

Refugee Law Lab Working Paper (29 January 2023)

Claim Types in Canada's Refugee Determination System: An Empirical Snapshot (2013-2021)

Sean Rehaag[⊕]

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Abstract: This article presents an empirical overview of refugee claims made in Canada from 2013 to 2021, using data obtained from Canada's Immigration and Refugee Board. The research aims to supplement standard legal research methodologies by providing an empirical snapshot of outcomes in different types of unpublished refugee claims in Canada. The article explains the research method used and presents the findings, including a broad overview of the number of claims made and their outcomes, a description of the categories of claims adjudicated, and a detailed examination of each of the main categories. The article concludes with some concluding remarks, including suggestions for future research.

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[⊕] Director of the Centre for Refugee Studies, Director of the Refugee Law Laboratory, Associate Professor at Osgoode Hall Law School, York University. This article draws on research supported by the Social Sciences and Humanities Research Council. The author is grateful for research assistance provided by Soliyana Yared. He also appreciates feedback provided on a draft presented at the Data-Driven Approaches to Asylum and Refugee Law workshop at Nordic Asylum Law and Data Lab at the University of Copenhagen's Faculty of Law (Copenhagen: September 2022).

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1. Introduction

This article presents an empirical overview of outcomes in different types of refugee claims made in Canada from 2013 to 2021, with the aim of providing context for existing research on specific types of refugee claims and suggesting areas for future research. The overview is based on data obtained from Canada's Immigration and Refugee Board through access to information requests and a data sharing agreement. The article begins by outlining why it is important to move beyond standard doctrinal legal research methodologies using published cases in the refugee law field and how an empirical snapshot of outcomes in different types of unpublished refugee claims in Canada can helpfully supplement such research. Next, the article explains the research method used to create the snapshot. Then the article moves on to present the findings of the research. It does so first by offering a broad overview of the number of claims made and outcomes in those claims, then describing the categories of claims adjudicated, and then providing a detailed examination of each of the main categories. Finally, the article offers some concluding remarks, including suggestions for future research.

2. Context: Beyond Published Cases

Much existing scholarship about Canada's refugee determination system relies on traditional legal research methods, and in particular close readings of published cases. These cases are often selected because they are influential. For example, scholars may focus on appellate level cases that clarify key legal principles, and that bind hierarchically inferior courts and tribunals.¹ Similarly, scholars may focus on cases that are frequently cited in other decisions,² or cases that offer an occasion for a particularly instructive analysis.³ Sometimes, scholars attempt to be more comprehensive by reviewing all published cases involving a particular type of claim. For example, a scholar may identify all published cases that mention gender-based violence to offer an account of how the refugee determination process deals with these sorts of claims.⁴

¹ See e.g. Colin Grey, "Thinkable: The Charter and Refugee Law after Appulonappa and B010" (2016) 76 SCLR (2d) 111; Nicole LaViolette, "The Immutable Refugees: Sexual Orientation in Canada (A.G.) v. Ward" (1997) 55 U Toronto Fac L Rev 1; Audrey Macklin, "Mr. Suresh and the Evil Twin" (2002) 20:4 Refuge 15.

² See e.g., James Simeon, "The Application and Interpretation of International Humanitarian Law and International Criminal Law in the Exclusion of those Refugee Claimants who have Committed War Crimes and/ or Crimes Against Humanity in Canada" (2015) 27:1 IJRL 75.

³ See e.g., Constance MacIntosh, "When "Feminist Beliefs" Became Credible as "Political Opinions": Returning to a Key Moment in Canadian Refugee Law" (2005) 17:1 CJWL 135.

⁴ See e.g., Efrat Arbel, "The Culture of Rights Protection in Canadian Refugee Law: Examining the Domestic Violence Cases" (2013) 58:3 McGill LJ 729; Constance MacIntosh, "Domestic Violence and Gender-Based

These are, of course, not the only research methodologies used by scholars interested in different types of refugee claims. Some scholars use a variety of research methods, such as interviews,⁵ ethnographic observations,⁶ reviews of transcripts and case materials,⁷ and many other methods. However, it would be fair to say that research on published cases remains the dominant methodology used by legal scholars to study Canadian refugee adjudication.

While this methodology can offer valuable insights, it also has significant limitations. One main limitation is that most refugee determinations are unpublished. Moreover, published refugee determinations are a skewed subset of the larger pool of decisions. The causes of this skew relate to how cases move through Canada's refugee determination system and to publication practices at the various levels of that system.

When a person makes a refugee claim in Canada, the government determines whether their claim is eligible for referral to the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB).⁸ Most claimants are eligible for referral, but some claimants are found to be ineligible.⁹ Some of the latter are entitled to a Pre-Removal Risk Assessment (PRRA),¹⁰ and some can be removed from Canada without any risk screening.¹¹ When claims go through PRRAs or where there is no process at all, there is no published decision unless there is a subsequent judicial review. Publication of judicial reviews is discussed in more detail below, but it is worth highlighting that claimants who are found to be ineligible for referral to the RPD face systemic barriers that constrain their access to judicial review – including for example that they are not entitled to automatic stays of removal pending determination of the judicial review.¹² As a result, although thousands of refugee claimants have been found ineligible for referral, there are no published first instance decisions for claimants who are found ineligible for referral and comparatively

Persecution: How Refugee Adjudicators Judge Women Seeking Refuge from Spousal Violence—and Why Reform Is Needed” (2009) 26:2 *Refugee* 147; Jenni Millbank & Anthea Vogl, “Adjudicating Fear of Witchcraft Claims in Refugee Law” (2018) 45:3 *JLS* 370.

⁵ See e.g., David Murray, *Real Queer?: Sexual Orientation and Gender Identity Refugees in the Canadian Refugee Apparatus* (London: Rowman & Littlefield International, 2015); Tai Jacob & Natali Oswin, “Trans migrations: Seeking refuge in ‘safe haven’ Toronto” (forthcoming) *Canadian Geographer*.

⁶ See e.g., Sule Thomkinson, “Who are you afraid of and why? Inside the black box of refugee tribunals” (2018) 61:2 *Canadian Public Administration* 184.

⁷ See e.g., Cécile Rousseau et al, “The Complexity of Determining Refugeehood: A Multidisciplinary Analysis of the Decision-making Process of the Canadian Immigration and Refugee Board” (2002) 15:1 *J Refugee Studies* 43.

⁸ *Immigration and Refugee Protection Act*, SC 2001, c27 [IRPA] s100-102.

⁹ Grounds for ineligibility for referral include: having made a prior refugee claims in Canada or the United States, being recognized as a refugee in another country where the claimant can be returned, being subject to the Canada-US Safe Third Country Agreement, and being inadmissible on certain grounds related to security, criminality or violating international human rights. *Ibid*, s101.

¹⁰ *Ibid*, s112-114.

¹¹ The largest group who are ineligible for referral and who are not entitled to any risk screening prior to removal are refugee claimants who are covered by the Canada-US Safe-Third Country Agreement. *Ibid* s112(2)(b).

¹² *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] s231.

few published judicial reviews of ineligibility determinations.¹³ Not coincidentally, there is little published legal scholarship on this group of refugee claimants.¹⁴

When claimants are found to be eligible for referral, their claims are decided at first instance by the RPD. In the past, hundreds of RPD decisions were published each year, though these represented less than 5% of RPD determinations.¹⁵ More recently, the practice since 2020 has been to cease publishing RPD decisions entirely.¹⁶

Where the RPD denies a refugee claim, most claimants are entitled to appeal the denial to the Refugee Appeal Division (RAD) of the IRB¹⁷ and all claimants can apply for judicial review in the Federal Courts (either directly from the RPD for those who cannot access the RAD or from the RAD for those who can).¹⁸ It is also possible for the government to appeal or to seek judicial review of positive RPD decisions,¹⁹ but this is rare. For example, from 2008 to 2016, out of 33,920 applications for judicial review of refugee determinations, only 231 (0.7%) involved applications from the government challenging positive decisions, whereas 33,689 (99.3%) involved applications from individuals challenging negative decisions.²⁰ Similarly, from 2013 to 2014, out of 1,871 appeals to the RAD, 59 (3.2%) involved the government appealing positive RPD decisions, and 1,812 (96.8%) involved individuals appealing negative RPD decisions.²¹

¹³ A search conducted on 24 November 2022 on CanLII for Federal Court decisions that include the terms “ineligible”, “refer!” and “refugee” located 149 published cases in the past 3 years. By contrast a search conducted on the same date for Federal Court decisions that include the terms “Refugee Protection Division” or “Refugee Appeal Division” (terms that would be included in most decisions involving judicial review of IRB refugee determinations) found 1,590 cases during the same period.

¹⁴ One exception is that ineligibility due to the Canada-US Safe Third Country Agreement is a topic that has received considerable scholarly attention, but most of that attention has focused on the policy level and on questions related to compliance with constitutional and international law. See, e.g., Idil Atak, Zainab Abu Alrob & Claire Ellis, “Expanding Refugee Ineligibility: Canada’s Response to Secondary Refugee Movements” (2021) 34:3 *Journal of Refugee Studies* 2593.

¹⁵ For example, the IRB published 828 RPD cases in 2012 (out of 24,747 refugee determinations on the merits) and 683 RPD cases in 2013 (out of 27,721 refugee determinations on the merits). The numbers of published RPD decisions were calculated by searching on 24 November 2022 on CanLII’s IRB database for “RPD File” NOT “RAD File”, filtered for the relevant years. The former term is included in the header of all RPD decisions, and the later term is included in the header for all RAD decisions. Statistics on the overall number of refugee determinations on the merits were calculated based on data from the United Nations High Commissioner for Refugees, and include only cases decided on the merits (i.e. excluding cases that are abandoned, withdrawn or otherwise closed). United Nations High Commissioner for Refugees, “Refugee Data Finder” (2022) online: <<https://www.unhcr.org/refugee-statistics>> (permalink for specific search: <<https://www.unhcr.org/refugee-statistics/download/?url=Buzla7>>).

¹⁶ For example, the IRB only published 37 RPD decisions in 2020 and 25 RPD decisions in 2021. These figures were calculated using the same methodology as described in *Ibid*.

¹⁷ IRPA, *supra* note 8, s 110. For a discussion of limits on access to the appeal, see Angus Grant & Sean Rehaag, “Unappealing: An Assessment of the Limits on Appeal Rights in Canada’s New Refugee Determination System” (2016) 49:1 *UBCLR* 203.

¹⁸ IRPA, *supra* note 8, s 72.

¹⁹ *Ibid*, s 72 & 110.

²⁰ Sean Rehaag, “Judicial Review of Refugee Determinations (II): Revisiting the Luck of the Draw” (2019) 45:1 *Queen’s LJ* 1 [Rehaag, “Luck II”] at 16-17.

²¹ Grant & Rehaag, *supra* note 17 at 221.

Because most RPD decisions are not published and because the RPD is the end of the process for all but a handful of claimants who get positive RPD decisions, almost all published decisions involve appeals or judicial review of initial negative RPD decisions. Moreover, the small number that involve appeals or judicial reviews of positive decisions represent exceptional cases where the government chose to challenge a negative decision.

Even if one focuses only on RAD appeals of mostly negative RPD decisions, however, decision-making combined with publication practices further skew the dataset of published decisions. As of the time of writing, 11,977 RAD decisions made between 2013 to 2021 were published,²² out of 46,427 RAD cases finalized during the same period.²³ It is also worth noting that the proportion of published RAD decisions has declined in recent years.²⁴ The RAD does not explain how it chooses which decisions to publish, but there is no reason to think that the decisions the RAD publishes are representative of the RAD caseload, which as we have seen is already heavily skewed towards initial RPD denials.

Decision-making and publication practices in Federal Court judicial reviews also further skew the subset of published cases (beyond the skew towards initial denials of refugee protection in the cases that come to the Federal Court to begin with). Unlike in most areas of law, refugee claimants do not have a right to full access to judicial review.²⁵ Instead, they must first seek leave, or permission, from the Federal Court to hear their application.²⁶ In theory the test for leave is permissive: leave should be granted if there is a “fairly arguable case”.²⁷ In practice, however, most applications do not clear this hurdle. This may in part be due to the deferential standard of review applied in many aspects of refugee law judicial review – that is, on many issues raised in refugee judicial reviews the court does not ask itself whether the decision they are reviewing is correct but merely whether the decision is reasonable.²⁸ Whatever the reason, leave is typically denied. For example, from 2008 to 2016, out of 33,920 applications for judicial review of refugee determinations, leave was granted in only 5,702 cases (16.8%).²⁹ When leave is denied, no reasons are provided, so there are no written reasons to publish.³⁰ When leave is granted and the case is determined

²² This figure was calculated by searching CanLII’s IRB database on 27 December 2022, restricted to decisions from 2013 to 2021, where decisions contain the terms “Refugee Appeal Division” and “RAD File”.

²³ Immigration and Refugee Board, “Refugee appeals statistics” online:

<<https://irb.gc.ca/en/statistics/appeals/Pages/index.aspx>> (accessed 27 December 2022).

²⁴ Using the same methodology described in note 22, the numbers of RAD cases published each year are: 2013: 397; 2014: 1,338; 2015: 1,795; 2016: 1,420; 2017: 630; 2018: 1,028; 2019: 2,025; 2020: 2,577; 2021: 767. Using the same methodology as described in note 15, the numbers of finalized RAD decisions are: 2013: 688; 2014: 1,935; 2015: 2,781; 2016: 2,967; 2017: 3,137; 2018: 4,412; 2019: 8,684; 2020: 9,555; 2021: 12,268. This means that whereas the proportion of published cases from 2013 to 2016 was near or in excess of 50%, the proportion of published cases from 2017 to 2021 was less than 25% (and as of 27 December 2022, was only 6% in 2021).

²⁵ For a discussion of the process, see Sean Rehaag, “Judicial Review of Refugee Determinations: The Luck of the Draw?” (2012) 38:1 Queen’s LJ 1 [Rehaag, “Luck I”] at 6-9.

²⁶ IRPA, *supra* note 8, s 72.

²⁷ *Bains v Canada (Minister of Employment and Immigration)*, (1990) 47 Admin LR 317, 109 NR 239 (FCA). See also *Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223 at para 18.

²⁸ For a critical discussion of standard of review jurisprudence in the immigration and refugee law context, see Jamie Chai Yun Liew, “The Good, the Bad and the Ugly: A Preliminary Assessment of whether the Vavilov Framework Adequately Addresses Concerns of Marginalized Communities in the Immigration Law Context” (2020) 98:2 Canadian Bar Review 388.

²⁹ Rehaag, Luck II, *supra* note 20 at 17.

³⁰ *Hajiyeva v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 922 at 55 (noting that the “Court does not ordinarily provide reasons for granting or denying leave”).

on the merits, the Federal Court's practice is generally to provide reasons, though this is not a statutory requirement.³¹ Publication practices with regard to reasons have shifted over time, and there have been periods where only decisions deemed to have precedential value were published.³² Since 2018 the Federal Court has published written reasons for all final decisions on the merits.³³ However, even during periods where all Federal Court decisions on the merits are published, the skew in terms of which cases come to the court (i.e. largely negative first instance decisions, and a handful of exceptional positive first instance decisions that the government decided to apply to review) is further amplified by the leave process, in that decisions are only published in circumstances where the court previously found a *prima facie* reasonably arguable case that the refugee determination was unreasonable.

Finally, it is in some circumstances possible to appeal Federal Court decisions to the Federal Court of Appeal, and beyond to the Supreme Court of Canada. Where a case proceeds to the Federal Court of Appeal, and where the Court issues written reasons those will generally be published.³⁴ But access to the Federal Court of Appeal is highly constrained. First, in cases where leave was denied by the Federal Court, there is no appeal.³⁵ Moreover, even where an application for judicial review proceeds to a full hearing on the merits at the Federal Court, appeals to the Federal Court of Appeal are only available if the Federal Court judge issuing the decision decides to certify a question for appeal.³⁶ The legal test for certification is whether there is "a serious question of general importance"³⁷ that "transcends the interests of the parties"³⁸ and that would be "dispositive of an appeal".³⁹ This test is rarely met. For example, in 2021 whereas the Federal Court decided 8,440 immigration and refugee judicial reviews and 9,997 matters in all areas of law,⁴⁰ there were only 148 appeals of Federal Court final judgements across all areas of law commenced in the Federal Court of Appeal the same year.⁴¹ In the relatively small number of cases that do make it to the Federal Court of Appeal it is possible to appeal to the Supreme Court of Canada,⁴² but

³¹ Sean Rehaag & Pierre-André Thériault, "Judgments v Reasons in Federal Court Refugee Claim Judicial Reviews: A Bad Precedent" (2022) 45:1 Dal LJ 185 at 202.

³² Ibid at 203. See also, Federal Court of Canada, "Notice to the Parties and the Profession: Publication of Decisions of Precedential Value" (19 June 2015), online: <[web.archive.org/web/20170505222639/http://cas-cdc-ww02.cas-satj.gc.ca/fct-cf/pdf/Notice%20to%20the%20Profession%20-%20Precedential%20vs%20non-precedential%20decisions%20FINAL%20\(ENG\).pdf](http://web.archive.org/web/20170505222639/http://cas-cdc-ww02.cas-satj.gc.ca/fct-cf/pdf/Notice%20to%20the%20Profession%20-%20Precedential%20vs%20non-precedential%20decisions%20FINAL%20(ENG).pdf)> [perma.cc/8TXU-2XNQ].

³³ Rehaag & Thériault, *supra* note 31 at 203-204. See also: Federal Court, "Notice to the Parties and the Profession: Publication of Court Decisions" (1 June 2018), online <[www.fct-cf.gc.ca/content/assets/pdf/base/Notice%20to%20the%20Profession%20-%20publication%20of%20decisions%20final%20\(ENG\)%20final.pdf](http://www.fct-cf.gc.ca/content/assets/pdf/base/Notice%20to%20the%20Profession%20-%20publication%20of%20decisions%20final%20(ENG)%20final.pdf)> [perma.cc/7XSX-R4SR].

³⁴ The Federal Court of Appeal can dispose of appeals by signing an order and is not required to provide written reasons. See *Federal Courts Rules*, SOR/98-106 at s 392-3.

³⁵ IRPA, *supra* note 8, s 72(e).

³⁶ Ibid, s 74(d).

³⁷ Ibid.

³⁸ *Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168 at para 9.

³⁹ *Canada (Minister of Citizenship and Immigration) v Zazai*, 2004 FCA 89 at para 11.

⁴⁰ Federal Court, "Activity Summary - January 1, 2021 to December 31, 2021", online: <<https://www.fct-cf.gc.ca/en/pages/about-the-court/reports-and-statistics/statistics-december-31-2021>>

⁴¹ Federal Court of Appeal, "Activity Summary 2021" online: <https://www.fca-caf.gc.ca/fca-caf_eng/summary-sommaire_eng/2021.html>

⁴² Absent exceptional circumstances, there is no direct appeal from the Federal Court to the Supreme Court of Canada. Cases can be appealed from the Federal Court of Appeal with leave from the Supreme Court, or, exceptionally, on the request of the Federal Court of Appeal. *Supreme Court Act*, RSC, 1985, c S-26 at s 37.1, 38 & 40.

the Supreme Court applies its own strict leave requirement,⁴³ and refugee law cases at that level are quite rare, though reasons are always published when they do occur.

Taken together, the combined result of these decision-making and publication practices are that standard legal research methods must be approached with caution in the refugee law context. Scholars who rely on published decisions should be aware that their research is based on a highly skewed dataset. Whereas most refugee claims in Canada succeed at first instance, almost all of the published decisions in this area involve negative first instance decisions. Moreover, where the cases involve published Federal Court decisions, they not only almost always involve negative first instance decisions, but they have also by definition cleared the hurdle of demonstrating that, on a deferential standard of review, there is a fairly arguable case that the decision was unreasonable.

This, of course, does not mean that research about published refugee law cases should not be undertaken. We can learn a lot from these cases. For instance, it might be helpful to review Federal Court cases to see various ways that IRB decision-makers make mistakes in refugee adjudication. But care must be taken to keep the skewed nature of the datasets used for analysis front of mind. Failing to do so can result in unwarranted inferences.

For example, imagine that a researcher wants to know how Canada's refugee determination system responds to claimants who have experienced gender-based violence. If the researcher only examines published decisions, their analysis will mostly be limited to circumstances where refugee claims were denied at first instance. Due to this limitation, the researcher is likely to find that, in a large proportion of the cases that are reviewed, the claimant was found not to be credible.⁴⁴ Moreover, if the researcher focuses on Federal Court cases, they will be examining cases where the Federal Court has already found that there is a *prima facie* reasonably arguable case that the decision was unreasonable in some way. As a result, we might expect that a large proportion of the cases will involve problematic negative credibility assessments that are overturned by the Federal Court. Such an analysis can be quite useful. It might, for example, help the researcher to identify common forms of flawed reasoning that result in negative credibility assessments for refugee claimants who have experienced gender-based violence, which could lead to productive recommendations for improved training, revised guidelines, and the like. But the researcher would not be able to make assertions about whether in general women refugee claimants who experienced gender-based violence are found to be credible. Nor would the researcher be able to speak about best practices (or flawed practices) in the most common scenarios, which is where such claimants are believed and are granted protection.⁴⁵

⁴³ The Supreme Court has discretion to grant leave where the Court is "of the opinion that any question involved therein is, by reason of its public importance or the importance of any issue of law or any issue of mixed law and fact involved in that question, one that ought to be decided by the Supreme Court or is, for any other reason, of such a nature or significance as to warrant decision by it." *Ibid*, s 40.

⁴⁴ Negative credibility inferences are a key factor in most denials of refugee protection. See generally, Hilary Evans Cameron, *Refugee Law's Fact-Finding Crisis: Truth, Risk, and the Wrong Mistake* (Cambridge: Cambridge University Press, 2018).

⁴⁵ See e.g., Constance MacIntosh, "Domestic Violence and Gender-Based Persecution: How Refugee Adjudicators Judge Women Seeking Refuge from Spousal Violence—and Why Reform Is Needed" (2011) 26:2 *Refuge* 147 (examining RPD and Federal Court decisions published on Lexis, noting that only 3 out of 135 published RPD cases involving domestic violence were successful, noting that a high proportion, 44%, of published Federal Court cases involving refugee judicial review relating to domestic violence overturned negative RPD decisions, and offering

This problem of skewed data does not only affect research. It also affects jurisprudence. The bulk of published case law involves negative first instance decisions where the issue in the case is about whether there is some problem in the denial of refugee protection. This feature of case law may be useful for subsequent Federal Court or RAD cases because future cases will likely need to work through similar questions about when to intervene in denials of refugee protection. In other words, it is likely helpful for the Federal Court and the RAD to consider what past cases have to say about whether a particular type of alleged error justifies overturning a negative refugee determination when they consider whether to overturn a negative determination on similar grounds. However, consider what this means for the RPD, where the issue is not whether to overturn a negative refugee determination but whether to grant refugee protection. The case law sends signals to RPD Members about what mistakes should be avoided when denying a refugee claim lest these mistakes lead to a decision being overturned. But the case law provides little guidance about reasoning in positive decisions. Tools that are built on this jurisprudence are also problematic for similar reasons. IRB guidelines and policy documents generally rely on published case law. And it is therefore not surprising that the guidelines mostly involve warning decision-makers about errors and missteps that could result in a decision being overturned, rather than setting out best practices in refugee adjudication.⁴⁶

This problem of the skewed nature of published refugee law jurisprudence in Canada is particularly troubling as we enter the era of computational law.⁴⁷ Governments around the world are increasingly reaching to artificial intelligence to help inform – and sometimes to automate – administrative law

critiques that flow from an examination of these cases). For examples of research on similar themes that situate critiques of published case law within broader statistics about unpublished decision-making, see: Efrat Arbel, “The Culture of Rights Protection in Canadian Refugee Law: Examining the Domestic Violence Cases” (2013) 58:3 McGill LJ 729; Rupaleem Bhuyan, Adriana Vargas & Margarita Píntín-Perez, “Fleeing Domestic Violence from a “Safe” Country?: Refugee Determination for Mexican Asylum-Seekers in Canada” (2016) 32:3 Refuge 95.

⁴⁶ See e.g., Immigration and Refugee Board, “Guideline 9: Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics” (17 December 2021), <online: <https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDir09.aspx>> at s 6 & 7 (setting out a series of stereotypes about sexual minorities that decision-makers should avoid, and drawing lessons from cases where the Federal Court or the RAD overturned negative credibility determinations made in cases involving sexual orientation); Immigration and Refugee Board, “Assessment of credibility in claims for refugee protection” (31 December 2020), online: <<https://irb.gc.ca/en/legal-policy/legal-concepts/Pages/Credib.aspx>> (offering guidance to IRB members about how to assess credibility drawing mostly on Federal Court caselaw that identifies problems in how IRB members engage in credibility assessments).

⁴⁷ See generally, Jens Frankenreiter & Michael Livermore, “Computational Methods in Legal Analysis” (2020) 16 Annual Review of Law & Social Sciences 39; Mireille Hildebrandt, “Law as computation in the era of artificial legal intelligence: Speaking law to the power of statistics” (2018) 68 UTLJ 12; Sarah Sutherland, *Legal Data and Information in Practice* (New York: Routledge, 2022).

decision-making,⁴⁸ including in the immigration law field.⁴⁹ While there is much potential in this technology,⁵⁰ one of its key limitations are that algorithms built on biased datasets end up replicating bias.⁵¹

To see this problem at work, imagine the following scenario: a tech company has been hired to build a tool to assist refugee adjudicators in writing their reasons.⁵² Assume that the tool works by ingesting all published case law, identifying common legal issues that lead to refugee determinations being overturned, and providing decision-makers with recommended words, sentences or even paragraphs as they draft their decisions – with the aim of speeding up the process of preparing reasons and encouraging decision-makers to provide reasons that are likely to be upheld. If the case law used as training is disproportionately based on appeals and judicial review of negative first instance refugee determinations, the predictive text that the tool offers to adjudicators is likely to end up recommending various ways of denying protection in ways that will survive appeals/judicial review. Moreover, because we know that negative credibility inferences are a key feature of most negative refugee determinations,⁵³ it is likely that technology initially envisioned as a tool to assist refugee adjudicators in writing their reasons will largely

⁴⁸ For recent discussions of the use of artificial intelligence in administrative law contexts, focusing on Canada, see e.g., Jennifer Raso, “Unity in the Eye of the Beholder? Reasons for Decision in Theory and Practice in the Ontario Works Program” (2020) 70 UTLJ 1; Jennifer Raso, “AI and Administrative Law” in Florian Martin-Bariteau & Teresa Scassa, eds., *Artificial Intelligence and the Law in Canada* (Toronto: LexisNexis Canada, 2021); Teresa Scassa, “Administrative Law and the Governance of Automated Decision-Making: A Critical Look at Canada’s Directive on Automated Decision-Making” (2021) 54 UBC L Rev 251; Paul Daly & Brandon Orct, “Artificial Intelligence Accountability of Public Administration in Canada” (2022) Ottawa Faculty of Law Working Paper No. 2022-30, online: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4266365>.

⁴⁹ See e.g., Petra Molnar & Lex Gill, “Bots at the Gate: A Human Rights Analysis of Automated Decision Making in Canada’s Immigration and Refugee System” (Citizen Lab, Toronto: 2022) online: <<https://citizenlab.ca/wp-content/uploads/2018/09/IHRP-Automated-Systems-Report-Web-V2.pdf>>; Petra Molnar, “Technological Testing Grounds: Migration Management Experiments and Reflections from the Ground Up” (2020) EDRi Research Paper, online: <<https://edri.org/wp-content/uploads/2020/11/Technological-Testing-Grounds.pdf>>.

⁵⁰ For discussions about how technologies built on artificial intelligence might be used for both helpful and problematic purposes in Canada’s legal sector, see e.g., Benjamin Alarie & Abdi Aidid, *The Legal Singularity: How Artificial Intelligence Can Make Law Radically Better* (University of Toronto Press, forthcoming); Jena McGill & Amy Salyzyn, “Judging by Numbers: How Will Judicial Analytics Impact the Justice System and Its Stakeholders?” (2021) 44:1 Dal LJ 249; Jena McGill, Suzanne Bouclin & Amy Salyzyn, “Mobile and Web-Based Legal Apps: Opportunities, Risks and Information Gaps” (2017) 15:2 Canadian Journal of Law and Technology 229. For a recent discussion on the possible use of artificial intelligence to reduce false negative refugee determinations, see Hilary Evans Cameron, Avi Goldfarb & Leah Morris, “Artificial Intelligence for a Reduction of False Denials in Refugee Claims” (2022) 35:1 Journal of Refugee Studies 493.

⁵¹ See e.g., Emily Blender, et al, “On the Dangers of Stochastic Parrots: Can Language Models Be Too Big? 🦜” (2021) FAccT ’21: Proceedings of the 2021 ACM Conference on Fairness, Accountability, and Transparency 610.

⁵² This is not a far-fetched possibility, as there are examples of the Canadian government attempting to deploy older technologies to similar ends. See e.g., Government of Canada, “CIMM — Chinook Development and Implementation in Decision-Making” (15 & 17 February 2022) online: <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/committees/cimm-feb-15-17-2022/chinook-development-implementation-decision-making.html>> (discussing a controversial technology used by the government to assist officers in making visa decisions and preparing letters setting out those decisions). See also Nicholas Keung, “Canada is refusing more study permits. Is new AI technology to blame?” in the *Toronto Star* (15 November 2021), online: <<https://www.thestar.com/news/canada/2021/11/15/canada-is-refusing-more-study-permits-is-new-ai-technology-to-blame.html>>.

⁵³ See above note 44 (and accompanying text).

become a tool to facilitate negative credibility inferences and to insulate those inference from appeal or judicial review.

As this hypothetical example shows, the skewed nature of published refugee law cases not only poses problems for research, but it also causes problems in jurisprudence and in tools – including future tools that use artificial intelligence – built on that jurisprudence. Due to these concerns, the Refugee Law Laboratory, hosted at York University's Centre for Refugee Studies, is undertaking a variety of initiatives to help address the skew in published refugee decisions. For example, we have established a Refugee Law Lab Reporter that only publishes positive first instance RPD decisions that we obtain through Access to Information Requests.⁵⁴ The present article represents another initiative to go beyond the skewed dataset of published decisions.

3. Methodology & Limitations

As we have just seen, published refugee law decisions involve a skewed dataset, mostly involving appeals and judicial review of negative first instance refugee decisions. This means that standard doctrinal legal research methods cannot offer a reliable picture of how Canada's refugee determination system responds to different types of refugee claims.

To get around this problem, this article uses a methodology increasingly employed by socio-legal scholars working on immigration and refugee law issues in Canada: obtaining quantitative data from the IRB about all decisions, regardless of whether they are published.⁵⁵ Specifically, this article uses a combination of Access to Information Requests and a data sharing agreement with the IRB to amass a comprehensive dataset about all first instance refugee determinations decided under Canada's revised determination system (the new system came into effect on 15 December 2012).

The Access to Information Request sought data on all principal applicant refugee determinations (i.e. one claim per family) from 2013 to 2021. The key datapoints sought were: (1) IRB File Number; (2) Date Case Referred; (3) Date Case Decided; (4) Outcome; (5) Country of Persecution; (6) Claim Category; (7) Claim Type; (8) Decision-Maker Name; (9) Counsel Name.

Due to privacy concerns, the IRB was only prepared to release the information pursuant to a data sharing agreement.⁵⁶ That agreement reflects the IRB's small value suppression policy: "When publishing statistics on Immigration and Refugee Board of Canada (IRB) [...], small value suppression is applied by the IRB to data values less than 20 [...] This risk mitigation strategy is applied to IRB statistical reports to protect the privacy of those who appear before the Board as refugee protection claimants."⁵⁷

⁵⁴ Refugee Law Laboratory, "Refugee Law Lab Reporter", online: <<https://refugeelab.ca/rllr/>>.

⁵⁵ See e.g., Sean Rehaag, "Troubling Patterns in Canadian Refugee Adjudication" (2008) 39:2 *Ottawa Law Review* 335 [Rehaag, "Troubling"]; Asha Kaushal & Catherine Dauvergne, "The Growing Culture of Exclusion: Trends in Canadian Refugee Exclusions" (2011) 23:1 *IJRL* 54; Catherine Dauvergne & Hannah Lindy, "Excluding Women" (2019) 31:1 *IJRL* 1.

⁵⁶ "Memorandum of Understanding between The Immigration and Refugee Board of Canada (IRB) and Sean Rehaag and his research team" (7 & 8 July 2022) (on file with author) [IRB, "Agreement"].

⁵⁷ Immigration and Refugee Board, "Protecting privacy when releasing statistical information: small value suppression", online: <<https://irb.gc.ca/en/statistics/Pages/small-value-suppression.aspx>>. See also Treasury Board of Canada Secretariat, "Privacy Implementation Notice 2020-03: Protecting privacy when releasing information about a small number of individuals" (6 October 2020) online: <<https://www.canada.ca/en/treasury->

The terms of the data sharing agreement include that any publication must adhere to the IRB's small value suppression policy and that the data will not be shared in a way that might reasonably be expected to identify any individual. The data sharing agreement also requires that advance copies of any publications (or any information otherwise made available) must be provided to the IRB and that any changes that the IRB requires to protect privacy will be made prior to dissemination.⁵⁸ To comply with the data sharing agreement, wherever the number of cases in a category or subcategory is reported in this article, we only report the number where it is larger than 20. Out of an abundance of caution, we also round all numbers of cases to the nearest 20.

The data provided under this agreement involves all principal applicant refugee determinations made from 2013 to 2021. All the datapoints noted above were provided. While most of the datapoints are straightforward, a few words should be said about claim categories and claim types. At an early stage in the refugee determination process, the IRB categorizes cases into specific claim categories and claim types. The former are 13 high level categories that are described in detail in section 5 below. The latter are much more granular sub-categories, of which there are 438 in the dataset. Cases may involve more than one claim category and/or claim type.

The data provided by the IRB was processed through a computer program written in Python⁵⁹ in a Jupyter Notebooks environment,⁶⁰ and relying mainly on the following open-source packages: Pandas,⁶¹ Numpy⁶² and openpyxl.⁶³ Data was cleaned and differently reported datasets were merged using IRB file numbers as unique identifiers. Ultimately, this led to a dataset of 113,000 principal applicant refugee determinations finalized from 2013 to 2021. Because many of these 113,000 claims involved multiple claim categories or claim types, this produced 140,120 unique combinations of IRB numbers, claim categories, and claim types. In other words, there were 27,120 rows in the dataset that involved a second or subsequent claim category or claim type for a given IRB file number.

Before getting to the analysis of this dataset, a few notes of caution are in order.

First, this article relies on data provided by the IRB. From time to time, the author has discovered significant errors in data provided by the IRB (leading to requests for corrected data) and the author is not

board-secretariat/services/access-information-privacy/access-information-privacy-notices/2020-03-protecting-privacy-releasing-information-about-small-number-individuals.html>.

⁵⁸ IRB, "Agreement", supra note 56.

⁵⁹ "Python", online: <<https://python.org/>>. For an introduction to Python, see Al Sweigart, *Automate the Boring Stuff: Practical Programming for Total Beginners*, 2nd ed (2020), online: <<https://automatetheboringstuff.com/>>.

⁶⁰ "Jupyter", online: <<https://jupyter.org/>>. See also, Cyrille Rossant, *IPython Interactive Computing and Visualization Cookbook*, Second Edition (Sebastopol: O'Reilly, 2018), online open-access: <<https://ipython-books.github.io/>>.

⁶¹ "Pandas", online: <<https://pandas.pydata.org/>>. See also, Wes McKinney, *Python for Data Analysis: Data Wrangling with Pandas, NumPy and Jupyter* (3rd ed) (Sebastopol: O'Reilly, 2022), online (open access): <<https://wesmckinney.com/book>>.

⁶² "NumPy", online: <<https://numpy.org/>>. See also McKinney, supra note 61.

⁶³ Eric Gazoni & Charlie Clark, "openpyxl - A Python library to read/write Excel 2010 xlsx/xlsm files" (24 May 2022) online: <<https://openpyxl.readthedocs.io/en/stable/>>.

able to directly verify the accuracy of the data provided under the data sharing agreement. That having been said, the data provided appears plausible and consistent with prior research.⁶⁴

Second, the datapoints involving claim categories and claim types that are at the heart of the analysis in this article must be approached with particular caution. Not only does all categorization involve a certain amount of subjectivity, but also cases are categorized at an early stage in the refugee determination process for administrative purposes, and the data is not corrected if it is later discovered that information has changed or that the initial recorded data is incorrect.⁶⁵ Between possible errors in categorization, changes in claim types over the course of the refugee determination process, and some cases having multiple claim types recorded, one cannot be entirely confident that outcomes in a given case necessarily reflect a given recorded claim type. In our experience at the Refugee Law Laboratory with cases that we have obtained through Access to Information Requests, information about case categories and types in the IRB's database reasonably reflect the types of persecution addressed in the written reasons approximately 85-90% of the time.

These limitations mean that we should be cautious about inferences about claim categories and claim types based on small subsets of data. However, given the large size of the dataset, and in particular the large number of decisions we report for each category, the overall patterns nonetheless give us a good overview of decision-making in Canada's refugee determination system – and certainly a better overview than standard doctrinal legal research methods allow.

Finally, a few notes on terminology. In this article, the term recognition rate refers to the proportion, expressed as a percentage, of positive decisions relative to the sum of positive and negative decisions, excluding cases that are withdrawn, abandoned, or otherwise resolved. This is the standard reporting procedure used by the United Nations High Commissioner for Refugees,⁶⁶ and it is the preferred method of reporting refugee outcome statistics because it avoids potential distortions caused by withdrawn and abandoned claims. Also, for the remainder of the article, "refugee claim" refers to principal applicant refugee claims (there is typically one principal applicant per family). Because we are interested in refugee adjudication, we are using each decision as the unit of analysis, regardless of the number of individuals affected by the decision, which is why we focus on principal applicants. However, it should be recognized that this approach can introduce skews in datasets, and in particular risks obscuring the experience of "dependent" applicants, a disproportionate number of whom are women and children.

⁶⁴ For examples of prior research using similar methodologies, see e.g. Sean Rehaag, "2019 Refugee Claim Data and IRB Member Recognition Rates" (12 August 2020), online: <<https://refugeelab.ca/refugee-claim-data-2019>>; Sean Rehaag, "Sexual Orientation in Canada's Revised Refugee Determination System: An Empirical Snapshot" (2017) 29:2 CJWL 259 [Rehaag, "Sexual Orientation"]; Sean Rehaag, "Do Women Refugee Judges Really Make a Difference? An Empirical Analysis of Gender and Outcomes in Canadian Refugee Determinations" (2011) 23:2 CJWL 627 [Rehaag, "Women Judges"]; Rehaag, "Troubling", supra note 55.

⁶⁵ Rehaag, "Sexual Orientation", supra note 64, at 273; Rehaag, "Women Judges", supra note 64 at 640. See also, Immigration and Refugee Board, "Members Decisions: Explanatory Note" (July 2008) online: <<https://refugeelab.ca/refugee-claim-data-2019>> at 2.

⁶⁶ See e.g. United Nations High Commissioner for Refugees, "Global Trends: Forced Displacement in 2020" (2021) online: <<https://www.unhcr.org/60b638e37.pdf>> at 42.

4. Empirical Snapshot: Overview

The dataset described in this article covers 113,000 refugee claims finalized by the Refugee Protection Division of the IRB from 2013 to 2021.

As can be seen in Table 1 and Chart 1, from 2013 to 2021, the number of refugee claims finalized per year increased fairly steadily, from a low of 3,920 cases in 2013 to a high of 26,320 cases in 2021. The one exception is a dip in 2020 at the height of the initial disruption caused by the Covid-19 pandemic. These figures reflect the overall trend of growth in the number of refugee claims made in Canada during this period, particularly from 2017 to 2019, when many refugee claimants from several countries came to Canada via the US in the years following the election of President Donald Trump.⁶⁷ Overall, the average number of cases finalized from 2013 to 2021 was 12,556 cases per year. Despite the increase in several recent years, it is worth noting that the total number of refugee claims made in Canada from 2013 to 2013 was typical, when put in a broader historical context.⁶⁸

Charts 2 and 3 show outcomes in refugee claims from 2013 to 2021. Recognition rates fluctuated from year to year, but the overall trend was an increase in recognition rates. The lowest recognition rate was 63% in 2013 and the highest rate was 73% in 2021. The average recognition rate across this period was 70%. This is above historical averages for Canada.⁶⁹

Table 1: Refugee Claim Outcomes per Year (2013-21)

Year	Abandoned Withdrawn*	Negative*	Positive*	Number*	Recognition Rate (%)
All	10,360	31,240	71,400	113,000	70
2013	380	1,300	2,220	3,920	63
2014	400	2,340	4,300	7,040	65
2015	400	2,260	4,880	7,540	68
2016	540	2,560	5,840	8,960	70
2017	800	3,520	8,020	12,360	69
2018	1,540	4,000	7,100	12,640	64
2019	2,100	5,600	13,280	20,980	70
2020	1,160	3,380	8,740	13,280	72
2021	3,020	6,280	17,000	26,320	73

* Rounded to the nearest 20

CHART 1: Number of Refugee Claims Finalized (2013-21)

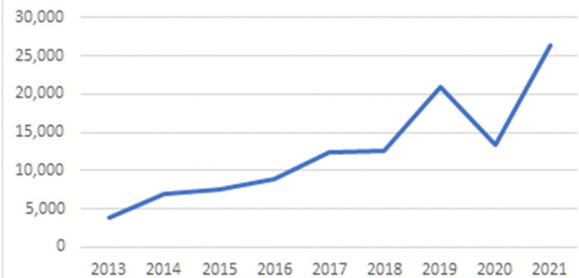


CHART 2: Refugee Claim Recognition Rates (%) (2013-21)



⁶⁷ See e.g., Craig Damian Smith, "Policy Change, Threat Perception, and Mobility Catalysts: The Trump Administration as Driver of Asylum Migration to Canada" (forthcoming) International Migration Review.

⁶⁸ According to United Nations High Commissioner for Refugees statistics, from 2000 to 2012, the average number of applications for refugee protection in Canada was 29,429 cases per year, whereas the equivalent figure for 2013 to 2021 was 29,792 cases per year (these figures reflect all applicants, not just principal applicants, and cover first instance applications only). United Nations High Commissioner for Refugees, "Refugee Data Finder" (29 December 2022), online: <<https://www.unhcr.org/refugee-statistics/download/?url=MoN2tQ>>

⁶⁹ According to statistics from the United Nations High Commissioner for Refugees, the recognition rate from 2000 to 2012 was 51%. United Nations High Commissioner for Refugees, "Refugee Data Finder" (29 December 2022), online: <<https://www.unhcr.org/refugee-statistics/download/?url=1bM6Qq>>.

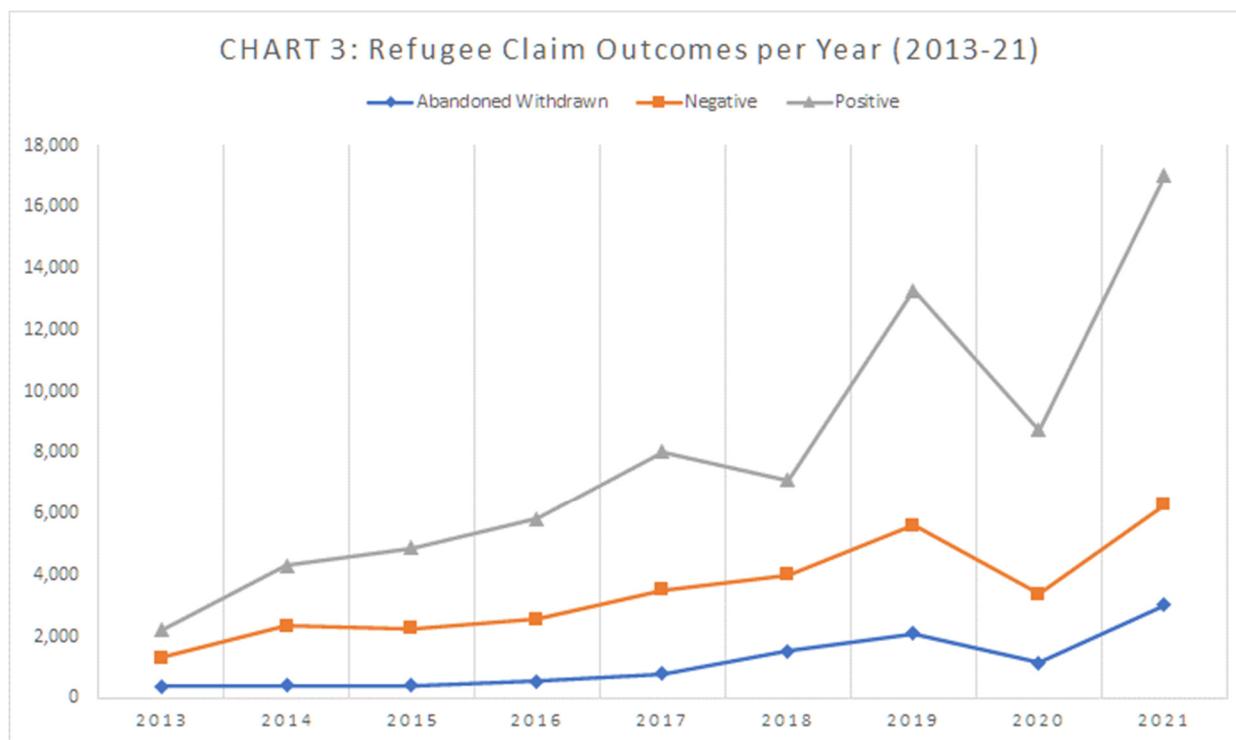


Table 1a shows the ten most common countries of persecution for refugee claims finalized from 2013 to 2021. Claimants come from a wide variety of countries, with no single country representing more than 8% of claims finalized during this period. The top five countries of origin are Nigeria, Haiti, China, Iran and Pakistan, which together account for 34,000 out 113,000 claims finalized (30%). Recognition rates vary significantly across the top 10 countries of persecution, ranging from 96% (Syria) to 32% (Mexico). This is expected, given that country conditions and human rights records differ across countries. Nonetheless, even for countries with relatively low recognition rates in this list of the ten most common countries of persecution, it bears emphasizing that thousands of claimants from these countries have been recognized as refugees.

TABLE 1a: 10 Most Common Countries of Persecution (2013-21)

Countries of Persecution	Number*	Proportion (%)	Recognition Rate (%)
All	113,000	100	70
Nigeria	9,100	8	50
Haiti	7,240	6	41
China	6,820	6	56
Iran	5,960	5	95
Pakistan	4,880	4	76
Mexico	4,740	4	36
Turkey	4,700	4	92
India	4,480	4	38
Colombia	3,180	3	69
Syria	2,600	2	96

* Rounded to nearest 20

5. Empirical Snapshot: Claim Categories

Table 2 sets out statistics on claim categories. The IRB uses 13 claim categories in its database (and a residual blank category), which have been aggregated into 6 categories for the purposes of this article.

This aggregation reflects categories in Canada's Immigration and Refugee Protection Act, which in turn partly reflect categories in the 1951 Refugee Convention.⁷⁰ Under that legislation,

A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of [1a] race, [2] religion, [1b] nationality, [3] membership in a particular social group or [4] political opinion [...] is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries⁷¹

And,

[5] A person in need of protection is a person in Canada whose removal to their country or countries of nationality [...] would subject them personally [...] to a danger [...] of torture [...] or to a risk to their life or to a risk of cruel and unusual treatment or punishment [...]⁷²

The numbers added in square brackets to these provisions reflect the aggregated categories used in the IRB's database, with an additional category [6] for claims where no claim category information was available. Note that the category indicated as [5] above is described as "No Nexus" in the aggregated categories. This reflects that the claim has no connection (or no nexus) to the Refugee Convention grounds, and thus that the claim is being assessed under the subsidiary grounds provision for "persons in need of protection".

As can be seen in Table 2, claims involving political opinion were the most common category of claims, representing 34% of all refugee claims finalized during this period. The recognition rate for these claims was above average: 78% for political opinion vs 70% overall. The next most common type of category involved people facing persecution on account of their membership in a particular social group, which represented 28% of all claims finalized. These claims were slightly more successful than average (72% vs 70% overall). The third most common category of claim was those who have no nexus to a

TABLE 2: Claim Categories (2013-21)			
Categories	Number*	Proportion (%)	Recognition Rate (%)
All	113,000	100	70
Political Opinion	38,740	34	78
PO: Activity/Occupation	20,120	18	80
PO: Organization	11,460	10	76
PO: Varied/Other	4,820	4	73
PO: Military Service	2,340	2	90
PO: State Policy Issues	1,800	2	53
PO: Activism	140	0	95
Particular Social Group	31,280	28	72
PSG: Gender-based/Domestic Violence	14,300	13	70
PSG: Sexual Orientation	12,760	11	77
PSG: Varied/Other	5,660	5	65
No Nexus	25,580	23	48
NN: Criminality/Corruption	22,420	20	48
NN: Varied/Other	3,660	3	48
Religion	18,580	16	78
Race/Ethnicity/Nationality	13,580	12	79
No Category Provided	4,480	4	68
* Rounded to nearest 20			

Convention ground, and who are thus seeking protection as persons in need of protection. These claims represented 23% of all claims finalized, and they had the lowest recognition rate of all claim categories by

⁷⁰ *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954).

⁷¹ IRPA, supra note 8, s 96.

⁷² Ibid, s 97.

a substantial margin (48% vs 70% overall). Religion based claims (16% of all claims) and claims based on race / ethnicity / nationality (12% of all claims) were the least common claim categories, and both had above average recognition rates (78% and 79% respectively, vs 70% overall). Finally, for 4% of claims, no information about claim categories was provided – and these claims were slightly less likely than average to be successful (68% vs 70% overall).

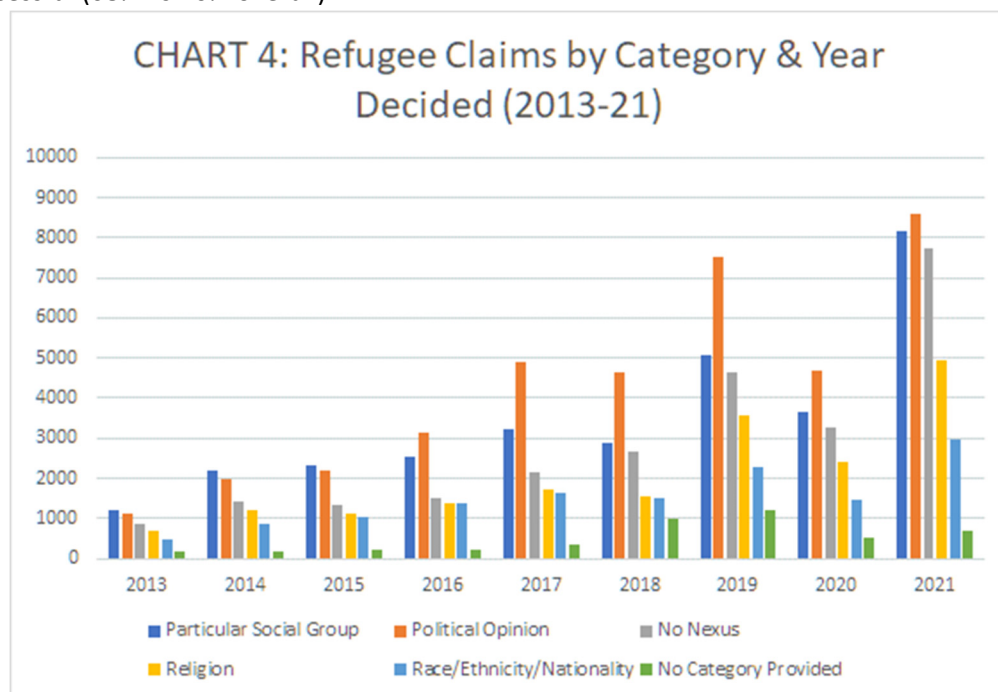


Chart 4 shows the proportion of claims that fell into the various categories each year from 2013 to 2021. The pattern was fairly consistent during this period, with the main variation being whether political opinion or particular social group was the leading category.

The next sections will explore each category in more detail, focusing on different types of claims within these broad categories.

5.1 Political Opinion

As noted above, claims categorized as involving political opinion were the most common category of claims from 2013 to 2021, representing 34% of all claims finalized.

Table 3 sets out the 20 most common subtypes of claims in this category. As can be seen in the table, the most common claim sub-type by far was the generic “Anti-government” subtype, which represented 30% of all claims in this category. It is apparent that the subtypes of claims are somewhat arbitrary, because some claim types are generic (e.g. NGO worker, State employee, Journalist, Academic), whereas others are specific to particular countries (e.g. Hizmet, HDP, LTTE) – all of which could likely also be included in the “Anti-government” generic category. Table 3 also shows that while political opinion-based refugee claims were more likely to succeed (78%) than the overall average (70%), there was significant variation in recognition rates across common subtypes of political opinion claims. For example, whereas claimants

TABLE 3: 20 Most Common Political Opinion Claim Types (2013-21)			
Claim Types (Political Opinion)	Number*	Proportion (%)	Recognition Rate (%)
All	38,740	100	78
Anti-government	11,740	30	82
NGO/Community worker	1,740	4	80
Hizmet (Gulen) Movement	1,700	4	98
State employee/representative	1,180	3	86
Journalist	980	3	83
Evasion	760	2	92
Family Planning Policy (FPP)	760	2	55
Halklarin Demokratik Partisi (HDP)	720	2	95
Student activist/organizer	700	2	75
Academics/Artists/Intellectuals	660	2	86
Liberation Tigers of Tamil Eelam (LTTE)	600	2	85
Employee of foreign/international agent/Entities	420	1	97
Desertion	420	1	90
Land expropriation	420	1	28
Taliban	380	1	90
Nepali Congress (NC)	300	1	75
Southern Cameroon National Council (SCNC)	280	1	82
Movement for Democratic Change (MDC)	240	1	71
Sikh militant - Other	200	1	32
Trade/Labour unionist	200	1	70
* Rounded to nearest 20			

TABLE 3a: 10 Most Common Countries of Persecution in Political Opinion Claims (2013-21)			
Countries of Persecution (Political Opinion)	Number*	Proportion (%)	Recognition Rate (%)
All	38,740	100	78
Turkey	3,600	9	94
Haiti	2,460	6	42
Venezuela	1,960	5	89
Eritrea	1,800	5	92
Burundi	1,740	4	95
Afghanistan	1,680	4	95
Ethiopia	1,600	4	81
China	1,520	4	50
India	1,480	4	33
Congo, DRC	1,440	4	58
* Rounded to nearest 20			

involved with the Hizmet (Gulen) Movement succeeded with their claims 97% of the time, claimants resisting land expropriation only succeeded 28% of the time.⁷³

Table 3a sets out the 10 most common source countries for refugee claims involving political opinion, which together account for 50% of claims in this category. As can be seen, Turkey was the most common source country, followed by Haiti, Venezuela, Eritrea and Burundi. Recognition rates varied substantially across these countries, from 95% for claimants from Afghanistan to 33% for claimants from India.

5.2 Particular Social Group

After political opinion, membership in a particular social group (PSG) was the most common claim category from 2013 to 2021, representing 28% of all claims during this period. The Supreme Court famously held that particular social groups include:

- (1) groups defined by an innate or unchangeable characteristic;
- (2) groups whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake the association; and
- (3) groups associated by a former voluntary status, unalterable due to its historical permanence.⁷⁴

⁷³ In addition to these subtypes, there was a residual subtype of “Varied/Other” with a large number of claims (12,520), representing 32% of political opinion claims, with a 74% recognition rate.

⁷⁴ *Canada (Attorney General) v Ward*, [1993] 2 SCR 689.

The Court also noted that PSGs include those facing persecution on account of their gender and their sexual orientation.⁷⁵ Because these two types of claims represent the largest subcategories of PSGs, and because they have attracted a great deal of scholarly attention, we will examine each in turn.

In addition to these two subcategories, the IRB's database also includes a residual "Varied/Other" PSG subcategory. Because only a small proportion (5%) of cases fall within this subcategory, we will not examine them in detail. The most common subtypes of claims that fall within this subcategory are: Falun Gong (2,500 claims, 51% recognition rate), Western dress/practices (640 claims, 97% recognition rate), Statelessness/No Status (40 claims, 90% recognition rate), and a residual subtype of Varied/Other (2,400, 70% recognition rate).

5.3 Particular Social Group: Gender

Refugee claims involving gender-based violence were the most common subcategory of PSG claims from 2013 to 2021, representing 46% of PSG claims and 13% of claims overall. Gender based claims succeeded 70% of the time, which is the same as the overall recognition rate during the same period – though in some years the recognition rate in gender-based claims diverges from the overall average, including in 2021, when the recognition rate in gender-based claims was 83% compared to 73% overall.

Table 4 breaks down gender-based claims into the subtypes of claims identified in the IRB's database. As can be seen in the table, the most common subtype of claim involved domestic violence (38%), followed by a residual "female – other" subtype (20%), non-domestic sexual violence (17%), forced marriage (14%), and female genital mutilation (13%). Recognition rates varied across subtypes of claims, from 42% for sexual harassment and 47% for female genital mutilation, to 78% for the residual female-other subtype, and 75% for both forced marriage and female – honour killing. It is worth noting that domestic violence, a subtype of claim that has prompted substantial interest both in research and in practice, has slightly higher than average recognition rates (72% vs 70% overall).

TABLE 4: Gender Based Violence Claim Types (2013-21)			
Claim Types (Gender Based Violence)	Number*	Proportion (%)	Recognition Rate (%)
All	14,300	100	70
Domestic violence	5,380	38	72
Female - Other	2,900	20	78
Non-domestic sexual violence	2,380	17	73
Forced marriage	1,940	14	75
Female Genital Mutilation (FGM)	1,840	13	47
Male - Other	340	2	53
Honor Crime	320	2	73
Child Abuse	120	1	73
Widowhood rites	80	1	52
Female - Honour killing	60	0	75
Forced prostitution	40	0	66
Sexual harassment	20	0	42
* Rounded to nearest 20			

TABLE 4a: 10 Most Common Countries of Persecution in Gender Based Violence Claims (2013-21)			
Countries of Persecution (GBV)	Number*	Proportion (%)	Recognition Rate (%)
All	14,300	100	70
Nigeria	2,860	20	47
Haiti	1,200	8	65
Iran	900	6	97
India	540	4	57
Mexico	440	3	63
Congo, DRC	360	3	64
Pakistan	340	2	78
Afghanistan	320	2	93
Uganda	260	2	80
Kenya	240	2	69
* Rounded to nearest 20			

⁷⁵ Ibid.

Table 4a shows the main source countries for cases involving gender-based violence, with Nigeria (20%), Haiti (8%) and Iran (6%) being the most common source countries. There are also large differences in recognition rates across countries. For example, the recognition rates for gender-based claims from Nigeria (47%) and India (57%) were much lower than rates for Iran (97%) and Afghanistan (93%). Also, despite the overall trend of slightly higher recognition rates in gender-based violence claims than in overall claims, the inverse is true for gender-based violence claims from Nigeria (47% for Nigerian gender-based violence claims, 50% for Nigerian claims overall).

5.4 Particular Social Group: Sexual Orientation

Claims categorized as involving sexual orientation were the second largest subcategory of PSG claims, representing 41% of PSG claims, and 11% of claims overall from 2013-2021. The recognition rate for sexual orientation claims (77%) is above the average for claims overall during the same period (70%).

Table 5 breaks down sexual orientation claims by subtype. As can be seen in the table, the most common subtypes were: gay (45% of sexual orientation claims), bisexual (28%), and lesbian (21%). Recognition rates varied significantly across these categories, with higher recognition rates for lesbians (84%), followed by gay men (79%), and with substantially lower recognition rates for bisexuals (68%). The figures for transgender claimants are also striking – both in terms of the small number of claims (representing only 1% of sexual orientation claims) and the high recognition rate (97%). It is worth noting that all claims categorized as involving transgender claimants were from 2019 to 2021, suggesting that data collection practices at the IRB have shifted and that transgender claims were previously placed in other categories.

Table 5a sets out the 10 most common source countries for claims categorized as involving sexual orientation. Nigeria (27%) is the top source country by a substantial margin, followed by Uganda (5%), Jamaica (5%) and Cameroon (4%). Recognition rates in sexual orientation claims varied across countries, from 58% for Ghana and 57% for Nigeria to 94% for Turkey and 85% for both Uganda and Ukraine.

Breaking Nigerian sexual orientation claims down further it is interesting to note that the large minority involve bisexuals (2,300 claims, 66% recognition rate) rather than gay men (600 claims, 65% recognition rate) or lesbians (450 claims, 76% recognition rate).

TABLE 5: Sexual Orientation, Gender Identity & Expression Claim Types (2013-21)

Claim Types (SOGIE)	Number*	Proportion (%)	Recognition Rate (%)
All	12,760	100	77
Gay	5,800	45	79
Bisexual	3,620	28	68
Lesbian	2,720	21	84
Varied/Other	600	5	73
Transgender	80	1	97
Imputed Sexual Orientation	60	0	74
Family of / Related to LGBTQ person	60	0	73

* Rounded to nearest 20

TABLE 5a: 10 Most Common Countries of Persecution in SOGIE Claims (2013-21)

Countries of Persecution (SOGIE)	Number*	Proportion (%)	Recognition Rate (%)
All	12,760	100	77
Nigeria	3,420	27	67
Uganda	680	5	85
Jamaica	580	5	75
Cameroon	500	4	78
Ghana	420	3	58
Turkey	420	3	94
Kenya	380	3	77
India	360	3	72
Ukraine	360	3	85
Pakistan	340	3	82

* Rounded to nearest 20

5.5 No Nexus (Persons in Need of Protection)

The next most common category of claims finalized from 2013 to 2021 involved persons in need of protection, with no nexus to a refugee Convention ground. These represent 23% of claims finalized during this period. The recognition rate for these claims (48%) was substantially lower than the overall average (70%).

Table 6 sets out the most common subtypes of these claims. As can be seen in the table, the most common subtypes of claims involved individuals who feared criminality, including at the hands of organized criminals (22% of no nexus claims), people with individual or family conflicts (18%), common criminals (15%), agents of the state (10%), and fundamentalist groups (8%). There were also many other subtypes of claims, ranging from unspecified generalized risks, to forced recruitment in gangs, guerilla groups or paramilitary organizations, to the unavailability of medical care for health conditions. Recognition rates appeared to be particularly low for cases involving criminality by non-state actors (e.g. organized crime 44%, common criminality 35%, land disputes 31%), and to be higher when cases involve paramilitary organizations (e.g. victims of paramilitary groups 73%, forced paramilitary recruitment 76%, victims of Houthi groups 98%).⁷⁶

TABLE 6: 20 Most Common No Nexus Claim Types (2013-21)			
Claim Types (No Nexus)	Number*	Proportion (%)	Recognition Rate (%)
All	25,580	100	48
Witness/Victim of Organized crime	5,720	22	44
Personal vendetta/Family feud	4,480	18	42
Witness/Victim of Common crime	3,760	15	35
Witness/Victim of State agents	2,560	10	60
Witness/Victim of radical fundamentalist group	1,960	8	64
Witness/Victim of Guerrilla/Rebels	1,320	5	64
Fear is unspecified/unclear	1,200	5	45
Generalized risk	980	4	52
Land dispute	420	2	31
Witness/Victim of Paramilitary	400	2	73
Blood feud	160	1	51
Witness/Victim of Hezbollah	160	1	56
Forced recruitment by gangs	160	1	58
Returnee/Expatriate	140	1	58
Economic migrant	140	1	26
Witness/Victim of Radical fundamentalist group - Al-Shabaab	140	1	54
Forced recruitment/collusion by Guerrilla	120	1	63
Witness/Victim of pro-Houthi groups	120	0	98
Health Care/Medical condition	100	0	78
Forced recruitment/collusion by Paramilitary	80	0	76

* Rounded to nearest 20

TABLE 6a: 10 Most Common Countries of Persecution in No Nexus Claims (2013-21)			
Countries of Persecution (No Nexus)	Number*	Proportion (%)	Recognition Rate (%)
All	25,580	100	48
Haiti	3,700	15	33
Mexico	3,220	13	29
Colombia	2,280	9	66
Nigeria	1,860	7	33
India	1,280	5	23
Pakistan	1,020	4	52
Somalia	800	3	61
El Salvador	800	3	68
Iraq	500	2	67
Honduras	480	2	60

* Rounded to nearest 20

Table 6a breaks down the main source countries for no-nexus claims. These include Haiti (15%), Mexico (13%), Colombia (9%), Nigeria (7%) and India (5%). Recognition rates for some countries for no-nexus

⁷⁶ In addition there was a residual subtype of "Varied/Other", with 2,420 claims, representing 9% of non-nexus claims, and with a 43% recognition rate.

claims were especially low, including India (23%) and Mexico (29%), and were much higher for others, including El Salvador (68%), Iraq (67%) and Colombia (66%).

5.6 Religion

The next most common category of refugee claims from 2013 to 2021 involved claims based on religion, representing 16% of claims overall during this period. The recognition rate for these claims (78%) was higher than the IRB average (70%).

Table 7 describes the most common subtypes of religion-based refugee claims. As can be seen in the table, claims involving Christians were the most common subtype (representing 27% of religion-based claims), followed by claims relating to apostasy (11%) and Ahmadi claims (6%). It should be noted that the subtypes are somewhat arbitrary, with some generic categories (e.g. interfaith relationships), others grouping together many different religious communities (e.g. Christian, Muslim), and still others representing more specific communities (e.g. Pentecostal, Lahori Ahmadis). The dominant types of religious based refugee claims, however, appear to involve various groupings of Christians, followed by various groupings of Muslims. It is also worth noting that the subtype “Apostasy” almost exclusively involves claimants from Iran (99%).⁷⁷

Recognition rates vary across the different types of religion-based refugee claims, ranging from 24% for “Chieftaincy issues”, 35% for “Traditional” and 48% for “Rituals/Witchcraft/Traditional Practices” to 98% for Ahmadis, and 97% for “Apostasy”, Coptic Christians, and Bahai claimants.

TABLE 7: 20 Most Common Religion Claim Types (2013-21)			
Claim Types (Religion)	Number*	Proportion (%)	Recognition Rate (%)
All	18,580	100	78
Christian	5,080	27	75
Apostasy	2,080	11	97
Ahmadi (unspecified)	1,100	6	98
Muslim - Sunni	960	5	93
Christian - Coptic	860	5	97
Shia Muslim	700	4	71
Muslim - Shia	680	4	68
Muslim	480	3	65
Christian - Unregistered/underground church	400	2	71
Chieftaincy Issues	320	2	24
Atheist/Agnostic/non practicing	320	2	91
Pentecostal	280	2	88
Traditional	260	1	35
Alevi	260	1	81
Rituals/Witchcraft/Traditional practices	220	1	48
Inter-faith Marriage/Relationship	200	1	60
Bahai	180	1	97
Hindu	180	1	75
Ahmadi (Lahori)	160	1	97
Buddhist	140	1	79

* Rounded to nearest 20

TABLE 7a: 10 Most Common Countries of Persecution in Religion Claims (2013-21)			
Countries of Persecution (Religion)	Number*	Proportion (%)	Recognition Rate (%)
All	18,580	100	78
Iran	4,160	22	95
Pakistan	3,020	16	82
China	2,140	12	62
Nigeria	1,360	7	33
Iraq	1,180	6	89
Syria	1,100	6	97
Egypt	1,000	5	97
India	540	3	37
Eritrea	460	2	87
Turkey	360	2	82

* Rounded to nearest 20

⁷⁷ In addition, there was a subtype “Varied/Other” with 3,400 claims, representing 18% of religion-based claims, with a 70% recognition rate.

Table 7a breaks down religion-based claims by the 10 most common countries of origin. Iran (22% of religion-based claims), Pakistan (11%), China (12%), Nigeria (7%), Iraq (6%), Syria (6%), and Egypt (5%) were major source countries for such claims. There are very large differences in recognition rates across source countries in religion-based claims, ranging from 33% for Nigeria, 37% for India and 62% for China, to 97% for Syria and Egypt and 95% for Iran.

Given the history of contemporary international refugee law as partly a response to the Holocaust, and given the ongoing prevalence of violent anti-Semitism, it is worth noting that the number of religion-based claims involving Jewish claimants was under the minimum reporting figures required under the data-sharing agreement with the IRB (i.e. under 20 claims). There were a further 20 claims categorized as involving persecution against Jewish claimants under the Race/Ethnicity/Nationality category (with a 44% recognition rate).

5.7 Race / Ethnicity / Nationality

The least common category of refugee claim from 2013 to 2021 were claims involving Race / Ethnicity / Nationality, which accounted for 12% of all claims during this period. Recognition rates for these claims (79%) were above the overall average (70%).

Table 8 sets out the most common types of claims involving Race / Ethnicity / Nationality. As can be seen in the table, the largest group were Roma claimants (19%), followed by claimants who are Tutsi (8%), Kurdish (7%), Alevi Kurdish (6%) and Tamil (6%). Recognition rates varied across groups, from 50% for claimants facing persecution related to caste and 55% for claimants involved in mixed relationships to 97% for Tutsi and Muslim Ouighor claimants.⁷⁸

TABLE 8: 20 Most Common Race/Ethnicity/Nationality Claim Types (2013-21)			
Claim Types (Race/Ethnicity/Nationality)	Number*	Proportion (%)	Recognition Rate (%)
All	13,580	100	79
Roma	2,520	19	73
Tutsi	1,080	8	97
Kurd	920	7	90
Alevi Kurd	820	6	91
Tamil-North/East/Central	760	6	86
Palestinian	460	3	80
Tibetan	400	3	81
Madhiban/Midgan/Gaboye	360	3	64
Oromo	340	3	84
Amhara	240	2	80
Mixed Marriage/Relationship	240	2	55
Hazaras	220	2	95
Jiberti	180	1	96
Asharaf/Ashraf	180	1	76
Sheekhaal/Sheikhal/Shikal	160	1	70
Caste issues	140	1	50
Muslim Ouighor	120	1	97
Tamil-Colombo	80	1	87
Bedun	80	1	84
Toubou (Gorane)	80	1	73
* Rounded to nearest 20			

⁷⁸ In addition to these subtypes, the largest subtype of race/ethnicity/nationality claimants were categorized as "Varied/Other" with 3,060 claims, representing 23% of claims within this category, and with a 69% recognition rate.

Table 8a breaks down these claims by the ten most common countries of origin, which include Turkey (12% of Race / Ethnicity / Nationality claims), Somalia (10%), Hungary (8%), Burundi (8%), Sri Lanka (7%) and Ethiopia (6%). Recognition rates varied across countries of origin in this category of claim, ranging from 69% for Romania and Somalia, to 97% for Burundi and 91% for Turkey.

6. Conclusion

This article has set out an empirical snapshot of first instance refugee determinations made in Canada from 2013 to 2021.

The main aim in doing so was to help provide context for other research, especially research using standard doctrinal legal methods examining published case law. As the article has argued, because of a combination of how refugee decision-making works and when refugee decisions are published, datasets of published decisions are skewed in various ways. Most notably, published decisions usually involve cases where refugee status was denied at first instance. Moreover, in judicial reviews, published decisions mostly reflect cases where, by definition, there is a *prima facie* reasonable argument that the initial denial was flawed in some way. By contrast, during the period of this study, if one examines all initial refugee determinations, most decisions resulted in claimants being granted refugee protection, and in the large majority of such cases no one has argued that the decision is flawed. Thus, research based only on published case law – as well as jurisprudence and tools based on that case law, including tools using artificial intelligence – are likely to suffer from distortions. For instance, one can easily find examples of recent problematic published cases where decision-makers inappropriately drew on stereotypes in making negative credibility inferences in sexual orientation-based refugee claims.⁷⁹ However, research exploring this case law should be supplemented by the sort of research used in this article, which shows that sexual orientation-based refugee claims usually succeed, and that they do so at higher rates than average at the IRB.

A secondary aim in providing an empirical snapshot of first instance refugee adjudication is to encourage further research on groups of refugee claimants who have attracted comparatively little scholarship. Some groups of claims, including gender and sexual orientation-based claims, have been the subject of extensive critical scholarship.⁸⁰ This is for good reason, as scholars have identified many ongoing serious problems with decision-making in these areas. The IRB has responded to such research by creating policy tools that aim to improve decision-making and by offering extensive training for decision-makers.⁸¹ At the

Countries of Persecution (Race / Ethnicity / Nationality)	Number*	Proportion (%)	Recognition Rate (%)
All	13,580	100	79
Turkey	1,580	12	91
Somalia	1,320	10	69
Hungary	1,100	8	72
Burundi	1,080	8	97
Sri Lanka	920	7	86
Ethiopia	820	6	82
China	600	4	84
Romania	460	3	69
Slovakia	400	3	81
Palestine	380	3	85

* Rounded to nearest 20

⁷⁹ See e.g., *X (Re)*, 2021 CanLII 151956 (CA IRB) at para 21-25; *Ba v Canada (Citizenship and Immigration)*, 2019 FC 233 at para 14.

⁸⁰ See above, notes 4 and 5.

⁸¹ See e.g., Immigration and Refugee Board, “Chairperson’s Guideline 4: Gender Considerations in Proceedings Before the Immigration and Refugee Board” (18 July 2022), online: <<https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDir04.aspx>>; Immigration and Refugee Board, “Guideline 9: Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics” (27 December 2021), <<https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDir09.aspx>>.

same time, however, as this article has shown, these groups of refugee claimants now succeed with their claims at rates above the IRB average, while other groups that have received less attention continue to struggle. A good example of the latter are claims based not on Refugee Convention grounds but based instead on rules relating to persons in need of protection – including people facing harms flowing from organized crime and other forms of criminality. More scholarship, and potentially new policy instruments to assist adjudicators, would be warranted with regard to this group of refugee claimants, as well as other groups whose claims are frequently denied.

A final aspiration for this empirical snapshot is that other scholars might notice patterns that would be worth researching further. For example, scholars interested in law and religion might wonder what we could learn from the way that Canada's refugee determination system responds to different types of refugee claims based on religion – including differences in responses to Christian and Muslim claimants. Or scholars interested in race and the law might wonder what to make of the fact that the largest group of refugee claims involving race/ethnicity/nationality are Roma claimants from central European countries. These are only two examples of interesting patterns in claim category and claim type, and the hope is that scholars will find other patterns – or that they will be encouraged to dig further into similar data. While restrictions related to the data sharing agreement between the author and the IRB preclude directly sharing the raw data used for this research, scholars with research projects that would benefit from more granular exploration of this data are welcome to contact the Refugee Law Laboratory to inquire about possible collaborations using the data.⁸² Another approach would be for researchers to contact the IRB about entering into their own data sharing agreement, and we would be happy to facilitate such contact.

⁸² For contact details, see: Refugee Law Lab, "Contact", online: <<https://refugeelab.ca/contact>>.