

This research was gathered from key authorities in the field of the refugee determination system, including former member(s) of the Immigration & Refugee Board, experienced refugee advocate(s), former refugee claimant(s) and refugee lawyer(s). Informants were chosen based on their level of expertise and direct experience with the Research Directorate and Documentation Centre at the Immigration & Refugee Board.

Section 3: Refugee Categorization: Problematizing the Convention Definition and Refugee Determination System

Canada's refugee determination system continues to garner both positive and negative reactions in the domestic and international spheres. The approach taken in this section will be critical towards the refugee system and the refugee definition that have resulted in the exclusion of a vast number of persons seeking protection. The numerous claims presented in this section are meant to emphasize the legalistic and adjudicative principles that result in blocked access to Canada's refugee system, experienced by a majority of persons seeking protection. Subsequently, it will be proven that the most successful claimants are individuals who attempt to slot their identity, story, and reasons for persecution into a legalistic framework. The first portion (3.1) describes the legalistic methods that are used to assess a refugee claim. It also helps to contextualize Canada's acceptance of refugee claimants in proportion to international numbers and questions the extent Canada fulfills its humanitarian obligations. The second portion (3.2) describes the static categories of the Convention definition, within which a refugee claim is assessed. Here, special attention is given to the role that identity plays within the Convention definition. The third portion (3.3) explores how Canada's legal framework (IRPA) interprets the Convention definition. Explaining the specificities of the interpretation illustrates that Canada's refugee system adheres primarily to categorical principles. The fourth portion (3.4) provides the framework to explain how the term "refugee" is constructed by the state as the other. It will be shown that the government places a refugee's identity into a category that is then labeled in opposition to the state, which allows them to reject a claimant's identity based on their non-adherence to the

ideological principles of the dominant group. The fifth portion (3.5) discusses how the process of intertwining the race and the identity of a refugee claimant perpetuates the idea that the two are inseparable and effectively leads to the construction of “the racialized refugee”. Examples of the historical linkages of refugee status with an essentialist view of racial identity serve to prove this as the continuing viewpoint within institutions such as the IRB.

3.1 Aspects of Importance: Canada’s Refugee Determination System

Both domestic and international legal frameworks govern Canada’s refugee adjudication process. Within each framework, the focus is on a static and categorical system that seeks to classify a person who has been subject to persecution. Unfortunately the end result is that very few meet this stringent criterion and are eligible for protection. Both the *UN Convention* definition and the *Immigration & Refugee Protection Act* disqualify a large number of persecuted persons, in some cases purposely while in others unwittingly. In Canada, people seeking protection are assessed under the *Convention* definition and this is done through the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB).¹⁸ The determination system also uses a variety of international instruments to determine refugee status, with the *1951 Convention Relating to the Status of Refugees* and subsequent *Protocol* being the most important.¹⁹

¹⁸ Arboleda and Hoy. 1993. p.148

¹⁹ International instruments used include: *1979 Handbook on Criteria and Procedures for Determining Refugee Status*, *1951 Convention relating to the Status of Refugees* and the subsequent *Protocol*, *Universal Declaration of Human Rights*, *International Covenant on Civil and Political Rights*, *International Covenant on Economic, Social and Cultural Rights*, *Convention on the Elimination of All Forms of Discrimination Against Women*, *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*

Exceptions to this are given to individuals who receive special permission to stay from the Minister of Citizenship & Immigration.²⁰

The legislative framework employed to determine refugee protection is the *Immigration and Refugee Protection Act* (IRPA). A primary goal of *IRPA* in regards to refugees is “to recognize that the refugee program is in the first instance about saving lives and offering protection to the displaced and persecuted.”²¹ In contrast to the economic value placed on independent-class immigrants, this statement reveals a fundamental commitment to humanitarian objectives. It is important to note the inclusion of humanitarian objectives within Canadian immigration law. Throughout it, the human rights component of Canadian immigration policy is executed under the Immigration & Refugee Board (IRB).

Despite their stated humanitarian concerns, Canada continues to accept relatively low numbers of refugees. To illustrate, 35 685 persons were admitted to Canada in 2005²², when the UNHCR estimated worldwide refugee numbers at over 21 million.²³ The fact that just over one in ten immigrants arriving in Canada is a refugee shows the minimal impact Canada has the worldwide refugee crisis. In addition, the enactment of the *Canada-US Safe Third Country Agreement* in 2005 has drastically reduced the number of in-land refugee claims made at Canadian borders.²⁴ Further evidence of the

²⁰ Department of Justice. 2001. *Immigration and Refugee Protection Act 2001*. <http://laws.justice.gc.ca/en/I-2.5/245769.html>, Section 95, (accessed October 25, 2006)

²¹ Ibid. Section 2(a)

²² Citizenship and Immigration Canada. 2006. *Annual Report to Parliament on Immigration 2006*. <http://www.cic.gc.ca/english/pub/annual-report2006/index.html>, (accessed November 15, 2006) Section 3.1.1

²³ UNHCR: The UN Refugee Agency. 2006. *UNHCR Global Appeal 2007: Part 1: An Overview*. <http://www.unhcr.org/publ/PUBL/455443960.pdf>, (accessed November 15, 2006), p.12

²⁴ Canadian Council for Refugees. 2005. *Closing the Door on Refugees*. <http://www.ccrweb.ca/closing-doordec05.pdf>, (accessed November 15, 2006), p.3

effects of the *Agreement* and the influence it has had reducing refugee claimants access to Canada's refugee system will be discussed in later detail in Section Five.

3.2 The Importance of Identity in the Convention Refugee Definition

In order to show the narrow approach that the refugee determination process takes in assessing the identity, and therefore the credibility, of a refugee claim, it is important to explain the role 'identity' plays within the Convention refugee definition. The Convention refugee definition may either facilitate or hinder the state's construction of a refugee's identity. One major criticism of the Convention definition is that it tends to perpetuate an essentialist identity by asking for specific 'grounds of persecution' that does not leave much room for fluidity. States that choose to directly adopt the Convention definition within their domestic law tend to conform to these specific and static categories of defining a refugee. Canada's adoption of the Convention definition highlights the problems associated with the actual legal definition of a refugee as well as how the state defines this identity.²⁵

The Convention definition is the most important standard used to assess refugee claims in many domestic refugee determination systems worldwide. The Convention definition stated in the *1951 Convention Relating to the Status of Refugees* reads:

The term "refugee" shall apply to any person who owing to a 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; or who, not having a nationality and being outside the country of his former habitual resident as a result of such

²⁵ Dauvergne, Catherine. 2005. p. 82

events, is unable or, owing to such fear, is unwilling to return to it.²⁶

It is important to note that this definition is far from neutral, as it arose in the political climate at the beginnings of the Cold War. The *Convention* definition is in theory supposed to be a non-hierarchical list of reasons for persecution, yet in reality there is bias towards accepting political refugees who sought refuge from a different political ideology and social system based on Soviet-style communism. The political origins of the *Convention* definition result in a continuing influence on how refugees are defined in contemporary domestic law. The influence of the political origins of the *Convention* definition will be explored further in Section Four. As well, there is an ambiguity and vagueness that plagues the definition, which arguably allows for its different interpretation and application by various sovereign nation-states.²⁷ What is most important about this definition is that each of the four reasons listed as valid to claim persecution, other than political beliefs, are based on identity. Hence, the creation of identity and subsequently, the governmental treatment of these identities in a static and categorical manner has a significant influence on the way a refugee must present their identity in order to get their claim approved.²⁸

The influence of identity in the *Convention* definition and how it may be constructed by the state for the purpose of maintaining a legal framework is considerable. Author Catherine Dauvergne supports this argument when she claims “while an individual may not identify as a member of a particular race, religion, nationality, or

²⁶ UNHCR: The UN Refugee Agency. 1988. *Collection of International Instruments Concerning Refugees*. Geneva: Office of the United Nations High Commissioner for Refugees, p.11

²⁷ Adams, Carla D. 1995. *A Feminist Critique of the Convention Refugee Definition*. L.L.M. Thesis University of Toronto. Toronto: National Library of Canada, p.31

²⁸ Dauvergne, Catherine. 2005. p.87

social group in all or even any circumstances, in an atmosphere of persecution this identity will become important whether or not an individual subjectively accepts it as important to them.”²⁹ A push by the state to categorize a refugee’s identity and focus on these essentialist characteristics shows the state’s willingness to maintain a legalistic reasoning, despite the consequences of rejecting claimants who have legitimate reasons of persecution but are not easily categorized. The state does not accept that identity is fluid in nature and cannot be forced into legal categories.

3.3 Canada’s Interpretation of the Convention Definition

Canada’s refugee determination system has embraced the principles of the Convention definition, regardless of the exclusion of persons seeking protection that may result from its stringent criteria. The *1951 Convention relating to the Status of Refugees* remains the key international legal instrument that informs Canadian refugee law and policy. Within Canada’s *Immigration and Refugee Protection Act (2002)* there is noticeable weight and reference given to the importance of possessing the characteristics defined in the Convention. The legal obligation to provide refugee assistance due to humanitarian reasons remains paramount in many sections of the *Act*, yet in reality protection is not guaranteed for bona fide refugees.

Refugee claimants may lack evidence to substantiate their claims of persecution or may be unable to prove the credibility of their claim. Also, they may not fit into one of the five categories of persecution stipulated within Canadian refugee law.³⁰ The barriers of the Convention refugee definition provides an avenue for the Canadian government to maintain control over its refugee system while portraying itself as progressive and

²⁹ Ibid.

³⁰ Waldman, Lorne. 2001. Section 8.15

committed to humanitarian ideals. An emphasis is not placed on the humanitarian needs of those fleeing persecution, but on refugees who slot themselves into the definition and legal framework.

One significant aspect of the Convention definition that is subject to interpretation by the Canadian state is the ability to prove a static identity, which gives credibility to claims of persecution. An interpretation of a claimant's identity and reasons of persecution results in the construction of an identity that pits the claimant against the state, which often focuses on the claimant's 'Third World' identity. This identity is then inferiorized by the state through the process of racialization. The racialization process provides the state with the power to be the sole evaluator of the claimant's identity with the ability to slot this identity into a category in the Convention definition.

3.4 The Social Construction of the "Racialized Refugee"

This section pieces together the theoretical position of the paper through discussions of how the Canadian state treats refugee applicants and also provides a counter-position to the state based on critical race theory. A critical race theory approach demands that the nature of the refugee determination process needs to be mindful of race, identity and other common stereotypes. Critical race theory is especially applicable because the bulk of refugee claimants come from developing areas whose inhabitants have been historically racialized through slavery, colonialism and foreign occupation.

The position taken in this paper argues that the identity of refugee claimants are constructed by the Canadian state as outsiders who represent characteristics that contrast

with the values of the dominant group.³¹ Part of a refugee's outsider status is constructed through the enactment of barriers that place her outside the refugee determination system, as noted in earlier discussions on the restricting nature of the Convention definition. This position builds on the work of Catherine Dauvergne, which argues that "the refugee is constructed as the ultimate other to the nation in order to be permitted entry. Refugees are the most unlike us, as well as the most unknown, facilitating our imaginative construction of their identity."³² A preliminary examination of how this identity is constructed requires an analysis of the detrimental effects that racialization, essentialism and stereotypes have on the nature of the refugee determination process.

Essentialism continues to exist throughout the refugee determination system, both in the policies, laws and minds of the actors within the process. This approach is in large part due to the nature of the system that is insistent on the labeling and categorization of identity. Although the refugee system focuses on the individual, the labeling of an individual claimant's identity often coincides with the labeling of a group identity, as persecution may be due to a group-based identity.³³ A claimant must then fulfill the duties required of someone with this identity if her claim for protection is to be accepted. An emphasis on an essentialist portrayal of identity indicates that the system is more likely to accept a claim if identity characteristics are rigidly defined. This position will lead to stereotypical portrayals of identity, which are constructed by the Canadian state and result in the rejection of many legitimate claims that do not fit the stereotype.

³¹ Lacroix, Marie. 2004. Canadian Refugee Policy and the Social Construction of the Refugee Subjectivity: Understanding Refugeeeness. In *Journal of Refugee Studies*, Vol.17 (2), p.154

³² Dauvergne, Catherine. 2005. p.81

³³ Ibid. p.87

An essentialist view of a refugee's identity means that the refugee system deems that certain characteristics can be easily recognizable and can be applied to numerous claims that portray a similar identity. Author Lisa Malkki highlights this problematic assumption in her discussion on how refugees are often imagined as "almost like an essentialized anthropological 'tribe', refugees thus become not just a mixed category of people sharing a certain legal status; they become 'a culture', 'an identity', 'a social world' or 'a community'."³⁴ Categorizing a refugee identity most often relies on identifying stereotypes and characteristics in order to label and then slot these into the Convention definition.

This social constructivist approach argues that refugees do not possess a shared and innate identity contrary to the stereotypes established vis-à-vis Canada's refugee system and rather shows how the identity of a subordinated group is constructed as the other³⁵ for the purpose of positioning this identity in opposition to the legalistic framework that evaluates refugee claims.³⁶ What is missing from the above discussion is a focus on the process of self-identification by refugee claimants. Critical race theory contends that in order to address the racism and discrimination in institutions such as the Immigration & Refugee Board, the narratives, knowledge and voice of the disenfranchised (read: refugees) must be taken into account.³⁷

³⁴ Malkki, Liisa H. 1995. Refugees and Exile: From 'Refugee Studies' to the National Order of Things. In *Annual Review of Anthropology*, Vol.24, p.511

³⁵ Lacroix, Marie. 2004. p.154

³⁶ Razack, Sherene. 1998. *Looking White People in the Eye: Gender, Race and Culture in Courtrooms and Classrooms*. Toronto: University of Toronto Press, p. 88

³⁷ Shie-Wei Fan, Stephen. 1997. Immigration Law and the Promise of Critical Race Theory: Opening the Academy to the Voices of Aliens and Immigrants. In *Columbia Law Review*, Vol. 97(4), p.1205

3.5 The Function of the “Racialized Refugee” in the Canadian Adjudicative Process

The following discussion will illustrate how essentialism permeates the Canadian government’s approach to assessing the legitimacy of a refugee’s claim. The use of essentialism perpetuates the notion of a static refugee identity that is valued in the adjudicative process. It will be argued that a refugee’s identity is racialized, and this identity is seen as independent of any underlying issues of systemic racism within Canadian refugee policy.

Racial identity continues to be an important element in Canadian refugee policy. Historically, race as an ideology has been a key factor in the decision to admit or reject refugees into Canada.³⁸ Before 1967, overt racism and discrimination directed towards many racial minority immigrants was also directed towards racial minority refugees. Although the explicit racism directed against refugees has lessened over time, discriminatory regulations and policies continue to target racial minorities.³⁹ The influence of essentialism and stereotypes in the refugee determination process is indicative of this racism and merely exemplifies a more subtle form of discrimination than pre-1967. By forcing refugee claimants to perform an identity wherein race is the most important marker, the Canadian state reinforces the importance of a racial identity that is distinguished by a limited and calculated number of traits.

The construction of a refugee’s identity within the Canadian refugee process must be examined in light of the broader influence of what Sherene Razack calls the “systems

³⁸ Howard, Rhoda. 1980. Contemporary Refugee Policy: A Critical Assessment. In *Canadian Public Policy*, Vol. 6 (2), p.368

³⁹ Jakubowski, Lisa Marie. 1997. *Immigration and the Legalization of Racism*. Halifax, Fernwood Publishing, p.18

of domination” that currently govern this society.⁴⁰ Razack has noted the importance that the Canadian refugee system plays in constructing the refugee identity as one coming from “dysfunctional exceptionally patriarchal cultures and states...[from which] the successful asylum seeker must cast herself as a cultural Other, that is, as someone fleeing from a more primitive culture.”⁴¹ The construction of this identity as exhibiting otherness is intertwined with colonialist influences that adhere to a hierarchy of cultures, with the dominant cultural marker based on race.⁴² This idea inherently places Western culture, society and values as superior and casts the refugees as inferior. This is exemplified through the IRB’s reinforcement of proving one’s “otherness” in relation to Canadian society as the core of the refugee identity.⁴³ This process of labeling a refugee as the other is used by the IRB to successfully construct the refugee identity in opposition to a Canadian identity, typically described as: racialized, Eastern and without status as opposed to white, Western and with citizenship.

In addition, Razack contends that the construction of a racialized refugee identity is an important part of the Canadian nation building process. It enables the Canadian state to act as the “imperialist as savior of the Third World peoples.”⁴⁴ The construction of a refugee identity by the Canadian state enables the state to construct themselves as saviors but ignores the pervasive racism within the refugee system. Canada’s position as a part of the First World, as inherently exploitive of the Third World, is ignored in favor of constructing refugees as inferior and in need of regulation.⁴⁵

⁴⁰ Razack, Sherene. 1998. p.90

⁴¹ Ibid. p. 92

⁴² Gunew, Sneja. 1997. Postcolonialism and Multiculturalism: Between Race and Ethnicity. In *The Yearbook of English Studies*, Vol. 27, p.39

⁴³ Dauvergne, Catherine. 2005. p.97

⁴⁴ Razack, Sherene. 1998. p.88-89

⁴⁵ Ibid. p.91-92

Another way in which a claimant's identity is constructed as inferior is through the portrayal of refugees as an economic 'burden' on the citizens of the state. Since the influx of the infamous "boat people" to Canada in the 1970s, much of the rhetoric surrounding refugees portrays asylum-seekers as burdens on tax-paying citizens.⁴⁶ In relation to this rhetoric, Prakash A. Shah argues "the portrayal of refugees or migrants as economic liabilities or as assets may itself reflect biases that are actually racially determined, but expressed in economic terms."⁴⁷ The common portrayal of the refugee identity as non-contributing adds to their position in opposition to the citizens of the state. This will be further analyzed in the following section that delves into how the development of refugee policy in Canada was based on ideological influences, negative public reactions and political objectives that became the foundation for the consistent view of a refugee's identity as incompatible with state goals.

⁴⁶ CBC News. 1979. Boat People: A Refugee Crisis. July 29, 1979, Online Archives. http://archives.cbc.ca/IDC-1-69-524-2712/life_society/boat_people/clip8 (accessed May 15, 2007).

⁴⁷ Shah, Prakash A. 2000. *Refugees, Race and the Legal Concept of Asylum in Britain*. London: Cavendish Publishing Limited, p. 5

Section Four: Dictating Refugee Law and Policy in Canada: The Influence of Political and Public Pressures

The following section seeks to contextualize the main arguments of this paper by including a necessary historical analysis of the role that ideology and political self-interest have played in the development of refugee policy. These developments continue to influence the contemporary refugee system and its policies requiring that identity is still the deciding factor in admitting persons seeking protection. Following discussions on the political objectives of restricting admissions based on identity, it becomes clear that current refugee policy does not differ significantly from a mandate that has historically advocated for the control and restriction of refugees coming to Canada. The first argument that supports the above statement discusses how the Canadian state historically chose to respond only to select refugee movements in place of developing a system that would accept refugees annually.

Within Canadian refugee policy, past reasons for restrictions have been very influential on the development of contemporary relations between refugee claimants and the state. As a result, the development of refugee policies within the Cold War era continues to have significant impact on the control tactics used by the Canadian state, which have morphed from the identity a refugee presents to how effectively it can be categorized. Current refugee policies still adhere to this, restricting a vast majority of persons based on their inability to prove certain identity characteristics. In effect, today's refugee is still forced to perform an identity that is favoured by immigration policies (i.e. economic success, political affiliations in line with Canadian objectives) and which increase their chances for acceptance into Canada.

4.1. Ideology-Infused Acceptance: Political Refugees Fleeing Soviet Satellite Nations in the Post-1945 Era

The development of Canada's domestic refugee policy took place in the political and economic developments following the end of World War II, coinciding with the emergence of the Cold War. These global developments resulted in increased refugee movements worldwide. Prior to this era, substantial numbers of persons sought refuge in Canada, however the end of the war forced Canada to play a more active role in addressing refugee movements. The post World War II era was characterized by refugees fleeing Soviet satellite states, with Canada responding by admitting 37,000 Hungarians and nearly 11,000 Czechs.⁴⁸ As well, many people fled situations of persecution in developing areas, such as expellee Asians in Uganda of whom Canada admitted more than 7,000.⁴⁹ Canada's refugee policy was largely influenced by its relationship with the NATO and North American defense pacts, such as NORAD, and with the larger Western bloc, which was considered anti-communist. In essence, Canada's intake of refugees would be dependent on a politically motivated rationale. By responding to certain refugee flows from communist areas, Canada easily managed its refugee intake while fueling support for its political position. Canada's political standpoint effectively meant: refugee policy was equated with foreign policy; that is, the acceptance of refugees from communist countries was encouraged to showcase the weakness and defectiveness of the Soviet government.⁵⁰

⁴⁸ Hathaway, James. 1992. "The Conundrum of Refugee Protection in Canada: From Control to Compliance to Collective Deterrence." In *Refugees and the Asylum Dilemma in the West* (ed, Gil Loescher). Pennsylvania: Pennsylvania State University Press, p.72

⁴⁹ Ibid. p.72

⁵⁰ Gibney, Mark P. 1992. "Foreign Policy: Ideological and Human Rights Factors." In *Refugees and the Asylum Dilemma in the West*, ed. Gil Loescher. University Park, PA: University of Pennsylvania Press, p.37

Another position of the Canadian government that had significant influence on the development of domestic refugee policy placed emphasis on security to ensure that the protection of Canada's borders remains paramount. The fusion of security concerns with domestic refugee policy has historically, and continues to be, an important part of the development of Canadian refugee law and policy. The contemporary use of security concerns to restrict refugee inflows will be discussed in later discussions of the *Canada-US Safe Third Country Agreement* in Section Five.

Canada's anti-communist position had significant influence on the development of Canada's approach to refugees and continues to remain influential in the current development of refugee policies and laws. Therefore, a discussion of the shifting political ideologies and the pressure that public perceptions placed on refugee policy is imperative to show the development of the nation's current relationship with refugees.

4.2. Tactical Admissions Based on Political Objectives: Prioritizing the Economy in the 1950s and 1960s

The beginning of Canada's domestic refugee policy in the 1950s and 1960s did not differ considerably from the states immigration policy, which advocated control and restriction of all persons coming to Canada. The distinction between refugee and immigrant was minimized in favor of focusing on the economic benefits an individual could bring to Canada.⁵¹ An example of this was the acceptance of thousands of Hungarian refugees after the 1956 Hungarian Revolution. This can be seen as one instance where refugee policy was aligned with both the economic needs of the country and an ideological preference. Parliamentarians on all sides agreed that it was in

⁵¹ Hathaway, James C. 1992. p. 71

Canada's best interest to accept refugees fleeing the "German yolk,"⁵² providing political incentive, while many Canadian companies were outspoken about their desire to accept Hungarian refugees in order to expand their reserve of available labour. Historian Gerald E. Dirks pointedly notes that "much of the Canadian public looked upon refugees as providing useful services within the country's economy."⁵³ The acceptance of thousands of Hungarian refugees showed the façade of Canadian humanitarian ideals was in reality more in line with economic and political self-interest. In effect, refugee policy had a tactical element to it.

4.3. Changes to the Racial and Geographical Composition of Refugees: A Shift in Public Perceptions in the 1970s and 1980s

In discussions surrounding how refugee policy has developed and remained its restrictive nature, it is imperative to discuss the negative perceptions that many Canadians had towards refugees. The restriction of refugees due to identity characteristics deemed "undesirable" was strongly influenced by the public perception of refugees in the 1970s and 1980s. These negative perceptions had significant clout in relation to changes to Canadian refugee policy. A negative perception of Canada's refugee system also developed in the 1970s and 1980s that was overwhelmingly negative, if not blatantly anti-refugee. Prior to this period, the public perception of Canada's refugee policy was one of general acceptance for a system perceived as generous, yet only insofar as the persons being admitted did not possess any "undesirable" identity traits. Public perception continued to be shaped by the propaganda of the Cold War and having generous admissions policies towards political refugees was at first accepted by

⁵² Dirks, Gerald. E. 1977. *Canada's Refugee Policy: Indifference or Opportunism?* Montreal: McGill-Queen's University Press, p.201

⁵³ Ibid. p.204

the public, if not outright encouraged.⁵⁴ However, as time went on, public perception began to shift, as the racial makeup of refugees changed from European to non-European refugees.

The factors leading up to this shift in public perception were largely informed by foreign policy developments meant to establish Canada as a political player on the international stage. Changes were made to Canada's refugee policy in order to parallel international foreign policy developments in an attempt to solidify Canada's role as a "peacekeeping, neutral and humanitarian-minded nation."⁵⁵ The multilateral role that Canada was to play in the United Nations had a significant impact on renewed discussions of Canada becoming a signatory of the *Geneva Convention*.⁵⁶ It is important to note that it had been institutionalized racism within immigration and refugee policy that had guided Canada's previous decision to not become a signatory of the Convention at the time of its formation in 1951.⁵⁷ In essence, throughout the 1950s and early 1960s Canada's institutionalized racism meant that it focused refugee admissions on European refugees fleeing the perils of the Eastern Bloc. Canada's decision to become a signatory of the Convention in 1969 relinquished a certain amount of domestic control over which refugees would be accepted. Under these new conditions Canada began to accept non-European refugees, who began to face more discrimination because of their more visible differences from the social 'norm'. This resulted in a shift in public perceptions from acceptance of European refugees to negative responses towards refugees from the Third World. This shift in perceptions was clearly driven by a change in the racial makeup of

⁵⁴ Ibid. p.211

⁵⁵ Hathaway, James C. 1992. p.74

⁵⁶ Ibid.

⁵⁷ Ibid. p.73

refugees, as result of the abolishment of the “White Canada” policy and the enactment of the point systems. This was fueled by Canada becoming a signatory of the *Geneva Convention* in 1969 as result of wanting to gain international recognition for accepting refugees. However, regardless of the position that the government took in adopting the Convention definition that incorporated persecution based on race, religion, nationality etc., public perceptions did not favour this new position of a universal definition and criteria used to admit refugees.

Both the *1974 Green Paper* and the subsequent *1976 Immigration Act* that addressed annual refugee admissions elicited strong responses from the Canadian public. The *1976 Act* stated for the first time that refugees were to constitute a separate admissible immigration class.⁵⁸ Regardless of the perceived openness of the policy in the *1976 Act*, the Canadian public continued to be skeptical of refugee admissions. . This can be seen in the adoption of a “Canadians First” labour-market policy in 1978 under which Canadian citizens and residents were prioritized in all sectors of the labour market.⁵⁹ Until the *1976 Act*, refugees were mostly admitted through orders-in-council that dealt with situation-specific refugee flows. The vast majority of those admitted were political refugees, including approximately 165,000 Eastern Europeans.⁶⁰ Enactment of the *1976 Immigration Act* and the signing of the *Geneva Convention relating to the Status of Refugees* in 1969 meant that Canada had new obligations to address the worldwide increase in refugee flows.

⁵⁸ Trebilcock and Kelley. 1998. *The Making of the Mosaic: A History of Canadian Immigration Policy*. Toronto: University of Toronto Press, p. 404

⁵⁹ Ibid. p. 389

⁶⁰ Dirks, Gerald E. 1995. *Controversy and Complexity: Canadian Immigration Policy during the 1980s*. McGill-Queen’s University Press, p. 61

State obligations towards the Convention were consistently pushed aside in the face of negative public reactions towards refugees. A notable example of this was seen with the Ugandan Asian refugees expelled in August 1972. In signing the Geneva Convention, the Canadian government agreed to accept the relatively small number of 7,000 Ugandan refugees. Given these small numbers, the overwhelming negative response from the Canadian public would suggest that the racial makeup of Ugandan refugees, more than their actual number or potential burden on the state was the driving force behind this reaction. Overall, 44% of Canadians surveyed at the time opposed the resettlement of this group and this decision eventually ended up costing the Liberal government at least one seat in parliament. Conversely, around the same time period the influx of American draft dodgers numbering around 30-40,000 led to an amendment to the Immigration Appeal Board Act in their favour, relaxing criteria so all illegal visitors could become landed immigrants.⁶¹ The differential treatment experienced by Ugandan refugees and American draft-dodgers shows that racial makeup became the marked difference of eliciting a negative response from the Canadian public. Notably, the language used to describe each group is also telling of the perception of each group at the time, with racialized individuals from the Third World being called “refugees” and white individuals from an industrialized nation being called “draft dodgers”.

An additional example of the influence public perceptions had on refugee admissions was the over-publicized situation of the Indochinese “Boat People” in the late 1970s and early 1980s. This saga led to the heightened interest of the Canadian media in refugee issues, which fueled a corresponding increase in the response of the public,

⁶¹ Knowles, Valerie. (1997). *Strangers at Our Gates: Canadian Immigration and Immigration Policy, 1540-1997*. Toronto: Dundurn Press. p.172-73

which in turn affected the actions the government took. Given the fact that the *1976 Act* had recently been passed and was meant to solidify Canada's humanitarian commitment towards refugees, it was ironic that the issue of the "Boat People" elicited calls by the public for the government to engage in a more restrictive refugee policy.⁶² The sheer numbers of people coming in meant that a backlog developed in processing refugee claims and there were renewed concerns by the public that Canada was losing control of its immigration system.⁶³

Canada publicly showcased a human rights position while privately becoming more restrictive. More restrictions were due to the negative public reaction, which coincided with the earlier removal of geographical and racial discrimination in regards to refugee admissions that led to high inflows of refugees from developing nations. This demonstrates the ability of the government to use rhetoric about a humanitarian commitment towards refugees, while falling short of addressing human rights obligations. This contradictory position is demonstrated in reports released at the time that recommended imposing visa restrictions on countries producing high-volumes of refugees while advocating the development of a new refugee determination system that would conduct oral hearings to ensure "all claims to refugee status must be considered as substantive."⁶⁴ The contradiction of fulfilling Canada's humanitarian obligations while restricting the number of refugees coming to Canada is a paradox that continues in contemporary refugee policy. Overall, the overwhelming majority of refugees being

⁶² Ibid. p.175

⁶³ Trebilcock and Kelley. 1998. p.413

⁶⁴ The name of the report was the *Refugee Status Determination Process* or the 'Robinson Report' submitted in November 1981 by the Task Force on Immigration Practices and Procedures to the Minister of Employment and Immigration, Lloyd Axworthy. (Trebilcock and Kelley, p.413)

admitted from developing nations in this time period were racialized and subject to negative public reactions based on race and country of origin.

It is important to note that negative public perceptions have continued to persist within refugee policy and therefore the lack of attention given to the unequal relationship between the state and refugees deserves to be questioned. The Immigration & Refugee Board and its Documentation Centre continue to feed off the incorrect idea that gaining refugee status in Canada is a simplistic and fair if not overly generous process. This effectively ignores criticism of the refugee determination process and allows central issues, such as the problems associated with determining identity, to remain unsolved.

Section 5: Contextualizing Present Issues for Claimants: How Security, Control and Fairness Result in Blocked Access

Section Five aims to expand on the above arguments by looking at contemporary examples of how the Canadian state aims to restrict the inflow of refugees. Historically, the restrictions placed on refugees coming to Canada were based on economic and ideological factors, as discussed in the section above. This has given way to restrictions based on security concerns, demonstrated through the emergence of legislation such as *IRPA* that explicitly focuses on the security aspect of Canada's immigration policy.⁶⁵ The outcome of the above restrictions remains the same, whether each is based on economic, ideological or security concerns. Each restriction results in fewer refugees gaining access to Canada's refugee determination system. Hence, restrictions based on inflated security concerns combined with the legalistic nature of the IRB fail to provide a fair process for persons seeking protection. The impact of border security concerns is now discussed in order to contextualize the range of restrictions faced by refugees, which cumulates in the restrictive criteria that characterizes the in-land refugee determination process. The following arguments also show how the current mandate of the Immigration & Refugee Board has done little to address the significant drop in claims at Canadian borders, and are indicative of how the situation of blocked access faced by claimants is of little concern to the state.

⁶⁵ Section 34(1) of IRPA (2001) stipulates six possible reasons for inadmissibility based on security concerns including: (a) engaging in an act of espionage or an act of subversion against a democratic government, institution or process, as they are understood in Canada; (b) engaging in or instigating the subversion by force of any government; (c) engaging in terrorism; (d) being a danger to the security of Canada; (e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada

5.1 Pre-Emptive State Control: Restricting Refugees Prior to Flight

Onerous restrictions in the pre-migration process through visa controls, strict definitions and border security laws work collectively to limit refugee inflows to Canada. The above strategies used by the Canadian government allow the state to ‘manage’ refugee inflow. Migration scholar Stephen Castles notes how ‘non-arrival’ policies are an integral part of keeping asylum-seekers from gaining access to a nation-state’s refugee system.⁶⁶ ‘Non arrival’ policies, including carrier-sanctions and restrictive visas, drive many individuals to rely on dangerous illegal migration routes in order to reach a destination country.⁶⁷ Following the official dismantling of the “White Canada” policy in the 1960s and the implementation of the points system, immigration and refugee policy have been used subtly to restrict racialized persons from coming to Canada.⁶⁸

A subtle form of restricting refugee inflows includes the advent of visa restrictions. This includes implementing visa requirements for countries designated as ‘refugee-producing’. The number of visitor and student visas issued by the Canadian government has declined significantly in recent years for India, China and a majority of African countries. However, the number of visas issued to individuals from France, Germany and Britain has increased⁶⁹ to compensate for the lost arrival of individuals from countries labeled as “refugee-producing”. Barriers such as visa requirements are a tactic used perennially by Canada and other Western states to limit refugees from

⁶⁶ Castles, Stephen. 2002. The International Politics of Forced Migration. In *Socialist Register 2003: Fighting Identities: Race, Religion and Ethno-Nationalism*, ed. Leo Panitch and Colin Leys, Halifax: Fernwood Publishing and the Monthly Review Press, p.180

⁶⁷ Ibid.

⁶⁸ Jakubowski, Lisa Marie. 2006. ‘Managing’ Canadian Immigration: Racism, Ethnic Selectivity, and the Law.” In *Locating Law*, ed, Elizabeth Comack. Halifax: Fernwood Publishing, p. 94

⁶⁹ Unknown Author. Sept. 2005. Student Numbers Down in Canada. <http://www.hothousemedia.com/etm/etmbackissues/septetm05/septetm05news.htm>, accessed May 15, 2007

crossing their borders.⁷⁰ In the 1980s, the Canadian government imposed visas on ninety-eight countries to prevent refugees from potentially reaching the border.⁷¹

Currently, there are 148 countries that are subject to visa entry requirements, all within Asia, Africa, Eastern Europe and Central and South America.⁷² This barrier effectively limits refugees from escaping situations of persecution through legitimate, safe passages and only serves to aggravate their precarious situation further. Many refugees must then resort to non-legal methods in order to escape a situation of persecution. In addition to the general visa restrictions, other transit avenues such as air-carriers have been purposefully limited through imposing harsh fines on airlines that allow undocumented persons on board.⁷³

5.2 Restricting Refugee Claimants in the Name of “Security Measures”: The Safe Third Country Agreement

Linking refugee policy with security concerns is a long-standing tactic used by the Canadian government in order to limit racialized persons from entering the country. As noted in previous discussions surrounding the development of refugee policy, public anxiety arose with the heightened flow of refugees to Canada in the 1980s, as result of the rising number of non-white refugees.⁷⁴ Historically, racialized persons were perceived as a “threat not only to the social, cultural and linguistic order of the nation, but also to the security of the nation.”⁷⁵ Security concerns and the need for more border

⁷⁰ Hayter, Teresa. 2000. *Open Borders: The Case Against Immigration Controls*. London: Pluto Press, p.75

⁷¹ Pratt, Anna. 2005. *Securing Borders: Detention and Deportation in Canada*. Vancouver: UBC Press, p. 99

⁷² Keung, Nicholas. 2007. “Strict Visa Rulings Called Unfair”. *Toronto Star*. August 21, News section, Toronto edition

⁷³ Castles, Stephen. 2002. p.181

⁷⁴ Jakubowski, Lisa. 2006. p.110

⁷⁵ Chan, Wendy. 2004. Undocumented Migrants and Bill C-11: The Criminalization of Race. In *What is Crime? Defining Criminal Conduct in Contemporary Society*, ed. Law Commission of Canada, Vancouver: UBC Press, p.51

controls have made a “marked resurgence” in the 1980s, which continues to intensify.⁷⁶ This resurgence cumulated in the enactment of the *Safe Third Country Agreement* in 2004, showing the intent of the Canadian government to ensure security concerns remain interconnected with refugee policies.

The *Safe Third Country Agreement* has been widely criticized as a long-term strategy aimed at restricting and managing the number of refugees seeking protection in Canada. It is noted that the humanitarian language that normally graces discussions on asylum-seekers is notably absent from the *Agreement* through the use of terms such as “control” and “fairness” to replace any human rights provisions.⁷⁷ The *Agreement* came into effect on December 29, 2004 and meant that the Canada Border Services Agency was responsible for refugee claims that came under its jurisdiction. The *Safe Third Country Agreement* between the United States and Canada has drastically reduced the number of in-land refugee claims made at the border.⁷⁸ The *Agreement* stipulates that both countries are named “safe” and therefore a refugee should make their claim in the first “safe” country that they reach.⁷⁹ The *Agreement* has effectively resulted in prioritizing security concerns that seek to control, regulate and restrict refugees from access to the refugee determination system. It’s interconnectedness with race is no accident, pointedly stated in Jakubowski’s assessment of the *Agreement*: “The ultimate effect of the legislation, then, without ever mentioning the word ‘race’, is to control a particular dimension of the refugee population-‘developing world’ refugees, the majority

⁷⁶ Jakubowski, Lisa. 2006. p.110

⁷⁷ Ibid. p.114

⁷⁸ Canadian Council for Refugees. 2005. Closing the Door on Refugees: Report on the First Year of the Safe Third Country Agreement. CCR Online Library. <http://www.ccrweb.ca/closingdoordec05.pdf>, p.3

⁷⁹ Ibid. p.2

of them classified as ‘visible minorities’”.⁸⁰ Canada’s supposed humanitarian commitment to refugee claims is consistently compromised in the face of regulating individuals, through the use of barriers such as visa restrictions and the *Safe Third Country Agreement*.

⁸⁰ Jakubowski, Lisa. 2006. p.115

Section 6: Questioning Reliability, Accuracy and Influence: An Analytical Case-Study of the IRB Documentation Centre

The influence of the Immigration & Refugee Board Research Directorate and its Documentation Centre [IRBDC] on the credibility of the refugee adjudication process is extensive. Evidence and information presented in the hearing room is a decisive factor in a Board members decision to either accept or reject a claimant's case. Hence, it becomes imperative to ensure the information from the Documentation Centre is held to the highest standards of accuracy and reliability. Inaccuracies or misuse of this information can have drastic consequences on the credibility of the refugee determination process.

The neutrality of the Documentation Centre, alongside the bias of refugee protection officers and Board members, has been questioned since its conception. The interconnectedness of political patronage and the refugee process has been a core characteristic of the Centre throughout its development. Accusations have ranged from the use of evidence laced with an institutional bias, to the discounting of evidence by refugee protection officers, to the "anti-refugee" position of select Board members. Given the importance of evidence in shaping the identity of the claimant, it becomes imperative to question how the wrongful application of this evidence could be used to reject a claimant's proposed identity and subsequently refuse their claim for protection. The following discussions will question if the Documentation Centre fulfills the role of providing reliable information given the reality of the problems stated above.

The following Case Study is divided into two portions. The first portion lays out the legalistic framework within which documentary evidence operates in the refugee system. The main goal of this section is to show the development of the Documentation

Centre within a legalistic framework that compromises accuracy in favour of an emphasis on categorization. The following discussions include: (1) the influence of a one-member panel at the IRB on the categorization of identity; (2) the development of political bias and patronage in the IRB's practices; (3) how "control" and "fairness" have guided the objectives of the refugee determination process. This section intends to illustrate that the Documentation Centre favors the objectives of the state over practices that instill integrity and credibility in the decision-making process.

The second portion delves into the specifics of the research practices from the Documentation Centre that compromise its title as an "objective" resource centre. The issues discussed include: the misuse of information in the hearing room, the authoritative weight placed on documents from the Centre, the discounting of non-government sources, and the circulation of outdated information. The appearance of these issues show the willingness of the process to sacrifice its objectivity and credibility in order to restrict the number of accepted claimants.

The Research Directorate is used as an extensive Case Study to exemplify the IRB's categorical principles, as it holds a responsibility for producing information that is the deciding factor in refugee cases. An emphasis on the legal framework of the refugee adjudication process forces the claimants to morph their identity into a designated category and be able to prove this identity with sufficient evidence. The importance this places on documentary evidence in proving an identity is also indicative of how refugees are constructed in opposition to the Canadian system. Relying on evidence to prove identity shows the inability of the state to comprehend any "foreign" situation of persecution, as the information must be gathered outside the normal realm of the usual

methods of proof.⁸¹ In essence, the very existence of the resource centre indicates that information on a foreign identity must be collected through unconventional methods, such as ‘fact-finding missions’,⁸² as the identity is perceived as vastly different from the dominant group. This leads into the first argument that illustrates how the IRB attempts to control this foreign identity through a categorical process supported by evidence from the Documentation Centre.

6.1. Legalistic Categorization infused with Racialization: IRB Control over a Refugee’s Identity

The structure of the IRB and its Documentation Centre each has a strong tendency to value information that adheres to a legalistic and categorical process. Each institution strives to create an overly simplified process that is meant to establish the claimant’s credibility, identity and reasons for persecution. A focus on a simplified process means that the complexities of identity tend to be overlooked. The multifaceted nature of identity is readily dismissed in favour of what one informant calls “the IRB’s need to classify.”⁸³ This point demonstrates the IRB’s need to categorize a refugee claim, regardless of whether this results in an inaccurate or essentialist portrayal of their identity.⁸⁴

Forcing refugee claimants to conform to the IRB’s legalistic and static definitions of identity and persecution highlights an imbalanced relationship between the state and refugees.⁸⁵ The receiving state has the power to define and construct a claimant’s identity with the use of institutions such as the Documentation Centre, which focus on

⁸¹ Dauvergne, Catherine. 2005. p. 110

⁸² See Glossary of Terms

⁸³ Informant 1. 2007. Personal Communication, July 12, 2007

⁸⁴ Dauvergne, Catherine. 2005. p.111

⁸⁵ Abu-Laban, Yasmeeen. 2002. Liberalism, Multiculturalism and the Problem of Essentialism. In *Citizenship Studies*, Vol. 6 (4), p.463

classifying the reasons of persecution, and proving or disproving claims in a legalistic manner. Focusing on a system of classification signals power discrepancies relating to racialized versus non-racialized populations, by exposing who holds the power to present and classify the claimant's identity.

The context within which the IRB was created had significant influence in its current control over constructing a claimant's identity in opposition to the state.⁸⁶ The position taken by the IRB is laced with what Gerald E. Dirks calls a "gate-keeper mentality"⁸⁷ fueled by the nation-states fixation with controlling the inflow of asylum-seekers.⁸⁸ A refugee's claim is influenced not only by a past identity, cultural heritage and history, but also by new influences in the receiving country.⁸⁹ Ignoring this fact, the IRB continues to use legalistic interpretations that discount the complexity of a claimant's previous experience, by constructing identity as easily categorized within Canadian refugee law.

6.1.1 The Severity of a One-Member Panel on the Classification of Identity

The recent enactment of *IRPA* means that a single IRB member currently decides refugee cases.⁹⁰ This effectively limits discussion between two or more decision-makers that may provide more insight into the assessment of a refugee's identity. As a single IRB member is now responsible for determining the credibility and identity of the claimant, this results in a higher risk of a wrongful decision based on a single interpretation of a claimant's identity. Depending on the knowledge, training and experience of the Board member, a claimant may be evaluated based on their

⁸⁶ Lacroix, Marie. 2004. p.154

⁸⁷ Dirks, Gerald E. 1995. p.22

⁸⁸ Lacroix, Marie 2004. p.151

⁸⁹ Ibid. p.153

⁹⁰ Dauvergne, Catherine. 2005. p. 98

preconceived notions of an identity, with no alternative opinion to dispute this construction.⁹¹ One informant expressed the severity of a one-member panel and the influence it has over the interpretation of evidence: “A single Board member may have already done 15-20 similar claims...the problem is that even though the information [used in previous claims] may be proven as inaccurate, the information is still running around the head of the Board member as now a ‘fact’.”⁹² A decision-maker’s previous experience with similar refugee claims may result in using incorrect information as “fact” to dispute the identity of the claimant. Prior to assessing other problems associated with the poor application of evidence, it is imperative to look at how evidence has developed to become a key element of identity determination and consequently the deciding factor in a claim.

6.2 The Need for Reliable Evidence: ‘The Burden of Proof’ and the Development of the Documentation Centre

The importance of reliable, trustworthy and accurate information has continued to be a key component of helping to properly assess the validity of refugee claims. The role of the information provided by the Documentation Centre should not be underestimated, as the credibility of the claimant, based on evidence, is the deciding factor in most case decisions.⁹³

The development of a new refugee determination process in the 1980s identified the need for a resource centre that would provide all parties in the refugee process with reliable information and give credibility to the decision-making process. In addition, the Documentation Centre was meant to address the obligations stated in the *UNHCR*

⁹¹ Ibid. p.99

⁹² Informant 2. 2007. Personal Communication. July 24, 2007.

⁹³ Showler, Peter. 2006. *Refugee Sandwich*. Toronto: McGill-Queen’s University Press, p. 220

Handbook on Procedures and Criteria for Determining Refugee Status that required receiving states to share in the gathering of evidence. This is to ensure that claimants had a fair opportunity to prove their case. Additionally, Article 25 of the *1951 Convention Relating to the Status of Refugees* obliges Canada to provide assistance in ensuring that the refugee claimant has sufficient evidence to prove their identity as a Convention refugee.⁹⁴

The specifics of the obligations surrounding who is responsible for gathering the evidence to support a claim is affirmed under Paragraph 196 in the *UNHCR Handbook*. The *Handbook* asserts that the “burden of proof” in the hearing process rests on the claimant.⁹⁵ However, the specifics of the clause below reveal that given the volatile situation faced by many refugee claimants, the “burden of proof” should be shared between claimant and examiner (i.e. the state):

It is a general legal principle that the burden of proof lies on the person submitting the claim. Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents. *Thus while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner* (emphasis added). Indeed in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application.⁹⁶

The creation of the Documentation Centre by the IRB was to fulfill the above obligations.

The obligations reveal that information and evidence are imperative in reaching a fair

⁹⁴ United Nations High Commissioner for Refugees. 1951. *Geneva Convention relating to the Status of Refugees*, Geneva: Office of the UNHCR, Article 25 (4)

⁹⁵ Jackman, Barbara. 1989. Burden of Proof in Assessment of Refugee Claims. In *Refugee Claims: An Analysis of Some Key Issues*, ed. Waldman, Lorne. Toronto: Canadian Bar Association-Ontario, p.2

⁹⁶ United Nations High Commissioner for Refugees. 1988. *Handbook, on Procedures and Criteria for Determining Refugee Status*, Geneva: UNHCR, Paragraph 196, p.48

decision. The decision-makers must therefore share the process of gathering evidence, if the refugee system is to earn credibility and integrity. Evidently, the *UNHCR Handbook* imposes a strong burden on the claimant to provide the sufficient information to support their claim. Yet in the light of the creation of the Documentation Centre, it is easily arguable that there is a significant responsibility imposed on the decision-makers to ensure that reliable evidence is applied to reach a fair decision.⁹⁷ Subsequently, if the IRB is to earn credibility for its decision-making, significant attention must be placed on the Documentation Centre to ensure that the information produced is reliable, up-to-date and void of potential biases that result in poor decision-making.

6.3 The Paradox of Canada's Humanitarian Role and "Effective" Decision-Making

Fulfilling Canada's humanitarian obligations, while restricting the number of refugees coming to Canada, is a paradox that characterizes the Documentation Centre. Hence, the development of the Documentation Centre was an obligation for Canada as a signatory of the *1951 Convention* and not the result of a desire to fulfill an international humanitarian role. The role of the Documentation Centre could be perceived as either filling a humanitarian role to help claimants prove their case or providing evidence to help reject it.

The original philosophy of the Centre was informed largely by a 1988 article in *Refugee Abstracts* that emphasized "what ought always to have been self-evident, that the protection of refugees depends on policy-makers, practitioners and the general public having the best possible information available to them."⁹⁸ The underlying point in this philosophy addresses the issue of the need to ensure improved decision-making skills by

⁹⁷ Ibid. p.3

⁹⁸ Rusu, Sharon. 1989. The Development of Canada's Immigration and Refugee Board Documentation Centre. in *International Journal of Refugee Law*, Vol. 1 (3), p. 319

the IRB through accurate and up-to-date information from the Documentation Centre. As noted above, this could be perceived in two very different ways. From the view of refugee advocates and genuine supporters of Canada's humanitarian obligations, improved decision-making skills at the IRB could lead to a higher acceptance rate for genuine refugee claims. Conversely, from the perspective of the IRB and the governmental institutions under pressure to produce low acceptance rates, improved decision-making could mean more avenues to reject refugee claims.

6.3.1. The Development of the Documentation Centre as a Key Element of the New Direction of the Refugee System

The creation of the Documentation Centre coincided with the development of new refugee determination procedures, including the launch of the Immigration and Refugee Board in 1989.⁹⁹ As mentioned previously in Section Four, the new refugee determination system was formed due to calls by government officials and the Canadian public that Canada was losing control of its borders and its refugee system.¹⁰⁰ This was in large part due to the fact that the overall number of refugees worldwide had increased dramatically by the late 1980s and many developing and industrialized states experienced an increase in refugee inflows.¹⁰¹ In the late 1970s, between 200 and 400 individuals arrived annually claiming refugee status in Canada. This increased substantially between 1982 and 1984 when roughly 3,400 to 5,200 claimants began to arrive each year. The inflow reached its highest point in 1992 when over 37,000 individuals claimed refugee status.¹⁰² The main purpose of the reforms to the refugee system, including the

⁹⁹ Ibid. p.320

¹⁰⁰ Knowles, Valerie. 1997, p.175

¹⁰¹ Trebilcock and Kelley. 1998. p.382

¹⁰² Ibid. p.412

development of the Documentation Centre, was to eliminate the backlog of cases by placing new emphasis on “fairness”, “justice” and “control”.¹⁰³

The direction of the new refugee system was perceived by some to approach refugee claims with preconceived notions of the current abuses taking place in the system, due to the “openness” of Canada’s approach towards refugees. This is evidenced by the fact that the main priority of the refugee reforms, as stated in Bill C-55, was “to streamline Canada’s refugee-determination system so as to maintain the integrity of our refugee determination system by ensuring the protection of legitimate refugees, while deterring the shameful manipulation of false or abusive claims.”¹⁰⁴ In essence, with a larger number of claimants arriving annually, alongside the creation of a new refugee determination system, there was a presumption amongst decision-makers of a high number of fraudulent refugee claims.¹⁰⁵ A common awareness amongst IRB decision-makers was the importance of their role in addressing the backlog of refugee claims, as result of the high number of falsified claims. The development of the IRBDC by the government was meant to act as a key element in alleviating the pressure and restoring credibility to the decision-making system.¹⁰⁶ Armed with a resource centre full of evidence and information that could easily identify fraudulent claims, the IRB positioned itself to restore integrity to a system perceived by the public as being too generous towards refugees.

¹⁰³ Dirks, Gerald E. 1995. p. 80

¹⁰⁴ Ibid. p.416

¹⁰⁵ Ibid. p.84

¹⁰⁶ Rusu, Sharon. 1989. p. 322

6.3.2. *The Failed Recommendations of the “Plaut Report”: Separating Political Patronage from Refugee Protection*

The refugee policy reforms that eventually led to the creation of the Documentation Centre was heavily influenced by a report presented in 1985, entitled *Refugee Status Determination in Canada: Proposals for a New System*, or informally the ‘*Plaut Report*’. Highlighted in the introductory section of this report was the assertion that the new refugee system must be completely independent of political pressures.¹⁰⁷ When the resources required to develop the Documentation Centre were granted and the operations were launched in 1988, political patronage was an issue that permeated throughout the background of the IRBDC’s mandate. The original mandate of the Documentation Centre acknowledges how “comprehensive, objective, current and trustworthy documentation is the foundation upon which good decisions are based.”¹⁰⁸ However, what failed to be acknowledged was *how* this information could be slanted by the bias of a decision-maker, through tactics such as the selective submission of evidence in refugee hearings. It is primarily Board members who are responsible for contextualizing the evidentiary information used to decide refugee claims.¹⁰⁹ Subsequently, the political appointments of Board members that characterize the refugee process become an important factor when looking at the application of the information from the Documentation Centre.

The political appointments that characterize the IRB, until recently, are in direct contradiction of the recommendations of the *Plaut Report*. Including political appointees on the IRB is an act that undermines the recommendations of the report that warned

¹⁰⁷ Dirks, Gerald E. 1995. p. 85-86

¹⁰⁸ Rusu, Sharon. 1989. p.323

¹⁰⁹ IRB Legal Services. 2003. *Weighing Evidence*. http://www.irb-cisr.gc.ca/en/references/legal/all/weighevid/index_e.htm. December 31, 2003. (accessed May 15, 2007), Sec 3.1.2

against forming political ties to the governing party, as this could result in hearing decisions that are closely aligned with its mandate.¹¹⁰ As result, the mandate of the IRB as an independent quasi-judicial body never materialized. Instead, the political co-dependence that characterized the IRB from its development had lasting effects on its ability to produce impartial decisions. Prominent refugee advocates, merit-appointed Board members and government officials have frequently criticized the political nature of the IRB.¹¹¹ An authority in international refugee law, Professor James Hathaway, in a review of the refugee determination process criticized the appointment and reappointment of numerous Board members based on political patronage and concluded that appointments must be merit-based in order to restore credibility to the process.¹¹²

The appearance of political bias on the part of Board members also meant that many affiliated employees and institutions within the IRB are subject to similar criticisms. Allegations surrounding the lack of impartiality of both refugee protection officers [RPOs] and researchers at the IRBDC have continued to surface.¹¹³ The main role of RPOs is to act as “non-adversarial” investigator in the refugee hearing.¹¹⁴ Similarly, the role of the IRBDC researchers is to provide objective, unbiased information.¹¹⁵ Yet, many accusations have surfaced describing how the intelligence-gathering unit of the Documentation Centre was “established by the IRB to assist refugee

¹¹⁰ CBC Online News. 2004. Minister Promises IRB Appointments Will Now Be ‘Merit-Based. March 14, 2004. http://www.cbc.ca/canada/story/2004/03/16/refugeeboard_040316.html, (accessed May 15, 2007).

¹¹¹ Ibid. & Informant 1, 2, 5. 2007. Personal Communication, July 2007

¹¹² Hathaway, James C. 1993. *Rebuilding Trust: Report of the Review of Fundamental Justice in Information Gathering and Dissemination of the Immigration and Refugee Board of Canada*. Toronto: York University Centre for Refugee Studies, p.1

¹¹³ Trebilcock and Kelley. 1998. p.429

¹¹⁴ Communications Directorate, Immigration & Refugee Board. 2006. *Immigration and Refugee Board of Canada: An Overview*, p.11

¹¹⁵ Rusu, Sharon. 1989. p.319

hearing [protection] officers in contesting claimants' applications for refugee status."¹¹⁶ Additionally, accusations went so far as to state "many RHOs [RPOs] were alleged to have become adversarial in orientation involving the use of private contacts to gather information adverse to claimants' cases, refusal to comply with pre-hearing disclosure requirements and aggressive cross-examination."¹¹⁷ In short, the political nature of the new refugee process had a distinct political agenda that supported lowering refugee inflows to Canada through unethical measures.

The political pressures placed on RPOs and Board members resulted in an extremely adversarial climate within which refugee claims were not objectively assessed. The *Plaut Report* had suggested that "a cooperative inquiry in a relaxed and informal atmosphere with the claimant at ease" was best suited and that "the goal of the refugee hearing was to assist the refugee claimant to present the claim as effectively as possible."¹¹⁸ The accusatory reactions, tones and approach of decision-makers meant that claimants commonly perceive refugee protection officers as "an adversary with a special relationship to the decision-maker."¹¹⁹ Visible political pressures from Board members, RPOs and researchers at the IRBDC indicate that separating political patronage from the refugee process never materialized. This unethical relationship illustrates the beginnings of the IRB and affiliated Documentation Centre was strongly laced with a political bias, which continues to influence its current functions.

¹¹⁶ Trebilcock and Kelley. 1998. p.429

¹¹⁷ Ibid.

¹¹⁸ Angus, William H. 1989. The Role of Board Members and Refugee Hearing Officers in Hearing of Refugee Claims. In *Refugee Claims: An Analysis of Some Key Issues*. Ed, Waldman, Lorne. Toronto: Canadian Bar Association-Ontario Meeting, p. 4

¹¹⁹ Ibid. p.11

6.4 The Objectives and Mandate of the IRB Documentation Centre's

The Documentation Centre fulfills the role of a resource library for the players in the refugee determination process. Within the Centre there is a wealth of relevant information including, yet not limited to: country profiles, chronologies of significant events, information on the current political situation, information on ethnic, religious and political groups and the human rights situation.¹²⁰ The Communication Directorate at the IRB describes how the Research Directorate gathers information for the Documentation Centre through the use of:

interviews with human rights workers, journalists, academics and other authorities. They also gather information through a wide range of publications on international affairs and refugee and migration issues. Using many different sources ensures that the information is fair, full and reliable. As well, the IRB exchanges information on country conditions with international organizations such as the UNHCR, foreign government agencies, and non-governmental organizations.¹²¹

The mandate stated at the IRBDC's outset was to fulfill the role as a primary information source for the Convention Refugee Determination Division (now the Refugee Protection Division) and the Immigration Appeal Division. The Centre also responds to information requests from any interested public parties, including federal and provincial parliamentarians, refugee organizations and independent researchers.¹²² The inclusion of the full objectives of the Documentation Centre below are intended to give the reader an impartial view of the Centre's main functions.

- (1) to be the principal resource for the provision of credible and trustworthy evidence relevant to the processes of refugee determination, including country of origin information and information on jurisprudential questions;

¹²⁰ Rusu, Sharon. 1989. p. 319

¹²¹ Communications Directorate, Immigration & Refugee Board. (March 2006). *Immigration and Refugee Board of Canada: An Overview*, p. 13-14

¹²² Rusu, Sharon. 1989. p.322

- (2) to provide, actively and regularly, the latest country of origin information to the major actors in the process including case presenting officers, refugee hearing officers,¹²³ Immigration & Refugee Board members, advocates, claimants and others concerned with refugees;
- (3) to offer objective and authoritative, but not 'expert', analysis of a wide range of trustworthy and current country information and available relevant case law;
- (4) to acquire, treat, store and disseminate such information, using both hardcopy and electronic means;
- (5) to initiate the participation of those recognized as authorities on particular situations relevant to the ongoing education of those involved in the determination process in Canada;
- (6) actively to encourage the exchange of information with human rights, refugee and other relevant documentation centres, both nationally and internationally; and
- (7) to ensure that the formats necessary for such an exchange comply with those already established as international standards.¹²⁴

The problems associated with some of the above objectives will be discussed further throughout the following sections. In addition, assessing whether the objectives have been filled since its 18-year existence will be an important analysis, as the mandate has not changed since its conception.

6.5 Problematising the Research Practices at the IRB Documentation Centre

The original plan of the IRBDC's role to provide unbiased information for refugee hearings has now shifted towards dealing with the controversies surrounding its practices.¹²⁵ The Research Directorate and Documentation Centre have remained unresponsive to issues surrounding the credibility of evidence, the selective reliance on information, the authoritative weight of documents and the inclusion of biased documents. Guidelines produced by the IRB that are meant to address the above issues,

¹²³ Refugee Hearing Officers [RHOs] are now referred to as Refugee Protection Officers or RPOs

¹²⁴ Rusu, Sharon. 1989. p. 323

¹²⁵ Informant 2. 2007. Personal Communication. July 24, 2007

titled “Weighing Evidence”¹²⁶ and the “Assessment of Credibility in Claims for Refugee Protection,”¹²⁷ fail to offer avenues for preventing problems from reoccurring.

The key issue remains that the individuals and institutions responsible for avoiding the above problems are instead focused on a controlled framework. A legalistic framework seeks to regulate the refugee influx and derives no benefit in preventing these inaccuracies. Essentially, the process continues to be governed by rigid legalistic elements that are inflexible in addressing the controversies that surface outside of official mandates and objectives. Subsequently, the problems of bias, inaccuracies and the unethical practices that have guided the role of the Documentation Centre cease to be addressed. The specifics of these controversies will now be discussed with significant input from key informants involved in the refugee determination process.

6.5.1 How the Misuse of Information Allows for the Categorization of Identity: The Influence of Refugee Protection Officers

Since discussing the development, objectives and controversies that have plagued the Documentation Centre, it is now imperative to analyze how these oversights prevent the objective assessment of a refugee claim. The position taken in this paper argues that the determining factor in a refugee claim is a claimant’s credibility; notably, credibility is dependent on proving one’s identity.¹²⁸ Proving one’s identity is strongly influenced by information and evidence that gives legitimacy to a claimant’s assertions.¹²⁹ However, decision-makers must be made aware that evidence may discount the fluidity of identity and therefore may affect the accuracy of the decision. This section will illustrate how a

¹²⁶ IRB Legal References. 2003. Weighing Evidence.

¹²⁷ IRB Legal References. 2004. Assessment of Credibility in Claims for Refugee Protection. http://www.irb-cisr.gc.ca/en/references/legal/rpd/assesscred/index_e.htm. January 1, 2004. (accessed May 15, 2007).

¹²⁸ Dauvergne, Catherine. 2005. p.83

¹²⁹ IRB Legal References. 2003. “Acceptable Documentation (Identity).” Sec 6.16

complex identity is purposefully ignored in the refugee process, through the misuse of evidence in order to easily categorize the claim.

The most common form of the misuse of evidence from the Documentation Centre is through the selective use of information. The IRB supports the selective use of evidence when deciding a refugee claim, as shown in the following statement: “It is not a reviewable error for the Board to rely on some documents and not others.”¹³⁰ Relying on select information is a common technique employed by refugee protection officers in the refugee process. One of an RPO’s many roles is selecting the important information needed to help ascertain the truth of a claimant’s story.¹³¹ This role has particular importance over the outcome of a claim decision, as all relevant evidence must be disclosed in order to reach an informed and fair decision.¹³² The refugee protection officer is also supposed to provide the context and background information to the claim and to pinpoint the preliminary issues in the hearing.¹³³ The impartiality of an RPO may be questioned if they engage in the selective use of evidence. The selective use of evidence is indicative of a desire to sway the outcome of the claim, most often in favour of the Board.

The IRB acknowledges that the selective use of evidence may occur and takes no avenues to prevent this, besides recommending “the panel must do more than simply search through the evidence looking for inconsistencies or for evidence that lacks credibility, thereby ‘building a case’ against the claimant, and ignore the other aspects of

¹³⁰ IRB Legal References. 2003. Selective Reliance (“Picking and Choosing”). Sec 6.8.4

¹³¹ Communications Directorate, IRB of Canada. 2006. p.11

¹³² Ibid. p.12

¹³³ Informant 2. 2007. Personal Communication. July 24, 2007

the claim.”¹³⁴ Many accusations have surfaced of the adversarial approach taken by RPOs, commonly described as an “energetic” questioning¹³⁵ that gives the appearance of arguing against the claimant.

The selective use of information in the refugee process indicates a noticeable political agenda on the part of the refugee protection officer. The above examples confirm a political bias on the part of certain RPOs, affecting the legitimacy and accuracy of decisions. In a report titled “Refugee Claims: The Role of Board Members and Hearing Officers” the Documentation Centre is stated as the main resource for an RPO to gather the needed information for a hearing.¹³⁶ The selective use of information from the Documentation Centre is a technique used by an RPO in order to reach a sought-after decision. A preferred decision is a claim based on an identity that is easily categorized and supported by evidence from the Documentation Centre. An RPO may use her/his influential role to construct a claimant’s identity for the purpose of slotting them into a definable category.¹³⁷ This misconstrued identity is supported through the selective use of information from the Documentation Centre and results in faulty decisions, erring on the side of rejection.

6.5.2 *A Spectrum of Bias: From RPOs to “Expert” Researchers*

The information-gatherers and researchers for the Documentation Centre have a significant influence on deciding a claimant’s credibility. The researchers and issue-experts are responsible for helping produce the evidence used to prove or disprove a

¹³⁴ IRB Legal References. 2004. Considering the Evidence in its Entirety. Sec 2.1.1

¹³⁵ Ibid. Questioning by the Board Member and Refugee Protection Officer. Sec 2.6.4

¹³⁶ Laredo, Sam. 1989 “Guidelines for Refugee Hearing Officers” in *Refugee Claims: The Role of Board members and Hearing Officers*, (ed. Lorne Waldman.). Toronto: Canadian Bar Association-Ontario, p. 5

¹³⁷ Dauvergne, Catherine. 2005. p.102

refugee's claim.¹³⁸ IRBDC issue-experts hold what is described as "the special skill and knowledge acquired through study or practical observation that entitles him [or her] to give opinion evidence and speak authoritatively concerning his or her area of expertise."¹³⁹ The opinion of an expert is given significant authoritative weight in the decision-making process.¹⁴⁰ IRBDC Headquarters in Ottawa admits to calling issue-experts the "personal sources"¹⁴¹ used to gather credible evidence. Describing objective experts as "personal sources" admittedly demonstrates a preference by decision-makers towards the evidence produced by IRBDC experts. This raises questions concerning the position of the experts being dictated by the legalistic manner and restrictive nature of the IRB.

Research undertaken through the action of an Information Request¹⁴² may also incorporate strong legalistic principles into its conclusions and methodologies, resulting in a restricted view of the issue at hand. One informant expressed concern with researcher bias infiltrating many of the Information Requests, in his/her statement: "There are a lot of things that are inaccurate [with the Information-Requests] because it depends on the approach of the researcher. And this depends on whom they talk to, depends on how they explain what they are looking for, depends how they introduce themselves about who they are representing or for whom they are doing this. It also depends on the political opinion and knowledge that the person has."¹⁴³ This confirms how the viewpoints of IRBDC experts frame the kind of information that is collected and

¹³⁸ Informant 3. 2007. Personal Communication. July 24, 2007

¹³⁹ IRB Legal References. 2003. Expert/Opinion Evidence. Section 6.7

¹⁴⁰ Ibid.

¹⁴¹ Informant 3. 2007. Personal Communication. July 24, 2007

¹⁴² See Glossary of Terms.

¹⁴³ Informant 1. 2007. Personal Communication. July 12, 2007

applied using a strict methodology, similar to the methods of the IRB. Pressure is placed on the Documentation Centre to conform to the strict IRB research methodologies, which commonly advocate the need to “consign individuals to identity boxes.”¹⁴⁴ This approach then influences the methodology used to gather the research for the Documentation Centre, in particular when researchers are surrounded by an institutional culture that holds strong reservations about the legitimacy of many refugee claims.¹⁴⁵

The framing of a research question can reveal a researcher’s bias if the information produced is vague, inapplicable to the claimant’s situation or has a one-sided tone. The IRB cautions against using information that tends to be general in nature as this is an indication that the evidence could be somewhat one-sided.¹⁴⁶ One informant mentioned the high frequency of generalized information produced by the Research Directorate. Researchers present generalized information due to awareness that potential biases may leak into the research and therefore employ “very rigid standards of objectivity.”¹⁴⁷ As result, strict standards can mean inaccurate reports on the issues at hand by framing the results to leave out important information.

Omitting detailed information and concentrating on general themes ensures the researcher is not accused of producing wrong information. The informant remarked how this approach is also an indication of a researcher’s bias: “They [the researchers] spend a lot of time trying to be neutral. My concern is how does that neutrality result in very vague comments [on the issue in question].”¹⁴⁸ Including vague information within an Information-Request can give an inaccurate impression in the hearing room of the

¹⁴⁴ Dauvergne, Catherine. 2005. p.90

¹⁴⁵ Trebilcock and Kelley. 1998. p.422

¹⁴⁶ IRB Legal References. 2003. ‘Tone’ of the Document. Section 6.8.9

¹⁴⁷ Informant 2. 2007. Personal Communication. July 24, 2007

¹⁴⁸ Ibid.

severity of the situation under discussion. Thus, the research could consequently lessen the credibility of the claimant, resulting in a negative decision by the Board. The research produced by the experts at the Research Directorate includes a disclaimer.¹⁴⁹ This provision voids the researcher of any responsibility in producing research that aids in rejecting claims for refugee status, based on inaccurate research.

6.5.3 Racialized Community Experts and the Discounting of Non-Governmental Sources

Non-governmental institutions represent many of the key sources of information at the Documentation Centre. Human rights groups such as Amnesty International and Human Rights Watch have been prominent in the development and sustainability of the credibility of the Centre.¹⁵⁰ Much of the information needed to decide refugee claims is often unavailable from the government in question, due to unstable conditions such as civil war or state-sponsored persecution.¹⁵¹ In addition, much of the information that is needed to decide a refugee claim, such as how many people are detained from a particular political group each year, are simply not available for reasons of government protection. It is therefore the task of human rights groups to provide the needed information that will determine the reality of the situation at hand. However, the accuracy of reports from international human rights groups should be questioned, due to the nature of the research as somewhat vague, generalized and commonly out-of-date.¹⁵² One informant stated the difficulties with research from reliable human rights groups, such as Amnesty International, due to its tradition of requiring two sources for every piece of information

¹⁴⁹ All Information-Requests and other research produced by the Research Directorate include a *Disclaimer* on the first page of the document stating “This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.”

¹⁵⁰ Informant 3. 2007. Personal Communication. July 24, 2007.

¹⁵¹ Informant 2. 2007. Personal Communication. July 24, 2007

¹⁵² Ibid.

gathered.¹⁵³ To remain a reliable and authoritative source in the human rights field, reports tend to contain very vague information for fear of publishing incorrect information. One informant gave an example of a typical description from a reputable human rights report: “*some members of this political party may have been arbitrarily arrested.*”¹⁵⁴ For the above reasons, using what one informant describes as the “alternative sources of information”¹⁵⁵ is crucial in producing accurate decisions in the hearing room.

Using alternative sources of information implies going beyond strictly government and reputable human rights organization reports to rely on information from refugee advocates, claimants and community experts. Within the Documentation Centre, alternative sources of information are commonly viewed as un-authoritative. In addition, community experts are frequently perceived as retaining a strong bias towards the rights of refugee claimants.¹⁵⁶ The Documentation Centre perceives using an alternative source of information as contradictory to the third objective in its mandate that is meant, “to offer objective and authoritative, but not ‘expert’, analysis of a wide range of trustworthy and current country information and available relevant case law.”¹⁵⁷ Evidence provided by community experts is seen as “self-serving” with “an interest in the outcome of the hearing”¹⁵⁸ and is therefore given little value as trustworthy evidence. One informant expressed his frustration with this practice in the following statement.

¹⁵³ Amnesty International. 2007. Frequently Asked Questions. <http://web.amnesty.org/pages/aboutai-faq-eng#9>, (accessed August 5, 2007).

¹⁵⁴ Informant 2. 2007. Personal Communication. July 24, 2007

¹⁵⁵ Informant 1. 2007. Personal Communication. July 12, 2007

¹⁵⁶ Ibid.

¹⁵⁷ Rusu, Sharon. 1989. p.323

¹⁵⁸ IRB Legal References. 2003. Factors to Consider in Weighing Evidence. Section 5.1.1. & 6.2.1

It has been suggested to the IRB several times that it is necessary that they use a list of refugee community experts so that people who are here [in Canada] and have gone through the process and know the current conditions in their home country, could be of use. But the problem is that they define community experts as having a bias...this is something that is very sad, because they can give the IRB perceptions that would be to the point, since many have worked on refugee cases for many years, published many reports, have done country conditions research...it would be very useful for them to clarify an issue or give the contact information of someone who could.¹⁵⁹

In addition to the problems associated with gathering information from community experts, it is also clear that there is a racial element to what sources are deemed as authoritative. Since many community experts are former refugee claimants and also racialized within Canadian society, the IRB presumes these individuals as having an inherent bias and therefore discounts them as authorities in the field. The IRB tends to ignore how bias permeates through all information used in the hearing room and how no evidence is completely void of bias.¹⁶⁰

Discounting community experts for reasons of bias indicates an unequal value the IRB places on the credibility of its own researchers versus the opinion of other experts in the community. The racial element to discounting community experts is perceived as a dichotomy by one informant: the IRB experts or “the white sources of information” versus the community experts or “the coloured sources of information.”¹⁶¹ The preference of opinions from non-racialized informants indicates how the IRB views all racialized persons or former claimants as having an interest in the outcome of decisions. This discrimination against alternative sources of information further inhibits restoring

¹⁵⁹ Informant 1. 2007. Personal Communication. July 12, 2007

¹⁶⁰ IRB Legal References. 2003. Weighing Evidence. Section 6.7

¹⁶¹ Informant 1. 2007. Personal Communication. July 12, 2007

credibility to the refugee determination process, as the IRB discounts the opinion of those perceived to increase refugee acceptance rates.

6.5.4 The Authoritative Weight of Documentation Centre Research

Evidence presented in a refugee hearing is supposed to be given an equal assessment of its authoritative weight, regardless of its source.¹⁶² The IRB describes the term ‘to weigh evidence’ as, “to assess the reliability and probative value of evidence that has already been determined to be relevant. The probative value of evidence is its value in assisting in determining the matters in issue...the more trustworthy and probative evidence is given more weight in coming to a decision on the matters in issue.”¹⁶³ The IRB recommends using “the application of common sense” to determine the weight assigned to evidence.¹⁶⁴ The method of applying common-sense is problematic in many ways, most notably if the political bias of Board members permeates into their common-sense. This bias may result in less weight assigned to information that will help prove the claimant’s case.

There have been many instances since the development of the Documentation Centre of less authoritative weight being assigned to evidence not produced by the Research Directorate. This practice was especially problematic earlier in the history of the IRB when claims were assessed with little information available on a claimant’s situation of persecution. One informant gave a typical example of the discounting of evidence when s/he discussed the situation of homosexuals seeking protection from persecution in Russia. With the fall of the Berlin wall, an array of information describing the persecution of homosexuals began filtering out of Russia.

¹⁶² IRB Legal References. 2003. Weighing Evidence. Section 4.

¹⁶³ Ibid.

¹⁶⁴ Ibid.

The first report provided by a gay rights organization was called 'The Pink Book'. Many [Board] members discounted this information because it was from a gay rights organization. This is ironic because when there was first persecution of Christians in China, it was first reported by the Churches and didn't receive the same kind of reaction.¹⁶⁵

This is one example of Board members placing no authoritative weight on credible evidence, due to the source of information being perceived as having an interest in gay rights in Russia and therefore in the outcome of case decisions. The amount of authoritative weight has significant influence on the extent to which an information source is valued as helping to credit or discredit a refugee's claim.¹⁶⁶

If the information presented in the hearing by a refugee protection officer or Board member contains an authoritative source, it is extremely difficult for counsel to disprove its accuracy and validity. One informant discussed a case where evidence presented by the Board contained a very biased viewpoint; when counsel questioned the document as credible, the Board had problems in revealing its sources of information. One informant expressed frustration with challenging evidence presented by the IRB that has an obvious bias. "If you challenge them [the IRB] and question 'who is the expert' in this document, they say 'We cannot tell you in order to protect the confidentiality of the expert'."¹⁶⁷ In this case, the informant needed to produce vast amounts of information to prove the IRB document was biased and therefore should not be given weight in determining the claimant's case.¹⁶⁸ This example pinpoints a common accusation directed towards the adjudicators in the refugee determination process of how they tend to support and prioritize the claims produced by the Documentation Centre and their

¹⁶⁵ Informant 2. 2007. Personal Communication. July 24, 2007

¹⁶⁶ IRB Legal References. 2003. Weighing Evidence. Section 4

¹⁶⁷ Informant 1. 2007. Personal Communication. July 12, 2007

¹⁶⁸ Informant 1. 2007. Personal Communication. July 12, 2007

researchers. Although IRB research policies explicitly state how evidentiary information is assessed on criteria such as questioning the bias of the author/publisher and the “tone” of the document, it fails to discuss the methods taken to address this common problem.¹⁶⁹

It is important to note that many of the adjudicators in the refugee determination process perceive the researchers within the Documentation Centre as neutral and objective sources.¹⁷⁰ This commonly leads to an institutional bias, whereby the evidence from the IRBDC is presumed to be authoritative and correct. It is clear that this perception is inaccurate, since rarely are the ‘fact-finding missions’¹⁷¹ and researchers able to provide a wide spectrum of information from a variety of viewpoints. Most commonly, the viewpoint is from a readily available government spokesperson that is unlikely to be critical of the actions of the government. An informant emphasized this problem when s/he discussed a situation when researchers undertook a recent ‘fact-finding mission’ for the Documentation Centre: “the government in Mexico may be readily available to talk, but the researcher may not be able to go into the slums in Mexico City and talk with people there.”¹⁷² Hence, the reports and evidence that are produced through the Research Directorate may possess a state-supported bias. Therefore, it is vital that the information produced by the Research Directorate is assessed by the same stringent criteria as other information gathered and is not presumed to be void of biases and inaccuracies.

¹⁶⁹ Immigration & Refugee Board of Canada. Research Methodology. http://www.irb-cisr.gc.ca/en/research/about_e.htm

¹⁷⁰ Ibid.

¹⁷¹ See Glossary of Terms

¹⁷² Informant 2. 2007. Personal Communication. July 24, 2007

6.5.5 The Circulation of Outdated Information: The Responsibility of Board Members, Documentation Centre Staff, RPOs and Counsel in Preventing Inaccuracies

Addressing the problem of the use of inaccurate information in the refugee determination process would help restore needed integrity and credibility to the system.

Providing the most accurate and up-to-date information is crucial in helping claimants establish their identity, as this identity is constructed by the state from documents and pieces of information.¹⁷³ Evidentiary inaccuracies are not always in the form of simply the production of wrong information, but occur more commonly in the use of information that is no longer relevant or is out-of-date.¹⁷⁴ However, there are certain cases where the information is simply inaccurate. One informant expressed frustration with the slow response of the Documentation Centre in removing information from the system in order to ensure future decisions are not based on wrong information: “they [the IRB] do not take the proper provisions to change the wrong information. You continue to find the same research and there is no notation saying that the research is wrong...there is no clarification of when a case is accepted because the information presented by the IRB was wrong.”¹⁷⁵ The IRB does not take into account the serious effects that wrong information can have on the claimant. This perspective is indicative of the nature of the IRB that focuses more on the bureaucratic procedure surrounding the removal of information, rather than the harmful effects this information has on a claimant’s case. This shows similarities to issues raised previously, such as the IRB focus on legalistic frameworks instead of allowing for identity to be defined in less narrow terms than the criteria of the Convention definition.

¹⁷³ Dauvergne, Catherine. 2005. p. 116

¹⁷⁴ Informant 2. 2007. Personal Communication. July 24, 2007

¹⁷⁵ Informant 1. 2007. Personal Communication. July 12, 2007

As noted earlier, evidentiary inaccuracies can be the result of the incorrect application of evidence by a specific Board Member or RPO. To correct this problem, former Board member Catherine Dauvergne suggests allowing a Board member to specialize in a particular region or country in order to become familiar with a wide-range of issues, from documentary information to the demeanor of the claimant.¹⁷⁶ However, as noted previously by an informant, a Board member who is highly experienced in one particular type of claim may have preconceptions and stereotypes of the identity and facts a ‘legitimate’ claimant should present.¹⁷⁷ Therefore, it is important for Board members to be mindful of the complexities of identity and be vigilant in using previous expertise with a particular identity.

The wrongful application of evidence by RPOs can also skew the accuracy of the evidence and the outcome of the decision. RPOs are permitted to use a personal collection of information to help prove the facts of a claim. The IRB notes, “while it is permissible in certain circumstances for the RPD members¹⁷⁸ to do their own research into the facts of a case, a member should not secretly initiate a search for evidence which it then intends to use as a basis for questioning the claimant.”¹⁷⁹ The issue with a private collection, other than the high probability an RPO may gather evidence to reject a claim, is that the information is not monitored to ensure that it is up-to-date and relevant.¹⁸⁰ This can result in inaccurate evidence being introduced in the hearing room that can skew

¹⁷⁶ Dauvergne, Catherine. 2005. p.108, *supra* note 83

¹⁷⁷ Informant 2. 2007. Personal Communication. July 24, 2007

¹⁷⁸ Refugee Protection Division

¹⁷⁹ IRB Legal References. 2004. Questioning by the Board Member and Refugee Protection Officer. Sec 2.6.4

¹⁸⁰ Informant 2. 2007. Personal Communication. July 24, 2007

the results of the decision. Since the collection is private, this also raises issues of inaccurate information being applied to reject numerous cases.

The National Documentation Packages within the IRBDC are a significant component of the refugee determination process and is therefore a point from which to assess the accuracy of the information at the Documentation Centre. RPOs have a responsibility to ensure that the National Documentation Packages [NDP]¹⁸¹ in the Documentation Centre contain the most accurate and current information available. The Documentation Centre Headquarters in Ottawa asserts that an NDP is given significant authoritative weight in refugee hearings.¹⁸² Given this importance, maintaining up-to-date information within the packages is key in ensuring credible information is used in hearings. One informant expressed the difficulties in sustaining this high-level of accuracy when s/he pointed out, “We are talking about over 100 countries. The great majority of information is contained within the top 20 source countries, such as Mexico, Iran etc., and all of those have standardized packages, however often within those packages you find inaccurate information.”¹⁸³ Another informant highlighted similar problems when describing the situation where a claimant arrives from a source country that the IRB is not familiar with. In this case, the information can be sparse and in many cases, inaccurate due to irrelevant and outdated information.¹⁸⁴

The inaccuracies described above by Documentation Centre researchers, Board members and RPOs, mean the responsibility of counsel to present up-to-date and accurate information weighs heavily on the outcome of the decision. In spite of the noted

¹⁸¹ See Glossary of Terms

¹⁸² Informant 3. 2007. Personal Communication. July 24, 2007

¹⁸³ Informant 2. 2007. Personal Communication. July 24, 2007

¹⁸⁴ Informant 1. 2007. Personal Communication. July 12, 2007

importance of counsel on the outcome of decisions, funding for counsel is only available for some claimants in Ontario, Quebec and British Columbia.¹⁸⁵ A lawyer, immigration consultant, trusted advisor or family member could represent refugee claimants.¹⁸⁶ However, given the legalistic nature of the proceedings of the IRB, a lawyer who is knowledgeable in refugee law with previous experience could have a significant influence on helping to ensure a positive decision.¹⁸⁷ Many informants mentioned the primary role of counsel in refuting the claims made by the Board and presenting contradictory evidence to support the claimant.¹⁸⁸

6.6 Recommendations by the ‘Players’ in the Refugee Determination Process

The contribution of all of the informants participating in this research project was based on their extensive experience in the refugee determination process, and earns them the label of being authorities in the field. The following section is devoted to the recommendations proposed within the discussions on the issues within this research project, conducted from June to August 2007. One key issue that consistently emerged amongst the informant’s recommendations was the need for the IRB to conduct outreach with community organizations to ensure the resources at the Documentation Centre are available and utilized by refugee claimants. One of the strongest criticisms of the Centre revolves around the lack of knowledge of its existence by those outside the bureaucracy of the Immigration & Refugee Board. One informant suggested that personnel at the Immigration & Refugee Board could conduct outreach to inform claimants of the services

¹⁸⁵ Informant 1. 2007. Personal Communication. July 12, 2007

¹⁸⁶ IRB. 2007. Tribunal Process. http://www.irb-cisr.gc.ca/en/references/procedures/index_e.htm (accessed May 15, 2007).

¹⁸⁷ Daurvergne, Catherine. 2005. p.117

¹⁸⁸ Informant 2. 2007. Personal Communication. July 24, 2007

provided by the Documentation Centre, such as presenting information at ESL classes¹⁸⁹ or other services used by refugee claimants.¹⁹⁰ This could also help to make the IRBDC services more accountable to the population that they serve.

A pressing recommendation is the need to provide information at the Documentation Centre in languages other than English or French, as a majority of claimants do not have a solid command of either language.¹⁹¹ Given resource availability, a list of on-call interpreters and legal experts at the Centre available to help refugee claimants in languages other than English or French is imperative.

One informant advocated a closer working relationship between the IRB, the Documentation Center and the Refugee Protection Division. In particular, s/he mentioned more collaboration in the preparation of the National Documentation Packages and the importance of the regional Documentation Centre's in using the same information to decide cases.¹⁹² Currently, the Board is supposed to identify any variances in regional decisions. For example, if the Vancouver Board accepts a much smaller number of Afghani claims than Montreal or Toronto, this discrepancy must be identified and an investigation done as to locate the source of the problem and correct these inconsistencies. Identifying inconsistencies in case decisions is crucial in preventing Board members experienced in one type of claim from having high rejection rates.

As stated previously, this research project agrees with many informants in their recommendation to gather information from alternative sources of information. This includes making better use of community experts and other non-institutional sources,

¹⁸⁹ ESL is a common term for "English-as-a-Second-Language"

¹⁹⁰ Informant 1. 2007. Personal Communication. July 12, 2007

¹⁹¹ Ibid.

¹⁹² Informant #2, Q18

while maintaining a high level of reliability and accuracy. This recommendation is crucial if the IRB is to provide a full-spectrum of information to correctly decide refugee claims. The use of a variety of sources would also help to dispel the many accusations of bias that currently plague the integrity and credibility of the procedures of the IRB.

One step towards accomplishing the proposed recommendations, as suggested by an informant, is to begin dispelling the emphasis researchers and Board members place on “scholastic neutrality.” Neutrality can prevent researchers from focusing on specific human rights situations and issues pertinent to reaching accurate decision-making.¹⁹³ If the Research Directorate places a focus on remaining neutral, this results in discounting information that could achieve more accurate decision-making. Accurate decision-making is imperative to restore credibility to an institution plagued with the inconsistencies and biases described in the above evidence. In order to make the complicated and intricate process of deciding refugee claims more accountable, all parties involved must first recognize the severity of its problems.

¹⁹³ Informant 2. 2007. Personal Communication. July 24, 2007.

CONCLUSIONS

This research project undertook to show how institutions, such as the Documentation Centre, construct and categorize a refugee's identity to maintain a system that excludes claimants who do not fit into a particular criterion. A strict criterion facilitates the ability of institutions to construct the refugee claimant to represent an identity that is acceptable when seeking protection in Canada. The incorrect application of information from the Documentation Centre assists the IRB in meeting the legalistic and categorical principles set out in the refugee determination process. This compromises both the credibility and integrity of Canada's entire refugee system, for the purpose of restricting refugee inflows.

As Canada's refugee determination system continues to be subject to widespread criticism, such as accusations of political patronage, increased transparency must develop within the practices of the IRB. In particular, a focus on preventing incorrect evidence from permeating the refugee determination process is a recommended reform. The players within the refugee system continue to have significant influence over the application of evidence in the hearing room, therefore, the conduct of these players must be scrutinized and held accountable for decisions that harm the integrity of the decision-making process. Specifically, misuse of information by Refugee Protection Officers and Board members is currently not regarded as an acute problem.

In examining the guidelines and codes of conduct for both RPOs and Board members, there is a tendency to err on the side of the decision-maker. For instance, the decision-maker determines which evidence is important in proving a claimant's identity,

ignoring information that could be pertinent to the case.¹⁹⁴ The common assumption by Board members that identity is easily definable through specific traits may result in the discounting of information in the hearing room. In order to make the IRB's practices more accountable, questioning the decision of a single Board member to dismiss important evidence must be well received, if not encouraged.

The use of incorrect evidence in Canada's refugee determination process can generate a chain reaction that has unforeseen consequences on international refugee systems. Canada's Documentation Centre has considerable responsibility, as the evidence it produces is used to help decide refugee claims from London to Sydney,¹⁹⁵ and thus must adhere to the highest standards of accuracy and reliability. The consequences of incorrect information could trigger the dismissal of an unprecedented number of refugee claims internationally, resulting in the return of many individuals to situations of persecution.

This research project is meant to pave the way for future discussions on the role of the IRB Documentation Centre. This research was conducted within a framework that recognizes the importance that a refugee's identity carries in the refugee process, and the role of evidence in shaping this identity. This project has questioned the practices of institutions in constructing identity in order to subsequently reject a claim for protection. Future research would benefit from an examination of the extent to which incorrect evidence appears in refugee hearings, finding concrete proof indicating the number of incorrect decisions annually. In addition, conducting a content analysis of documents within the Documentation Centre to examine the frequency of bias would be beneficial.

¹⁹⁴ IRB Legal Services. 2003. Apply the Facts and Standards of Proof to the Issues of the Case. Sec. 3.3.6.

¹⁹⁵ Dauvergne, Catherine. 2005. p.107

An examination of decisions based on false information must be placed at the forefront of the issues currently being researched at the IRB. A consensus on the authoritative nature of evidence in the refugee determination process requires a certain degree of urgency in producing this research, as the number of incorrect decisions continues to climb.

REFERENCES

- Abu-Laban, Yasmeen. 2002. Liberalism, Multiculturalism and the Problem of Essentialism. In *Citizenship Studies*, Vol. 6 (4)
- Adams, Carla D. 1995. *A Feminist Critique of the Convention Refugee Definition*. L.L.M. Thesis University of Toronto. Toronto: National Library of Canada
- Amnesty International. Frequently Asked Questions. <http://web.amnesty.org/pages/aboutai-faq-eng#9>, (accessed August 5, 2007)
- Angus, William H. 1989. "The Role of Board Members and Refugee Hearing Officers in Hearing of Refugee Claims." In *Refugee Claims: An Analysis of Some Key Issues*, ed. Lorne Waldman. Toronto: Canadian Bar Association-Ontario
- Arboleda, Eduardo and Ian Hoy. 1993. The Convention Refugee Definition in the West: Disharmony of Interpretation and Application. In *International Journal of Refugee Law*. 5 (1)
- Babbie, Earl and Lucia Benaquisto. 2002. *Fundamentals of Social Research*. Scarborough: Thomson Canada Limited
- Canadian Council for Refugees. 2005. Closing the Door on Refugees. <http://www.ccrweb.ca/closingdoordec05.pdf>, (accessed August 5, 2007)
- Castles, Stephen. 2002. "The International Politics of Forced Migration" In *Socialist Register 2003: Fighting Identities: Race, Religion and Ethno-Nationalism*, ed. Leo Panitch and Colin Leys. Merlin-Press, Fernwood Publishing and the Monthly Review Press

Chan, Wendy. 2004. "Undocumented Migrants and Bill C-11: The Criminalization of Race." In *What is Crime? Defining Criminal Conduct in Contemporary Society*, ed. Law Commission of Canada. Vancouver: UBC Press

CBC News. 2004. Minister Promises IRB Appointments Will Now Be 'Merit-Based,' March 14, 2007. <http://www.cbc.ca/canada/story/2004/03/16/refugeeboard040316.html>, (accessed May 15, 2007)

CBC News. 1979 Boat People: A Refugee Crisis, July 29, 1979, Online Archives. http://archives.cbc.ca/IDC-1-69-524-2712/life_society/boat_people/clip8, (accessed May 15, 2007)

Citizenship and Immigration Canada. 2006. Annual Report to Parliament on Immigration 2006. <http://www.cic.gc.ca/english/pub/annual-report2006/index.html>, (accessed November 15, 2006)

Dauvergne, Catherine. 2005. *Humanitarianism, Identity and Nation: Migration Law in Canada and Australia*. Vancouver: UBC Press

Department of Justice Canada. 2001. Immigration and Refugee Protection Act 2001. <http://laws.justice.gc.ca/en/I-2.5/245769.html>, (accessed May 15, 2007)

Dirks, Gerald E. 1995. *Controversy and Complexity: Canadian Immigration Policy during the 1980s*. Montreal: McGill-Queens University Press

Dirks, Gerald. E. 1977. *Canada's Refugee Policy: Indifference or Opportunism?* Montreal: McGill-Queen's University Press

Fierlbeck, Katherine. 1996. The Ambivalent Potential of Cultural Identity. In *Canadian Journal of Political Science*, Vol. 29 (1)

Gibney, Mark P. 1992. "Foreign Policy: Ideological and Human Rights Factors." In *Refugees and the Asylum Dilemma in the West*, ed. Gil Loescher. University Park, PA: University of Pennsylvania

Gunew, Sneja. 1997. Postcolonialism and Multiculturalism: Between Race and Ethnicity. In *The Yearbook of English Studies*, Vol. 27

Hathaway, James C. 2005. *The Rights of Refugees Under International Law*. New York: Cambridge University Press

Hathaway, James C. 1992. "The Conundrum of Refugee Protection in Canada: From Control to Compliance to Collective Deterrence." In *Refugees and the Asylum Dilemma in the West*, ed. Gil Loescher. Pennsylvania: Pennsylvania State University Press

Hathaway, James C. 1993. *Rebuilding Trust: Report of the Review of Fundamental Justice in Information Gathering and Dissemination of the Immigration and Refugee Board of Canada*. Toronto: York University Centre for Refugee Studies

Hayter, Teresa. 2000. *Open Borders: The Case Against Immigration Controls*. London: Pluto Press

Howard, Rhoda. 1980. Contemporary Refugee Policy: A Critical Assessment. In *Canadian Public Policy*, Vol. 6 (2),

Huntington, Samuel P. 1993. The Coming Clash of Civilizations. *New York Times*, June 6 1993

Immigration and Refugee Board of Canada. About Research. <http://www.irb-cisr.gc.ca/en/research/about/e.htm>, (accessed July 5, 2007)

Immigration and Refugee Board of Canada. Research Methodology. http://www.irb-cisr.gc.ca/en/research/about_e.htm, (accessed August 4, 2007)

Immigration and Refugee Board Legal Services. 2003. Weighing Evidence. December 31, 2003. http://www.irb-cisr.gc.ca/en/references/legal/all/weighevid/index_e.htm, (accessed July 1, 2007)

Immigration and Refugee Board Legal References. 2004. Assessment of Credibility in Claims for Refugee Protection. January 1, 2004. http://www.irb-cisr.gc.ca/en/references/legal/rpd/assesscred/index_e.htm, (accessed May 15, 2007)

Informant 1. 2007. Personal Communication, July 12, 2007

Informant 2. 2007. Personal Communication, July 24, 2007

Informant 3. 2007. Personal Communication, July 24, 2007

Informant 4. 2007. Personal Communication, July 25, 2007

Informant 5. 2007. Personal Communication, July 30, 2007

Isajiw, Wsevolod, W. 1999. *Understanding Diversity: Ethnicity and Race in the Canadian Context*. Toronto: Thompson Educational Publishing Inc.

Jackman, Barbara. 1989. "Burden of Proof in Assessment of Refugee Claims." In *Refugee Claims: An Analysis of Some Key Issues*, ed. Lorne Waldman. Toronto: Canadian Bar Association-Ontario

Jakubowski, Lisa Marie. 1997. *Immigration and the Legalization of Racism*. Halifax: Fernwood Publishing

Jakubowski, Lisa Marie. 2006. 'Managing' Canadian Immigration: Racism, Ethnic Selectivity, and the Law. In *Locating Law*, ed. Elizabeth Comack. Halifax: Fernwood Publishing

Keung, Nicholas. 2007. Strict Visa Rulings Called Unfair. *Toronto Star*. Print Edition, August 21, 2007

Knowles, Valerie. 1997. *Strangers at Our Gates: Canadian Immigration and Immigration Policy, 1540-1997*. Toronto: Dundurn Press

Lacroix, Marie. 2004. Canadian Refugee Policy and the Social Construction of the Refugee Subjectivity: Understanding Refugeeeness. In *Journal of Refugee Studies*, Vol.17 (2)

Laredo, Sam. 1989. "Guidelines for Refugee Hearing Officers." In *Refugee Claims: The Role of Board members and Hearing Officers*, ed. Lorne Waldman. Toronto: Canadian Bar Association-Ontario

Mahalingam, Ramaswami and Janxin Leu. 2005. Culture, Essentialism, Immigration and Representations of Gender. In *Theory & Psychology*, Vol. 15, (6), p. 839-860

Malkki, Liisa H. 1995. Refugees and Exile: From 'Refugee Studies to the National Order of Things. In *Annual Review of Anthropology*, Vol. 24, p.495-523

Malkki, Liisa H. 1996. Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization. In *Cultural Anthropology*, Vol. 11 (3)

Pratt, Anna. 2005. *Securing Borders: Detention and Deportation in Canada*. Vancouver: UBC Press

Razack, Sherene. 1998. *Looking White People in the Eye: Gender, Race and Culture in Courtrooms and Classrooms*. Toronto: University of Toronto Press

Rusu, Sharon. 1989. The Development of Canada's Immigration and Refugee Board Documentation Centre. In *International Journal of Refugee Law*, Vol.1 (3)

Said, Edward W. 1993. *Culture and Imperialism*. New York: Random House Publishing

Said, Edward W. 1980. *Covering Islam: How the Media and the Experts Determine How We See the Rest of the World*. New York: Random House Publishing

Said, Edward W. 1979. *Orientalism*. New York: Random House Publishing

Shah, Prakash A. 2000. *Refugees, Race and the Legal Concept of Asylum in Britain*. London: Cavendish Publishing Limited

Shie-Wei Fan, Stephen. 1997. Immigration Law and the Promise of Critical Race Theory: Opening the Academy to the Voices of Aliens and Immigrants. In *Columbia Law Review*, Vol. 97 (4)

Showler, Peter. 2006. *Refugee Sandwich*. Toronto: McGill-Queen's University Press

Stein, Barry N. and Silvano M. Tomasi. 1981. Forward. In *International Migration Review*, Vol.15 (Spring/Summer), p.5-7

Tator, Carol and Frances Henry. 2006. *Racial Profiling in Canada*. Toronto: University of Toronto Press

Trebilcock and Kelley. 1998. *The Making of the Mosaic: A History of Canadian Immigration Policy*. Toronto: University of Toronto Press

United Nations High Commissioner for Refugees. 1988. *Handbook, on Procedures and Criteria for Determining Refugee Status*, Geneva: Office of the United Nations High Commissioner for Refugees

UNHCR: The UN Refugee Agency. 1988. *Collection of International Instruments Concerning Refugees*. Geneva: Office of the United Nations High Commissioner for Refugees

UNHCR: The UN Refugee Agency. 2006. UNHCR Global Appeal 2007: Part 1: An Overview. <http://www.unhcr.org/publ/PUBL/455443960.pdf>, (accessed November 15, 2006)

Unknown Author. 2005. "Student Numbers Down in Canada" <http://www.hothousemedia.com/etm/etmbackissues/septetm05/septetm05news.htm>, (accessed May 15, 2007)

Waldman, Lorne. 2001. *The Definition of Convention Refugee*. Markham: Butterworths Canada Ltd.