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Contextualizing Discretion: Micro-dynamics of Canada's Refugee Determination System

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Abstract

In an era where international immigration is increasingly difficult and selective, refugee status constitutes a valuable public good that enables some non-citizens access and membership to the host country. Based on the discretionary judgment of the decision-maker, refugee status is only granted to claimants who establish well-founded fear of persecution if returned to their home country. Canada's largest independent administrative tribunal, Immigration and Refugee Board of Canada (IRB), is charged to hear refugee claimants and make refugee status determinations. This dissertation investigates why significant disparities exist among IRB's politically appointed decision-makers' refugee status grant rates.

As little was known about the concrete ways Canada allocates opportunities for entry and legal status for non-citizens, lifting the blanket of administration was necessary. By exploring refugee decision-making from a Street Level Bureaucracy Theory (SLBT) perspective, and an ethnographic methodology that combined direct observation, semi-structured interviews and document analysis, the study sought first to understand whether the variation in grant rates were a result of differences in decision-makers' discretionary practices and reasoning and second to trace the organizational factors that foster variation.

In line with previous scholarship on SLBT that document how the work situation structure discretion and how individual views play in decision-making; this study demonstrates substantive differences among decision-makers in terms of their work routines, conceptions of refugee claimants and the best way to conduct their work. The analysis illustrates how decision-makers apply not a singular but a variety of approaches to the refugee hearing, ranging from rigid *interrogation* to the more resilient *interview* style. Despite clear organizational constraints on decision-makers that target to increase consistency and efficiency of refugee determinations, the significance of credibility-assessment and the invisibility of the decision-making space leave ample room for discretionary behavior.

Even in rule-saturated environments like administrative tribunals which extensively regulate discretion; decision-making hardly means neutral and hierarchical rule adherence. Instead discretion is nested within the context of interaction routines, work situation, rule adherence and law. It is inherently difficult if not improbable to control and discipline discretionary decision-making even in organizations that institutionalize and standardize training and communicate their demands clearly to decision-makers. When faced with goal ambiguity and with demands that they consider run against their discretionary authority, decision-makers reinterpret their job definition and routinize their practices. They formulate an encounter routine that is organizationally acceptable to assess the people in front of them. This dissertation illustrates how unevenly the claimants, their testimony and evidence are treated and how these treatments are reflected on the refugee decision.

Key words: administrative discretion, administrative tribunals, street-level bureaucracy, refugee status determination, refugee decision-making, international human rights standards, Canada, policy implementation, bottom up approaches

Résumé

À une époque où l'immigration internationale est de plus en plus difficile et sélective, le statut de réfugié constitue un bien public précieux qui permet à certains non-citoyens l'accès et l'appartenance au pays hôte. Reposant sur le jugement discrétionnaire du décideur, le statut de réfugié n'est accordé qu'aux demandeurs qui établissent une crainte bien fondée de persécution en cas de retour dans leur pays d'origine. Au Canada, le plus important tribunal administratif indépendant, la Commission de l'immigration et du statut de réfugié du Canada (CISR), est chargé d'entendre les demandeurs d'asile et de rendre des décisions de statut de réfugié. Cette thèse cherche à comprendre les disparités dans le taux d'octroi du statut de réfugié entre les décideurs de la CISR qui sont politiquement nommés.

Au regard du manque de recherches empiriques sur la manière avec laquelle le Canada alloue les possibilités d'entrée et le statut juridique pour les non-citoyens, il était nécessaire de lever le voile sur le fonctionnement de l'administration sur cette question. En explorant la prise de décision relative aux réfugiés à partir d'une perspective de Street Level Bureaucracy Theory (SLBT) et une méthodologie ethnographique qui combine l'observation directe, les entretiens semi-structurés et l'analyse de documents, l'étude a d'abord cherché à comprendre si la variation dans le taux d'octroi du statut était le résultat de différences dans les pratiques et le raisonnement discrétionnaires du décideur et ensuite à retracer les facteurs organisationnels qui alimentent les différences.

Dans la lignée des travaux de SLBT qui documentent la façon dont la situation de travail structure la discrétion et l'importance des perceptions individuelles dans la prise de décision, cette étude met en exergue les différences de fond parmi les décideurs concernant les routines de travail, la conception des demandeurs d'asile, et la meilleure façon de mener leur travail. L'analyse montre comment les décideurs appliquent différentes approches lors des audiences, allant de l'interrogatoire rigide à l'entrevue plus flexible. En dépit des contraintes organisationnelles qui pèsent sur les décideurs pour accroître la cohérence et l'efficacité, l'importance de l'évaluation de la crédibilité ainsi que l'invisibilité de l'espace de décision laissent suffisamment de marge pour l'exercice d'un pouvoir discrétionnaire.

Même dans les environnements comme les tribunaux administratifs où la surabondance des règles limite fortement la discrétion, la prise de décision est loin d'être synonyme d'adhésion aux principes de neutralité et hiérarchie. La discrétion est plutôt imbriquée dans le contexte de routines d'interaction, de la situation de travail, de l'adhésion aux règles et du droit. Même dans les organisations qui institutionnalisent et uniformisent la formation et communiquent de façon claire leurs demandes aux décideurs, le caractère discrétionnaire de la décision est par la nature difficile, voire impossible, à contrôler et discipliner. Lorsqu'ils sont confrontés à l'ambiguïté des objectifs et aux exigences qui s'opposent à leur pouvoir discrétionnaire, les décideurs réinterprètent la définition de leur travail et banalisent leurs pratiques. Ils formulent une routine de rencontre qui est acceptable sur le plan organisationnel pour évaluer les demandeurs face à eux. Cette thèse montre comment les demandeurs, leurs témoignages et leurs preuves sont traités d'une manière inégale et comment ces traitements se répercutent sur la décision des réfugiés.

Mots-clés: discrétion administrative, tribunaux administratifs, street-level bureaucracy, détermination du statut du réfugié, normes internationales relatives aux droits de l'homme, Canada, mise en œuvre des politiques, approche l'État au guichet

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ABBREVIATIONS

Access to Information and Privacy (ATIP)

Action Réfugiés Montréal (ARM)

Canadian Association for Refugee and Forced Migration Studies (CARFMS)

Canadian Association of Refugee Lawyers (CARL)

Canadian Border Services Agency (CBSA)

Canadian Council for Refugees (CCR)

Case Management Team (CMT)

Citizenship and Immigration (CIC)

Coordinating Member (CM)

Cour nationale du droit d'asile (CNDA)

Corporate Security Services (CSS)

Designated Country of Origin (DCO)

Democratic Republic of Congo (DRC)

Governor in Council (GiC)

Internal Flight Alternative (IFA)

Immigration and Refugee Board of Canada (IRB)

Immigration and Refugee Protection Act (IRPA)

Learning and Professional Development Directorate (LPDD)

Mara Salvatrucha (MS-13)

Methodological Notes (MN)

Ministerial Advisory Committee (MAC)

New Public Management (NPM)

Observational Notes (ON)

Office français de protection de réfugiés et des apatrides (OFPRA)

Operations Services Manager (OSM)

Personal Information Form (PIF)

Persons living with AIDS (PLWA)

Port of Entry (PoE)

Public Appointments Commission Secretariat (PACS)

Refugee Protection Division (RPD)

Scientific Content Analysis (SCAN)

Strategic Communications and Partnerships Branch (SCPB)

Street-Level Bureaucracy Theory (SLBT)

Street-Level Bureaucrat (SLB)

Table de concertation des organismes au service des personnes réfugiées et immigrantes (TCRI)

Theoretical Notes (TN)

Tribunal Officer (TO)

Unified Lumumbist Party (PALU)

World War II (WWII)

For those who search for a safe home.

And for Steve, who decided that life at a prison wasn't worth living.

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Introduction

On a particularly cold February afternoon, at 12:55 pm, on the second floor of Guy-Favreau complex, refugee and immigration lawyer Roger Bluer presents me to his client Qadir Hussein, a 43-year-old man from Pakistan, one of the most articulate and cheerful refugee claimants that I met during my fieldwork. Qadir asks for Canada's protection since he fears persecution on the basis of political opinion and his activities against the Taliban. His younger brother Hassan, a journalist, who was accepted as a refugee a few months ago accompanies him. In order to comfort Qadir, Hassan grabs his shoulder and says "Insha'Allah, god willing, everything will be all right". Qadir's tenuous smile slowly disappears, and he looks very serious. He turns to Roger and inquires of his chances to be accepted as a refugee like all claimants do. Roger is a realistic lawyer and a very sharp-tongued one in the hearing room. He looks at Qadir and answers cold-bloodedly: "I do not know which decision-maker we will have. I will see with you when we all enter the hearing room. We have very strong evidence, and you are well prepared". Then he turns to me, "If we have Wael as the decision-maker, he will be accepted for sure. But if we have Walter or Hector, I am not sure. You observed them, right?" I nod and roll my eyes. He continues: "They will find a way to refuse, like they always do". While we walk towards the hearing room 30, I notice once again, how perception of uncertainty and arbitrariness encompasses the refugee determination in Canada.

This dissertation focuses on refugee decision-making, one function of the state. It analyzes how macro-level and abstract legal rules are interpreted and employed in the conduct of refugee status determination. It locates the various forces that operate on decision-makers'

treatment of refugee claims made in Canada. It studies concrete individuals and tries to understand the sources of their embedded actions.

The state, as the principle of political reality, encompasses two different, even contradictory arrangements. At the macro-level, it represents an abstract, monolithic, vast and coherent structure; at the micro-level, on the other hand, it translates into a set of concrete, diverse, localized and inharmonious organizations. Policy is designed and adopted at the national, provincial or federal level, but its implementation takes place on the ground. State practice occurs at various locations; when a poor citizen waits to collect food stamps at a welfare office, when a police officer decides to arrest a suspicious looking individual at night or when a refugee decision-maker demands clarifications to a claimant's testimony during a refugee hearing. It happens in direct and immediate ways through routine face-to-face encounters between the public and concrete individuals who represent the state. Policy is implemented during or as a result of these encounters and the state continues to play a ubiquitous role in public and private life. Taking the state seriously in understanding policy outcomes does not mean using the state simply as an independent variable. It signifies, on the contrary, studying the numerous forces that operate on the state actors' mundane encounters with the public. Locating practices and decisions through concrete encounters, demystifies the state as a macro-level homogenous body and challenges the taken-for granted assumptions behind the law and policy.

States have no option but to employ individuals to process private demands of their public, which is greatly diversified; neither its demands nor its characteristics are the same. In terms of its relationship to the state, the public can simply be divided into two extreme opposites as citizens and non-citizens. Citizens are persons recognized as having an effective link to the state through strong ties; they bear citizenship rights and are officially entitled to freely stay or

leave the state territories. They are equal and full members of the society. Non-citizens' relationship with the state where they are located, conversely is characterized by the absence of any bond of attachment.[1] As a result of this difference, the rights they bear are more limited and they are not free to cross state borders to which they lack attachment as they please. The demands made by citizens and non-citizens are most of the time received, processed, categorized, and decided by front-line workers who interfere in demanders' lives at close range.

A non-citizen may gain the rights and privileges, which citizens enjoy, through refugee or immigrant categories. States make a distinction between immigrants and refugees despite the fact that their movements can be considered within the framework of international mobility. They maintain that refugees are people who escape from persecution in their country of origin and they are forced to leave, hence unable or unwilling to return back to their country of origin safely. Immigrants on the other hand, are considered to be people leaving their country of origin on a voluntary basis to improve their lives economically, socially and educationally. Contrary to refugees, immigrants are considered to have the option to return back to their home country hassle-free. The distinction between refugees and immigrants are codified through international human rights law. States who ratified the United Nations Convention on the Status of Refugees agree to accept and protect qualified refugee claimants who seek asylum within their borders. This means that refugees have a right to protection "upon the host country that arises from outside the host country's jurisdiction" (Whitaker, 1998, p. 418). International immigration, on the other hand remains to be a privilege and a fundamental feature of state sovereignty at the formal level. States decide which non-citizens are worthy of being accepted as an immigrant and a refugee. This

[1] See the judgment of the International Court of Justice on 6 April 1955 in the Nottebohm case (Liechtenstein v. Guatemala).
Non-citizens are not a single body of individuals they vary importantly such as permanent residents, immigrants, refugees, refugee claimants, refused refugee claimants, temporary visitors, survivors of human smuggling and trafficking and stateless people.

macro-level distinction has to be made on the ground by front-line decision-makers as well. The refugee claimant, who seeks asylum, has to convince the decision-maker that s/he is a refugee on Convention grounds, and in need of the host country's protection; and that s/he is not an immigrant who left his/her country of origin voluntarily.

In Canada, the interpretation and the application of refugee definition into individual reality is done by Canada's largest independent, quasi-judicial, and administrative tribunal, the Immigration and Refugee Board of Canada (IRB). It renders decisions on immigration and refugee matters. The IRB's Refugee Protection Division (RPD) receives, hears and processes refugee claims made in Canada. Annually around 25.000 refugee claim decisions are finalized by decision-makers, who are called Board members (IRB, 2013, 2014g). These categorization decisions require assessment and judgment. A refugee claimant, who fears persecution, has to demonstrate that his/her fear has an objective basis. The Board member has to assess whether the claimant is credible and if s/he is *personally* targeted by the agents of persecution and that s/he is at higher risk compared to persons similarly positioned if returned back to his/her country of origin. If the judgment is positive, the claimant is eligible for both refugee and permanent residence status in Canada [my emphasis] (IRB, 2004).

Canada is known as a country of immigration which is reflected by its ethnic diversity. Historically, it "has been viewed as a global leader with respect to refugee protection" (Amnesty International, 2015). Yet, international immigration continues to raise questions of membership as who is admitted, settled and included to Canadian society. Immigration is debatably one of the most researched Canadian public policy fields today. This rich and interdisciplinary scholarship often focuses on the study of immigration policy-making processes (Kelley & Trebilcock, 1998; Simmons, 2010), federalization of this process (Paquet, 2014), immigrant integration and

resettlement (Black, 1982; Frideres, Burstein, & Biles, 2008), citizenship (Bloemraad, 2006) and governance of immigrants (Triadafilopoulos, 2012).

Simultaneously, there exist two research gaps that have not been adequately addressed by social scientists in Canada. First, state officials who implement immigration policy and take decisions in immigration related matters are rarely studied (Bouchard, 2000; Bouchard & Carroll, 2002; Foster, 1998; Hawkins, 1972; Pratt, 2005; Satzewich, 2014a, 2014f). Secondly, the study of refugees, as one of the four categories of immigrants that Canada receives, remains at the margins of Canadian immigration studies (Adelman, 1991; Anderson, 2010, 2013; Dirks, 1978, 1984; Garcia y Grigeo, 1994; Mountz, 2010; Soennecken, 2013, 2014; Whitaker, 1987, 1998, 2002). As I will elaborate on these studies in more detail below, despite their valuable contributions, there is no theorisation of how Canada determines refugee status and differentiates refugees from immigrants. Little if anything is known about the concrete ways Canada allocates opportunities for entry and legal status for refugee claimants. Without such understanding, we are left with insufficient evidence and analysis into this important matter.

This dissertation tackles three concepts very central to political science: state, law and authority. The differentiation I made above in terms of the state as the abstract, monolithic and coherent macro-level structure and the concrete, diverse and inharmonious micro-level one is even more pronounced when we consider the diversity of individual front-line decision-makers. These individuals are the delegated state authority. On one hand, the principles of equality and the rule of law require them to strictly implement universal laws and policies in an impartial and impersonal manner. On the other hand, they are real individuals with personalities, opinions, interests and preferences. This concrete tension challenges the conception of policy

implementation as a top-down, prescriptive, and well-structured process with predictable outcomes.

This dissertation investigates why significant disparities exist among RPD's Board members' refugee status grant rates. It offers an organizational analysis of the administrative process that the refugee claimants have to go through to gain refugee and permanent resident status in Canada. More than simply seeking how policy is implemented though, this study strives to identify why codified universal refugee definition is not interpreted and applied in a consistent manner by Board members.

In Canada, in terms of the study of immigration policy implementation, not many researchers had access to decision-makers. Limited research that investigates how immigration officials carry out their jobs mostly focuses on visa officers. The first study is by the political scientist Freda Hawkins, who visited several European visa offices in the 1960s, before the overtly racist Canadian immigration law was transformed. Her research focuses on policy formation and the pressures immigration managers face, with some attention to officers that she characterizes as very dedicated to their work (Hawkins, 1972). Secondly, sociologist Lorne Foster shares his observations and reflections as an immigration officer in the 1980s and the 1990s in Toronto. He draws a negative portrayal of these officers who disproportionally focus on keeping the "bad" immigrants out, instead of settling the "good" ones (Foster, 1998). Thirdly, for her dissertation, Geneviève Bouchard studied visa officer discretion across three national contexts; Canada, the United States, and Quebec. Through interviews with officers and analysis of official documentation, she endeavors to understand what room was officially left for officers' discretion (Bouchard, 2000). Therefore, she explores the structural differences among national contexts, and how they impact broader officer discretion instead of individual officers. Fourthly,

criminologist Anna Pratt, in her examination of Canada's detention and deportation practices, analyzes official documents and gives an overview of the deportation policy. However, the study of state officials who carry out this policy is largely missing from her previous work (Pratt, 2005). Later, Pratt (2010), through interviews and court decisions, studies how border officials' suspicion is made reasonable through border control agency policies and the courts. She argues that the interplay between the two enhances border officer discretion and safeguards their decisions from scrutiny. Again, officials are studied as a unified group, on what they say, without attention to what they actually do. Most recently, sociologist Vic Satzewich secured access to a quarter of Canadian overseas visa offices (Satzewich, 2014a, 2014f). Through in-depth interviews with visa officers, observations of their interactions with applicants, and official document analysis, he argues that visa decision-making is not informed by racism as some Canadian debates suggest, but discretion is socially constituted and technical organizational logics shape decision-making.

When it comes to refugee policy, all but one study focus on formal policy-making process and policy change. They provide well-developed historical institutionalist explanations in relation to Canada's refugee policy, but say almost nothing in relation to refugee decision-making.[2] Political scientist Gerald E. Dirks (1978) through a historical institutional analysis, illustrates how until after World War II (WWII), Canada was cautious in relation to the creation of permanent international organizations that would play a role in the settlement of immigrants and refugees. Later, Dirks (1984) describes the factors that influenced the governmental actors in the formulation of refugee policy in the 1976 Immigration Act. He emphasizes the actors' persistence in deterring potential refugee claimants to minimize the administrative costs of

[2] I exclude human rights (Macklin, 2009), refugee law (Rehaag, 2008), and administrative law (Hamlin, 2014) researchers from that list. I will talk extensively about their work in the first chapter.

refugee status determination. Historian Manuel Garcia y Grigeo (1994, p. 138) argues that Canada's postwar refugee and immigration policies "reveal a fluctuating pattern of opening and closing". He concludes that despite the commitment to human rights protection, Canada increasingly attempts to manage international immigration. Political scientist Reg Whitaker's work explores how Canada's refugee policy is steered by the interaction of security and ideology concerns. He emphasizes that Canadian refugee policy historically favored the exclusion of asylum seekers[3] who were leftists or communists in favor of non-citizens seeking to enter Canada from Eastern Europe and Indochina (Whitaker, 1987, 1998). He contradicts the claims of how September 11 attacks transformed migration policies towards a security focus, and rather highlights the continuity of refugee policy within a Canadian national security discourse (Whitaker, 2002). Philosopher Howard Adelman (1991), in a volume called *Refugee Policy: A Comparison of Canada and the United States*, provides a comprehensive historical analysis of refugee policy change in Canada. He demonstrates the 1980s shift in policy emphasis from off-shore humanitarian settlement to inland refugee claims. Political scientist Christopher G. Anderson's work concentrates on the politics of border control in relation to asylum seekers, mainly the interaction between institutions and policy-making processes from a historical perspective. He points out that comparative literature on liberal-democratic state responses to asylum seekers almost always assume that the expansion of rights protection for these populations undermine restrictive border control policies. Instead, he argues that rights-restrictive policies undermine border control by producing rights-based politics and creating administrative inefficiencies (Anderson, 2010, 2013). Geographer Alison Mountz (2010) studies the interaction between law, geography and state power under a crisis situation. Her analysis is

[3] Asylum seeker is a non-citizen seeking asylum. It is synonym of refugee claimant. While asylum seeker is the term used internationally, the use of refugee claimant is prevalent in Canada.

partly based on her ethnographic fieldwork in the late 1990s, at the Citizenship and Immigration (CIC) office in Vancouver when Canada received four boats filled with 600 smuggled individuals from China. She illustrates how during turbulent times, bureaucrats simultaneously perceive themselves as vulnerable state actors against unwanted immigration and as powerful ones who can circumvent human rights of non-citizens who are potential threats by extending state power beyond their border. Her work is a successful demonstration of how the CIC bureaucracy responded to an exceptional situation and managed the crisis. However, it does not tell us much about how the state functions every day in relation to the management of refugee claimants. Finally, political scientist Dagmar Soennecken, as the only researcher who analyzes Canada's contemporary refugee determination system, studies the interplay between political actors and judicial institutions and the outcome for administrative procedures for refugee determination. She argues that refugee determination is severely managerialized in Canada through efficiency-based standards (Soennecken, 2013) and took a securitization turn (Soennecken, 2014). Soennecken's work is similar to other researchers and concentrates on the formal policy side. The question raised by this dissertation, therefore, remains unanswered by these two groups of studies focusing on visa officers and formal refugee policy.

As little was known about the concrete ways Canada allocates opportunities for entry and legal status for refugee claimants, lifting the blanket of administration was necessary. I explored refugee decision-making from a Street Level Bureaucracy Theory (SLBT) perspective and an ethnographic methodology that combined direct observation of 50 closed refugee hearings, semi-structured interviews with 30 actors of which 10 were former Board members, and document analysis of 7000 pages of IRB's official documentation. The study sought first, to understand

whether the variation in grant rates were a result of differences in Board members' discretionary practices and reasoning and second, to trace the organizational factors that foster this variation.

In line with previous scholarship on the SLBT that documented how the work situation structure discretion and how individual views play in decision-making; this study demonstrates substantive differences among Board members in terms of their work routines, personal conceptions of refugee claimants and their work. The analysis illustrates how decision-makers apply not a singular but a variety of approaches to the refugee hearing, ranging from rigid *interrogation* to the more resilient i*nterview* style. Despite clear organizational constraints on decision-makers that target to increase consistency and efficiency of refugee determinations, the significance of credibility-assessment and the invisibility of the decision-making space leave ample room for discretionary behavior.

By contextualizing discretion in an administrative tribunal which determines the rights of refugee claimants who are non-citizens, this dissertation engages in a new way with a longstanding debate in decision-making in the SLBT. Even in rule-saturated environments like administrative tribunals which extensively regulate discretion; decision-making hardly means neutral and hierarchical rule adherence. Instead discretion is nested within the context of interaction routines, work situation, rule adherence and law. It is inherently difficult if not improbable to control and discipline discretionary decision-making even in organizations that institutionalize and standardize training and communicate their demands clearly to decision-makers. In organizations that lack a shared workplace culture, when faced with goal ambiguity and with demands that they consider run against their discretionary authority, decision-makers reinterpret their job definition and routinize their practices. They formulate an encounter routine that is organizationally acceptable to

assess the people in front of them. This dissertation illustrates how unevenly the claimants, their testimony and evidence are treated and how these treatments are reflected on the refugee decision.

In the next chapter, I set the stage for the importance of studying refugee decision-making by pointing out its particularity. In the second chapter, I explain why the SLBT scholarship equips us with the best tools among other front-line decision-making literatures. Chapter 3 sets an agenda for an organizational ethnography with the aim of contextualizing Board member's discretion. In chapter 4, I offer a detailed analysis of the refugee hearing as a routine of practice, Board members' distinct *hearing styles*, and coherent conceptions of the refugee claimants and the credibility assessment practices. Chapter 5 situates the Board members' organizational life at the IRB and illustrates the endogenous conditions that foster differential *hearing styles*. In the concluding section, after raising questions on the concepts of state, rule of law, justice, and discretion, I underline the significance of studying the routines of practice of other state officials responsible from carrying out immigration policy, whose decisions impact non-citizens' lives such as detention reviews or immigration appeals. In sum, this dissertation illustrates that refugee decision-making is not singular or uniform, but various conceptions and practices guide it. Board member's discretion has wide-ranging consequences in terms of which claimants are deemed worthy of Canada's protection.

Chapter 1 STUDYING REFUGEE DECISION-MAKING EMPIRICALLY

Controlling international immigration is one of the biggest challenges liberal democracies face today. Despite the expansion and institutionalisation of international human rights, border control remains among the most important principles of state sovereignty (Anderson, 2010). Refugee claimants seek entry to a country other than their own, on the basis of international human rights law. Unlike immigrants and overseas refugees, who are selected for settlement before their arrival, refugee claimants, whose claim for refugee status is based on their right to escape persecution, are unsolicited (Joppke, 1997) or "self-selected".

As a modern administrative category, refugee status allows the Western refugee-receiving states to keep sovereignty over their borders while also making a commitment to protect non-citizens who escape persecution (Fassin, 2013). This very valuable status is only granted to a small percentage of refugee claimants who demonstrate a well-founded fear of persecution. International law provides a common refugee definition in the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. The Convention and the Protocol outline the characteristics of a refugee and set standards on how refugee claimants should be treated. Refugee is

> "any person owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it" (UNHCR, 1966).

The purpose of refugee and human rights law is essentially a humanitarian one, requiring each Refugee Convention signatory state to extend its protection to non-citizens to whom it owes

no obligation and who would otherwise not qualify to stay under immigration law. Canada, like other Western refugee receiving states, aims to identify the claimants who are in need of protection while eliminating those who use the system for speedy landed status (Urbanek v. Canada [1992)]). Right to asylum does not exist per se, but a right to seek refugee status does, a non-citizen has the right to ask the relevant administrative authority whether s/he meets the refugee definition (Thomas, 2011).

1.1 The puzzle: disparities in refugee status grant rates

In Canada, the administrative body that determines if the claimant meets the refugee definition is an administrative tribunal, Refugee Protection Division (RPD) of Immigration and Refugee Board of Canada (IRB). Established following the Supreme Court's 1985 landmark *Singh* v. Canada decision which recognized that refugee determination procedures existing at the time, based on the assessment of an interview transcript by an immigration officer, was invalid. The Immigration Act of 1976 did not provide the refugee claimant with an oral hearing. Based on the interpretation of the Canadian Charter of Rights and Freedoms and Bill of Rights, the *Singh* decision established that refugee claimants are entitled to a fair hearing on the basis of fundamental justice (Dirks, 1984; Dolin & Young, [1993] 2002).

Following its establishment as an independent administrative tribunal in 1989, the IRB faced continuous criticism on the selection, appointment and behavior of its Board members employed by the RPD (House of Commons, May 4, 2001). Members hear and decide refugee protection claims on a discretionary basis. They are appointed politically by the Governor in Council (GiC) on renewable limited-terms as advised by the Minister of Citizenship and Immigration. One set of criticisms is that the RPD appoints Board members through patronage,

instead of on merits. Another set of criticisms focus on the inconsistency of refugee decision-making among the Board members. The IRB compiles refugee decision-making data on annual refugee status outcomes (positive or negative) of its Board members, which are obtainable through Access to Information and Privacy (ATIP) Requests. Year after year, the Canadian media reported significant disparities among Board members' refugee status grant rates (Macklin, 2009). Especially following the influential academic article of a refugee law researcher, Sean Rehaag, in which he illustrated that refugee status grant rates for 2006 varied considerably across Board members, and some Members granted refugee status to over 95 % of the claimants while some others refused around the same percentage (Rehaag, 2008), this issue became more newsworthy. When reporting this highly mediatised issue, journalists have claimed that the RPD is characterized by inconsistent decision-making, alleging that the Board member who hears the claim makes a greater difference than the merits of the case (Humphreys, 2014; Keung, 2011, 2012; McKie, 2009; Sanders, 2013; Sheppard, 2012). Even when Members hear claims of a similar nature arising from the same countries and regions, the disparities remain (Rehaag, 2008).

According to the refugee advocacy community, which includes refugee lawyers and refugee advocacy and service organizations, the main issue is arbitrary refugee decision-making (Showler, 2006; Zambelli, 2012c). The fact that one Board member only granted refugee status to 3 claimants among 368 claimants he heard since his appointment in 2007[4], while another consistently granted status to over 80 % of the claims he heard since 2007 hints bias, according to Rehaag (2013) which is difficult to explain through the legal assessment of the claimant's eligibility to refugee status.

[4] Here is the number of claims he heard: 51 decisions (1 positive) in 2012, 108 decisions (2 positive) in 2011, 62 decisions in 2010; 72 decisions in 2009; 35 decisions in 2008 and 40 decisions in 2007.

Suffice it to say inconsistency raises significant questions about the treatment of refugee claimants, equality and the rule of law that I will cover below. This dissertation is the first study that attempts to understand the sources of this disparity. The puzzle I seek to solve is the following: Why do some Board members very rarely grant refugee status while their colleagues grant it to the majority of the claimants they hear? What explains this disparity in refugee status grant rates if Board members simply interpret refugee, human rights and Canadian immigration law and apply it to individual cases?

When asked to comment on this issue for almost for over a decade, all spokespersons of the IRB respond that jumping to conclusions about the quality and consistent decision-making at the IRB based on these statistics, is unreasonable. They accentuate that Members specialize in certain regions, cases are assigned randomly, and some Members hear claims from more democratic and stable countries. Commentaries underline the expertise of the Board members, that they are independent decision-makers and that they are hired on merits, that they are well-trained and receive continuing training. Spokespersons also comment along the following lines "Acceptance rates of individual IRB members do not reflect the many factors — besides the alleged country of persecution and the conditions in that country — that members must consider before making a determination" (Humphreys, 2014). There is decrease among extreme acceptance and refusal rates as the compiled data shows (Rehaag, 2013, 2014). However, the perception of uncertainty and arbitrariness of refugee decisions that I introduced through Qadir's story, tied to the individual Board member, as the sole decision making authority, but not to the claimant's written narrative, evidence and oral testimony is still very present (Butler, 2010, 2011a, 2011c; House of Commons, Apr 24, 2007; House of Commons, Canada, May 2 , 2012, Nov 29,

2011). Two tables below illustrate a snapshot of outcome of decisions for in 2012 and 2013 for six members with highest and lowest refugee status grant rates.

Table 1. Outcome of Decisions by Board member in 2012					
Member	**Neg. No Cred Basis[5]**	**Negative**	**Positive**	**Total**	**Recognition Rate (%)**
MCSWEENEY, DANIEL	64	15	1	80	1.3
MCBEAN, DAVID	19	31	1	51	2.0
JOBIN, MICHEL	6	94	6	106	5.7
GOBEIL, MARC	0	25	99	124	79.8
FAINBLOOM, KEVIN	0	23	100	123	81.3
FORTIN, JACQUES	0	6	114	120	95.0

(Rehaag, 2013)

Table 2. Outcome of Decisions by Board member in 2013					
Member	**Neg. No Cred Basis**	**Negative**	**Positive**	**Total**	**Recognition Rate**
ROBINSON, EDWARD	0	87	6	93	6.5
FIORINO, PASQUALE A.	5	48	5	58	8.6
DICKENSON, KIRK	3	79	8	90	8.9
SETTON, DOMINIQUE	3	32	97	132	73.5
LOWE, DAVID	12	17	87	116	75.0
FAINBLOOM, KEVIN	0	21	77	98	78.6

(Rehaag, 2014)

Why is divergence in refugee acceptation rate alarming? Refugee law experts note that potentially these are life and death decisions. Normatively, we would expect "some but relatively little variation" in relation to refugee status decisions among decision-makers on the doctrinal assessment of the claimant's eligibility for refugee status: especially if the claimants originate from the same country and base their claims on the same Convention refugee category (Ramji-Nogales,

[5]Refusal on non-credibility basis means that the Board member is convinced that the claimant is credible. Claimants refused on that basis become removable from Canada within 15 days following the decision.

Schoenholtz, Schrag, & Kennedy, 2009, p. 11). This position is quite pervasive in the discipline of law. Legal certainty is among the main pillars of justice and rule of law. It is the prerequisite condition that "law to be applied equally to all persons in like circumstances in a non-arbitrary manner" (Wolff, 2011, p. 553). According to this position, the law is certain, the outcome of the application of law is predictable, and inconsistency signals arbitrariness.

The assumptions of political science discipline are not much different from law. For over a century, Weber's formulation of the state as a rational, monolithic and coherent entity has dominated our way of thinking about public administration (Weber, 1978). The principle of rule of law has an implicit conception that the citizens should be able to predict the impact of the actions of the state. Rule of law as obedience to an identifiable body of norms and rules is the essential basis for legitimate authority (Hill & Hupe, 2009). Theoretically, Weber's claim of a rule-bound conduct of the bureaucrats and the "strictly neutral implementation of codified universal and precise laws" would eliminate uncertainty and make administrative decisions predictable (Rothstein, 2012, p. 410). However, since the 1970s, policy implementation scholars have challenged the assumptions of certainty and predictability of decision-making both empirically and theoretically. The administrative discretion debate emerged from these studies. It was clear that policy implementation did not refer to a prescriptive and well-structured process with predictable outcomes (Gofen, 2013; Hupe & Hill, 2007; Hupe & Sætren, 2014; Moore, 1987).

1.2 Lack of convincing empirical evidence for alternative explanations

In trying to understand why such disparities in refugee status grant rates exist, two perspectives, one based on political patronage and the other based on sociological characteristics of the Board members have been put forth, but no empirical evidence for these positions exist.

Refugee advocates call attention to the political character of the appointment process and claim that the disparity in refugee status grant rates might be explained in relation to the political party that appointed the Board member: Liberal or Conservative. As a result of their lack of security of tenure, critics argue, Board members are not insulated from ministerial influence in their decision making for reappointment considerations (Bonisteel, 2010). However, previous research shows that re-appointment based on positive performance was never certain (Crépeau & Nakache, 2008). Furthermore, the critics acknowledge the importance of the broader change in immigration and refugee policy in 2012 as well as the negative political discourses of former Minister of Citizenship, Immigration and Multiculturalism Jason Kenney in relation to Roma and Mexican claimants. They also highlight that the Minister controls the RPD and consequently the organizational leaders limit and regulate the authority of the Board member (Aiken, 2012; Soennecken, 2013; Zambelli, 2012a). Therefore, they allege that the policy preference of the Minister will impact the Board members and endanger their independence.

Political control claim does not hold true for refugee status grant rates even for aggregate results. The policy preferences of the Citizenship and Immigration Minister do not have a direct impact on the decisions Board-members take. For example, previous Minister Jason Kenney, while campaigning for refugee policy change, made countless references to the fraudulent nature of Mexican and Hungarian Roma refugee claims and even added these two countries to the designated safe countries of origin list, which makes it much harder for these claimants to receive refugee protection (Boesveld, 2012; CBCNews, 2013; Chase, 2013). In spite of clear political signals towards non-recognition of these claimants as refugees, between January and June 2013, 183 Hungarians and 132 Mexicans were granted refugee status by Board members (Cohen, 2013). In 2014, Hungary was the third country in top 20 countries, by the number of

decisions finalized, and the aggregate refugee status grant rate for Hungarians was 35 % (Dench, 2014).

The aggregate refugee status grant rates of refugees are in decline since the Conservatives came to power in 2006 (D. Black, 2012) but political control argument fails to explain whether the IRB demands its members to refuse or accept more claimants from certain countries, or the Minister selects and appoints candidates among other applicants since they had a more unfavorable approach towards refugees. According to former IRB Chair Peter Showler (1999-2002), the Conservatives kept simply appointing people who "are just instinctively less receptive to refugee claims being made in Canada" (Butler, 2011a). On the other hand, there is no evidence for these presumptions.

Previous research that focuses on the design and the transformation of Canada's refugee policy shows that the ministerial focus on the deterrence of claimants from certain countries are not new, but representative of historical border control concerns (Anderson, 2010, 2013; Dirks, 1978, 1995; Garcia y Grigeo, 1994). That said Board members, who are appointed by the Conservative party, have very divergent refugee status grant rates.[6] The critics cannot explain the re-appointment of Board members with very high or very low grant rates with political control arguments in relation to perceived refugee policy preference of the political party in power. New scholarship in judicial politics challenges the main theoretical assumptions of political control. Hausegger, Riddell, and Hennigar (2013a) argue that party of appointment is not a meaningful measure to study patronage because it is different party affiliation, as commitment to a political party and its policies. They stress eloquently:

> Governments tend to favour their own partisans in the selection process, but they also appoint a number of individuals who have no political background and occasionally appoint

[6] Information on the appointment date and period of Board members is public and available on the internet.

> individuals who are connected to an opposition party. This suggests that if policy preferences influence the votes of these judges, party of appointment may not accurately measure it (Hausegger, Riddell, & Hennigar, 2013b, p. 666).

Former Board members also challenge political control argument and highlight that they took decisions not because they were pressed by the Minister, but decided cases based on their own judgment. In an opinion article, published with the accusatory title "Ministerial chill eroding IRB: ex chair", Butler (2011c) cites Rehaag commenting that the majority of the Members with lowest refugee status grant rates were Conservative appointees. By contrast, the article continues,

> "15 members approved 70 per cent or more of the claims they ruled on. One, Marie Chevrier, a Liberal appointee, approved 94 per cent. She is now off the Board, as are two other members who had sky-high grant rates last year".

As members in office are not allowed to comment about the private proceedings of the RPD and are required to avoid mediatisation at all times (SCPB, April 2011, September 2011), we do not hear any direct response from them. But as Chevrier was not a member anymore in 2012, she publicly responded to the article through a reader's letter that she found defaming. She explains how she was responsible for expedited claims, which focuses on the cases "that appeared manifestly well-founded and could be accepted without a hearing. My acceptance rate was logically quite high." She continues:

> When I was first appointed to the IRB, I already had five years' experience as part of an important administrative tribunal in Quebec, preceded by 16 years of legal practice in administrative law. I should hope that I was not a Liberal patronage appointee, but a competent bilingual woman and lawyer, chosen for my professional background and competence.
> I can state, without any hesitation, that during my eight years as a member of the IRB, and later as a coordinating member, I have never felt influenced or pressed by the current minister, nor by his predecessor (Chevrier, 2012).

Academic research weakens the impact of political control on the Board members' decision-making powers. In her comparison of American, Canadian and Australian refugee

status determination regimes, Hamlin (2014) documents that Canada has the most administratively insulated regime from other institutional players, namely, legislative, executive and judicial bodies**.** The deference shown by these players to the IRB leaves it relatively autonomous to develop its own guidance for its Members. Previously Heckman (2008) also argued that the RPD meets the requirements of an independent tribunal and appears to operate independently from the political executive.

Aside from political control argument, some other researchers hint to sociological characteristics of the Board members and highlight that the disparity might be explained by these characteristics (Hamlin, 2014; Rehaag, 2008). There is some evidence that sociological characteristics play a role in refugee decision-making. A data set of 65,000 status determinations from 2004 to 2008 reveals that male Board members accept more refugees at 51.5 % compared to their female counterparts at 48.6 %, and this difference is more pronounced for male Board members who hear female claimants involving gender-based persecution. However, female Board members who have previous experience in women's rights, accept more gender-based persecution claims. Their grant rate for these claims filed by female refugee claimants were 64.2 %, while for the other female Board members without previous experience in women's rights, the acceptance rate for the same groups of claimants was 55.5 % (Rehaag, 2011a). Other than this one, there is no research that focuses on sociological characteristics of Board members.

Taken together, political control and sociological characteristics arguments fail to provide convincing empirical evidence. In this dissertation, in order to understand disparities in refugee status grant rates we will look elsewhere, namely to refugee hearing and the endogenous features of the IRB as an organization. Disparities in refugee status grant rates raise important questions for public administration research, such as decision-making, administrative discretion and policy

implementation. But before I start tackling these questions, a short description of the decision-making space at the RPD is necessary.

1.3 The Legal and practical complexity of refugee determination

The administrative process of identification of refugee claimants escaping from persecution and providing them with protection through refugee status is called refugee determination process and stems from international law (Hamlin, 2012, 2014). It is also incorporated into the Immigration and Refugee Protection Act (IRPA, 2001), the federal legislation regulating immigration to Canada.

Not everyone who claims refugee status neatly fits into the categories of refugee definition. In the presence of ever-increasing barriers to legal immigration to Western countries, claiming refugee status is an attractive option and an international immigration strategy for some non-citizens who desire to secure entry. Refugee determination aims to identify 'genuine' refugees while weaning out the 'fraudulent' ones. As *Ward* v. Canada [1993] one of the most significant decisions of the Federal Court of Canada in refugee law, indicates;

> the international community did not intend to offer a haven for all suffering individuals. The need for "persecution" in order to warrant international protection, for example, results in the exclusion of such pleas as those of economic migrants, i.e., individuals in search of better living conditions, and those of victims of natural disasters, even when the home state is unable to provide assistance, although both of these cases might seem deserving of international sanctuary.

The refugee determination process functions as follows: After an asylum seeker makes a refugee claim, the claim is referred to the IRB by an immigration officer after an initial eligibility assessment (M. D. Jones & Baglay, 2007). Board members examine, through a hearing, whether

the refugee claimant fits one of the categories of people that Canada has promised to protect. In order to make these determinations, the RPD requires the claimants to file and submit a detailed document called a Personal Information Form (PIF). The claimants hold the burden of proof and in the PIF, they have to explain their reasons for seeking Canada's protection in a narrative format (Galloway, 2011). Alongside the PIF, they may submit documentary evidence and proof regarding general country conditions. During this process, they may choose to seek legal representation, at their own expense or through legal aid. 87.5 % of refugee claimants in Canada are represented by legal counsel and 79.1 % by refugee lawyers (Rehaag, 2011c).

The most intrinsic part of the quality of refugee is not that the person has crossed borders as of fear of persecution, not even that s/he has been persecuted because "the fear of persecution looks to the future" (Goodwin-Gill, 2008). For a claimant to be considered as a refugee, s/he has to pass an administrative test. S/he has to convince the Board member, through his/her oral and written testimony, as well as documentary evidence, that s/he is *likely* to face persecution in his/her country of origin on the basis of one of the five grounds determined in the definition of refugee, namely; race, religion, nationality, membership of a particular social group or political opinion [my emphasis]. Therefore, the Board member is required to determine whether, "at the time of the claim is being assessed, the claimant has good grounds for fearing persecution in the future" (IRB, 2010).

The Members have to reach their determinations on very limited evidence. As a result of this scarcity of 'hard' evidence, refugee decisions rely on a judgment of whether the subjective fear of the refugee claimant is credible or not (Cohen, 2001; Rousseau, Crépeau, Foxen, & Houle, 2002; Thomas, 2005). The subjective fear of persecution has to be justified on objective grounds. There must be valid basis for fear and that the fear must be seen as reasonable. To assess

the claimants' need for protection; Board members must also be familiar with the social and human rights conditions of the claimants' country of origin. They also have the determine the identity of the claimant and the veracity of the submitted documents (Diesenhouse, 2006).

In the public perception, a refugee hearing suggests an informal space where the claimant tells his/her story to the Board member and explains why s/he needs protection. Although briefly presented, the process is highly formal and legalistic. It requires extensive preparation for the refugee claimants. The claimants do not simply tell their story but respond to the Board member who has to resolve the determinative issues of the claim for the analysis and the decision. Before moving along with the explanation of why Board members constitute distinct actors within Canadian public administration, I will continue with a critical description of how the IRB, despite its similarities with judiciary and bureaucracy is also very different than both.

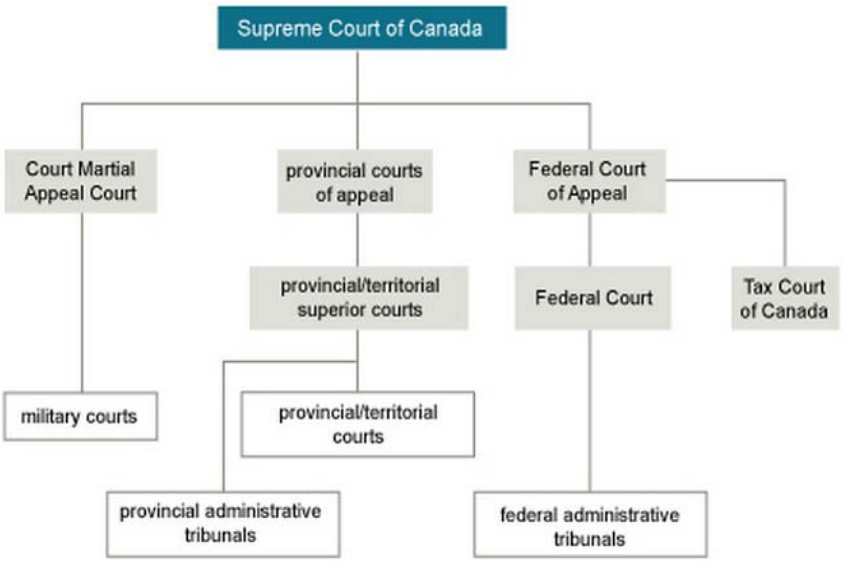
1.4 The IRB: neither judiciary nor bureaucracy

Administrative tribunals are established for pragmatic reasons to unencumber the bureaucracy and the judiciary but they embody an insolvable tension within democratic regimes. They share some characteristics of the judiciary and the bureaucracy, but they fit neither of the two categories. Their adjudicative independence is in question as a result of the executive appointment process. The expertise of the tribunal Members also raises important questions. However, this dual role played by administrative tribunals in implementing government policy and distributing justice has largely gone unnoticed by political scientists in Canada (Sheldrick, 2009).

Administrative tribunals represent a procedural innovation in administrative justice (Genn, 1993). Tribunals are often referred as agencies, boards and commissions. They, both

provincial and federal, are specialized organizations that hear disputes over administrative rules and regulations or make determinations of rights and privileges. Created by statute, they focus on very particular areas of law such as employment insurance, disability benefits, human rights, immigration and refugee claims. Administrative tribunals resemble courts but they are not a part of the court system. As can be seen in the figure below, they run parallel to provincial or territorial, and federal court systems (CJC, 2013; Department of Justice, 2013; 1994). Courts, however, play a supervisory role over administrative tribunals through judicial review and make sure that they operate under the law and that their procedures are fair (Department of Justice, 2013).

Figure 1. Canada's Court System



Source: (Department of Justice, 2013)

Despite the diversity of their jurisdictions, similar features of tribunals show less formality in their procedures compared to civil courts, such as absence of strict rules of evidence, absence of court robes, inexpensiveness, optionality of legal representatives and speediness:

> In the early days of the modern tribunal system, the intention was that tribunals should provide easy access to specialist adjudicators at no cost to applicants. There was no charge for the initiation of applications to tribunals and no cost for applicants if they lost. The hearings were to be 'informal' and there was an assumption that the informality of proceedings would make it possible for applicants to represent themselves at hearings. Tribunal chairmen would take a relatively active role in hearings and adopt flexible procedures. The process was intended to be swift, not bogged down in 'technicality' and not bound by strict rules of evidence. Since there was perceived to be no need for highly trained judges, the system could be operated relatively inexpensively (Genn, 1993, p. 395).

Emergence of administrative tribunals is a recent Canadian phenomenon. Until WWII, there were only a few of them which were established to "regulate aspects of the expanding economy, adjudicate disputes arising from the administration of new social programs, bring expertise to complex issues and remove certain matters from the purview of courts" (Carnwath, Chitra, Downes, & Spiller, 2008, p. 9). Administrative tribunals were preferred to ordinary courts for reasons of cheapness, accessibility, swiftness, freedom from technicality and expert knowledge on a particular subject (Willis, 1958, 1959). Many tribunal members were appointed as a result of their expertise in that particular area of law (Ombudsman Saskatchewan, 2009).

Currently around 700 administrative tribunals and boards operate in Canada. This unprecedented feature of tribunals was captured eloquently by Rosalie Abella, when she was serving as the Chair of Ontario Labor Relations Board:

> We were such an amorphous collection of institutions, floating as constellations in an atmosphere whose primary bodies were courts and bureaucracies… We arose, of course, full-panoplied from the forehead of the legislatures, who recognized that neither the courts nor bureaucracies were able to handle the volume of decision-making law and policy required. And so was born the administrative tribunal – part law, part policy, a push-me-pull you two-headed creature designed to alleviate the burdens of judges and bureaucrats… How

> we were to do it developed interstitially, from tribunal to tribunal, case to case, judicial review to judicial review (Abella, 1988-1989, 2 as cited in (Carnwath et al., 2008, pp. 9-10).

Administrative tribunals, therefore, were established for pragmatic reasons in order to deliver decision-making in a more accessible way. Still, according to administrative law scholars, they continue to occupy an ambiguous place within the state. Their jurisdiction varies significantly. Some has regulatory, administrative and adjudicative powers; some others like the IRB only perform adjudicative duties. Houle (2008), who also worked as a legal adviser for the IRB, notes that purely adjudicative tribunals resemble courts in their functioning. They make binding decisions on rights with the holding of hearings, but they are not courts. They are also not bound by procedural rules of courts or rules of evidence. That is why they were named as the ""fourth branch" of Canadian government" since they did not fit into the traditional three branches of government (Mullan, 1985, p. 155). Administrative tribunal members;

> legislate by developing rules and policies to be followed in their day-to-day work; they exercise discretion within the mandate laid down in either their empowering legislation or their own rules and policies; and they perform the judicial rule of adjudicating on individual matters that come before them (Mullan, 1985, p. 155)

Different than bureaucracy, administrative tribunals are in principle "able to act with complete immunity from the political pressures" (Angus, 1958, p. 512). A government department on the other hand, does not fully supply this independence as a result of political accountability (Legomsky, 1998) and requirements of policy compliance (Creyke, 2006). Despite this claim of independence, administrative tribunals are inherently executive bodies which perform the same functions as the courts. In that sense, their mandate and structure can be

modified by the legislature.[7] "Thus, when looked at formally, the separation of powers suggests that the measure of independence enjoyed by tribunals will be fluid and subject to the policy preference of the legislature that creates the tribunal" (Sossin, 2006, p. 51).

The IRB, as a right-based adjudication tribunal makes quasi-judicial decisions in refugee and immigration matters (Diesenhouse, 2006). It's RPD that this dissertation focuses on, shares some similarities with other administrative tribunals such as the ones in social rights context, as high-volume and fact-based jurisdictions. However, different than other administrative tribunals, refugee adjudication is not characterized by a compromise solution or negotiation between parties (Thomas, 2005). The claimant is either granted or denied refugee status according to his identification and categorization by the presiding Board member. Rather than adversarial, it is often inquisitorial as I will elaborate in the next section. Other issues that distinguish the RPD from other administrative tribunals are the complex nature of refugee determination (Thomas, 2005), criticisms around Board members' merits and expertise (Macklin, 2009; Sossin, 2006), and limited use of judicial review (Rehaag, 2012). These issues will be addressed in the following section.

1.5 The Features of the Board member's job

Board members, occupying an ambiguous position between bureaucrats and judges, enjoy extensive delegated authority to examine and decide refugee claims in the conduct of their work. During their term of appointment, except for extreme cases of misconduct, Board

[7] For example *Protecting Canada's Immigration System Act* that entered into force in Dec 15, 2012 severely changed the way the RPD functions, by creating a designated countries of origin list, compartmentalizing refugee claimants, assigning accelerated time frames for the hearing, making detention of refugee claimants much easier and transforming the position of the Board member from a politically appointed limited-term job to a permanent public service job.

members enjoy absolute security of tenure.[8] They are the sole arbiters of refugee claims that they examine and decide. Their authority is organizationally and judicially endorsed. Only through judicial review, can their decisions be overturned, but this remains a rather rare practice. The IRB management underlines that Members are independent and impartial decision-makers (Macklin, 2009). Finally, the disparities among refugee status grant rates raises questions about the nature of appointments related to merits and expertise. These issues highlight a rather rare and interesting decision-making duty.

The Proactive Board Member in the Inquisitorial Decision-making Context

Adversarial and inquisitorial styles of decision-making within administrative law are distinctive. Administrative justice is often established through adversarial procedures, where parties to a dispute try to convince a judge, who plays a passive role in establishing the facts of the claim. Adversarial system is thought to be best adapted for the resolution of disputes (Jolowicz, 2003). The adversarial judge plays a passive role, since s/he has to decide on the persuasiveness of the case among competing disputants[9] (Damaska, 1986; Jolowicz, 2003; Shapiro, 1981).

The inquisitorial decision-maker is much more active than the passive adversarial style judge (Hamlin, 2012). Here, the decision-maker plays a proactive role in establishing the facts (Damaska, 1986). The Board member plays an active and engaged one, directing research,

[8] Only publicly known case of dismissal from the RPD is Steve Ellis, a former member from Toronto, who was accused of offering refugee status to a female claimant in exchange for sex in 2006. He was sentenced to 18 months of prison term for breaching public trust in 2010 (Kori, 2010)

[9] The judges at para-judicial Tribunal Administratif du Québec make their decisions in conciliation contexts where the plaintiff and the department, agency or municipality concerned come together for an informal negotiation in the presence of an administrative judge (TAQ, Undated). The Board of Transport Commissioners as a regulatory Board also adjudicate disputes affecting issues of transportation (Wright, 1963).

questioning the claimant and witnesses, and controlling the proceedings. Members examine and determine the claim. Refugee hearings are predominantly inquisitorial.[10]

The expansion Kagan (2009) made on the adversarial vs. inquisitorial models of decision-making based on the model of Damaska (1986), helps us better understand the decision-making style at the RPD and the Board member as the decision-making authority. Decision-making for Kagan (2009) can be organized in four different ways. The Board member's decision-making authority is hierarchical, since the member is the sole decision-maker and informal compared to more formal court proceedings. The member, prepares for the case, hears the refugee claim in an informal setting and decides it based on expert judgment (Hamlin, 2014).

Table 3. Modes of Decision-making and Dispute Resolution

Organization of decision-making authority	Decisionmaking style	
	INFORMAL ⟷	FORMAL
HIERARCHICAL	Expert or political judgment	Bureaucratic legalism
↕		
PARTICIPATORY	Negotiation/ mediation	Adversarial legalism

Source: (Kagan, 2009, p. 10).

[10] RPD can be adversarial as well when a ministerial representative intervenes and argues against the recognition of the claimant as a refugee. In inquisitory RPD, Board members preside over refugee hearing where the refugee claimant and any other available witness testify and are subject to the questioning by the Board member and their lawyer. No statistics are available on the rate of ministerial representative involvement in the RPD process to my knowledge, but it was the case for only 3 cases over 50 that I observed at the Board.

The Limited Use of Judicial Review in Refugee Determinations

The Federal Court is the first judicial body that deals with judicial review of refugee matters. The refugee claimant, if rejected, can apply for judicial leave at the Federal Court, and can appeal against the negative decision on the grounds that there was an error of law or that the Board member was prejudiced (Diesenhouse, 2006). Acceptation of leave by a Federal Court judge, entitles the claimant for a hearing at the Federal Court, and if judicial review is granted, the claimant is allowed a new hearing with a different Board member. As previous research shows, Canadian refugee determination is centralized at the IRB and the IRB is insulated from the judicial players (Hamlin, 2012), that is why; the refugee claimants' access to the Federal Court for judicial review is very limited. The Court rarely overturns the Board members' decisions (Macklin, 2009; Rehaag, 2012; Soennecken, 2013). Even though no public data is available, in stakeholders' events the IRB or RPD chairpersons stress that less than 1 % of IRB decisions are overturned by the Federal Court.

In common law systems, courts have no power to review the substance of the decision unless there are questions of law, including the review of the process "whereby the decision is arrived at". Courts also require that the decision-making authority honestly applies "its mind to deciding the question it is empowered to decide and no other question but that question" (Willis, 1959, p. 53).

The Federal Court hears and decides disputes in the federal domain but only reviews refugee determination decisions on the basis of reasonableness, not correctness. The Federal Court declines to intervene unless the decision fails in terms of standard of reasonableness which refers to the transparency, justifiability and intelligibility of the decision as framed by the

Supreme Court of Canada *(Dunsmuir* v. New Brunswick, [2008]). As the Honorable Justice Shore wrote in a Federal Court decision in *Mohamed Mahdoon* v. Canada [2011];

> First-instance decision-makers from the IRB are to examine, thus, scrutinize, and, then, to provide reasons to demonstrate consideration of each significant part of each case; and, then, to demonstrate consideration of a sum of all parts of a case, even if only in summary fashion, but enough by which to motivate each decision (para.3).

The Federal Court shows particular deference to the Board members' expertise and credibility findings as a result of the presiding Member's opportunity to assess the refugee claimant through a hearing (*Aguebor* v Canada [1993]; *Khokhar* v. Canada [2008]) As long as the Board member provides a decision which is transparent, justifiable and intelligible*,* the Court can only make reviews based on reasonableness (*Baker* v. Canada [1999]; *Dunsmuir* v. New Brunswick, [2008]). The findings of the Board members are only reviewable "if they are determined to be patently unreasonable" (*Nyathi* v. Canada [2003], para. 15).

In sum, the Federal Court rarely grants leave and gives no reason for its leave decisions (Macklin, 2009). For example, for the period 2005 to 2010, only 6.35 % of over 23,000 applications for judicial review succeeded (Rehaag, 2012). In the light of the discussion above, when the Federal Court weighs in, if the Board member made reasoned judgments in clear and unmistakable terms, his/her authority and expertise are judicially endorsed.

Contested professional expertise

The majority of the Board members, who are appointed by the GiC, as advised by the Minister, for limited but renewable terms, have no specific expertise in refugee or human rights law (Crépeau & Nakache, 2008). They come from very diverse backgrounds with a very small portion trained in law. Institutionally, the IRB requires only 10 % of its total workforce at the RPD to have legal training and five years of legal experience (IRPA, 2001). The IRB's self-description

as an informal administrative tribunal (Galloway, 2011) also favored the discretion of layman, as the "discretion of an independent and impartial party" (Willis, 1959, p. 50).

Previous IRB Chair Brian Goodman defined the IRB as an expert tribunal whose RPD "has established an international reputation for expertise in refugee determination" (Goodman, 2008). The Code of Conduct for IRB Members that came into force in 2008, regulates Members' behaviors in relation to the tribunal, parties and the public on the basis of two principles: "(i) that public confidence and trust in the integrity, objectivity and impartiality of the IRB must be conserved and enhanced; and (ii) that independence in decision-making is required" (IRB, [2008] 2012).

Professionals are considered to have expertise in a particular domain. Members are not professionals in the traditional sense of the term. Professionalism as "a peculiar way of organizing work" (Faulconbridge & Muzio, 2008, p. 8) underscores professional values that emphasize "a shared identity based on competencies (produced by education, training and apprenticeship socialization) and sometimes guaranteed by licencing" (Evetts, 2010, p. 126). This means, "the ideal typical position of professionalism is founded on the official belief that the knowledge and skill of a particular specialization requires a foundation in abstract concepts and formal learning" (Freidson, 2013, pp. 34-35). Acquired knowledge and skills, especially when licenced are considered to be transferable to the context of work. That is why; professionals are attributed authority on the basis of their presumed expertise and competence (Olejarski, 2013). In order words, we trust professionals' "assessments, recommendations and intentions" (Evetts, 2010, p. 126) since we believe that they will act according to their best judgment.

Bureaucrats are attributed professionalism and considered to make decisions according to their best judgment with the envisioned ideals of objectivity, impartiality, neutrality and independence from the political currents as a result of their job safety (Kearney & Sinha, 1988). In judiciary, not only independence and impartiality of the judges is the key but despite the different positions of the researchers, specialized judges are considered to be experts in their specialized area of law (Oldfather, 2012). Administrative law expert France Houle, does not agree with this equation. By making a difference between expertise and specialization, Houle (2004) underlines the fact that Board members, at the time of their selection are laypersons with lack of knowledge on issues related to refugee determination. However, after becoming Board members they acquire hands-on specialized knowledge as a result of the training that they receive at the IRB. Still, according to her, the RPD is not an expert tribunal, it is a specialized tribunal that requires acquisition of specific knowledge and practical skills for the exercise of this juridical function (Houle, 2004). Lorne Sossin, a human rights and public law expert, argues that Board member's job requires a duty to implement administrative law. For this position, a given person's qualification or lack thereof is very difficult to determine. Board members are required to make credibility assessment of the claimant who is in front of the Board, but "no special training or educational program certifies expertise in this area" (Sossin, 2006, p. 56).

Consequently, Board members' professionalism and expertise are unconventional and remain contested even though the IRB legitimizes their expertise through delegated discretion. That is why, as we will see in the next section, issues related to the Board members' appointment created much public debate.

The Issues attributed to the selection and the appointment of the Board members

IRB is independent from the ministerial departments and its Chairperson reports to the parliament, but the Minister of Citizenship and Immigration plays an active role in the selection of the Board Members. Since its establishment in 1989, the IRB faced much criticism on how selection and appointment of Board members were done by "media commentators, lawyers, opposition politicians, and refugee advocates who saw the appointment to the RPD as an opportunity for the government to award party faithful and repay political debts" (Macklin, 2009, p. 139). Board members are appointed from two year to five year terms with possibility of reappointment for a maximum period of ten years.

At its establishment, under the Conservative government of Mulroney, available positions were not advertised, and the process of appointment was entirely opaque. Since that period, the importance of political connections with the political party in power came to be seen as more important than qualifications. Former immigration officer, now a sociologist at York University, Lorne Foster (2003) argued that:

> Traditionally, they [Board member positions] have been a patronage-plum for the distinguished partisans of the federal political party in power. Liberal and Tory governments have stacked the agency with loyal organizers and supporters as well as failed electoral candidates, and so, its' internal organizational structure rests on a "political cronism" that is not likely to go quietly into the night.

While in the early 1990s, the majority of the Board members were thought to be appointed on their tough attitude towards refugee claimants, the 1994-1995 period was considered to be captured by a "pro-refugee lobby" (R. Ellis, 2013, p. 43). In 1994, the Liberal government attempted to cease criticisms by advertising available positions and creating a Ministerial Advisory Committee (MAC) to assist the Minister in the selection of the candidates (Macklin, 2009). However, the patronage criticisms of the opposition party members did not terminate and the

Liberal government was harshly criticized for being a representative of special interests of the immigration sector (House of Commons, May 13, 1996).

In 2004, the Liberal government introduced important changes to the selection and appointment of the Board members. For the first time, the IRB clearly identified the competences required to perform a Board member's job: oral communication, information seeking, organizational skills, results orientation, self-control, and cultural competence. Besides that, the MAC was replaced by an independent and nonpartisan Advisory Panel, with representatives from the Bar, academia, and civil society; and a Selection Board, led by the IRB Chair and composed of other senior officials from the IRB and other tribunals. Even though on paper, the Minister retained the capacity to nominate the members of the Advisory Panel, he delegated the authority to the IRB Chair (Macklin, 2009). Judy Sgro, the minister at the time declared: "We are professionalizing the process by which IRB appointments are made. The result will be a more transparent and effective IRB, one in which Canadians can have even greater confidence" (CIC, March 16, 2004). This merit-based selection and appointment process was welcomed by many groups, who traditionally criticized the IRB appointments with patronage arguments. It also contributed to the independent image of the IRB (House of Commons, Apr 24, 2007). The table below shows the appointment process that lasted until 2007.

Table 4. The IRB Board Member Appointment Process

Advertisement of vacancies	**Average length**
Application Made to IRB	
Preliminary Screening (evaluates basic requirements)	2-3 months

Advertisement of vacancies	Average length
Application Made to IRB	
Written Test Evaluates 4 competencies: Judgement/Analytical Thinking, Conceptual Thinking, Decision Making, Written Communication	
Advisory Panel - Re-evaluates the 4 competencies of the written exam - Candidates screening and assessment using other available documentation	Within 5 months after application to the IRB
Chairperson's Selection Board - Evaluates 6 competencies: Oral Communication, Information Seeking, Organizational Skills, Results Orientation, Self-Control, Cultural competence - Reviews evaluation results - Interview and reference check - Qualified candidates identified	Within 1 month after the Advisory Panel meeting
Recommendation to Minister IRB recommends qualified candidates to Minister	
Recommendation to the GiC Minister recommends appointments to the GiC taking into consideration IRB operational, gender and diversity requirements	
Appointments to IRB	

Source: (PACS, 2007)

The newly elected Conservative government, in 2007, employed a federal commission, Public Appointments Commission Secretariat (PACS)[11], to restudy and redesign the appointment process. The outcome only resurrected patronage critiques because PACS advised the merge of the Advisory Panel with the Selection Board and the constitution of a new committee which "should be composed of an even number of IRB staff and external members" (PACS, 2007). It also

[11] One of the reasons PACS was established was to elaborate guidance in relation to GiC appointments. It is nonoperational since June 2011.

suggested ministerial involvement in the appointment of half of the new committee Members, while previously the IRB Chair appointed all. Finally, in relation to reappointment of the Members, PACS remarked "since these are GiC appointments, positive performance does not automatically lead to a renewed term" (PACS, 2007). Jean-Guy Fleury, the IRB Chair at the time, and all members of the Advisory Panel resigned after the announcement of the new appointment process (House of Commons, Apr 24, 2007) and the new process was adopted in July 2007 (Macklin, 2009). Probably in order to avoid patronage criticisms, the Minister did not appoint any new Board members immediately. However, his subsequent appointments were not free from criticism. In its 2009 audit, PASC found out that 11 out of 23 appointments through non-advertised processes did not meet merit requirements. The officials were unable to conclude if the merit requirement was met since there was either no assessment on the file or they were incomplete. They also concluded that for 2 external appointments, merit was not met in relation to official language requirements (PACS, 2009). No other official report or academic research focused on the selection and the appointment process after 2009.

1.6 Studying refugee decision-making from below

The role of the Board members in the inconsistency of refugee status acceptation rates is clear, since they are the sole first-instance decision-makers. An insulated look at the annual refugee grant rates of Board members as grant or refusal tell us very little and it overlooks how Board members reach these decisions, in what context and how they justify their decision through an analysis in a written form. The Board member reaches different conclusions about the refugee claimant's need for protection, as a result of the examination at the refugee hearing. A positive decision means that the claimant is credible, fits at least one of the Convention categories and has proven on the balance of probabilities that his/her fear of persecution is more than a mere

possibility. Based on my analysis of the respective reasons of negative decisions on the Canadian Legal Information Institute's database (CanLII, 2015), refusal of refugee claimants signals five different courses:

- The claimant's story is completely unfounded.
- The claimant is not credible. The contradictions between the written narrative that was filled upon making a refugee claim and the oral answers given at the hearing are too serious to ignore and the contradictions have not been clarified by the claimant in a plausible manner.
- The claimant is credible, but there is generalized risk; everyone living in that country is at risk of becoming victims of violence, the claimant is not singled out or personally targeted.
- The claimant is credible. However, state protection has not been sought. The state has the power and the means to protect its citizens.
- The claimant is credible and has faced persecution but Internal Flight Alternative is available. If the claimant was to move to a different city or region in the country of origin, s/he would be safe from persecutors.

I argued above that the arguments of political control or sociological characteristics do not provide convincing empirical evidence in understanding refugee decision-making. In this dissertation, I will study the inner dynamics of refugee decision-making, in order to comprehend how refugee status is determined in Canada and what organizational forces interplay in Board members' decision-making.

Before announcing the argument and the plan of the dissertation and the contribution this dissertation makes, I will very briefly go over existing studies from a multidisciplinary and international literature that particularly focus on credibility assessment and show that, despite their significant insights about decision-makers' expectations from the refugee claimants, these studies are unable to answer to the question raised by this dissertation.

To start with, previous studies that examine credibility assessment within refugee decision-making context are not numerous. The field is multidisciplinary and traverses several

social science disciplines as wide as anthropology, law, geography, sociology and sociolinguistics. Bohmer and Shuman (2008), in their work that focuses on refugee determination in the United States argue that the distinction between asylum seekers and economic immigrants are not very straightforward and most asylum applicants fall into grey areas. Decision-makers hold an assumption that most applicants are lying, and try to weed out the genuine refugees by seeking a certain degree of organization, detail and coherence in refugee narratives. In Canada, the first study that provides an overview of the complexity of refugee determination by indicating its legal, psychological and cultural dimensions was by a research team of international human rights law specialist François Crépeau, psychiatrist Cécile Rousseau, anthropologist Patricia Foxen and administrative law specialist France Houle (Rousseau et al., 2002). Through the study of 40 refugee cases that were decided between 1994 and 1998, the authors argue that; the Board members equate credibility with consistency of the refugee narrative and dismiss the claims that have omissions and contradictions. They stress that the members have very limited understandings of trauma and the claimants' cultural contexts. The same research team – except Houle - , this time with the collaboration of public international law expert Delpine Nakache, interviewed former Board members, IRB managers, refugee advocacy organizations and refugees on issues ranging from specific credibility expectations to work conditions at the IRB (Im.Metropolis, November 2007). In publications based on that research project, Rousseau and Foxen (2005) underline the unequal power dimensions of credibility assessment and the Members' unrealistic explanations from the claimants in terms of truth performance. Crépeau and Nakache (2008) provide a detailed account of issues as wide-ranging as the problems the IRB faces, the Board members' various expectations from refugee claimants and the IRB's requirements from the Board members.

While some researchers in refugee law, underline the problems with memory and remembering and expectations of one single truth at the IRB (Cameron, 2010), some other refugee law researchers provide the necessity of comprehensive structural and ideological reform to the refugee determination process and the functioning of the RPD (Zambelli, 2012c). A more recent study by anthropologists, based on interviews with Finnish refugee decision-makers highlights the fact that claimants and state officials have ontologically different and irreconcilable truth claims (Kynsilehto & Puumala, 2013). Despite recognition of the diversity of refugee claimants on occasion, these studies suffer from two problems: either they tend to conflate refugee decision-makers into one single group, who simply try to unmask the 'bogus' refugee (Bohmer & Shuman, 2008). Or, they recognize variance in different decision-makers' conceptions about refugee claimants, but they only use interview data *without* focusing on the actual interaction during the refugee hearing [my emphasis] (Crépeau & Nakache, 2008; Kynsilehto & Puumala, 2013; Rousseau & Foxen, 2005).

These valuable contributions offer essential insights about inherent problems related to refugee determination but remain silent about actual credibility assessment practices as a result of lack of attention to the refugee hearing. Only exceptions to this rule are sociolinguists who study the interaction during the refugee hearing. They study the discursive practices between the decision-maker and the refugee claimant. They focus on how the claimant's speech is hindered and decontextualized and how the decision-making actually focuses on unmasking the lying claimants in Canada and Europe (Barsky, 1994; Diaz, 2011; Jacquemet, 2006; Maryns, 2006a, 2006c). These studies underline how decision-makers place unrealistic demands on refugee claimants which prevent them from giving an account of their experiences in their own terms.

Finally, the research done in France on asylum-seeker advocacy organizations and asylum interviews, by a sociologist (Spire, 2007, 2008) and two anthropologists (d'Halluin-Mabillot, 2012; Kobelinsky, 2008, 2012, 2013a, 2013i), approximates what I aim to do in this dissertation, with attention to the examination of the refugee claim and the administrative routines,

Spire studies asylum agents who receive demands at visa offices outside of France. He successfully shows how these agents, placed lowest at the organizational category as receptionists, are vital in which asylum claims are filed. He illustrates how these agents are left to their own devices and what stereotypes, assumptions and aspirations guide their decision-making. d'Hauillon and Kobelinsky both study the asylum aid and advocacy organizations that provide services to refugee claimants, ranging from accommodation to legal help with the preparation of the refugee claim file. They underline how the work of the employees in these organizations are guided by different conceptions about refugee issues and what refugee claimants receive as aid very much depend on those conceptions (d'Halluin-Mabillot, 2012; Kobelinsky, 2008, 2012, 2013b). They also highlight different credibility assessment practices of the agents of l'Office français de protection de réfugiés et des apatrides (OFPRA) (d'Halluin-Mabillot, 2012) and the reporters and judges of La Cour nationale du droit d'asile (CNDA) of France (Kobelinsky, 2013a) through interviews and observations. However, these studies lack the detailed attention to organizational conditions, namely the inner workings of refugee decision-making bodies.

1.7 Argument

This dissertation argues that in order to understand the sources of disparities among Board members' refugee status grant rates, we have to study refugee decision-making; first, exploring the refugee hearing, the written decision, as well as the voiced opinions of Board members about their work to illustrate their different credibility assessment practices and reasoning; and second, by tracing the features of the organizational life at the IRB that impacts and shapes Board member's discretion.

In the course of IRB hearings, Board members hold important discretionary powers. In practice, they test not only whether the claimant fits the legal definition of a refugee, but also their own conception of what constitutes refugee status. This is not simply a bias for or against refugees. It is an analytical conception that is formulated as a result of personal and professional experience and is a product of a cumulative understanding of the organization and the claimants. Further, Board members conduct the credibility test in contradictory manners. They apply different approaches to the refugee hearing, ranging from rigid *interrogation* to the more resilient *interview* style. In sum, Board members interpret and apply refugee definition and test credibility in different ways.

These differential conceptions and hearing practices do not occur because Members lack an institutionalized and standardised training or that the organizational superiors do not attempt to restrict and discipline Members' discretion. They happen as a result of dual instructions they receive at the training which creates a goal ambiguity and fosters different conceptions and how best to conduct their jobs. The invisibility of the hearing room to the organizational superiors and the pressures Members face at work foster routinization of the hearings through *interrogation* or

interview. Hearing room is the only space Members can control in the conduct of their jobs. Finally, organizational expectations that demand consistency are not realized, since Members see themselves as the legitimate decision-making authority, and ignore those demands since following them does not guarantee renewal of their terms.

1.8 Plan of the dissertation

Chapter 2 explores front-line decision making across several bodies of scholarship in policy implementation and examines the suggested factors that impact and shape discretion that these literatures considers as important. It concludes with the suitability of SLBT for this dissertation.

Chapter 3 focuses on methodological questions. It presents the research design, justifies the choice of an ethnographic methodology and multi-methods research, presents the issues of access, data collection, data analysis, and briefly deals with questions of ethics, sensibility, and reflexivity.

Chapter 4, called "Truth is a stubborn beast. How will you handle it? Truth seeking and credibility assessment during refugee hearings" is a careful account of the refugee hearing. It presents the varied interactions between the refugee claimants and the Board members, as the holders of state authority. It focuses on the different *hearing styles* and discretionary practices of the Board members during the hearing, manifested as *interview* or *interrogation*; and the displayed conceptions of what makes a refugee and the best credibility assessment method during the refugee hearing. This chapter illustrates the varying understandings of the Board members in relation to refugee definition and their jobs as well as the consequences of these for the refugee claimants in the hearing room and in the decision.

Chapter 5, called *"*Dynamics of organizational life at Refugee Protection Division" is an organizational analysis of Board member's life at the RPD. What I call organizational dynamics: instructions, conditions and expectations of the IRB, provide a fertile ground for establishing differing conceptions about their work and *hearing styles*. Board members, enjoying legitimate discretion, despite the constraints they face, play an active part in the definition of their organizational role. I show, how new Members are simultaneously instructed to be sensitive and show disbelief towards refugee claimants, which create a goal ambiguity in relation to the definition of the Board member's job. Difficult work conditions coupled with the invisibility of the refugee hearing to the organizational superiors leaves the hearing room as the only place the Members can control. This allows the Members to balance the pressures by formulating a *hearing style*. Finally, the expectations of the organizational superiors; increasing efficiency and consistency are not realized, since as a result of uncertainty in relation to their future appointment, Members have no motivation to follow these expectations.

The conclusion contends that inquisitorial administrative tribunals provide a largely similar but also a different discretionary space through slow-pace, long encounter times compared to welfare distribution on which most of the SLBT literature focuses. Board members are powerful actors and are not placed at the bottom of the organizational hierarchy. The rule-bound nature of the tribunal that demands verifiable justifications to their refugee decisions does not mean that they have no discretion. Even in a rule-saturated environment like the IRB, refugee decision-making hardly means neutral and hierarchical rule following. Instead discretion is nested within the context of interaction routines, work situation, rule adherence and law. In that sense, it might be illuminating to study the routines of practices of other state officials in other contexts, such as immigration appeals and detention reviews.

1.9 Contribution

This dissertation makes original empirical, methodological and theoretical contributions. By focusing on a real life political puzzle with important implications for distribution of justice to refugee claimants who are non-citizens, I concretely show how negative and positive decisions come about, how the claimants' testimony and evidence are treated and how these treatments are reflected on the refugee decision. It provides an important window into the roles of state actors into labeling and transforming legal status. It illustrates the significant value in analyzing procedures and practices from below.

The study of the refugee determination process through close proximity for eighteen months provides significant methodological advantage in answering the research question. I investigate administrative behavior in real time, the final outcome of these encounters, the voiced beliefs and practices of the Board members, as well as the articulated policies of the IRB as organization. By placing the refugee hearing and the IRB at the heart of the research design, I show that notwithstanding apparently clear refugee laws and regulations, the grant or refusal of the refugee status is not predictable or fixed, since the status is decided following the refugee hearing which proceeds through human interaction and can have divergent outcomes depending on the Board members involved.

The refugee determination, maybe as a result of its legal, linguistic, anthropological and psychological dimensions, did not attract the attention of political scientists, despite the fact that public administration scholarship offers well-developed theoretical tools in its interactional and organizational dimensions. Studying the IRB as a street-level organization and the Board members as street-level workers not only expands the applicability of the street-level theory to the analysis

of decision-making at administrative tribunals, but also provides a significant theoretical contribution: It is inherently difficult if not improbable to control and discipline discretionary decision-making even in organizations that institutionalize and standardize training and communicate their demands clearly to decision-makers. When faced with goal ambiguity and with demands that they consider run against their discretionary authority, decision-makers reinterpret their job definition and routinize their practices. They formulate an encounter routine that is organizationally acceptable to assess the people in front of them. Not only we have to take the discretionary practices of state officials in relation to refugee determination seriously in order to fully understand the management of migration but also to capture what logics operate on the ground with real consequences for refugee claimants.

Chapter 2 LITERATURE REVIEW & THEORETICAL FRAMEWORK

This chapter outlines the existing considerations and explorations of front-line policy implementation and decision-making, as well as the factors that have impact over front-line decision-makers' discretion. This rich and diverse literature has three significant analytical orientations akin to the puzzle that I propose to explore; first, the concentration on how different factors such as political and managerial control, representativeness of the work force, bureaucratic professionalism, and organizational constraints impact discretion and shape the discretionary practices of front-line workers. Second, how these discretionary practices are systematically employed to differentiate between clients. Finally, how the organizational or social context constitutes discretionary behavior.

This chapter begins by a critical, historical discussion on discretion and its indispensability for state organizations in legal and social science scholarship. I will argue that discretion involves two dimensions, but this differentiation is often taken for granted. I will clarify the two aspects of discretion as autonomy and cognitive activity. This will be followed by a detailed argumentation on the factors that impact discretion; political and managerial control, representativeness, bureaucratic professionalism and organizational constraints. I will conclude why the last one provides the best theoretical view of the Board members' work environment.

2.1 Problematizing discretion

In this section I will offer a condensed review of how discretion is conceptualized by legal scholars and social scientists who studied it from different perspectives. Legal scholars considered discretion as something to be confined and controlled through the rule of law, while

social scientists offered detailed examination of the exercise of discretion in different organizational contexts from an agent centered approach. The majority of legal scholars conceptualized discretion as an autonomous decision-making space which is bound by legal rules and free from external constraints. Social scientists understood discretion within its organizational context and illustrated how it is bound by rules, but not necessarily by legal rules (K. Hawkins, 1992a). These two groups, therefore, understood discretion largely as an autonomous decision-making space. However, within this space, discretion implies a second aspect, a cognitive dimension including judgment, reasoning and interpretation as characterized by a few early legal scholars (Friedrich, 1973; Galligan, 1986) and a few contemporary social scientists (Molander & Grimen, 2010; Molander, Grimen, & Eriksen, 2012; Wallander & Molander, 2014). Even though, we implicitly see this cognitive aspect of discretion in social science research, it is never clearly differentiated from the autonomy aspect.

2.1.1 Discretion in legal and social science scholarship, the differences

Discretion is often considered as a precondition of a profession and the functioning of professional work (Olejarski, 2013). States have to delegate discretionary powers to decision-makers so that they can "carry out the final steps in the implementation of laws or policies" (Molander & Grimen, 2010, p. 167). Both legal scholars and social scientists recognize the significance of studying discretion but they do so from different perspectives (Lacey, 1992; Pratt & Sossin, 2009). The former is inclined to "think in terms of the role of legal rules in achieving outcomes" while the latter "tend to think rather in terms of decision goals and decision processes" (K. Hawkins, 1992c, p. 14).

Legal scholars are often concerned with the tension between discretion and law, rules and procedures (Gilboy, 1991). They attempt to clarify the legal notion of discretion in relation to rules and how much rules authorize discretionary behavior (K. Hawkins, 1992c). However, they rarely study discretion empirically. Discretion is dominantly perceived as "an area of conduct which is generally governed by rules but where the dictates of the rules are indeterminate" (Goodin, 1986, p. 234). Early scholars understood discretion mostly as a lawless area that provides unjustified freedom of choice (Harlow & Rawlings, 2006). With the rise of the welfare state, and the proliferation of decision-making in front-line bureaucratic contexts, discretion was understood as a "humanizing" device"" (Pratt & Sossin, 2009, p. 303) that permitted individualized and responsive decision-making (Willis, 1958, 1959).

Since the late 1960s, a strand of legal scholarship returned back to its early assumption: discretion is inherently undesirable. Following the influential work of Davis (1969) *Discretionary Justice*: *A Preliminary Inquiry* where he established the law-discretion dichotomy, legal scholars highlighted the importance of structuring, controlling and confining excessive discretionary power to prevent its transformation into arbitrary and capricious action. The often cited conventional characterization of discretion "like the hole in a doughnut, does not exist except as an area left open by a surrounding belt of restriction" of Dworkin (1977, p. 77) highlights three dominant assumptions: the supremacy of law in governing the society, the discretion as a residual category of law and that it "is exercised by individuals who, though influenced in a wide variety of ways, are essentially autonomous" (Pratt & Sossin, 2009, p. 301). This legal construct has directed legal scholars to mistakenly assume that reducing discretion would resolve problems associated with decision-making (Handler, 1986, 1992) and turned the focus on formulation of binding legal standards to harness the exercise of discretion (Lacey,

1992) and keep its exercise to a minimum (Galligan, 1986). Inattention of legal scholars to issues outside of the courtroom and "the formalities of decision-making by adjudication" (K. Hawkins, 1992c, p. 18) encouraged some to reconceptualise discretion in its relation to trust, participation, democratization and social transformation (Cartier, 2009; Handler, 1992; Sossin, 1993), and highlight that trying to find legal solutions to problems of discretionary decision-making will recreate these very problems (Goodin, 1986).

Michael Lipsky transformed how discretion is understood and studied. He is the first public administration researcher to establish a common framework to study the discretion and actions of the front-line workers in different organizational settings. He convincingly argues that front-line workers who interact with citizens in the course of their work, are relatively autonomous from organizational superiors, and do not simply implement policy, but they make policy. These state officials can be called street-level bureaucrats (SLBs) and their actions can be studied with the same theoretical tools through attention to concrete interactions between SLBs and their clients and the features of the organizational settings (Lipsky, 1969, 1980, 2010). Besides Lipsky's attribution of the term "SLB" to teachers, police officers, welfare workers, health personnel and lower court judges, "other public employees who control access to public programs, deliver service, and/or enforce public laws and regulations" are also street-level workers (Meyers & Nielsen, 2012, p. 36)[12].

Social scientists, following Lipsky's call avoided fundamental normative assumptions about the nature of discretion. As emphasized clearly by Brodkin (2008, p. 154) "discretion, in itself, is neither good nor bad but the wild card of implementation, likely to produce different results in different organizational contexts." Social scientists, therefore, stress the importance of

[12] In this dissertation, I will use the term "street-level worker" instead of SLB as I established that the IRB is not a part of the bureaucracy.

studying how decisions are made through empirical investigation of discretionary actions and processes. Instead of focusing on legal rules, which preoccupied legal scholars, they turned their analytical attention to ""extra-legal" or "non-legal" influences on discretionary decision making" (Pratt & Sossin, 2009, p. 304). They studied the dynamics and power of decision-making, such as who exercises it, in what ways, as well as the consequences of discretion. They studied discretion in relation to decision-making as a "social, rather than individual process" (Feldman, 1992, p. 161). They illustrated how the social context of their work environment, rather than the formal authority (or prescription of more formal rules) provides some ways to impact discretionary behavior.

Instead of law–discretion dichotomy, social scientists, therefore focused on what Satzewich (2014f, p. 1450) calls "social constitution of discretion". From a macro-perspective, discretion is understood as the broad latitude of a public agency in implementing broad legislative mandates (Scott, 1997). From a micro-perspective, discretion implies "leeway that officers enjoy in selecting from more than one choice in carrying out their work" (Mastrofski, 2004, p. 101). The definition can also be stretched to include the factors that define specific conditions of discretion which is "the extent of freedom a worker can exercise in a specific context and the factors that give rise to this freedom in that context" (Evans, 2010, p. 2).

2.1.2 Cognitive dimension of discretion: implicated but not uttered

These two divergent scholarships indicate that discretion is something decision-makers have as well as something they do. It implies, therefore, "the legitimate right to make choices based on one's authoritative assessment of a situation" (Feldman, 1992, p. 164). More than four decades ago, legal theorist Friedrich (1973, p. 175) noticed that discretion involved two

simultaneous notions: the notion of making choices among alternatives and "the notion that such a choice is not to be made arbitrarily, wantonly or carelessly, but in accordance with the requirements of the situation". Just over a decade later, socio-legal scholar Galligan (1986, p. 8) stressed that to have discretion is "to have a sphere of autonomy within which one's decisions are in some degree a matter of personal judgment and assessment". Definitions of these two scholars highlight that a decision-maker vested with discretionary authority is responsible for finding facts, interpreting standards (legal rules and regulations), applying the standards to the facts and eventually making a decision. During this process, after assessing the situation, the decision-maker ought to offer an explanation and give reasons for the action taken in order to justify it and make a judgment about the "meaning, content and weight of given standards" (Galligan, 1986, p. 9). The most important element here is the cognitive feature of discretion; consideration and justification of the decision as what Friedrich (1973, p. 176) calls "reasoned elaboration".

Friedrich (1973) and Galligan (1986) offer a good starting point to conceptualize this cognitive dimension of discretion. Even though some legal scholars and social scientists suggested that discretion requires interpretive behavior (K. Hawkins, 1992c), an ability to justify the decision (Feldman, 1992), a careful weighing of the features of the individual needs against public considerations (Handler, 1992) and "to apply norms and evaluate facts" (Mashaw, 1983, p. 157), none of them pushed the argument as far as to differentiate between these two aspects of discretion.[13]

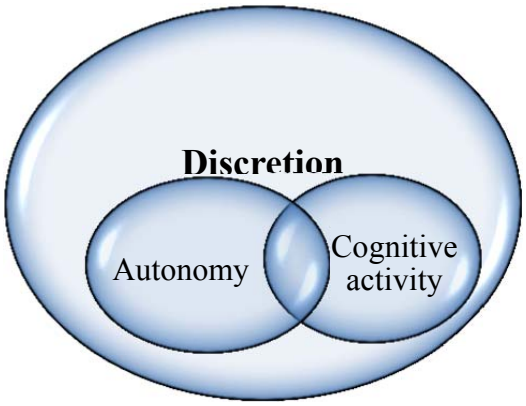
[13] Cartier (2009) attributes a dialogic aspect to discretion. Instead of understanding it as power, we should understand it as the relationship based on the ideals of participation and accountability between the ruler and the ruled. However, in refugee decision-making context, discretion implies power that belongs to the Board member and is exercised to make a differentiation between refugees and nonrefugees.

In a rather rare cooperative research project by a public administration and a socio-legal scholar, based on life stories collected from police officers, social workers and teachers, Maynard-Moody and Musheno (2003) underline that front-line workers are constantly attentive to who their clients are. While conducting their functions, these workers explain that they act on their judgments and assessments of who their clients are. Instead of constant attention to what law, policy and supervisors say, they get a fix on their clients. When legal rules and their own beliefs are in conflict, these workers "describe their work more as judging people and acting on these judgments than as adapting rules to the circumstances of cases" (p. 18). Furthermore, in their decision-making process, decision-makers first make a judgment about a client based on societal values "and then turn to policy to help enact or, if negative, to rationalize their judgments" (p. 18). This means, these officials' stories "are citizen centered more than rule centered, and the workers' judgments are more moral than legal" (p.18). Clearly, this approach focuses on the judgment and reasoning aspect of discretion, but we can push the cognitive aspect of discretion even further.

Molander and Grimen (2010) are the first social scientists who visibly establish the distinction between the two aspects of discretion. By drawing upon Thomas Hobbes' *Leviathan*, the authors underline that discretion has a negative and positive liberty aspect. For Hobbes, where no rules exist (where no action is prescribed or forbidden) individuals can "freely choose among such alternatives, and nobody has the right to prevent them from choosing according to their own judgment" (p. 169). This description underscores one's discretion as autonomy. In situations of indeterminacy, discretion plays a role in "distinguishing and discerning and judging" between things. In this case, "a certain type of reasoning is required to reach justified decisions about what to do" (Molander & Grimen, 2010, p. 169).

More recently, Molander and Grimen with Eriksen, expanding political philosopher Charles Taylor's ideas this time, pushed the two aspects of discretion even further (Molander et al., 2012). As negative liberty, discretion offers a space where the decision maker is autonomous from the interference of others. Negative liberty is an "opportunity-concept" according to Taylor (1985) where the individual is free from external constraints (Bentwich, 2012). Within this space, the decision-maker has the capacity "to judge, decide and act according to his own judgment" (Molander et al., 2012, p. 214). However, as Taylor characterizes "being able to do what one wants" is not sufficient for being free[14] (Taylor, 1985, p. 215). In order to exercise freedom, "under conditions of indeterminacy" (Molander et al., 2012, p. 214) some cognitive capacities based on reasoning such as "some self-awareness, self-understanding, moral discrimination and self-control" are needed (Taylor, 1985, p. 215). These capacities can be understood as the merit requirements of the work which can be obtained through training. Therefore, these two concepts of discretion as opportunity and exercise are linked, yet distinct. Simultaneous and interconnected aspects of discretion can be illustrated as the following:

Figure 2. Two Aspects of Discretion



Adapted from: (Molander & Grimen, 2010).

[14] We can take this in the sense of free to take decisions.

Discretion, as a restricted yet protected space where the decision-maker has the autonomy to judge, reason, act, and decide by making inferences that are justifiable, underscores the basis of decision-making. The citation below elaborates this point entirely;

> The entrustment of discretionary power to professionals, i.e. their being assigned a *space* for making decisions in accordance with their own judgment, is based on the assumption that discretionary judgments and decisions are not mere whimsies but are justifiable, and that the practitioners involved are capable of making *reasoned judgments and decisions*. What we expect from these professionals is that they act in accordance **with their *best* judgment,** which means that what they do is supported by *good* arguments. Hence, this epistemic dimension of discretion—discretion as reasoning—is fundamental from a normative point of view (Wallander & Molander, 2014, p. 3) [my emphasis].

In that sense, conceptualizing discretion as a two sided notion is vital in studying the process of decision-making, such as the actions of the decision-makers when they assess clients, their written decisions and, their understandings of their actions.

As I am not interested in how to eliminate Board member's discretion like legal scholars would be, but rather in understanding the conditions that give rise to discretion and how it looks in action, I will look at the four sets of influences on it. These literatures that I refer are predominantly American, but I also cite some Canadian and European studies. One set is from the political and managerial superiors who set forth their intentions through wording of the policy goals, directives as well as guidelines on how policy should be implemented (Brodkin, 2011; Evans, 2010; Keiser, 1999; Riccucci, 2005; Scholz, Twombly, & Headrick, 1991; Winter, 2003). A second set is the decision-makers' representativeness of their clients (Bradbury & Kellough, 2011; Meier, O'Toole, & Nicholson-Crotty, 2004; Pitts, 2007; Riccucci & Saidel, 1997; Sowa & Selden, 2003). A third set is bureaucratic professionalism, as the goals and values that guide the professional work (Jones-Carrea, 2008; Lewis & Ramakrishnan, 2007; Marrow,

2009; Maynard-Moody & Musheno, 2000, 2003; Meier et al., 2004). The last set is the organizational context of the implementing organizations. This SLBT literature explores how organizational constraints shape, limit or encourage discretion (Brodkin, 1997, 2003, 2012; Dubois, 2010; Lipsky, 1969, 2010; Spire, 2007; Watkins-Hayes, 2009). I will focus on these factors respectively and treat them separately. It is challenging to bring all the elements of these diverse literatures without doing injustice to individual works. I attempt to mitigate this concern by outlining the principal concerns and findings of all. At the end of review of each set, I will discuss the appropriateness of that framework for this dissertation and I will conclude that the last body of scholarship is the most fitting one for this dissertation.

2.2 Political control and compliance

Most political scientists would agree that politics has a tremendous impact on bureaucracy but there is less agreement on the scope of the control elected officials exert on front-line action (Scholz et al., 1991). Control, here covers "a range of influence over discretion extending from little to absolute" (Mastrofski, 2004, p. 101).

Political control is among the most studied questions of policy implementation that directly lends itself to Weber's ideal-type bureaucracy and the normative dialectic of politics v. administration. The dialectic role of public servants is quite explicit: first, they have to serve to the minister of their department. While they should not play an overtly political role, they are expected to be loyal to their political superiors and assist them by executing their duties. Their second role involves serving the needs of the public or their clientele. These two roles seem to be complimentary but they can be conflictive as well when the demands of their political superiors and clientele are in conflict (Carroll & Siegel, 1999).

Researchers who see the job of the front-line worker through a compliance model emphasize policy definitiveness, in the sense that the bureaucrat does what the political executives set forth as policy goals. Even though I cannot engage in a detailed top-down vs. bottom-up debate here, it will be useful to mention how discretion debate emerged.

The 1970s characterize the period that policy analysts noticed increasing government efforts to address social problems through policy that often resulted in ineffective results (Hill & Hupe, 2009). Implementation studies did not start at this period per se, but there was a clear recognition of separating policy formation from policy implementation (Hargrove, 1975; Pressman & Wildavsky, 1984). Until the end of the 1960s, there was an implicit assumption that government mandates were clear and public servants would do what their political superior demanded. After this period, implementation scholars, following Lipsky, focused on identifying the features of the complex process of policy implementation instead of assuming a simple, certain, and well-structured process. Following the 1970s, we may say a distinct approach to study policy implementation emerged in which the definite implementation is challenged. According to this approach, as I will articulate among organizational conditions, no policy or program is clear; there is complexity and uncertainty in them. Yet, most political control literature as we will see, assume that policy is clear and the political superiors are determinate in policy implementation.

Research in political control literature offer mixed conclusions. Some findings especially in regulatory enforcement indicate that bureaucrats implementing federal programs are prone to the preferences of several politically elected bodies. Field offices of federal bureaucracies are responsive to presidential politics, congressional representatives and local electoral politics; yet there is little evidence of direct partisan intervention (Scholz et al., 1991). But, researchers often

fail to determine if local enforcement activities were influenced by "local activities of the representatives themselves or groups in electoral coalitions" (Scholz et al., 1991, p. 847).

Other research finds that antitrust regulation aims to establish an efficient framework that responds to changing market forces and economic misbehaviour yet, US antitrust policy shift can be explained by the political control of the democratic institutions (Wood & Anderson, 1993). This concludes that the level and substance of antitrust activity is a top-down mechanism. The composition of the Congress plays some role in terms of enacting new laws but not in an ideologically consistent pattern. The most central and ideologically coherent changes emanate from the presidency and the ideology of the president results in the fluctuations in antitrust regulations.

Some other research shows evidence of responsiveness to political pressure that explains divergence in policy delivery when federal policies are implemented at the state level (Keiser, 1999). Variation exists in disability insurance grant rates across American states, despite the expected uniformity of policy delivery. Keiser (1999) concludes that street-level workers delivering unemployment insurance are responsive to political pressures, and are more likely to grant disability insurance if their states have more Democrats among their legislators than the Republican ones.

Therefore, there are some findings that shows signs of political control in the alignment of the aggregate policy outcomes in relation to desired policy goals of the politicians but this only suggests an indirect influence of political control on front-line decision-making (Meyers & Vorsanger, 2003). Further, these studies do not say much about the scope and specific mechanisms of political control. They tie the shifts in agency outcomes to change in agency leadership through political appointments by the president (Wood & Waterman, 1991). Some

other researchers underline the importance of political party in power in different American states' welfare agencies' front-line decisions. They find that in states with greater Republican control, exemptions from the child support enforcement program are fewer. The outcomes for good cause exemptions, therefore, in the words of the authors "appear to depend not only in the merit of their individual claims, but also on which party controls the state government" (Keiser & Soss, 1998, p. 1151).

Winter (2003) underlines a significant problem, often overlooked in political control literature: only some aspects of street-level behavior, that are more transparent, are open for influence by the political superiors. Politicians may have some influence on quantifiable aspects, such as the numbers of or timelines for processed clients. However, one fundamental aspect of street-level behavior takes place in settings that are invisible to political superiors; street-level interactions between the street-level worker and his/her client. These superiors are largely unaware how street-level workers conduct their work. This point may not appear so illuminative at first, since Lipsky (1969) had already highlighted the relative autonomy that street-level workers enjoy from their superiors. Yet, Lipsky had referred to organizational authority, not the political superiors. By looking at the results of two surveys of street-level workers employed in Denmark in the delivery of service-oriented refugee and immigrant integration policy and regulatory agro-environmental policy, Winter (2003) finds that politicians' signaled policy preferences or staff allocations have no impact on street-level workers' styles of interacting with their clients and processing of their cases such as responses/reactions to violations of regulations or conditions for receiving benefits.

May and Winter (2009) add a significant variable to the study of political control on street-level workers, namely, proximity. They find out that municipal workers are more likely to

diverge from national policy goals that focus on activation when local politicians who are closest to them disagree with these goals and emphasize the importance of divergence. Once again, however, the study is based on surveys and does not help us understand why and how divergence or compliance occurs.

Why political control literature is not appropriate for this dissertation?

Political control literature perceives the street-level worker as a servant of political principles but at the same time only provides evidence of indirect influence of political control on street-level behavior (Meyers & Vorsanger, 2003). Arguing that the elected officials *control* the use discretion of the bureaucrats makes a claim bigger than pointing out that the street-level workers are responsive to political pressures. It rather means that street-level workers are passive players, who do nothing but comply and employ political will. This literature is not free from criticism on its insistence on the concept of power, namely that "*political officials get bureaucrats to act in a way that they would not otherwise have done*" [emphasis of the authors] (Meier & O'Toole, 2006, p. 178). The most important weakness of this literature is its inattention to within unit comparison but simply focusing on aggregate results.

In the previous chapter, I argued that there is very weak evidence for political control of the Board members. Even more importantly, Hamlin (2014) in her comparison of Canadian, American and Australian refugee status determination regimes that pay particular attention to the relationship among institutional players such as legislative, executive, judicial bodies and the administrative authority that determines refugee status, finds that Canada has the most administratively insulated regime among the three. The IRB is mostly autonomous from political currents and is left to its own devices, free to design and implement organizational policy

(Crépeau & Nakache, 2008). Finally, as I am interested in exploring discretion under conditions that are invisible to political superiors, as suggested by Winter (2003), this literature is not appropriate for this dissertation.

2.3 Managerial control

After Lipsky's first elaboration of street-level approach in 1969, important changes happened in the world of public administration. Since late 1980s, it moved towards identification with the private service or a businesslike approach called New Public Management (NPM). As noted by Canadian political scientist Savoie (1995, p. 113) "Unlike the traditional public administration language that conjures up images of rules, regulations and lethargic decision-making processes, the very word "management" implies a decisiveness, a dynamic mindset and a bias for action". This perception is flawed according to the critics since it is based on the idea that private sector practices are superior to government practices. NPM's motto's "letting the managers manage" (Savoie, 1995, p. 114) principal underlying aim is to curb the discretion of the street-level workers (Farrell & Morris, 2003) and "to gain more effective control of work practices" (Kolthoff, Huberts, & Heuvel, 2006, p. 401).

The first pillar of the NPM, managerial control or managerialism is the analytical attention to the rigid impacts of management reforms on street-level discretion through the enactment of performance measurements that emphasize work efficiency (Brodkin, 2008, 2011; Lynch & Cruise, 2012) and the emphasis on surveillance of the street-level workers through audits and inspection (Kolthoff et al., 2006). The literature on managerial control in street-level organizations broadly deals with the following question: "What is the impact of managerialism on discretionary practices of the street-level workers?" Evans (2010) roughly divides this

scholarship into three approaches; street-level, managerial domination and discursive managerialism.

Street-level approach: the difficulty of managerial control

This approach's departure point is that managers have limited control over street-level worker's discretionary practices, not only as a result of confusing or vague policy goals and procedures but also as a result of autonomy these officials enjoy from the organizational authority (Hupe & Hill, 2007). Therefore, street-level workers' "on-the job behaviors are more difficult to observe or directly monitor" (Meyers & Nielsen, 2012, p. 306). Research in this perspective underlines the managers' inability to control street-level discretion. Studies, conducted within this literature, see the managers and the workers as two separate bodies. Despite Evans's (2010) characterization of the *street-level approach* as simply conflictual, Lipsky (2010) characterizes this relationship as intrinsically conflictual but also reciprocal, since managers need the workers for policy implementation.

Riccucci (2005) finds that clear managerial directives do not result in immediate change in street-level behavior. Street-level workers resist change and rely on their previous routines of eligibility assessment and benefit determination. While managers insist on placing the clients into jobs soonest possible, social workers want to focus on the broader client issues (Dias & Maynard-Moody, 2007). Durose (2011) denies the control of managers, scrutiny and monitoring demands and emphasizes the street-level workers' agency. The privileged positions of the street-level workers, as the only actors who have access to the clients' actual life situations give them important powers. This monopoly makes them "at least partially resistant to hierarchical control" (Hjörne, Juhila, & van Nijnatten, 2010, p. 304). Despite the fact that managers cannot advise the workers on how to handle specific cases, they champion case reduction strategies and will continue

to pressure the workers to process more cases which does not necessarily hamper discretion, but is likely to produce informal practices that are detrimental to the clients (Brodkin, 2011). Street-level workers when forced to meet performance requirements and efficiency measures, will find ways to meet the demands but their service quality will be significantly hampered.

Managerial domination approach: street-level work as a zero-sum game

This approach refers to the recognition of the central role of managers in controlling the work of street-level workers and curtailing their discretion through a "more hard-nosed commercial logic" (C. Jones, 2001, p. 556). This approach sees managerialism as a conclusion to a zero-sum game between the front-line workers and their managers in which managers won and street-level workers lost (Evans, 2010). This perspective, especially predominant in social work, underlines the fact that street-level workers are subject to more rigid control tools, such as performance measurements which act as instruments of discretionary control.

Researchers also argue that managerialism violated its own principles and instead of creating more responsive practices, proved harmful to street-level workers and clients. According to some, managers control the organizations up to a degree where street-level discretion is no longer relevant (Howe, 1991; C. Jones, 2001). Social workers still see and serve their clients but through a more regulatory focus, for shorter periods of time and the services they can provide are more limited. Another study looks at the convergence in the organization of social work services in the UK and Canada despite their initial differences (Carey, 2008). In both contexts social work moved towards a market-led logic, managerial control and regulation had significantly intensified, social work staff saw deteriorating client services as a result of privatization and neo-liberal logic. Horton's (2006) research illustrates this approach succinctly. Clinicians who serve female,

immigrant and vulnerable Spanish speaking populations in the US assume double roles not simply as clinicians, but also as advocates who help their patients navigate through unfamiliar welfare and support services (Horton, 2006). However, implementation of the managerial measures of productivity and efficiency jeopardize their advocacy work since this work does not fit into the category of 'billable hours' and prevents clinicians from meeting their administrative quotas. This literature characterizes the street-level workers in a particularly difficult condition, wanting to serve their clients, but because of the pressures on them, they fail to complete their missions.

Discursive managerialism approach: *complicating the managerial control*

This approach challenges the street-level approach on two premises, that the managers are compliant to their organizational roles and that the relationship between the manager and the street-level worker is conflictual. In terms of managerial control, it converges with the street-level approach and denies managerialism's intact effectiveness and underlines the continuing influence of street-level discretion in the conduct of work. Instead of seeing it as a conclusion, this brand new literature frames managerialism as a continuing process that changes, alters and overlays how discretion is implemented where street-level workers are not passive actors, but resist and contest managerial control. This approach also questions the homogenous/monolithic study of managers and complicates their location as actors who struggle between the demands of the policy and their relationship with their staff. Further, it interweaves the context and organizational conditions of the role of the managers. It, therefore does not study managerialism as the sole factor that impact discretion. It also recognizes that the exercise of discretion is multi-layered and dispersed among multiple stakeholders (Evans, 2010; Scourfield, 2013). Instead of studying managers as a unified

body, Evans (2011) makes a difference between senior and local managers and finds that curtailing street-level discretion remains unrealized not only because of practical limitations identified by Lipsky such as the solitary conditions of the street-level work, but also as a result of ideas of professionalism or bureaucratic missions of social workers and local managers.[15]

Appropriateness of the managerial control literature to the dissertation

The literature on the NPM and its impact on street-level discretion show that street-level workers do not blindly follow managerial demands, and the managerial influences do not constitute an independent force in shaping discretionary actions, but they operate upon the organizational conditions of the agency or the department they work for. Can this literature shed light to my research question?

Recall how the IRB takes pride in the independence of its Board members and announces that no one can interfere with their decisions. On paper, Members are the ultimate decision-makers; managers cannot comment on Members' decisions or direct the Members' to take a certain decision. Also, Members assess the refugee claimants, in the hearing room, in a space invisible to their managers. Managers, similar to policy superiors, cannot control Members' practices that take place in the hearing room. On the other hand, as we will see later, managers do enact standards, by creating guidelines and choosing persuasive decisions to be followed by Members. They also have an interest in promoting predictability and consistency in decision-making across similar cases originating from same regions as the former IRB Chairperson put it (Goodman, 2011). The Federal Court of Appeal addressed this question in *Kozak* v. Canada [2006] and recognized the authority of the IRB management to develop ways to enhance consistency and quality of decisions, but also warned that such procedures "cannot be adopted at

[15] The impact of bureaucratic missions on SLB discretion will be presented in detail in the next section.

the expense of the duty of each panel to afford to the claimant before it a high degree of impartiality and independence" (para. 56).

This means, there are hints of managerial pressures that might have an impact on Board members' discretion. I will be mindful of those, and explore how Members find a balance between these pressures of efficient and consistent decision-making and their inherent duties to be impartial and independent. This brings us to the exploration of second and third factors that impact discretion, namely representative bureaucracy and bureaucratic missions.

2.4 Representative bureaucracy: serving to represented clients

This literature, on the representative bureaucracy, predominantly focuses on one issue; the front-line workers' representativeness of the population they serve and how this representation is reflected in service outcomes. This body of scholarship departs from a normative standpoint of an inclusive group oriented stance (von Maravić, Peters, & Schröter, 2013) and it challenges the assumption that bureaucracies act upon control and instead insists on their reciprocity (Meier & O'Toole, 2006). It focuses on the prospect that the organizations that deliver services "may themselves be considered as explicitly and directly representational" (Meier et al., 2004, p. 3). The majority of this research focuses on demographic representativeness of public bureaucracies and how this representation would positively manifest itself in organizational outcomes (Riccucci & Saidel, 1997).

According to the theory, when the bureaucrats are representative of the populations they serve on gender, ethnic and racial terms, they are more likely to promote the interests of their social group, since they hold similar values (Jones-Correa & Leal, 1996; Watkins-Hayes, 2011).

Bureaucrats are social actors, and their decisions are conditioned by their life experiences. Nonetheless, the client population exerts some control over the actions of the public servants to ensure that they are in accord with public preferences (Dolan, 2002). In other words, if the bureaucracy is representative of the public in all its aspects, and it exercises discretion to follow its own values, then it will also follow the values of the represented clients (Meier & O'Toole, 2006; Riccucci & Saidel, 1997). The transformation of passive demographic representation into active, advocacy and support based representation have important consequences for marginalized populations with histories of racial and ethnic inequality (Pitts, 2007).

Passive representation is seen as *sine qua non* of active representation. Active representation occurs when a bureaucrat "press[es] for the interests and desires of those whom he is presumed to represent" (Mosher, 1968, 11 as cited in (Bradbury & Kellough, 2011, p. 158). However, this is not a linear process as the passive representation will turn into an active one, and it will produce policy outputs that benefit underrepresented populations like minorities and women (Dolan, 2002; Lim, 2006; Riccucci & Meyers, 2004). Another significant question the literature tackles is the level of representation; street-level or managerial level, which creates more favorable outcomes for the represented clients. The findings of different research often signal the interplay of other organizational factors with social group commonality. Women holding positions at the top of the federal executive are influenced by gender group commonality in their policy-relevant attitudes, but organizational socialization also plays a role in attitude-formation (Dolan, 2002). Meier and O'Toole (2006) find that Latino students would perform better in schools where Latino school board members and Latino teachers work. Representative bureaucracy (the impact of the Latino teachers) shows stronger correlation compared to political control (the impact of Latino school board members). Among administrators with the same job

definition in a representative bureaucracy, the ones who perceive themselves as enjoying greater discretion to act, "produce policy outcomes that are more broadly representative of minority interests" (Sowa & Selden, 2003, p. 707). However, when administrators perceive themselves as having little discretion, they will not take risks and make decisions that reflect group interests and fail to be active representatives of these interests.

What about client perceptions of representative bureaucracies' performance? Through a survey with 510 persons living with AIDS (PLWA) in Dallas, the authors underline that PLWAs report more positive experience and service delivery by service providers of the same race/ethnicity, sexual orientation and gender (Thielemann & Stewart, 1996). PLWAs do not attach significance to the higher level agency personnel, but note their desire for continuation of front-line services by service providers they identify with. All these mentioned studies use survey data instead of actual interaction between the bureaucrat and the client so they do not tell us much about the complexities of negotiations that take place between these actors and what processes impact the outcome.

Studies that focus on first account recipient and provider experiences instead of survey results, underline the inadequacy of representative bureaucracy's explanatory power (Watkins-Hayes, 2011). Through in-depth interviews with recipients and providers of public cash benefits and food stamps, Watkins-Hayes (2011) shed light to the assumed passive representation of racial group commonality to active presentation. She demonstrates that organizational constraints of a street-level organization and intragroup politics (such as the bureaucrat being a higher status member of the same racial group) greatly inform how common identification through race is translated into more positive outcomes for the clients. Therefore, transformation of passive representation into active representation is not necessarily linear.

Why representative bureaucracy literature is not appropriate for this dissertation?

The ultimate weakness of this literature is its assumption that street-level workers are independent and capable in shaping the organizational outcomes under conditions of social group commonality. It ignores the fact that their actions are constrained or facilitated by institutional rules and that they are not completely free to take actions that will maximize the clients' benefits. Another important weakness is the essentialist character of the theory that is reflected through its compilation of individual experiences into group commonality and lack of attention to intragroup differences (Watkins-Hayes, 2011). It falls short of accounting for social, political and economic differences among groups and their ever-changing dynamics by simply focusing on an idealized and non-tangible concept of group-interests (Jones-Correa & Leal, 1996). Last, but not least, the literature perceives the bureaucracy as a homogenous body and does not offer the tools to study differences among street-level workers during interaction, which is among the most essential objectives of this dissertation.

According to the presuppositions of the theory, we would expect the Board members who are not native Canadians and who have experienced international immigration to grant more refugee status compared to their counterparts as a result of group commonality. However, this assumption does not hold true. Refugee status grant rate is not systematically contingent on social group commonality, as I will illustrate later. As there are numerous Board members who are native Canadians and grant more refugee status than the average, their counterparts, who are non-native Canadians, have experienced international immigration, or are recognized as refugees refuse more than the average. In that sense, representative bureaucracy literature is not appropriate for my dissertation, since it focuses on the aggregate outcomes instead of individual differences and interaction processes.

2.5 Bureaucratic professionalism: professional missions on service delivery

This body of scholarship investigates how within group conceptualization of front-line workers as professionals is mirrored in their service delivery. Literature on bureaucratic professionalism emphasizes the significance of workers' professional missions on policy implementation, since most of the time their responses to clients are more positive and welcoming compared to ones of politicians and managers. This literature posits that professions have their internal norms and regulations and the professional bureaucrats will continue to act according to these principles even if there is no political or managerial push, even when conditions are unfavorable. Professional missions have important consequences for their clients.

Brehm and Gates (1999) argue that the level of oversight and monitoring does not ensure bureaucratic compliance during policy implementation. The influence of the principals on the bureaucrats' behavior is not as straightforward, and bureaucrats work not as a result of control but because they agree with the policy goals, hold bureaucratic values of professionalism and aspire for support and recognition from their colleagues. May and Winter (2009) discuss that in Denmark, managers' emphases on getting the clients into jobs impact the caseworkers behavior only when they have less policy knowledge and their policy preferences are not well-established as a result of lack of experience in the organization.

Contrasting police responses to the knowledge and perception of elected city councillors, local administrative officers and immigrant organizations in relation to the needs of newcomer populations, Lewis and Ramakrishnan (2007) find that police departments in Californian cities are ahead of elected local politicians and other organizational actors in providing support to newcomers, for example, through language support. According to the authors, police officers' professional missions play a distinct role in responding to these clients, in ways that are

independent from political pressures. They suggest this by underlining the fact that policy relevant groups but the police remain largely uninformed about new practices of policing styles between the police departments and immigrants (Lewis & Ramakrishnan, 2007). Besides positive reactions of the police to immigrants, teachers also respond positively to the needs of immigrant children. Despite the strength of their politically-engaged middle-class white constituents, coupled with a period of budget shrinking; schools plan to spend more and shift their budgets to be able to respond better to the needs of newcomer students. This happens because organizations have their internal norms and professional ethos which can be the impetus behind redistributive policy change (Jones-Carrea, 2008). Principals in public schools in Manitoba bend the rules to varying degrees, and their decisions are characterized by an interplay between their conceptions of what is best for the students or and the defensibility of the decision (Heilmann, 2006).

Why bureaucratic professionalism literature is not appropriate for this dissertation?

Bureaucratic professionalism literature ties what bureaucrats do to their bureaucratic missions, in other words, to the collective way of seeing what their job and client needs entail (Dias & Maynard-Moody, 2007). Bureaucratic missions are embraced as a result of organizational socialization but also as a result of training as well. Teachers, police, doctors and social workers, during their training and education internalize what their job entails and develop a form of professionalism as a group that can best respond to certain situations as a result of reflection upon bureaucratic mission.

Considering that the Board members' professionalism is in question as a result the limited-term appointment and the absence of credibility assessment qualification as discussed

above (Houle, 2004; Sossin, 2006), we cannot conceptualize their work within bureaucratic professionalism. They work under simply incomparable conditions at an administrative tribunal, which does not aim to provide service as a bureaucratic organization would do, rather deliver decision-making. Furthermore, this literature focuses on the bureaucratic missions of bureaucrats, as a definite professional group *in contrast* to other actors who are supposed to be knowledgeable or assumed to act on the issue.

2.6 Street-level bureaucracy: the impact of organizational constraints

In the discussion of discretion at the beginning of this chapter, I briefly touched upon Lipsky, and how he transformed the way public administration scholars study policy implementation. Contrary to the findings of political control literature, Lipsky saw street-level workers, who often occupy the lowest level positions in state organizations, as policymakers instead of "policytakers" (Gofen, 2013). He deemphasized the role of politicians as distant actors, far from the front-line struggles of the mundane work of policy implementation. He also highlighted the limited capacity of managerial actors in controlling street-level discretion. This approach problematizes the hierarchical model and control in policy implementation. Powerlessness to control does not come from the unruly character of the street-level workers, but from the requirements and conditions of their work where exercise of discretion is critical (Smith, 2012).

As organizational arrangements, street-level settings are unique since they rely on street-level workers "to serve as brokers between the organization and its clientele" (Scott, 1997, p. 37). Policymaking roles of these workers emanate from two factors; "relatively high degrees of

discretion and relative autonomy from organizational authority" (Hupe & Hill, 2007, p. 280). As a result of their unique location, "at the interface between citizens and the state" (Meyers & Nielsen, 2012, p. 306) they have central position in policy implementation. The essence of the street-level organizations is the fact that "they require people to make decisions about other people", hence human discretion and judgment are inevitable in this work (Lipsky, 1980, p. 169).

As decision-makers, street-level workers have high degrees of discretion and regular interaction with citizens (Lipsky, 2010). The state organizations they work for suffer several problems; such as lack of resources relative to the work they are expected to perform, conflictual, ambiguous or vague goal expectations, difficult to conduct performance measurements and a largely involuntary clientele (Lipsky, 1969, 2010). According to the assumptions of the theory, implementation gap, as divergence between policy and practice cannot simply be understood in relation to formal rules or the individual beliefs of front-line workers, but more as responses to organizational conditions where implementation occurs (Brodkin, 1997, 2003, 2012; Hill & Hupe, 2009).

Street-level workers are responsible for transforming clients into legislatively defined categories in order to provide services and other forms of assistance or to regulate their behavior. This literature is grounded in a theoretical approach that aims to identify the internal logics of street-level service provision routines within specific organizations. The SLBT justifies the methodological focus on the street-level worker and the client interactions. However, focusing on micro-level does not mean organizational issues must be bypassed (Satzewich, 2014a). Researchers successfully interlinked street-level behavior to organization conditions and found the assumptions of the theory empirically sound (Maynard-Moody & Portillo, 2010).

An individual is too complex to be processed as a whole by street-level organizations since these organizations neither have the time nor the resources. Hence, they operate by applying specific standard rules and procedures to individual cases. For individuals to be processed, they have to be reduced to "a form that is simple enough to be compatible with pre-existing standard operating procedures" (Prottas, 1979, p. 3). The simplicity and the standard nature of an administrative form also signify the routine aspect of street-level work. It is concretely these routines of practice and how street-level workers articulated their work that guided the researchers who tried to understand the dynamics of policy implementation and discretion.

Researchers tackled the complexity of assumed straightforward policy implementation in policy areas such as enforcement (Maynard-Moody & Musheno, 2003), education (Kelly, 1994; Maynard-Moody & Musheno, 2003), regulation (Bastien, 2009; Pires, 2009), justice (Cowan & Hitchings, 2007), border control (Alpes & Spire, 2013; Ellermann, 2009; Satzewich, 2014a, 2014f; Spire, 2007), but mostly social policy (Brodkin, 1997, 2011, 2012, 2013; Dubois, 2010; Watkins-Hayes, 2009).

Analytical focus was most often on street-level workers and their routines of practice when processing clients. Researchers looked at what shaped these routines and what logics informed them. Besides, they were interested in the ways these workers articulated the conduct of their work, and the implementation gap, why they took certain actions that seemed counterintuitive in terms of policy. Researchers also documented these workers' perceptions about the organization, their work as well as self-perceptions and interlinked them to policy implementation processes.

Street-level workers do not see themselves the way organizations define them. As a result of policy ambiguity, they "read institutional cues that address their purpose and objectives and then infuse their own meanings, goals and commitments to create day-to-day capacities for action" (Watkins-Hayes, 2009, p. 26). They redefine their occupational roles. The organization they work for frequently fosters this, because they often lack institutionalized training and the rare situations where they receive training do little to standardize the client treatment (Dubois, 2010). Since, they work alone with the client; their behaviors are not easily mouldable either.

Street-level workers are organizational actors, whose actions can be understood in relation to the organizational context (Brodkin, 2012). This is how Lipsky conceptualized them. However, some influential researchers also highlight the social character of street-level workers. They pay close attention to workers' socioeconomic backgrounds, personal stories, careers and current situations (Maynard-Moody & Musheno, 2000, 2003) as well as to the constraints they face during their work (Dubois, 2010; Spire, 2007; Watkins-Hayes, 2009) that lead them to diverse behaviors. This is why, Maynard-Moody and Musheno (2003, p. 25) underline that workers define themselves in relation to their clients instead of principles of law, predictability and fairness and their discretionary judgments are "pragmatic expressions about acts and identities and assertions of dominant yet jumbled societal views of good and bad behavior and worthy and unworthy individuals". During their encounters with the clients, workers practice "spontaneous sociology and judgment – on the morality of an individual, the normality of a case" (Dubois, 2010, p. 92). They are constantly attentive to who their clients are and they bring their own perspectives of fairness and worthiness to the assessment of their client. They continuously assess the worthiness of the clients, and their decisions are more moral than legal and reflect "the interplay of rules and beliefs" (Maynard-Moody & Musheno, 2003, pp. 40-41).

Maynard-Moody and Portillo (2010) in their overview of the SLBT literature note how some researchers stretch the definition of street-level workers to officials' whose work are not considered discretionary such as court clerks (Yngvesson, 1988), tax auditors (Kinsey & Stalans, 1999) and building inspectors (May & Wood, 2003). But they remind that in order to conceptualize a public official as a street-level worker "the emphasis on direct contact with clients and citizens and the meaningful level of discretion are crucial and central elements of the theory" (p. 264).

During the last decade, despite the concerns about the relevancy of policy implementation studies and their cumulative research results (Saetren, 2005), SLBT research maintained steady advancement (Hupe & Sætren, 2014). As put accurately by Hupe and Buffat (2014, p. 548), "[W]hile this research has produced several insights, the impact of variety in the institutional context has not been adequately explored". Comparative research is limited in this area. Further, researchers mostly study caseworkers and police officers, who occupy the lowest position in the organizational hierarchy, and engage in high-volume, accelerated decision-making.

Why SLBT is the most appropriate literature for this dissertation?

This literature challenges first, the assumptions and findings of political and managerial control on administrative discretion. Then, it points to goal ambiguities, heavy caseloads, unrealistic agency expectations, resource inadequacies and uncertainty to which street-level workers need to respond when conducting their jobs. Thirdly, it explores the routines they have to develop in order to respond to mass client demands, and finally, how these routines are operationalized in face-to-face bureaucratic encounter. Still, well-developed conceptualization of

discrepancy between discretionary practices of workers who work in the same context and how this discrepancy is manifested in client outcomes, are rather rare.

Considering that my dissertation is primarily about accounting for why divergence in refugee status grant rates among individual Board members exists, how refugee decision-making takes place and which conditions allow divergence to occur, this literature is best suited for my dissertation. This scholarship takes discretion as the most critical aspect of street-level organizations and explores how discretion serves to minimize or maximize the resources the clients receive and the surveillance that they are subject to. Discretion nevertheless is neither rambling nor autonomous from the rules and regulations of street-level organizations. It is therefore not without limits (Watkins-Hayes, 2011). This means that I will be particularly attentive to the IRB as an organization; and as such the context it provides to the Board members, the demands it makes, and how these constraints may have an impact on the Board members' discretionary behavior.

2.7 How to study discretion in refugee determination?

How do street-level workers take decisions and what factors impact their discretion? This question is the subject of considerable research, much of it conducted through increasingly complex statistical designs. Answers fall into several camps ranging from the influence of politicians and managers, representation, bureaucratic missions and organizational constraints. Through detailed elaboration I argued that SLBT offer the best tools, with analytical attention to the inner dynamics of the organizational setting.

Above, I made a distinction between discretion as an autonomous space and a cognitive activity. The SLBT puts forward the idea that the way discretion is patterned comes from the

characteristics of the organization within which decision-making takes place. The link between the two aspects of discretion and how they impact each other can be captured through investigation at the ground level, attention to the organization and street-level practices.

In order to understand why significant disparities exist in refugee status grant rates, one has to study refugee decision-making. Despite the contested nature of their professionalism, Board members are given the legitimate discretionary authority to make refugee determinations. They are the ones who evaluate and decide the claims. Clearly, investigating the invisible nature of refugee hearing is indispensable if we are to study the discretionary practices of the Board members. While trying to identify organizational conditions that influence and shape discretion as a space, we can simultaneously try to capture the cognitive activity the Board members undertake in determining refugee status. This means my focus will be on the meaning and significance of Board members' discretionary actions and reasoning in relation to refugee determination.

Chapter 3 OPERATIONALIZATION OF THE RESEARCH

Considering that divergence in refugee decision-making has never been studied before, this research is based on an ethnographic field research. Triangulation of methods, through participant observation, informal and semi-structured interviews and document analysis, is employed in order to collect all possible data, to verify the consistency of findings, and to control researcher's bias (Denzin, 2006; Lofland, Snow, Anderson, & Lofland, 2006). The table below shows the employed methods and the origins of the collected data.

Table 5. Research methods and data

Direct observation	Semi-directed interviews	Document Analysis
50 private refugee hearings 10 Refugee advocacy groups' activities: conferences, workshops, and protests 5 Federal Court judicial review observations	30 interviews with actors implicated in refugee determination	4 Access to Information Requests (ATIP) to the IRB: training material, performance measurement documents, contract samples 103 Respective reasons of observed and non-observed hearings:
13 lawyers, 29 Board members	10 former Board members (observed: 3) 10 refugee claimants 2 interpreters 2 members of refugee advocacy groups 6 refugee lawyers	Total: 7000 pages of documents ATIP numbers : #A-2013-00688/DE # A-2013-00561/DE # A-2014-00241/SB # A-2014-00242/SB

My fieldwork, including the pre-field period, lasted from March 2012 to November 2013, with additional interviews conducted between July and September 2014. The research took place principally in Montreal, but also in Ottawa, Kitchener and Toronto.

This chapter points out the methodological framework and the operationalization of the research. It explains step by step the research design and how the data came to be collected. It also sets and justifies the methodological foundations of this analysis that aims to accurately capture and describe the discretionary behaviors of Board members but also to understand what enables them to behave in the ways they do. After an explanation of why I adopted an ethnographic methodology and specifically organizational ethnography, I will touch upon the questions of the development of research, data collection, data analysis, reflexivity and ethics as well as limitations, reliability and validity.

3.1 Methodological framework: why ethnography?

This research neither departed from a theory nor from a willingness to fill a gap in a body of literature. An empirical puzzle of divergence in refugee decision-making contrary to the expectations of predictability and consistency steered this research. This highly controversial topic that has received wide media coverage did not lend itself to a conventional, positivist research process. I was interested in the why and how of this divergence, hence in the actual practices of refugee decision-making. This was an unexplored phenomenon within Canadian political administration research and as the researcher I had to be the research 'instrument' to explore the issue instead of staying outside of the it (Schensul, Schensul, & LeCompte, 1999).

In their written or oral communications, the researchers are not expected to reveal their epistemological position but this practice is favored by qualitative researchers (Becker, 1996).

My epistemological position favors the acquirement of knowledge, close to the actors of the phenomenon that I intend to explore. This position rationally made sense since I intuitively believed that the hearing room was the most interesting place to study before I stepped foot at the IRB. For me, the refugee hearing was 'the field'. I was fascinated with exploring what was happening in the hearing room, in that space that was hidden from public sight. As C. Ellis and Bochner (1996, p. 19) reiterate, "ethnographers cannot stay above and outside what they study". This epistemological position was reinforced following the theoretical justification of the significance of studying concrete discretionary practices.

Setting the refugee hearing as the principal field, based on theory, may raise questions about the informal and inductive character of ethnography (Wedeen, 2009). However, instead of emphasizing the insurmountable difference between inductive and deductive reasoning towards research, contemporary ethnographers underline the dynamic character of the research process. They also admit that each researcher starts with some preconceived ideas emanating from empirical experience or theoretical knowledge. What differentiates ethnography is its dynamism during the data collection and analysis process (O'Reilly, 2005, 2009). The researcher should not forget that

> all data are theory driven. The point is not to pretend they are not, or to force the data into theory. Rather, the researcher should enter into an ongoing simultaneous process of deduction and induction, of theory building, testing and rebuilding (Ezzy, 2002, p. 10)

This dissertation therefore, adopts a dynamic ethnographic approach that is attentive to real life experiences of the actors involved in refuge decision-making and aims to offer an organizational analysis grounded in the everyday reality of Board members as decision-makers.

3.2 Research question and objectives

The complexity of refugee determination and newsworthiness of the seemingly arbitrary and uncertain nature of decision-making was brought up regularly since 2008; however, the question this dissertation poses has stayed unanswered. This puzzle remains despite the fact that it has repercussions for several real life questions such as the functioning of democracy, the role of administrative tribunals in decision-making, the operation and distribution of justice as well as the protection of the human rights of non-citizens. If Board members simply interpret the refugee, human rights and Canadian immigration law and then apply it to individual cases:

Why do some Board members very rarely grant refugee status while their colleagues grant it to the majority of the claimants they hear?

In order to respond to this research question, I have to study refugee decision-making by analyzing two arenas; first, the refugee hearing, as the encounter between the Board member, the refugee claimant, the counsel and the interpreter (if applicable) and second, the organizational conditions at the IRB that might have shaped the Board members' discretionary practices and reasoning. The study of these two arenas will allow;

- the exploration of the features of the encounter through which the claimants are heard by the Board members,
- the identification of the requirements the refugee claimants are expected to meet at the hearing,
- the documentation of similarities and differences between discretionary credibility assessment methods of Board members as well as their reasoning,

- the specification of the organizational life at the IRB, the constraints Board members face as well as their autonomy,
- and the identification of the link between Board members' hearing practices and reasoning and the dynamics of organizational life.

Consequently, I will be able to answer the research question by the identification of factors that are endogenous to refugee determination. In the next section, I will present the features of organizational ethnography as a methodology which allows proximity to the Board members and the IRB as an organization.

3.3 Organizational ethnography: pursuing complexity in mundane organizational life

Organizational ethnography is the most appropriate methodology to study refugee decision-making, since it calls for attention to mundane, day-to-day aspects of organizational life and its intricacies. In their well-known volume, called *Organizational Ethnography: Studying the Complexities of Everyday Life* Ybema, Yanow, Wels, and Kamsteeg (2009, p. 1) note;

> Although the quotidian experiences of people working in organizations may, to some, hardly seem exciting, for organizational ethnographers much of the intriguing 'mystery' of organizational life is hidden in the ordinary exchanges of ordinary people on an ordinary sort of day.

Organizational ethnography is distinctive compared to other methods and analytical approaches to study organizations through its seven key characteristics[16] (Ybema et al., 2009). I quote them in bold letters:

[16] Other researchers have set forth of features or sensibilities of organizational ethnography such as Neyland (2007). However, considering the number and the importance of the researchers, I chose to adapt the framework offered by Ybema et al. (2009).

Combined fieldwork methods rest upon accessing and generating data through the use of extended fieldwork methods with various field research tools such as observation (various degrees of participation), conversation (informal exchanges between the researcher and research participants and formal interviewing) and close attention to documentary resources. Presence in the organization for extended periods of time enables the researcher to access the actors' everyday presence and to both front stage and back stage appearances and activities in a Goffmanian sense. Using several methods of data collection, known as data triangulation, helps in strengthening the study, by checking and establishing the validity of the research (Patton, 2002).

At the scene: Organizational ethnography demands first-hand, field-research based descriptions of scenes, actors, interactions and experiences. Through paying close attention to the organizational scene and by immersing themselves to the conditions of the studied actors, organizational ethnographers, in some sense, take hold of and deliver the actors' daily lives (Pachirat, 2011; Van Maanen, 1978) through thick description (Geertz, 1973). They do that through raw data collection during fieldwork which

> is a technique of gathering research materials by subjecting the self – body, belief, personality, emotions, cognitions – to a set of contingencies that play on others such that over time, usually a long time, one can more or less see, hear, feel and come to understand the kinds of responses others display (and withhold) in particular social situations (Van Maanen, 2011a, p. 219).

Hidden and harsh dimensions, Power and emotions: since organizational ethnography emphasizes proximity to the researched actors and their daily lives, it has the potential to unveil hidden dimensions, emotional exchanges within rational organizations, and the importance of power differentials among organizational actors (Nencel, 2005). It is especially useful "to analyze the gap between idealized representation and actual apprehension of events, people and

political orders" (Wedeen, 2009, p. 85). It is well-suited for exploring counter-intuitive aspects of organizational activity (Bate, 1997).

Context-sensitive and actor-centered analysis: Organizational ethnography disrupts the positivist research principles such as neutrality, detachment and objectivity since the researcher is close to the researched and to the organizational context (Pierce, 1995). The researcher is attentive to researched actors, ranging from their facial expressions to gestures (Goffman, 1959) as well as to broader social and institutional setting and dynamics (Yanow & Schwartz-Shea, 2006). Its strength is in "exploring and exemplifying the general through the local and the particular" (Ybema et al., 2009, p. 7).

Meaning-making is at the forefront of the organizational ethnography (Van Maanen, 1995). Organizational actors often develop insider perspectives that might not reflect outsider perspectives of what their work is and what it should be. These perspectives are not random but strongly attached to "experientially based meanings" whose validity "is established, sustained and continually reaffirmed through everyday activity" of which the researcher can develop first-hand experience through fieldwork (Van Maanen, 1978, p. 311).

Meaning-making as an experimental and intellectual practice does not claim that researchers must be seeing the world through the eyes of the people they study, rather they stress that capturing the insider perspectives in making explanations is vital and must be taken seriously (Geertz, 1973). In that sense, conversing with and observing the actors to see how they ground their ideas, questions and presumptions in their everyday life is suitable for exploring social phenomenon.

Multivocality: Organizations employ multiple actors with different roles instead of a single type of actor. Organizational ethnography provides space for multiple and sometimes

contradictory voices. Instead of making a claim to capture *the* reality of organizational stage and the practices, the researcher juxtaposes the research site and thickly presents various actions, inconsistencies and incoherencies. This approach contradicts the monolithic way of seeing, observing, analyzing and writing (Van Maanen, 2011c).

Reflexivity and positionality: Ethnographers need to question their own meaning-making, analysis and writing processes to be able to provide a candid account of the research process. In the end, ethnography is experientially driven and who we are as individuals impacts what we do in the name of research and to whom we have access as researchers (Kobelinsky, 2013i). In that sense, organizational ethnographers' own roles in the research process has to be mentioned (Neyland, 2007).

I constantly moved back and forth among these seven characteristics during my data collection and analysis process in order to ensure the quality of the research as an organizational ethnography as will be exemplified below. Now, let's look at how the research design took shape.

3.4 Research design: a dynamic approach

The critical question the researcher needs to ask while formulating the research design is "What do I need to know in order to answer *this* question?" [author's emphasis](Richards, 2009, p. 47). Creating the research design means seeing the research sequentially and as a whole. This requires planning its' pacing, namely designing the sequencing of its different components and assuming a flexible and adaptive approach between data collection and data analysis (Flick, 2007; Richards, 2009; Richards & Morse, 2013).

In order to answer the research question, first, access to the hearing room was vital to directly observe the verbal and non-verbal interaction between the Board member and the refugee claimant. I chose the IRB's Eastern region office, Montreal, for its convenience to my place of residence. Considering that the refugee determination is administered by a federal administrative tribunal, the Montreal office is a good representative among three regions: Central (Toronto), Western (Vancouver) and Eastern (Montreal). As I will explain below, the length of time it took to gain the confidence of the refugee lawyers, as the gatekeepers who facilitated my entry to the hearing room, it would not have been reasonable to undertake the research in another region. Further, as one Canadian anthropologist explains in her PhD dissertation, Board members in Toronto did not allow researchers access to the hearing room, during my fieldwork period (Beaudoin, 2014), even though this was not the case in 2009 (Hamlin, 2014).

Aside from hearing observations, I had to converse with the actors who were implicated in the process, such as former Board members, refugee lawyers, refugee claimants, and members of refugee advocacy groups. Finally, I had to locate and analyze the documents related to refugee decision-making and the IRB such as respective reasons for the observed hearings, and the documentary material used for the training of new Board members.

In what follows below I will describe the development of the research, the pre-field work; challenges encountered during the research process, and research methods; next introduce data collection steps. In order to maintain the anonymity of the researched actors, as in the rest of the dissertation, all names and hearing dates have been changed.

3.4.1 Development of the field research and the issue of Board member diversification

The refugee hearing is quite particular, especially in terms of the lack of researcher's control in terms of diversification of the Board members as well as access. I will present the issues of access in detail below, so I will tackle the difficulty of Board member diversification. According to IRB's internal documents, after a refugee claim is found eligible, a Coordinating Member, assigns the case to a Board member who specializes on the region and the type of the claim (LPDD, 2009). Refugee lawyers clearly can make an educated guess on the presiding Board member before entering the hearing room, as I presented in the introduction of this research. However, lawyers will only know who the presiding Board member is when they walk in to the hearing room, the day of the refugee hearing. This meant, despite the fact that I was studying the Board members' discretionary practices and reasoning in the hearing room, my access to them was beyond my control. Hence, I had to follow a pragmatic and dynamic approach to observe as many Board members as possible.

While writing my dissertation proposal in early 2012, I was quite worried about my options of access to the hearing room. Refugee hearings are private proceedings and Board members have discretion over who will be admitted to and excluded from the hearing room. Anonymity and confidentiality of the refugee hearing are among the main concerns of the IRB, and under most conditions the consent of the refugee claimant for the presence of outside actors in the hearing room is sufficient. Under certain conditions, however, I learned that some Board members excluded outside actors – professional support workers and/or claimants' family - from

the hearing room against the will of the claimants[17] (CCR, Jan 2012). If I were to face Board members who were against my presence, my research would have been in jeopardy. At first, I did not know who to contact and how to explain what I was doing. In order to ensure access to the field, at first, I planned to introduce myself to the refugee advocacy organizations and ask them to facilitate my meeting with the refugee claimants. Yet, I was not sure if this strategy was going to work. I was enthusiastic but helpless since I was out of place as a political science student trying to gain access to a legal environment.

3.4.2 Pre-field work period and sampling (March-October 2012)

With these worries in mind, in late February 2012, I went to visit the IRB office at Guy Favreau Complex. Contrary to the hearing rooms and private offices, the IRB reception area is open to the public. Mine was an impromptu visit and I had no expectations other than simply seeing the physical space. That day, I met refugee lawyer Georges Teuré who invited me to meet two of his clients and maybe observe their hearings with him the following week. During the same day, Georges introduced me to another official from the IRB Immigration Appeal Division who gave me the contact information of a well-known refuge advocate and lawyer, Andrew Piazza. Through an internet search, I found out about a refugee advocacy organization, the Canadian Association of Refugee Lawyers (CARL) and Andrew's involvement with the group. CARL's annual conference was during the second week of March 2012. I participated at the meeting, talked about my research project, which was very much at its infancy at the time, and exchanged business cards with five lawyers. I contacted these lawyers by e-mail and phone but I

[17] According to Canadian Council for Refugees (2012) research report, based on interviews with refugee claimants on their refugee hearing experience, after the exclusion of support workers and family members, some Board members explained that they never allowed outside observers.

never heard back from them. Andrew was willing to help and I observed two other hearings with him the first week of April and left my pre-field research with confidence on access issues.

The pre-field research process taught me that it was more sensible to approach lawyers compared to advocacy organizations, since I had not received any response to my e-mails and calls from community organizations such as *Action Réfugiés Montréal* (ARM), *Table de concertation des organismes au service des personnes réfugiées et immigrantes* (TCRI) and the *Canadian Council for Refugees* (CCR) at the time.

As my field research proceeded into late 2013 and I got to know more about the work of these organizations, I learned that they were offering their services to the most disadvantaged of the refugee claimants, such as those who failed to secure legal aid, were detained, or had already been rejected. A recent analysis of Australian service providers and community organizations is very pertinent here because Gifford (2013) reminds us that these organizations can be "fierce gatekeepers when it comes to refugee research. As gatekeepers, they may see themselves as refugee protectors – from outsiders and from institutional practices and forms of power that would do them harm." Since refugee claimants are often seen as vulnerable, these organizations take protecting the claimants as their duty. As my field progressed, the members of refugee advocacy organizations that I came to know indicated that they did not want to traumatize the claimants further as a result of my presence in the hearing room, and did not believe that their work matched my research interests. I might have unwittingly triggered this perception of mismatch by communicating to them that the focus of my research was principally on the Board members. I came to know the significance of understanding the larger context of their assistance, such as the legal work put into preparing the refugee claim and the issues unrepresented and/or detained claimants face. Reformulating research objectives to overlap with the mission and

concerns of advocacy organizations may be a helpful idea to increase their willingness to help researchers. At that time, the best strategy was to meet refugee lawyers, which proved to be the most successful one in terms of access to the field.

Aside from these more informal, purposive sampling strategies, I still tried to get an official permit from the IRB management. I met the late Chairperson of the IRB Brian Goodman, the Assistant Deputy Chairperson Lois Figg, and Greg Kipling, an officer at the Policy, Planning and Research Branch on 17 May 2012 at York University, Toronto, at the annual conference of the Canadian Association for Refugee and Forced Migration Studies (CARFMS). Mr. Goodman encouraged me to make an official demand to the IRB Communications Department to observe a number of hearings. My demand was refused on the basis that it was beyond the operational capabilities of the Montreal branch in terms of managing consent by the presiding Board member, counsel and the claimant. The e-mail exchange can be found in Appendix A. During our conversation, I had also asked Mr. Goodman if having a short internship at the IRB office was likely. My aim was to see the Board members in their everyday collegial context and observe what their work consisted of outside of the hearing room. However, I was told that this was not possible. Later, when I became more familiar with the IRB's proceedings and concerns, I understood why an internship at the IRB was unimaginable. A PowerPoint presentation by the Corporate Security Services called "Security Awareness Program" highlights that all IRB employees must:

- Think safety, think security
- Become familiar with your security and safety policies and procedures
- Escort visitors at all times. Never leave a visitor unattended.
- Challenge anyone in the area that you do not know (CSS, 2008, p. 5809).

During the summer of 2012, I participated the general assembly and a few local activities of *Action LGBTQ avec les immigrantEs et réfugiéEs.* I also got more involved with CARL and I

was among the local coordinators for its third national conference on September 14, 2012. At the conference, I met 15 refugee lawyers and 7 of them during the following weeks agreed to introduce me to their clients and 5 of them, Claude Dubois, Peter Ken, Daphne Auger, Samantha Auteuil and Roger Bluer did. One refugee lawyer who practices law at *le Bureau d'aide juridique Montréal* strongly refused my presence. She highlighted that she counseled the most vulnerable of the claimants. Since I could potentially alter the hearing setting and this could be detrimental for the claimant, she did not want to take the risk of having me in the room. This was a valid argument and I wanted to meet her to hear about her experiences with the claimants in front of the IRB but she never responded to my requests for an interview.

During the pre-field process, I also benefited from the opportunity of academic conferences in order to present my dissertation project and to receive comments and suggestions on my methodological framework in Montreal, Ottawa and Boston.

I was aware of the methodological challenges of studying encounters and the need to see the refugee hearing "both as an information exchange and a negotiation and conflict management process through which the applicant's normative framework and expectations are brought in line with the organization's" (Hasenfeld, Rafferty, & Zald, 1987, p. 402). In that sense, I had to know what to observe, where to look and what to listen to. Hence, I prepared an observation grid which I updated during the fieldwork process. This strategy disciplined and focused my observations of the hearing on the research question.

Table 6. Observation Grid

Listening	**Observing**
Does the Board member clearly identify the issues related with the case and inform the	How does the Board member enter the hearing room? (on time or late)

lawyer and the claimant?	
Does the Board member explain who s/he is and what his/her role is to the claimant?	Does s/he look at the claimant and other actors in the hearing room? Does s/he acknowledge their presence?
What kinds of questions does the Board member ask? (open or closed ended, neutral, investigative, interrogatory)	Who are the actors? How are the actors dressed?
Does s/he allow the claimant to speak and explain contradictions/ambiguities between their written and oral testimony?	How do actors look? (observable emotional state)
Does s/he insist on contradictions and use cross-questioning?	Is the Board member prepared for the case? Or does s/he keep asking the details of the case to the lawyer?
Does s/he predominantly ask close-ended questions?	Through his/her reactions, does the Board member show the claimant that s/he does not believe the claimant's testimony?
Does s/he demand a chronological account of the events?	What does the Board member do when the claimant and the lawyer speak? (i.e. listen, shuffle papers, take notes)
Does s/he comment on the actions of the alleged agents of persecution?	Does s/he listen the claimant's testimony attentively?
Does s/he attribute rationality to the actions of agents of persecution?	Does s/he encourage the claimant to continue his/her testimony through positive body language?
Does s/he insist that the claimant answers the questions with YES or NO?	Does the Board member control his/her emotions when the claimant fails to follow his/her instructions?
How does s/he treat the claimant? (i.e. respectful or patronising manner)	What is the displayed emotional variance during the hearing?
How does s/he react to the emotions that arise during the hearing?	How does s/he react to the emotions that arise during the hearing?
How does s/he treat the other actors in the	How does s/he treat the other actors in the

hearing room? (the interpreter and the lawyer)	hearing room? (the interpreter and the lawyer)
Does s/he ask the claimant if s/he needs a break?	Does s/he rush the claimant to continue with the hearing?
Does s/he raise his/her voice when confronted by the lawyer or the claimant?	

Below, I offer a detailed description of how the hearing observations unfolded.

3.4.3 Getting started with fieldwork and maintaining efforts of sampling

Observation of refugee hearings formally started on November 20, 2012 after receiving the Research Ethics Certificate. I observed the last hearing on November 13, 2013. My field research took place during significant institutional changes in refugee and immigration policies as a result of *Protecting Canada's Immigration System Act* that came into force on December 15, 2012. This change created two parallel RPDs, one legacy initiative, that employed politically appointed Board members that this dissertation studies and a new RPD, that employed Board members who were public servants. This allowed me to observe hearings in both RPDs, which I will elaborate further in the direct observation section. I collected data during this turbulent period where most actors in the field (the Board members, the lawyers and the interpreters) were trying to adapt to the new time limits and procedures.

After I started my field work, I maintained my efforts to diversify my sampling of the refugee lawyers, since most of the lawyers I was accompanying to the hearing room were white, middle aged men. Despite the fact the refuge lawyers were representing various refugee claimants from different countries, in order to expand and diversify the actors I were to observe,

I needed to meet more lawyers, preferably younger women. Increasing the sample of lawyers was important since in qualitative research, sampling is often associated with choosing the 'right' cases, sites or actors from a reservoir and this can be done before and during the field research process (Flick, 2007).

In early 2013, I met Joanie Gauthier at the Federal Court when she was pleading a judicial review case. She was an activist lawyer, very engaged with the Bar Association. She agreed to inform me about her hearing dates and to introduce me to her clients. A colleague of mine introduced me to Vanessa Amber, and another acquaintance to Marc Burton. In mid-February, Georges, the first lawyer I met, introduced me to an IRB representative, Hugo Paulin, who is one of the parties at the detention reviews. Hugo was greatly appreciated by refugee lawyers despite their controversial relationships in the hearing room. He invited me to the lawyers' room at the IRB and introduced me to Mélanie Savoie and Jean Rachid. Finally, I met Alexia Boutin through a Kurdish-Alewite family from Turkey seeking refugee status that I came across during my first visit to the IRB. Alexia is the only lawyer who did not know my research before my presence in the hearing room. In less than a year, I had managed to convince 12 lawyers to introduce me to their clients. As will be clear from Appendix B, where I illustrate the hearing dates, outcomes, Board member and lawyer names and claimant characteristics, I accompanied some lawyers only once, while others more often. All information that can result in identification of these actors has been changed.

3.4.4 An ordinary day in the field

A typical day in the field looked like the following: I arrived at the IRB reception almost always 30 minutes before the hearing. I observed the claimants at the reception while chatting with

the security officer, lawyers and interpreters I knew. When the lawyer that I was going to accompany that day arrived, s/he introduced me to the claimant, and I explained my research briefly and sought the claimant's consent to be in the hearing room. In almost all cases, the refugee lawyer had already mentioned my research to the claimants, but my description of the research was necessary to underline that I was an independent researcher who was not working for the lawyer and to receive the oral consent of the claimant.

Afterwards, I followed the lawyer and the claimant to the hearing room, and met the interpreter (if there was one) before the Board member arrived. I sat on one of the chairs placed at the back of room for the observers. Before the hearing started, I explained who I was to the Board member if it was the first time they saw me. After several times of seeing me, some Board members did not ask who I was, but each time they checked with the claimant if they were comfortable with my presence. They also reminded me that I should not speak or interfere with the hearing and not share any details of the case outside. This was followed by the proceeding of the case, document checks between the lawyer and the Board member and the questions asked by the Board member to the claimant. Officially, I was only allowed to take notes during two hearings by two different Board members, but during the breaks I jotted down notes, and took voice notes on my digital tablet or smartphone that would help me to write my field notes. After a 90 minute questioning there was often a 15 minute break, if not already demanded by the claimant's lawyer. I took the break with the claimants and the lawyers. The informal quality of the relationship I had with the lawyers proved to be important for them feeling comfortable enough to speak to their clients in front of me on issues that would be considered inappropriate for the hearing room (even though this was not the case for each lawyer).

When the Board member completed his/her questioning period, the lawyer did his/her submissions and the hearing was closed. I had a brief chat with the claimant and the lawyer and left the IRB. If the Board member was ready to give an oral decision from the bench, I waited with the lawyer and the claimant for the Board member to call us back to the hearing room. In some cases, I celebrated the positive decision with the claimants and their family by going to a cafe or a restaurant.

I typed my field notes every night using the jotted and sound notes about the hearing. My conversations with the lawyers and the claimants helped to reconstruct the hearing dialogue.[18] These notes were very detailed thick descriptions of dialogues as well as verbal and non-verbal behavior. They served as raw data. I will give two examples from my field notes in the "Ethnographic data collection" section.

3.4.5 Strengthening the bonds with refugee lawyers and advocacy organizations

I was quite successful in convincing the lawyers that field research was my priority. I always kept my schedule open and was available to meet them and observe the hearings. The fact that I was doing field research at 'home', in Montreal, definitely contributed to this readiness. I was always early and never made the lawyers wait for me. I made sure to do my homework about their work and kept asking questions without being too intrusive (Hertz & Imber, 1995). At first some older male lawyers did not hesitate to insist that law and political science were different, indicating my inability to fully comprehend the process. However, after I

[18] The respective reasons of the refugee decisions that I observed also helped the reconstruction. I will explain in "document analysis" section, how I got hold of these decisions.

mentioned that I had an MA degree in international human rights law, this attitude transformed and I was taken more seriously.

I also maintained and tightened my ties with the refugee advocacy organizations during my fieldwork, namely the CARL. For the second time, I was one of the local coordinators for their annual conference in October 2013. Further, I became involved with the CCR, an umbrella organization that represents 170 non-profit organizations across Canada. I became a member of their inland protection working group and participated at the CCR summer working group in Montreal on 6-7 September, 2013. I also helped organizing a workshop on citizenship issues and participated at the CCR's fall consultation in Kitchener on 28-30 November, 2013. At that meeting, I met the Deputy Chairperson of the new RPD, Ross Pattee, who I was trying to contact since mid-September, 2013 through the communications department. I managed to have a brief chat with him about my research and demanded an interview by e-mail. I never heard back from him. Official interview demands with the IRB managers that I made to the communications department also remained unanswered. I tackle these issues in an upcoming opinion piece (Tomkinson, 2015c).

My presence at their public events helped me create bonds with two refugee organizations*: Maison Haidar* and ARM. I gave weekly voluntary yoga classes to refugee claimants at *Maison Haidar* from October, 2013 to January, 2014. Finally, I got involved with the CCR's national research project "The Experience of Refugee Claimants at Refugee Hearings in the New System" managed by ARM in Montreal, that aimed to collect positive and negative experiences of the refugee claimants at the hearing (CCR, April 2014). I interviewed one recognized and two rejected refugee claimants for this project who gave their consent to use these interviews in my research.

3.4.6 Challenges encountered as a result of adopting an ethnographic methodology

The research process made me raise important questions about research and me as a researcher. First of all, especially at the beginning of my fieldwork, I was not always taken very seriously by some Board members and lawyers. The fact that I was an outsider resulted in my perception as someone who does not fully understand the process. After they were sure of my capacity to comprehend the legalistic aspects of credibility assessment, some lawyers insisted that it was good that my PhD was in political science instead of law, which was less likely to intimidate Board members.

Secondly, it was hard to keep listening and following the hearing process when there was an interpreter and when the hearing lasted over three hours. Especially in hearings where the claimants spoke Turkish, my native tongue, I was resentful when I thought that the interpreter was not translating the claimant's testimony entirely. I was required to be invisible in the hearing room by the Board members, but keeping a neutral face was extremely difficult. Similarly, it was positive that lawyers trusted me enough to take the breaks with me and counseled their clients in front of me. However, when I was left alone with the claimants during breaks, I did not always know what to say when they asked my opinion about the questioning and testimony, or how to react when they cried.

Thirdly, it was emotionally draining to listen to traumatic experiences of the claimants as well as the ones that somehow did not sound believable to me. Several times, I caught myself trying to assess the veracity of the claimant's testimony, playing the role of the Board member. I had to remind myself several times, that my role was to observe, listen, and understand - not to assess credibility.

Fourthly, I was doing a politically sensitive research, seeing and hearing things which were not always positive about the IRB, the Board members, the lawyers, the interpreters and the claimants. How much responsibility as a researcher did I bear to reveal without doing harm? The lawyers had trusted me enough to talk about their work and the IRB. The claimants sometimes denied vulnerability that is often associated with refugee and forced migration research (Block, Riggs, & Haslam, 2013; Gifford, 2013) and explained to me candidly how they filled in claims that did not match their own story. How would they react when they read what I wrote? How would I represent the field as I came to know it intimately without jeopardising the relationships I formed with my participants? These are not just abstract theoretical worries, but very practical ones (Brettell, 1993). In the end, I decided to be as transparent as I can be in my writing, and consider these worries as a part of the politics of ethnography.[19]

Fifthly, the claimants, most of the time were already informed by their lawyer about my presence during the hearing, but in five occasions the claimants changed their minds about my presence, since they already felt uncomfortable testifying in front of strangers and they did not want to have me present because it would increase their level of discomfort. In addition, I could not observe about ten hearings because they were postponed or re-scheduled at the last minute as a result of diverse reasons emanating from the IRB, the claimant or the lawyer.

Finally, my adaptation of ethnography as a methodology seemed too uncommon and informal to lawyers who were used to a well-structured research process. Simply hanging around at the IRB reception, chatting with everyone who wanted to talk to me and waiting things to appear by being in the field for a very long time was ridiculed by comments like; "Are you still here?

[19] I got invited by CARL to present on the quality of counsel in their national conference which took place on April 2nd, 2015 in Toronto. We had very fruitful discussions about the lawyers' professional responsibility in preparation of the claim and the claimant.

What do you think you will find in the end?" In the next section, I will present the data collected through a triangulation of methods.

3.5 Ethnographic data collection

My aim during 18 months of field research was to collect the richest possible data which would allow me to explore the discretionary behaviors and reasoning of Board members, but also to delve deeply into the organizational life at the IRB. The length of the fieldwork, as well as the proximity to the studied actors, is an important strength the ethnographic methodology offers when studying organizational settings. The longitudinal fieldwork meant

> a wide and diverse range of information collected over a relatively prolonged period of time in a persistent and systematic manner. Ideally, such data enable you to grasp the meanings associated with the actions of those you are studying and to understand the contexts in which those actions are embedded" (Lofland et al., 2006, p. 15).

A combination of direct observation, semi-structured interviews, and document analysis enabled me to concretely locate the discretionary practices and reasoning of the Board members, tie those to their perceptions about refugee claimants and their work and appreciate the organizational context where those were rooted.

3.5.1 Direct observation: situating the discretionary practices concretely

The data from direct observation came from the following sources: 1) observation of refugee hearings and participation at refugee advocacy meeting; 2) informal conversations with refugee lawyers, claimants and interpreters; 3) my field notes.

Above, I indicated that during my fieldwork a significant policy change occurred. This policy change introduced by the Conservative government, aimed dissuasion of fraudulent refugee claimants, and significantly accelerated the refugee determination process. Prior to the change, claimants had to wait around 19 months before their refugee hearing. After the change, their hearings took place only after 30 to 60 days. Following the change, the number of claims filed in 2013 dropped to 9,700 (IRB, 2014i) from the 20,461 claims made in 2012 (CIC, 2013).

As these two systems (legacy initiative and the new one) coexisted during my fieldwork, I observed hearings under both. Among 50 refugee hearings that I observed, accompanying 13 lawyers, 33 of them were presided over by 19 politically appointed, limited-term Board members. 10 new RPD members, who were appointed as permanent public servants, presided at the remaining 17 hearings. This sample is not meant to be representative of all lawyers, Board members or refugee claims. Rather, the purpose of this sample was to capture as much variation as possible. Even though my research was not a comparison of both systems, knowledge of the two enabled significant insights to emerge, especially in embedding the practices of the Board members that I studied, organizationally. I will say a bit more about this in the "Analysis and interpretation of data" section.

During direct observation of hearings and refugee advocacy organization meetings, I clearly identified myself as a researcher. The Board members and the claimants were disposed to think that I was an articling student and working with the lawyer that I accompanied. I took all possible efforts to ensure that the Board member, the claimant and the participants in the refugee advocacy meetings knew that I was a researcher. Before the hearing started, I presented my Research Ethics Certificate to the Board members. I made it clear to the claimants that my

presence in the room would not alter the decision and, I was only there to observe the hearing for academic purposes.

I admit that I entered the field with certain naivety about the Board members and the refugee claimants. During the first few months, I thought that this was an area where staying impartial or not taking sides was impossible. I often imagined myself in solidarity with the claimants and the lawyers against the Board members, but this strict position disappeared when I started noticing that neither the refugee claimants nor the Board members were a homogenous group. I was rarely observing extremely difficult and traumatic cases often contrary to the perspectives offered by refugee advocacy groups. On the other hand, all the claimants I observed were represented and none of them had experienced detention in Canada, so they were not members of the most vulnerable population among refugee claimants.

My negative attitude toward the Board members at the beginning of my fieldwork was not because of a bias that I developed as a result of my close relationship with the lawyers and the claimants. This was rather the result of a few negative experiences I had in the hearing room and the reactions that I received. I observed how some Board members were harassing the claimants. I was either ignored or questioned on what "exactly" I was doing. My presence was never completely welcome by the Board member. This hardness softened in time and slowly disappeared especially after I came to know the Board members, the lawyers and the claimants and their diversity.

Informal conversations present an important corpus of the data to which I would not otherwise have had access if I had not observed refugee hearings. These conversations were immensely useful in terms of identifying what information the claimants tend to conceal and what they reveal, the way the lawyers approach to their job, the perception of the claimants about

their hearing, and the process of refugee determination. The claimants and the lawyers tended to reveal more about their cases and themselves during informal conversations. I avoided jotting down notes in front of the claimants and the lawyers during our conversations, because "making open jottings not only reminds those studied that the fieldworker, despite constant proximity and frequent expressions of empathy, has radically different (perhaps unknown) commitments and priorities", but also taking such notes may distract the fieldworker from paying attention to the immediate scene (Peterson, Fretz, & Shaw, 2007, p. 356). Vanessa Amber, a young lawyer once commented on this avoidance and said that she never saw me writing down or taking notes, still, I preferred fully immersing myself in the conversation and taking notes later in the evenings (Emerson, Fretz, & Shaw, 2011).

Ethnographers underline the significance of writing detailed and elaborate field notes, and including their emotions and impressions in those as well (C. Ellis & Bochner, 1996; Fine & Shulman, 2009). I paid attention to inserting emotional accounts into my field notes to remember and reconstruct the occurrences more candidly. First, these accounts are significant since the researcher's feelings and emotional responses in the setting may mirror the ones going on in the setting. Secondly, even if not shared by other actors in the field, these emotions may be analytically important. Finally, recording and turning back to emotions and responses will reveal the biases or prejudices of the researcher (Goffman, 1989). Some other researchers underline the importance of categorization of field notes as theoretical notes (TN), observational notes (ON) and methodological notes (MN). I wrote my field notes according to this classification and taking TNs has been especially useful after I understood the theoretical importance of *hearing style*. TNs

> represent self-conscious, controlled attempts to derive meaning from any one of several observational notes. The observer as recorder thinks about what he has experienced, and makes whatever private declaration of meaning he feels will bear conceptual fruit. He

> interprets, infers, hypothesizes, conjectures; he develops new concepts, links these to older ones, or relates any observation to any other in this presently private effort to create social science (Schatzman & Strauss, 1973, pp. 100-101).

Below, I included an excerpt from my field notes:

> (27 Nov 2012) At 08:45 on a sunny morning at the Board, Andrew and I are having our morning coffee with the pumpkin muffins that I brought. He tells me that he really wishes that the assigned Board member will not be Albert Taylor. Apparently, Mr. Taylor has a negative reputation; he is known to reject on a consistent basis and avoid preparatory work by having a refugee protection officer with him. (Who is refugee protection officer? I better figure that out myself).
>
> In a few minutes, we go and find his client. Andrew introduces me to her and we enter the hearing room. She says that she is surprised about the size of the room; she was expecting a much bigger space. She is from Kirgizstan with Korean origins. She is extremely elegant in her black dress, with lots of gold jewellery. Despite the fact that she is in her 70s, she looks beautiful and has an exalted presence in the room. Her daughter who is working for a United Nations Agency is there to support her mother. Andrew repeats his usual calming speech just before the hearing. I came to know that he is especially sensible with senior claimants.
>
> Mr. Taylor (A male Board member, white, in his forties, who has been known for his work in conservative think tanks, and with his affinity to the conservative party, has been at the Board for 5 years) is clearly agitated when he enters the hearing room; he is in an aggressive state and sighs continuously; it gives the impression that he rather be somewhere else. He reminds me of Walter Dylan, the first Board member I observed, very distant and impersonal. He looks very smart in his well-cut gray suit and also wearing the Canadian poppy for the Remembrance Day. Without saying good morning, he sits down and starts looking at his notes. It looks like he does not feel the necessity to make an explanation in relation to why he is taking so much time. After about 10 minutes, he looks around, and asks me who I am. After my explanation, he just asks my name and does not even demand me to spell it (which is very unlikely for a Board member to do, since my name is quite an uncommon one). Andrew looks at me briefly and through his gesture I understand Mr. Taylor is the Board member Andrew was talking about in the morning.
>
> The hearing continues like a joke. Mr. Taylor has not even read the claimant's case. He is not sure if the claimant who is a citizen of North Korea can have South Korean citizenship. I can tell that he is not ready to question the claimant, he does not know what he wants to clarify. He asks Andrew if the claimant has family in South Korea. When responded negatively, he wants to take a break only after 20 minutes and adjourns the case upon his return…[ON]

Therefore, direct observation data that comprised observation of hearing and refugee advocacy organizations' activities, informal conversations with the lawyers and the claimants, and field notes, provided a close account of concrete practices for analysis and interpretation.

3.5.2 Semi-structured interviews: getting closer to Board members' meanings and self-understandings

Semi-structured or in-depth interviews are one of the most significant components of ethnography. As a methodology, it is about exploring and understanding the meanings research participants attach to their actions as they go through their mundane activities, and capturing the complexities of their everyday life (Van Maanen, 2011c). Not all research participants however are equally accessible. Research with elites is much harder (Hertz & Imber, 1995). Elites, such as the people who are in position of power, status or wealth, are generally more reluctant to share their experiences (Adler & Adler, 2003). I experienced this difficulty firsthand during my efforts to convince the Board members for an interview, while talking to other actors was not particularly difficult.

I conducted 30 semi-structured interviews in total with 10 former Board members (of 3 which were observed in the hearing room), 10 refugee claimants (of which 8 were observed), 2 interpreters, 2 members of refugee advocacy groups and 6 lawyers (of which 5 were observed). In order to encourage conversational flow, I tape recorded the majority of the interviews and kept extensive note taking after the interview. The interviews lasted from forty-five minutes to two hours.

At the beginning of my field work (until February 2013), after each hearing that I observed, I went to the presiding Board Member to explain my research in a bit more detail and revealed my intention to interview Board members. The most common reaction I encountered was a surprised grin followed by a brief wish "Good luck with that". Yet, they wanted to see the final product and demanded that I should send my dissertation to the IRB office once I complete

it. Only two Board members, Hugo Savard and Madeleine Abeillard agreed to meet me after their term ended without slightest hesitancy.

Neither the lawyers nor I could make sense of the hesitancy of the Board members about being interviewed. Then a Code of Conduct for Board members which entered into force on June 1, 2008 has come to my knowledge. This code regulates the Board members' behaviors, lists their responsibilities towards the tribunal, involved parties and the public and makes the following demands in terms of communications with the public:

> 15. Members shall not disclose or make known any information of a confidential nature that was obtained in their capacity as a member. This means disclosure outside of the IRB to other government departments or agencies or to the general public, as well as disclosure within the IRB to members or staff where such disclosure is not operationally required.
> 16. Members shall not communicate with the news media or publicly express any opinion regarding: (i) any matter relating to the work of the IRB; or (ii) any other matter that may create a reasonable apprehension of bias. Inquiries from the media or members of the public shall be referred to the IRB office responsible for communications with external stakeholders.
> 17. Subject to the exception noted in section 18, members shall not communicate with other government departments or agencies, or elected officials or their staff, regarding: (i) any matter relating to the work of the IRB; or (ii) any other matter that may create a reasonable apprehension of bias. Inquiries shall be referred to the IRB office responsible for communications with external stakeholders
> 18. Members may communicate with other government departments or agencies regarding a matter relating to the work of the IRB when the communication is carried out in accordance with the member's official duties.
> 19. The responsibilities set out in sections 15-17 do not limit any rights or obligations that members may have or are subject to under any applicable legislation, guideline, code, policy or other instrument (IRB, [2008] 2012).

That is why Board members were not allowed to talk to me as a researcher. A well-established perspective on the position of ethnographer in relation to research participants permeates qualitative social science research: ethnography often takes place in sites where the researcher is more powerful compared to research participants. The researcher is seen as the one who is in control while the participants as the ones who are prone to abuse (Yanow, 2007; Yanow & Schwartz-Shea, 2008). In my situation, this was clearly not the case.

When I understood the impossibility of interviewing Board members during their term, I decided to interview former Members who served at the RPD at different time frames. For locating and convincing them for interview, I employed three strategies. First, as I mentioned above, I asked the Board members if they wanted to talk to me and only two agreed: Hugo Savard (1998-2009 & 2012-) and Madeleine Abeillard (2007-2013). Second, I asked the refugee lawyers about former Board members who would be willing to talk to me. That is how I identified Guillaume Kennard (1993-2004), Maria Turcotte (1993-1998), Daisy Walker (2003-2006) and Maxime Durand (1996-2006). Finally, as an informal relationship between Hugo and I grew in 2014 and we began to see each other regularly, I asked his help to interview a few more former Members. He called twelve former members, among which four agreed to meet me: Eudes Leclerc (1989-1994), Jean-Claude Cadieu (1998-2008), Jean-Pierre Montpellier (1998-2006), and Guy Auger (1989-2001 & 2010-). It is important to highlight that the majority of Hugo's contacts were suspicious of my motives and very reluctant to talk to me even years after they had left the IRB. I took all possible efforts to ensure that I had a good mix of interviewees in terms of age, gender, race and ethnicity. Other than not having equal numbers of males and females, I reached a good diversity.

The aim of these interviews was to delve into former Members' experiences and perceptions about their work and refugee decision-making as articulated by them. The interviews revolved around four main themes: (1) Board members' personal and professional background, (2) the way they saw their job, feelings and impressions of the claimants, lawyers, and the IRB as an organization, (3) the training they received, good and bad aspects of their job, and ended with (4) the most heartbreaking and the wildest story they heard. While some were hesitant to give me

details about everyday aspects of their former job, others were more eager to share insights and criticism about the functioning of refugee determination.

These conversations allowed me to have access to former Members' work conditions as well as the pressures they faced while conducting their work. Through the use of guiding questions and by interfering only when I wanted to explore a theme further, I encouraged my interviewees to articulate their views through examples and stories. They explained how they identified refugees among the claimants they heard, explaining the strategies they used and the conceptions that guided those actions. Their examples provided access to the accounts of how they approached their work, what the Members believed that they did in the hearing room and why they believed their way of hearing claimants was better compared to their colleagues.

3.5.3 Document Analysis: locating and evaluating relevant documentation

Dvora Yanow (2007), one of the most notable policy and organizational ethnographers of our age, highlights that "ethnography involves not only observing (with whatever degree of participating) and talking, but also locating and reading research-relevant documents". The last data collection strategy I adapted in order to have a complete view of refugee decision-making was document analysis. This strategy not only complemented data collected through direct observation and semi-structured interviews but provided a fuller organizational picture.

The collected documents for analysis, the official request numbers of which are in parentheses, are the following; respective reasons and written decisions for the observed cases (# A-2014-00241/SB) (except 5)[20], respective reasons of one negative and one positive decision taken by 29 observed Board members (# A-2014-00242/SB), training documents used by the

[20] These cases were adjourned until 2014. I did not receive any update from the lawyers regarding the cases.

IRB (# A-2013-00561/DE), as well as a performance measurement report sample and an employment contract sample (# A-2013-00561/DE). While I received some written decisions for the observed cases through the lawyers, I received most documents through the IRB Access to Information and Privacy Office.

Written decisions of the hearings that I observed, not only facilitated the reconstruction of the dialogue by paying attention to the analysis of the case by the Board member, but the simultaneous study and comparison of the non-observed cases with the observed ones permitted me to investigate the Board member's larger reasoning and justification in relation to recognition or refusal of a claimant as a refugee. Further, this practice allowed me to cross-check the validity of my hearing observations.

In order to investigate the content of the training new Members receive, I made an access to information request to the IRB and demanded all training material used after 2006.[21] The request took over 9 months to process and I received a package of 6257 pages which included documents dated as early as 1993. The majority of those were dated between 2002 and 2011. About 1500 pages were withheld based on the section 23 of the Access to Information Act, solicitor/client privilege. Finally, the analysis of the performance measurement report sample and employment contract sample permitted the understanding of the organizational expectations from Board members as well as their rights and obligations during their term. ATIP request details can be found in Appendix C.

[21] I needed to decide a start date that would allow the preparation of the document package within 90 working days.

3.6 Analysis and interpretation of data: contextualizing discretion

As detailed above, an intensive fieldwork undergird the descriptions, observations, arguments and interpretations reported in this dissertation. The extensive time in the field and the close relationships formed with the researched actors allowed me to establish a multidimensional view of the research object while tracing the organizational factors that shaped Board member's discretion.

The purpose of data analysis process in organizational research is "to achieve analyses that (1) are attuned to aspects of human group life, (2) depicts aspects of that life, and (3) provides perspectives on that life that are simply not available to or prompted by other methods of research" (Lofland et al., 2006, pp. 4-5). My analysis focused on capturing the discretionary reasoning and practices of the Board members in the hearing room and delving deeply into the factors that informed discretion. The analysis was not a linear, but a very dynamic process, where I went back and forth between analysing the data and constructing explanations.[22]

In early summer 2013, before the fieldwork had been completed, I started using a qualitative data analysis software called Nvivo, to gather and to code the data I collected. First, I started coding field notes and hearing decisions simultaneously. At first, coding was very standard and descriptive, such as creating codes related to claim types (i.e. political opinion or religion), and the issues Board members raised during the hearing (i.e. Internal Flight Alternative, State Protection). Then, I moved to a more analytical exercise, such as coding the

[22] There is a distinction between positivist and interpretivist ethnographies (Wedeen, 2009) or realist-objectivist and constuctivist—interpretivist approaches to ethnography (Yanow, Ybema, & van Hulst, 2012). The first group aims to explain how things work in reality, departing from a realist ontology that presumes that there is an objective reality out there. The role of the researcher in this understanding becomes collecting data and objectively making sense of what is going on. The second group perceives the reality to be intersubjectively constructed, and the role of the researcher as a co-constructer and interpreter of social reality. It must have been evident that I belong to the latter group.

type of questions Board members asked in the hearing room and the expectations they raised in the written decision. At this stage, I started creating subcodes attached to the codes (i.e. open-ended questions -details, coherence, spontaneity, believability-) to locate "specific, observable types of realistic actions" (Saldana, 2013, p. 12). As the document packages were very long PDF files and hard to read on a computer screen, I printed them all and manually coded them, while simultaneously writing analytical memos. Afterwards, I typed the relevant sections of the documents and recoded them in Nvivo, this time reflecting and writing on the code choices. With the transcription of the interviews with the former Board members, I coded their perceptions about refugee claimants, lawyers, interpreters, themselves and colleagues and their explanations of how they assessed refugee status (i.e. accuracy, consistency, contradiction).

The analysis of the training package that included documents as diverse as pre-course readings on legal refugee issues to handouts for role play and exercise sessions, allowed me to obtain a close understanding of what the IRB teaches to its Members. This analysis was particularly helpful in developing an understanding of the policies Board members adapted and strategies they used in its institutional form. It was not until the end of May 2014 when I reread all data, and reconsidered codes and memos that I noticed I was observing two contradictory types of *hearing styles* and credibility assessment practices. It is through these steps that I attempt to present an empirically grounded analysis of what Board members grapple with in their day to day work.

3.7 Questions of reflexivity, positionality and ethics

During my field research, especially during the first half, there was a voice in my head asking a constant question; "Do you think what you are doing for the sake of data collection is

enough? Is there any way you can do more?" I was persistently going through my field notes, observation grid, and my incomplete data. What I was reading on ethnographies was not matching with my real life experience. I could see the lawyers, refugee claimants and interpreters who mostly had time for a short chat and to listen to the challenges I was facing. I managed to interview former Board members, but I was distanced from the physical space they occupied, such as their offices or meetings rooms where they socialized.

Hirsh (1995) presents his own challenge: "I once enthusiastically told Erving Goffman I was studying business elites. "Have you slept with them?" he replied. No, "but I am getting in to talk with them", I proudly answered" (Hirsh, 1995, p. 72). After some time, and going through my research design several times, I recognized that the voice in my head was there to stay, and was a natural reflection of the research process. I kept questioning myself if my knowledge was intimate enough to answer my research question yet I was hesitant not to give a definitive response. The social scientist, however, should be ready to face the Goffman challenge any time during and after the research process and frankly tackle these questions.

Negotiating my position in the research site in relation to refugee claimants has not been easy (especially in relation to lawyers and Board members)

As I elaborated elsewhere:

> The claimants were attentive to who I was. First impressions were important. I looked more Middle Eastern than Canadian and spoke with an accent, as put by a young female Syrian refugee claimant. I was a permanent resident in Canada whose membership to Canadian society was not fully established. I had gone through visa refusals and international migration. My aim is not to magnify my similarities with refugee claimants (since they were seeking asylum, I on the other hand was legally permitted to live, study and work in Canada), but the fact that I was somehow external to the Canadian society helped us to establish a similarity. Kobelinsky (2013a) contends that being a non-French woman actually helped her establish ties with asylum seekers in France. This does not mean that the asylum seekers find their condition comparable to a PhD candidate's but they share the perception of exteriority to the society they are in" (Tomkinson, 2015a).

Organizational ethnographers who are sensitive to the concealment of ethical dilemmas in the field or the incomplete account of data collection methods highlights the fact that these distortions, or brushing-ups are actually costly to ethnographers themselves and to their readers because these practices conceal how ethnography is practiced on the field and the ethical dilemmas the researchers confront during the field work (Fine & Shulman, 2009). What is offered for public consumption as the result of organizational ethnography, unless presented as experienced is partial truths and self-deceptions because of the idealistic ethical concerns the researcher wishes to embody (Fine, 1993). I have tackled these questions of ethics in practice at great length elsewhere, so I will not reiterate them (Tomkinson, 2015a). Suffice it to say, I am aware of the multidimensional nature of the refugee hearing as a research site as well as power differentials among the actors in the hearing room.

3.8 Limitations, reliability and validity

Standard canons of validity and reliability do not apply to ethnographic research as a result of the proximity to the researched actors. Most of ethnographers' raw data comes from participant observation, in which the researcher is the instrument (Schensul et al., 1999). Different than positivist epistemologies of seeking objectivity and proving or falsifying hypotheses, ethnographer seeks thick description that will serve to convince the reader on the plausibility and the believability of the account provided. This means, the ethnographer aims to provide an account "that communicates with the reader the truth and the setting and the situation, as the ethnographer has come to know it" (Atheide & Johnson 1994, p. 496 cited in Warren and Karner (2010, p. 8). I believe that I respected this demand by clearly identifying the social context and the situation of the IRB, by providing details of my sampling and the nature of my

relationship with the researched actors and by explaining how the observations were made and field notes were taken.

One last method of assessing a valid and reliable research is through member checks or member validations (Schensul et al., 1999). I made sure to consult with the researched actors within the hearing room and as I wrote along, a former Board member, a refugee claimant and a refugee lawyer read my dissertation. I took the necessary measures to prevent any identification of the refugee claimants or lawyers with my research, but thinking how small the refugee advocacy community is, some actors may be identified.

Now that these precisions have been given, we can start contextualizing discretion, first by looking at the refugee hearing.

Chapter 4 TRUTH IS A STUBBORN BEAST, HOW WILL YOU HANDLE IT?: TRUTH-SEEKING AND CREDIBILITY ASSESSMENT IN REFUGEE HEARINGS

This chapter will illustrate how Board members assess refugee claims and make refugee determinations. It will concretely locate various discretionary practices and reasoning of the Board members and tie these to their conceptions about refugee claimants and their work. I will focus on the interaction during the refugee hearing and the respective reasons of the written refugee status determinations to illustrate how claimants are assessed on whether they fit the refugee definition. A simultaneous analysis of what former Board members say about their work and refugee claimants will show how their conceptions operate upon the way they evaluate the refugee claim, through a routinization that I call *hearing style*. By demonstrating the similar and different elements Board members examine in a refugee narrative, this chapter brings forward the interactive yet controlled nature of the refugee hearing in the understanding of the divergence in Board members' refugee status grant rates.

4.1 Organizational backstage of the refugee hearing

As refugee status provides access and membership to the host country to some non-citizens, who would otherwise not have qualified to stay, there is increasing worry that refugee claimants use the refugee determination system as a back door (Hamlin, 2014). Refugee decision-making takes place within a highly charged political environment where the 'genuinity' of the claimants' need for protection is often debated by the political leaders. Refugee protection implies dual imperatives (Spire, 2008, p. 467). On the one hand, there is a global trend of tightening of

borders and deterrence of unwanted immigrants (Fassin, 2005). These practices are a consequence of state sovereignty. Immigrant destination states have a desire to control who is admitted into their territories especially in an era where the importance of national security became more prominent. Their wish to exclude some immigrants is not exceptional. On the other hand, the belief in the importance of protection of human rights is more pronounced than ever. Currently, a majority of the states have ratified the Refugee Convention and Protocol, the treaties that establish the international obligation to offer protection to non-citizens who escape from persecution (UNHCR, April 2011).[23] However, there are far more people that claim refugee status in Canada and the rest of the liberal democracies, than these states are willing to accommodate (Hamlin, 2014). That is why Canada established an administrative system through the Refugee Protection Division (RPD) of the IRB to process non-citizens who claim refugee status to evaluate the merits of each claim.

After a non-citizen makes a refugee claim to an immigration officer at the Citizenship and Immigration Canada (CIC) or Canadian Border Services Agency (CBSA), his/her file is transferred to the RPD. The claimant is required to fill and submit a Personal Information Form (PIF) in English or French within 28 days.[24] This sixteen page document demands extensive personal information such as biographical facts, personal records and work information, previous travel information, the grounds of the refugee claim and the details of the claim. The PIF is described among the training material designed for new Members as the following: "The PIF asks the claimant to provide detailed information about the claimant's personal circumstances, history and reasons for claiming refugee protection. The claimant must attach a copy of all identity and travel documents, genuine or not" (LPDD, 2009, p. 2089). Besides, the claimant can

[23] As of April 2011, 142 states ratified both the Convention and the Protocol.
[24] If the PIF is sent to the claimant by mail, the claimants has 35 days to file the original completed PIF [RPD Rule 6(1)]. A figure that explains the process from claim making to the final decision can be found in Appendix D.

submit documentary evidence that corroborates his/her allegations regarding the well-founded fear of persecution. Afterwards,

> Each case is assigned to a case management team (CMT), consisting of Board members, tribunal officers (TOs), Case Officers and in some offices, other staff. A CMT is responsible for its own caseload and is managed by a Coordinating Member (CM) and Operations Services Manager (OSM). In the larger offices, CMTS are organized according to geographic specialization (i.e. assigning particular countries to each team). Geographic specialization improves the level of knowledge of country conditions and in turn enhances consistency in decision-making (LPDD, 2009, p. 2090).

A tribunal officer who is assigned to make the triage screens each case file and places it in one of the four case-processing streams according to the complexity of the determinative issues of the claim: (1) expedited (manifestly well-founded), (2) short hearing (2 hours), (3) full hearing (regular ½-full day or longer) and (4) priority (unaccompanied minors, detainees etc.). Besides triage, the officer also "identifies the key issues in the case, information that may need to be acquired, and ensures the indices for any standardized information packages as well as any documents provided by the minister and disclosed to the parties" (LPDD, 2009, p. 2090).

The Board members receive the case files that they will hear several days before the refugee hearing and are expected to familiarize themselves with the details of the claim. The official documentation on pre-hearing states that pre-hearing preparation "is one of the key elements in a fair and expeditious refugee status determination process" which facilitates (RPD, September 2005, p. 417):

- That the issues central to the claim are identified early in the process;
- That the case be thoroughly prepared;
- That there be ongoing communication on the preparation of the case among all the participants in the hearing;
- That documents, reports, or other material to be produced as evidence to be selected in regard to the issues identified; and
- That there be timely disclosure and filing before the hearing of all relevant evidence, particularly country conditions and personal identity documents (RPD, September 2005, p. 417).

The Board, therefore, requires the Member to be familiar with all aspects of the case file when s/he steps into the hearing room.

4.2 Refugee hearing as an administrative inquiry: *interrogation* or *interview*

The refugee hearing is an inquiry which involves a determination of legal status. It seeks an answer to the question: is this a person in need of protection? (LPDD, June 2007h). The Board member's job in the hearing room requires first "allowing the claimant the opportunity to tell the key elements of his or her story in his or her own words (aimed at trying to establish the factual basis for the claim)" and second "testing the credibility of that testimony" (LPDD, June 2007h, p. 449).

The Board's internal documents indicate that members engage with decision-making in a specialized board of inquiry whose aim, on behalf of Canadians, is to make well-reasoned decisions on refugee matters "efficiently, fairly, and in accordance with the law" (LPDD, Undated-c, p. 2091). The Board members do not play a passive role in refugee decision-making but rather an "active and engaged" one, "directing research, questioning the claimant and witnesses, and controlling the proceedings. Thus, the member is responsible, not only for determining the claim, but also for the conduct of the investigation and preparation of the claim" (LPDD, Undated-c, p. 2091)

As refugee protection implies dual imperatives, so does the Board member's job. The Member has no interest in the outcomes of the hearing and is expected to "take an active role in ascertaining the truth" (LPDD, June 2007h, p. 449). But a dichotomy exists between the requirement to identify the claimants who are "genuine" refugees and the one to detect the liars

who abuse the administrative system. Can Board members realize these two tasks simultaneously?

This chapter makes the point that the Board member's job involves a considerable degree of discretion. It implies not only the authority to question the claimant and control the hearing, but also requires the member to reinterpret legal standards in the light of his/her personal and professional choices in refugee determination. Discretion is two sided: it entails (1) autonomy to make decisions and (2) a cognitive activity that requires judgment, reasoning and justification of the decision (Molander & Grimen, 2010; Molander et al., 2012; Wallander & Molander, 2014).

Discretion does not solely offer an autonomous *space*, free from external constraints, delegated to the decision-maker to take the necessary actions to process and finalize the refugee claim. Discretion in refugee decision-making context also implies a cognitive aspect where the decision-maker is not only required to make a deliberative and informed judgment but also provide reasons for the judgment. The Board member has to realize a cognitive activity; first, guide the investigation to evaluate whether the claimant provides a truthful account of what happened and then to decide on the balance of probabilities whether there is serious reason that the claimant would be persecuted if returned back to his/her country of origin.

Discretion in that sense is not solely an abstract concept of legal nature, but very much tangible in practice. It can be observed, heard and seen through the actions of the Board members in the hearing room and read through the written decisions. These two aspects of discretionary work can help us understand the differential ways the Members approach the claimants and their work as a result of their varying conceptions of (1) what makes a refugee (2) best way of credibility assessment. These varying conceptions have important consequences in the way refugee claimants are handled. Members do not treat each case as if it is unique but they follow

operational routines that they have developed to mitigate the difficulty of their job. *Hearing style* is the way the Member conducts the hearing, it is the ensemble of the methods formulated in the course of their work. Despite the fact that the aim of the hearing is to investigate whether the claimant is a refugee or not, the investigation is done in two fashions: *interrogation* or *interview*.

Interrogation proceeds through rigid tests and aggressive questioning, if the claimant fails to pass these tests, his/her need for protection not only raises serious suspicion but also the Member deems that the refugee narrative is fabricated. *Interview*, on the other hand, is more resilient. The Member allows the claimant to speak in more details. Through that way, someone who is lying will come to the surface. To be clear, *hearing style* alone is not the sole cause of acceptance or refusal of the refugee claim, but *interrogation* makes it harder for refugee claimants to prove their need for protection while *interview* offers them a more resilient platform.

Through examples from refugee hearing observations, written decisions and interviews with former Board members, I will illustrate how the actions the Board members take in the hearing room, the interpretations they make in the written decision, and the understanding of their job reflect their conceptions of who refugees are and the best way of credibility assessment. Given the limited access to hearing transcriptions; dialogues and quotes from the hearings are reconstructed based on my field notes, conversations with the refugee claimants and lawyers and the written decision. Interviews on the other hand, are recorded and transcribed verbatim. In order to make a clear distinction between the two, I use *italics* for reconstructed dialogues and regular citation for interviews. The purpose of the interviews was not to provide a representative sample of the Board members but to deliver a depth of their meaning-making practices and supplement the observation of refugee hearings.

In order to understand how refugee receiving states like Canada allocate opportunities for entry and legal status for non-citizens, it is significant to lift the blanket of administration to investigate the discretionary practices of Board members who decide refugee status. Only through focusing on the 'how' and the investigation of this process, we can understand 'why' Board members have such divergent refugee status grant rates.

I am conscious that the ability of a claimant to seek legal counsel and to present a coherent and consistent narrative are significant for how well s/he performs in the refugee hearing. Further, not all claimants receive equivalent legal advice from their lawyers. I already tackled these issues in a forthcoming article, and I will not be concerned with them here (Tomkinson, 2014).

4.3 Similar cases, contradictory practices

Yolanda Hernandez is a citizen of the Dominican Republic. She has a law degree but never practiced law before. She alleges to fear persecution by her ex-boyfriend with whom she lived from 2006 to 2008. According to her written testimony, his jealous acts at the beginning of their relationship slowly transformed into violent ones, and even after she left him, he kept following her and she managed to escape from a kidnapping attempt. After they broke up she took a vacation in Spain but did not seek refugee protection. She arrived in Canada in the second half of 2011, and following the arrival of her minor daughter from the United States two months later, who lived with her father, they filed a refugee claim based on gender persecution.

The Board member Lydia Blanchet is responsible from hearing and deciding Yolanda's claim. Lydia has a criminology degree and worked as a probation officer before she started working for the IRB twenty years ago. She held different positions at the IRB before she was appointed as a Board member in 2009. Lydia has to assess the credibility of Yolanda during the hearing, like the other Board members in order to decide whether she believes Yolanda's evidence

and "how much weight to give to that evidence" (IRB, 2004). Following the protocol of the hearing, she asks Georges Teuré, Yolanda's lawyer to ensure that Yolanda confirms what is in her Personal Information Form (PIF) is true, exact and up to date. After Yolanda's confirmation, the hearing starts.

Lydia's first few questions are standard. She wants to know who Yolanda is afraid of if she were to return to her country and the reason of this fear. Instead of giving short and precise answers, as demanded by Lydia at the beginning of the hearing, Yolanda describes how her ex-boyfriend beat her one night. Lydia stops her and tells that they will come to that. She first wants to clarify a few issues with the home addresses Yolanda indicated in her PIF. In her oral testimony, Yolanda says she lived with her ex-boyfriend from February 2006 to January 2008 and specifies the address. When they broke up she moved to her mother's place. In her PIF on the other hand, she indicated that she lived with her mother between January 2001 and August 2009 at her mother's apartment, and then she moved to another address and stayed there until January 2010. Lydia puts the contradiction to Yolanda and asks for an explanation. Yolanda does not really have one. She says "*c'est possible que quelqu'un ait commis une erreur*"[25] (1). Contradictions do not end there though. In her PIF, Yolanda wrote that she broke up with her ex-boyfriend in May 2011, but in the hearing she says that she broke up with him in January 2008 and never saw him again. She cannot explain this contradiction either. Following that Lydia questions Yolanda on her boyfriend's work on an apparent contradiction:

- *Qu'est-ce que votre ex fait dans la vie? Quel est son travail?*
- *Il est chez les militaires.*
- *Qu'entendez-vous par des militaires? Quel est son rang?*
- *Il est le chef de l'unité des narcotiques.*
- *Est-il dans l'armée ou dans la police?*
- *Il est dans la police.*

[25] French to English translations can be found in Appendix E.

- *Alors, pourquoi avez-vous dit qu'il est dans l'armée? Dans votre formulaire vous avez mentionné qu'il était dans la police, pourquoi changez-vous d'avis maintenant?*
- *Eh ben, en République dominicaine, nous les appelons tous les militaires, il n'y a pas beaucoup de différence entre l'armée et la police.*
- *Mais vous avez suivi une éducation supérieure ce qui signifie l'intelligence supérieure aussi. Nous nous attendons que vous connaissiez la différence entre la police et l'armée. Pourquoi? Vous ne la savez pas?*
- *Dans le langage quotidien, dans la langue parlée, nous les appelons les mêmes, militaire* (2).

Lydia moves on to question Yolanda on another aspect that she considers dubious. The fact that Yolanda took a vacation in Spain after she broke up with her ex-boyfriend to get away and failed to claim protection there does not ring right for Lydia. According to international law, individuals fearing persecution can claim refugee status in any country that ratified the Refugee Convention and the Protocol (UNHCR, 1966). In practice though across European Union, Australia, United States and Canada, non-citizens must ask for protection at the first safe country they enter. Otherwise, they are considered to do 'asylum shopping', hence not really fearing persecution (Kaberuka v. Canada [1995]; Wangden v. Canada [2008]). Yolanda explains that she saw a lot of people using drugs there, and thought that this was not the ideal place for raising her child. Plus, she heard at that time that "*Canada était le pays numéro un en matière de protection*" (3). But she also failed to make a refugee claim immediately after her arrival to Canada according to Lydia, which harms the credibility of her claim. For Yolanda it was reasonable to wait two months, since she had to find a lawyer and seek some information about the process.

Yolanda submitted documentary evidence that corroborate her allegations when filing her claim; a letter from an independent psychologist, another one from a psychologist at the Ministry of Women in Dominican Republic, two medical certificates which documented the physical violence she experienced, and a friend's letter who accommodated her for several nights. Before

Yolanda's hearing, Georges told me that they submitted enough corroborative evidence which documents that Yolanda is suffering battered women's syndrome. This evidence would show the Board member that possible contradictory testimony and problems with dates were results of the syndrome. During the hearing, Lydia announces that she will not accept the evidence, since some letters are not dated and the most recent letter is from early 2010, out-of-date for almost three years. Georges states that his client is clearly suffering battered wives' syndrome as recognized in a Supreme Court decision (R. v. Lavallee, [1990]), which would explain the contradictions. Lydia disagrees and says that she has no expert evidence in front of her that documents such a syndrome. Georges states that they thought the evidence they submitted was enough, since it clearly is not, they can get a new report in seven to eight weeks. Lydia sneers and says that the document had to be submitted before the hearing.[26]

Lydia's approach to Yolanda's case illustrates how she tests the credibility of the claimants. Lydia's questions to Yolanda and reactions to her answers make clear what she considers as the most important features of a genuine refugee claim. She seeks a seamless consistency between the PIF and the oral testimony. She expects a claimant of Yolanda's caliber, with a university degree, to be able to differentiate between dates and addresses and take responsibility for the mistakes that appear in her PIF. Furthermore, as we will see later in the chapter, in Lydia's written decision, she believes that if Yolanda was really afraid of her ex-boyfriend, she would not have returned back to Dominican Republic, and instead would have stayed in Spain. And she would have claimed refugee status immediately after her arrival to Canada. Lydia's denial of the trustworthiness of the submitted evidence and refusal to wait for a new document is valid to a great extent. It is up to Board members to accept or reject evidence in

[26] Lydia is right. Any new documentation has to be submitted twenty days prior to the hearing according to the Board's regulations on "disclosure and filing of evidence" (RPD, September 2005).

front of them. The coordination of the Board encourages the members to process the cases in front of them with a speedy and precise manner. Accepting applications for changing the date and time of a hearing at the last minute are not encouraged either (LPDD, Aug 2006). The high caseload in front of Lydia -she made around one hundred decisions in 2013- does not provide the ideal condition to respond to last minute demands either. But ultimately Lydia makes a choice about how to preside at the hearing, through questions that are focused on detecting contradictions to uncover or discredit supposedly fraudulent claims.

Not every Board member evaluates the claimants' credibility in this manner. Madeleine Abellard who is tasked to do the same job, follows surprisingly different steps when faced with a claim remarkably similar to Yolanda's. Madeleine has an undergraduate and a graduate degree in political science and she held different positions in municipal cultural services before she was appointed as a Board member in 2007. She is presiding at the hearing of Priscilla Meirelles, a young Brazilian woman, claiming refugee status on membership to a particular social group, specifically on gender persecution. Priscilla has a very similar claim to Yolanda's. She is in her late thirties and allegedly escapes from the violence she suffered in the hands of her ex-boyfriend. Before her departure to Canada, she was working as a nurse. After she claimed refugee status in Montreal in October 2010 with the help of an immigration consultant, she moved to nine hundred kilometres away to the suburbs, since she was too scared that Montreal was a big city and that she could accidentally run into her former boyfriend who is a businessman that often travels. She contacted Georges by phone and when he agreed to represent her, they met only once. She did not respond to Georges' calls before the hearing and missed her appointment. That is why she is not prepared for the hearing at all. Before the hearing starts Georges says that he wants to discuss an issue with Madeleine who demands that Priscilla and

the interpreter leave, and somehow she ignores me and I end up staying in the room. Georges explains that he wants to make an application to change the hearing date, because his client clearly needs a psychological report. Madeleine is surprised to hear such a demand; it is too late to change the date of the hearing. She inquires if Georges prepared his client for the testimony. Georges answers that he did not because Priscilla did not respond to his calls. Madeleine wonders if Georges is sure that he did not mix two case folders up, since the name of the agent of persecution (ex-boyfriend) changes at several instances in the PIF. Georges notices the error in one sentence as well. But for Madeleine there are numerous other important mistakes and incoherencies such as the name of the city Priscilla habited, some dates as well as names. Georges demands again if they could change the date, but Madeleine says that they have to start and see whether Priscilla can understand the procedures and testify or on the contrary if she is "*complétement gaga*" (4). Madeleine will make her decision accordingly.

After Priscilla enters the room, Madeleine asks Georges to check with his client if they want to do any corrections to Priscilla's PIF in order to render it true, exact and up to date. Georges asks a few questions and they change the name of the city Priscilla lived, the city where she applied for a Canadian visa and the date she met her ex-boyfriend, Fabio. Madeleine asks Priscilla if she is feeling OK since she will have to testify. She is, but she is very nervous at the same time. Madeleine highlights that it is normal and all claimants are nervous. She wants to make sure Priscilla's PIF has been translated from French to Portuguese and she knows what is in her claim. After Priscilla's confirmation, Madeleine starts the hearing and wants to know who she is afraid of in Brazil and why. Priscilla's answers are dispersed. She says that she is scared to death because of her ex-boyfriend, who beat her up and tried to kill her. Then adds that she is afraid of violence in general in the city she lived. She continues that she filed a complaint at the

police station when he tried to kill her. Madeleine wants to know more about their relationship before the incidents. She asks the ex-boyfriend's name and what he does in life. After, she wants to know how they met and if they lived together and where. Priscilla explains that she met Fabio in 2008 among a group of friends, shortly after she sold her condo and they moved in together. In her PIF though, Madeleine points out, she indicated only one address of residence between 2006 and 2011; there is no sign of moving in together. How can Priscilla explain that? She simply does not know why the address is not there, she changed her lawyer after she submitted her PIF. Madeleine sighs and highlights that it is a contradiction. Then, turns her investigation to another question, "*vous avez déménagé avec lui et qu'est-ce qui s'est passé après*?" (5) Priscilla explains how great everything was at the beginning, how they used to take vacations together. They even went to Romania to meet Fabio's family. The only issue was that he was very jealous. He kept calling the hospital where Priscilla used to work several times during her night shifts, just to check if she was really there. He did not want her to work but stay at home instead. Why did Priscilla stay in the relationship then? Because she never thought he would do such things. Madeleine wants to know the details. Priscilla explains:

> *Un dimanche, je suis arrivée du travail, c'était le 8 août, non 10 en fait, je ne suis pas trop sûre. J'étais en retard et il m'a fait dormir par terre. Il m'a jeté sur le canapé et il a essayé de me tuer avec ses mains. J'ai couru et me suis enfermée dans la toilette et j'ai appelé ma sœur et un agent de police est venu. Après, je suis allée faire un examen pour savoir si j'avais eu des blessures* (6).

This incident is not in Priscilla's PIF though, it is omitted. Madeleine wants to know why. Priscilla answers that she explained a lot of things to her previous lawyer about her story, but they did not put everything in the PIF. The dialogue below shows how Madeleine is uncomfortable to continue her questioning:

- *Au début on vous a demandé si le dossier était complet. Vous avez dit oui.*

Georges intervenes : *comme elle n'est pas venue à notre rendez-vous, on n'était pas capable d'examiner ces contradictions.*

- *Elle n'est pas venue?*

Georges : Non.

- *Pour quoi?*
- *J'habite à la campagne. Avant j'ai habité à Montréal et j'ai trop peur à Montréal. J'ai peur que quelqu'un me suive.*
- *Mais madame vous êtes venu ici pour régler votre statut. Pourquoi avez-vous perdu votre rendez-vous?*
- *Lui, il voyage beaucoup, j'ai peur de le voir à Montréal.*
- *Madame regardez-moi s'il vous plaît. Je comprends pourquoi vous habitez à la campagne. Mais tous les demandeurs doivent passer ici. Votre ex ne pourrait pas y entrer*
  (Silence. No reaction from Priscilla).
  Il ne peut pas savoir que vous êtes là. Alors, vous devrez vous présenter soit devant moi soit devant l'autre. Vous ne pouvez pas échapper ça.
- *Oui, je vous comprends bien.* (Suddenly she starts crying). *Essayez de comprendre, j'étais bien, j'avais eu mon travail, tout était bien. Tout à coup…*
- *Madame, juste un moment, je sais, mais c'est passé. Si ce n'est pas moi, vous serez devant un autre commissaire et ce sera à vous de le convaincre que vous avez eu les problèmes que vous avez. Vous devrez lui expliquer vos problèmes.*
- *Je sais, je suis ici pour ça.*
- *Alors pourquoi n'êtes-vous pas allé à votre rendez-vous?*
  (Silence. No answer).
  Je suis obligée d'accorder la remise parce qu'une histoire comme ça… ça ne colle pas l'histoire (7).

Madeleine turns to Georges and says that he has to solve these contradictions first. She interrupts him when he mentions the psychological report; the issue is not just the report, the PIF is very badly prepared, this has to be resolved. She says that she does not like postponing hearings; they cost a lot of money to the IRB in the end. Yet, she demands Georges when they would receive the report. They would in seven to eight weeks. Madeleine wants a precise date since her term ends in eleven weeks. After the date is fixed she turns to Priscilla and says that the hearing will take place next time. If Priscilla does not appear, Madeleine will understand that she abandons her claim. Therefore, she must go see her lawyer, prepare her folder and obtain the psychological report and have the hearing. It is obligatory, she says. Then, she looks at me and smiles "*Ça, ça n'arrive pas souvent*" (8).

One can easily forget that Lydia and Madeleine work for the same administrative tribunal. In both cases, they are interpreting the same law, procedures and guidelines and are examining refugee claims of similar nature. They both received the same training and instructions; and are equally expected to finalize the claims they hear within the allocated time frame. What they do in the hearing room is ultimately a matter of discretion. They both seem to follow a certain routine, even though different ones. Lydia wants short, precise answers. She wants the contradictions between the written and oral testimony to be explained. Madeleine, on the other hand, while expecting explanations to apparent contradictions, allows Priscilla to tell what happened to her in her own terms. While Lydia seems to simplify her decision-making by pointing to the contradictions in Yolanda's PIF and oral testimony, Madeleine looks as if she complicates her task by explaining to Priscilla what is expected of a refugee claimant, postponing the hearing and giving a new hearing date. Even though what Madeleine does would look like an inconvenience to someone like Lydia, her decision to allow Priscilla to get a psychological report and come back in a few weeks, is a form of reasonable simplification as well. If the report shows that Priscilla suffers from a psychological syndrome, it will be obvious that these contradictions are a result of a mental issue. Unless the report indicates such a finding, Madeleine will know that the missing information and contradictions are result of something else: a lying claimant.

These two cases are not exceptions but representative of the 50 hearings that I observed as well as many others described to me by interpreters, refugee lawyers and previous Board members. Refugee status is a valuable public good that is distributed only to a small percentage of refugee claimants who pass the credibility assessment test in the refugee hearing. In 2013, only 31 percent of all refugee claimants were recognized as refugees (Rehaag, 2014).

Admittedly assessing credibility is a very complex task. Further, it is rare that there is a seamless consistency between the written and oral testimonies of the claimants. Still, Board members have to make refugee status determinations with limited documentary evidence. The IRB may gather some information through the Research Directorate of Strategic Communications and Partnerships Branch (SCPB). When necessary, Board members can make information requests about general aspects of refugee claims but most of the issues of importance to the claim cannot be searched.[27] This means, in some sense, similar to other decision-makers in street-level organizations, their decision-making is saturated with uncertainty (Brodkin, 2012; Lipsky, 1980). Yet, different than other immigration gatekeepers, such as border officers who have to make categorizations of people in a very short time and fast paced environment (Gilboy, 1991; Heyman, 1995; Jubany, 2011; Pratt, 2010); Board members interact with the claimants for several hours and have more information about the claimants compared to what border officers could have about international travellers.

What is expected of Board members when they are asked to process refugee claimants and finalize status? Are they required to identify the refugees who need protection? Or are they expected to detect the aspiring migrants who are trying to pass themselves as refugees? I argue that the IRB requires them to do both these tasks simultaneously even though these requirements are apparently competing. On an ordinary day at work, Board members are not only faced with

[27] The SCPB lists the topics that cannot be searched:
Personalities not likely to attract attention of international human rights monitors
Verification of authenticity of documents, including information on the usual appearance of documents.
Medical information
Questions of logistics, such as the possibility of travelling from one destination to another by whatever means within a certain amount of time
Questions that ask for a probability statement (is it possible for…?)
Information that is usually considered sensitive for security reasons (e.g. the location of military bases, information on the security measures taken at particular airports, detailed information on security or intelligence organizations
Descriptions of uniforms worn by a particular group (army regiments, school etc.)
Comments on the credibility of a source
Anything not normally considered to be in public domain
Interpretation or application of legal texts to specific cases (SCPB, Undated, p. 2187)

an ambiguity towards what is expected of them, but they also have to deal with complex cases, lack of information, uncertainties, and pressures from their superiors to process and finalize more cases. They often work alone far from direct supervision.[28] These factors that will be explored in the next chapter, compel Board members to "to develop their own patterns of simplification" as *hearing styles* (Lipsky, 2010, p. 83). What matters in the treatment of the claimants is the way the Members use their discretionary power and reasoning based on their conceptions of what makes a refugee and understandings of the best credibility assessment methods.

4.4 The implications of discretion in refugee decision-making

The IRB delegates the authority to hear refugee claimants and make a determination regarding their legal status to the Board members. Members have extensive discretionary powers in the course of their work. This power is exercised through different stages of refugee determination. Board members' are required to make decisions on their best judgment which underlines that they are independent to make decisions, and they have the merits -required training and professional values- to make decisions according to their own reasoning. What does it mean to exercise discretion in refugee decision-making context? It means;

- identifying the determinative issues of the claim (deciding what aspects of the claim needs to be examined)
- conducting the hearing in a way that focuses on eliciting information from the claimant in order to assess the claimants' credibility (investigating the claim)
- on the basis of the facts determining if the claimant has subjective fear of persecution, and this fear has objective basis – whether the claimant is likely to face future

[28] Complex cases are sometimes heard by three member panels. But it is not an ordinary practice.

persecution, in danger of being tortured or at risk of being subjected to cruel and unusual treatment and punishment

- making inferences between the facts and legal standards and writing well-reasoned arguments in order to justify the decision (analysis and decision).

There are certain legal standards and organizational instructions that the Board members need to abide to in the hearing room and in their decision-making which will be explored in the next chapter. For now, suffice it to say that as long as the refugee lawyers do not make official complaints to the management of the IRB about the Members' specific behaviors in the hearing room, the Members are autonomous in the way they work. Since their work is invisible to their direct supervisors, they have the liberty to decide the way they process refugee claims and construct routines of practice through the *hearing style*. But the decision has to offer an analysis of the situation of the claimant and explain why the Member reached that decision. According to the IRB;

> The objective for the reasons writer is not to provide a report of the hearing but to explain what the Panel thought of the claimant's evidence and arguments so that the claimant may understand why she or he succeeded or failed (LPDD, June 2007e, p. 2195).

The importance of the legal aspect, namely making clear findings and valid inferences is pervasive in the work of the Board member. The Members are not allowed to make decisions on mere guess, they cannot grant or refuse refugee status on the basis of pure conjecture which has no legal value, but are required to make deductions on the basis of the evidence as long as they can demonstrate that it is reasonable to make that inference (IRB, 2004).[29] According to the IRB, the features of reasons for quality decisions are;

[29] "In *Satiacum, supra*, at 179, MacGuigan J.A. cited Lord Macmillan in *Jones v. Great Western Railway Co.* (1930), 47 T.L.R. 39, at 45, 144 L.T. 194, at 202 (H.L.), for an explanation of the distinction between a

1- Reasons explain to the satisfaction of the parties, that the tribunal made the correct and fair decision using a legally sound analysis.
2- Reasons do not canvass all possible issues but construct an honest, logical and comprehensive analysis of the determinative issues.
3- Reasons will anticipate the readers' questions every step of the way and seek to answer them.
4- Reasons are formulated simply and clearly so that they may be understandable to the lay claimant.
5- The technical and legal terminology is consistent from one set of reasons to another.
6- Reasons do not simply report on the evidence adduced in the case; they make clear findings of fact and relate those facts directly to the issues determining the case.
7- The decision conforms with applicable statutory and common law and reflects appropriately the tribunal's commitment to the rule of law.
8- On issues of law or on generic issues, the decision does not conflict with previous RPD decisions unless the conflict and the reasons for the disagreement are explicitly specified.
9- The decision contributes to a useful body of decisions which must be internally coherent, to the extent possible, and which can assist in understanding the issues in new cases (LPDD, June 2007e, p. 2196).

Discretion, in administrative law context, then, can be seen as "the power to make a decision that cannot be determined to be right or wrong in any objective way" (Grey, 1979, p. 107). This means there is no correctness but only reasonableness. What matters is that the Board members display that they made reasoned judgments in clear and unmistakable terms. Inference in the legal sense then does not mean objectivity as understood by all individuals. Pratt (2010, p. 467) argues that "objectivity in law is a rather low standard. Rather than reflecting a fully-fledged adherence to scientific, evidence-based decision-making, it often refers more generally to the absence of bias, or prejudice or whimsy".

When we study the refugee hearing and the decision simultaneously, by also paying attention to what Board members say about their work, we not only see the coherent routines of practices of the Board members and their deliberation of the situation, but also understand their differing conceptions of what makes a refugee and best credibility assessment methods and its consequences for the claimants.

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reasonable inference (which a decision-maker is entitled to draw) and pure conjecture (which is not permissible)" (IRB, 2004).

Discretion is not only an autonomous space where one does what s/he wants but within constraints where one takes actions, makes and defends their decisions through well-reasoned arguments and analysis. The hearing room, besides providing a space for evaluation and testing of the claimant and the evidence also requires deliberation from the Board member, it "consists of weighing reasons for and against a choice" (Molander et al., 2012, p. 225). Written decisions and analysis offers "argumentative justifications of judgments, decisions or actions" (Molander et al., 2012, p. 220). Now let's look at the Members' conception of refugees and how it informs their assessment of the claimants' need for protection.

4.5 Refugee determination as interplay between conceptions and the *hearing style*

Credibility assessment for refugee determination is a form of evaluation where the stakes are potentially high. When assessing credibility, the Board member, as the fact-finder and the decision-maker, determines whether it is reasonably likely that the claimant is telling the truth (Thomas, 2011). As elaborated by one accepted refugee from Syria: "It is a process that determines your life. If they say yes I stay here, if they say no, [you] go back to Syria and die."[30] The refusal of each claimant might not always have such dire consequences, but the potential is there and mostly unknown.

Credibility assessment is central in refugee determination because it is often very difficult to obtain 'hard' evidence for the claimants (Crépeau & Nakache, 2008). In that sense, the claimant's oral testimony as much as the written one is vital in order to assess the authenticity of the claim. That is why the Supreme Court of Canada, in its prominent *Singh* v. Canada [1985] decision obliged the Canadian state to establish an administrative structure that will determine

[30] Interview, 2 October 2013, Montreal.

refugee status following an oral hearing. The hearing therefore is constructed as the administrative space and process where the merits of a claim are assessed.

No official IRB document defines what credibility assessment is, yet it is noted as one of the most significant elements of refugee determination. When asked, Board members enumerate what they look at and what they do for credibility assessment, with examples. My hearing observations are parallel to these explanations as well. Very similar to the agents of l'Office français de protection de réfugiés et des apatrides (OFPRA) (d'Halluin-Mabillot, 2012); reporters and judges of La *Cour nationale du droit d'asile* (CNDA) of France (Kobelinsky, 2013a) and the adjudicators of the Department of Homeland Security in the United States (Macklin, 2009), besides looking at jurisdictional issues, Board members evaluate (IRB, 2004, Undated-i);

1) internal consistency of the testimony and the contradictions as told in the PIF and the different stages of the claim (such as at to the CBSA officer, CIC officer and at the hearing);
2) external consistency of the testimony, its reasonableness and believability in relation to its geographical context
3) accuracy of the testimony, the claimant's ability to give a precise and detailed account in a spontaneous manner and
4) authenticity of the documentary evidence.

All Coard members characterize their work as a legalistic administrative one where they have to determine the legal status of refugee claimants. I detected that there are two ways through which they approach to the refugee hearing and the claimant. In my conversations with Members, similar to the observations of Watkins-Hayes (2009) among the caseworkers she

studied, they framed their work in two distinct ways. While some underlined the resiliency of the work, and how it is open to the interpretation of the Board member, others saw it from a more rigid, clear-cut and compliant perspective. Lens (2013) is the only researcher who studied the differential treatment of welfare appellants by administrative court judges through the analytical tool of *hearing style*. She explores how the administrative hearing process that is designed to correct the error of case managers in the administration of public assistance in reality proceeds through two *hearing styles*. She finds that while some judges focus their attention on the compliance of the appellants and the bureaucratic regularity of their cases, their counterparts encourage the appellants to articulate the reasons of infringements and perceived failures of the welfare agency. The former style subjects the appellants to increased scrutiny, in the name of compliance, without real attention to the problems caused by the agency; while the latter employs legal norms to question both parties and correct mistakes. This means that the conduct of the hearing and what the judges emphasized were different and had divergent outcomes for the appellants.

In refugee hearing observations, I identified two *hearing styles* through which the hearing was conducted; *interrogation* and *interview*. Both are informed by the Board members' conceptions of what makes a refugee and the best credibility assessment methods. By focusing on four components of credibility assessment that I presented above, I will illustrate the importance of discretionary reasoning in refugee status determination.

4.5.1 Internal consistency: contradictions, omissions and details

For Board members like Lydia, whose hearing style is *interrogation*, scepticism is vital in order to detect the liars and strain through the refugees among the amalgam of claimants. For

these Members, refugee status should be granted to someone who does not contradict himself/herself at different stages and parts of his/her testimony. The claimant must take responsibility for his/her claim, with all its dimensions. Therefore, members like Lydia expect the claimant to answer the questions in a precise and direct manner and in conformity with the written testimony. As explained by a former Member, Jean-Pierre Montpellier (1998-2006) who was a refugee himself, and a writer and journalist before he started working for the IRB, the conception of what makes a refugee constitutes an important part of the hearing style, and what the Member tests in the hearing room:

> …il y a trois étapes de détermination. La première étape c'est quand ils [demandeurs d'asile] arrivent à l'aéroport, ça s'appelle de point d'entrée. Alors, ils racontent une histoire. Ils disent « je suis réfugiée », c'est ça. La deuxième étape est un formulaire de renseignements personnels, là avec l'avocat il raconte une autre histoire, qui n'est plus la même que la première parce que la première ne fera pas l'affaire. En fin arrive l'audience et là, c'est le témoignage, la troisième. Alors, moi-même j'étais réfugié dans la vie c'est à dire que mes parents étaient juifs et je suis né à X (a city in Europe) en 1934 au moment où un peu plus tard les nazis sont entrés en Y (a country in Europe). On était obligé de se sauver. Si je raconte mon histoire, je n'ai pas besoin d'avocat. Je n'ai pas besoin d'interprète. Je peux dire exactement ce qui s'est passé vingt fois et je ne vais jamais contredire. C'est l'histoire de ma vie! Mais pour ces gens-là, ce n'est pas pareil. Ils arrivent là et ils racontent une histoire qui n'est pas la leur. Alors, au bout d'un certain temps au témoignage, un certain moment arrive « mais là vous parlez de juin 2002 et puis dans votre histoire vous parlez d'avril 2000 ». Et là il regarde l'avocat. Mais comment est-ce que vous réconcilierez la contradiction? « Ah, je me suis trompée ». « D'accord, vous êtes trompé, c'est correct. Est-ce que vous êtes trompé aujourd'hui où lorsque vous avez écrit ça? (imitates someone who is confused, aaaa, hmmmm) Alors, on va corriger. Mais petit à petit, ils font des bourdes parce que c'est pas leur histoire… C'était pas leur histoire, c'était une fable qu'ils n'arrivaient pas à défendre au cours d'une audience de trois heures. Parce que petit à petit ça s'effilochait[31] (9)…

This strict conception of what makes a refugee, or as often referred as 'genuine' refugees, as individuals who faced a cruel situation and had no option but to leave immediately, informs the way Jean-Pierre used to conduct the hearing. He compares his own experience as a refugee in a distant past, with the refugee claimants' of today. The expectation of consistency from the

[31] Interview, 26 August 2014, Montreal.

refugee claimants during the oral testimony, among other things, reflects the conception that, the Board member's job is to elicit the truth from the claimant. That 'truth' should be told in a harmonious manner in three different stages of refugee determination, otherwise the claimant is not telling the truth, but instead fabricating stories to benefit Canada's protection. This approach is largely informed by "the assumption that memories are detailed, accurate and consistent" (C. Jones, 2001, p. 294).

Members like Jean-Pierre believe that 'genuine' refugees do not need lawyers to frame their need for protection. If they really have fear of persecution, they will be able to tell their story in the same manner, again and again, without contradiction. As I argued elsewhere, however, the presence of a lawyer is crucial, as is how well s/he has been chosen (Tomkinson, 2014). Jean Pierre's conception of "genuine" refugees highlights a clear distinction between "us" and "them" and manifests a distance from and insensitivity towards the claimant. This is coupled with a belief that Canadian refugee determination system is under attack by 'bogus' refugees. This indicates a precise conception of what the refugee hearing serves for: weeding out the bad apples. Guillaume Kennard (1993-2004) was appointed as a Board member just after he received his law degree, when he was in his early 20s. Among the refugee advocacy community, he is seen as a former liberal patronage appointee. We see a similarity in the way Jean-Pierre and Guillaume understand the best credibility assessment methods:

> À l'audience, ce que j'ai remarqué à l'époque et ce que je remarque toujours aujourd'hui, le non verbal est important pour évaluer la crédibilité. Mais surtout, le témoignage, les contradictions, les vraisemblances, les contradictions dans le témoignage de la personne. Au début de son témoignage par exemple, il a dit que l'événement est arrivé à telle date, le temps d'audience se déroule, après une heure, on pose la même question sur l'événement et l'événement est rendu à une autre date. C'est sûr qu'on a l'obligation de lui demander de s'expliquer, mais, s'il n'y a pas d'explications, ça affecte la crédibilité. Hmmm, contradictions entre son témoignage et ce qu'il a écrit dans son formulaire lors de demande

> d'asile. OK? Donc, la contradiction entre sa preuve documentaire et son témoignage. Souvent aussi, on teste la crédibilité dans les contradictions au sein même des formulaires[32] (10).

Unsurprisingly, this approach has been disputed in the UK and Canada by psychiatrists who argue that refugee decision-makers' approach is based upon a mistaken understanding of consistency, memory and trauma and the ability to recall (Rousseau et al., 2002; Rousseau & Foxen, 2005, 2006). Psychology and psychiatry research shows that, for events that took place in the past, individuals remember more through repeated recalls (Cohen, 2001). In their repeated interviews with accepted Kosovar and Bosnian refugees who suffer posttraumatic stress disorder (PTSD), Herlihy, Scragg, and Turner (2002), found discrepancies in central and peripheral details of persecution, including the provision of new information. They suggest that over repeated call, new information about an event may become available. Further, the longer the determination process took, the more discrepant accounts refugees who scored higher on symptom severity gave. That is why, Herlihy, Gleeson, and Turner (2010) contend, concluding that the refugee claimant is fabricating the story solely based on inconsistencies and omissions, is dangerous. However, that is often the way refugee claims are evaluated and judged according to previous research (Bohmer & Shuman, 2008; Kynsilehto & Puumala, 2013; Millbank, 2009).

Not all Board members that I spoke gave primary importance to internal consistency of the testimony though, rather underlined the significance of listening to and observing the claimant actively, trying to establish a personal connection with the claimant and looking for other cues about the veracity of the testimony. I observed this difference in the factual establishment of the claim in the hearing room as well. *Interview* looked very different than *interrogation*. Evaluating internal consistency through suspicion is not the best idea for Members who have a more resilient conception of what makes a refugee and the best of credibility

[32] Interview, 6 August 2013, Montreal.

assessment. According to these members, who constitute the minority among the corpus of Board members that I observed, credibility cannot be assessed through *interrogation*. They make conscious choices to approach the hearing from a more humane and flexible framework.

Eudes Leclerc (1989-1994), a former refugee, who worked for UNESCO for a long time, was among the first Board members of the IRB. He explains how he used to conduct the refugee hearing and why:

> La demande doit être suivie par une enquête. Moi, je préside une enquête, je n'essaie pas de ficeler un demandeur, je recouds ce qu'il dit. Je fais la même chose que l'autre [commissaire] comme, monter sur ses grands chevaux et parler comme je sais pas… Comme le policier procède, de la même façon. C'est une manière de le faire. Peut-être, il y a certains qui ne sont pas habiles. Il y en d'autres qui procèdent comme des avocats. Alors, c'est choquant parfois. Des fois, on procède comme si on était au pays là-bas. Je sais, il y en a certains qui procèdent comme un policier ou comme un dictateur. Ce n'est pas la façon de le faire. Moi, j'étais un demandeur de refuge, on m'a interrogée, je me mets à la place du demandeur qui est là. Il est traumatisé, pour venir ici. Même s'il réussit à venir ici, il est traumatisé. Il n'a pas d'argent pour vivre. Et quand il doit venir devant le tribunal, sa vie dépend de ma décision. Il a un trou dans la tête, il est bousculé. Tout le monde ne peut pas réussir à interroger des demandeurs calmement. Parce que l'être humain, dès que vous lui donnez un peu de pouvoir... Je ne critique personne, hein? Il est possible d'avoir des informations en passant par l'avocat ou en interrogeant le demandeur. Poser la question, appliquer la loi sans traumatiser personne. Même entre lui et son avocat on peut avoir des contradictions[33] (11).

Members like Eudes, highlight the importance of a more humane approach that gives more power to the claimant. They clearly mention that the Board member's job is also to interpret laws in relation to refugee determination and human rights but still the main work of the Member is listening to the claimant attentively with an open mind. That is why Eudes told me; "Le seul travail de commissaire est d'écouter d'autre en sa présence. Sinon il y a plus des droits de la personne" (12). These Members deliberately avoid interrogating claimants and testing credibility solely through inconsistencies but rather underline the significance of allowing the claimants to explain why they need protection. Madeleine told me:

[33] Interview, 8 August 2014, Montreal

> Peut-être, ce que je vais dire n'est pas prouvé scientifiquement, mais je crois que c'est très difficile de mentir. Il faut être à l'écoute de la personne... Quand j'ai commencé à la Commission, on nous a fait observer, on nous a fait travailler à la banque de droit. Je n'oublierai jamais; il y avait une commissaire à l'époque, elle, elle prenait une date, la personne a raconté que « bon, le 15 octobre 1995 j'ai marché dans la rue ». « Monsieur, ça, c'est arrivé quand ça? » une incitation (imitating someone like a wild animal who is ready to attack) et puis, si ce gars ne se rappelait pas la date exacte, il ne passait pas. Et pour moi, ce n'est pas ça (13).

Another example of *interview* comes from Kathleen Pélletier (2008-), former founder and director of a research company that focuses on intercultural training and former lecturer in the areas related to immigration. Benjamin and Cecile Bukassa, a couple from the Democratic Republic of Congo (DRC) allege to fear persecution as a result of Benjamin's political opinions. He worked as a doctor at a university hospital and in an NGO. He was an active member of the Unified Lumumbist Party (PALU) and he was delegated to increase interior party mobilization in one of DRC's provinces. Since early 2010, he objected PALU's alliance with the People's Party for Reconstruction and Democracy in several public meetings which resulted in unidentified threats when he was away for work. Concurrently, he received a PhD scholarship from a sub branch of Canadian International Development Agency and left to Canada and did not take the threats seriously. Only after a month after entering Canada in early 2011, did he notice that his scholarship has not been deposited. After his wife was threatened once again in Congo, he understood the graveness of the situation, took the measures to bring his wife to Canada and they claimed refugee status together. One of the principal issues in Benjamin's hearing was the lack of documentation of his employment status at the university where he alleged to work. Instead of focusing on precise, short answers, Kathleen wants to see if Benjamin can formulate his answers in a detailed and spontaneous manner.

- *Explain me the procedure. How did you receive the scholarship?*

- *It was a scholarship from Canadian Agency for International Development. I received a scholarship that covers all the expenditures for a PhD in Québec.*
- *Start with the first step please.*
- *OK. Canadian Francophonie Scholarships Program was offering several scholarships to different professionals in order to promote competence and relations between countries in Africa and Canada. The government was responsible from managing this scholarship and when I applied the director of the hospital that I worked for already knew it.*
- *Wait, wait, how did you apply? Go step by step.*
- *I applied through the university hospital; there was an internal competition first. Afterwards, I was selected by the director of the hospital and I applied for the external competition.*

The excerpt from the written decision shows that Kathleen's conception of internal consistency is not rigid. The claimant is not required to pass an interrogatory test but to explain in a detailed manner why the inconsistency exists. It is more likely that the claimants respond to this demand. Benjamin and Cecile are recognized as refugees at the end of the hearing.

> [13] Concerning the analysis of the refugee claim… the principal claimant has clearly responded the questions. He did not attempt to embellish his story, when he did not know the answers, he clearly admitted so.
> [14] A contradiction occurred in relation to the claimant's testimony that he made to the immigration officer. He claims that his spouse has received phone threats. She states that she did not receive any threats. When confronted in relation to this contradiction, the claimant explained that he was confused, he had just arrived to Montréal, he did not have a place to stay and it is probable that he mixed things up in relation to his spouse. In that case, the tribunal understands that the claimant was not present during the threats and gives him the benefit of doubt in relation to that subject.
> [17] In relation to the claimant's job at the university hospital, the tribunal remained sceptical since he does not possess his original documents. However, considering the claimants' detailed explanation in relation to the scholarship competition, selection criterion, the tribunal accepts his explanations (RPD file no: MB1-05280 & MB1-05304).

All Members try to explain how they approach credibility assessment which is ultimately an abstract notion. Their answers indicate different, even competing conceptions of best credibility assessment methods. Not all Members believe that their job is to discover the truth of the refugee claim during questioning and straining out the 'genuine' refugees. When they articulate what they do, these formulations hint a different understanding of their job, the aim of refugee hearing and refugee claimants. A Member that I observed, Hugo Savard (1998-2009 &

2012-) - whose hearing style was *interview*- who is an immigrant himself and has extensive experience in human rights training and protection, states:

> Les commissaires ne sont pas nommées pour détecter des menteurs, mais plutôt pour accueillir ceux qui ont besoin la protection. C'est à cause de ça qu'il faut répéter ça. Malheureusement, on a un peu perdu ça. L'attention généreuse est un peu perdue. Des demandeurs ne sont pas des criminels, mais dans les têtes des gens, ils le sont. Une commissaire ne doit pas juger, c'est pas ça son travail[34] (14).

For Members in this group, to elicit the truth through a hearing is not possible. The Member can only assess the plausibility of the claimant's story, and when contradictions appear, s/he will assess the responses of the claimant in relation to those contradictions. In credibility assessment, the issue is not that there are contradictions or implausibilities in the claimant's testimony; the Board member's job is not to detect these issues either. The Member has to go one step further and be able to reason and assess the claimant's responses to these contradictions. In that sense, the job of the Member is not to evaluate credibility, but the justifications to apparent contradictions. Member's job, therefore, has an expansive reasoning aspect. Hugo clarifies;

> L'audience devient une épreuve de vraisemblance. Je ne dirais pas la vérité. On ne cherche pas la vérité – La commissaire cherche la vraisemblance. Alors, prétendons que le demandeur est homosexuel. L'individu doit lui dire comment il pratique son homosexualité; avec qui dans quel milieu pour combien de temps. La commissaire va à la salle pour tester, donc il faut la définir comme concept. Il faut définir l'audience. Une audience est un moment de test où on valide la crédibilité ou la vraisemblance. Alors qu'est-ce que la commissaire fait pour valider la crédibilité de ce qu'il entend? Sa maturité comme être humain. Il va déceler dans ce qu'il entend; la cohérence du récit, il faut être suffisamment intelligent aussi, je ne dirais pas qu'ils sont bêtes, mais il y'en a; tout le monde n'est pas intelligent, c'est la loi de la nature (laughs). La crédibilité décèle à travers des questions; il y a des contradictions qui peuvent annuler la véracité de récit. Mais l'importance n'est pas la liste des incohérences, des invraisemblances ou contradictions – ce sont les réponses que le demandeur donne pour expliquer les incohérences apparentes ou les contradictions. La commissaire décide sur les réponses. Alors, la difficulté qu'il y a entre la différence entre les décisions positives et négatives c'est que la plupart des décideurs arrêtent au constat. Ils n'évaluent pas la réponse, beaucoup de décisions ont été infirmées sur cette base. Donc, le travail de décideurs est l'évaluation. Les commissaires, qu'est-ce qu'ils évaluent? Ils n'évaluent pas la crédibilité, il évalue la justification de contradictions apparentes (15).

[34]After his official term ended at the Board in summer 2013, Hugo continued to organize training sessions and hear refugee claimants with short term contracts.
Interview, 14 August 2013, Montreal

After criticizing the Board members who evaluated internal consistency of the claim just by pointing out to contradictions, Madeleine told me that there would be contradictions in the majority of the claims and in order to accept a claimant, she did not have to be convinced completely either;

> Il faut que je me rende compte que j'ai accepté des gens ce n'est pas parce qu'ils ne se contredisaient pas beaucoup et ce n'est pas parce que je les croyais cent pour cent... J'estimais, je pense, maintenant une femme du Pérou, Équateur. Elle a une vie là, une vie de tristesse (exaggerates on s). OK, je sais qu'on n'est pas là pour faire la charité, mais elle avait tellement d'horreur avec ses deux garçons. Et pas de grosse contradiction. Alors, je dis « si je vais me forcer pour trouver des contradictions pour la refuser ou accepter en me disant "je me trompe, mais je me trompe de quelqu'une qui a toute de façon d'une vie misérable". Tu vois? (16).

Board members with the rigid conception of what makes a refugee are more sceptical about the incidents described at later stages of the claim of which no mention was made at first. These incidents are considered to be made up at the later stages of the claim, in order to strengthen the claim, as quoted above from Jean-Pierre who simply elaborated "là, avec l'avocat il [claimant] raconte une autre histoire, qui n'est plus la même que la première parce que la première ne fera pas l'affaire" (17).

Guillermo Dominguez Alvarado is a young man from El Salvador, who alleges to have escaped from being recruited by Mara Salvatrucha (MS-13), a transnational criminal gang. According to his oral testimony, he was kidnapped by MS-13 members in 2006, when he was 16 years-old. In an empty field, the members made him watch the killing of a man, which he assumes was a member of MS-18, the enemy organization of MS-13. After making jokes about forcing Guillermo Dominguez to kill someone, the members released him. However, in his PIF, there is no indication of killing or forcing him to kill someone. He claims that his first lawyer never met him, but he had to fill his PIF with his lawyer's secretary, who asked him to be brief.

These elements of the story only came into picture after Guillermo Dominguez changed lawyers, through amendments to the PIF. After hiding several days at a friend's of his father, he leaves to the United States towards the end of 2007. Two years after living and working there illegally, he claims status at the Canadian border in 2009. During the hearing, Lydia's disbelief to Guillermo Dominguez's story was evident. Lydia did not find his explanations about the bad quality of his previous lawyer convincing. She did not take into account the fact that the incident took place 6 years before the hearing took place either. In her written decision, where she rejected Guillermo Dominguez on the basis of non-credibility, this omission was vital:

> [27] Questionné afin de savoir pourquoi à la première question 31 le demandeur n'avait jamais n'indique avoir été témoin d'un meurtre, et que l'on voulait qu'il en commette également un a titre initiatique, le demandeur répondra que c'est parce que l'assistante de son avocate d'alors ne lui avait jamais demandé de raconter son histoire.
>
> [28] Le demandeur sera questionné afin de savoir pourquoi lors de son entrevue avec un agent d'immigration (voir A-24, entrevue du 6 septembre 2009, et le formulaire Claim for Refugee Protection in Canada, question 43 traduite en séance) il n'avait jamais n'indique avoir été témoin d'un meurtre et que l'on voulait qu'il en commette un. Le demandeur répondra que c'est parce qu'il était nerveux et qu'il avait oublié des choses. Interrogé par son procureur, le demandeur répondra que l'entrevue avec un agent d'immigration s'était déroulée en espagnol et sans interprète. L'agent s'est adressé à lui en espagnol et il lui a répondu en espagnol. Le demandeur dira que cet agent d'immigration avait un accent mexicain et que de ce fait, il avait de la difficulté à le comprendre.
>
> [29] Le tribunal est d'opinion, en ce qui concède I 'omission d'avoir mentionné dès le départ avoir été témoin d'un meurtre, que les explications du demandeur ne sont pas satisfaisantes. Par conséquent, le tribunal les rejette. Malgré les explications du demandeur concernant le fait que 1'agent d'immigration avait un accent mexicain, il n'en demeure pas moins que le demandeur a répondu aux questions posées sans mentionner le meurtre dont il avait été témoin, car "il était nerveux et avait oublié des choses".
>
> [30] Ce faisant, le tribunal peine à comprendre comment le demandeur aurait pu oublier lors de son entrevue de demande d'asile l'élément le plus important et traumatique de son histoire. L'explication du demandeur apparait dénuée de sens et, par conséquent, non crédible (RPD file no: MA9-10951) (18).

Not all members treat omissions in the same way and see it as a problem of internal consistency. Skyler Finkelstein (2010-), one of the kindest Board members that I observed did not see omission as a sign of non-credibility. She has undergraduate and graduate degrees in law

and before being appointed as a member in 2010, she held different positions within the IRB ranging from managerial positions to legal advisor. She was the only Board member[35] that I saw as a participant in refugee advocacy community meetings that bring the stakeholders together.

Serhat Karabacak, a Kurdish Alewite man from Turkey, arrived to Canada with his wife Emel and their three children in early 2012. They were escaping from political persecution by the Turkish police and army. Serhat had been detained several times as a result of his political activities within the Kurdish independence movement. When presiding at their claim, a young couple with three kids, Skyler noticed an omission. Serhat was the main applicant, but Skyler questioned Emel about her own subjective fear of persecution as well:

- *Why did you leave Turkey?*
- *Because they wanted us to deny our identity, our religion and our ethnicity and we could not accept that.*
- *Tell me what happened the day the gendarmerie came to look for your husband.*
- *Two of them arrived when we were having lunch. My father-in-law was at home and my children as well.* (Silence. Takes a deep breathe).
- *Continue please.*
- *They asked where my husband was, I told them that he left to Diyarbakir to transfer some goods. They did not believe me and they started searching everywhere. They looked under the beds, tables, they poked about drawers, cupboards. They threw my underwear and clothes down. When my father-in-law asked them to stop, one of them slapped him. When I ran towards them to stop it, one of them squeezed my breasts and asked "are all these yours?"*[36]
- *Wait, there is no mention of this in your PIF. Why did not you talk about this before?*
- *Let me put it this way: there have been so many incidents like this. It was already hard to choose what to write there* (referring to PIF).

During the break, Serhat and Emel's lawyer was not pleased that Emel brought up the subject, since she had clearly explained both what their PIF included and how they should not bring up other issues. Emel turned to me and said *"What could have I done Sule? I had to get it off my*

[35] Clearly I am only referring to the Board members in Montreal, except the top managerial officers such as the IRB Chairperson or the Deputy Chairperson of the RPD.
[36] "Hepsi senin mi?" (Are these all yours?) is a derogatory sexual question, made ordinary with a 90s pop song.

chest. I kept silent for years". Upon our return to the hearing room, Serhat, Emel and their children were accepted as refugees on the bench by an oral decision.

It can be argued that being forced to watch a murder and being subject to sexual harassment several times are not equally traumatic and their omission at the earlier stages of the claim are not of equal importance. The main issue here is not the degree of persecution but how inconsistencies are perceived and treated by different Board members. For someone like Lydia, even a single inconsistency is vital, but for a Member like Skyler only the cumulative effect of several inconsistencies will create an issue (Thomas, 2011). Especially in situations where the claimant's lawyer indicates psychological issues for inconsistencies in the testimony, without backing the issue up with medical documentation from Canadian doctors, members like Lydia will be more distrustful (Kobelinsky, 2013a; Tomkinson, 2014). I will cover this issue in more detail in one of the next sections "authenticity of the documentation". Now, let's see how reasonableness and believability of the testimony is assessed in relation to its geographic context.

4.5.2 External consistency: believability and reasonableness

Suspicion and a pervasive disbelief characterize the work of the Board members who have a strict understanding of external consistency. When they doubt the reasonableness of the claimant's story they often see it as a sign of lying claimant. This suspicious stance is pervasive among the street-level workers of various policy areas, such as welfare distribution (Dubois, 1999; Watkins-Hayes, 2009), first instance asylum treatments (d'Halluin-Mabillot, 2012), asylum appeals (Kobelinsky, 2013a), immigration control (visa processing) (Alpes & Spire, 2013; Satzewich, 2014a) and border inspection (Gilboy, 1991; Jubany, 2011; Pratt, 2010). In refugee determination, discretionary reasoning in some cases shifts to disbelief towards the claimant

testimonies as Millbank (2009) has argued for LGBTQ claimants in the UK and Australia. In the refugee hearing, the Members whose hearing style is *interrogation* do not hesitate to show their disbelief towards certain aspects of the claimant's testimony. When formulating their conceptions towards what makes a refugee, they clearly indicate this pervasive suspicion. Jean-Pierre explained the difference between popular conception of refugee and the refugee claimants in Canada:

> Quand on parle des réfugiés dans la perception populaire, on parle des gens qui vivent dans les tentes en Somalie, etc. Cela ne vient pas au Canada. Ça ne fait pas partie de notre système. Il y en quelques-uns qui viennent via Nations Unies [referring to refugees determined by the UNHCR]. Donc, ce que nous avions n'était pas ces gens-là. C'était des gens qui alléguaient que s'ils retournaient dans leur pays, ils seraient les victimes de persécution : groupe social, homosexuelle, nationalité, religion, opinion politique. Alors, ils essayaient d'avoir des histoires qui caneraient ce qu'on appelle la preuve documentaire — quelque chose qui existait vraiment dans le pays — si par exemple, un pays avait des lois homophobes là, ils se disaient homosexuelles, ils risquaient d'être persécuté (19).

Clearly, convincing a Board member like Jean-Pierre on their need for protection is harder for the claimants.

Ginette Labelle (2008-), a former immigration and refugee lawyer, is often criticized by refugee lawyers for her high expectations of the claimants, *"despite the fact that she knows the difficulty of refugee claims"* as one of her former colleagues said. Manifestation of Ginette's disbelief towards the claimants was evident when she was presiding at the hearing of a Haitian woman, Rose Laurent. According to her PIF, Rose lost her three kids during the earthquake in 2010 and as soon as she could, she came to Canada to see her mother. She was hospitalized during the first week of her arrival to Montreal where she discovered that she was pregnant. While she was in Canada, her husband in Haiti started seeing another woman who had lost her husband. The new girlfriend kept calling Rose and threatening her, saying that if Rose were to go back to Haiti, she would be dead.

Ginette, after asking when Rose arrived in Canada, wants to learn if Rose knew that she was pregnant. Did she come to Canada to give birth? Rose answers that she thought that she was pregnant, but she was not sure, because of the conditions in Haiti at the time, she could not see a doctor. No, she came to Canada to see her mother, not to give birth. Further, she was planning to go back to Haiti, since her husband was there. Ginette counts the months between the birth date of Rose's son and her arrival to Canada and states that Rose was pregnant for 5 months. That many months of pregnancy would show. Given the fact that Rose was a mother before, she should have known she was pregnant by then. The distance, Members like Ginette establish between themselves and the claimants and their suspicion towards the claimants' motives provide a fertile ground for insensitive questions and harsh comments (d'Halluin-Mabillot, 2012; Spire, 2008). Rose could not answer the following question because her sobbing was uncontrollable *"Why did your children die? There should be a reason, dehydration, some kind of virus or what?"*

Ginette then questions Rose on her need for protection and the source of her fear. Rose explains how she receives death threats from her husband's girlfriend who took the number from his mobile phone. Ginette inquires what Rose's husband did about the threats. Rose states that he only said that he could not protect Rose from her. Ginette does not hesitate to put her disbelief and frustration clearly: *"What you are saying is not credible, the husband may say "I don't love you any more", or "I do not want to be with you", but not something like "I cannot protect you from her"*. Rose starts crying heavier this time and murmurs: *"That is what he tried to say, that he did not want me anymore"*.[37]

[37] Ginette was satisfied with Rose's answers and her need for protection. Rose was accepted as a refugee on the bench.

Through *interrogation*, Board members do not only question the claimants in relation to the reasonableness of their own actions, but their family members' as well. This constitutes an extra step that the claimants need to surmount. Andrea Oreiro a young woman from Uruguay alleges to fear persecution from the gang her late father owes money to. According to her PIF, her father who was an accepted refugee in Canada; was involved in drug use and trafficking. He would go back and forth between Canada and Uruguay and traffic around 15-20 kg of cocaine each time. He was a part of a gang to which he owed an important sum of money. The gang also had police officers as members. He was forced to pay his debt, which he could not and committed suicide. Several gang members threatened Andrea, her mother and brother after the father's death. They wanted to recruit Andrea as a sex worker and make her pay the sum her father owes to the gang. Andrea managed to get a visitor's visa to Canada thanks to her cousin's invitation letter but her mother and sister left first to Brazil and then to Argentina.

Hector Nowak (2007-), a former CIC officer with a law degree, is responsible for determining Andrea's claim. During my time at the IRB, I heard numerous critiques from refugee lawyers and interpreters in relation to Hector's approach to the claimants. One interpreter said he felt that whenever he was working with Hector, the claimant was *"like a lamb against a wolf"*. I saw several lawyers who left for break frustrated and helpless. One even said *"He sometimes turns into Hitler! How can you work calmly with this guy?"* Below, Hector questions Andrea about her mother's and brother's whereabouts since he is not convinced that they- including Andrea- truly need protection.

- *When did your mother and brother leave the country?*
- *2011. In November and they went to Brazil.*
- *Did they seek asylum?*
- *No.*
- *Why?*

- *Because they had their passports. They could stay there a few months, and they can't claim protection.*
- *Did you know this? Or that is what she told you?*
- *I knew it.*
- *How many months can they stay?*
- *Four months.*
- *What did they do after four months?*
- *They left.*
- *To?*
- *Argentina.*
- *So they are there since september 2012 with or without status?*
- *I dont understand.*
- *Are they legal or illegal?*
- *Illegal.*
- *Since when?*

Andrea tries to calculate and then says she is not sure. She says that she talked about the situation with her mother but never specifically about claiming refugee status. Hector suggests that if they needed protection, they could have claimed refugee status in Brazil or in Argentina. But they stayed in these two countries without any legal problems, Andrea says. They had to enter Uruguay very briefly between their stay in Brazil and Argentina, even though Andrea does not know the exact reason. Hector protests:

- *On the one hand, you are telling me that they are illegal and on the other, you are telling me that they stayed without problem.*
- *Yes.*
- *But then how can you say that they can stay illegally with no problem?*
- *Because they did. They did not have issues.*
- *But how come, when they are illegal... Did you speak to them when you were in Canada about why they did not claim refugee status?*
- *We did. They said they can stay illegally.*
- *Then why did you claim status? You could have stayed illegally too.*
- *I could have.*
- *Then why did you claim refugee status instead of staying illegally?*
- *Because there is justice in Canada. For security... Stability...*
- *Exactly. That is what I am asking. For their security and statibility, why did not they ask status in Argentina?*
- *I don't know.*
- *Your mother sends you a letter, which corraborates your story, which explains what happened. But she does not try to regularize her own situation?*
  (Silence)

In the written decision and analysis, Hector says he does not believe Andrea's story because he does not find her credible. For Hector, the fact that her mother and brother went back to Uruguay, shows that Andrea does not need Canada's protection. He writes in the decision:

> [11] Le fait qu'ils soient retournés en Uruguay, même si c'est pour une brève période, met en doute sérieusement le fait qu'il y ait une crainte subjective des persécuteurs ou criminels. Même s'ils croyaient qu'ils ne pouvaient pas demander le statut de réfugié ni au Brésil, ni en Argentine, ils auraient dû essayer de faire les démarches pour se renseigner où ils pourraient faire les demandes de refuge n'importe où. Le dernier pays où ils auraient dû retourner était l'Uruguay, vu qu'ils craignaient pour leurs vies. Ceci affecte la crédibilité de la demanderesse concernant cet aspect du témoignage (RPD file no: MBl-06830) (20).

Jean-Claude Cadieu (1998-2008) who has an immigration background, undergraduate degrees in administration and accounting and MA in law, and extensive experience in public audit and, does not hesitate to externalize his disbelief towards the claimants when I asked him how he used to assess external consistency:

> Le demandeur consulte une interprète très souvent, il y a beaucoup d'interprètes qui sont des fabricants des histoires, ils savent quelles sortes d'histoires sont acceptées. Les demandeurs doivent se présenter chez leur avocat également, et l'avocat doit faire une première évaluation, parce qu'on sait très bien que les demandeurs ne sont pas des vrais réfugiés à 90 pour cent. Le Canada a une telle réputation d'un pays bon, accueillant que beaucoup de gens viennent tenter leur chance. Puis il y a des pays pour lesquelles les gens n'ont pas besoin d'un visa pour venir au Canada, donc les gens se présentent à la frontière, ils sont accueillis, leurs demandes sont acceptées à la frontière, mais il faut qu'ils viennent exposer les craintes réelles devant la commission. Pendant les audiences, les gens savent très bien quels types d'histoires pouvaient passer la rampe. Donc, ce n'est pas à travers la lecture du dossier qu'on pouvait, toujours définir quelles histoires était vraies et d'autres frivoles. Il y en avait, mais c'était des malheureux qui ont été mal conseillés qui écrivaient n'importe quoi. Alors, il y avait des gens; il y a l'histoire qui est présentée et des fois on voyait, wow, la différence entre le point d'entrée et l'audience est simplement incroyable![38] (21).

Now, we will see how Wael Morency (2009-), a Board member with training and experience in communication and film industry, who is very much respected by refugee lawyers, directs questioning in relation to the believability of the claimant's testimony. Qadir Hussein, from Pakistan, is the very first claimant I presented in the introduction of this dissertation, alleges

[38] Interview, 28 July 2014, Montreal.

to be targeted by Taliban members as a result of his open criticism of Taliban's actions. Qadir was accepted as a refugee at the end of the hearing. Before arriving to Canada, Qadir worked at the Embassy of the United States as a security officer and saved several foreigners by driving them to the hospital after a terrorist attack on the Embassy. Before his hearing, Qadir had three interviews with the CBSA about his previous army membership before his claim was deemed eligible for refugee status.[39]

- *What are you scared of if you were to go back to Pakistan?*
- *The police, Taliban and the ISI (Inter-Services Intelligence).*
- *When did your problems start with these mentioned institutions?*
- *In May 2007, when I gave a speech at a seminar in …. University. I supported a form of regime where the state and the religion are separate from each other. I was doing an MA in social work, and I was chosen by our professor to travel with General Musharraf and give a couple of speeches.*
- *What did you talk about in your presentations?*
- *I was condemning jihad and terrorism. Afterwards, I started receiving threat calls. I was kidnapped; my wife was kidnapped in the following months. My daughter and brother were attacked as well. After that time the Taliban were behind me, they wanted to kill me.*

After questioning Qadir about the details of the kidnapping and physical violence he suffered, Wael asks;

- *How come after being kidnapped and going through all those events, how come you kept living in the same place?*
- *Where could I go? I had nowhere else to go.*
- *But they knew where you lived.*
- *Yes, they did.*
- *Did you feel safe staying at the same place?*
- *Not completely. But still, it was the best place to stay.*

[39] Qadir was a member of the Pakistani air defence (not air force). The CBSA did not seem to understand the difference. When someone has been in the army, they can actually be excluded from claiming refugee status, since they may be considered to have committed war crimes and crimes against humanity. While air force attacks, air defense remains on the ground (Qadir clarified this to me during the break).

Qadir's lawyer Roger Kadima intervenes and asks if the compound where he lived was a secure place.

- *It was a secure place, there were army officials protecting the compound, so it was the best place for me to stay.*
- *Considering that you were being searched by these groups why did you share that you were being interviewed by the CBSA on Facebook?*
- *I thought that I am in a democratic country and wanted to share my life with my friends and what has been going on in my life.*
- *Considering that your wife and your daughter were attacked, they were shot at, how come you left them there and came to Canada alone?*
- *I was the only one who had the visa.*
- *But they were targeted as well.*
- *I spoke to my wife and daughter and they told me that I was the one targeted, so they asked me to leave and be safe, and they found a place to hide.*
- *But you left them alone.*
- *In our culture, wives love their husbands so much so that they put their [husbands'] safety in front of their own.*

As we have seen, Board members have to question the claimants in various ways and make evaluations and judgments in the end about how people would behave in these particular situations. Clearly, there is no single way how people fearing persecution would recognize the dangers and act upon. Compared to Ginette and Hector's conduct of the hearing, we see that Wael, despite trying to elicit clear answers from the claimant, invites the claimant to elaborate and explain the actions he took, in relation to his context, without clear explicit assumptions of what a 'genuine refugee' would do.

4.5.3 Accuracy of testimony: spontaneity, details and demeanor

Accuracy, in refugee determination context refers to the claimant's ability to present a detailed account of his/her personal life in a spontaneous manner. No doubt, for accuracy all

Board members evaluate the straightforwardness of the claim. They try to obtain the most information from the claimant's testimony on the issues that they consider as determinative aspects of the claim. I detected slight differences between Board members having different *hearing styles* when assessing the accuracy of the testimony. However, some Board members with a more resilient conception of refugees underline that the truthfulness of the testimony cannot always be assessed through what the claimant says but through reading between the lines.

Guy Auger (1989-2001 & 2010-), a former professor of physical sciences with an immigration background, -a Member that I observed- took leadership roles in human rights training for the new Members. He explains what he believes to be the best way to assess accuracy:

> Il faut entrer dans la salle comme le premier jour, il faut arriver sans décision. Si je vous donne la chance pour vous expliquer, je me donne la chance pour évaluer plus facilement. Il faut personnaliser les causes et les rendre humaines. C'est une histoire humaine. Vous allez écouter une personne qui a l'âge de vos enfants, de votre grand-mère. Il ne faut pas installer les murs entre nous et les autres. Il faut beaucoup savoir pour mieux comprendre la cause, pas pour exiger plus. Mais il faut bien écouter, il faut amener les choses et il faut les traiter. Dans une cause, il y a l'âme et la chaîne. Une cause n'est pas simple. Je ne suis pas là pour la rendre simple, mais pour la rendre juste[40] (22).

After this explanation, Guy remembered the details of a claim that he heard in early 1990s. He described a mayor in southeastern Turkey who was claiming persecution by the Turkish state. Guy reported that he was not convinced with the accuracy of the testimony; if the claimant was elected as a mayor, where was the state persecution? How could the Turkish authorities let him hold office? He thought maybe the major was helping the Kurdish people who wanted an independent state in a clandestine manner, but he clarified, that there was no indication of such help in written or oral testimony. Yet, Guy said that he still wondered what happened to the claimant, who seemed to be asking for understanding and pity. He described the demeanor of the

[40] Interview, 2 September 2014, Montreal

claimant very vividly after almost a quarter century later, whose body language said more than his words.

Maria Turcotte (1993-1998), an immigration lawyer with an MA in refugee law, and a very active member of refugee advocacy community underlines a similar aspect of connecting with the claimant when assessing accuracy.

> I put a lot of emphasis on personal connection with the claimant that really influenced me a lot. I felt l could relate, no not as much I could relate, I could try to, I guess, I won't use the word empathize but if I could just make some connection with the claimant in order to understand what they were saying, what they were going through, it was more… I got more information on that. Even if the person spoke broken English, when they could automatically address me, that makes me feel more connected to him and be more sympathetic and empathetic to him and be more likely that I would accept him unless there is other kind of serious problem. So often, and the other thing with the interpreter is you do not know if the interpreter is interpreting right. And then, a lot of people just forget about that. And the interpreters do influence the hearing a lot. A lot of Board members do not speak the languages that the claimants speak, so it is a huge issue. There are also class differences too. Interpreters are very high class people and the claimants are not. So, there is a lot of stuff going on, as a member you have no idea. Some members are oblivious to that; they do not even recognize this question as an issue. I felt like you have to recognize the context you are working in. What he says might not be interpreted right. So do not hang on to his every word, come on! I was able to realize that but there are people that as members who just listen what the interpreter say. OK, sure. It is very difficult to "really find out" (her emphasis). You can never "really" know the story of these people. I felt like if I could connect to them, or if I got some emotions from this person or they were showing me something to help me to accept them, whether they were telling the truth or not. That is the way I worked but I do not think that is the way other people worked. You know the body language does not need an interpreter that does not need to be interpreted, the expressions, the face, the body language. I remember this case, it was this woman she had been raped by the police and they were from India I think. It was the husband and the wife and they were sitting next to each other. I do not remember if the wife was telling about the rape or it was the husband, they turned away. One turned one way and the other turned the other way. So for me, this was so telling that something has actually happened. Because she was ashamed and he was ashamed, they both turned away from each other. It was really different. That is what I found helpful. So it is like they have to come through to you when they had the best chance of convincing me is telling the truth.[41]

The members whose hearing style was *interview*, therefore, paid close attention to the claimants' demeanor when assessing accuracy. In her analysis of an Indonesian Christian claimant's case,

[41] Interview, 12 November 2013, Montreal

Monique Goulet (2002-2012), a lawyer with an extensive practice in administrative law, who occupied different positions at the IRB, reports: "[7]…the Tribunal was very attentive to the attitude of the claimant, such as her demeanor at the hearing and the fact that she was able to respond without hesitation to the questions put to her either by the tribunal or by the counsel" (RPD file no: MB2-02459).

This attention to the claimant's non-verbal behavior does not mean that Board members' will not test the accuracy empirically by checking spontaneity and details. I saw no difference between assessments of the accuracy of the testimony, for instance, in relation to the claims based on religious persecution. Wael - that I introduced in the section above - and Philippe Ouellet (2007-), a former lawyer with experience in different state departments and degrees in law and political science - who is considered to be one of the toughest members by the lawyers and interpreters- assessed accuracy in the same fashion despite the fact that they had different *hearing styles*. Wael was hearing a senior woman from Egypt who claimed to be Coptic Christian, and Philippe had a Tunisian claimant in front of him, a young man who claimed to have converted to Christianity. Both members asked the claimants the rituals of Christianity, the important days and requested them to say Christian prayers. While the claimant in front of Wael was able to give the right answers to his questions and was accepted at the end of the hearing, the claimant in front of Philippe could not respond to his questions and his claim was judged manifestly unfounded.

Another member, Hugo, who underlined above that the Board member's job is not to detect lies when assessing internal consistency now explains how contradictions that arise harm the accuracy of the testimony:

> On peut voir des indices. Par exemple, si vous avez déjà lu ce récit ailleurs ou vous y est tombé sur vos fichiers. Vous pouvez rencontrer des histoires identiques. C'est un peu étonnant. Des fois l'idée est la même, mais il y a plus de détails. Ça ne peut pas arriver à deux personnes en même temps, à la même place, à la même heure, la même ville. Soit un des deux a copié l'autre, ou il y a un des deux qui ment. C'est ça que j'appelle l'identité de l'histoire. Mais il y a aussi des incohérences dans le récit lui-même; il dit le 15 juin il était à Istanbul, il a été battu et torturé, le 16 il était à Ankara[42] dans une discothèque, avec des amis, s'est bien amusé. Il y a un problème. S'il est hospitalisé, il n'a pas eu le temps de guérir. Quand il réalise ça, il change des dates. Il va dire « je me suis trompée ». Ceci est déjà un indice. Ou une autre histoire semblable : quelqu'un qui me disait, les gens qui m'ont enlevée avec des yeux bandés. C'est gros ça. Les gens ne peuvent pas voir avec des yeux bandés. Ou « J'étais en train de fouiller et la police m'a suivie ». « En Inde, j'étais dans mon champ avec mon tracteur et il venait très vite, moi j'ai couru très vite et ils ne m'ont pas rattrapé »; une voiture et une personne? (23).

When assessing the accuracy of the testimony, Board members have to make judgments on subjective elements such as spontaneity, details and demeanor (Kobelinsky, 2008, 2013a). We saw that assessing accuracy provides a fertile ground for judgments on what is believable as well as what constitutes appropriate refugee behavior. Furthermore, the majority of the members that I spoke to highlighted the significance of simplicity in the credibility of the claimant. The more sophisticated a claim looked, the more likely that it was a fabrication. Now, we will look at what forms of evidence Board members consider as reliable and how they assess their authenticity.

4.5.4 Authenticity of the documentary evidence

In this section I will illustrate how Board members assess the authenticity of the documentary evidence by making assessments on medical reports, country documentation packages and photos. The Board is entitled to rely on documentary evidence when assessing credibility (IRB, 2004). However,

[42] Istanbul and Ankara are major cities of Turkey. The distance between them is 453.5 km.

> Unless there are valid reasons to question a claimant's credibility, it is an error for the RPD to require documentary evidence corroborating the claimant's allegations. In other words, the RPD cannot disbelieve a claimant merely because the claimant presents no documentary or other evidence to confirm his or her testimony (IRB, 2004, p. 2.4.3.).

When identity of the claimant is at stake, besides written documentation, the Board accepts other independent evidence such as "testimony of friends, relatives, community elders and other witnesses; affidavits of individuals who have personal knowledge of the claimant's identity or other elements of the claim" (IRB, 2004, p. 2.4.5.2. Commentary to RPD Rule 7).

The Board relies on its members to evaluate the authenticity of the evidence through "specialized knowledge of tribunal (with respect to country conditions, identity documentation, characteristics of documentation)" and to be attentive to "obvious signs of alteration or fabrication on the face of a document" (IRB, Undated-i, p. 2216)

In the hearing room, we see clear differences between how the Members assess the authenticity of the evidence and how they interpret it. Mostly, more resilient members do not question the authenticity of the document, but at the beginning of the hearing, clearly mention what they will not accept as evidence, such as YouTube videos or Wikipedia articles. It is harder to convince the Members who hear the claimant through *interrogation*, about the authenticity of the evidence, especially when the lawyers claim different forms of vulnerability about their claimant but fail to document it adequately. For instance, when Board member Lydia assessed the authenticity of the documents presented to her by Yolanda, the claimant from Dominican Republic allegedly escaping from her ex-boyfriend's persecution, she did not accept the medical reports from outside of Canada, as documenting the trauma she suffered. In another claim from El Salvador in front of Lydia, Guillermo Dominguez's lawyer Roger Bluer claimed that his client was suffering psychological and cognitive issues that impacted his recall without

submitting any medical evidence. Roger even claimed that his client had childlike behavior. On the other hand, Roger did not take into consideration that Guillermo Dominguez's boss had sent an affidavit and testified on his skills as a manager and an employee. In her decision Lydia said:

> [17] Le tribunal demandera au demandeur de préciser son travail au Québec. Le demandeur dira que depuis quatre ans il travaillait dans une entreprise a titre de déchargeur (il décharge des pots de fleurs) et qu'il était également chef de brigade pour cette même entreprise ayant sous ses ordres un groupe de huit employés.
>
> [18] Ces éléments ainsi que la lettre de son employeur a l'effet que le demandeur était devenu, de ses compétences et son efficacité, un travailleur indispensable, si bien que l'entreprise l'incluait dans ses réunions décisionnelles, amène le tribunal a pensé que le demandeur n' est pas une personne infantilisée, sinon on ne lui aurait pas confié de telles responsabilités dans l'entreprise, et que ses capacités intellectuelles doivent être tout au moins dans la moyenne pour qu'il puisse être chef d'équipe et ses capacités cognitives doivent être adéquates, le demandeur ayant su se hisser au rang d'employé indispensable dans un pays ou pourtant il était un nouvel arrivant.
>
> [19] Le tribunal n'a pas relevé lors de l'audience une difficulté ou une incapacité à témoigner de la part du demandeur quel que soit l'élément sur lequel il était interrogé. Outre certaines dates spécifiques pour lesquelles le tribunal ne lui a pas tenu rigueur, notamment en ce qui concerne sa date de départ d'El Salvador, le demandeur a livré un témoignage qui ne laissait transparaitre aucun problème cognitif ou intellectuel minant sa capacité à témoigner (RPD file no : MA9-10951) (24).

Board members who have a more rigid conception of what makes a refugee tend to give more importance to documentary evidence that present country conditions in a more favorable light. In two surprisingly similar claims of Chinese Christians and Buddhists from Indonesia, a predominantly Muslim country where non-Muslim groups and individuals are often attacked, Board members came to different conclusions on the grounds of the same documentary evidence.[43] None of the claimants were personally attacked during the riots of May 1999 against Chinese and Christians. While one member, Monique Goulet, took into account the reports that documented "historical and continuing bias and discrimination against Chinese Indonesians", while indicating that the same reports underline improved conditions for these individuals, yet

[43] The Research Directorate of the IRB prepares and updates current and reliable information related to human rights in the claimants' country of origin (IRB, 2014c).

“they remain “legally and socially vulnerable”” (RPD file no: MB2-02459, para. 11). The member found that, on the basis of documentary evidence, if returned back to Indonesia, there was a “serious possibility that she [the claimant] could be the victim of an unfortunate and persecutory incident” (Ibid, para.13). The other member, Martin Lefebvre, on the other hand, gives more value to the documents that underline that ethnic Chinese and Christian community currently enjoys more rights and freedoms and the government promotes racial and ethnic tolerance, even though he recognizes the fact that there are localized attacks and incidents. Referring to an affidavit written by an expert witness who highlights that living in Indonesia is dangerous for these individuals, which he considers contradictory to the more positive documentary evidence, Martin concludes:

> [27] In light of the foregoing, the panel concludes that even though incidents could still arise between extremist Muslim individuals or groups and Christian or Chinese individuals or groups , the analysis of the evidence as a whole does not show that the claimants would face a serious possibility of persecution given their Chinese and Christian or Buddhist origins, or that they would face a probability of being subjected to a risk to their lives, to a risk of cruel and unusual treatment or punishment, or to torture should they return to their country (RPD file no: MB1-06089, MB1-06093, MB1-06099).

Despite these differences in their reasoning practices, when Board members talk about how they detected the mismatch between the claimant’s testimony and the documentary evidence through the submitted photographs, their accounts are surprisingly similar. Jean-Pierre, who admitted that he did not believe most of the claimants he heard, said:

> Par exemple les gens arrivaient avec des choses en preuve parce qu’on leur disait de détailler leur dossier. Alors, moi je n'ai pas fait beaucoup d'Inde, mais j'en ai fait quelquefois. Et un jour un type d’Inde arrive avec des photos. C'étaient des photos de son arrestation. C'était les militaires qui étaient venus tout ça. Je regarde ça et c'était pris à plusieurs endroits de sa maison. Et je dis "C'est quoi ça" il dit, mais voilà quand ils m'ont arrêtée. Il y a de mère qui est plié sur ses genoux. La mère plus jeune que le requérant. C'est quoi ça? Il m'a dit c'est une photographe qui a pris ça. J'ai dit, mais pourquoi y avait-il une photographe? Les policiers n'aiment pas être photographiés quand ils bastonnent quelqu'un. Il dit, bah, c'est parce qu’il s'est caché. Pourquoi il y a une photographe? Parce qu'il était de l'autre côté de la rue. Qu'est-ce qu'il faisait? Il avait un studio. Il faisait des photos de passeport. Pourquoi est-il venu chez

> vous? Parce qu'il a entendu les cris. Comment ça se fait qu'il prenne des photos comme ça? Il s'est caché. Mais il s'est caché dans plusieurs endroits de la maison. Puis, il y a un flash, on voit le flash dans la vitrine. Il avait demandé à quelques copains de se déguiser en militaire et voilà. C'était ça, c'était le travail à longueur d'année des histoires comme ça. Est-ce qu'il y avait des vrais réfugiés? Quelques-unes (25).

Madeleine, who explained above that most of the claimants she accepted were not necessarily the ones without contradictions in their testimony, now details how corroborative evidence actually "killed" the claimants:

> St Vincent. C'est un tout petit pays, tu connais? Je crois que c'est un des exemples le plus, le plus, c'est le plus grand échec de la colonisation. Dans tous les autres pays qui ont été colonisés y ont les élites, les gens éduqués, mais on dirait que tous les gens de St Vincent sont des gens écrasés. D'ailleurs les rapports familiaux sont très malsains, il y a des incestes. Il n'y a jamais de nom de père dans les actes de naissance, femmes battues, bon. C'est incroyable. Mais ça ne veut pas dire que tous ceux qui viennent disent la vérité. Deux femmes (she is clearly laughing) qui disaient qu'elles ont été agressées sexuellement par leur beau père. Qu'est-ce qui les a tués? Tuer est un grand mot, mais qu'est que qui les a contredit? Elles soumettent des photos. La photo, la première photo est le monsieur et les femmes étaient comme moi, grande OK? Le pauvre beau père était un petit vieux de 75-80 années, maigre comme ça (showing her pinky finger). Elle disait qu'il nous a battus quand on était avec nos boyfriends et qu'on a marché dans la rue. Déjà ça, vraiment, elle m'ont dit un moment donné qu'il est passé par la fenêtre et rentré. Elles m'ont monté la photo de la maison, j'ai dit sur quoi il est monté pour rentrer? Personne ne peut atteindre cette fenêtre sans monter sur quelque chose, OK? Troisième élément, elles avaient dit qu'elles habitaient dans un endroit isolé. J'ai dit pourquoi vous n'avez pas appelé les voisins. Sans réponse. Dans la photo, il y a une maison juste à côté… (she laughs and laughs) (26).

The Members, despite their differences in the way they conceive claimants, the best credibility assessment methods as well as hearing styles, see refugee protection as an institution that needs to be protected and not to be granted to claimants who clearly try to trick the system (Kobelinsky, 2013a). Even though before, some more resilient members emphasized the protection role of the IRB, we saw how when the claimants' accounts indicate deception, members turned into furious interrogators.

4.6 Conclusion

In this chapter, I examined what takes place in the refugee hearing, the most important moment of refugee status determination, where the claimants' credibility and fear of persecution are assessed. We saw how Board members examine the refugee claims in the hearing room, the interaction between the claimants and the Board members, the deliberation and reasoning that takes place during the hearing, and the refugee decision. I tie these processes to the Board members' coherent conception of refugee definition and their preferred credibility assessment methods. I illustrated that the answer to the question: "in assessing the credibility of refugee claimants what should be taken as reasonable degrees of contradictions and omissions?" is different by the Board members. What they consider as believable or plausible refugee stories are disparate as well as the way they give a meaning to juridical categories of Refugee Convention. The IRB is organized in a way to minimize these personal unfounded judgments. Despite strictly discretionary way of credibility assessment, the members have to show the absence of bias in their written decisions and provide "objectively verifiable justifications" (Pratt, 2010, p. 474) to the decisions they took.

We saw two different, almost contradictory conceptions of what makes a refugee and best credibility assessment methods and how these reflect on the Board members' hearing styles. Through *interrogation*, Board members search one singular type of refugee who does not contradict himself or the documentary information and clearly fits with one of the categories of refugee definition. They look for cues of deceptive behavior in a more active and engaged manner. For these members information that is added later to the file not only prompts suspicion but also disbelief. Through *interview*, Board members encourage the claimants to offer a complete response to their questions without interruptions or requiring short answers to specific

questions. They understand that memory does not work in a chronological manner and they know that the claimant's mention of one incident can stimulate the recollection of an earlier previously non-mentioned event.

Previous research that focus on the self-understandings and practices of refugee decision-makers often argue that "the guiding spirit of" refugee determination process (Fassin, 2005, p. 366) is informed by general mistrust towards refugee claimants (Bohmer & Shuman, 2008). Some other studies claim that the universe of decision-makers and the claimants are so different that the decision-makers' expectations from what the claimants can offer as testimony are almost always irreconcilable (Kynsilehto & Puumala, 2013; Maryns, 2006a, 2006c). Some studies are more attentive not to conflate all the decision-makers into suspicious agents, and show how the decision-makers, despite sympathy towards the claimants, have to follow a rigid reasoning dictated by the organizational superiors that disadvantage refugee claimants (d'Halluin-Mabillot, 2012; Kobelinsky, 2013a). Another multidisciplinary research illustrate how the ways Board members established the facts of each refugee claim differed; while some looked for the truth, others tried to detect deception (Crépeau & Nakache, 2008; Rousseau & Foxen, 2005, 2006) Crépeau and Nakache (2008) speculated that purely political appointees, lacking expertise and sensitivity towards refugee issues, have preconceived conceptions about the claimants, which can be linked to how they conceived their role "in the grand scheme of things, as protectors of the oppressed or as ultimate gatekeepers for Canada" (p. 112) and how they performed their functions. This deterministic approach ignores the reasoning and judgment work that the Board member has to conduct. This approach finds many proponents among refugee lawyers that I spoke to. Former Member Daisy Walker (2003-2006), a refugee herself, who currently works with detained refugee claimants, contended:

> It is about beliefs: what one thinks about refugees. A Board member has a lot of power. No one can tell him what to do. What decision to take…No case is very clear. There are very few cases that you can say easily the person is a refugee. Otherwise, all the other cases can be both yes and no… We had members who were Chretien's wives' friends. There to make just some good money really. They didn't care about refugees. They had no idea about refugees. Before they were appointed I am sure that they did not know what a refugee is.[44]

In this chapter, I argued that the divergence in refugee status grant rates happens as a result of *hearing style* which is an operational shortcut guided by a set of coherent beliefs about the refugee claimants and their work. In the next chapter, we will see how different conceptions related to the Board member' work definition and *hearing styles* are constituted within a rule-bound organization.

[44] Interview, 2 June 2014, Toronto.

Chapter 5 DYNAMICS OF ORGANIZATIONAL LIFE AT THE REFUGEE PROTECTION DIVISION

Board members have different approaches to the refugee hearing, the claimant and credibility assessment. What enables the distinction among their approaches to their work within a rule-bound organization? This chapter deals with this question. Board members receive the same training on how to conduct their work when they are appointed to the RPD, they work under comparable conditions making refugee determinations on similar cases, and they face the same demands from organizational and political superiors.

I argue that endogenous arrangement, that I call organizational dynamics: instructions, conditions and expectations of the IRB, provide a fertile ground for establishing differing conceptions about their work, the refugee claimants and *hearing styles*. Board members, enjoying legitimate discretion fostered by the IRB and the judiciary, despite the constraints they face, play an active part in the definition of their occupational role. We will see how new Members are simultaneously instructed to be sensitive and show disbelief towards refugee claimants, which creates a goal ambiguity in relation to the definition of the Board member's job in the hearing room. Difficult work conditions coupled with the invisibility of the refugee hearing to the organizational superiors leaves the hearing room as the only place the Members can control. This allows the Members to balance the pressures by formulating a *hearing style*. Finally, there are clear signs of managerialization and attempts to monitor Board members' reasoning. The expectations of the organizational superiors; increasing efficiency and consistency are not realized, since Members see themselves as the only legitimate authority to take the decisions and as a result of uncertainty in relation to their future appointment, Members have no motivation to follow these expectations.

Core insights of the SLBT meaningfully illuminate refugee decision-making as well as the relationship between the Board member and the organization they occupy. One of the most central issues in this literature is the extent that the organizational settings help us understand policy implementation. Decision-making at the street-level cannot simply be explained in relation to formal rules or individual beliefs of the decision-makers, but as responses to organizational conditions where implementation occurs (Brodkin, 2012). Despite the differences of the Board members compared to classical street-level workers and the refugee decision-making from the social policy implementation, my main findings are surprisingly similar.

Unlike the majority of state officials studied by the SLBT literature, Board members are not at the bottom of the organizational hierarchy. Enjoying high degrees of discretion and legitimized autonomy, Members are not just cogs in the administrative system. They have the power to make concrete changes in refugee claimants' and their families' lives after examining the issues of the claim under conditions that are invisible to their organizational superiors. Delegation of authority to the Members to determine refugee status under conditions of goal ambiguity, allows them to develop hearing routines that accelerate the investigation of the claim, and challenge the prospects of organizational control over their work. Discretion, therefore, is not managed from above.

5.1 Routines and simplifications: managing and controlling the work situation

Board members, similar to other street-level workers, see themselves and the work they conduct mostly in a positive light. They believe in the difference they can make in the refugee claimants' and their families' lives. As Guy Auger put if forward candidly, Members believe that they are a part of the mechanism that determines the claimants' fate and their decisions have the

potential to transform the claimants' and their families' lives. We will see in this chapter how Members also elaborate on the complexity and importance of their work while criticizing the demands made by organizational superiors that restrict the ways they should conduct their work. Lipsky states that;

> They believe themselves to be doing the best they can under adverse circumstances, and they develop techniques to salvage service and decision-making values within the limits imposed on them by the structure of the work. They develop conceptions of their work and of their clients that narrow the gap between their personal and work limitations and the service ideal (Lipsky, 2010, p. xv).

Street-level workers, in order to process the clients more efficiently and balance the pressures they face at work, redefine the clients and their work. They act upon these definitions and what the clients get as services are very much informed by the character of these definitions. Recall the different conceptions of refugee claimants and their work Members developed. They cannot offer Canada's protection to any claimant who demands it, but only to the ones who have passed the administrative test. Despite the fact that the aim of the refugee hearing is to investigate whether the claimant is a refugee or not, we saw how the investigation is structured in disparate ways. In practice, Members' actions are highly routinized and simplified in order to differentiate among refugee claimants.

Considering the difficulty of rendering services and resources to a population with increasingly complex demands; rationing limited public money under conditions of uncertainty as a result of conflicting or ambiguous goals and responding to the case-processing demands of the superiors, street-level workers face tensions. One principle premise of the SLBT is that street-level workers with delegated discretionary authority carry their function often in solitary conditions and their superiors do not have the immediate technical knowledge to comprehend

their actions (Hill & Hupe, 2009). Under these conditions, street-level workers, "manifestly attempt to do a good job *in some way* , given the resources at hand and the general guidance provided by the system" [author's emphasis] (Lipsky, 2010, p. 81). Their ideal conceptions of their professional role are almost always in conflict with what is expected of them organizationally. These conditions coupled with broad discretion incite them to manage the tension between the two by redefining their work.

A simple but concrete example to this tension comes from a caseworker who appears in the study of Watkins-Hayes (2009). She does not see her work through organizationally defined enforcement requirements or processing paperwork but instead says "I have been dying to say this: I do social work… A lot of people in this office said that it is not social work that we do, but it is" (p. 59). Another case worker, who works in the same office, in striking contrast to the previous statement, sees her role as a case processor and asserts "[w]e're not social workers. We are business workers, financial workers" (p. 73).

Interacting with the reformulation of their work redefinition, the street-level work context "calls for the development of mechanisms to provide satisfactory services in a context where quality, quantity and specific objectives of service remain (within broad limits) to be defined" (Lipsky, 2010, p. 82). One response to this complexity is to develop patterns of practice. By routinizing their work, especially their interactions with the clients in front of them, street-level workers structure their work to transform the task at hand to a more manageable one.

The administrative context formally structures and regularizes the client assessment processes by offering simplifying cues through eligibility requirements and definition of a client population. Yet, these measures often remain inadequate as Lipsky (2010, p. 83) reminds us and

street-level workers also "develop their own patterns of simplification when the official categories prove inadequate for expeditious work processing, or if they significantly contradict their preferences". Street-level workers find themselves in a particular situation; they are constrained by organizational requirements, but they also enjoy leeway to conduct the job according to their preferences as long as their practices are organizationally acceptable. Hosticka (1976), in one of the first street-level studies, observed that legal service lawyers did not differentiate between clients and their cases and rather they collected information through well-structured routines exercising total control.

The routinization of work does not only transform the street-level worker's task to a more manageable one, and allow the worker to control the work situation but also bears important consequences for the clients who are assessed and categorized through these routines. Housing possession proceedings for example, despite their mundane appearance, are structured in a way that disadvantage the claimants and may produce homelessness and other forms of housing needs (Cowan & Hitchings, 2007). If administrative tribunal judges organize their redress hearing routines through a strict bureaucratic framework, appellants are further disadvantaged in the administration of public assistance, instead of seeing correction of errors committed by case managers (Lens, 2013).

The discretion Board members exercise in the hearing room is not random but systematic as I exemplified in the previous chapter. Members do not approach each claimant or case as if it is unique. *Hearing style* is used as an operational tool by the Members to manage their work, assess refugee claimants and consequently allow or deny access to Canada. But what exactly engender differential *hearing styles*?

5.2 Organizational dynamics as the source of disparity

Board members are 'entrusted with the responsibility for making quasi-judicial decisions that profoundly affect the lives of individuals." (LPDD, Undated-a, p. 2129) The Immigration and Refugee Protection Act (IRPA) that provides the IRB with jurisdiction to hear and decide refugee claims;

> gives Members the broad powers and authority of a Commissioner under the inquiries Act to direct the gathering of information relevant to the assessment of refugee claims. Thus, a member may issue summons, administer oaths, issue commissions and "do any other thing they consider necessary to provide a full and proper hearing" [IRPA, a. 165] (IRB, Undated-a, p. 2092).

Members "come from different walks of life and many join the Board without legal training or legal experience" and are granted significant discretionary authority organizationally (IRB, 1997a, p. 1595). Even when they ask for help from the Legal Services Department within the IRB, with their legal reasoning and analysis, "the legal adviser makes comments on the reasons that are respectful of the independence of the decision-maker" (IRB, 1997c, p. 2190). The IRB reminds that "individual decision-makers retain the freedom to decide according to their own consciences and opinions" (IRB, Undated-c, p. 2219).

The IRB grants legitimate autonomy to the Board member's actions and judgments as we will see. In this section, I argue that organizational dynamics coupled with the member's role as the only discretionary authority in the hearing room, produce and sustain conditions that create relative goal ambiguity in relation to the definition of Board member's work instead of a goal consensus. The members actively engage in defining what is expected of them and how to conduct their job.

Organizational dynamics not only foster the members to attribute their own meanings to the definition of their work, but also the legitimacy given to their roles allows them to resist the directives they receive from the managers. This legitimized role as an independent decision-maker and the uncertain employment security encourages them to defy the demands of the organization that they see as a threat to their decision-making authority and rule them out.

5.3 Simultaneous instruction of sensitivity and disbelief

The Refugee Protection Division (RPD), as a specialized board of inquiry determines refugee status. Clearly, Board members are not professionals in the classic sense of the term, like doctors, lawyers, teachers, engineers or social workers. No specialized prior training designed to prepare an individual to hear refugee claims and assess the claimant's credibility exists (Sossin, 2006). That is why the IRB directs a lengthy, extensive, and ongoing training for all Members following their appointment (Macklin, 2009). This section tackles the following question: What does the IRB instruct the Members and how? Through analysis of official training documentation, I argue that the instructions the IRB gives to the Members from the appointment onwards creates a relative goal ambiguity in relation to the definition of Board member's job. We will see how Members are simultaneously taught sensitivity and disbelief towards the claimants. During this process, they learn that they are the sole discretionary authority in the hearing room who must ensure that their actions and communications do not harm the integrity of the IRB by also providing well-reasoned decisions.

The IRB was designed as a "tribunal of the people, a species of grand jury" (Crépeau & Nakache, 2008, p. 73). Despite this lay aspect of refugee decision-making, it is an occupation that is heavily based on interpretation of law; legal as well as practical reasoning. In order to

close the knowledge gap about the legal issues of refugee determination; national and international human rights measures, country conditions, conduct of a hearing, credibility assessment and so on, the IRB under the supervision of an internal unit, Learning and Professional Development Directorate (LPDD), offers regular, continuing and, customized training to its Members.

Unlike visa officers of France (Spire, 2008), asylum agents in Spain (Bastien, 2009) and welfare caseworkers in the US (Watkins-Hayes, 2009) and France (Dubois, 2010) who do not receive specific instructions and training on precise ways of conducting their job, Members are "made expert by training and experience" similar to border officers in Canada (Pratt, 2010, p. 474). Newly nominated members receive six weeks of intensive training at the beginning of their term and continuing education through individual reading, facilitated workshops, mock hearings and information sessions guided by the LPDD, the Legal Services Department and presentations by expert speakers. Through these sessions which serve the purpose of professional training, new Members are not only instructed in the suggested ways of conducting their job but they also learn the extents and limits of their discretionary authority.

Their technical and administrative knowledge is updated regularly as a part of continuing education efforts. Further, if the IRB management decides that a Member needs more training on a specific issue, raised by the Legal Services Department, a customized training is offered (Macklin, 2009). The IRB also provides conditions for the new Members to receive real hearing room experience by making them observe hearings of more experienced Members or placing them on a three-member panel for training purposes. Director of Policy and Procedures Directorate points out that;

> Presiding effectively over a quasi-judicial hearing requires a combination of skills that are best acquired through the actual experience of conducting hearings. Training on presiding

> skills in the abstract or a classroom setting is enhanced by sitting with experienced members before proceeding to hear cases as a single member (IRB, 2003a).

A glance through the SLBT literature indicates that welfare agents bring personal preferences to case processing when there is lack of coordinated training. Dubois (2010) explains how the lack of preliminary training, before one is appointed as a benefits reception agent, allows the agents to constitute their own priorities and practices through concrete interactions with the clients. Occasional training "does not question the agents' practical constructions and does little to standardise methods (p. 91). Watkins-Hayes (2009) raises a similar issue. She presents how following a major welfare policy change, the lack of a harmonized training created a vacuum and enabled the agents to formulate their own policy preferences which resulted in a variation in service delivery. Board members' experiences at the RPD are clearly different than those agents. They are not left alone to learn the job. As a result of the IRB training, one would expect consistency instead of divergence in the hearing room practices but, as illustrated in the previous chapter, this is not the case.

In the following pages, I will illustrate how the IRB might have unwittingly contributed to the disparities in processing refugee claimants by creating a relative goal ambiguity in relation to the Board member's job in the hearing room. Rooted in the legitimized discretionary authority of the Board members, the training suggests that diverse, even contradictory conceptions and hearing room practices are valid. Through training, the IRB simultaneously teaches sensitivity and disbelief towards the claimants. Members are instructed to be sensitive to the claimants in front of them, cross-cultural issues, their own prejudices and bias. They are reminded that credibility cannot be assessed solely based on reasonability under Canadian standards, but on the other hand, they are taught to disbelieve the claimants, dig deeper, be mindful of omissions, highlight inconsistencies and detect deception.

5.3.1 Sensitivity in handling the refugee claims

Board members have a duty to act fairly to the parties in front of them. The training emphasizes that the Members ensure that the claimants more or less understand the procedures and what is expected of them. Members are instructed to be sensitive towards all claimants but specifically to vulnerable populations; such as unrepresented claimants, children, victims of trauma, women who experienced gender persecution and LGBTQ claimants. This suggested sensitivity does not override the concerns of efficiency of case processing, however. Members are required to balance sensitivity with expeditious decision-making. It is impossible to cover all suggestions given by the Board, so I will emphasize concerns that are expressed more than once.

The documents designed for individual pre-course reading vary vastly in their content and function. They include basic reading materials such as "UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status" as well as progressive and critical academic articles in relation to victims of gender persecution (Dauvergne & Millbank, 2010). The Board even asked Nicole LaViolette, a leading academic in of LGBTQ claims, to prepare a paper that reviews the developments in Canadian refugee determination and addresses how these claims should be assessed (LaViolette, 2004, [2010] 2013).

Preparation of the new Members to the realities of hearing room is an important concern. In an exercise on hearing procedures that offers several scenarios, the LPDD asks the new Members how they would rule in case of applications to change the date or time of proceedings at the last minute. Members are asked to handle the situation and the suggestions of the CM, who assigns the cases to the members and often makes these decisions when applications are received before the hearing. Members have the discretion to grant postponement after considering the

relevant factors, and they have to take the necessary steps to prevent delays. The document highlights relevant factors that the Members must consider to make procedural accommodations for these claimants and offers suggested ways of ruling.

The two examples below include the application of unrepresented claimants with limited formal education and language skills to change the hearing date at the hearing. Despite the assumptions of informality of its procedures, "Board recognizes that there are differences between represented and unrepresented claimants and the requirements with the latter ones should be relaxed" (RPD, Jan 2008, p. 42). While the Member is required to ensure that the procedures are fair to the unrepresented claimant, "it is not the role of the Member to become the advocate for the unrepresented claimant" (RPD, Nov 2010e, p. 3057).

In the first scenario, the claimant demands the hearing date to be changed because he "would like to obtain counsel. The claimant says that he just recently realized the importance of having a counsel to represent him at the hearing based on suggestions from people in his community" (RPD, Aug 2006, p. 10)[45] The facilitator's notes indicate that even though "the claimant has a reasonable right to counsel of choice – it is not an absolute right". The member has to consider the relevant factors, such as; "the claimant is young and unsophisticated and there have been no adjournment/postponement requests". On the other hand, the same document specifies that the RPD informs the unrepresented parties about their right to a counsel and that they have to be ready to testify on the date that has been set for the proceeding. Even if it is the first time the claimant asks for a change "The RPD will consider if the parties have been given notice of the date and time of the proceeding and if the parties have had a reasonable amount of time to prepare for it" (RPD, Aug 2006, p. 11). The document still suggests the Member to

[45] Also see RPD (Nov 2010a) and RPD (Nov 2010c).

clarify how the claimant would pay for the counsel since he was not able to secure legal aid at the first place and which steps the claimant took in obtaining a counsel. This does not mean that the Member just proceeds with the case, if they believe a postponement should take place, they can:

> Where it seems necessary to grant a postponement, what steps would you take to prevent further delays? For example, the panel could give the claimant a reasonable deadline, in advance of the hearing date, to report to the RPD the name of the counsel retained. In addition the next hearing could be made peremptory, and the claimant advised that any subsequent request for a change in the date of the hearing would not be favorably viewed, barring exceptional circumstances (RPD, Aug 2006, p. 11).

In the second scenario, the unrepresented claimant, as a result of his limited language skills could not read the documents that the RPD disclosed three weeks before the hearing. There is no indication of what the claimant demands. The facilitator's notes specify that "Members must ensure that claimant take responsibility for his/her actions. However, Member must also ensure the claimant's right to be heard is protected" (RPD, Aug 2006, p. 17) Members are suggested to consider alternatives instead of changing the date or time of the hearing such as recessing or the having the claimant review the documents with the interpreter. This is a common practice. During my hearing observations I often witnessed the Member to take a recess and demand the interpreter to review the documents with the claimant or to translate the documents submitted at the last minute.

Members are instructed to be particularly sensitive to vulnerable persons as well. Vulnerable person refers to an administrative category defined by the IRB that covers

> individuals whose ability to present their cases before the IRB is severely impaired. Such persons may include, but would not be limited to, the mentally ill, minors, the elderly, victims of torture, survivors of genocide and crimes against humanity, women who have suffered gender-related persecution, and individuals who have been victims of persecution based on sexual orientation and gender identity (IRB, [2006] 2012, p. 2.1).

The IRB urges the Members to identify vulnerable persons according to the Chairperson's Guidelines in order to "provide guiding principles for adjudicating and managing cases". When a claimant is identified as a vulnerable person, it does not mean that the Board recognized the merits of the claim, because identification only deals with procedural matters. The Board "has a broad discretion to tailor procedures to meet the particular needs of a vulnerable person" (IRB, [2006] 2012, p. 4.2). In order to accommodate the vulnerable person, the Board can, among other things, allow the presence of a support person, create a more informal setting for a hearing and vary the order of questioning.[46] Generally, it is the CM that designs vulnerability, but a person can be identified as vulnerable at any stage of the process, including at the beginning of the hearing (RPD, Jan 2008).

Instances of instructed sensitivity cover questioning during the hearing as well, since oral communication, information-seeking and self-control are among the required competences of the Board members. The RPD highlights that "questioning is a goal-oriented activity" (RPD, June 2007c, p. 454) After establishing the differences between questioning with adversarial and inquisitorial models, a document called "Questioning 101" underlines that Members must be neutral and must avoid creating an appearance of bias, and that they "cannot use aggressive cross-examination techniques –cannot "trap"… cannot badger, harass, ask repetitious or misleading questions to adopt a hostile, sarcastic or a similarly inappropriate one" (RPD, June 2007c, p. 50). Members are asked to treat the claimants with respect; to establish good rapport from the beginning; to ensure that they ask relevant questions; to keep their questions simple, short and unambiguous and to convey appropriate body language which is transmitted through "eye contact, facial expressions, body posture and body tension, hand gestures and body

[46] Normally, the Board member starts questioning the claimant followed by the lawyer. S/he has the discretion to allow the claimant's lawyer to start first.

movements". The document further commands "As a rule, avoid gestures that suggest disapproval or disbelief. Questions should be asked in a neutral tone, and made at an appropriate pace. Avoid reading or shuffling papers while the claimant is speaking" (RPD, June 2007a, p. 455)

The "Questioning 101" module also lists inhibitors to communication and urges the Members not to underestimate their impact on the hearing:

> Fear (authority, endangering others, rejection, the process, the reaction of people in the room, the interpreter), cross-cultural issues, education, age, memory difficulties, culture shock, trauma and torture and other vulnerabilities, intimidating nature of the proceedings, lack of understanding of the process, impact of communicating through an interpreter (RPD, June 2007c, pp. 50-51)

However, at least on paper, there is no further information on how the Members should apply this mindfulness to questioning the claimant. It is up to the Members to interpret it.

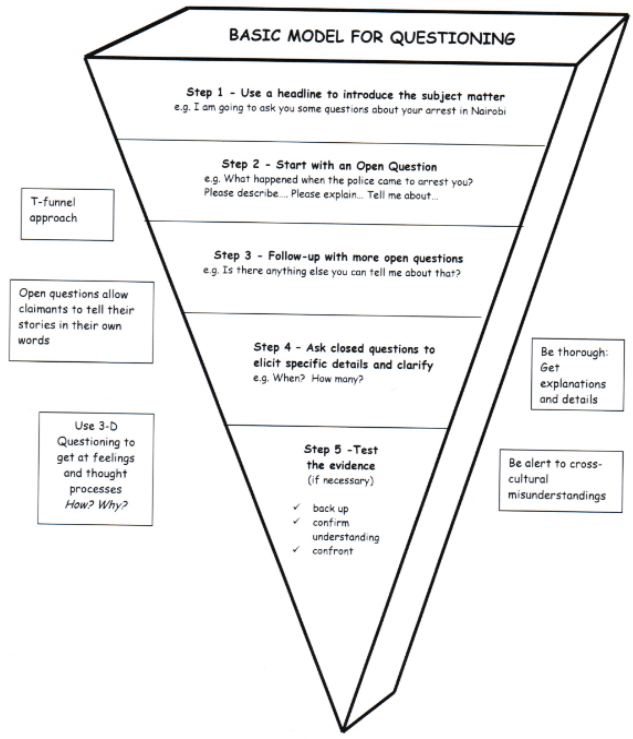
Discovering the "truth" about the claimant's need for protection is the most important aim of the hearing. The same document suggests that the analytic activity the Members conduct during the hearing is statement analysis which proceeds from the assumption that "the description of real memories is qualitatively different from the description of invented or coached memories – spontaneity is a critical factor" (RPD, June 2007c, p. 52). The presence of real memory is confirmed if the following criteria are present:

- ✓ Coherence- the allegation should hang together
- ✓ Spontaneous reproduction – should not be rigid or with overly strict chronology
- ✓ Sufficient detail – level of detail one would reasonably expect in the circumstances
- ✓ Contextual embedding – e.g. claimant describes her father's morning routine as part of her description of the arrival of the soldiers at her home – real experiences are part of everyday life
- ✓ Descriptions of interactions – who did what to whom (RPD, June 2007c, p. 53).

Clearly, the amount of interpretation work that needs to be done in questioning the claimant is quite extensive. The schema that offers a basic framework for questioning only teaches the necessary steps to get more information from the claimant through more detailed questions.

Asking closed questions, through which the Members control the hearing to a great degree and chooses what will be discussed with the claimant, yield short answers -or a simple yes or no-, is a very good way of eliciting the details of a specific incident. However, the document brings to the attention of the Members that the efficiency of the closed questions must not outweigh the fairness aspect of questioning. The document specifies overuse of closed questions "can feel like an interrogation, can miss the forest for the trees" (p.53). That is why the following T-funnel model is advised for the use of opening a new line of inquiry which allows the Member to keep the claimant on track. The Members after setting the scene, and mentioning on what topic the claimant will be questioned, slowly proceeds to elicit details and clarify testimony.

Figure 4. Basic Model for Questioning



Source: (RPD, June 2007c, p. 55)

The training offers a good indication of what is deemed effective and troublesome questioning techniques. The handouts of the questioning basics that ask Members to identify troublesome questioning case studies describes a situation where the claimant fails to remember an important date for the claim. The Member responds "Why don't you know? I would think you might remember such a significant event in your life." This question and statement are considered "inappropriate and judgmental". In another scenario the Member makes the following statement:

> When you first said you wanted to enter Canada, you said you had a good job and would only be taking a two-week holiday. At the airport, you said you had no relatives here. But, your brother is a refugee claimant here, isn't he? You lied to get your visa and you lied at the airport. Why should we believe that you were arrested and beaten? (RPD, June 2007c, p. 58).

According to the handout, this statement is "inappropriate, aggressive, hostile, leading, multiple questions" (RPD, June 2007c, p. 58). It is up to the Members to find an acceptable way to put the inconsistencies or contradictions to the claimant and demand clarification.

The hearing takes place in an intercultural environment (Rousseau et al., 2002). Members receive instructions on what cultural competence means and how they can manage cultural diversity (IRB, [2007] 2008). This competence is defined as

> the ability to take into account the social and cultural conditions, norms and beliefs prevailing in the party's milieu or origin in assessing the credibility or plausibility of their actions. This involves the ability to question one's own cultural assumptions, a willingness to understand a perspective other than one's own, and a commitment to recognize diversity both between and within cultural groups (IRB, [2007] 2008 p. 219).

Despite this definition, there is no indication of how questioning of one's assumptions can be done and how one might try to understand another cultural perspective. Considering that the refugee decisions are concretely taken on reasonability based on the truth or plausibility of the claim, this statement remains wildly ambiguous: "there is no such thing as common sense in a

cross-cultural setting- avoid drawing inferences about common sense, plausibility or the reasonable person that are premised on culturally based assumptions – check what makes sense in the person's own environment (RPD, June 2007c, p. 54). Recall the evaluations made by the Members in terms of cultural assumptions. We see significant differences in terms of cultural awareness as well as communication patterns.

When questioning the claimants who have been victims of sensitive issues, such as physical or sexual violence, the documents repeatedly highlight some claimants' difficulty of testifying against their abusers. Members are reminded that holding assumptions about the way a victim must testify at the hearing is problematic. "Some women may testify in a flat and unemotional manner while others may become emotionally overwrought. Both reactions are consistent with a history of domestic violence. Remember that demeanor is the least credible indicator of credibility" (LPDD, Sep 2009, p. 2148). Members are requested not to ask questions on the abuse suffered as it related to a particular incident, rather the consequences of that incident. The same document indicates that

> The claimant may be suffering depression, battered women's syndrome, post-traumatic stress syndrome. A woman suffering these symptoms may have difficult in testifying. She may try to hide the full extent of the abuse; she may feel shame and anxiety, long periods of silence, physical distress… All of these symptoms, if misunderstood, could be used to discredit the testimony of the claimant, even though their appearance should, if anything, strengthen her credibility (LPDD, Sep 2009, p. 2151).

It is not only victims of violence who have trouble testifying. The RPD recognizes that "all people have difficulty with memory" and that "even ordinary non-traumatic memories are not necessarily encoded, retained or retrieved accurately" and that they "often change with each retelling" since "memory is a constructive process". The document further recognizes that "memory for date and times is notoriously unreliable" (RPD, June 2007c, p. 54). The next section, on the contrary, will show how the constructive nature of memory is forgotten and how

Members are required to detect deception and falsehood through contradictions and discrepancies.

5.3.2 Teaching disbelief rather than suspicion

Refugee determination not only conveys but requires suspicion. Instead of taking at face value what the claimant expresses in relation to his/her need for protection, the Member has to determine if the claimant's fear of persecution is well-founded. The Member has to do objective fact-finding. Recall how the previous chapter established that Members had disparate levels of suspicion in the hearing. This section argues that some instructions go beyond suspicion and approach to disbelief. Suspicion conveys a feeling of doubt under conditions of uncertainty, while disbelief means "a feeling that you do not or cannot believe or accept that something is true or real" according to Merriam-Webster dictionary. This signifies a tendency to reject something, such as a statement, as untrue. This section, based on the analysis of mock hearing and expert presentation material, argues that sensitivity concerns presented in the previous section, do not override disbelief since messages of sensitivity and disbelief are sent simultaneously.

Jubany (2011) in her ethnographic research on asylum screening officers in Spain and the UK demonstrates how official training and front-line practices are guided by the principles of disbelief and deterrence. She notes that "the interpretation of the criteria is nearly always imbalanced towards the disbelief of the narrative and the discrediting of the applicant" (p. 84). These practices sustain and reproduce a culture of disbelief. We will see now how disbelief is instructed through mock hearings in refugee determination context.

Mock hearings, guided by experienced Members, aim to allow new Members "to practice their skills in a realistic setting, based on a mock file used during other sessions throughout the

training course", to gain confidence in their competences to concerns that arise in refugee hearings, to practice their skills to identify the determinative issues of the claim, to enhance their questioning, note-taking and listening skills, "to practice approaches to controlling the hearing", and "to practice decision-making and reasons writing" (RPD, [2004] 2008, p. 373). During these practices, each Member plays a different role during a specific part of the hearing.

It is worth questioning why in mock hearing exercises two case files based on gender persecution and membership to a particular social group are used repeatedly. The claim of Tina Aguilar, a young Mexican woman (RPD, [2004] 2008, August 2006, March 2009) is used more frequently than Magda Magyar, a young Hungarian woman of Roma ethnicity (LPDD, 2000, June 2007a, June 2007c). These two files include all the red flags in relation to inconsistency, implausibility and omissions in the testimony. In the written decisions of these cases, the claimants are not recognized as refugees. Among a few other case studies similar examples are given from Costa Rica (IRB, Undated-e), Dominican Republic and El Salvador (IRB, March 2011). These examples show discrepancies in the narrative as told to the immigration officer, in the PIF and during the hearing. On one hand, as I underlined in the previous section, instructions highlight that inconsistency does not always equate to the lying claimant and there are inherent difficulties with memory. On the other hand, in practical exercises, consistency is treated as the most significant aspect of the claimant's credibility. When there is inconsistency the claimant's rejection is suggested.

Paying particular attention to the mock hearing practice documents is significant because they instruct a single analysis and reason writing saturated with disbelief. As the case file of Tina Aguilar presents the "summary of the claimant's anticipated testimony" (RPD, [2004] 2008, p. 377), she is from Mexico and claims to be a victim of domestic violence. However, according

to the Port of Entry (PoE) notes, she never complained to the police, since her boyfriend Fernando told her that he had friends in the police force. Afterwards, she changed her testimony and said she meant relatives rather than friends, but did not know who or where they were. At the PoE interview, she stated that she had a miscarriage as a result of Fernando's attack (there is discrepancy in the way the attack was described as well, since there were so many instances of violence she could not remember them correctly) in October 2003 but in her PIF she stated that it took place in December 2003. When questioned on the discrepancy, she first blamed the Argentinian interpreter using local Argentinian expressions and then explained that at the time she was scared and made a mistake. In her PIF, she stated that she went back to live with Fernando after the miscarriage, since he apologized and said he loved her, but then she claimed she went back because he threatened to kill her family and she simply said she forgot to mention the threats. Even though she had said that she could have provided the documents that she was hospitalised for two days at the PoE interview, the documentary evidence has not arrived. Finally, she presented a letter from an institution that stated that the claimant was admitted to an abused women's program and that she failed to submit it with her PIF since she had not realized its significance for the claim at the time.

In mock hearings, Members are required to make refugee status determination based on the analysed case file and deliver oral reasons. The same document elaborates reasons for a negative status determination. As the document puts is,

> In coming to my decision I considered Chairperson's Gender Guidelines that apply to women who allege to have suffered domestic violence. However, they do not assist you, as I do not believe you have a boyfriend in Mexico who is likely to murder you, attack you or otherwise inflict serious harm on you. I cannot conclude on a balance of probabilities, that your story of domestic abuse is true, nor can I conclude that you have provided clear and convincing proof that, in the event of such abuse, state protection would not be forthcoming. My reasons are as follows.

> I find that, if you were indeed pregnant, no miscarriage took place, when I assess the reliability of evidence on a balance of probabilities. I find it difficult to believe that you could have made a mistake, as you allege, regarding the date of your miscarriage. You stated at the PoE interview that you miscarried in October 2003; however, in your PIF, you indicated that the miscarriage took place in December 2003. When questioned on the discrepancy, you first blamed the interpreter's Argentine expressions and then you changed your story that you were frightened and therefore made a mistake. Setting aside the significance of this contradiction on your credibility for a moment, I do not believe that someone in your position could have made such a glaring mistake on the dates (RPD, [2004] 2008, p. 381).

Remember the previous instructions on the fallibility of memory and how another segment of the same training had put that memory was based on construction and how recall of times and dates were particularly unreliable. We see a contradictory practice to what has been instructed in theory. The reasoning continues on the likelihood of miscarriage:

> First, the loss of a baby is a traumatic experience for most women, one which could likely be remembered so close in time to the event; in this case, one year. Secondly, you provided us with a number of details relating to the December date – the more significant one being your Christmas shopping which, had they truly occurred, would have helped you situate the incident in time. I believe that you forgot what you had said at the port of entry and engaged in a detailed fabrication of a December incident to lend your story greater credibility (RPD, [2004] 2008, pp. 381-382).

Statements regarding "the truth" of the miscarriage are commonsensical. Even though, as I have illustrated previously, when studying the significance of the cross-cultural setting, Members are instructed not to draw inferences based on common sense, but in the claimant's own environment, we see that this principle is not followed in the analysis. The claimant is further discredited based on her failure to provide testimony and documentation on her admission to a program for abused women:

> I also find that you did not, as you allege, attend a program for abused women, a fact which would have supported your allegation that you were abused. You presented a document today stating that you were admitted to a program for abused women. You made no mention, however, either, in the PIF, or at the port of entry, of your having attended such program. Had you truly attended a program for abused women, I believe it reasonable to expect that you would have disclosed this fact to the officer at the port of entry or in the PIF, given its importance and its close association to your alleged history of abuse you suffered to the hospital where you had your miscarriage. It was put to you at today's hearing that the

> documentary evidence indicated that a national health regulation required all of the country's health centers to record domestic violence complaints and yet, you did not know that this regulation existed. In any event, in fact, the alleged abuse, miscarriage and hospitalization had taken place, anyone in your position, namely someone believing herself to be at risk of her life, would have sought protection of the authorities (RPD, [2004] 2008, p. 383).

Bearing in mind how the Board instructs its Members to be more understanding to the 'unsophisticated' claimants in front of them, the assumption that Tina must have known the specific health regulation in relation to domestic violence appears counterintuitive. Further, when the whole training package is analyzed in its ensemble, we see documentation related to Mexico and the dire condition of protection of human rights, which shows there is clear and convincing proof of the Mexican state's inability to protect victims of abuse. Challenges victims of abuse face are clear in seeking state protection within the larger social, cultural and historical context (Gugaba, Undated; IRB, March 2003; US Department of State, 2004). It is interesting that the case file was created in 2004, and the cited documents on Mexico cover the period 2003 to 2005. What we see here is that mock hearing practices entangle issues related to inconsistency and omission as proof of fabrication in credibility assessment.

Disbelief towards claimants is also perpetuated through role plays. In a role play exercise called "Practice Identifying Falsehoods: Credibility/Get-to-know-you", each new Member fills a PIF with one true and one false story. They pair up and question each other on different aspects of their stories. The aim is to identify which story is true and which one is false. The exercise aims to strengthen the skills in credibility assessment through "practicing our own embellished or false story and learn what works, refining our questioning skills to seek out the true story" (RPD, January 7, 2010). Falsehoods are seen as identifiable and the main issue remains how this identification is suggested to be made. There is no specification in this document but when we think of the mock hearing, the reasoning behind it becomes clear.

Finally, I will pay close attention to a power point presentation called "Do you hear…what you hear?: The Detection of Deception" which teaches advanced questioning techniques to the Board members (IRB, March 2011). It instructs that proper preparation is vital to question the claimants, and notes boldly that "to question- you must know what the issues are, where are the inconsistencies?" (IRB, March 2011, p. 5677). It suggests carefully checking time frames for addresses and employment, being attentive to inconsistencies among the CIC documents and the PIF. It also asks "Study the submissions carefully – do they fit the story and timelines?????" (IRB, March 2011, p. 5677). The presentation is based on the promotion of a technique called Scientific Content Analysis (SCAN), created by Avinoam Sapir, an ex-polygrapher and codebreaker for the Israeli army. SCAN is widely used among the police forces of the Western countries, spearheaded by the American police force (Leo, 2009). According to the presentation, SCAN is "a technique to discriminate between truthfulness and deception, a technique that allows an interviewer to highlight areas that require clarification". It mentions "variables: social class of the speaker, educational level, gender culture" (IRB, March 2011, p. 5700), but there is no indication of how these variables can be treated in the credibility assessment and analysis. The document further elaborates on SCAN:

- *****Does not detect lies… it is merely an investigative guide to direct your questioning… when deception is detected or suspected.******
- It works best on a pure statement….i.e. A handwritten statement, and will work best in the language of the interviewer.
- However, it is useful during a live interview and can be done through an interpreter (IRB, March 2011, p. 5701).

According to these assumptions a deceitful person speaks differently than a truthful one, and the deceitful statements have patterns. The document elaborates examples such as; a change in the language (switching from my uncle to he), emotions that come to surface inappropriately (crying at the wrong point in the story), improper use of pronouns (pay attention to the use of we,

our, they, I), lack of conviction in the story (by avoiding implication and remaining vague or saying that they do not know), no denial of allegations (truthful subjects would deny it when confronted with an allegation of a deception) and out of sequence information (new testimony appears inappropriately). Furthermore, supposedly, "A truthful statement will contain few, if any corrections. Corrections tend to be minor". The document also asks ironically "How many PIFs get re-written?" (IRB, March 2011, p. 5732). This document contains numerous citations from hearing transcripts and decisions where the claimants are hassled when they have issues with memory and previously non-declared aspects of their claims and Members are harshly criticized when they fail to keep the investigation on track and do not ask follow up questions. It highlights that digging deeper and investigating vigorously does not turn the Member into a monster (IRB, March 2011, p. 5751). They can still appear neutral while remaining inquisitorial.

In sum, training serves the purpose of turning the members into experts in refugee decision-making. Analysis of training documents reveals that IRB invests extensively in the training of the new Members. The training covers a vast area ranging from the legal foundations of Canada's refugee determination system, treatment of claimants, hearing experience and reasons writing. However, as I have shown, this training instructs dual imperatives and results in relative goal ambiguity for the Member in the hearing room.

Different than other high volume decision-making contexts such as airports, where nationality or ethnic groups' stereotypes are rampant, even implicitly encouraged in training for deciding who gets in (Gilboy, 1991; Jubany, 2011; Pratt, 2010), there is no direct indication to be careful towards any particular social groups but clear insistence on the Members' independence. Yet, as this section illustrated, we can talk about an organizational willingness to encourage one particular way of processing and deciding claims, informed by disbelief, which run contrary to

the assumptions of what makes a refugee, which is based on one particular interpretation of refugee definition.

During training Members are instructed that these two contradictory suggested ways of conducting the job, are valid. Now we will simultaneously look at conditions of work at the RPD as well as the managerial expectations from the Members.

5.4 Conditions and Expectations of the IRB: a fertile ground for *hearing style*

Being a Board member is hard. This is one of the rare points that all Members I spoke to agreed. It is not hard in the way other street-level workers such as caseworkers, teachers or police officers experience their work. These groups have limited devices in their hands to address clients' issues. They see clients again and again and it is rare that they contribute to significant improvements in clients' lives. This feeling of powerlessness in the face of client problems was one of the frustrations of street-level work that Lipsky (2010) had identified.

Being a Board member is rewarding as well. Members believe that they make an enormous difference in a claimant's life, when they accept or refuse the claimant. They often put this conviction in dramatic terms, such as "his life depended on my decision". Conversely, when they reveal the lying claimant, they also took great satisfaction, as if they saved Canada from receiving an unworthy person. That is why the source of their frustrations, namely sentiments of powerlessness in relation to the complex problems their clients face, is not the same. Members do not try to solve client problems like other street-level workers, but make an administrative identification about the claimants in front of them. When the identification is done, it is unlikely that they will meet the claimants again. Their frustrations principally come from the organization but also from their colleagues and the counsels. In the face of these difficult work conditions, I argue, as a result of the invisibility of the refugee hearing to the organizational superiors and

other colleagues, the hearing room is the only place Members can control. They learn to see themselves as the only legitimate authority to question the claimant and take the refugee decision according to their own judgment. Bombarded with continuous demands to take more decisions, to follow organizational directives to increase the consistency of their decision-making and to avoid being mediatized, Members need to balance these pressures by formulating a *hearing style*. This style, through which they identify the claimants, is sticky. It is change resistant as a result of Members' beliefs that only they can make refugee determinations, since they have access to the hearing room and to the claimant. Further, as I will elaborate below, because of uncertainty in relation to their future appointment, Members have no motivation to follow organizational demands.

5.4.1 Peer pressure and peer perceptions: lack of a harmonious organizational culture

Members are socialized in an organizational environment where there is no goal consensus or fostering of shared organizational norms. Crépeau and Nakache (2008), based on the data they collected through interviews with former Members and IRB managers in late 1990s, tie this absence to the political appointment process, which "has prevented the build-up of a common institutional culture that would include some consensus on the core objectives and methods of the IRB and that would be fostered by a management with some kind of institutional authority" (p.82). Even though, it was never acknowledged openly, the difference between Members who were perceived to be appointed on their merits and experience versus others who were considered to be nominated thanks to their political ties was the elephant in the room. What is also interesting is, Members did not hesitate to label themselves and others in two conflictual

camps in terms of their approach to their works using wording such as "someone who was lenient towards the claimants, who mostly said yes" or "another who was very rigid, who always said no" etc. These factors seem to have played a role in creating a non-collegial environment which fosters a conflictual perception of refugee claimants as well as decision-making.

When IRB was established in 1989, the panels making refugee determination were to consist of two Board members, instead of one. In order to be recognized as a refugee, the claimant had to be accepted at least by one of the Members. Slowly, with the consent of the refugee claimant, panels presided by only one Member increasingly became the norm (Crépeau & Nakache, 2008). Two member panels, as a result of its cost, were abolished when IRPA entered into force in 2002. Besides its obvious advantage for refugee claimants, two member panel, created a space for deliberation, but also intensified the conflicts, and did not necessarily foster similar understandings. Maria Turcotte (1993-1998), who defines herself with someone with resilient attitude to the claimants said:

> People felt like falling into two groups. People either felt like I did, or the ones who did not think like me. It was a bit of black and white you know. So there were sort of camps, ideological camps going on which I guess, I was very lucky, I do not know if I were partnered with people who did not think similarly to me I do not know if I could last for 5 years. So in a way sitting alone, it is better to sit alone then with someone if you are gonna be in conflict. But being with someone made differences for refugees. I remember I got along with this colleague very well. We had a huge dispute about this claimant if he had IFA. He was a really nice guy and everything but he just would not see. And I said, look, he does not, and he says yes. If we were not sitting together that guy would not have been accepted, if he was just with my colleague, he would have been rejected. The way the two people worked, that dynamic was beneficial to the refugees for sure.

Maxime Durand (1996-2006), a former immigrant with a public administration degree, who was employed in several public service organizations before his appointment to the RPD, attached a form of bureaucratic rationality to the work he did, justified his rejection of the majority of the claimants he heard on his accurate interpretation of Refugee Convention. He did not hesitate to criticize his colleagues who accepted the majority of the claimants they heard. He

highlighted that these colleagues believed that if the claimants have come all the way to Canada, they must have a problem and they deserve protection, even though that is not the work they were supposed to conduct.[47]

Jean-Pierre Montpellier (1998-2006) a refugee himself, explained to me how his first perceptions at the RPD in relation to more experienced members were negative, but in time how he came to look at the claimants as well as the work he did negatively as well:

> En 1998, je me retrouve commissaire ça veut dire juge administratif à la Section du Statut de Réfugié. Alors une amie qui travaillait au Radio Canada avec moi m'a dit "mais dis donc t'es plus dans la fiction là". Moi je dis (laughs) je suis toujours dans la fiction. C'était le début d'une immense rigolade j'ai réalisé assez rapidement que tout le système était une immense fraude, une industrie qui faisait vivre les avocats, les interprètes, des gens comme moi aussi (laughs) des commissaires, des agents d'audience... Et c'est très drôle parce que quand je suis y entré naïvement j'avais mis une citation d'Anne Frank sur mon, dans mon bureau "Où je vais me cacher? Il y a plus de maisons, il n'y a plus rien" et les collègues qui voyaient ça en passant rigolaient. Je me disais c'est des gens sans cœur! Comment peut-on rire de ce que Anne Frank a écrit? Plus tard, j'ai compris qu'ils rigolaient parce qu'il n'y avait pas d'Anne Frank qui venait chez nous. Ce n'était pas... C'était pour la plupart des gens qui utilisaient les portes des services de l'immigration, parce qu'immigrer au Canada ce n'est pas facile, attendre des années, etc. Mais les gens je sais pas, qui vendent des tomates au Nigéria, ils ont très peu de changes d'être ne jamais accepter comme immigrant. Donc, il y a la filière de la section du statut et les avocats, eux, ils recrutent à l'extérieur dans les pays (27).

This experience or negative perception of refugee claimants is not an isolated one, but rather a dispersed one across time. Guillaume Kennard (1993-2004) also explained to me how, at the beginning of his mandate, he accepted an Algerian claimant on the bench and was excited to talk about it with colleagues. Instead of praise and sympathy as Guillaume was expecting, he faced discouragement and negative remarks. He highlighted that after that experience, he understood how the members who accepted the majority of the claimants were not seen in a positive light. Since under IRPA, members were not required to write up their reasoning and analysis for

[47] Interview, 28 July 2014, Montreal

positive decisions[48], conversely to the negative decisions, Members who accepted the majority of the claimants were labeled as lazy and even not intelligent enough. Jean-Pierre, despite his criticism of the senior members who were laughing at his Anne Frank citation at the beginning of his term, also perpetuates the negative perception towards the Members who have higher refugee status grant rates "…les uns ont étiqueté comme nulle, des gens qui ont nommé politiquement, ils n'arrivaient pas à écrire une décision négative. Ils acceptaient tout le monde" (28).

My dialogue with Madeleine Abellard (2007-2013) underlines that this perception is still reproduced, not only by Board members who perceive refugee claimants negatively, but even by the ones, like Madeleine, who are much more positive:

> Madeleine: Je ne suis pas d'accord avec les réputations qu'ils m'ont fait, mais ils disent "elle dit toujours oui".
> Sule: Non, en fait, vous êtes connue plutôt comme très juste.
> Madeleine : Voilà. Donc, j'étais juste je ne peux pas tout le temps dire oui, je ne suis pas imbécile (29).

The lack of a harmonious organizational culture, or absence of shared values and perceptions, contributes to a personalization and routinization of the refugee hearing, according to Members' own conceptions. Now, we will see how the emotional distress may have also contributed to the stickiness of the hearing style as an institution.

5.4.2 Emotional distress in a rational organization

Independent from their attitude towards refugee claimants, Board members found the work they conduct emotionally distressing, even though they all underlined that their job

[48] Until the end of December 15, 2012, the members did not have to provide reasons for why they granted refugee status. With the entry into force of *Protecting Canada's Immigration System Act*, they are required to provide reasons for both positive and negative decisions.

required rationality rather than emotivity. Board members have to cope with stress, the challenging nature of the job and the complexity of decision-making. In order to avoid additional involvement with the claimants and investment in their problems, Members must believe that they assess the claims fairly. The change resistant nature of the hearing style also seems to be a result of trying to avoid the emotional toll that the job takes on Members, yet through different strategies.

Even when they reject that the claimant's fate is in "their" hands, Members note that they are a part of the administrative mechanism that transforms claimants' lives tremendously. This fact clearly denotes the feeling of being responsible of someone's future and requires some form of emotional investment. Maynard-Moody and Portillo (2010, pp. 257-258) remind that "street-level workers often feel a mix of compassion, disgust, fear, and annoyance in their personal encounters with clients and citizens. Moreover, their work is at once unpredictable and routine but rarely detached". Even Members, who do not hesitate to ridicule eccentric stories they heard during their term, do have a soft spot for certain claimants. Jean-Pierre Montpellier (1998-2006) responded as the following when I asked him "you keep talking about fraudulent claims, did not you hear any genuine ones?"

> Pour les vraies réfugiées, il y avait des femmes qui étaient très vulnérables, des jeunes femmes qui venaient d'Afrique, etc. Souvent, qui sont forcé à la prostitution, des cicatrices tout ça et elles ne viennent pas avec ses histoires, mais avec une autre. Mais derrière de l'histoire qu'elle raconte, il y a une autre histoire que des souteneurs des hommes la battue, la trait en Hollande, etc. Elles arrivent devant moi avec un bébé dans le bras. Mais là, j'avais dû mal à refuser ces gens-là. Je ne voulais jamais tomber dans l'arbitraire parce qu'on ne peut pas accepter un et refuser l'autre. Mais quelquefois c'était vraiment difficile. Parce que je voyais bien que ces filles de 18 ans 20 ans qui avaient été abusées et qui avaient étaient traîné de pays en pays et là où est-ce qu'on allait les envoyer? Au moins ici, il y avait une petite protection (30).

Clearly, this group of claimants aroused sympathy in Jean-Pierre and required a form of emotional investment even if he had a very rigid conception of refugees. Members who had a more resilient conception of refugees emphasized the emotional distress they faced regularly while doing

their job. They explained how they got through challenging decision-making processes, while continually pondering whether to accept or reject the claimant and what would happen to the claimant if deported. They underlined that some members (never referring to themselves) needed psychological support, but they did not seek it, because if it was to be heard by the organizational superiors, would have the impression that that those Members were not fit for the job.[49] I did not detect this form of reflection in other members, but rather a clear distancing of themselves from the claimants and only admitting investment in relation to certain types of claimants.

Emotional distress does not occur simply as a result of traumatic stories Board members hear day in and day out, but also as a result of the productivity pressures they face, which will be articulated below. Immigration judges in the U.S. who preside similar claims and take comparable decisions as their Canadian counterparts complain about burnout, compassion fatigue and secondary traumatic stress as a result of long work hours, overwhelming caseloads, and inherent difficulty of the work as a result of their managers' "arbitrarily imposed case completion goals" (Lustig et al., 2008, p. 65) inadequate time for self-development and training and factual and legal complexity of the work.[50] Despite different organizational arrangements within the American and Canadian context, we can affirm the similarity of immigration judges' and Board members' work conditions.

Here, one point from this discussion is relevant. Members like Madeleine, who were clearly more sensitive to the claimants during their hearing, still underlined the significance of avoiding emotivity in assessing credibility. Being emotional, for Madeleine, fades clear

[49] In one of the refugee advocacy meetings that I participated, I learned that the Board was arranging several psychology trainings on how to deal with occupational stress and burn out which reflects the emotional toll of the work Meeting at Action Réfugiés, Montreal, October 29, 2013.

[50] U.S. context of refugee determination is different than Canadian one. In U.S. there is not an independent court but refugee decisions are taken under the Department of Justice. Further, the immigration judges are attorneys, whereas in Canada there is no such criterion.

reasoning and judgment. Maxime Durand (1996-2006), who was proud of his wittiness in detecting liars through the stories he told me, said "N'importe qui peut sympathiser avec les souffrances. Vous pouvez sympathiser avec le demandeur, mais la loi est la loi" (31). Guillaume Kennard (1993-2004) agrees with that statement "C'est un travail strictement juridique pas humanitaire, sinon il faut accepter tout le monde qui a besoin d'aide" (32). Therefore, despite their differences in the way they conduct their job, the way they approach the claimants and their work, Members perceive their own way of reasoning as the fair one.

5.4.3 Dealing with difficult counsel

Different than other street-level client evaluation contexts, generally refugee claimant is not alone with the Board member during the refugee hearing. 90 % of refugee claimants are represented by counsel, by refugee lawyers (79.1 %), immigration consultants (8.1 %) or other voluntary counsels who do not charge fees (1.7 %) (Rehaag, 2011c). The presence of the counsel is another factor that Members have to consider and be mindful of during the hearing. Members have to watch what they say, because the counsels are powerful actors, and they can make trouble. They may claim that the Member is biased, make an official complaint to the organizational superiors or mediatize the issue (Nicaud, 2012).

Until s/he walks into the hearing room, the counsel does not know for sure which Member will preside at the refugee claim. The counsel can make an educated guess about which Members might be presiding at the hearing, since Members specialize in certain regions.

While relations between Members and counsels are often courteous and professional, in a few hearings, I observed important tensions in the hearing room and heard concerns and stories about the counsels from the Members that I interviewed. Some Members explained how they wanted to avoid certain counsels that they saw as trouble-makers and even characterized them as

dishonest. As the main authority in the room, it is up to the Members to deal with and resolve these tensions and while keeping their appearance of independence and impartiality. Organizational superiors recognize the gravity of this issue, and how some counsels try to intimidate the Member that s/he believes will refuse his/her client, in order to recuse himself/herself from the case. Along with the presiding skills, Members also learn how to deal with difficult counsel:

> 1. Avoid getting into debate or lengthy discourse with argumentative counsel. Opt for a swift direct response. Don't back down just because it seems easiest. Be firm, calm and specific.
> 2. Require counsel to proceed based on your direction. If counsel refuses and continues to argue, say the matter is decided. *Counsel, I have made the ruling. That is the ruling. Now please move on.* Put your decision clearly on the record and advise counsel that recourse is Federal Court (RPD, March 2003 [September 2009], p. 2366)

The RPD even provides several examples on how this can be done:

> When counsel is acting in a manner which you wish to stop, try the following:
> "*Counsel, I know you are aware that…* (set out the relevant principle)
> or
> "*Counsel, I know that you know better than that*."
> or
> "*Counsel. Stop. Now."*
> or
> "*Counsel, I have explained this. Go no further. If you wish to pursue this, you will have to go to Federal Court*" (RPD, March 2003 [September 2009], p. 2368)

If the tension between the counsel and the Member becomes so intense that they cannot work together, as a last resort, the Member can make a demand to the CM not to schedule hearings with a certain counsel. However, as one of the competences of the Board member is self-control (IRB, 2014k), these tensions and problems are not seen in a positive light by the peers and the organizational superiors.

5.4.4 Limited success of demands for consistency

In the first chapter I detailed why disparities in refugee status grant rates that signify inconsistency of decision-making is troubling for the organizational superiors. It presents a negative public image of a tribunal that is tasked with distributing justice for refugee claimants, probably some of the most vulnerable segments of the Canadian public.

Managerial demands have intensified since mid-90s with the increasing number of guidelines and persuasive decisions that members are expected to follow in order to increase consistency and efficiency (Goodman, 2011). In one of the rare organizational analyses on the IRB, Soennecken (2013, p. 293) argues that we see increasing managerialization of the IRB "fuelled by repeated government efforts at retaining discretionary control over the process (and ultimately who gets in)" which eventually privileged "efficiency and administrative convenience over fairness". This analysis is fair in the sense that the IRB aims to keep the power of refugee decision-making within the IRB while minimizing the judicialized procedure and access to courts by the claimants to a minimum. That is why Canada invested heavily in a good quality, first-instance decision-making at the IRB (Crépeau & Nakache, 2008; Hamlin, 2014). This indicates the main reason for the creation of administrative tribunals with informal, fast, efficient and less expensive ways of decision-making instead of the courts. The IRB takes pride in the fact that less than 1 % of its refugee protection decisions are overturned by the Federal Court. The fewer decisions overturned by the Federal Court, the more legitimate the decision-making within the IRB.

Drawing on the common law tradition of precedent, and its mission to be innovative, the IRB plays important policy-making roles in defining its practices. Its organizational superiors attempt to increase consistency in decision-making through jurisprudential guides, guidelines

and persuasive decisions (IRB, 2003c). Application of those are not mandatory, however if Members choose not to apply them under conditions of similar facts, they are expected to provide well-reasoned explanations.

Jurisprudential Guides are "policy instruments that support consistency in adjudicating cases which share essential similarities" (IRB, 2014a). These guides, identified by the IRB Chairperson, are refugee determinations made by the Board members that "articulate policy through the application of the law set out in a decision of the Board to the specific facts of another individual case before a decision-maker" (IRB, 2014a). To date, the Chairperson identified two jurisprudential guides in March 2003, which were revoked in October 2011. Both guides were negative decisions in which the claimants had not been recognized as refugees. They dealt with claimants from Costa Rica, first seeking protection due to sexual orientation, and the second due to fear of criminality. In both decisions the availability of state protection is underlined. It is hard to determine how effective jurisprudential guides are in increasing consistency. We can say that they worked in keeping the acceptance rates low, since Costa Rice was among the top 10 refugee producing countries in Canada from 2002 to 2004. When we look at the refugee status grant rates from Costa Rica in 2002, the acceptance rate was 4 % and dropped to 2 % when the number of claims was fluctuating between 1,500 and 2,000. It can be said the guideline might have acted as a deterrent for the would be refugee claimants since the number dropped to 700 in 2004 (University of Ottawa, 2012).

In various policy areas, the IRB took the initiative to create Chairperson's Guidelines which are general statements that serve for adjudicative or operational concerns. Guidelines that provide guidance to the Board members on specific type of claimants have a liberal spirit that highlights sensitivity in the handling of claimants. For example, Canada was the first country to

add gender persecution to refugee definition which opened the doors to women refugee claimants fearing gender persecution in 1993 (Ramirez, 1994). Since then, different IRB Chairpersons adopted seven more guidelines; six of them impacting the RPD, ranging from procedures with respect to claimants identified as vulnerable persons, child refugee claimants, civilian non-combatants fearing persecution in civil war situations to more operational concerns as changing the date and the time of a hearing to preparation and conduct of a proceeding (IRB, [2006] 2012).

Another attempt to increase consistency is through RPD chairperson's identification of persuasive decisions which are "well written, provide clear, complete and concise reasons with respect to the particular element that is considered to have persuasive value, and consider all of the relevant issues in a case" (IRB, 2014e). Members are encouraged to adopt the reasoning of persuasive decisions and

> cite the relevant case in their reasons for decision, if they agree with it. Although these decisions are not binding, members should consider the reasoning in persuasive decisions in cases involving similar considerations, both as a way of contributing to consistent decision-making and as a welcome time-saving tool (LPDD, June 2007e, p. 2205).

Recently revoked persuasive decisions, like jurisprudential guides, are negative decisions, in which the Member did not find that the claimant's fear of persecution is well-founded in Sri-Lanka and Mexico.

Except for Chairperson's Guidelines then, the tendency in the IRB's attempts to increase consistency is through encouraging negative decisions. However, there is clear highlight of the Member's independence, if they do not agree with a decision, or if they can provide why they refuse to follow a jurisprudential guide with clear arguments, they are not required to do it. All former Members that I interviewed underlined their role, as the only legitimate decision-making authority in the hearing room. Maxime Durand (1996-2006), articulated this point most clearly:

> D'abord le tribunal est connu comme un tribunal spécialisé. La cour fédérale dite qu'on ne peut pas se mettre là on n'était pas dans la salle [referring to the Federal Court's refusal to make credibility findings]. Ce qu'on voit ici c'est ça on fait confiance en tribunal. C'est un tribunal spécialisé. Ensuit, on devient plus connaisseur, moi, j'étais beaucoup plus connaisseur au bout d'un an en droit d'immigration en droit de réfugié qu'un avocat qui ferait le divorce, bien plus connaisseur. Même si je n'avais pas fait mon droit, j'avais acquis des connaissances juridiques qu'aucune avocate qui aurait eu. Donc, on entre dans le tribunal, on pourrait très bien acquérir cette connaissance en travaillant. Et puis la formation de deux mois, intense, vraiment intense (33).

In one of my first hearing observations, a Member who was a former notary, after the hearing was postponed as a result of an interpreter issue, remarked, when the counsel was commenting about issues of judicial independence, that she knew the significance of signing a document as a decision-maker. The decision belonged to the person who took it, not to anyone else. She highlighted that this impression only strengthened during her term at the RPD instead of being damaged.

SLBT scholars remind that management factors or the impact of organizational superiors "has much less of an impact – at the front lines or street-level service delivery" (Riccucci, 2005, p. 115). In that sense, It is hard to overstate the fact that Members see themselves as the only legitimate authority who evaluate the claims and decide according to their own judgment, not according to someone else's, even if these demands come from the organizational superiors.

5.4.5 Clear pressures of efficiency but remain unrealized

The IRB values the speediness of the refugee decisions the Members take, as much as their quality. Now, not a real concern, once the RPD suffered a significant backlog. Its Members just did not process enough cases. The backlog reduction initiative was approved by the IRB Chair on 20 October, 2010 to process 61,890 awaiting cases. The Board was allocated extra funds of $9.3

million to address the backlog. According to a 2012 internal audit, Board members took 14,554 more refugee decisions compared to IRB's funded capacity (IRB, April 2012).

One ATIP request that I made to the IRB provided me with a sample of the form that shows how the Board members are evaluated on timely and complete review of cases, their demeanor during the hearing, efficient work management, providing high-quality and timely reasons for their decisions, participating in trainings and mentoring and finally contributing to positive work environment. The demands for efficiency are very clear in **"**Performance Review and Employment Assessment Form" (IRB, Undated-g). The IRB expects the Board members to hear 5 cases per week and to announce orally 80 percent of positive and 50 percent of negative decisions at the end of the hearing. The IRB also asks the Members to decide and sign 80 percent of the cases "within 15 calendar days of being reserved in status". Board members, therefore, have to take speedy decisions under strong pressures of efficiency. On the other hand, during my fieldwork some refugee decisions were not finalized up to 4 months after the hearing.

A good reason for non-realization of these demands is that Members do not find them valid and binding. They contrast the process-oriented nature of their work with the outcome oriented demands of the organizational superiors. They believe that the latter is privileged at the expense of the former. They saw these demands as almost irreconcilable. They contrasted the logics of the business world with public administration. Eudes Leclerc (1989-1994) explains how uncomfortable he was with the productivity demands because he thought there was a danger that insistence on speediness could lead to a wrong decision;

> Moi personnellement, j'ai pris mon temps pour rendre une décision... J'ai toujours pris mon temps pour écouter la personne. Je fais la démarche: je pose la question, je vois que c'est un dossier vide et je rends ma décision tout de suite. Mais en général je rends ma décision après avoir écrit une décision dans mon bureau. J'essaie de voir si je peux me tromper. Je connais des commissaires, qu'ils écoutent un peu, lisent le dossier et disent après quelques questionnes que "je suis prête à rendre ma décision". Il va en arrière un peu. On ne peut pas décider comme ça. La direction demande l'accélération de prise de décision, mais il y a du

> risque de se tromper. Il ne faut pas oublier que ces gens, si on les envoie chez eux, c'est comme une peine de mort. C'est dangereux de prendre une décision très vite. Il faut demander au demandeur et à l'avocat. Éventuellement il faut demander s'il n'a pas d'autre chose à dire. Ça m'est arrivé de demander à quelqu'un qui venait de l'Amérique latine qui avait un frère que des bandits venaient et essayer de voler ses bêtes. Il est allé en ville et j'ai demandé des documents là-bas, dans son pays. On voit les documents qui ont pris un mois. Mais, voilà, je les ai reçus. Pour rendre une décision juste, il fallait demander les documents à l'étranger et ça prenait peut-être un mois (34).

Jean-Pierre Montpellier (1998-2006) agrees on the organizational superiors demand for productivity and says "On a été harcelé par la direction, pour faire de plus en plus, c'était jamais assez. Ce n'était jamais assez" (35). What matters then is the numbers. As Maria Turcotte (1993-1998) said "as long as you put in your numbers, nobody cared what decisions you took, I mean positive or negative". Even though there seems to be concerted efforts to increase consistency of decision-making, organizational superiors did not mind what decision the Member took in a particular case. This pressure of speediness might also contribute to crystallisation of the *hearing style* as an operational shortcut that permitted Members to hear more claimants and decide more cases.

5.4.6 Employment Uncertainty

In addition to their self-perception as the only legitimate decision-making authority in relation to handling of refugee claims, employment uncertainty might also have played a role in Members' avoidance of the organizational superiors' demands for increasing consistency and efficiency.

In the first chapter, I presented how the selection and appointment to the RPD was saturated with perceptions of patronage and how this image was slightly transformed following reforms of 2004. With the Conservative government in power, and the return to more ministerial

involvement of the selection and appointment process, refugee advocacy community saw this as a reversal. Especially the remark of Public Appointments Commission Secretariat (PACS), in relation to the reappointment of the Members "since these are GiC appointments, positive performance does not automatically lead to a renewed term" (PACS, 2007), raised concerns about who is appointed and renewed.

However, previous research shows that performance reviews by CMs have counted very little for the future reappointments. In the performance reviews, managers could only comment in relation to the efficiency of the Board member, namely about the number of refugee claimants processed. As mentioned above, numbers mattered. They had no power to refer to specific cases or demand explanation for a particular decision. Performance reviews, therefore, did not serve any concrete action that can be taken for or against the Board member (Crépeau & Nakache, 2008). This point was confirmed by all but one former Board member that I interviewed. They said positive performance reviews did not automatically translate into reappointment as negative ones did not result in exclusion from the IRB, at least not until the end of Board member's term. However, they all noted that they were not interfered with decision-making except being pushed for processing more claimants in a shorter period. They saw no reason to follow these demands, and even saw it irreconcilable with their job definition.

5.5 Conclusion

In this chapter, I illustrated how endogenous dynamics creates conditions which allow Board members to take active part in the definition of their organizational roles. These dynamics provide a fertile ground for different conceptions about work and different styles of conducting that work. Board members find themselves in a particularly uncertain position, the IRB grants

them extensive discretionary powers to do their job which is also judicially endorsed as I presented in the first chapter. Board members are instructed that they are the ones to make credibility assessments and take the decision. However, on the other hand, they face different pressures that attempt to restrict and discipline their reasoning to make more decisions consistently and more efficiently. The most important aspect of their work though which demands individualized judgment on refugee claimants through credibility assessment in the hearing room, can only be conducted by the Board member.

Through practice, Members try to find ways to accelerate the collection of information from the claimants. This element of speed – and the way they questioned the claimant, was especially evident when I compare the practices of the Board members that I studied here with several years of experience at the IRB with the public servant Board members who were appointed in December 2012 and started processing refugee claimants in January 2013. Even though statistically not very significant, it is still meaningful to mention that while on average, the 33 hearings heard by old Members lasted 120 minutes, the 17 hearings heard by the new members increased to 220 minutes. This difference highlights that *hearing style* is an operational shortcut and is only gained by experience.

There are important signs of managerialization of decision-making as argued by Soennecken (2013), through attempts to increase efficiency and consistency of refugee decision-making. However, it is the Member's job to hear the claimant within a space neither peers nor superiors can control or influence. Furthermore, members know that following organizational directives will not ensure future employment at the IRB. Scoring high points on the "Performance and Employment Assessment Form" does not guarantee reappointment. There are no clear incentives or sanctions if they fail to meet these expectations either. Instead of blindly

following what the organization demands them to do; Members are the ones who control the situation by highlighting their legitimate role as the decision-maker. Even though these pressures try to push the Board members in a standardised way of decision-making that focus on disbelief, they cannot control how the work is done. At the face of these escalating pressures, the hearing room is the only space the Members can control, while doing their jobs. *Hearing style* is no more than a strategy where members create their own solutions as a response to these dynamics. These demands are not crippling Board member's discretion because the endogenous conditions legitimize it despite attempting to discipline and restrain it. Controlling street-level behavior in this context is inherently difficult if not impossible.

CONCLUSION

Historically, Canada has been among the most popular destinations for refugee claimants and a pioneer of protection of human rights. For over two decades, many refugee law researchers, refugee advocates and opposition politicians have argued compellingly that Canada's refugee determination system is at best troubled and at worst arbitrary because of its Board members. They pointed at the political appointment process or individual characteristics of the Board members. A particular policy implementation puzzle steered this research as much as my deep interest in understanding concrete state practices when they relate to the human rights protection of non-citizens. In this thesis, I asked a research question based on policy outcomes of refugee policy: *Why do some Board members very rarely grant refugee status while their colleagues grant it to the majority of the claimants they hear?* Finding the other two claims unconvincing, I sought the answer in the inner dynamics of refugee determination.

"Refugee" is a modern administrative category that allows states to keep sovereignty over their borders by also making a commitment to protect people in need (Fassin, 2013; Fassin & Kobelinsky, 2012). Refugee claim cases are quite exceptional within administrative law decision-making. In an appeal of a welfare decision, for example, there are usually other sources of information other than the claimant, such as a bank transaction, a lease contract or a letter of dismissal. In refugee cases, the information comes from the claimants themselves, often without documentary evidence. The Board members have extensive discretion to assess, judge and determine, and must conduct refugee determinations on very limited evidence. As a result of this scarcity of 'hard' evidence, refugee decisions rely on a judgment of whether the narrative of the

refugee claimant is credible or not (Cohen, 2001; Thomas, 2005). Therefore, "it becomes a matter of importance to examine how this is done" (Herlihy et al., 2010, p. 352).

At the face of the complexity of refugee determination, I argued, we first have to understand what is happening in practice in its normal and everyday context. My comparison of the Board members through the combination of a SLBT perspective and an ethnographic methodology combining direct observation, semi-structured interviews and document analysis, provides a unique window into the way refugee decision-making operate in Canada. I argue that official policy remains limited in understanding the variation in refugee status grant rates and the source of variation is in the discretion of the Board members. The research strategy that I followed enabled me to concretely locate the discretionary practices and reasoning of the Board members, tie those to their perceptions about refugee claimants and their work and appreciate the organizational context where those were rooted.

Board Members are the ones who translate the theory or standards of refugee determination to the refugee hearing practice. By studying the immediate and interactional features of the refugee hearing, it was possible to grasp its importance in drawing the line between the refugees and the nonrefugees. During refugee hearings, Members have to find the hard balance between assessing credibility vigorously, expeditiously but also fairly, without appearing biased. I showed that they have very discrepant conceptions about refugee definition as well as their work. I called the interaction routines that govern their practices *hearing style*, and illustrated that the claimants are assessed through *interview* or *interrogation*. I showed how through *interrogation* the Board member seeks one single truth through consistency and chronology. I presented how through *interview* the Board member evaluates the veracity, the spontaneity and the details. That is why refugee claimants are not assessed in the same fashion.

My analysis aimed to accurately capture and describe the interaction routines among the claimants and the Board members but also to understand what compels the Members to create *hearing styles*. Noting its change resistant feature, I argued that *hearing style* is simply an operational shortcut guided by a set of coherent beliefs about the refugee claimants and the Board members' work in the hearing room. Endogenous arrangements allow and foster differences between conceptions and practices in handling refugee claims. Slightly different than other street-level organizational contexts, the IRB offers a strictly rule-bound environment and attempts through several control devices to restrict and discipline discretionary reasoning, but this strategy hardly works. Organizational dynamics; instructions, conditions and expectations compel members to develop a *hearing style* in order to conduct the job. Even in organizations like the IRB that extensively institutionalize training and communicate its consistency and efficiency expectations clearly to its Board members, it is difficult, if not impossible to control discretion. When faced with messages that send dichotomous signals, such as sensitivity and disbelief, Members encounter a goal ambiguity towards their work. While working under invisible conditions with entrusted legitimate authority and faced with demands that they consider run against their authority, Board members reinterpret their job definition and routinize their practices. In order to reconcile the organizational expectations and the realities of their work, they formulate an encounter routine as an operational shortcut to differentiate among refugee claimants. Despite organizational expectations, Board member's discretion is fostered by the IRB and the judicial review, which contributes to Board members self-perceptions as the sole legitimate refugee decision-maker. Since they lack concrete motivations to follow the organizational control devices they avoid these demands. The hearing room becomes the only space which Board members can control, free from the peers and the managers.

An overwhelming majority of studies conducted within the SLBT try to understand how street-level workers' actions impact citizens in social, education, regulation and enforcement policy implementation. Different than other street-level organizations where decision-makers face citizens, in refugee decision-making context, Board members assess, evaluate and judge refugee claimants who are non-citizens. In this setting, contrary to welfare distribution, discretion "involves the creation of rights and privileges, as opposed to the determination of who holds those rights and privileges" (Grey, 1979, p. 107). That is why, the issues at stake are arguably more important.

We live in an era in which there is much discourse about the demise of the state sovereignty and rapprochement between states. We observe proliferation of international human rights and states' willingness to protect human rights of their own citizens and others who lack such attachment. Conversely, we also note an increasing socio-economic division between the wealthy Western liberal democracies and the rest of the world. International migration from the latter to the former becomes more valued and selective. In other words, state sovereignty has not loosened but intensified in choosing the potential members of Western states. Through investigating the micro-dynamics of refugee determination, we saw that state sovereignty and practice come into being through institutionalized encounters. Decision-making is not singular or uniform, but different conceptions, expectations and interaction routines guide refugee decision-making. These differences among Board members do not play out just at the margins but impact a massive number of refugee claimants. Through their discretionary authority, we can raise important questions about international human rights law, the state and the rule of law, justice, and discretion.

International human rights law, constituted by regional and international conventions, is designed to promote and protect human rights. All Western states are party to international human rights law and bounded by it. It is imperative that they protect people who escape from persecution. However, there are far more people that seek asylum and claim refugee status than these states are willing to accommodate. They have the autonomy to decide the administrative structures they wish to establish to protect human rights. The state is not an all-encompassing political institution but an administrative apparatus that embodies numerous organizations through which legal order is institutionalized. Concrete state officials employ, negotiate or challenge international human rights through actual encounters with concrete individuals. The conception of rule of law as justice delivered evenly in a predictable manner by neutral state officials does not seem to hold true for this thesis. Maybe our assumptions about the state and the institutional order are very strict, even unrealistic. We should not think about rule-oriented implementation, rule following, compliance and discretion in dichotomous terms but rather recognize how they are interconnected. Possibly we can start considering them in joined terms. We need administrative organizations and concrete state officials. In jobs where the street-level workers have to implement law and policy, there is extensive room for discretion. It is inevitable. Rather than seeing discretion as antonym of law and rules, we have to find ways to make it more flexible and responsive. In terms of reducing goal ambiguity in organizations, a better-targeted training program could result in more harmonious conceptions about work. We have to recognize that the negative perception in relation to discretion in refugee decision-making erodes trust in administrative justice. A better guided discretionary authority in refugee decision-making may also contribute to increasing public trust and the image of integrity of the IRB.

The analysis presented in this thesis raises more questions than it offers answers about the debates on the state, administration of international migration and discretion. Board members are significant actors, drawing the line between the refugee and the nonrefugee, they have the power to include or exclude noncitizens who would have not have qualified to be a member of Canadian society through other means. It is a task that demands respect but also accountability. Board members do not succinctly fit to Lipsky's definition of street-level workers. They enjoy a higher professional status compared to the least authoritative state officials that SLBT literature generally focuses on. Theirs is not a high-volume, accelerated decision-making context, yet core insights of the SLBT were present in this analysis.

Bearing in mind the limited research in credibility assessment of refugee claimants and the difficulty of access and sampling, I took all efforts to diversify my data collection methods, still there may be limitations. A potential sample bias may exist since the observed Board members and the interviewed ones are not entirely the same. Notwithstanding the analysis of hearing observations and respective reasons of the decisions, another bias may come from the Board members who agreed to respond to my interview demands. On the other hand, as we have seen the interviewed Board members reflect the both sides of the observations reported in this thesis. There is strong reason to believe that the findings of this thesis, especially in relation to credibility assessment during refugee hearings are generalizable to asylum interviews in other Western refugee determination contexts. Decision-makers in those contexts also work alone and their work demand considerable interpretation of refugee definition and credibility expectations.

Paths for further research

This thesis focused on the impact of operational styles on the refugee policy outcomes. But why Board members choose one style over the other and how these hearing styles are

constructed should be the subject of another study. Similar to the nature of refugee determination, Board members' job implies dual imperatives, either to detect 'fraudulent' claimants or to identify the 'genuine' ones. This is a constraint that applies to each and every Board member. Why they perceive and implement this constraint differently should be searched elsewhere through another in-depth study. Following sociological variables might have an impact on the Board members' understandings of their jobs:

(1) personal experience (whether they were refugees or immigrants);
(2) professional socialization and background (previous training and jobs);
(3) demographic characteristics (race, class, religion, ethnicity, gender, age, disability and others);
(4) political values and attitudes (such as universal conception of common good vs. restricted, nationalist conception);
(5) seniority at work
(6) personal or professional motivations

During my fieldwork, Canadian refugee determination process was hastily transformed. Even though the professional judgment model remained intact, the Board member position was transformed into a civil servant and new Members were hired following a written exam, while the politically appointed Board members continue their functions until the end of their term. Refugee hearings now take place much faster compared to the legacy system studied in this thesis (2 months v. 19 months). A Designated Country of Origin (DCO) list, so called "safe countries" list was created to reduce "fraudulent" claims. The Minister of Citizenship and Immigration argues that claims from these countries are "bogus" since they originate from countries that are not considered to be refugee producing. Yet, more refugee claimants from Hungary, Croatia and Slovakia -three countries on DCO list- were granted refugee status in 2014, compared to previous years (Keung, 2015). Aggregate refugee status grant rates are also higher for public servant Board members compared to politically appointed ones (Keung, 2015;

Rehaag, 2014). These statistics raise interesting questions about political control of bureaucrats and why these new Board members disagree with policy goals of their political superior.

The responses I provide in this thesis are not negligible for decision-making, and the way organizations impact individuals, hence the structure agency debate. From a theoretical perspective this thesis demonstrated the significance of the study of street-level interactions and how they are nestled in organizational setting. Yet, this analysis offers not so much a conclusion on the discretionary refugee determination practices but a starting point for discussion. Maybe this thesis and the study of Board members as street-level workers may inspire others to conceptualize the work of public officials occupying higher echelons of power in a variety of policy implementation context from a street-level perspective.

Immigration studies have important gaps in connecting formal policy and policy implementation and the challenges of implementation and decision-making in state organizations are often overlooked by researchers. That said, state officials' practices in relation to non-citizens in quasi-judicial institutions, such as administrative tribunals are understudied. Studying concrete decision-making practices are vital in linking the policy-making with policy implementation. I suggest two areas of research that I aim to undertake in the future. First, refugee decision-making from the perspective of the refugee claimants can be studied in various national contexts by contrasting the features of the administrative apparatus (such as the complexity of the administrative system, the volume of the backlog of refugee claims and procedural time limits). This study would allow us to understand which institutional characteristics serve refugee claimants better in filing and proving their claim. A comparison of the new, accelerated and centralized Canadian system that receives less number of refugee claimants with the slow, highly decentralized, and vastly backlogged American one seems to be a good option. In parallel,

another research project could try to understand the roles of service organizations in the help they provide for refugee claimants. Second, the study of the assessment of credibility in other street-level interactions that relate to border control and international migration, such as detention reviews and immigration appeals have not been undertaken yet. Research in these administrative tribunals context, would potentially offer new insights about the functioning of the state in relation to non-citizens and allow us to understand how international human rights are employed, negotiated or challenged through these interactions. High level of discretionary reasoning characterizes the work of the IRB decision-maker in both arenas. In immigration appeals, decision-makers need to assess the credibility of the applicant in areas such as refused sponsorships and removal orders. The applicant needs to convince the decision-maker that either s/he did not conceal any information from the state or s/he was compliant with the procedures. In detention reviews, non-citizens who are detained by the CBSA officers and their counsel try to persuade the IRB decision-maker that they should not be detained. The intervening Minister's counsel provides arguments on why the non-citizen should remain detained, ranging from their unlikelihood to appear for a hearing, examination or removal to their inadmissibility to Canada on the basis of security grounds. This process, different than inquisitorial refugee decision-making space, includes two opposing parties, hence it is adversarial. Studying the persuasion or negotiation aspect of these interactions could shed light on issues such as state control and authority and the importance of the quality of counsel in what non-citizens receive.

On a final note, international human rights law conceptualizes refugee claimants as extremely vulnerable people. Canada, similar to other Western refugee receiving countries, adopts this conception: refugees are forced to leave; they do not leave their country of origin voluntarily. It is well established that individual agency in choosing the country of residence is

related to immigration, not refugee matters. Asylum seekers are expected to leave their country of origin after they face persecution or a persecution threat and claim refugee status at the first safe country. When they apply for asylum, refugee claimants face a difficult burden of proof as a result of this voluntary vs. forced binary. They need to exercise agency when they decide that it is not safe to stay in their country of origin. There, they have to take all necessary measures to leave. On the other hand, refugee status demands passivity, no intentional or purely rational decision-making such as in "choosing" the destination country. However, vulnerability and the capacity for agency are intertwined for refugee claimants. The ones who fear persecution but have not experienced it face the hardest challenge. Their claims do not neatly fit into established Convention refugee categories. There is a danger that these claims fall between the cracks. It is conceivable that, after half a century of the adoption of the Refugee Convention and Protocol, we need a large-scale international discussion on the redefinition of the refugee. On the other hand, considering the desire of the Western refugee receiving states to control and reduce the number of refugee claimants they receive, this discussion seems extremely unlikely.

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- *Baker* v. Canada *(Ministry of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.
- *Dunsmuir* v. New Brunswick, [2008] 1 S.C.R. 190, 2008 SCC 9
- Kaberuka v. Canada (Minister of Employment and Immigration), [1995] 3 FC 252
- *Khokhar* v. Canada *(Minister of Citizenship and Immigration)*, 2008 FC 449 , 2008 FC 449
- *Kozak v. Canada (Minister of Citizenship and Immigration)* (F.C.A.), 2006 FCA 124, [2006] 4 F.C.R. 377
- *Nottebohm case (Liechtenstein v. Guatemala)* [1955] ICJ 1
- Nyathi v. Canada (Minister of Citizenship and Immigration), 2003 FC 1119
- R. v. Lavallee, [1990] 1 SCR 852
- *Singh v. Minister of Employment and Immigration*, [1985] 1 S.C.R. 177
- *Urbanek* v. *Canada (Minister of Employment and Immigration*) (1992), 17 Imm. L.R. (2d) 153 (F.C.A.)
- Wangden v. Canada (Minister of Citizenship and Immigration), 2008 FC 1230, [2009] 4 FCR 46
- *Ward: Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, 103 D.L.R. (4th) 1, 20 Imm. L.R. (2d) 85.

Appendix A- Official demand to the IRB

----- Original Message -----
From: Bayrak Sule
To: Kipling, Greg
Sent: Wed Jun 27 2012
16:13:08
Subject: research at Refugee Protection Division

Dear Kipling,

This is Sule Bayrak Tomkinson, a PhD student at political science department of Université de Montréal.
I was introduced to you by Brian Goodman, at Osgoode Law School on 17th of May.

My research is based on the IRB members and their assessment of credibility during the refugee hearings. I would like to participate the hearings in Montreal to observe if the IRB members have specific patterns or styles to assess credibility.

Mr. Goodman had told me that getting a bureaucratic permission from him could be possible.

I will be starting my field in mid-September, but I will need a document to submit with my documents to the ethic committee.

If you would like more information on my thesis project, I will be very happy to give more information.

Looking forward to hear from you.

Best,
Sule Bayrak Tomkinson

From: Kipling, Greg
To: Bayrak Sule
CC: White, Kevin
Sent: Thurs Jun 28 2012
11:22:03
Re: research at Refugee Protection Division

Dear Sule,
Thank you for your e-mail. Mr. Kevin White, Director General, Strategic Communications and Partnerships, is the focal point at the IRB for these types of matters, and I would ask that you direct your request to him. He can be reached at [redacted]

Best wishes,
Greg

You forwarded this message on 28/06/2012 10:20 PM.

From: Delfish, Akua
To: Bayrak Sule
CC: Figg, Lois
Subject: Research request for RPD Montreal

Hello Ms. Bayrak,

I am contacting you on behalf of the RPD – Assistant Deputy Chairperson in Central Region, Lois Figg. Our office has received your request to observe hearings in support of your research. Please be informed that your request should be appropriately redirected to the attention of Kevin White, Direct General of Communications. His office will review and process your request for consideration. A representative, or Mr. White himself, will be in contact with you once your request has been received.

Kevin White can be contacted at [redacted]

Regards,

Akua Delfish

Administrative Coordinator / Coordinatrice Administrative

Office of the ADC / Bureau de la VPA

RPD – Central Region / SPR – Région centrale

Tel: 416-973-2633 / Fax: 416-954-3405 /

*** This E-mail is sent from the Immigration and Refugee Board of Canada. As this message may contain confidential information, if you are not the intended recipient, please delete the E-mail and notify the sender. / Ce courriel a été envoyé par la Commission de l'immigration et du statut de réfugié du Canada. Il pourrait contenir des renseignements confidentiels; s'il vous est parvenu par erreur, veuillez le supprimer et aviser l'expéditeur immédiatement. ***

You replied to this message on 07/08/2012 10:58 AM.
From: Neligan, David
To: Bayrak Sule
Subject: RE: Research at Refugee Protection Division

Hi Sule – I just spoke with the Montreal registry and the official process to follow is to simply write them and request access to a specific hearing. They will then proceed to contact the member, counsel and claimant on your behalf.

The Montreal Registrar is Francois Thinel. He will be able to answer your questions about this.

Best of luck,

David

David Neligan
Communications Officer / Agent en communication

Strategic Communications and Outreach / Communications stratégiques et diffusion externe
Immigration and Refugee Board of Canada / Commission de l'immigration et du statut de réfugié du Canada
613-995-4366

From: Bayrak Sule
Sent: August 3, 2012 12:49 PM
To: Neligan, David
Subject: Re: Research at Refugee Protection Division

Dear Neligan,

Thank you very much for your response. I will be attending the hearings individually. However I have a question in relation «individual written requests». I have observed a few hearings through the approval of the legal representative, refugee claimant and then the Board Member. So I was wondering what the official process is.

Have a good day,

Sule Tomkinson

Neligan, David wrote:

Dear Ms Tomkinson,

I am writing with respect to your letter requesting access to 100 IRB hearings in Montreal. We appreciate the importance of your research and recognize the value that observing a significant number of hearings would have for your thesis. Unfortunately, the IRB does not have the resources at this time to accommodate such a request.

IRB hearings are held in private and the Board has a formal process in place for requests to observe proceedings. When a request is received, IRB staff are required to contact the presiding member, counsel and claimants to receive their consent to be observed. The facilitation of a random sample of 100 hearings would require significant research, scheduling and coordination from the Montreal registry that is beyond their operational capabilities.

While we are unable to grant you permission to attend a large sample of hearings, we encourage you to continue filing individual written requests to the Montreal registry to attend specific hearings. The IRB staff in Montreal will be able to better assess each request on a case by case basis.

I wish you the best of luck with your research and I'm sorry that we are unable to fully accommodate this request.

Regards,

David

David Neligan
Communications Officer / Agent en communication

Strategic Communications and Outreach / Communications stratégiques et diffusion externe
Immigration and Refugee Board of Canada / Commission de l'immigration et du statut de réfugié du Canada
613-995-4366

Appendix B- HEARING OBSERVATIONS

#	Decision	Date	Board member	Legacy/new	Counsel	Country of origin	Gender	Age	Basis of claim
1	recusal - negative	20-Nov-12	Walter Dylan	Legacy	Roger Bluer- Samantha Auteuil	Afghanistan	Two male	One in 30s and the other in 40s	Membership to a particular group- homosexuality
2	Negative	21-Nov-12	Martin Lefebvre	Legacy	Andrew Piazza	Indonesia	Female	In her 60s	Religion and ethnicity (Chinese Christian)
3	Positive	23-Nov-12	Monique Goulet	Legacy	Andrew Piazza	Indonesia	Male - female couple	in their 70s	Religion and ethnicity (Chinese Christian)
4	Adjourned	27-Nov-12	Albert Taylor	Legacy	Andrew Piazza	Kirgizstan	Female	In her 60s	Ethnicity- Korean
5	Positive	29-Nov-12	Monique Goulet	Legacy	Andrew Piazza	Indonesia	Male	43	Ethnicity- Chinese
6	Positive	29-Nov-12	Monique Goulet	Legacy	Andrew Piazza	Indonesia	Male	24	Membership to a particular group- homosexuality
7	Positive	05-Dec-12	Hugo Savard	Legacy	Roger Bluer	Tunisia	Male - his two minor sons waiting outside	in his 60s	Scared of a police officer
8	Positive	05-Dec-12	Hassan Simard	Legacy	Roger Bluer	India	A married couple and their two minor children	in their 40s	Escaping from powerful people in the village
9	Positive	10-Dec-12	Wael Morency	Legacy	Georges Teuré	Egypt	Female	69	membership to a particular social group – Christian woman
10	Adjourned	11-Dec-12	Michelle Lachance	Legacy	Claude Dubois	Hungary	Family-	mother, 19 year-old daughter, 8 year old son	Membership to a particular group- Roma
11	Negative	11-Dec-12	Guy Auger	Legacy	Georges Teuré	Honduras	Male	early 30s	escaping from an organisation
12	Negative	12-Dec-12	Philippe Ouellet	Legacy	Georges Teuré	Tunisia	Male	late 30s	membership to a particular group - Christian

13	Positive	13-Dec-12	Ginette Labelle	Legacy	Claude Dubois	Haiti	Female	in her 40s	membership to a particular group- escaping from her husband
14	Positive	13-Dec-12	Skyler Finkelstein	Legacy	Claude Dubois	Turkey	Young couple and their two children	Couple in their 30s, children 5 and 3	freedom of religion, ethnicity (Kurdish Alevi)
15	Negative	30-Jan-13	Lydia Blanchet	Legacy	Peter Ken	Guatemala	Young couple with a child born in Canada	late 20s	gang violence
16	Negative	31-Jan-13	Denis Gosselin	Legacy	Marc Burton	Nigeria	Male	late 20s	scared of the villagers - freedom of religion
17	Negative	31-Jan-13	Lydia Blanchet	Legacy	Georges Teuré	Dominican Republic	Female	40s	membership to a particular group- escaping from her ex-boyfriend
18	Negative	07-Feb-13	Bernadette Martel	Legacy	Daphne Auger	Mexico	couple with three children	couple in their 40s, one daughter is an adult, other two were minors	gang violence
19	Negative	12-Feb-13	Bernadette Martel	Legacy	Joanie Gauthier	Croatia	male	late 30s	Membership to a particular group- Roma
20	Positive	12-Feb-13	Jean-François Michaud	Legacy	Joanie Gauthier	Democratic Republic of Congo	male	late 40s	persecution through a superior
21	Positive	13-Feb-13	Wael Morency	Legacy	Roger Kadima	Pakistan	male	early 40s	political opinion - state is the agent of persecution
22	Positive	19-Feb-13	Walter Dylan	Legacy	Joanie Gauthier	Rwanda	female	early 40s	state persecution - Gacaca courts
23	Negative	13-Mar-13	Mona Tremblay	New	Joanie Gauthier	Rwanda	male	early 20s	state persecution

24	adjourned	13-Mar-13	Madeleine Abéillard	Legacy	Georges Teuré	Brazil	Female	late 30s	membership to a particular group-escaping from her ex-boyfriend
25	positive	14-Mar-13	Mona Tremblay	New	Georges Teuré	Egypt	Male	mid 20s	escaping from the old regime in Syria
26	Negative	16-Mar-13	Sébastien West	New	Vanessa Amber	India	Young couple	man mid 30s, woman mid 20s	freedom of religion, persecution of
27	Negative	18-Mar-13	Mona Tremblay	New	Samantha Auteuil	Ghana	Male	late 20s	membership to a special group: gay
28	positive	20-Mar-13	Clara Bergeron	New	Georges Teuré	Egypt	Old couple	man 77 years old, woman 69	freedom of religion
29	negative	18-Mar-13	François Gagné	New	Joanie Gauthier	Russia	Couple with one child	woman late 30s, man early 50s, child 8	state persecution
30	Positive	26-Mar-13	Skyler Finkelstein	Legacy	Alexia Boutin	Turkey	couple with three children	couple late 30s, minor children	state persecution, ethnicity, freedom of religion
31	Negative	27-Mar-13	Ginette Labelle	Legacy	Joanie Gauthier	Haiti	old couple	late 70s	persecution because of their son
32	positive	28-Mar-13	Benjamin Carlson	Legacy	Mélanie Savoie	Colombia	Female	early 30s	membership to a particular group-escaping from her ex-husband
33	Positive	16-Apr-13	Madeleine Abéillard	Legacy	Andrew Piazza	Indonesia	Female	mid 40s	Christian - (family Muslim)
34	Negative	25-Apr-13	Elise Ryan-Couture	Legacy	Andrew Piazza	Indonesia	Female	28	Chinese - ethnicity
35	Negative	02-May-13	Eric Grenier	Legacy	Jean Rachid	Ivory Coast	Male	mid 40s	Ethnicity
36	Negative	20-Jun-13	Jacques Fournier	New	Andrew Piazza	Columbia	Family		Violence because of killed PM mother

37	Positive	25-Jun-13	Kathleen Pélletier	Legacy	Vanessa Amber	Democratic Republic of Congo	Male (family)	late 30s	political opinion - state is the agent of persecution
38	de novo	25-Jul-13	Christian Bélanger	Legacy	Vanessa Amber	Namibia	Male	early 30s	particular social group - gay
39	Negative	31-Jul-13	Walter Dylan	Legacy	Vanessa Amber	Sierra Leone	Male	late 30s	political persecution
40	adjourned	19-Aug-13	Hector Nowak	Legacy	Georges Teuré	Albania	Male	early 40s	political opinion
41	adjourned	22-Aug-13	Hector Nowak	Legacy	Georges Teuré	Albania	Female	late 30s	political opinion + rape
42	Negative (no credible basis)	26-Aug-13	Ginette Labelle	Legacy	Georges Teuré	Morocco	Male	50s	claiming status on the basis of fear of money lender
43	Negative	28-Aug-13	Clara Bergeron	Legacy	Georges Teuré	Lebanese	couple	30s	escaping from violence of family and Hizbollah
44	Negative	10-Sep-13	Hector Nowak	Legacy	Samantha Auteuil	Uruguay	Female	24	escaping gang and police violence - father drug trafficker
45	Positive	16-Sep-13	Elise Ryan-Couture	New	Georges Teuré	Egypt	Female, mother, daughter and granddaughter	60s, 40s, 10	membership to a particular social group (Christian women in Egypt)
46	Positive	16-Sep-13	Wael Morency	Legacy	Georges Teuré/law intern	Syria	Young couple, 2 kids	42, 33, 7, 3	religion (Christianity)
47	Negative	20-Sep-13	Eleanor Christie	New	Roger Bluer	Sri Lanka	Man, family already in Toronto	40s	ethnicity (Tamil)
48	Negative	08-Oct-13	Lydia Blanchet	Legacy	Roger Bluer	el Salvador	Young man, escaping from gang violence	early 20s	gang violence
49	recusal	06-Nov-13	Hector Nowak	Legacy	Joanie Gauthier	Armenia	Old male	60s	state persecution
50	Negative	13-Nov-13	Benjamin Carlson	New	Joanie Gauthier	Burundi	Young female	early 20s	state persecution

Appendix C – ATIP Requests

From: Eisl, Debora
Sent: August-14-13 9:38 AM
To: Bayrak Sule
Subject: RE: FW: access to information in relation to Board member training documents

Hello Sule,

Indeed there is a lot of material - We are still processing a request we received for only the 'new' RPD training materials, for which we already took an extension to the end of November. I received a rough estimate of 3,000 pages for the OLD RPD, plus the RAD division which has yet to be determined.

I'll send you a letter next week once I get more information.

Debora

Debora Eisl

Deputy Director-ATIP/Directrice adjointe-AIPRP

Immigration and Refugee Board of Canada

Commission de l'immigration et du statut de réfugié du Canada

Tel/Tél : 613-992-2684

Fax/Téléc : 613-996-9305

-----Original Message-----
From: Bayrak Sule

Sent: August 14, 2013 11:23 AM
To: Eisl, Debora
Subject: Re: FW: access to information in relation to Board member training documents

Good morning Debora,

I am quite surprised about the extensiveness of my request. I knew that it would be hundreds of pages, but not thousands...

Waiting to hear from you.

Sule

"Eisl, Debora" wrote:

Good afternoon Sule,

I have been informed that this request is actually going to be quite huge, with many thousands of pages for us to review. So there may very well be search and preparation costs involved as well as a lengthy time extension.

We will be sending you a formal letter concerning this hopefully next week.

Debora Eisl

Deputy Director-ATIP/Directrice adjointe-AIPRP

Immigration and Refugee Board of Canada

Commission de l'immigration et du statut de réfugié du Canada

Tel/Tél : 613-992-2684

Fax/Téléc : 613-996-9305

From: Eisl, Debora

Sent: July 30, 2013 11:37 AM

To: 'Bayrak Sule'

Subject: RE: access to information in relation to Board member training documents

1. Yes, please include as much information and detail as you can, as well as timeframes (ie documents from the last month, 6 months, etc...) for the information you are seeking; also for which division of the IRB it concerns, i.e. the Refugee Protection Division (RPD), the Immigration Division(ID), the Immigration Appeal Division (IAD).

It is up to you if you want to provide why it's important, but not necessary.

2. You can include it all in one request for $5. However keep in mind that there may be additional costs for searching and preparation of the records if there is a lot of material. We will let you know if that is the case once we receive your request. Also note that background info on new members will probably be protected (their personal information), unless it was made public.

3. It is be quicker and easier for us to send you the information electronically (CD).

Debora Eisl

Deputy Director-ATIP/Directrice adjointe-AIPRP

Immigration and Refugee Board of Canada

Commission de l'immigration et du statut de réfugié du Canada

Tel/Tél : 613-992-2684

Fax/Téléc : 613-996-9305

_____

From: Bayrak Sule

Sent: July 30, 2013 11:24 AM

To: Eisl, Debora

Subject: RE: access to information in relation to Board member training documents

Dear Eisl,

Thank you very much for your prompt response.

I have a few questions:

1- Should I fill out the type of information I am seeking in the second part? (provide details regarding the information being sought). Should I also include more details why this information is important for my research?

2- I will be demanding a few different types of information all in relation to the IRB (such as the training manuals used for training of Board members and the a short background information of new Board members (who are appointed through Public Service Employment Act), kind of information that exists on the web for nominated Board members) Should I fill a different form for each different type of information and enclose a $5 cheque for each? Can I send everything at once or should I send each demand separately?

3- This will be a more general question. For the method of access preferred: I have no issue with examining the original documents in the government offices as long as I am given enough time. Is it faster to get authorisation if I choose this option instead of demanding copies of the originals?

Sincerely,

Sule Bayrak Tomkinson

Doctorante

Centre de recherche sur les politiques et le développement social (CPDS)

Science Politique

Université de Montréal

From: Eisl, Debora

Sent: July-30-13 11:07 AM

To: Bayrak Sule

Cc: Villemaire, Eric

Subject: FW: access to information in relation to Board member training documents

Dear Sule Bayrak Tomkinson,

On behalf of the Director, Access to Information and Privacy at the Immigration and Refugee Board of Canada, please find attached a form you can use to make your Access to Information request.

You can mail the completed application form along with the prescribed $5.00 fee, payable to the Receiver General of Canada, to the following:

Eric Villemaire, Director

Access to Information and Privacy Division

Immigration and Refugee Board of Canada

344 Slater Street, 14th Floor

Ottawa, Ontario K1A 0K1

Should you have any further questions, please do not hesitate to contact me.

Debora Eisl

Deputy Director-ATIP/Directrice adjointe-AIPRP

Immigration and Refugee Board of Canada

Commission de l'immigration et du statut de réfugié du Canada

Tel/Tél : 613-992-2684

Fax/Téléc : 613-996-9305

_____

From: Bayrak Sule

Sent: July 30, 2013 9:13 AM

To: ATIP

Subject: access to information in relation to Board member training documents

Dear Villemaire,

This is Sule Bayrak Tomkinson, a PhD student in political science department of Université de Montréal.

I am conducting my doctoral research on Canadian refugee determination process and have been observing refugee hearings in IRB Montreal office for about 1,5 years.

I will be demanding some documents through Access to Information Act to use as data in my dissertation and I was wondering what is the best way to do this, can I make my demand through e-mail or should I send it by post? Is there a standard form that I need to fill out?

Thank you very much for your attention,

Sule Bayrak Tomkinson

PhD Candidate

P.S. I attached my ethics certificate form for my research.

Immigration and Refugee Board
Commission de l'immigration et du statut de réfugié

344 Slater Street, 14th Floor
Ottawa, Ontario K1A 0K1

PROTECTED

Our File #: A-2013-00688 / DE

OCT 0 9 2013

Ms. Sule Tomkinson
3028E Boulevard Lasalle
Verdun , Quebec
H4G 1Y8

Dear Ms. Tomkinson,

This is in response to your Access to Information Act request dated August 29, 2013, which was received by this office September 3, 2013, for:

> *1- Contract terms of members of RPD and members of legacy initiative. The aim is to see the differences and similarities.*
> *2- Monitoring of members of RPD and members of legacy initiative. This is to see if any document exists on the evaluation of the members' performance. Time period: 2012 – Sept 2013.*

Concerning your first question please be advised that IRB GIC members, who were not transferred to the RAD or IAD, are working at reducing the inventory of Legacy cases (received prior to Dec. 15th 2012). GIC members are appointed by the Governor in Council. Their terms and conditions are made through an order in council: http://www.appointments-nominations.gc.ca/prsnt.asp?menu=3&page=Process&lang=eng (copy attached). Terms and conditions are administered by the Privy Council Office: http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=terms-conditions/2009-eng.htm (copy attached).

Concerning your 2nd question on the monitoring aspect, there are targets, standards and an End of Mandate form on our web page, under the section 'performance evaluation': http://infonet/en/Branches/GICSSB/index.htm (copy attached).

We have equally attached a sample Performance Review and Employee Assessment form and a sample letter of offer.

.../2

Canada

Immigration and Refugee Board
Commission de l'immigration et du statut de réfugié

344 Slater Street, 14th Floor
Ottawa, Ontario K1A 0K1

PROTECTED

Our File #: A-2014-00241 / SB

May 22, 2014

Ms. Sule Tomkinson
3028E Lasalle Blvd.
Verdun , Quebec H4G 1Y8

Dear Ms. Tomkinson :

This letter is in response to your *Access to Information Act* request dated April 16, 2014 which was received by this office on April 22, 2014, for:

> **"I am seeking the notices of decision (from Refugee Protection Division) along with their respective Reasons for Decision for files:**
>
> **MB2-01725 MB2-01690**
> **MB0-00235 MB1-07576**
> **MB2-00850 MB0-07140**
> **MB2-02458 MB2-02815**
> **MA9-10951 MB1-06830**
> **MB1-00164 MB0-00986**
> **MB3-00007 MB3-00198**
> **MB3-00324 MB3-01076"**

I have enclosed the records that respond to your request. You will note that information is withheld from disclosure pursuant to section 19(1) of the *Act* (copy of the relevant section is attached).

Please be advised that you are entitled to complain to the Information Commissioner concerning the processing of your request within sixty days of the receipt of this notice. In the event you decide to avail yourself of this right, your notice of complaint should be addressed to:

Information Commissioner of Canada
30 Victoria Street
Gatineau, Quebec
K1A 1H3

Canada

Immigration and Refugee Board | Commission de l'immigration et du statut de réfugié

344 Slater Street, 14th Floor
Ottawa, Ontario K1A 0K1

PROTECTED

Our File #: A-2014-00242 / SB

April 23, 2014

Ms. Sule Tomkinson
3028E Lasalle Blvd.
Verdun , Quebec H4G 1Y8

Dear Ms. Sule Tomkinson :

This is to acknowledge receipt of your *Access to Information Act* request April 16, 2014 and received by this office April 22, 2014 for "One positive and one negative decision from each of the following decision makers:

Please include a few negative decisions on no credibility basis and/or manifestly unfounded claims (if available)."

Under the provision of sub-section 7(a) of the *Access to Information Act*, you can expect a response within thirty (30) days of initial receipt of your request that is by May 22, 2014.

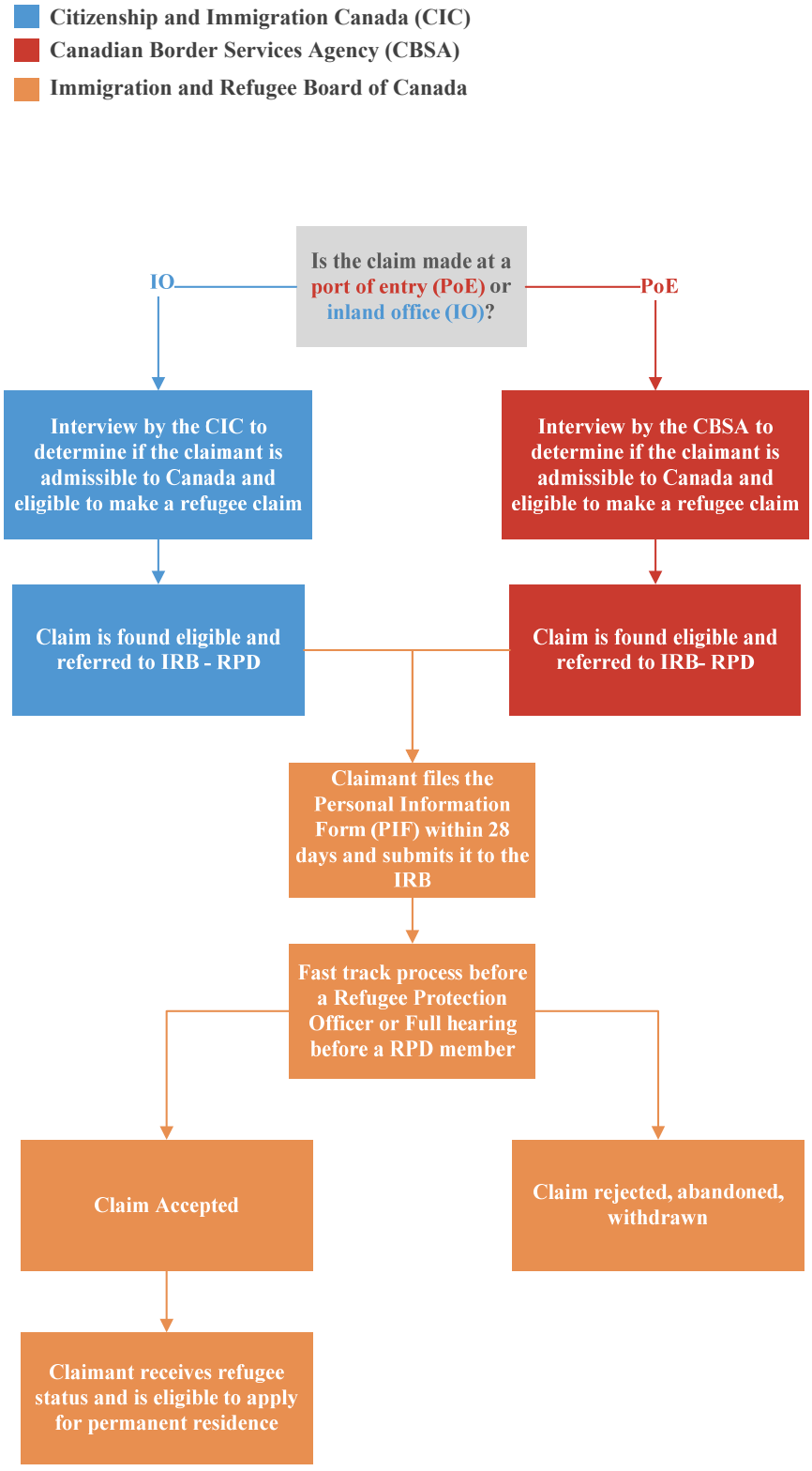
Should you have any questions, please do not hesitate to contact me at 613-996-2696.

Sincerely,

Sean Boileau
Officer, Access to Information and Privacy

Canada

Appendix D. Figure of Canada's Refugee Status Determination



Appendix E – Translations

(1) *It is possible that someone made a mistake.*

(2) - *What does your ex do? What is his work?*
- *He is in the military.*
- *What do you mean he is in the military? What is his rank?*
- *He is the chief of the narcotics unit.*
- *Is he in the military or in the police service?*
- *In police.*
- *Then why did you say that he is in the army? In your narrative you mention that he is in the police. Why do you change your mind now?*
- *Actually in Dominican Republic, we call them all military. There is not much difference between the military and the police.*
- *But you have a university degree which implies superior intelligence as well. We expect you to know the difference between the military and the police. Why? Don't you know it?*
- *In daily language, in oral language, we call them all the same, military.*

(3) *Canada is the number one country in terms of protection.*

(4) *Completely gaga.*

(5) *You moved in with him, and then what happened?*

(6) *One Sunday I came back from work, it was 8th of August, no 10th actually, I am not very sure. I was a bit late and he made me sleep on the floor. He threw me on the coach and he tried to choke me. I ran and shut the bathroom door behind me, and called my sister. Then the police arrived. After that, I went to get a medical exam to see whether I had injuries.*

(7) - *At the beginning I asked you if the folder was complete. You said yes.*
Georges intervenes : As she did not come to her appointment, we were not able to examine those contradictions.
- *She did not come?*
Georges : No.
- *Why?*
- *I live in the country side. Before, I lived in Montreal, but I was scared all the time. I was scared that he would follow me.*
- *But Madame you came here to regularize your status. Why did you miss your appointment?*
- *He travels a lot. I am afraid that I can run into him in Montreal.*
- *Madame look at me please. I understand why you live in the country side. But all the claimants have to go through this. Your ex cannot come here.*
(Silence. No reaction from Priscilla).
- *He cannot know that you are here. So, you have to appear either before me or someone else. You cannot escape from that.*

- *Yes, I understand (Suddenly she starts crying). Try to understand, I was fine, I had a good job, Suddenly…*
- *Madame, just a second, but it is the past. If not me, you will be in front of another Board member that you have to convince that you went through problems that you have now. You have to explain him your problems.*
- *I know, that is why I am here.*
- *Then, why did not you go to your appointment?*
  (Silence. No answer).
- *I am obliged to grant a postponement because a story like this… the story does not fit.*

(8) This does not happen very often.

(9) …there are three steps of refugee determination. The first step is when they [refugee claimants] arrive at the airport, which is called port of entry. There they tell a story. They say I am a refugee, that's it. The second step is a Personal Information Form (PIF), there, with the lawyer, they tell another story because the first one will not work. In the end, the hearing, the testimony is the third [stage]. So, I was a refugee myself, which means my parents were Jewish and I was born in X (a city in Europe) in 1934, at the moment or a bit later than the time the Nazis arrived in Y (a country in Europe). We had to save ourselves. If I tell my story, I don't need a lawyer. I don't need an interpreter. I can tell exactly what happened twenty times and never contradict myself. It is the story of my life! But these people, they are not the same. They arrive here and they tell a story which does not belong to them. After a while during the testimony, a moment arrives "But here you are talking about June 2002, but in your story [referring to PIF] you are mentioning April 2000". There, he looks at the lawyer. "But how can you reconcile the contradiction?" "Ah, I made a mistake". OK, you made a mistake, it is fine. But did you make a mistake today or when you wrote this? (imitates someone who is confused, aaaa, hmmmm). OK, we will fix it. But slowly they keep making mistakes, because it is not their story… It was not their story; it was a fable which they could not defend in a hearing which lasted three hours. It is because little by little it wore away.

(10) At the hearing, what I had noticed at the time, and I still notice today, the non-verbal was very significant to assess credibility. But in particular, the testimony, the contradictions, the plausibility, contradictions in the testimony of the claimant. At the beginning of his testimony for example, he says that the incident happened at a certain time, and then the hearing unfolds, after an hour, we ask the same question and he says the incident took place at another date. It is obvious that we have the obligation to ask the claimant to explain it, but if there is no explanation, it impacts credibility. Hmmm, contradictions in his testimony and what he wrote in his form at the moment of refugee claim. OK? So, the contradiction between his corroborative evidence and his testimony. Often as well, we test credibility through the contradictions within the same document.

(11) The claim has to be followed by an investigation. I preside an investigation, I do not try to tie up the claimant, I re-stitch what he says. I do the same thing as the other who [Board member] jumps up and speaks like, I do not know, like the police proceeds. This is a way of doing things. Maybe there are ones who lack skills. There are others who proceed like lawyers. So, it is shocking at times. Sometimes they proceed as if they were at that country. I know there

are certain ones who proceed like a police or like a dictator. This is not the way to do it. I was a refugee claimant myself, they questioned me, I put myself in the shoes of the claimant there. He is traumatised when he arrives here. Even if he manages to come here, he is traumatised. And when he is in front of the tribunal, his life depends on my decision. He has a hole in the head, he is knocked over. Not everyone can manage to question the claimants calmly. Because human beings, when you give them a bit of power… I do not criticize anyone, huh? It is possible to get information through the lawyer and by questioning the claimant. Asking the questions without traumatising anyone. Even between him and his lawyer there may be contradictions…

(12) The only work of the Board member is to listen the person in front of him. If not, there is no more human rights.

(13) Maybe what I am going to say is not proven scientifically but I believe that it is very difficult to lie. You have to listen to the person… When I started working at the Board, they made us observe [hearings], they made us work at the bench. I will never forget, there was a Board member at the time, she, she got obsessed with a date, the claimant said "On October 15, 1995, I was walking on the street". "Sir, when did this happen?", like real anger (imitating someone like a wild animal who is ready to attack) and then if the guy could not remember the exact date, he did not pass the test. And for me, that is not the work.

(14) The members are not appointed to detect liars but to welcome the ones who need protection. That is why it is important to repeat it. Sadly, we lost this aspect a bit. Generous attention is a bit lost. The claimants are not criminals, but in people's minds, they are. A Board member should not judge, that is not his job.

(15) Hearing is a plausibility test; I would not say the truth. We are not looking for the truth. We are looking for plausibility. For example, let's say that the claimant is homosexual. He has to explain how he practices his homosexuality, with who, where, for how long. The Board member goes to the hearing room to test the claimant; therefore we have to define the concept of hearing. Hearing is a moment where we validate credibility or plausibility. Then what does the member do to validate the credibility of what he hears? His maturity as a human being; he will discern from what he hears, the coherence of the testimony, he has to be sufficiently intelligent as well. I won't say they are stupid, but there are some. Not everyone is intelligent, that is the law of nature (laughs). But the importance is not among the list of incoherencies, implausibilities and contradictions – what matters is the explanations the claimant gives to these apparent incoherencies or contradictions. The member decides on the responses. So, the difficulty between positive and negative decisions is that most of the times, majority of the decision-makers stop at the contradictions, they do not evaluate the response, many decisions have been quashed because of this. Therefore, the member's job is evaluation. What do they evaluate? They do not evaluate credibility, but the justification to apparent contradictions.

(16) I have to admit one thing, I accepted people not because they did not contradict themselves very much or that I believed them hundred percent. I assessed, now I think of a woman from Peru, Ecuador, her life there, is a life of sadness. OK, I know that we are not there to do charity, but she had real horrors with her two sons, and no real contradictions in the testimony. Then, I think "Will I force myself to find contradictions or accept her telling myself

"OK, I may be making a mistake, but at least I make a mistake for someone who has a miserable life anyways". You see?

(17) "There, with the lawyer he tells another story, which is not the same with the previous version because the first one will not do the trick".

(18) [27] The claimant was questioned why when responding to question 31, he had not indicated that he had witnessed a murder and that he was asked to kill someone for initiation, he responded that his former lawyer's assistant never asked him to narrate his story.

[28] The claimant was then questioned on why he had not indicated that he had witnessed a murder and that he was asked to kill someone to initiate him, to the immigration officer during his interview (see, A-24, interview of September, 6 2009, Claim for Refugee Protection form, question 31, which was translated during the hearing). The claimant responded that he was nervous and he forgot about it. When examined by his lawyer, the claimant responded that the interview with the immigration officer took place in Spanish. The officer spoke to the claimant in Spanish and he responded in the same language. The claimant said the immigration officer spoke with a Mexican accent, which is why, he had difficulty understanding him.

[29] According to the panel, the explanations which concede to the omission of witnessing a murder are unsatisfactory. As a result, the tribunal rejects them. Despite the claimants' explanations regarding that the immigration officer had a Mexican accent, the fact remains that he responded to other questions without mentioning the death that he witnessed, because "he was nervous and had forgotten certain things"

[30] Thereby, the Panel has difficulties understanding how the claimant, during his asylum interview could have forgotten the most important and traumatic element of his story. The claimant's explanation made no sense, and consequently, it is not credible (RPD file no: MA9-10951).

(19) In popular perception, when we refer to refugees, we refer to people who live in tents in Somalia etc. These do not come to Canada. They are not a part of our system. There are a few who come through United Nations [referring to refugees determined by the UNHCR]. Thus, what we had were not these claimants. It was people who alleged that if they were to be returned to their country of origin, they would be victims of persecution because of social group, homosexuality, nationality, religion, political opinion. Therefore, they tried to have stories which they fit with the documentary evidence- something that really existed in the country. For example, if a country had homophobic laws, they said they were homosexuals and there was a risk that they would be persecuted.

(20) The fact that they returned to Uruguay, even though for a brief period, raises serious doubts about their subjective fear of persecutors or criminals. Even if they believed that they could not demand refugee status in either Brazil or Argentina, they should have tried to take the necessary measures to seek information on where they could seek asylum. Considering that they were afraid for their lives, the last country they should have returned to was Uruguay. This impacts the credibility of the claimant considering this aspect of the testimony.

(21) Very often, the claimant consults an interpreter, there are many interpreters who make up stories, and they know which stories are accepted. The claimants also have to see their lawyer, and lawyer must do a first assessment, because we know very well that the 90 percent of the claimants are not genuine refugees. Canada has a reputation as a good, welcoming country; so many people come and take their chance. There are some countries to which Canada does not require a visa. So, people appear at the border, they are received, they are allowed into the county, but then they have to show their fear of persecution in front of the Board. During the hearings, people knew very well which stories could pass. So, it was not always through studying the case folder that we could define which stories were genuine and which were frivolous. We could at times but they were the miserable ones who were ill-advised and wrote whatever. And then you could not believe the transformation of the story from the port of entry to the the hearing!

(22) You have to enter the hearing room as if it is the first day. You have to enter without a decision. If I give you a chance to explain yourself, I give myself a chance to evaluate easier. You have to personalize the cases and make them more human. It belongs to a human being. We should not install walls between us and the others. You have to know a lot, to better understand the case, not to require more. But also you have to listen well, you have to bring issues in and treat them. In a case, there is a spirit and a chain. A case is not simple. I am there not to make it simple but to make it just.

(23) We can see clues. For example, if you have already read that story somewhere else, if you noticed it among your files. You can notice identical stories. It is a bit astonishing. Sometimes the idea is the same but there are more details. It cannot happen to two people at the same time, at the same place, in the same city. Either one of the two copies the other, or one lies. That is what I call identity of a story. But there are also incoherencies in his own story; he says on June 15 he was in Istanbul, he was beaten up and tortured, on 16th he was in Ankara, in a disco with his friends, where he had fun. There is a problem. If he is hospitalised, he did not have the time to get better. When he notices that, he changes the dates. He will say, I was wrong, already a clue. Or another similar story: someone told me that he was blindfolded and kidnapped. This is huge. People cannot see when they are blindfolded. Or, “I was conducting a search and the police followed me”. “In India, I was in my field with my tractor and he launched very fast, I ran very fast and they caught me”; a vehicle or a person?

(24) [17] The Panel demanded the claimant what his job was in Quebec. The claimant said that for four years, he has been working in a company as an unloader (he unloads flower pots) and he was also the staff head and was responsible from communicating the commands of the company to his group of eight employees.

[18] These elements as well as his employer’s letter that indicates that as a result of his competences and the efficiency of his work, the claimant became a vital worker, so that the company included him in its decision-making meetings, make the Tribunal consider that the claimant is not an infantilised person, otherwise, the company would not have entrusted him

these responsibilities. Further, his intellectual capacity should be at least average for him to be a staff head and his cognitive capacity should be sufficient for the claimant to haul himself to be classified as a vital worker in a new country as a newcomer.

[19] The Panel did not notice that the claimant had any difficulty or incapacity to testify on the issues he was questioned. Other than specific dates which the Panel did not take into consideration such as his date of departure from El Salvador, the claimant testified in a manner that raised no doubts about his cognitive or intellectual issues that would have harmed his capacity to testify (RPD file no : MA9-10951).

(25) For example people arrived with things as documentary evidence because they were asked to give details of their folder. Well, I did not do India much but I did a few. One day a guy from India arrived with photos of his arrest. There were soldiers and stuff. I look at it and the photos were taken in several areas of the house. Then I as « what is this? » He says there you go, when they arrested me. There is his mother who is on her knees. The mother looks younger than the claimant. What is this? He said it was a photographer who took it. I said but why was there a photographer? Police does not like being photographed when they beat someone up. He says, well because he was hiding. Why was there a photographer? It is because he was across the street. What was he doing? He had a studio. He was doing passport photos. Why did he come to your place? Because he heard the cries. How is it possible that he takes photos like this? Because he was hiding. Was he hiding in several areas of the house? And there is a flash, and we see it on the window. He had asked some friends to disguise as soldiers and that was it. That was it, the work was this for years with stories like that. Was there any genuine refugees? A few.

(26) St. Vincent. Do you know it is a very small country? I believe it is one of the worst examples, failures of colonisation. In all other colonized countries there is elite, an educated group of people, but we can almost say the people in St. Vincent are crashed. By the way, family relationships are very unhealthy, there is incest. There is never the name of the father on birth certificates, battered women. Well, It is incredible. But it does not mean that who come from there tell the truth. Two women (she is clearly laughing) said they were sexually harassed by their stepfather. What did kill them? To kill is a big word but what made them contradict themselves? They submitted photos. The photo, the first photo is the guy, and the women were like me, tall OK? Poor stepfather was an old guy 75-80-year-old, very thin like this (showing her pinky finger). They were saying how he beat them up when they were with their boyfriends when they were walking in the street. Even there, really, they said at some point that he entered through the window. They showed me the photo of the house, I asked he climbed on what to enter? No one can reach the window without climbing on something, OK? Third element, they responded that they lived in an isolated area when I asked them why they did not call the neighbors. No response. In the photo, there is a house just on the side of their (she laughs and laughs).

(27) In 1998 I find myself as a Board member which means as an administrative judge at the Refugee Protection Division. A friend that I used to work with at a broadcast company told me “wait a minute, you are no more in fiction”. I said (laughs) I am always in fiction. I noticed from

the beginning that it was a joke, the whole system was a vast fraud, an industry which supported the lawyers, the interpreters, and people like me as well (laughs), Board members, tribunal officers… And it is funny because when I started working there, naively, I put a citation from Anna Frank on my desk which said "Where will I hide, there is no house, there is no nothing" and when my colleagues saw it they were giggling. I was telling myself, these people are heartless! How can one laugh at what Anne Frank wrote? Later, I understood they were giggling because there were no Anne Franks who came where we live. It was not. It was mostly people who used the doors of immigration services, because immigrating to Canada is not easy, waiting for years etc. But people, I don't know, like someone who sold tomatoes in Nigeria have very little chance to be accepted as an immigrant. So, there is status section (referring to RDP) and lawyers, who recruit abroad.

(28) The ones who were labeled as stupid, the ones who were nominated politically, they could not write a negative decision. They accepted everyone.

(29) Madeleine: I disagree with the reputation they give me. They say "she always says yes"
Sule: No, actually you are known as someone rather fair.
Madeleine: Voilà. So, I was fair, I cannot always say yes, I am not a moron.

(30) As genuine refugees, there were very vulnerable women, young women who come from Africa etc. Often they are forced to prostitution, scars and all, but they do not tell their own stories but others. But behind the story they narrate, there is another one where pimps beat them up and sell them in the Netherlands. They arrive in front of me with a baby in their arms. But there, I had difficulty refusing these people. I never wanted to lapse into arbitrariness because we cannot accept one and refuse the other. But a few times it was really difficult. Because I saw clearly that these 18-20 year old girls had been abused and dragged from country to country, where were we going to send them? At least here, there was some protection.

(31) Anyone can sympathize with suffering. You can sympathize with the claimant, but the law is the law.

(32) It was a strictly legal work, if not you have to accept everyone who needs help.

(33) To start with, the tribunal is known as an expert tribunal. Federal Court says it cannot put itself there as if it was in the room [referring to the Federal Court's refusal to make credibility findings]. What we see here is that, we trust the tribunal. It is an expert tribunal. And then, we become more knowledgeable, me, I was more knowledgeable in immigration law and refugee law compared to a lawyer who did divorce, much more knowledgeable. Even though I did not study law, I gained a juridical expertise that no lawyer could have had. So, when we enter the tribunal, we can easily acquire this expertise by working. And two months of training, intense, really intense.

(34) I personally took my time before I rendered a decision. I always took my time to listen to the person. I follow the process, I ask the question, when I see that it is an empty folder I take a decision immediately. But in general I render my decision after I write the reasons and analysis in my office. I try to see if I may be making a mistake. I know some Board members, who listen

a bit, read the folder and after a few questions they say that “I am ready to render my decision”. He goes to the back a bit. We cannot decide like that. The management requires speeding of the decision-making but there are risks of mistakes. We should not forget that these people, if we return them back to home, it is like a death penalty. It is dangerous to take a decision very fast. You have to investigate the claimant and the lawyer. At the end you have to inquiry if there is anything left to say. I had to request documents for someone who was from Latin America who had a brother and the gangs had come and tried to steal his animals. He went to the city and I requested documents from his country of origin. The documents took one month to arrive, but, I received them. In order to take a fair decision, you had to request documents from abroad, and it took maybe a month.

(35) We were harassed by the management to take more and more decisions, it was never enough. It was never enough.