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Testimonies of LGBTIQ refugees as cartographies of political, sexual and emotional borders*

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To be granted status, refugee claimants have to testify at the Immigration and Refugee Board of Canada (IRB). This liminal space is charged with both the promise of liberation and the threat of deportation. Adding to the challenge are the governmental measures that constrain the right to asylum. This paper suggests answers to the question: What language and other discursive features do LGBTIQ claimants have to use to be recognized as refugees? This ethnography is based on fieldwork conducted in Toronto and Vancouver. I will present two vignettes of claimants I accompanied to their hearings. Contrary to heterosexuals, queer asylum seekers have to prove their sexual orientation and/or their gender identity. Truth about their sexuality and persecution is evaluated through the lens of legal technologies, and stereotypes are still common. However, extralegal forms of communication also come into play. New avenues for justice are being fostered by grassroots organizations.

Keywords: refugee, hearing, Canada, gay, LGBTIQ, asylum, testimony, evidence, credibility, citizenship

1. Introduction

Discriminatory systemic measures, policies, and social and cultural practices in a majority of countries across the globe still deny rights, security and dignity to people with same-sex desire (Lévy & Ricard 2013). Furthermore, 78 of the 193 member states of the United Nations criminalize same-sex sexual activities (Itaborahy 2012). In some cases, events and meeting places such as bars are also part of this prohibition. National laws in Africa, Asia and some Caribbean countries impose the harshest punishments, including imprisonment, torture, flogging and public humiliation. In Iran, Mauritania, Sudan, Yemen, Saudi Arabia and certain areas

of Nigeria, Somalia, Pakistan, Iraq and Chechnya (Baird 2007), same-sex acts are punishable by death. Consequently, it should come as no surprise if the concealment of same-sex desire, resistance to heteronormativity and the fight against homophobia have all, to some extent, been part of the emotional, physical, social and economic survival kit of lesbian, gay, bisexual, transgender, intersex and queer people (LGBTIQ) around the world. But, in addition, some of them have had to flee their country.

The 1951 *United Nations Convention relating to the Status of Refugees* (the *Geneva Convention*) and the 1967 *Protocol relating to the Status of Refugees* define a refugee as “Someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.” (United Nations High Commissioner for Refugees, UNHCR 2010: 3). Canada signed both legal instruments in 1969, morally obliging the country to grant protection to Convention refugees and persons in need of protection. What strikes the reader of the normative definition of the refugee is the absence of gender or sexual orientation as legal categories upon which one can claim asylum. Sexual minorities have to make a detour to first prove their sexual homo-orientation and/or gender identity in order to establish their “membership of a particular social group,” which is one of the five grounds a petition can be based upon. More specifically, to be recognized as a refugee, one must bring to the fore a multifaceted victimized identity. This involves proving that one belongs to a persecuted sexual minority, or if direct persecution is not involved, proving a subjective fear of being persecuted because of sexual orientation and/or gender identity if the asylum seeker were to return to his or her country of origin. Furthermore, the person has to prove that the country of citizenship is unable to provide the required protection everywhere in the country and at all times.

The Immigration and Refugee Board of Canada (IRB) has several divisions but the one that is of interest to us is the Refugee Protection Division (RPD), which hears claims for refugee protection made in Canada and decides whether to accept them. On paper, the RPD is an administrative tribunal, non-adversarial and independent. From March 2009 until September 30, 2010, of the 231 requests submitted for reasons of persecution based on sexual orientation in Canada, 53 received final decisions. The national rate of acceptance of these claims averaged 66%.¹ Rehaag (2008, 2012) suggests a few reasons why some claims are rejected. He documented how acceptance rates changed according to the claimant’s gender when bisexuality was involved. Even though half of the 1,351 petitions based on sexual orientation were accepted in 2004, only 28% of bisexual men and 10% of bisexual women were granted asylum (Rehaag 2008: 71). Dismissal of personal and customary laws,² ignorance about non-heteronormative women with different

cultural backgrounds, as well as sexist stereotypes could explain this discrepancy in acceptance rates (Rehaag 2008: 71).

The legal scholar also noted variances among Board members' decisions and between RPD offices located in the main cities where LGBTIQ migrants live. The Eastern Region (Montréal) has a higher rate of acceptance than the Central Region (Toronto) and the Western Region (Vancouver) (Canadian Council for Refugees 2013). Rehaag (2012) proposes that rate variation among Board members may be due to their specialization in particular types of cases. For example, some Board members are assigned expedited cases, which generally result in positive decisions. Others specialize in geographic regions with especially high or low refugee claim recognition rates. However, these organizational hypotheses do not explain why the same member will consistently not recognize refugees with similar profiles.³

Another point of contention is the designation of sexual refugees. As the acronym LGBTI is increasingly used in the refugee field to refer to individuals of variant sexual orientations and/or gender identities, the Organization for Refuge, Asylum & Migration (ORAM 2013: 1) underlines how this designation is based on Western constructs that are unknown or avoided in many areas of the world. Furthermore, such a conception of sexuality presumes clear and fixed demarcations between lesbians, gays, bisexuals, transgender and intersex people — identities non-heteronormative individuals do not necessarily identify with or recognize.⁴ Despite these reservations, UNHCR (2012) has used the acronym LGBTI in its latest guidelines on claims based on sexual orientation and/or gender identity. As a result, if adjudicators and others who have the responsibility to determine who can legally receive refugee status base their evaluations upon these narrow categories, claimants in need of protection risk being wrongly excluded (Berg & Millbank 2009, ORAM 2013).

By adding a "Q" to the institutionalized acronym, I want to acknowledge the cultural and fluid diversities of sexually and gender non-conforming ways of being, acting and loving, and at the same time, to illustrate the wording of the juridical logic.⁵ Furthermore, if I use the word "gay", it is in a generic way, "without presuming that this usage establishes a universal ethnographic referent," as Leap and Boellstorff suggest (2004: 4). Through the destabilization of the acronym LGBTI, I join critical scholars who challenge a "colonial narrative of development and progress that judges all 'other' sexual cultures, communities, and practices against a model of Euro-American sexual identity" (Gopinath 2005: 11). Moreover, its ethnocentrism holds that queer migrants move from repression and the closet, experienced in the global south, to liberation and coming out after crossing northern or western borders, as if regimes of power articulated around racism, (hetero)sexism and classicism ceased to exist, along with state regulations on citizenship status (Cantú 2005, 2009, Gopinath 2005, Luibhéid 2002, 2008, Manalansan 2006).

Language, as Bucholtz and Hall argue (2004:492), is “a primary vehicle by which cultural ideologies circulate, it is a central site of social practice, and it is a crucial means for producing sociocultural identities.” Although language and discursive elements displayed — or not displayed — are interesting for analyzing how, as sociocultural identities, LGBTIQ claimants are transformed into sexual refugees, scholars have traditionally neglected this field of inquiry. Based on my doctoral research in anthropology, which examines the notions and practices of justice regarding queer asylum in Canada,⁶ this paper will explore the following questions: What language do LGBTIQ claimants need to use in order to be recognized as refugees during their hearing? What words, narratives, documents, other forms of discursive practice, along with body language and appearance does a claimant need to exhibit to be acknowledged as a Convention refugee by the member of the IRB? What elements should their written and oral testimonies include to be deemed credible?

I will present two vignettes about asylum claimants I accompanied to their hearings. I chose them because they provide salient indicators of the language-centered discursive features that had to be used to convince their Board member about their gayness and refugeeeness. As other researchers have identified, these vignettes also illustrate how queer asylum involves the overlapping of national and sexual borders (see Cantú 2005, 2009, Lidstone 2006, Luibhéid 2008, Miller 2005), but as well, how these claimants had to be perceived as suitable citizens within Canadian society. More precisely, they had to explain their behaviour and identity in regard to the closet, choose correct words and narratives to identify themselves, and justify discrepancies between their oral and written declarations. I will start by an overview of the main issues in evaluating LGBTIQ cases, outlining the bureaucratic rules of the RPD and emphasizing the legal definition of credibility. A brief presentation of my multi-sited methodology will follow. Each vignette will then include a discussion highlighting the basis on which the regime of truth (Foucault 1975) enables and constrains the testimony of LGBTIQ claimants.

2. The recognizable LGBTIQ legal refugee

2.1 On interpretation

2.1.1 *Understanding persecution*

Impacts of internal politics and policies on the asylum process are rarely taken into account in the evaluation of LGBTIQ cases as the applicant's credibility remains the core issue, especially regarding sexual and gender identity, although LaViolette (2010a) argues that the difficulty lies more in the ability to assess the difference

between “discrimination” and “persecution”. Wilson (1997:135) reminds us of the existing debate between legalists who strictly adhere to the letter of the law rather than to its spirit, and contextualists who promote the inclusion of cultural and anthropological material and other sources of information to demonstrate the violence a person is subjected to and the denial of human rights. Unwilling to modify the *Geneva Convention* for fear of countries withdrawing their signatures, the UNHCR (Haut Commissariat des Nations Unies 2008:4) declared that it was in favour of a contextual approach in the evaluation of asylum requests.

Showler (2006:214), who has participated in more than a hundred asylum hearings, either as a lawyer or as a member of the RPD, argues that the *Geneva Convention* tends to limit who should gain protection because of its interpretation of the notion of “persecution.” Persecution is understood as serious and persistent harm, and the reasons for persecution must be tied to the five grounds established by this instrument (race, nationality, religion, political opinion, or membership in a particular social group). Thus, people fleeing civil war or culturally accepted forms of violence, like sexism and homophobia, can end up being disregarded if a legalistic approach is maintained to evaluate their case.

Not all LGBTIQ refugees who come to Canada are citizens from countries with laws that criminalize their sexuality.⁷ Violence is not only perpetuated by the state, representatives of its authority, the police and army, but as feminist and queer literature has widely demonstrated, abuses of all kinds originate within and around the family setting. Although initially the *Geneva Convention* was to be interpreted with state persecution in mind, Canada led the way in integrating gender-based violence into its understanding of persecution. In 1993, this unfolded into the recognition of sexual minorities as forming a particular social group. However, the essentialist premise upon which this recognition is based has been criticized (LaViolette 1997). In the legal framework, sexual identity is comprehended as immutable, innate, and constant over time, and/or should be considered a quality inherent to a person’s dignity. Thus, essentialism, as well as ethnocentrism, are reflected in the way sexual refugees are identified.

2.1.2 *Recognizing the non-normative subject*

While it is easier for women to prove their gender — and so their belonging to a particular social group — this is not the case for LGBTIQ people. Researchers have uncovered though, that testimonies of claimants will be deemed more credible if they correspond to the dominant representation of the gay identity (Berg & Millbank 2009, Lee & Brotman 2011, Miller 2005), which is expressed through coming out in North American culture, according to the evolutionist Stonewall model of sexuality, identity and liberation (Stychin 2004:954). Gay pride celebrations, masculine lesbians (Luibhéid 2002),⁸ effeminate gay men (Lidstone 2006),

gay villages, publications, and the culture of consumerism are part of this pink imaginary that can crystallize into stereotypes, which short-circuit any understanding of sexual subjectivities as intersectional, fluid and complex processes. Thus, the lifestyle and culture of many LGBTIQ claimants does not match what Board members think they know about “being gay”.⁹ Nonetheless, until December 2012, a rebutted claimant could not appeal the Board member’s decision. The reform of the asylum system has introduced such a right, but only for claimants who do not come from “designated countries of origin,” misleadingly also called “safe countries.”

However, UNHCR guidelines (2012:2) on claims for refugee status based on sexual orientation and/or gender identity could not be clearer about the risk of evaluating LGBTI claimants’ requests based on ethnocentric assumptions and on claimants’ nationality. Petitions should be evaluated according to each personal story that is indivisible from the “cultural, economic, family, political, religious and social environment” in which sexuality and gender have taken shape.¹⁰ Thus, the other challenge in evaluating LGBTIQ cases consists in establishing the claimant’s country’s legislation and cultural and social practices regarding sexual minorities, and to acquire knowledge about the ways in which written laws translate into the reality of daily life. Because legitimacy of sources is an ongoing debate at the IRB (LaViolette 2010b), the Board member relies on the *National Documentation Package* collected by a research team on conditions in the claimant’s country, although it is not always explicit on the situation of LGBTIQ people.

Called “juridical documentary fetishism” by Wilson and Mitchell (2003:10), the obsessive search for and value placed on written documents can equate to the squaring of the circle when countries perpetrate homophobic violence, deny it, and fail to report abuses committed by authorities. Consequently, many claimants have no medical or police report to prove that they were abused, nor any documents proving the risk they would face if they were to be sent back to their country. Gathering substantive documents takes time and money—resources claimants are often short of. Under the new system, after an initial interview to determine if they are eligible to claim asylum, seekers have 15 days to submit their story to authorities. Delays before the hearing (30, 45 or 60 days after the acceptance of the claim),¹¹ transform the hearing preparation into a race to document one’s life. These timeframes also impact the establishment of a trusting relationship with a lawyer, if one can be found in the first place.¹² Yet claimants have a greater chance of being successful when represented by a legal counsel. Before the asylum reform, claimants waited around 20 months (Cohen 2013) until their hearing. This also left them with more opportunities to reach out to support organizations that could help them to prepare for their hearing.

2.2 When power and truth are mixed up

2.2.1 *Human stories versus legal stories*

Anthropologists and sociologists have criticized the monopolization of law in the definition and identification of suffering bodies. McGhee (2000, 2003) suggests that immigration agents, lawyers and asylum claims evaluators mobilize legal technologies (an amalgam of specific terminology, criteria of definition, selective data and ways of interrogating) in order to maintain their expertise and authority in the field. As a result, a claimant's subjectivity and complex narrative will be fragmented into specific items to produce a legal subjectivity that will be recognizable. Thus the claimant is disempowered of their own knowledge about their story, suffering and self, while legal epistemology validates or discards their identity and story. In addition to labeling, medical and psychological reports obtained to support a claimant's testimony operate in the same register.

According to Conklin (1998:21), the homogenization of suffering bodies (which implies their disembodiment or the universalization of an abstract subject) underscores the pseudo-neutrality and a-historicity of the law, as well as its rationality (Wilson 1997). Legal discourse is based on the Western notion of what facts are — which, as stated by Hastrup (2001; 2003a: 316), limits the expression of cultures and emotional self and, I will add, of sexuality. The anthropologist (Hastrup 2003a/b) also argues that positivist and modern language reifies symbolic dimensions of violence. Not only are power and truth intertwined in the juridical field as Hastrup (2003b) indicated, but they are also semantically confused. However, LGBTIQ claimants who have no access to this editing of their suffering and subjectivity risk staying on the margins of legal recognition (Ricard 2011).

2.2.2 *Legal definition of credibility*

The evaluation of credibility hinges on three aspects (Thomas 2006:81). The first two are based on discrepancies. According to Engel (2005), a testimony will be believed as long as it is supported by reliable empirical data. This epistemology of the testimony is called "evidentialism." The search for external and internal discrepancies aims to discredit one's testimony by deconstructing its "evidentialism." Although the hearing is not supposed to be adversarial, the search for discrepancies renders it as such. External discrepancies are discrepancies between the oral declarations and written documents, whereas internal discrepancies are changes in the claimant's story.

Despite the fact that stress, fear and trauma can alter one's speech and its sequencing during a hearing, events have to be recalled in a specific order to be congruent with the juridical logic and the Westernized conception of time (Conley & O'Barr 2005, Kirmayer 2003). Thus, omission and confusion in the

reporting of events are deemed suspect (Conley & O'Barr 2005). Furthermore, ignorance about what can or should be written or told to the immigration agents can bring inconsistencies in the declarations of the claimant (Miller 2005). These discrepancies will be considered dubious by the Board member, who may already be suspicious about refugee claimants (Kirmayer 2003, Lacroix 2004, Showler 2006).

The last aspect of credibility is when the claimant's narrative is deemed not credible because it is not plausible or reasonable, or because it is simply a lie (Thomas 2006). This last aspect of credibility refers to the other epistemology of testimony that Engel (2005) has identified as "common sense." In contrast to "evidentialism," this "primitive form of certainty" close to instinct is not looking for proof. However, this is highly problematic for LGBTIQ people who defy the assumptions of so-called "natural common sense". Indeed, there exists a general ignorance regarding the impacts of homophobia, how people can live inside as well as outside of heteronormative norms (which are naturalized), and how these lifestyles can be expressed in different ways and meanings through cultures. Thus, the third aspect of credibility leaves the door open to the subjective judgment of the Board member and to inconsistent decisions between Board members (Herlihy, Gleeson & Turner 2010).

3. Methodology

3.1 Interviews

As previously mentioned, the data presented in this paper is drawn from another research project. The methodological aspects I will cover are in connection with the scope of this paper. Toronto, Vancouver and Montréal are the Canadian cities where most LGBTIQ migrants live. After two years of pre-field work, in February 2012, I started to formally collaborate with three organizations that support LGBTIQ migrants: the Rainbow Refugee Committee (Rainbow Refugee) in Vancouver, Action for Lesbian, Gay, Bisexual, Trans and Queer Immigrants and Refugees — Action Gay, Lesbienne, Bisexuelle, Trans et Queer pour Immigrants et Réfugiés (AGIR) in Montréal, and Among Friends Refugee Peer Support (Among Friends) in Toronto. I chose these associations for three reasons: They include asylum seekers, they are not based on an ethno-cultural identity and they are open to all sexual orientations and gender identities.¹³ However, because the vignettes I will present in the following section are about Alvin, who is a member of Rainbow Refugee, and Daniel, who belonged to Among Friends, I will not elaborate on AGIR. All names used to identify informants are pseudonyms that they chose.

One of the advantages in working with associations is to find claimants much more easily.¹⁴ All the refugee claimants I interviewed took part in support groups for LGBTIQ migrants, more or less on a regular basis. However, this was not the case regarding other LGBTIQ migrants who participated in my research. I reached out to them, or community organizers put us into contact. Thus, until now, I have interviewed, in each city, a total of 36 claimants.¹⁵ Interviews were generally in English and/or French, and a few were in English and Spanish, or French and Spanish. So far, I have managed to arrange semi-directed interviews with claimants, averaging two hours. However, on a few occasions, claimants have wanted to tell me their life story and interviews have taken place over more than one session. These interviews afforded special opportunities to explore informants' world view and life trajectory and to foster a more personal relationship. I always ask informants if they want a copy of their recorded interview. With the exception of one claimant, all fall under the old asylum system.

The reasons why claimants believe they qualify as Convention refugees or are in need of Canada's protection are recorded in their *Personal Information Form* (PIF) (if they are evaluated under the old system), or in their *Basis of Claim* (BOC). These are cornerstone documents against which all others and their oral declarations will be tested.¹⁶ In the course of their interviews, many claimants showed me their PIF and other documents they submitted. They usually did so because they did not want to repeat their painful story¹⁷ and/or because they sought my opinion regarding their narrative. Claimants worried it was not convincing enough to make the Board member believe them in order to recognize them as refugees. When possible, I have found it informative to compare their oral and written testimonies.

3.2 Writing support letters

One way to establish one's sexual orientation is to obtain letters from community organizations and professionals who support LGBTIQ refugees. Among Friends and Rainbow Refugee put a lot of effort into maintaining their reputation, in order to stay credible in the eyes of the IRB. Refugees who want to receive a letter from their group have to attend meetings. For my part, I think that most of the claimants who took part in my research came to me because they wanted me to write letters of support for them. They were especially eager to get such evidence if their hearing date was soon. Others who participated in my research aimed to make the asylum process easier for refugees and hoped that their contribution would also help to change the situation of LGBTIQ people abroad. They expected my research to head in that direction. Some claimants also sought my support in the preparation for their hearing and my opinion concerning documents they should submit.¹⁸

As Kobelinsky (2008) mentioned, the researcher is perceived as someone who is taking something from the community and should give something back. My political involvement, writing support letters, going through their PIF and other documents, accompanying claimants to their hearing, to the lawyer's office or elsewhere, meeting their children and getting to know their partners are all ways to exchange, and occasions to express support towards my informants. In addition, in recognition for their trust, I also gave food vouchers to claimants I interviewed. I have maintained open lines of communication with several claimants even after completion of the interview and/or hearing.

Writing support letters for the claimants became for me an instructive process that also turned into a methodological tool.¹⁹ All letters are approved by claimants. They make modifications by adding and removing elements based on what they believe will help to establish their credibility and not contradict the rest of the material they are submitting. Indeed, what they tell me during the interviews does not always match what they have declared in their written testimony. Claimants particularly appreciate the research I do on their country's conditions. Some claimants submit their letter to their lawyer for review. They usually ask to erase the parts that mention facts or cultural beliefs that are not supported by objective documentation; in other words, the facts that are not recognized as such by the juridical lens. The writing of such letters has also deepened my relationship with claimants. At times, as we will see it, it has made it possible to bring back into the hearing elements that had been put aside.

3.3 Going to hearings

Accompanying claimants during their hearing is another key element of the ethnography of queer asylum. However, it can be difficult to plan to attend a hearing when, while I was still in Toronto, the dates for the hearings of eleven claimants I interviewed were changed, and sometimes more than once. Multi-sited ethnography has its strengths but its downfalls too: it becomes more challenging to be there when hearings happen or during pivotal moments of community organizing and of informants' lives. Until now, I have been able to attend two hearings in Toronto, four in Vancouver and one in Montréal. To attend the hearing of a claimant, the claimant has to agree, as does the lawyer and the Board member. I present myself as someone who is accompanying the claimant and who does research on LGBTIQ refugeeeness. Later, if the claimant signs an agreement, I can obtain a copy of his or her recorded hearing from the PRD.

4. Ethnographic research findings

The following vignettes will underline how Alvin and Daniel brought their sexuality, along with their cultural background, to light in the context of their hearings. By not dissociating their culture from their sexual identity, claimants implicitly acknowledge the referential gap between them and the Board member who evaluates their case from a Canadian standpoint. How their respective identities were understood during their hearings relies on “a process of interaction between their speech act and the grounded sociocultural and situational context in which it was produced and received” (Sauntson & Kyratzis 2007: 3). As suggested before, claimants have to meet legal prerogatives to support their testimony and to be recognized as legal refugees. Otherwise, they will be left without a status. However, based on an analysis of the interactions that took place during their respective hearings, we will see how these standards alone cannot explain the outcomes. Butler (2007) reminds us how the reflexive capacity to tell the truth is indeed limited by what the regime of intelligibility admits as speakable — or, as we will see, by what claimants believe this regime wants to hear.

At the time of the interview, the claimants identified themselves as: 14 gay men, 9 lesbians, 7 bisexual men, 3 bisexual women, 2 transgenders (one female to male with a gay sexual orientation (his words) and one male to female with a heterosexual orientation), and one ‘gender bender’ with a gay sexual orientation (his own terms). Only one participant talked about himself as queer, mainly because he describes his artwork as queer. Amongst these claimants, 4 who identified as gays and 4 as lesbians wrote that they were bisexuals on their application. When I questioned for what reason they had done this, they gave me three explanations. They first answered that they thought bisexuality was less stigmatized than being gay; hence, that it would help their application to become more appealing to the Canadian authorities. Secondly, at the time they applied, they could not imagine that it was even possible to live in a society strictly as a gay person. Thirdly, other claimants answered that bisexuality was a logical way to explain why they had children (33% of interviewed claimants have children).

The following vignettes will illustrate in more detail how and when Alvin and Daniel disclosed their sexual orientation. The material used for the analysis consisted of my observations and interviews, the literature, and documents provided by Alvin and Daniel. Both offered copies of their PIFs, and Daniel also gave me copies of written declarations he had signed during his eligibility interview. In addition, Alvin’s recorded hearing was transcribed.

4.1 Alvin's struggle to come out

The narrative of personal liberation upon arrival into a so-called liberated society can mislead Board members. In this respect, a lawyer I interviewed described how it is assumed that since her clients "are here [in Canada], they will automatically come out! As if there was a switch!" Alvin's story, presented below, reminds us how coming out is a long and often challenging process. It illustrates the complexity of belonging to multiple communities and the importance of taking into consideration the intersectionality of identities to fully understand the asylum seeker (Lee & Brotman 2011).

Alvin's parents immigrated to Indonesia from China. When Alvin was a teenager, he was sent to school in Taiwan. Since then, he has been actively involved in the Christian community, which he considers his family. In his PIF, Alvin wrote "I always know from very young that I am not attracted to women. At that time, I didn't know anything about homosexuality," adding that he did not think his attraction to men was unnatural. At about 18, he understood what the term *homosexuality* meant. He commented in his PIF how, when he realized later (after his first sexual experience) that he was himself gay, he felt "confused about it [being gay]. Because of my background (not open to discuss sexuality), I become terrified to ask anything about homosexuality. I thought I made a mistake somewhere in my life when I came to realize I was gay." Since then, the battle between his faith and his sexuality has been raging in his body and soul. Alvin did not write about his internal conflict in his original PIF, even though it is a key element for understanding why his coming out process is so painful.

Alvin came to Vancouver to attend university. He has yet to come out to his Canadian friends, who are all straight, and to his parents and sisters, who still live in Indonesia. Alvin has never had a boyfriend or girlfriend. Even though he has a room in an apartment in the gay village, he does not socialize in his neighbourhood. He is busy with his full-time job in a coffee shop and with his church commitments. Moreover, he is not interested in reading gay magazines or newspapers and barely knows what is going on in the LGBTIQ community and politics. He gathers his information from the Internet and goes to the sauna for sex.

I met Alvin — now in his early thirties — during a meeting of the Rainbow Refugee support group, which he sporadically attends. Nothing in his looks, speech or gestures comes close to the gay stereotype upon which a Board member might rely to assess one's sexual orientation (Berg & Millbank 2009, Lidstone 2006, Luibhéid 2002, Miller 2005, Quan 2012). Having exhausted all the possible ways he could legally remain in Canada, he decided to apply for asylum, stating that he would be persecuted if deported to Indonesia. Alvin does not speak Bahasa anymore, or any other language of the archipelago. He is not close to his blood

family and has no friends “back what-he-can’t-call-home anymore,” as he told me during his interview. Canada is where he wants to stay and where he has been living for the past 11 years.

During the interview, Alvin burst into tears. He explained that it was the first time he was sharing how he felt torn between his faith and his sexuality. He had recently written an anonymous email to his pastor, saying he knew of someone in the congregation who had homosexual feelings. The pastor answered that he wanted to discuss this with him in person. Being terrified by the idea that his pastor could reject him, Alvin was postponing the meeting, but he felt it was no longer right to hide who he was. Furthermore, he was looking forward to settling down with a boyfriend. He thought he would be so proud and happy if his dream came true, it would be impossible not to be open. This also explains why he feels he would not be able to live in Indonesia. Thus, Alvin’s days in the closet were numbered.

Meanwhile, Alvin received his hearing date and asked me if I could accompany him. Blending in with the formality of the moment, to show his decency and as a sign of respect toward the Board member, Alvin wore a suit and a tie. There were four of us in the large, brightly lit room: Alvin, his lawyer, the Board member and me. The “judge,” as the Board member is referred to by most claimants I have interviewed, explained the process, inquired about who we were and informed us that the hearing would be recorded. He displayed the evidence submitted by Alvin’s counsel, classified it according to a specific order and by number. After a few questions, he informed the lawyer he was accepting all these documents, including the amendments brought to the PIF. This was good news because they mentioned Alvin’s participation in the church, his difficulties to come out and his strained relations with his family. The Board member then turned his attention to Alvin and asked him to stand up.

Alvin took his oath: to tell the truth and nothing but the truth. The Board member clearly stated what he was going to inquire about, and asked his questions in an assertive manner, while Alvin answered in his soft voice, often hesitating. He did not have all the answers and was very nervous. The Board member wanted to know why Alvin waited so many years before applying for asylum. He also questioned him about his knowledge of Indonesian society to verify if his fears were well founded. The Board member also quizzed Alvin on the gay community in Vancouver. Did he go to the bars? Read the gay newspapers? Has he ever attended Gay Pride? “No,” answered Alvin, he did not have any pictures. The only evidence Alvin could provide of his attachment to the gay community was a letter the manager of the sauna had written, and support letters from Rainbow Refugee and me.²⁰

During the hearing, it became clear that the Board member did not understand why Alvin was not more attuned with the gay community in Vancouver,

and how he had come to choose his Christian community over the LGBTIQ one. When the lawyer's turn came around, he tried to explain how coming out of the closet could be a complex matter especially when religion was involved. The Board member did not look convinced.²¹

Eager to move forwards, the Board member interrupted the lawyer while he was submitting how Alvin's struggles with disclosing his sexual orientation were not unique to him.

BOARD MEMBER: Okay, I did read this [documentation on homophobic attacks on gay activists in Indonesia]. But we're not dealing with a gay activist; we're dealing with a man who's in his early, stick-head-out-of-shell level of gay consciousness. [Alvin's transcript of hearing, Vancouver 2012]

The Board member's comment is telling about his knowledge of an evolutionist model of the gay identity. According to this developmental model, the gay person, notwithstanding the cultural context, will experience an epiphany when realizing she is gay. Her next step will be to come out to others, liberated from feeling confused and ashamed about who she is. Thus the judge went on inquiring about this moment of truth in Alvin's life, wanting to know when he had first come out to himself.

BOARD MEMBER: Yeah. What did you — did you ever say — did you have a moment where you said to yourself, gee, I'm — I'm gay!

ALVIN: Sorry, could you say it again, please?

BOARD MEMBER: I mean... It's a tough thing to come to a decision because you might be denying it. You might be having sex with men and still denying it. You might not want to use the word "gay". You might not like the word "gay." So I know this is very — not scientific and stuff like that. It would be hard to point the day. I get that. I just want to know where your experience was where you came to the decision: I'm a gay man.

ALVIN: When I explored the downtown area — yeah, that's when I accepted, when I say that I am gay.

BOARD MEMBER: So when you were exploring the downtown area, what were you exploring?

CLAIMANT: I went to the bath house.

BOARD MEMBER: Sure. There's more than one around here. Which bathhouse or house is this? [Alvin's transcript of hearing, Vancouver 2012]

The way in which the Board member formulated his initial question, asking Alvin when he identified as gay, and the overall order and elements of his questioning about Alvin's sexual orientation, are indicative that he was following the IRB guidelines (LaViolette 2004). He was looking for an innate and stable sexual identity that would motivate the person to live accordingly, especially once in Canada.

The guidelines overview three main subjects of inquiry: “Personal & Family; Lesbian and Gay Contacts and Activities in the Country of Origin & Canada; Discrimination, Repression & Persecution in the Country of Origin & Canada.” The document does not talk about bisexual or transgender people or activities but only refers to “lesbian and gay contacts and activities”. The guidelines also provide many examples of questions the Board member might want to ask the claimant. For example, to explore the “Lesbian and Gay Contacts and Activities in the Country of Origin & Canada”, the Board member could ask: “Have they [claimants] read any gay or lesbian magazines, books? If so, what have they read? Do they socialize with friends in any gay or lesbian social venues? Which bars, cafes, restaurants do they like to go out to?” (LaViolette 2004: 18) Searching in this way for clues that would be indicative of Alvin’s gay identity, the Board member asked him not only about his lifestyle, but also about his sexual activities (What sauna does he go to? At what frequency? Is there a membership fee?), and inquired if he had a boyfriend.

On several occasions, the Board member added a personal touch to this questioning. He mentioned his own Asian family background and talked about his gay nephew, who had done his coming out at seven years old. After acknowledging that he remembered “somewhere in [Alvin’s] package reading that you were concerned about coming out because of your faith community,” the Board member also suggested very seriously that even though he was “not an expert in LGBT issues,” he knew of churches embracing gay fellowship and clergy, and that would not “just immediately send you to a gay brainwash camp.” He asked Alvin: “Why not, as a gay man, look for the one [the church] that is very tolerant?” [Alvin’s transcript of hearing, Vancouver 2012]

Sharing his knowledge about mainstream LGBT culture and politics is also suggestive of the judge’s open-mindedness regarding homosexuality. By the same token, he is insinuating that, like other Canadians, he would not “condemn” Alvin if he came out.

BOARD MEMBER: [...] Now, heck, in this block you can pick up, you know — we have Xtra West down here and stuff. I mean, you can read about gay issues, gay — you know, gay-friendly — gay organizations, NGOs — sorry, non-government organizations, rainbow coalition, rainbow refugees, the Centre. I mean, there’s lots of places to get information to find people who are not going to condemn you, who are going to be okay with the way you are. Are you not reading these materials? Are you not interacting with the community?

ALVIN: To be true, I don’t read newspapers.

[Alvin’s transcript of hearing, Vancouver 2012]

The judge's attempts to sound friendly were also aimed at making Alvin as comfortable as possible so he could freely express his story and exercise his right to a fair trial. However, while the Board member was looking for specific facts to substantiate his legal decision (demonstration of Alvin's sexual orientation through coming out, knowledge of the gay community, same-sex desire), and as he was focusing on precise behaviours associated with the gay identity, the Board member did not sense the emotional fabric that was unfolding during his interaction with the claimant. Alvin's nervousness was due not only to the outcome of the hearing but also to the process of coming out as such; and what was more, coming out to an authority figure who had the sole power to decide on his destiny. The judge was not grasping that Alvin's hearing was part of his coming out.

BOARD MEMBER: Okay. I've got the Asian parents too, but now we're grownups. Okay? So you've been on your own a long time. If this is really important to you, being a gay man, why aren't you being a gay man?

ALVIN: Well, yeah. I'm in — as the process coming to — coming out right now. Sorry. Do you mind rephrasing that?

BOARD MEMBER: Sure. You're not out.

ALVIN: M'mm-hmm.

BOARD MEMBER: You're making a claim based on being gay.

ALVIN: Yes.

BOARD MEMBER: Well, why aren't you out? I mean, this is Canada. This is where it's safe to be — safeish, you know — safer.

[Alvin's transcript of hearing, Vancouver 2012]

In the above excerpt, the judge is also suggesting how Alvin should have gone through a process of acculturation and have already chosen Canadian progressive values that are not tied to traditional or religious prescriptions on sexuality, allowing him to achieve his full potential as an adult gay man. Alvin's counsel attempted to nuance the judge's idea on the ease with which coming out happens in Canada. However, the Board member's somewhat chauvinistic answer suggests how he embraces the liberation narrative in which national borders overlap with sexual ones (Cantú 2005, 2009, Lidstone 2006, Luibhéid 2008, Miller 2005). This narrative also supports his role in the granting or not of state protection.

BOARD MEMBER: I'm not going there, counsel. That's not my point! [...] Your client may want to be out, but I don't think he's wanted it so much that he's actually been able to come out where it's the safest possible place to do it, Vancouver, 2012. This — if you're going to be out anywhere, I mean, awesome place to be out.

[Alvin's transcript of hearing, Vancouver 2012]

After the hearing, Alvin's lawyer told us that he would send more information on the coming out process to the Board member.

Alvin and I went for coffee for debriefing. Alvin was feeling quite frustrated because he was under the impression that he could not express himself clearly, that the judge did not understand what he was trying to communicate about his disarray regarding his internal conflict and the complexity of his coming out. On several occasions, he told me that he was hesitant because he could not find the right words in English. To his surprise, the words he was looking for were coming to him in his mother tongue that he had not spoken in many years. I tried to reassure him as much as I could, but his hesitations during the hearing had worried me too. I thought about what I had heard during Among Friends meetings in Toronto and that the acceptance rates for LGBTIQ petitions are higher in the Toronto office than in Vancouver. All the lawyers, ex-Board members, activists and community organizers that I questioned about this difference were unable to offer an explanation. In contrast with the discourse at Among Friends, the facilitators at Rainbow Refugee spend more time reassuring claimants, telling them that “It’s OK not to have all the answers.” Claimants are encouraged to “try to be as precise as possible.” Other participants also try to lower the stress level of claimants by sharing their own experience of such hearings.

During Rainbow Refugee meetings, claimants are repetitively encouraged to be themselves, to tell their truth the way it is and the way they are, suggesting that there is not a bad or a good performance about gay refugeeeness during a hearing. The facilitators at Rainbow Refugee are rarely authoritative. They turn more to suggestive prompting, using the verb “can” more often than “should.” At Among Friends, although claimants are also encouraged to tell their truth — as the best guarantee against bafflement when testifying — and to stay coherent, claimants are more pressured to memorize their PIFs²² and to keep their dates straight. They are told that judges can try to trick them with questions. The truth is linear, and has to be presented in that way. Claimants should not hesitate when answering questions, because spontaneous answers reflect their knowledge about themselves, a truth that is not made up. Furthermore, claimants are told that they have to pay attention to their nonverbal communication. They should look into the judge’s eyes; they learn that this is not a sign of disrespect in Canadian culture.

Alvin’s hearing was in August 2012. He received a letter that acknowledged him as a Convention refugee in late January 2013. Relieved and truly happy, he does not know on what basis he was accepted, as the Board members are required to justify their decisions only when they are negative or when the claimant or lawyer ask them to do so for a positive one. To date, Alvin has not come out to his pastor.

Refugeeness is embedded in the moral economy of nation-states, in political representations of citizenship, and interpretations of refugee law. For Dauvergne (2008), the latter lies at the intersection of humanitarian and immigration laws.²³

Regarding the humanitarian aspect, it would have been somehow inhumane to send Alvin back to his former country, where his chances to assert himself as a gay man were minimal. Alvin did not speak the language of his native land anymore, had strained relationships with his family, and did not have any connections with the Indonesian community in Vancouver or elsewhere. Nonetheless, compassion resists the formatting of legal language. Alvin's lawyer, who provided scientific documentation on the coming out process when religious fervor is involved, probably helped the Board member to substantiate his decision.

This vignette also underscores the Board member's mainstream representations of the gay claimant identity and of Canada as a protective and progressive society. While Alvin's sexual narrative did not follow the script on LGBTIQ "liberated" migrants, the fact that he attended the sauna for sex seemed to have comforted the Board member's knowledge on gay men's sexuality. In his research on gay claimants in Vancouver, Lidstone (2006) documented how Board members had preconceptions about gay sex. Whereas he observed that it was preferable for claimants not to be associated with saunas or with having sex in public spaces like parks, in Alvin's case, this did not seem to interfere with the Board member's perception of him as a "proper" Canadian citizen. Alvin was a hard worker, involved in a Christian community, had never gotten in trouble with the law, and had been transparent from the beginning about his desire to regulate his immigration status.

However, the Board member's repeated questioning about Alvin's decision to remain in the closet disempowered the claimant with respect to his understanding of his own suffering and intersected subjectivity. While the judge was looking for specific legal subjectivity that reflected his representation of the gay claimant, Alvin's oral and written testimonies were nevertheless deemed credible because they did not contain signs of internal and external contradictions. But words alone did not suffice to convince the Board member to grant him protection. As we will see in the following vignette, how the refugee claimant comes across as a potential Canadian citizen impacts the type of treatment this person will receive.

4.2 Resourceful Daniel

At times, the letters of support bring another perspective to the application of the claimant like in Daniel's case, in which he had not mentioned his sexual orientation during his eligibility interview. Plus, his amended PIF did not provide details on how he had escaped Nigeria, his native land. I first met Daniel who is in his early forties at the Metropolitan Community Church of Toronto. In search of support letters and although he is Muslim, Daniel was attending mass and the support group for LGBTIQ claimants the church had set up. Like many folks of this group, Daniel also took part in Among Friends' activities. Daniel had recently

been released from jail where he had spent a couple of months until his identity was established, as he had arrived in Canada with a small bag and a false visa and passport. His hearing was in a few days and he was anxious. He did not know if the facilitator of Among Friends was going to write him a letter because he had not been attending the group for the required period of time.²⁴ He was pressuring me to write him a support letter which I did after interviewing him. He also accepted that I accompany him to his hearing.

Daniel was troubled for several reasons when he arrived in Canada through Mexico. Back home, he had dodged police gunfire, had very suddenly left behind his lover of nine years, and had spent weeks in the hull of a boat. He said: “[Since then], I have headaches and I cough. When I think about the ship, I feel sick. I drank sea water and ate biscuits for weeks. I did not know day and night.” Daniel is not the only one who arrived in Canada with a broken heart, who does not know what has happened to his or her partner and friends, and who has no news from family. Many land here with a feeling of having been betrayed by a family member, a jealous wife or an ex-lover. When criminalized, homosexuality can easily become a tool for revenge, to eliminate a political opponent or a potential source of money through blackmailing.

But the main reason Daniel did not tell the agents from the Canadian Border Services Agency that he was gay was because he was afraid of their reaction. As he told me during his interview: “Immigration don’t let me talk. I didn’t tell them I am gay because they will kill me or put me in jail”. Furthermore, Daniel did not know that homosexuality was not criminalized in Canada. In their discussion on language and sexual identity, Morrish and Sauntson (2007:17) have argued that “the non-normative subject’s choice of coming out is most often governed by an awareness of audience reaction.” Daniel detailed how the “white men” had intimidated him. “I’m your boss! Anything I say is final!” one of them had shouted. Their aggressive attitude and speech prevented Daniel to come out and thus to tell the real reason why he believed people wanted to kill him. As a result, Daniel’s testimony which had changed in the course of his asylum process was at risk of being deemed not credible because of external discrepancies (Thomas 2006).

Furthermore, the officers doubted Daniel’s national identity. Particularly a “wicked man”, as Daniel described him, who drilled him with all sorts of questions, like what the name of his primary school was. He could monitor Daniel’s answers with the support of the Internet. Surprised, Daniel asked him how his “school could be in the screen”... The officer answered that Daniel was “an ignorant and a novice.” The asylum process was particularly stressful for Daniel who did not complete his primary school and who did not know what the Internet was. Moreover, the officer made him sign papers that he could not read. Daniel, who speaks Yoruba and “pidgin English” as he says, had required a translator

that the officer never provided. Terrified, Daniel added that he cried during the interrogation.

Distrust in refugees is not new. They are often perceived as economic migrants who do not want to go through the long immigration process. The government has even called asylum claimants “bogus refugees” and “queue jumpers” to justify its controversial reform (Nerenberg 2012). Asylum seekers have also been suspected of wanting to abuse the generosity of the Canadian system, thereby justifying the development of a watchdog mentality in the public function (Lacroix 2004). The agents from the Canadian Border Services Agency who were assessing Daniel’s right to claim asylum, a universal human right, openly took on that role. According to Kirmayer, disbelief serves defensive and protective objectives “It keeps individuals from encountering a destabilising otherness that would call their assumptive world into question.” (Kirmayer 2003: 181). In doing so, incredulity maintains a moral economy that keeps the privileged from having to engage into compassionate thinking and behavior which includes the sharing of resources, time, and space (Fassin 2009, Kirmayer 2003: 182). Daniel also clearly identified these privileged men as White people: they were scary because they were foreigners (“there are no Whites in Lagos,” he specified), but also because “white” is associated with power.

Before the hearing, the lawyer met with Daniel and me. She prepared him for his hearing asking him several questions about his escape from Nigeria and his stay in Mexico. She also asked him how his sexual orientation had been discovered; by whom and for what reasons it was now causing a problem. She insisted that he be clear about the reasons why he was afraid to go back to Nigeria. The lawyer was trying to corner Daniel but his answers were clear when he understood her questions. Although Nigerian, Daniel’s lawyer did not speak his language. He told us that he had contacted some friends after he left the detention center. Two of them had told him that posters with his picture had been placed at the mosque and in front of his house, and elsewhere. The posters written in Arabic and English mentioned that he was “wanted” and a “homosexual”. Daniel showed us a ripped poster. The lawyer told him to hold on to it and that she did not think that this was a credible piece of evidence. Furthermore, Daniel’s cousin had told him that his uncle had asked the military and the police to look for him in the county. However, Daniel did not have any evidence to back this up. Trying to be reassuring, the lawyer told us that she knew who the Board member was for Daniel’s hearing and that he was “fair and direct”. She also added that he had done “many cases from Nigeria” and “[knew] the culture.” Daniel looked tired. As he told me, he had prayed throughout the night asking Allah to protect him. I understood that he preferred to put his faith in God’s hands rather than in the justice system.

Daniel had a translator for his hearing and after the usual formalities, the hearing could start. Each sentence uttered by Daniel, the lawyer or the Board member

had to be translated from Yoruba into English. Although, it was a slow process it did not seem to cause any problem. All parties seemed satisfied with the translator's work. Daniel looked straight into the judge's eyes at all times, sitting on the edge of his chair, his body leaning forward with intensity. A convincing "yes sir!" often punctuated his answers. The judge briefly challenged Daniel about his sexual identity because he had made changes to his story. Daniel explained why he had not disclosed his sexual orientation at port of entry. Furthermore, his original PIF stated that when he "was interviewed at the airport," he "specifically requested for an interpreter but was not given one. I [Daniel] said a lot of things that was not added in my Port of Entry Notes by the officer." This was indicative of how Daniel's rights had not been respected. Therefore, it left the door open to his lawyer to request for a juridical review if the Board member was to render a negative decision based upon external discrepancies. But the judge expressed his satisfaction with Daniel's answer. However, there were still issues regarding the credibility of Daniel's testimony Engel (2005) identifies as "common sense." Daniel's story was extraordinary and hard to believe — and not because of his sexual identity. So the judge asked him for more details about what had happened when he was discovered by the police in Nigeria and how he had managed to escape.²⁵

Daniel explained what had happened. However, his amended PIF did not provide these details. Luckily, Daniel's lawyer pointed out that what he had answered was corroborated by the letter we had devised together.

As the open van they [the gay men the police had fished out behind the national stadium] were in was slowing down to go through an area, [Mr. Daniel] jumped out and went hiding behind a bush. The police started to shoot, but they didn't get him. They finally went away and [Mr. Daniel] walked a long distance before he could reach a hotel. He called one of his very good customers, [Mr. L.]. [Mr. L.] knew of [Mr. Daniel]'s homosexuality and [Mr. Daniel] was selling him lace and jewelry for half the price, to make sure that he wouldn't talk. [Mr. Daniel] told [Mr. L.] that they had found out that he was gay and that his life was in danger. [Mr. L.] agreed to help him. [Daniel's letter, Nathalie Ricard, Toronto, May 25, 2012]

The judge went on questioning Daniel about who had helped him to get from Mexico to Canada. Although incredible, Daniel's story had its logic that he spoke of frankly and without hesitation. Daniel explained how he had found "a man with dark skin" who spoke English in the Mexican village where the ship had moored. The man had agreed to help him for free, "because [they] were both Muslims," but he had asked Daniel not to question him. To prove to him that he belonged to the Muslim *Ummah*, Daniel had performed his prayer rituals. He lived with the man and his family until his departure for Canada. Daniel made his way with a "smug-gler" to a country he said he had never heard of before.

As the Board member said when he gave his positive verbal decision, he had appreciated how Daniel had answered all his questions in a very clear and direct manner. He also stated that Daniel had substantively proven his membership to a particular social group. Although not part of the submitted evidence, Daniel had completed his testimony by a *coup de theatre* when he showed the Board member all the flyers he had picked up from the gay bars, and naked pictures of himself with his ex-lover. Friends from Among Friends had given him the suggestion to bring such documents to his hearing.

This vignette shows us the importance to turn to a contextualist approach when evaluating an asylum claim. This case also illustrates how critical the oral hearing is while providing the claimant with a unique opportunity to tell his or her story and to explain what seems unreasonable or illogical. The Board member's knowledge about Nigeria's culture and Islam and on smuggling played a role in the evaluation of Daniel's credibility when evidentialism and common sense were at stake. The answers Daniel offered during his hearing to explain the discrepancies between his written depositions, and the way he delivered these answers were of equal importance to convince the Board member of his honesty. The fact that Daniel was accompanied by a lawyer and the presence of a supporter also positively influenced the Board member. Furthermore, Daniel's body language, the extralegal proof he provided, and his flow of speech were all important elements that influenced the Board member's decision.

5. Conclusion

To be declared as a "Convention refugee", LGBTIQ claimants have to be recognized as individuals belonging to a sexual minority who have been persecuted for this reason. Thus, they have to be recognized, or to make themselves recognizable as being gay and as victims who do not receive protection from their state. The analysis of the vignettes I have shared indicates that "language" has a very broad association in the context of refugee recognition. In addition to words and phrases and forms of oral and written narratives, letters of support, legal documents, body language, flyers, dress, pictures, crying, the relationship between the judge and the lawyer, the look in the eyes, the speed of responses and the presence of supporters at the hearing all contributed to the communication of discursive messages. Nevertheless, the proceedings assume a narrow definition of language contrasting with real-life practice.

The language that has to be used during the hearing and in written documents has to coincide with the legal rationale of production of facts and their validation. Strict criteria based on the epistemology of the testimony (evidentialism

and common sense) and the definition of legal credibility (no external or internal discrepancies and a plausible story) determine whether submitted elements of proof are credible or not. The “criteria” of “common sense” leaves the door open to personal biases. “Common sense” is problematic for LGBTIQ individuals because their realities and subjectivities do not correspond with the heteronormative notion of “common sense”. What has become more acceptable, intelligible, common knowledge about their lifestyle is often based on the mainstream Euro-American gay identity. “Common sense” as plausible, reasonable certainties, believed not to be lies, is also problematic for non-Western people because their realities and subjectivities are generally not well-known nor understood. Lawyers play an important role when they proceed with their submissions, seizing the opportunity to influence the Board member’s interpretation of a case.

Within the regime of truth, Board members look for precise elements to support the notion of gay identity: coming out, knowledge of “the lesbian and gay communities” (LaViolette 2004) and expression of same-sex desire. As we have seen, this “knowledge” is not always based on scientific data on LGBTIQ communities and same-sex desire. To stay in the closet, like Alvin, when one is expected to be out in a progressive society like Canada, challenges the IRB’s notion of truth about sexuality. The latter is viewed as immutable, innate and constant over time. As a result, it is easier for a claimant to be recognized as a member of a particular social group if his or her testimony reinforces this essentialist view of sexuality, all the more so if elements of proof correspond with ethnocentric cultural attributes of gay identity. “Being out” also reinforces the representation of Canada as being a liberated society open to sexual citizenship.

But the regime of truth also relies on specific characteristics of speech to determine whether or not elements of the testimony are credible. To be deemed credible, the responses have to be delivered in a spontaneous manner, thus revealing a limpid narrative. Facts have to be presented chronologically and logically, in a coherent fashion, and in the case of LGBTIQ claimants, as a display of the inner reality of which sexuality is a key component. As Morrish and Sauntson (2007: 16) have argued, the analysis of coming out narratives shows how speakers are engaged “in constructing a social identity rather than simply reflecting on their experiences of sexual desire.” The stories of Alvin, and Daniel remind us furthermore, of the ongoing difficulties to express oneself as a non-heteronormative subject, and to find the words to do so without fear of repression, rejection, ridicule or misunderstanding; especially since words may not be the only way we tell this story — or the only way in which audiences listen to it, as these hearings demonstrate.

Writing support letters for and with LGBTIQ claimants, participative observations in organizations and building relationships with claimants and refugees have given me the opportunity to see how they have acquainted themselves with

the legal process, and how they have prepared themselves for their hearing. As the asylum process is not exclusively confined to legal parameters, I also witnessed how these migrants have coped physically, mentally, spiritually and socially with situations out of their control. As opposed to the representation of refugees as mere victims, each claimant had to embrace their refuge seeking journey as a full time job, documenting what had provoked their escape from their country and/or their fear of returning, their sexual and gender identity and their country's and people's treatment of sexual minorities. Daniel's vignette showed how strategic his performance was during the hearing. Although not instructed by his lawyer to do so, Daniel exhibited pictures of his ex-lover and flyers of the Gay Village. However, claimants still had to appear as victims that needed Canada's protection for their Board member to recognize their need. By the same token, the recognition of a refugee claim leading to full citizenship suggests that other elements than the interpretation of criteria stipulated by the Geneva Convention could interfere with the evaluation of asylum claims. If so, this "sub-text" challenges the independence of the administrative tribunal.

Support and advocate groups for LGBTIQ claimants and refugees play a significant role in assisting the claimants in the preparation for their hearing, in demystifying it and explaining in clear terms what they need to do to be successful. They also provide evidence and often accompany the seeker to his or her hearing. However, it becomes a problem if, as a moderator told me during an interview: "We are victims of our success. I've heard of refugees who were dismissed because they weren't coming [to Among Friends]. I am planning to go to the IRB to let them know that some refugees can't come out to us." Attributing an expertise to these community organizations recalls how it is the expert language that is deemed credible in legal fora. Nonetheless, refugee determination is not only a matter of immigration law, but also of human rights and compassion, as the selection of refugees generates an ongoing reconstruction of the cartographies of political, sexual and emotional borders.

Although claimants are not aware of all the legal technicalities and knowledge surrounding the evaluation of their claim, they are not naïve about the power differential between them and Board members. They intuitively perceive that to bridge the gap, they have to connect with the person sitting in the role of the Board member who acts as the significant censor. It is this human being that they will try to touch with their oral testimony, their unique chance to voice their story, hoping that he or she is still able and willing to hear the tale of another suffering body, hoping that the judge will show compassion and keep an open mind to understand the refugee claimant's situation and background. When asked about his upcoming encounter with his Board member, a claimant bluntly answered: "I just want to see his face", as if knowing the face will humanize the process and shift the power balance.

When I asked Daniel why he believed he was a refugee, he started to tell me his life story, starting from the moment he was found on the street as a baby. He was not the only one to do so. The suffering he had endured was only partly related to his sexuality. However, it is this reduction of subjectivity that the judge has to focus on in order to grant refugee status. Many migrants have been seeking a better home, protection, and freedom for a very long time, thus challenging the legalist and prescriptive definition of the “refugee”. As more than one claimant summarized: “I am a refugee because I have suffered enough.” Some community organizations want to expose these stories, hoping to counteract the dominant discourse on refugees and their exclusion from society. However, more than ever, organizations will also have to be creative and find new avenues to prepare refugees for their hearing, to help them rehearse what they will have to say to sound and look credible. Refugees’ advocates are fighting for rights and a fair system. Human rights are being constructed through social practices against the idea of the universal and abstract subject of the law.

Meanwhile, the stories of the sexual disenfranchised are locked up and silenced in the archives of the IRB. More discourse-centered analysis of hearings as they occur are required and the role of lawyers need to be further analyzed to understand the basis on which Convention refugee decisions are rendered. Such projects promise to open interesting avenues in understanding the social and legal recognition of LGBTIQ migrants and may inform us to know how to go from claiming to re-claiming refugees’ stories and subjectivities.

Notes

* I am grateful to William Leap, David Murray, Joseph Josy Lévy and two anonymous reviewers for their insightful and thought-provoking comments. Their suggestions and support have pushed and improved this project immensely. Any remaining errors, of course, are mine alone.

1. I obtained this data in February 2011 subsequent to a request under the *Access to Information Act* for the period from March 2009 to November 2010. In the past, the IRB did not systematically collect information on LGBTIQ refugees. The data is not public and can only be obtained by permission.

2. Whereas laws that criminalize same-sex activities, police and army repression, and social stigmatization against gay men and transgendered people (male to female) are fairly well documented, less attention is paid to private laws and local customs that compromise women’s freedom of movement and limit their range of action and their economic power. These cultural practices have a direct impact on lesbians and bisexual women (Amnesty International 2008). Hence, fewer queer women have the means to escape their country and to reach Canada.

3. For instance, in 2011, Board member Daniel McSweeney did not grant a single refugee status although 127 refugees testified before him, whereas Board member Thomas Pinkney granted asylum to 98% of the 799 people he had to evaluate (Rehaag 2012).
4. The Organization for Refuge, Asylum & Migration prefers the use of the term «Sexually and Gender Non-conforming (SGN) persons» when referring to “individuals whose sexual practices, attractions, and gender expression are different from the social expectations based on their assigned sex at birth” (ORAM 2013: Glossary of Terms).
5. Also using the acronym LGBTI in its documents and speeches is the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA 2011), which presents itself on its website as “the only worldwide federation campaigning for lesbian, gay, bisexual, trans and intersex rights” and which voices its agenda in various United Nations fora.
6. Ramanathan (1996:2) describes “queer asylum” as the process of a person claiming refugee status because of persecution due to sexual orientation and/or gender identity.
7. Between April 1, 2009 and June 30, 2011, 120 women who identify as bisexuals, gays or lesbians sought asylum in Canada. This accounts for 22.8% of the 526 petitions based on sexual persecution and gender identity that were submitted during that period. Claimants came primarily from the following countries (the number of requests per country is in parentheses): Mexico (71); Saint Lucia (48); Saint Vincent and the Grenadines (43); Nigeria (34); Jamaica (30); Iran (15); Pakistan (11); Russia (8); Burundi (8); Hungary (8); India (8); Lithuania (6); Turkey (5); Cameroon (5); Cuba (5); Barbados (5). This data was obtained from the IRB in February 2012 through the *Access to information Act*.
8. Luibhéid (2002) shares the story of a Mexican lesbian who was not butch looking and did not make it across the U.S. border. In the eyes of the officer, she was not masculine *enough*. Luibhéid (2002) and Miller (2005) point out the irony of representing sexual orientation in quantitative terms.
9. Even though training on various cultural expressions of sexual orientation and gender identity has been provided to Board members since 1995, a recent federal court ruling reminds us that officers still rely on stereotypes to make their decisions (Quan 2012).
10. “The experiences of LGBTI persons vary greatly and are strongly influenced by their cultural, economic, family, political, religious and social environment. The applicant’s background may impact the way he or she expresses his or her sexual orientation and/or gender identity, or may explain the reasons why he or she does not live openly as LGBTI. It is important that decisions on LGBTI refugee claims are not based on superficial understandings of the experiences of LGBTI persons, or on erroneous, culturally inappropriate or stereotypical assumptions” (UNHCR 2012: 2).
11. The time-frame depends on the claimant’s country of origin and when and where the person applied for asylum. For instance, if the person applies at the port of entry and comes from a designated country of origin, she will have her hearing within 45 days. A person who did not apply for asylum at the port of entry will have her hearing within a month.

12. As a lawyer with 25 years of experience in refugee and immigration law that I interviewed in Vancouver clearly voiced: “But now, I can’t get evidence in 30 days. I can’t get a psychological report in 30 days. I can’t get my client to open up in 30 days!”

13. Migrants who go to Rainbow Refugee come from all over the world and walk the full spectrum of rainbow sexualities. However, it so happens that very few lesbians attend this group. Five to twenty people gather in a circle every month in a small room of the LGBTIQ community center. Participants are solicited on a regular basis by researchers (Jordan 2010, Lidstone 2006), artists and activists to take part in projects where they can voice their experience. In contrast, an average of 100 refugee claimants meet every week at Among Friends, in the large room of the 519 Church Street Community Center. Although Among Friends is not exclusively for Black people, close to 90% of its participants come from former British colonies in Africa and the Caribbean. Approximately 35% of participants are women.

14. My involvement with organizations also provides me with the opportunity to observe and understand how grassroots groups vernacularize the language of international legal instruments (see Goodale & Merry 2007, Merry 2006), and mobilize people.

15. Since then, the immigration status of most interviewed claimants has changed. The other participants in my research are: migrants who had their hearing and who were accepted (4) or rejected as asylum claimants (4), lawyers (11) and professors (2) in refugee law, activists and community organizers (16), as well as ex-members of the IRB (3). Numbers in parentheses indicate the number of interviews per category of participants at the time of the interview.

16. Now, in addition to their BOC, claimants have to fill out a minimum of four other documents, each time increasing the risk of making mistakes, writing contradicting information and thus jeopardizing their credibility.

17. Researchers have argued that the asylum process revictimizes refugees (Diallo & Lafrenière 2007, Lacroix 2004, Lee & Brotman 2011). Furthermore, having to repeat one’s story over and over to different people, be it lawyers, activists, immigration agents, and even researchers, can become disempowering and bring back painful memories.

18. There are always possibilities to bring amendments to the PIF or to the BOC before the hearing and to submit last minute evidence the day of the hearing. However, the Board member has the right to dismiss these documents.

19. See Riles (2006:8) for a discussion on “the pull of documents” that become “ethnographic objects, an analytical category, and a methodological orientation.”

20. As agreed to by Alvin, my support letter stated that we met at a group for LGBTIQ refugees. Although not mentioned in his original PIF, the letter also reported his strained relationship with his family and that he was having a hard time reconciling his faith with his sexual orientation. As in his PIF, he further explained that Alvin fears the discrimination and assaults to which the Chinese minority in Indonesia is subjected. Nevertheless, during the hearing, the Board member made no allusion to this, hinting that it was only Alvin’s sexual orientation that could cause him harm if he were to return to his country of origin. My letter of support also provided information on the country’s conditions regarding LGBTIQ people and on how homophobia has entered the political discourse of Indonesia under pressure from Islamists (Boellstorff 2009).

21. This assumption is common. Alvin told me that one of the facilitators at Rainbow Refugee had confronted him about his sexual orientation, expressing doubts about his gayness.
22. Murray (2011) has demonstrated how migrants at Among Friends learn how to become sexual refugees according to the standards set by the RPD. In LGBTIQ migrants' support groups, claimants also learn about Canadian mainstream values and institutions and are constantly kept updated about the asylum process, laws and regulation. These associations also help to break the social and cognitive isolation of refugee claimants by providing a place where they learn about their rights and to accept themselves. At Among Friends, equality and inclusion also mean friendship, a place where the barriers between "those people" (LGBTIQ migrants) and "us people" (non-migrants, generally white and wealthier) do not exist.
23. For a discussion on similarities and differences between human rights and humanitarianism, see Wilson and Brown (2009).
24. Support groups for LGBTIQ claimants are readjusting their practices in response to the new time-frame instituted by the asylum reform.
25. While 25% of claimants I interviewed reached Canada with the help of a "smuggler", most informants did not know they could apply for refuge based on their persecuted sexual identity. Thus, only 13 claimants applied for asylum at the port of entry. As a result, 36% of these refugees experienced surviving in Canada for several years without the "correct" papers. During their migration journey, 8 informants went to jail, increasing their psychological distress (Cleveland 2011).

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