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# To feel the truth

## Discourse and emotion in Canadian sexual orientation refugee hearings\*

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In this paper I explore how adjudicators in the Canadian refugee determination system assess sexual orientation refugee claims. By focusing on discourse and terminology of questions utilized in the hearing (in which the refugee claimant answers questions posed by the Immigration and Refugee Board (IRB) Member), I will outline how these questions contain predetermined social knowledge and thus operate as a cultural formation through which particular arrangements of sexual and gendered practices and identities are privileged. However, documents and interviews with IRB staff reveal the presence of a 'gut feeling' or 'sixth-sense' in determining the credibility of a claimant's sexual orientation. While some may argue that these feelings represent a level of sensitivity that humanizes the decision making process, I argue that they reveal adjudicators' application of their own understandings and feelings about 'authentic' sexual identities and relationships derived from specific cultural, gendered, raced and classed experiences, which, in effect, re-inscribe a homonormative mode of gatekeeping that may have profound consequences for a claimant whose narrative and/or performance fails to stir the appropriate senses.

**Keywords:** refugee, sexuality, discourse, terminology, emotion

### 1. Introduction

For the past three years I have been exploring sexual orientation and gendered identity (SOGI) refugees' experiences of the Canadian government's refugee determination process. For most of the Toronto based refugee claimants that I worked with, the part of the refugee determination process they wanted to learn most about was 'the hearing.' On the Canadian Immigration and Refugee Board website, the hearing is described as "an important moment in the refugee protection

process because (it) is usually when the RPD (Refugee Protection Division) decides whether you are a Convention Refugee or a person in need of protection [...]. (The hearing) is a non-adversarial process at which the member or the RPO (refugee protection officer) will ask the claimant questions about the facts supporting the claim in order to establish the truth of the story. No one argues against the claim.” However, another page of the IRB website states that, “The refugee claimant has the burden of proof”, indicating that the process may indeed contain adversarial moments. We see further hints of adversity in the description of the sequence of events at a hearing. The sequence is outlined on the website:

- 1. You will testify: Before you testify, you must make a solemn affirmation, which is a promise to tell the truth. You will then be asked questions first by the member, and then by your counsel.*
- 2. If you bring any witnesses, they will testify after you have testified.*
- 3. After you and any witnesses have testified, the member will ask you or your counsel to explain why you think the evidence shows that you are a Convention refugee or a person in need of protection.*
- 4. The RPD member will decide whether you are a Convention refugee or a person in need of protection.<sup>1</sup>*

Thus while the hearing may be described somewhat benignly in some sections of this governmental portal, other sections construct a different image via a description that conveys a structure and format premised on formal Euro-American juridico-legal terminologies and logics, such that the RPD Member is, in effect ‘a judge’, who is gathering ‘evidence’ to determine if the ‘plaintiff’s’ case is true or false based on their (and any witnesses) ‘solemn affirmation’ to tell ‘the truth’. Evidence is gathered at the hearing through cross-examination of the claimant’s story, in which particular incidents, locations and people presented in the written version of that story (known in IRB parlance as the “Personal Information Form” and more recently, “Basis of Claim” form)<sup>2</sup> are broken down into a series of questions from the Board Member who then compares the oral testimony with the written documentation. Thus, for the refugee claimant, the hearing may feel more like an episode of the American television drama “Law & Order” than a ‘non-adversarial’ conversation.

Elsewhere I have explored how SOGI refugee claimants learn about and prepare for the hearing (Murray 2011). I found that most claimants learn about the importance of credibility from their legal counsel, immigration support workers and other refugees. More specifically they learn how to speak, respond and perform in order to persuade the Member they are a credible Lesbian, Gay, Bisexual or Transgender (LGBT) refugee. In this paper I would like to focus on the performance of the other key player at this event — the IRB Member. The Board Member

(or “Member”), as I noted above, is the individual in the room who decides if the claim for refugee protection is accepted or rejected. On the one hand, this is an extraordinary responsibility, the determination of whether an individual is telling the truth or not, with extraordinary consequences for that individual if it is decided they are not telling the truth. On the other hand, this is a mid-level bureaucratic position in a vast and growing immigration apparatus. There are hundreds of Board Members across Canada making hundreds of decisions on refugee claims daily (the IRB states that there are, on average, 40 000 hearings per year). As Didier Fassin (2011:218) observes, the governmentality of immigration in many 21st century nation-states has resulted in a large ‘street level bureaucracy’ in which the state’s dirty work of selecting good from bad immigrants has been downloaded to local bureaucrats, who sometimes experience moral dilemmas between their obligations as civil servants implementing state policy and their emotions when confronted with tragic situations.

While there is now a substantial body of research in refugee and immigration studies that elucidates the deeply problematic logics and assumptions in the policies and decision making processes of this ‘street level bureaucracy’ in relation to refugees more generally and sexual minority refugees more specifically (i.e. Berg & Millbank 2009, LaViolette 2009, 2010, Millbank 2009, Miller 2005, Rehaag 2008), it is important to find out what we can about the decision making process of these bureaucrats and their perspectives on their duties and responsibilities. In so doing, we can challenge the tendency to construct and render the state as an impersonal force that often appears to operate with its own logic and rationale. However, my goal is not to ‘humanize’ the state in the sense of trying to develop an empathetic analysis — rather, I am following anthropologist Laura Nader’s (1972) now classic entreaty to ‘study up’, that is, to study individuals and groups in greater and lesser positions of power in order to better understand the (il)logical, (im)moral and often contradictory organization of power, with a particular focus on the intersections of discourse, terminology, sexuality, nation and citizenship as they form a powerful nexus through which some migrant bodies are allowed to pass and many more are not.

In an effort to learn more about the responsibilities, practices and training of the Board Members, I met with three current and former Members,<sup>3</sup> three IRB staff and one outside consultant who conducted training workshops and developed guidelines for questioning sexual orientation refugee claimants at the hearings. They provided me with some of the material (including guidelines for sexual orientation and gendered identity refugee claims) that is distributed at the training workshops. I also attended nine hearings at the IRB offices in Toronto over a ten month period from November 2011 to September 2012. Finally I consulted a book written by Peter Showler, former Director of the IRB, which consists of,

“a collection of thirteen fictional vignettes [...] exposing the dilemmas and choices faced by refugees and those who decide their fates” according to the description on the back cover. While the cases in the book are ‘fictional’ (as are the examples I provide below<sup>4</sup>) due to the confidentiality requirements of all hearings, I found them to be a fruitful site of analysis based on Showler’s attempt to portray the inner voices of IRB officials as they negotiate various cases.

In sifting through these various sites, events, interviews and documents, my goal is twofold: First, to identify the discursive contours through which sexual orientation refugee cases are assessed, that is, to examine the discourse and terminology utilized in the hearing by the Member to assess the credibility of the claimant. In all refugee hearings, the claimant must provide ‘credible evidence’ to prove that they are eligible for refugee protection. For sexual orientation and gendered identity claimants, ‘the burden of proof’ that must be demonstrated is generally twofold: First they must prove to the Board Member they are a member of a ‘particular social group,’ which in the Canadian context is generally defined as someone who identifies as lesbian, gay, bisexual or transgendered in their sexual or gendered orientation. Second, the claimant must prove that as a member of this social group they face persecution in their country of origin. As numerous scholars have pointed out, sexual and gendered desires, practices, identities and prejudices are organized in deeply different ways within and across social, cultural, and national borders (Lewin & Leap 2002, 2009, Manalansan 2006, Miller 2005, Murray 2009, Weston 1998). Proving credible sexual or gendered orientation and proving credible persecution based on membership in this social group become deeply entangled in sexual identity terminologies with pre-existing socio-cultural determinate concepts which may be well understood by the Member but not by the claimant (McConnell-Ginet 2006: 228); misunderstanding and/or misinterpreting the meanings of these sexual identity terms may influence a negative evaluation of the latter by the former.

An additional challenge in the hearing is that much of the adjudication is based on the personal narrative and oral testimony of the claimant; unlike claims based on political opinion, race, nationality or religion, which tend to have some form of independent verification of group membership, sexual orientation claims depend mostly on the presentation of internal, often unspoken, or unspeakable qualities, desires, and practices such that extremely private experiences infuse all aspects of the claim (Berg & Millbank 2009: 196). Once again, complex, intimate and traumatic experiences may be difficult to articulate or render ‘credible’ if they do not ‘make sense’ in relation to the Member’s conceptualizations inherent in their use of particular sexual identity terms. My findings support Berg and Millbank’s (2009) arguments that in sexual orientation refugee cases, adjudicators often make evaluations based on sexual identity terms that reflect their training

and/or 'common sense' understanding of sexual identities which are based on a staged model of sexual identity development derived from specific cultural, gendered, raced and classed experiences and operate with particular assumptions about sexual identity as fixed, discoverable, and moving from a position of closeted to 'coming out', in which the hearing serves as the apotheosis to this narrative (Berg & Millbank 2009: 207–215).

However, I want to extend this argument by locating its key points in the IRB training documents and guidelines for these types of claims, which thus extends the discursive terrain beyond the bureaucratic event of the hearing itself and connects it to wider chains of socio-legal discourses of migration and sexual orientation. This discursive terrain produces an institutionalized speech genre (oral evidence based evaluation techniques) which produces linguistic inequality through pretextuality, that is, the Member's socially preconditioned meaning assessments influence communicative behavior and reinforce the privilege of those who are trained in and familiar with those preconditions (Maryns & Blommaert 2002: 12–14)

My second goal is to identify adjudicators' non-linguistic, corporeal or emotional registers which may influence the decision making process and to consider the relationship between these non-linguistic registers and the hegemonic linguistic evidence based process of adducing the truth of a refugee claimant's story. That is, in interviews with IRB members and staff and in Showler's book there is often reference to the importance of nonverbal, corporeal or emotional cues, which Board Members utilize to help underscore or validate their linguistic evidence based decision making framework. I argue that this emotive or sensorial dimension of the decision making process allows the Board Member to humanize their relationship to the claimant, and creates, in their view, the potential for an 'empathic' bond (or lack thereof) that helps to validate their decision. However, I will argue that this empathic bond can often be based on assumptions of universal, essentialist emotive capacities and displays, particularly in relation to love, desire and fear. These assumptions about being able to 'sense' the truth about these feelings and emotions in others are potentially problematic when applied at the hearing in which persons from diverse cultural, racial, class and/or economic backgrounds are performing and assessing a difficult story that is full of violence, fear, shame and rapid life transitions in an environment that is tightly structured through a juridico-legal framework which utilizes terms and discourses privileging a particular set of relationships between truth, identity, sexuality, culture and nation that are well understood by some and possibly not understood at all by others. In line with Ahmed (2004) and Berlant (2004) I argue that this 'sensorial' dimension of assessing credibility invokes particular incarnations of nationalism and citizenship, which are themselves freighted with moral valences of proper

assemblages of sexuality, gender, race and class, thus contributing to the hegemonic affective economy of the nation-state. My overall objective is thus in line with recent queer and feminist linguistic studies that demonstrate how discourses of gender and sexuality are critical to the maintenance of liberal and illiberal forms of power and domination and are at the governmental heart of capitalism, secularism, and civil society (Barrett 2002, Bucholtz & Hall 2004: 490; Povinelli 2006: 12–13; White 2010).

## 2. A pause in the process

All refugee hearings in Toronto take place on the 4th and 5th floors of a non-descript office building in the downtown core. Each floor has a waiting area; the 4th floor waiting area has one wall of thick glass, with the refugee claimants, lawyers, friends and family on one side and the IRB staff on the other. The rest of each floor is divided into identical rooms in which the hearings take place. It is a strange experience walking down hallways peering into room after room with the exact same placement of furniture, lighting, computer, Canadian flag and coat of arms, and security camera mounted in the ceiling. Each room has four desks arranged to form a square, and two doors, one opening into the hallway where the refugee claimant and legal counsel enter, and one opening into a private hallway that is only accessible to IRB staff. One desk has a computer and telephone — this is the Board Member's desk, and the other desks are bare except for microphones used to record voices. These other desks are for the claimant, legal counsel and other IRB staff. In most rooms there is also a box of tissues on the refugee claimant's desk. The refugee claimant and the Member face each other directly. Friends, witnesses, or observers sit in a row of chairs behind the refugee claimant so no eye contact can be made.

Every hearing I attended followed the same general format. The Board Member would enter the room from the door located behind their desk. We would stand up as s/he entered, and once seated the Member would announce that this is the hearing of (claimant's name), followed by asking the claimant if she understood English (if no translator was present) and then asking her to take an oath 'to solemnly affirm the evidence you give today is the truth'. The Board Member and legal counsel would then engage in a discussion about the organization of documents in the file, confirming that, for example 'item C1' is the personal information form, and 'item C4' is the letter submitted by a psychologist. In a number of cases, additional 'last minute' documents such as a letter from a family member overseas were submitted by counsel which then had to be accepted by the Board Member and given a specific file number. The refugee claimant would sit quietly observing this conversation, and a number of them told me afterwards they had

no idea what was going on other than that they recognized ‘their’ documents were being discussed in some manner.

Showler aptly describes these opening formalities as “more priestcraft [...] (that) were mainly for the record to satisfy the procedural requirements of the Federal Court. Claimants rarely understood the legal folderol [...] it simply confused and alienated them” (Showler 2006: 187). Opening the hearing with a required oath to ‘solemnly affirm’ the telling of the truth, followed by a conversation in which documents are identified by combinations of number and letters in a sequence known only to the legal counsel and Board Member immediately crystallizes the event as both a bureaucratic process and formal judicial ritual utilizing an institutionalized, procedural and technical discourse which the claimant has little to no familiarity with, thus rendering them marginal and unequal by virtue of their ‘illiteracy’ in relation to the other participants in the ritual who, through their relaxed familiarity with the proceedings and bureaucratic discourse, can be perceived to be occupying the roles of priest and ritual expert (Maryns & Blommaert 2002: 19).

Following this opening ritual discourse, the Board Member normally identifies the key ‘issues’ for the claimant and counsel, that is, the areas of the claim that are problematic and/or require further clarification through questioning. For many of the sexual minority refugee claimants, two key issues are identified: their credibility as members of a particular social group (the veracity of their claim to being gay, lesbian, bisexual or transgendered), and the credibility of their claim to being persecuted as a member of that social group (is their story of why they left their country of origin true, and if so, does it meet the UNHCR Refugee Convention definition of ‘persecution?’). The refugee claimant is then reminded to answer all questions as accurately as possible, and if they do not know or forget a particular date or location, to say so instead of making something up. After identifying the issues, questioning begins, often with a few benign background questions like “how many members in your family” or “how big is the village you grew up in?” These questions are often short in length, seeking out ‘factual’ information, and most claimants answered them with relative ease. Then, in most cases, there would then be an abrupt switch in the form and content of questioning from factual details to a completely different topic like “Are you a homosexual?” or “When did you realize you were gay”, followed by, “What does the acronym LGBT stand for?” In another case, a claimant might be asked a series of detailed questions about his son’s birth certificate (i.e. “why is there no middle name initial on the certificate when you provide this middle name on your personal information form?”), immediately followed by a series of questions about his first boyfriend in high school.

Prior to attending hearings, I wrongly assumed that the Member’s questions would be ordered in the same sequence as the events outlined in the claimant’s



Personal Information Form (PIF), which usually began in adolescence and progressed chronologically through to adulthood, highlighting events and actions relevant to the claimant's (perceived) sexual orientation that eventually forced them to leave their country. I was therefore surprised by the highly detailed and apparently random order of questioning at the hearing, in which the sequence and timing of a particular event would be cross-examined in minute detail and then the Member would suddenly switch to asking detailed questions about a particular personal document like a college transcript. Refugee claimants would often confirm feeling confused and disoriented by the Member's questions when I spoke with them after the hearing. In an interview with a Member I asked whether rapid shifts in question topics was a specific strategy for eliciting evidence, and she responded that because there is only a limited amount of time in which to assess the claim, and because most claims contain a few key issues that required cross-examination in order to determine credibility, she could not afford the luxury of asking questions chronologically. However, the effect of these multiple temporal and topical jumps was disorienting to say the least, and while some claimants were impressively adept at adjusting to these rapid shifts, others became visibly agitated and increasingly unfocused or vague in their answers, which could lead the Member to infer that there was inconsistency in the testimony, which could in turn lead to a decision that the claim was not credible.

In addition to the random order and movement of questioning, the wording of the questions themselves warrants close examination in order to better understand what kind of information or knowledge the Board Member is trying to elicit and/or considers a 'good' answer. I am particularly interested in Members' questions which utilize terms referring to the claimant's sexual identity, as they form a critical component of the overall assessment of the credibility of the claim. As noted above, questions about sexual experiences, sexual identification and/or knowledge about sexual cultures could come 'out of left field' at any point in the hearing. One minute a claimant might be asked if she knows about the laws pertaining to sexuality in her country of origin and the next question might be about where the LGBT refugee support group meets in Toronto. Despite the (apparent) random order of questions assessing the credibility of the claimant's sexual identity, I often heard the same questions being asked in the hearings I attended. Not surprisingly, the appearance of similar questions about sexual identity in multiple hearings is not a random coincidence. In interviews with Board Members and IRB staff, I was repeatedly told that SOGI refugee claims are now a standard component of all Board Members training. One staff member reminded me that the IRB has come a long way since the first lesbian and gay refugee claims were lodged in the early 1990s (see also LaViolette 2010): Whereas it used to be the case that some Board Members dismissed a claim if the person did not 'look' gay or lesbian,

now all Board Members get three weeks of in-class training, and SOGI claims are a standard module in the training package. This module was developed by staff members in consultation with national lesbian and gay rights groups like EGALE and expert consultants in sexuality, gender and migration law. One of these consultants gave me a copy of the guidelines (LaViolette 2004) that are provided to Board Members to help them better understand the particularities of these claims. The guidelines begin by noting that “assessing the veracity of a refugee claimant’s homosexuality is a very difficult, sensitive and complex task in the context of an administrative or quasi-judicial hearing” (LaViolette 2004: 3). They then outline some “general principles” such as “there are no universal characteristics or qualities that typify sexual minorities” (LaViolette 2004: 4) and that many factors may intersect with the sexual orientation of an individual (the primary example provided is gender i.e. sexual minorities often challenge dominant gender values) (LaViolette 2004: 6). The guidelines emphasize the centrality of ‘credibility’ in the determination of a claim and that the onus of proof is on the claimant, and that in rejecting a claimant’s testimony regarding his sexual orientation Members must be careful to clearly identify the contradictions, inconsistencies, omissions or implausibilities that support a negative conclusion on the issue of membership in the particular social group. This is followed by a note indicating that Members have to be careful when it comes to implausibility: “The Federal Court has cautioned that because refugee claimants come from different cultures, actions which appear implausible when judged from Canadian standards might be plausible.” (LaViolette 2004: 10). As will be seen below, the challenge of determining (im)plausible sexual desires, identities and relationships based on written and oral testimony can be extraordinarily difficult, if not impossible, given the potential for mistranslation and/or misinterpretation based on privileged definitions and meanings utilized in the institutionalized discourses of the hearing.

The guidelines include “a proposed model of questioning claimants about their sexual orientation”, and it is in this section we see the possible origin of the similar questions that I heard in various hearings. It is somewhat telling that this section begins with the statement, “It cannot be stressed enough, however, that there are no true answers to these questions” (LaViolette 2004: 12), which, I would argue, reveals more about linguistic inequality in the refugee determination process than perhaps any other sentence in the guidelines, and which I will return to below. There are three general “Subjects of Inquiry” in this section, each containing a series of suggested questions:<sup>5</sup> 1) Personal & Family (When did you come to realize your homosexual orientation? What did you personally believe about homosexuality when you realized you were lesbian or gay? Have you been involved in a relationship with someone of the same sex in the past? Have you told anyone about your sexual orientation?) 2) Lesbian and Gay Contacts and Activities in

the Country of Origin & Canada (Where do gay men or lesbians go to socialize in your country of origin? How do they meet each other? Did you know of any lesbian or gay groups in your country of origin? What do you know about gay and lesbian communities in Canada? Do you socialize in gay and lesbian bars? Which ones? How different are lives of gays and lesbians in Canada compared to back home?) and 3) Discrimination, Repression & Persecution in the Country of Origin & Canada (What do you fear if you return to your country of origin? What are the official laws on homosexuality in your country of origin? Do you know the legal status of gays and lesbians in Canada?) (LaViolette 2004: 13–16).

I would like to focus on the sexual identity terms utilized in these questions (which may be asked in the hearing) and the claimant's answers to these questions in order to better grasp how pre-existing knowledge (or lack there-of) and (un)familiarity with these terms produce linguistic inequality, with potentially severe consequences for the refugee claimant. In some hearings a claimant might be asked a question like, "When did you first realize you were homosexual?" followed by "Where did you realize this?" Some claimants would answer the first question with a specific age like '14', but in one hearing I attended a claimant paused long enough for the Member to ask, "Did you understand the question?" The claimant then hesitantly answered, "When I was in university". The claimant's pause could have been interpreted to be problematic by the Member because this question is included in the SOGI guidelines which implies that the claimant should be able to provide an answer in a relatively straightforward and decisive manner. Someone who is pausing could be lying because someone who is telling truth is assumed to be able to quickly recall such a significant moment, based on the Member learning from the guidelines that self-consciousness of one's sexual orientation is a significant event that is recognized at a particular moment. But the question "when did you realize you were a homosexual" is freighted with particular socio-cultural assumptions about sexual identity and development due to the presence of terms like 'homosexual', which have been identified in sexuality research as socio-cultural concepts located in Euro-American colonial worlds which now have extensive transnational mobility and interpretive variability.<sup>6</sup> Ethnographic research has demonstrated how connections between sexual practices, desires, relationships, identities and terminologies are historically and culturally variable, so terms like 'homosexual' and 'gay' may be unfamiliar and/or have different meanings related to different socio-cultural contexts. Not all societies may have sexual identity terms that easily equivocate to 'gay' or 'homosexual', and even in societies with identity terms for people who engage in same-sex relationships, there may be significant temporal and/or cognitive gaps between the memory of initial desire for someone of the same sex and realizing that one's desires are associated with a particular sexual identity term. There is also evidence demonstrating that those

who engage in same-sex sexual practices may not identify with a same-sex sexual identity term even if they are aware of that term associated with that practice in their own language.<sup>7</sup>

If we return to the claimant's pause after the question posed above, it could be the case that he was pausing to figure out what the Board Member was asking; perhaps he had same-sex relationships when he was younger, but had not thought of himself as 'a homosexual'; perhaps he had not thought of himself as 'a homosexual' until he was accused of being one by someone else; perhaps he had not thought of himself as 'a homosexual' until he arrived in Canada and filed a refugee claim because in his country of origin he had married a woman and had a child while he continued to have sexual relationships with men and did not therefore perceive himself as 'that kind of person'. It is also possible that the answer to the Member's question was written in the claimant's PIF, where these kinds of events and moments are usually noted with details of specific dates and locations, so the claimant may have been pausing to remember what was written there. The possible pause to remember the details of one's own life written in a document utilizing a particular format and style reveals how, in addition to assumptions about sexual desires being attached to a particular moment of self-consciousness about identifying as 'a homosexual', sexual identity terms in the hearing are also defined and evaluated through spatial and temporal grids through which the claimant and their antagonists move. Complex mental, emotional and sensorial processes become precisely timed and located facts written in chronological order on the PIF (and in other documents) which the claimant is expected to be able to reproduce exactly in their oral testimony. In most cases, it was impossible to know how the Board Member interpreted the claimant's answer as they would not give an opinion on how well the question was answered. However, in one case, when a claimant told the Board Member that she realized she was lesbian when she was 14, the Member responded, "That's very young to have that kind of realization", simultaneously conveying his pre-existing knowledge/bias about 'lesbian' sexual identity formation and his moral judgment about when one *should* know their sexual identity.

I also found that questions pertaining to the claimant's knowledge of "lesbian and gay contacts and activities in Canada" contained similar pre-existing conceptualizations of and connections between sexual desires, identity terms and cultural practices associated with those terms. In hearings, a claimant could be asked if they knew what the acronym "LGBT" stood for. While some had no problem with this, others struggled with the terms. One claimant only remembered 'gay', and then started to mumble words to himself as he searched for the other terms. Finally he said, "the other words have jumped out of my head". Members might move on to a different set of questions, but then return to the acronym again later in the hearing (often there was no change in the answer). Other claimants could

be asked whether or not they went to LGBT bars and clubs in Toronto, and if so, where they were located. In some cases, a Board Member might hold up a photo of a claimant marching down Yonge Street with another woman during the annual Pride parade in Toronto and ask the following questions:

*Board Member (BM): What day was that?*

*Refugee Claimant (RC): Pride was in....I think June?*

*BM: In June?*

*RC: June... I don't remember the exact dates*

*BM: It's not that long ago... you don't remember the first time you had physical contact with this woman?*

*RC: It was at night after Pride*

*BM: But you don't know when it was*

*RC: I don't know the date*

*BM: You think it was June*

*RC: I think it was*

*BM: Beginning, middle, or end of June?*

*RC: (sighing)... I think between the middle and end...*

This line of questioning could have been derived from the guidelines, which state, "Many gay men and lesbians find it easier in Canada to meet other gay people, to get involved in social activities, to go to bars or access gay and lesbian culture" (LaViolette 2004: 18). While this may be true for some refugee claimants, it may not be the case for others. A number of the refugee claimants told me that they did not spend much time in the bars and clubs on Church Street, the centre of Toronto's 'gay village'. One woman, Anna, said that she would like to go more often, but she lived in Etobicoke, a suburb of Toronto, and it would take her too long to get home on public transit; furthermore, she was working long hours at a nursing home, and was usually too tired to go out. Alimi, a bisexual identified man from Nigeria, had recently attended his first ever Pride parade, and while he had been amazed at how "open" everyone was, he was also intimidated by the very public display of sexuality, and he tried to stay away from cameras because he was worried that a photo of him might be seen 'by the wrong people'. While most of the people I interviewed were aware and appreciative of the openness of sexual diversity in Toronto and the relatively easy and safe access to queer spaces and social life (compared to where they came from), there were other factors which caused them to not feel safe or secure. Most of the interviewees could not afford to live in queer friendly downtown neighbourhoods, and were often finding accommodation in shelters, homes of family members who did not know about their sexual orientation or apartments in the outer suburbs where significant numbers of people from similar ethno/national backgrounds lived, resulting in what many felt was a need to continue to be discreet about where and with whom they were seen. The

precariousness of accommodation and work, combined with long internalized feelings of fear and distrust of any queer space or gathering meant that a number of interviewees did not have a well developed sense of mainstream Toronto LGBT topography and culture in the way that the guidelines imply they should. Furthermore, we might want to question what and where exactly is 'LGBT culture' and who participates in it? In other words, the Board Member's (and training guidelines) assumption that 'all' queer people congregate in the same spaces and at the same events, or that all queer people should be knowledgeable of these spaces and events, elides significant racial, gendered, sexual and ethno-national differences that produce multiple 'queer' sites and communities across the greater Toronto area. In other words, to assume a particular knowledge of certain clubs, groups and locations associated with "LGBT" acronym is once again an example of socially preconditioned meaning assessments which impose a homonormative (racialized, classed, and ethnocentric) vision of queer life. The fetishization of time and place in questions aiming to determine the credibility of sexual identity is a manifestation of a juridico-legal framework operating with Euro-American conceptualizations of socio-sexual identities i.e. a specific set of terms that are premised upon a staged model of sexual identity development and belonging that is raced, classed and gendered.

### 3. Disciplinary comments and sighs

My examination of the refugee claim hearing up to this point has focused on procedural ideology and terminology in questions posed by the Board Member, that is, how sexual minority terms in questions often contain socially preconditioned meanings about sexuality that are connected to particular socio-cultural, historical and political formations. However, while most of the discussion in the hearing was organized around a question and answer format, in which the Member asked questions and the refugee claimant provided all the answers, there were occasional moments in which the Member would comment on an answer, indicating doubt of its veracity, and thus sometimes revealing the Member's perspective on what a good answer should sound like. I have already noted one instance above, in which a Board Member indicated his disbelief that a claimant could know that she was a lesbian at age 14. In another case, the Board Member held up a photo of the claimant's girlfriend from Jamaica and asked the claimant how old the girlfriend was when the photo was taken. She responded, "36". The Member was silent, looking intently at the photo, and then replied, "She looks much younger than 36". She then stood up and walked around the room showing the photo to the claimant's legal counsel and me saying, "Don't you think she looks younger than 36?" (we

remained silent). In another case, a claimant was explaining why he returned to Kenya after living in the USA for two years, where he had an ongoing relationship with another man. The Member asked the claimant if he had any sexual relationships after he returned to Kenya, to which the claimant said no, and the Member responded, "How do you go from having a partner in the USA for two years to nobody in Kenya for five years?" In both cases, the Members expressed their disbelief in the veracity of the claimant's answer and at the same time conveyed their belief or opinion as to what the right answer should sound like. In one case, the Member assumed she could tell the age of a stranger from a different ethno-racial background based on a photograph. In the other case, the Member indicated his belief in what a normal sexual appetite of a young homosexual male should be. Once again, the likely negative assessments that were derived from these exchanges appear to be based on the assumption of a universal 'common sense' about how we look as we age in one case, and how often we need to have sex at a certain age in the other case, assumptions that gloss over a vast range of other potential interpretations or explanations.

In some hearings, particularly the ones that were not going well and were taking a long time (sometimes three to four hours), there could be unspoken signs from the Member indicating that they were not pleased with the claimant's answers. These usually took the forms of a sigh. For example, at one hearing the Member was cross-examining the claimant's educational background and finding discrepancies between the claimant's answers and the documentation in her file in relation to particular dates and locations. After a series of questions regarding discrepancies between the claimant's different home addresses during her high school and university studies, the Board Member was silent for almost a minute as he made notes, and then sighed heavily before taking up a different line of questioning. While I did not remember to ask the claimant if she had noticed this sigh after the hearing, I interpreted it to be a clear sign of the Member's displeasure with her answers and a non-verbal cue that he had made a negative decision as to the credibility of the claim thus far.

#### 4. The sixth sense

Non-verbal cues like sighing give us some potential insight into a Member's emotional state during the hearing, and I became interested in finding out if Members were conscious of feelings or emotions that might influence their linguistic evidence based decision making process. Perhaps the best example of the dialogue between a linguistic evidence based decision making process and an emotional sense based decision making process appears in Showler's (2006) fictional



vignettes of refugee hearings, in which he sometimes narrates the case from the Member's perspective. I was particularly interested in one vignette which takes us through a case involving a Russian man claiming asylum based on sexual orientation persecution. The chapter begins with a description of the Board Member, Hester Laframboise, going to work with "an armful of books, all pertaining to homosexuality, a topic that had consumed her interest for the entire weekend" (Showler 2006: 183).<sup>8</sup> Laframboise discusses with her staff how she has found some problems in the story of the Russian claimant, such as the fact that he lodged a complaint with the Russian police after he was beaten when he should have known that the police were notoriously homophobic, and that she will focus on these issues in the hearing.

When Laframboise enters the hearing room, Showler writes that she is surprised by the appearance of the claimant: He is "not at all what she expected" as he's "surprisingly tall with unruly hair, and a face that was closed to the world" (Showler 2006: 186). It is notable how an individual's body type and facial features make a first impression on this Board Member — while she is clearly not making a decision based on these features, the fact that she is surprised indicates there could already be particular assumptions at work i.e. big men are not intimidated as easily, or a 'stone-face' makes it harder to believe the claimant's story. Based on her first impression, Laframboise thinks, "this could be an act", indicating her doubt of the claim's veracity based on physical features and demeanor. Later in the hearing she returns to reflecting on the size of the claimant as she has trouble believing that this "large man" was afraid of fellow workers and skulked about the halls of his building fearing physical confrontation. "Also, he didn't look gay, not in any of the ways she understood, although the literature of the weekend had educated her on that point. Gays came in all shapes and sizes, eluding the stereotypes as much often as matching them" (Showler 2006: 191). While this passage indicates how Board Members may be self-aware of their heterosexist or ethnocentric tendencies, it also reveals how awareness of limits of knowledge may induce reliance on decisions that are partially based on other registers in addition to linguistic evidentiary based assessment techniques.

Following these feelings of doubt based on her appraisal of his appearance, Hester re-asserts her belief in the deductive process of cross-examination of oral testimony:

Hester believed she could use reason, knowledge and intuition to drill through the claimant's story. With patience and the right questions you could discover the truth. Most often truth was discovered in the details, the small facts surrounding the large event. Small facts spontaneously rendered, that could not be prepared in advance. You had to look for the little things. She had to believe that, otherwise she would be the fraud, supplanting her reality for theirs. (Showler 2006: 192)



Yet, a few paragraphs later, when Hester is questioning the claimant about being beaten in a dormitory room where he was caught having sex with another student, she becomes frustrated by his vague answers, and after asking him to “provide more details about the beating”, she sees “a strained look” pass over his face and wonders if she had seen “a flash of pain in those dark eyes... She had seen something, pain, possibly fear, but real, the briefest opening of a curtain” (Showler 2006: 194). Once again, this passage speaks to the investment in finding emotional, sensorial cues such as ‘pain’ or ‘fear’. Much of the rest of the chapter oscillates between these two deductive processes, the emotional-sensorial and the linguistic-evidentiary. By the hearing’s mid-point Showler writes, “She had no gutsy interior emotions at the moment. This fellow wasn’t giving them anything. Nothing. He was shut down and she couldn’t find a way to pry him open. She also couldn’t pick up any hint of homosexuality, not a whiff. Not that she would know. She had to be honest.” (Showler 2006: 196) Showler repeatedly illustrates the ways in which deductive logic through questioning and intuition based on ‘gutsy interior emotions’ are combined to determine the truth of a claim, and how, when a Board Member is aware of their limits of knowledge, they may rely more heavily on sensorial cues. The chapter ends without a formal decision (Hester indicates that she will provide a written decision), but it is quite clear that it will be negative based on credibility, that is, lack of sufficient evidence that this man is gay and that he suffered the alleged acts of persecution (Showler 2006: 208).

While my interviews with Board Members did not reveal the same level of intimate detail about their own feelings or emotions during the hearing, some provided me with similar anecdotes from sexual orientation refugee cases which indicated a similar calculus of the emotional-sensorial and linguistic evidentiary techniques at work: these anecdotes were from cases where the claimants, both men, had witnesses who were lovers or ex-lovers testify before the Board Members. One Board Member said that when the witness walked into the hearing room, the two men looked at each other and blushed deeply — it was clear to the Member that they were in love. Another Board Member said that “accessing the emotional is critical”, and that if the claimant’s partner was in the room, “you can tell its genuine”. While the Members noted they could not use these moments or cues as the primary rationale for their decision, they indicated that they nevertheless made each case easy to decide. One Member summed up this approach by saying, “you need head and heart to be a good Board Member”. I heard similar comments in interviews with other IRB staff who are involved in training Board Members. One stated that, “You can’t dismiss your sixth sense, but you can’t rely on it alone without testing conclusions objectively”. Another noted that she thinks the best Members utilize a combination of “empathy and evidence” in making their decisions.

But how much should a Member trust his heart? How sure can one be about her 'sixth sense'? How much can be deduced from corporeal cues, especially in highly organized and charged moments in which the misinterpretation of bodily signs is possible due to the constraints and structures of this bureaucratic and judicial event? The examples that Members provided me with indicate an assumption of universal emotions associated with particular corporeal displays, i.e. we all know 'true love' or 'real fear' when we see it. Furthermore, there is an assumption that these universal emotional displays provide a momentary glimpse into the deeper truth of the refugee claimant's story: Beneath the written/spoken testimony lies an authentic emotional core connected to individual experiences. This emotional core cannot be controlled or consciously manipulated, hence its appeal as a conduit to what a person 'really' is. Conversely, as Showler's vignette about the gay Russian refugee claimant illustrates, if the claimant is 'hard to read' and does not display any emotions while recounting traumatic or intimate moments, the Board Member may become suspicious of the story's veracity. Thus, it would appear that sensing and deciphering emotions is a key component in the assessment of refugee claims in addition to the juridical deductive framework based on oral examination of texts and narratives. However, as Catherine Lutz and Geoffrey White note in their review of anthropological research on emotions, significant tensions exist between psychobiological theories which argue for universal human emotions (sometimes referred to as a hardwired/materialist perspective) and a theoretical framework which views emotions embedded in socially constructed categories in which the importance of cultural systems or worldviews is fundamentally important to emotional experience. Lutz and White (1986:420) outline significant socio-cultural variation in notions of privacy, valuation of emotional displays, and ideas of appropriate self-conduct in public arenas, any/all of which may impact the ways in which emotion is conceptualized and performed in social activities. More recently, research on emotion has focused on its political dimensions and the ways in which power and authority may be organized through and by particular attachments of emotions to objects. I find Sara Ahmed's (2004) discussion of how emotion works on surfaces of bodies in order to define and align some within a 'proper' community like the nation-state and others abject to and outside of that community to be particularly applicable to the context of the hearing. Like Ahmed, I am concerned not with what emotion 'is' but rather with what it 'does', or rather what is done with perceptions of emotion in a quasi-judicial state event which prioritizes linguistic evidence based testimony. In contexts of intense cross-cultural translation located within the structure of a highly charged quasi-judicial setting where the refugee claimant's future is being decided, emotions may be displayed, repressed or performed in relation to a multiplicity of factors. The Board Member's interpretation of emotional cues or lack thereof is

presupposed upon reliance on their own emotional register and the assumption that they can accurately perceive the emotional register of the refugee claimant, an assumption that I am arguing may lead to misrecognition, misinterpretation and misjudgment. Even though these emotional interpellations are not formalized in the evaluative process (or training) of the adjudicator, they appear to undergird or legitimize linguistic evidence based assessment techniques, thus revealing how particular arrangements of discourse, terminology and emotion do the work of gate-keeping for the nation-state.

## 5. Conclusion

In this paper, I have examined how Canadian refugee claim adjudicators assess the credibility of sexual orientation refugee claimants by asking questions which contain terms imbued with particular socio-cultural, historical and political meanings. As Miller notes, the particular kind of identity created, named and rewarded in these hearings is one constrained by asylum's historically specific development and role in the modern regulation of the movement of people:

Articulating gayness within the asylum process, bringing queer sexuality into the national consciousness of who is here, or who should be here, can be seen as part of a broader engagement with multi-layered legal principles, national prejudices, and struggles for public space involving not only asylum seekers but their advocates including NGO champions. All are caught up in the process of making meaning for one's national and international audience at the same time as an individual subject seeks refuge. (Miller 2005: 144–145)

Over the past 20 years, the Canadian refugee system has increasingly recognized sexual orientation and gendered identity as particular kinds of social groups worthy of protection under the refugee laws of Canada. One of the outcomes of such recognition is increased attention to and assessment of the definitions and meanings of sexual orientation and gender identity terms, that is, determining appropriate modes of questioning that will help adjudicators determine the 'credibility' of sexual orientation or gendered identity of the claimant. While training guidelines indicate that adjudicators must be careful in their assessment of the 'implausibility' of sexual orientation and gender identity claims and that in fact there may be 'no true answers', the order and content of questions in the hearings I attended revealed the application of Euro-American socio-sexual identity terms with socially preconditioned (historic, geographic, and political-economic) meanings about sexual identity development, culture and community, which manifest gendered, raced, and classed knowledge that privilege the Member and work

against the refugee claimant. These questions, based on guidelines derived from recommendations of some LGBT scholars and activists, assume a particular kind of 'queer literacy', and assumptions about what constitutes a correct answer belie how sexual identity terms are embedded in juridical bureaucratic events and enable authority to be claimed and retained. What is relatively new here is the way in which a particular discourse about 'authentic' desire, sexuality and identity is now being utilized by the bureaucratic machinery of the nation-state as a form of gate-keeping, such that knowledge and understanding of this discourse and its key terms improves one's chances of being recognized as an 'authentic' refugee, opening the door towards 'legitimate' citizenship. Yet while some refugee claimants demonstrate competency with this discourse, others do not, and in hesitating or stumbling over an answer they risk losing credibility, having their claim rejected, and being deported to their country of origin.

I have also tried to demonstrate that the determination of credible sexual orientation in refugee hearings is simultaneously influenced by non-linguistic, non-verbal cues. Conversations with IRB Members and staff indicate reliance on an ability to perceive and interpret emotional cues pertaining to questions about intense events or relationships. Interpreting corporeal signs like blushing upon seeing a lover and relying on 'the heart' to help determine if a story is true reveals an emotion-based evaluative framework that is at least partially applied alongside the linguistic evidence based framework in determining credibility of claims to be lesbian or gay. This reliance on an emotional register may reflect adjudicators' moral dilemmas over the limits of their knowledge, but these officers in charge of one component of immigration control and naturalization procedures are also moral agents who are responsible for interpreting and applying the policies of the nation-state (Fassin 2011:218), and thus assessment of emotional display as a mode of accessing the truth (or falsity) of a claimant's story helps to illustrate how the bureaucratic machinery of the nation-state produces a discursive network of terminological, corporeal and sensorial registers in order to define and sort out good migrants from bad ones. In other words, the nation-state's gate-keeping policies and practices are manifested in part through discourses and terminologies that are enhanced through an assemblage of emotional and sensorial assessments gleaned from individual stories of love, loss and trauma (Ahmed 2004, White 2010).

In his overview of the governmentality of immigration, Fassin observes a paradox: that as asylum is increasingly disqualified both quantitatively and qualitatively, nation-states develop increasingly sophisticated instruments to scrutinize the 'truth' of applicants who, in the great majority of cases, will be rejected and end up added to the pool of illegal aliens after they have exhausted every possible appeal (Fassin 2011:221; see also Fassin & Rechtman 2009:250–274). Adjudicators' terminological and sensorial registers, employed to assess the credibility of sexual

orientation of refugees, are some of the instruments of this ‘truth finding’ machinery. The effect of heightened scrutiny and application of multiple assessment registers is an inevitable increase in the number of rejected asylum seekers, which then confirms the nation-state’s claim to need to further increase security and scrutinization of asylum due to the increased number of ‘bogus’ asylum seekers. It is a pernicious circular logic, indicative of the heightened securitization and gate-keeping mechanisms of the late-liberal nation-state and the subtle, yet powerful techniques through which citizenship is granted in ways that privilege and give life to particular racial, gendered and classed formations while rendering others illegitimate, unworthy and ultimately disposable.

## Notes

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1. <http://www.irb.gc.ca/Eng/brdcom/references/procedures/proc/rpdspr/Pages/rpdp.aspx> (accessed October 24, 2011) and <http://www.irbcisr.gc.ca/Eng/tribunal/rpdspr/ClaDem/Pages/ClaimGuideDem12.aspx> (accessed January 25, 2013). These webpages have since been removed and/or revised: The Immigration and Refugee Protection Act has undergone substantial revisions, implemented in December 2012, which have changed the refugee claim process and documentation standards. My research was conducted over a 14 month period from July 2011 to September 2012. The revised “Claimant’s Guide” can be found at: [http://www.irb.gc.ca/Eng/RefClaDem/Pages/ClaDemGuide.aspx#\\_Toc340245825](http://www.irb.gc.ca/Eng/RefClaDem/Pages/ClaDemGuide.aspx#_Toc340245825) (accessed January 4, 2014).

2. See footnote 1 regarding changes to the Canadian refugee determination process implemented in December 2012.

3. As Nader observes, the ethnographic work of ‘studying up’ can be challenging, as powerful individuals and institutions are often literally and figuratively well guarded. I found it difficult to access Board Members. I submitted a request to the IRB to interview Board Members, but was granted access to interviews with ‘policy and procedure’ staff members. I met Board Members through other networks of contacts.

4. I am employing Showler’s (2006: xi) approach to writing about hearings: I have fictionalized all examples from hearings by combining conversations and events from separate hearings and changing all identifying details of refugee claimants and Board Members (i.e. age, gender, profession, country of origin, family background). Therefore, the following examples from hearings do not refer to or portray any individual, whether refugee claimant or any other person involved with the refugee claim process. My interest is not in identifying IRB members or refugee claimants but rather in analyzing the organizational framework and process of the hearing and the underlying knowledge that is applied in the decision making process.

5. What follows are just a few examples of questions for each section.
6. See, for example, Boellstorff (2007), Leap & Lewin (2002, 2009), Murray (2009), Weston (1993).
7. While controversial, the term MSM (men who have sex with men) was developed in HIV/AIDS research as a way of identifying men who engage in same-sex practices but do not identify with a socio-sexual identity term like 'gay', which imputes exclusive male-male sexual relationships and/or identification with a social group with similar behaviours and values.
8. We are not told the titles of the books or if they pertain to homosexuality in Russia, Canada, or some other aspect of the topic of homosexuality.

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