

**Becoming Queer in Canada: Sexual Orientation/Gender Identity (SOGI)
Refugee Identities and the Canadian Immigration Apparatus**

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The ongoing global refugee crisis has been, and continues to be, one of the most pressing humanitarian issues facing the world today. The 2010s saw a steady increase in displaced peoples at a previously unprecedented scale, being widely referred to as the “Decade of Displacement” (UNHCR 2020:4). Official figures released by the UNHCR (United Nations High Commissioner for Refugees) reported a rise from 36.4 million displaced peoples at the end of 2009 to a staggering 86.5 million by the end of 2019; an increase of over 50 million in the span of a decade (UNHCR 2019:8). While those numbers in and of themselves would be concerning enough should they remain stable, the global trends of destabilization, conflict, and persecution that have been fueling this crisis show no signs of stopping, and the figures appear poised to continue to rise at an alarming rate throughout the 2020s as well. With the disaster looking to only grow worse, anthropologists have a duty to use their skills and insights into human culture and diversity to try to provide the knowledge and solutions necessary to begin addressing the issue. Fortunately, the relationship between the disciplines of anthropology and forced migration studies has been well established, and frameworks and models for how the two can be integrated have been developed (Chatty 2016:74-75; Manalansan 2006:230; Smith 2012:350). An understanding of cultural diversity and a focus on human experiences will be crucial in the coming decades if there is to be any hope of finding workable solutions to processing, resettling, and integrating displaced peoples and refugees in sustainable and ethical ways.

Clearly, the issues that must be considered are too numerous to cover exhaustively in a single paper. Refugee and migration studies is a vast and complex topic with many specializations and subfields. Thus, for the sake of feasibility and actually generating meaningful information, it seems necessary to focus specifically on both a category of asylum seekers and a country to which they are applying. By doing so, the goal of this paper will be to participate in a

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more nuanced, and therefore more personal, exploration of a specific set of issues within a specific refugee intake apparatus that may then potentially be used to explore how current immigration systems may be improved. Therefore, this paper shall focus specifically on the experience of SOGI (Sexual Orientation and Gender Identity) asylum seekers, perhaps more commonly known outside of legal documents as LGBTQ+, as they navigate the Canadian refugee intake apparatus.

The reasoning for choosing to focus on the two specific topics of SOGI claimants and Canada is interconnected and twofold. Firstly, SOGI asylum claimants have become an increasing minority in global refugee claims in the decades since 1991 (LaViolette 2009:438). Interestingly, this can be summed up by the combination of two opposing factors: the increasing recognition of LGBTQ+ rights and protections among certain nations; and increasing or continued persecution in others. While the trend has been towards an increase in LGBTQ+ rights globally, currently there are still 67 UN (United Nations) member states which criminalize consensual same-sex conduct, with two additional member states and one non-independent jurisdiction that have *de facto* criminalization (ILGA World 2020:25). Of those, the punishment for same-sex conduct is officially recognized as death in six countries, with a further five UN member states having an unofficial death penalty (ILGA World 2020:25). Secondly, the rationale for focusing on the experience of these individuals in Canada arises primarily from the fact that, in 1991, the country became the first jurisdiction across the globe to accept refugee claims based on sexual orientation and gender identity (Jordan and Morrissey 2013:13; Kahn and Alessi 2018:22; LaViolette 2009:440). Since then, “Canada has become known as a country that offers a safe haven to sexual and gender minorities whose countries of origin are unwilling or unable to protect them,” and thus is a logical focus for this paper (Kahn and Alessi 2018:23).

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The greatest obstacle that asylum seekers claiming refugee status on any grounds face is that of establishing the credibility of their claim, and SOGI refugees are no exception (Choi 2010:242). Given that fact, this essay will seek to explore the burden overcoming this obstacle places on SOGI claimants. Specifically, the question being addressed will be: **what are the current practices employed in the Canadian refugee intake apparatus? How can disproportionate demands for “covering” and “reverse covering” be seen to target SOGI asylum seekers? Additionally, through an analysis of appealed RPD (Refugee Protection Division) legal cases, is it possible to identify the stereotypes and preconceptions immigration judges employ in making their rulings? If so, what are those preconceptions and what are the implications of their presence?**

To address the research questions, the paper shall proceed as follows: firstly, the historical and legal background relevant to current SOGI refugee law internationally and domestically will be outlined. Having done this, the theoretical concepts of covering and reverse covering, which inform our analysis, will be explained, considering both the concept's original sociological origin and the modern iteration being employed. Next, the methodology used in conducting this research will be outlined, before presenting the chosen case studies. Having presented the case studies, the paper shall then move into a discussion and analysis of the information, during which the original research questions shall be answered in light of the findings. Finally, the paper shall then conclude, reemphasizing the main findings and offering some thoughts on how to move forward.

CONVENTIONS, PROTOCOLS, PRECEDENTS, AND BILLS: REFUGEES IN LAW

The Refugee in International Law

There are two main sources for refugee law: international law which we will discuss in this section; and domestic law which will be the focus of the following section. Before beginning an exploration of international refugee law, it is necessary to define what is meant by the term for the scope of this paper. Specifically, international refugee law from here on out will be the term used to describe that body of rules and regulations put forth by the UN and the UNHCR concerning refugees and asylum seekers. For our focus, international refugee law will not include regional standards such as the Organization of African Unity Convention, Cartagena Declaration, or Arabic Countries Convention which, while still being international, have no jurisdiction over North American refugee policy (Nicholson and Kumin 2017:19-22).

The origin of modern international refugee law can be traced back to the 1951 Convention relating to the Status of Refugees and the formation by the UN of the UNHCR (Choi 2010:244-245; Goodwin-Gill 2016:37; Nicholson and Kumin 2017:15-16; UNHCR 2018:1). It is from the 1951 Convention that the duties of refugees and States' responsibilities towards them, which are still in place today, were set out in international law (Nicholson and Kumin 2017:16). Additionally, it is from the 1951 Convention that we are given a definitive definition of who constitutes a refugee under international law. To be classified as a refugee, the Convention stated that an individual must:

have a well-founded fear of persecution because of their race, religion, nationality, membership to a particular social group, or political affiliation; be outside of their country of origin; be unable or unwilling to avail themselves the protection of their

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country of origin or to return there due to fear of persecution; and is not explicitly excluded from refugee protection for some reason (Nicholson and Kumin 2017:18).

While this definition is still the basis of refugee law today, the 1951 Convention was not without flaws. Most notably, the Convention was drafted in the wake of the Second World War with the specific intention of addressing the refugee problems created by the conflict (Nicholson and Kumin 2017:16). As such, the initial convention was geographically and temporally bounded to those refugees displaced before 1 January 1951 during the Second World War (Goodwin-Gill 2016:37; Nicholson and Kumin 2017:16). As new refugee crises emerged during the 1950s and 1960s, it was quickly realized that the 1951 convention was insufficient, in large part due to its temporal and geographic limitations, and so the 1967 Protocol was drafted to amend the 1951 Convention (Choi 2010:244-245; Goodwin-Gill 2016:38; Nicholson and Kumin 2017:16; UNHCR 2018:1). With the adoption of the 1967 Protocol, the 1951 Convention was amended to remove the geographic and temporal limitations it previously was bounded by.

Having done this, although the interpretations of certain sections of the amended 1951 Convention and its definitions have shifted with time, this became the body of international asylum law that we still draw upon today. It is through the interpretation of Article 1(A)(2) of the 1951 Convention and Article 1 of the Protocol that the legal precedent for SOGI asylum claims can be found (UNHCR 2016:2). Specifically, it is from the definition of an individual being able to claim refugee status due to “membership of a particular social group” that SOGI claims are categorized (UNHCR 2016: 2). This can be seen today in the guidelines published by the UNHCR for parliamentarians which specifically state that, as per the 1951 convention, individuals fleeing on account of their sexual orientation or gender identity are to be considered refugees under the internationally accepted definition (Nicholson and Kumin 2017:139).

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The Refugee in Canadian Domestic Law

While international law concerning refugees and asylum seekers does exist, as we have just discussed, it is reliant on the recognition and enshrinement of those laws by participating member states. If a state is not a party to, or refuses to recognize international conventions and presidents, the UN has little authority to overrule its internal domestic proceedings. Canada, as a UN member state, having signed the 1951 Convention on Refugees as well as many other related international agreements, does recognize the rules of international law on such matters as a legally binding aspect of Canadian domestic law. However, the prerogative of state sovereignty allows states, Canada included, to *go beyond* what is proscribed by the 1951 Convention and implement their own internal laws alongside international law. The result of this is that any study of refugees in Canada must also consider Canadian immigration law in addition to international refugee law. Thankfully, Canada adheres very closely to the guidelines outlined by the UNHCR, which means that a study into domestic policy is rather straightforward. In fact, there are only three key developments that need to be considered which relate specifically to SOGI claims.

As has already been mentioned, Canada was the first jurisdiction in the world to recognize SOGI claimants as a valid category of refugees, having done so since 1991 (LaViolette 2009:440). Perhaps most impressive about this fact is that it places Canada four years ahead of the UNHCR recognizing the category by reading it into the amended 1951 Convention (Choi 2010:246). That being said, there have still been several significant developments in Canadian immigration law, developing it further since the initial 1991 decision along its path to becoming the “world’s leader in progressive asylum policies” (Choi 2010 244). The first of these developments occurred in 1993, with the Supreme Court of Canada ruling in the Canada (Attorney General) v. Ward case (Rinaldi and Fernando 2019:35; Supreme Court of Canada

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1993). Although by 1993 some SOGI asylum claims had been approved in Canada, it was not until the *AG v. Ward* ruling that the identification of SOGI claimants as constituting a social group was formalized in obiter dictum (the principle of a law which is stated in the court's reasons for judgment) (Rinaldi and Fernando 2019:35). While the case did not actually concern an asylum claimant claiming on SOGI grounds, in his rule the presiding Justice Gerard La Forest used the opportunity to define social groups under Canadian refugee law (Rinaldi and Fernando 2019:35). As outlined in his threefold definition, social groups included “(1) ‘groups defined by an innate, unchangeable characteristic’; (2) groups consisting in members who associate for reasons so fundamental to their human dignity that forcing them to forsake association is out of the question; and (3) groups that might have originally been based on voluntary membership but became historically permanent” (Rinaldi and Fernando 2019:35). It is under that first category that SOGI claims became codified into Canadian law.

Following the *AG v. Ward* case, the next notable developments in Canadian refugee law comes in the form of Bill C-31, introduced in 2012, and the Chairperson’s Guidelines introduced in 2017 (Immigration and Refugee Board of Canada 2017; Parliament of Canada 2012). Bill C-31, otherwise known as the “Protecting Canada’s Immigration System Act,” sought to amend and reform Canadian refugee policy (Parliament of Canada 2012:1). Among other things, the act increased the regulation surrounding asylum claims of all kinds, with wide-ranging effects. Since its adoption, the Bill has received criticism from various groups for changes it has brought which are said to “undermine fairness and justice for all refugees,” SOGI included (Jordan and Morrissey 2013:13). While the specifics of the bill are complex and lengthy, it is sufficient to say that its introduction served to increase the difficulty faced by asylum seekers applying for refugee status in the country. The 2017 Chairperson’s Guidelines, specifically Guideline 9, aimed to

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directly address some of the issues facing SOGI refugee claimants and was informed by the work of Dr. LaViolette (2009) whose writings have informed this paper too (Immigration and Refugee Board of Canada 2017). Of the recommendations laid out, the Guidelines sought to inform judges on how to assess and establish credibility in SOGI claims, as well as cautioning them against the reliance on stereotypes to inform decisions (Immigration and Refugee Board of Canada 2017). While the effectiveness of these guidelines has been debated, it is because of their implementation in 2017 that it has been decided that all the case studies used in this paper will be from 2017 onwards.

As it stands, currently applicants seeking asylum on SOGI grounds must submit a claim to the Canadian Immigration and Refugee Board. Having done so, to be recognized as a Convention protected refugee it is then the responsibility of the applicant to convince the decision-maker overseeing their case that they are genuine in the proclaimed sexual orientation or gender identity, that they have a valid fear of persecution due to their identity, and that they lack protections in their home country (Jordan and Morrissey 2013:14). While all refugees must do this, the issue of how to prove one's sexuality or gender identity is a particularly problematic dilemma. It is during this process that the applicant must learn "to become an authentic SOGI refugee" if they wish to succeed (Murray 2016b:43). The demands which occur during this period and their implications are the focus of the remainder of this paper.

"COVERING" THEORY: SELECTIVE IDENTITY MANAGEMENT

Before we can proceed further with this analysis, it is necessary to outline the theoretical framework which will serve as a guide. "Covering" theory, the sociological concept outlined by Irving Goffman in the 1960s and recently revitalized by Kenji Yoshino in the mid-2000s, is particularly useful when considering the experience of SOGI refugees (Goffman 1963:102;

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Pamela 2009:295; Yoshino 2007:93). In its original iteration, Goffman's theory concerned itself primarily with the experience of individuals with a visible undesirable physical trait, using blindness or limb loss as his primary examples (Goffman 1963:103-104). Covering was said to be an adaptive strategy such individuals employed where "persons who are ready to admit possession of a stigma...may nonetheless make great efforts to keep the stigma from looming large" (Goffman 1963:102). In essence, Goffman's covering outlined a form of selective identity management where individuals with traits regarded as a stigma by their society, instead of hiding those traits and attempting to "pass,"¹ would instead admit possession of the trait but attempt to make it as unobtrusive as possible. Where Yoshino's contributions come into this is in his expansion of the term to encompass a wide range of non-physical traits, i.e., social or cultural ones. Specifically, Yoshino applies the term to describe the behaviour of various groups, including LGBTQ+ individuals, who accept and embrace their identity, but try to downplay aspects of it, often those stereotypically associated with the group (Pamela 2009:295; Yoshino 2007:91-93). While covering theory in itself offers useful insights when considering the topics at hand, perhaps the most valuable addition by Yoshino was the addition of a concept of "reverse-covering" (Pamela 2009:295; Yoshino 2007:92-93). The term is exactly what it sounds like: instead of downplaying the characteristic which identifies an individual as a member of a particular social group, they *play up* the stereotypical attributes associated with group membership (Pamala 2009:295). Interestingly, in his analysis, the only group Yoshino was able

¹ The concept of "passing" is similar to that of "covering" in that an individual is able to be regarded as a different identity group or category (racial identity, ethnicity, social class, gender, sexual orientation, religion, age, and/or ability status) than their own, often as a way to increase their social acceptance).

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to identify who face reverse-covering demands from the legal system were SOGI asylum seekers who were forced to emphasize their sexuality in order to convince immigration officials of their credibility (Yoshino 2007:93).

It is the pressure to reverse-cover and how that is manifested in the legal discourses of the immigration judge that should be at the forefront of the mind when reading the following case studies. How and to what degree the requirements and behaviours of immigration officials in the two cases force the applicants to overtly perform their sexuality will be discussed in detail throughout the analysis. Of particular note is the fact that both of the cases considered had to be brought before the appeals court before the two claimants' sexualities would be recognized as valid. The psychological pressures upon the applicants to essentially make their last stand or else face rejection would be powerful reverse-covering demands in their own right, even if not coupled with the various other pressures apparent throughout the cases. That SOGI refugee claimants are the only group in the legal system identified to undergo these demands, highlights how it is therefore essential for any analysis of the asylum system to take into account the implications of covering theory.

METHODOLOGY

The data to be analyzed for this study comes in the form of court records from refugee claimants. Specifically, the cases selected were all asylum seekers claiming refugee status on SOGI grounds between 2017, when the Chairpersons Guidelines were released, and 2021. Both of the cases selected were denied by the Refugee Protection Division (RPD), the first oversight body which hears refugee application claims. After being initially rejected, the selected claims then all filed appeals to the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada, seeking to overturn the initial court's ruling. The selection of rejected and

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appealed cases was made very intentionally. By looking at the evidence presented during the appeal as to why the initial court erred in its decision, it is far more clear what aspects of the applicant's testimony the initial judge found non-credible, and what aspects of the judges ruling the applicant felt were unjust. Furthermore, by examining the appeal judge's commentary on the reasoning provided by the RPD judge, it is possible to ascertain the opinions and practices of two sets of Canadian immigration officials operating at different levels of the legal hierarchy. While the result of each individual appeal is interesting in itself, of more value are the arguments presented and commentaries included by the appeal judge as to why they agree or disagree with various aspects of the initial hearing. As such, the cases offer a unique opportunity to analyze and identify what factors appear to play significant roles in the initial and continued rejection of unsuccessful refugee applications on SOGI grounds. At the same time, by examining the appeal records, it is easier to ascertain what, if any, impact the 2017 Guidelines have had by seeing if and how they are referenced in the court documents.

It must be noted that there are some methodological limitations to the approach taken. Due to both time constraints and external circumstances, interviewing actual refugee claimants, lawyers, and immigration officials was not feasible. This is unfortunate as, undoubtedly, having access to the firsthand accounts and stories of those involved in Canada's refugee intake system would have offered important insights which cannot be found in official court records. That said, in the absence of such sources, court documents still provide a fantastic and detailed account of the workings of the refugee intake apparatus as it operates in Canada today.

CASE STUDIES

In both of the following cases, the courts decided to redact the name of the individuals seeking refugee status. As such, the pseudonym John Doe 1 and 2 will be used when referring to

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the claimants henceforth. The case studies will describe the claimant's stories and the reasoning for the initial rejection of the case by RPD. Both were later overturned by RAD, and the applicants granted convention refugee status. The reasoning for why RAD overturned RPD's rulings will be discussed in the analysis section of this paper.

Case #1: John Doe 1, Refugee Appeal Board Hearing, 2017

John Doe 1, a Sri Lankan citizen, filed a SOGI refugee claim in Canada alleging that if made to return to his country, he would likely face assault by extremist groups and the general public, or imprisonment by the State. Doe stated that he had entered into a romantic gay relationship in Sri Lanka in 1993 which lasted until he left the country in 2014. Doe worked as a foreign worker in Saudi Arabia from 1995 onwards, which only allowed him to return home on leave every one to two years, making it possible for him to keep his relationship secret (Refugee Appeal Division 2017:2). After his mother died in 2011, Doe returned home and found great comfort with his partner, who would visit him at his house frequently. However, Doe alleges that his partner's frequent visits eventually drew negative attention which came to a head when his neighbours confronted the two, threatening them and stating that they would call the police if the two continued to "practice their lifestyle" (Refugee Appeal Division 2017: 7). Faced with the threat of arrest, the applicant left Sri Lanka for the last time in 2012, returning to work in Saudi Arabia before travelling to Canada and applying for asylum. In its judgment of the case, the RPD determined that Doe failed to establish his credibility as a gay man and that inconsistencies in his testimony meant that his claim was not sufficient to be recognized as a convention refugee. In his appeal, Doe contested this arguing that the RPD misinterpreted his evidence, failed in its duty by attempting to compare him to other witnesses, failed to accurately assess the risks for homosexuals in Sri Lanka, and relied upon preconceived notions on how homosexuals in Sri

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Lanka would behave when making its decision (Refugee Appeal Division 2017:3). Doe's appeal argued that the RPD was overzealous to discredit his claim as the lack of detail in some of his answers did not mean they were untruthful, failed to consider the trauma experienced as a result of having to hide and deny his sexual orientation for decades, and was ultimately unjustified in concluding that he was not gay (Refugee Appeal Division 2017:6).

Case #2: John Doe 2, Refugee Appeal Board Hearing, 2018

In the initial claim rejected by the RPD, John Doe 2, a Guinean citizen, applied for asylum in Canada on the grounds of his homosexuality. To the RPD, he presented the following evidence to justify his claim. Firstly, Doe explained that his father, a devout conservative Muslim, had been adamant since his childhood that Doe received and lived a Muslim lifestyle. However, upon reaching adolescence, Doe realized that he felt strongly attracted towards men, and felt no sexual desire towards women, entering into a clandestine romantic relationship with another male student. Knowing that it would be impossible for him to live openly as a homosexual in Guinea, Doe chose to attend university abroad in the UK at the earliest possible opportunity in 2010. After attending university in the UK and entering into another romantic same-sex relationship, Doe's father ordered him to return to Guinea and marry one of his female cousins in 2014. Refusing to do so but still not sharing his sexuality with his father out of fear, Doe instead was forced to move to Edmonton to live with his brother, as his father stopped sending him any financial assistance after he refused to return. It was while living together in Edmonton that Doe's sexuality was discovered by his brother, who promptly accused him of being a pervert and informed their father of his discovery. Upon learning of Doe's homosexuality, Doe claims his father became furious and again ordered him to return to Guinea, where homosexuality is illegal and condemned by Islam, to receive conversion treatment and

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marry his cousin (Refugee Appeal Division 2018:2). The RPD found his claim to lack credibility for several reasons, namely because his public Facebook profile indicated that he was interested in women, not men, and his story included several contradictions and shortcomings. Ultimately, they ruled that he was not a homosexual and was instead inventing his story to try to gain refugee status (Refugee Appeal Division 2018:3).

ANALYSIS

Impacts of Conscious and Unconscious Bias

From both cases considered, it should be clear to see that the RPD judges overseeing the hearings fell back upon preconceived notions of what a homosexual applicant should look like when making their credibility determinations. As unconscious racism has been recognized to impact legal decisions concerning race in many settings, the evidence found here indicates that unconscious homophobia appears to play a similar role in SOGI refugee cases (Morgan 2006:147). RPD judges appear to assess the credibility of SOGI applicants on the basis of their Western conceptions of sexuality and identity, founded in Canadian cultural contexts, which may or may not be compatible with sexual identity regimes elsewhere (Dhoest 2019:22; Llewellyn 2017:684; Murray 2016b:5). These biases towards Western notions and stereotypes of non-heterosexual behaviour present problems when determining the credibility of individuals who have had to, and continue to, live discreetly and attempt to “pass” as heterosexual due to a lifetime of social conditioning (Choi 2010:255). As the RAD appeal judge commented in the 2017 case considered, “the RPD failed to give due consideration to the trauma expressed by the Appellant as a result of hiding and denying his sexual orientation for decades” (Refugee Appeal Division 2017:6). The result, at least at the RPD level, is the creation of an ethnocentric gatekeeping system which privileges and permits only a very certain narrative of sexual and

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gender identity “premised upon a particular arrangement of sexual, gendered, raced, and classed experiences and histories” which fit within the dominant hegemonic² Canadian social framework (Murray 2016b:41). Such hegemonic narratives function to recreate the biases which give rise to them, which can manifest consciously or unconsciously, and thus the system perpetuates itself.

Systematic Production of Reverse-Covering Demands

How then can the presence of such preferential biases be understood in relation to the demand to undergo reverse-covering? Simply put, applicants from diverse cultural backgrounds must learn “to become an authentic SOGI refugee,” determining how “sexual diversity and gender identities are organized, named and located” within Canada, as well as how RPD judges think about and perceive authentic and inauthentic SOGI claims (Murray 2016b:43-44). Claimants must do all of this, and then modify their behaviour to match, even if it places them beyond their boundaries of comfort in expressing their identity if they wish to be successful in their application (Jordan and Morrissey 2013:14; Murray 2014:468; Murray 2016a:473-474; Murray 2016b:43). SOGI claimants find themselves constantly instructed by lawyers and peer support groups that they must learn and understand the assumptions and expectations that the RPD members associate with LGBT identities in order to stand a chance at being deemed credible. This compounds the presence of the reverse-covering demands as even those negatively impacted by them find themselves perpetuating them (Murray 2016b:45). Applicants adopt the role of the “homosexual” to survive; a complete reversal of the demands most SOGI applicants have been forced to endure most of their lives (Llewellyn 2017:684). How well they can adopt this role has huge repercussions, generating unimaginable pressures to perform correctly.

² Hegemonic or hegemony refers to the social, cultural, ideological, political, and/or economic influencing power exerted by a dominant group over all of the society.

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Generally, in the case of male SOGI claimants, the role is one in which “stereotypical images of the effeminate gay man” must be embraced, masculinity is punished, and open involvement in LGBT organizations is a requirement (Choi 2010:256; Hanna 2005:916; Murray 2016b:44).

While the presence of these stereotypes is visible to differing degrees in the cases considered, all are significant issues in the Canadian context as evident by their inclusion in the 2017 Guidelines which outline the most common stereotypes employed (Immigration and Refugee Board of Canada 2017).

Impacts of the 2017 Chairperson’s Guidelines

Contrary to the findings of Rinaldi and Fernando (2019), from the cases studies above it does appear that the 2017 Chairperson’s Guidelines have had a positive effect on the refugee intake apparatus (39). The Guidelines were referenced directly not only in the two cases studies, but also in the vast majority of cases (Refugee Appeal Division 2018:6; Refugee Appeal Division 2017:6) which unfortunately had to be left out due to space constraints in this paper. Potentially this difference could be the result of the use of RAD cases for this study instead of RPD. One of the most apparent features which became visible through this analysis was the differing attitudes of the RPD compared to the RAD. In both cases selected, the RPD continued to rely upon the SOGI stereotypes that the Guidelines specifically caution against which “contribute to the formulation of a highly delimited and privileged definition of sexual orientation reflecting particular alignments of raced, classed, and gendered histories and subjectivities in Canada” (Murray 2016a:475). However, the RAD made a sustained effort to employ the Guidelines in its judgments and openly criticized the RPD for forming incorrect conclusions as to the validity of applicants’ sexual orientations (Refugee Appeal Division 2017:6; Refugee Appeal Division 2018:6). Overall, while it seems that the 2017 Guidelines do

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appear to have been relatively ineffective at generating change among the lower RPD courts, as Rinaldi and Fernando found, the RAD courts do appear to have adopted the Guidelines' recommendations (2019:39). Clearly, this still presents a problem, as claimants are still being subject to the same stereotyped preconceptions that they were before 2017, and not all likely will be able to appeal an initial negative ruling. However, the Guidelines do appear to have been a positive move towards reforming the Canadian immigration system, albeit a far cry from solving the issues entirely.

Inequitable Nature of Current Demands on SOGI Applicants

All refugees coming to Canada, regardless of the grounds they make their claim upon, face the issue of proving their credibility (Choi 2010:242; Kahn and Alessi 2018:23; Murray 2016b:40). The true vs false refugee dichotomy affects all claimants, not just SOGI individuals, as the “increasingly restrictive and repressive policies of the state...are premised on assumptions that all refugees are potential frauds” (Murray 2016a:479). However, unlike other visible grounds for asylum, such as race, or even invisible ones such as religion, nationality, or political affiliation, for which there will likely be corroborating documentation to prove membership, SOGI claims are exceedingly difficult to verify (Murray 2016b:41). How does one prove they are gay? Especially someone who, up until this point, has taken every possible precaution to ensure that no one would be able to determine that fact? Unfortunately, as of yet, there is no easy answer. The issue of proving SOGI status presents a conundrum. While claims should be evaluated with some degree of scrutiny to prevent individuals from taking advantage of the system, it is also important to weigh the benefits of current practices to weed out false applicants against the harm they cause for genuine claimants. The current issues that plague SOGI claimants despite the 2017 Guidelines show that, while the issue is a complex one, it appears

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clear that a “one shoe fits all” approach to processing refugee claims is proving to be ineffective. As it stands, attempting to hold all categories of asylum seekers to the same standards of proof creates an inequitable demand upon SOGI claimants to undergo reverse-covering which is not faced by most other refugee groups.

CONCLUSION

From this analysis of the current practices of the Canadian immigration system and its handling of two appealed SOGI refugee applications, it has been possible to draw a few conclusions. Firstly, although all refugees must overcome the burden of credibility when applying for asylum in Canada, it appears fair to say that the burden placed upon SOGI claimants is disproportionately difficult to overcome. The continued prevalence of judgements informed by stereotypes and preconceived notions as to how SOGI applicants should behave continues to be an ongoing problem at RPD hearings, despite the efforts of the 2017 Chairperson’s Guidelines. However, that being said, from the examples considered in this study, the 2017 Guidelines have appeared to generate a positive impact at the RAD level, despite the findings of other researchers to the contrary. Hopefully, it has been made clear why an anthropological understanding, with its focus on personal experience and identity, is crucial when considering the complex and multifaceted problems currently facing refugees fleeing to Canada. Although this paper focused specifically on SOGI refugees, anthropological approaches offer highly relevant contributions for addressing the issues facing modern societies, including the ongoing refugee crisis. While this study was limited in some regards, namely in its small sample size and reliance on court records over personal interviews, the findings are in line with other similar studies examining the burdens placed upon SOGI refugees in Canada. Moving forward there is a strong potential for further research considering the pressures placed upon asylum seekers of all types to establish

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credibility and their manifestations in reverse-covering and covering demands. Overall, while this study has indicated that the 2017 Guidelines have had a positive impact on SOGI asylum cases at the RAD level, it is clear that they have been ineffectual at producing the necessary changes at the RPD level. While the ability to appeal an initial rejection alleviates this issue somewhat, a system in which claimants are consistently forced to appeal flawed rulings by lower-level officials is a system still in need of reform. It is a hope that this paper has succeeded in contributing a meaningful critique of the failings plaguing the current Canadian immigration system's approach to processing refugee claims. Perhaps, with the insights generated from this analysis, constructive reforms of RPD level policy could be implemented to alleviate some of the issues highlighted.

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