Securing Sanctuary: A Queer History of Crossing Canadian Borders

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Abstract

Throughout the world, a wide variety of non-heterosexual identities have been targeted and persecuted, while many of these discriminatory policies are still in place today. This thesis challenges the notion that advocacy for the human rights of peoples with underrepresented sexualities, ethnicities and cultural identities has reached an acceptable endpoint, asserting instead that discrimination persists in often insidious forms that are worth examining and exposing. Resting in a niche between queer theory, immigration theory, and historical studies, this inquiry into LGBTQ+ immigrant and/or refugee experience represents an attempt to build upon a body of work that examines challenges arising when individuals occupy both positions. The research presented is intended to enable a historically informed, reflexive analysis at the intersections of multiple underrepresented perspectives simultaneously, in a way that closely aligns with anthropological principles of respect and human rights.

Keywords: LGBTQ+**,** gender, queer theory, sexuality, identity, human mobility, immigration, refugee law, Canadian history

Dedicated to those who have ever felt like they do not belong,
and the loved ones that always prove us wrong

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Chapter 1: Introduction

Spaces defined by a state of exception invoking refuge or safety for those individuals within them often have complex historical trajectories. From early religious conceptions of sanctuary to contemporary notions of state-granted asylum, there have long existed motivations that push populations to seek out these designated spaces. While over time, the context has shifted drastically, a desire to find protection remains constant.

Specifically, this research will utilize contemporary theory on immigrants and refugees in conjunction with a historically informed, feminist anthropological approach to link together those who situate themselves at the intersection of both LGBTQ+ and migrant identities. The focus of this inquiry will target the emerging developments of exclusionary practices that are dependent on, and informed by, the rise of securitization and framing of the "other" within Canadian culture. To achieve this effectively, this analysis will incorporate Giorgio Agamben's (1998) notion of Homo Sacer, Sara Ahmed's (2000) creation of "the stranger," Yoshino's (2006) concept of "covering," as well as the work of other contemporary theorists concerned with exclusionary social tactics. A case study that centers on sexual orientation and gender identity expression (SOGIE) highlights how such theories can translate into embodied, tangible experiences. Such topics are crucial to a deeper understanding of human experiences of displacement, refuge, and spaces of exclusion concerning at-risk, intersectional populations in a broader sense. In turn, a perspective rooted in anthropological theory enables a more holistic approach to complex challenges present in Canadian society.

The decision to research LGBTQ+-specific challenges, with a focus on immigrant and refugee peoples is related in part to Canada's storied history as a social hub for both LGBTQ+ and other refuge-seeking migrants. While LGBTQ+ is not a globally acknowledged acronym, it is useful for clarifying the subject of discussion, therefore justifying it's use[1] (Browne & Nash, 2011). LGBTQ+, a term meant to encompass a wide variety of sexual orientations and gendered identities, highlights lesbian, gay, bisexual, transgender, queer, as well as other non-heterosexual identities[2]. While such an acronym has only recently entered public consciousness, the

[1] See section on "Terminology".
[2] This research will adhere to the Immigration and Refugee Board of Canada's (IRB) definition of sexual orientation and gendered identities. Sexual orientation refers to "A person's physical, romantic and/or emotional attraction to, and/or intimate relations with, individuals of a different gender, the same gender, no gender, or more than one gender", while gender identity is defined as "Each person's internal and individual understanding of their gender. It

individuals represented by this term have existed since the origins of human evolution. The discrimination and challenges faced by LGBTQ+ community members, however, has been historically ignored or minimized to a significant degree. The failure to acknowledge injustice of this kind is especially relevant to contemporary human rights, LGBTQ+ rights, and immigrant and refugee rights discourses.

Throughout the world, a wide variety of non-heterosexual identities have been targeted and persecuted, and many of these discriminatory policies are still in place today. From bullying in schools in some contexts to the death penalty in certain states, LGBTQ+ people all over the world may face the denial of privacy, safety, and basic human rights due to their personal identities. Following a recent wave of anti-homosexual propaganda originating from several countries, including Russia, Uganda, and Nigeria, Canada has responded to the moral imperative of hosting and resettling LGBTQ+ immigrants and refugees (Envisioning Global LGBT Human Rights, 2015). Under international human rights, “membership of a particular social group” is a qualifier for seeking asylum, and as of 1993, Canada has recognized this to include persecuted SOGIEs, accepting many at-risk persons into the country (UNHCR, 1951; Jordan, 2009). However, this change in Canadian policies did not come quickly or easily, as the history of LGBTQ+ migrants in Canada is troubled and contextually unique. A 1908 Canadian article entitled “The Defective and Insane Immigrant” represents the contrast in both social attitudes and policies over time. Within this text, insanity, perversion, and degeneracy are terms used interchangeably to describe immigrants, underrepresented sexualities, and immigrant sexualities, which allegedly combine to create “sexual perverts of the most revolting kind” (Maynard, 2012). This history of attitudes towards LGBTQ+ migrants must not be ignored when contributing to critical historical discourses on Canada as a safe haven for these groups.

The concept of sanctuary, a symbolic location of safety has origins reaching back to the earliest of human civilizations, with a record of such practices existing in nearly all major religions (Rabben, 2016). Historically situated most often within a religious framework, sanctuary is defined by the inviolability of a designated space, and the protection and inaccessibility of bodies within defined boundaries (McClain, 1995). As Rabben argues, granting sanctuary may be one of the most basic expressions of altruistic behaviour. It should be noted,

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is their sense of being a woman, a man, both, neither, nor being anywhere along the gender spectrum”. They are recognized as distinct, yet interrelated concepts (IRB, 2017).

however, that the willingness of social groups to recognize a legitimate claim to sanctuary is dependent on a variety of complex social, economic, and political circumstances beyond this simple altruistic impulse. The specific manners in which the concepts of inclusion and exclusion are socially legitimized play a consequential role in determining who enjoys protection and who does not.

Throughout this thesis, I will argue that while Canada may permit sanctuary and possibly legal asylum for many new LGBTQ+ arrivals, the process is often fraught with contest and complications. Past research illustrates that LGBTQ+ migrants who choose Canada as their destination do so for a variety of reasons, including; expectations of an LGBTQ+-friendly society, economic opportunities, the ability to pursue personal freedoms, including the legitimization of same-sex partnerships, and relative freedom from violence and persecution, in comparison to the countries from which they depart (Munro et al., 2013; Adam & Rangel, 2015). Building on past research, I will explore whether Canada has met the expectations of LGBTQ+ migrants and will identify ongoing barriers.

i. Theoretical Positioning

This research rests in a niche between queer and historical studies and centres on immigrant and refugee theory and anthropology or phenomenology of LGBTQ+ immigrant and refugee migrancy to Canada to highlight overlooked experiences. Much previous work focuses on only two intersections of identities, namely, underrepresented sexualities and non-dominant cultural and racialized groups, yet the challenges presented when one occupies multiple positions may be more difficult to visualize. The choice to integrate multiple theoretical influences from several schools of thought is a purposeful one, as it is necessary when many of these lived realities are not easily encapsulated within one field of study alone. With anthropological theory acting as a sturdy base, other influences from sociology, psychology, and philosophy can be utilized to form a more succinct and holistic description of complex positionalities. Specifically, this research adopts feminist, phenomenological and cultural anthropological thought to reveal selected themes in LGBTQ+ migrant experiences. This is meant to enable a historically-informed, gender-reflexive, culturally-conversant, intersectional analysis of contemporary subcultural collectivities that is informed by a historical understanding and that upholds and advocates for anthropological principles of respect and human rights.

As a culmination of interdisciplinary studies, this thesis exposes discrimination, prejudice, and misconceptions experienced by migrants with underrepresented sexualities in Canada's present and past. This thesis challenges the notion that advocacy for the human rights of peoples with underrepresented sexualities, ethnicities and cultural identities has reached an acceptable endpoint, asserting instead that discrimination persists in often insidious forms that are worth examining and exposing. While anthropological teachings stress the importance of refusing to speak for others, this work is meant to support and broaden discursive space centring the ongoing struggles of a variety of LGBTQ+ migrants, immigrants, and refugees and to amplify a wider diversity of voices. Any attempt to contextualize a contemporary discourse, moreover, ideally begins from a place that engages with and reflects upon the so-often forgotten communities of the past.

Throughout this research, feminist studies, in conjunction with queer theory, provide useful analytic constructs for thinking through gender, sexuality, and bodies. This is complemented by a specifically queer approach to phenomenology, which focuses on lived experience, intentionality, and the roles of behaviours in shaping social realms (Ahmed, 2006). A historical analysis of sexualities, moreover, would not be complete without the inclusion of Michel Foucault's (1978) contributions to our understanding of sex and power relations in social realms. To create a notable link also to immigrant and refugee studies, the works of Hannah Arendt (1958), Pratt (2005), Epp (2017) and Yakushko (2018), among others, will also be incorporated. I submit that there are more points of overlap between queerness and human mobility than many assume and build the thesis by expanding upon this foundational assertion. From this theoretically-informed perspective, I work to link these themes, which create the backbone of this thesis, namely, the positioning of underrepresented sexual migrants as "others requiring management" in Canadian history.

Alongside an anthropological, feminist-informed approach, this thesis employs a phenomenological orientation. Phenomenology itself is not categorized as a final theoretical explanation but rather as a philosophical exploration of experiences and consciousness, making it especially relevant to a more fulsome examination of the topic at hand. In a sense, this is an effort to rail against the history of objectifying and essentializing both LGBTQ+ and migrant communities in Canada to create space for retellings of more subjective and embodied experiences that are contextualized with anthropological rigour.

Over time phenomenology has shifted from its earliest origins as Edmund Husserl's brainchild in the early 20th century, undergoing transmogrification in the works of Martin Heidegger, Jean-Paul Sartre, Jacque Derrida, Hannah Arendt, and more recently, Sara Ahmed. The continuing core of the phenomenological approach is the rejection of objectivity in favour of a close consideration of human behaviour as illuminating human experience. I purposively and selectively choose certain anthropological and phenomenological constructs that align with the goal of this thesis to conduct a reflexive and critical exploration of intersecting LGBTQ+ and immigrant/refugee identities over time in Canada.

The goal here is not to align with a particular phenomenological approach but rather to incorporate certain aspects of phenomenology into an anthropological perspective to better contextualize the social histories and challenges faced by migrants with underrepresented sexualities who are persecuted. A century ago, phenomenological thought aimed to steer itself toward human beings and their subjective life experiences. This subjective view of a phenomenon and, subsequently, an understanding of real experience contributes greatly to deepening anthropological knowledge. Negating the naturalism that is inherent to the "natural laws" that inform determinism, phenomenology does not pretend to present an "empirical reality" and sets out instead to present some of many possible realities as well as located subjective truths. Arguably, what phenomenology permits is a decentering of the West, heteronormativity, and of empiricism because these values remain largely unmarked, they seem natural or normative but are, in fact, biases in science and impede an understanding of human history from the perspectives of those who have historically been consigned to the margins.

The orientation from which one observes and experiences phenomena is significant, a point which Ahmed supports in *Queer Phenomenology* (2006). The emphasis on orientation within phenomenology is especially relevant when examining, quite literally, the concept of sexual orientation. One is argued to "have" an orientation that belongs to them, while also making object-choice decisions. However, as anthropologists stress, orientations and perspectives are highly subjective and cannot be taken for granted. The reflexive analysis of orientation, and by extension sexual orientation, is crucial. As an aligning of body and space, orientation in the abstract can also extend to a variety of topics, including the movement experienced by immigrants and refugees. Due to ongoing COVID-19 restrictions at time of

writing, in-person fieldwork with such communitites is limited however phenenomenology can prove to still be useful, especially regarding written texts and sources.

I use phenomenology primarily to negate any objective claims to human experience, especially with respect to "top-down" analysis. I opt instead for a "bottom-up" approach. This is especially crucial when examining archival and historical texts as "active texts." Moran (2000) submits that the founding figures of phenomenology wished to move beyond understandings that were bound tightly to dominant historical traditions of thought (especially positivism). Instead, they sought to reinvigorate a connection to peoples' realities and lived experiences while remaining aware of cultural and social prejudices. Husserl was concerned with the degree to which our assumptions, beliefs, and scientific knowledge clouded our understandings and interpretations of experience (ibid). While all aspects of Husserl's work will not be relevant to this thesis, the suspension of prejudicial presumptions remains at the forefront of my approach. I employ a phenomenological epistemology or way of co-creating realities with research collaborators to complement an anthropological methodology that is intensely intersectionally attuned and analytically prepared to provide the deep context that is necessary to understand an infinite variety of subject positions. This perspective avoids making assumptions on behalf of those most affected and permits a reading of texts and other works as contextualized "in situ" (rather than empirically real) pieces.

Throughout the literature review several themes emerged; a feeling of unfamiliarity (creating the "stranger"), societal reactions to unfamiliar people and ideologies (pathologizing sexuality and migrant bodies), in addition to reactionary actions taken by those most vulnerable (passing and covering). These themes broadly frame my analysis of the challenges that LGBTQ+ migrants to Canada face after their arrival.

ii. Terminology

Throughout this research the terminology I employ often attempts to encapsulate a wide variety of persons and experiences. This is neither to homogenize nor to generalize experience, but rather for brevity and inclusivity. I employ, for instance, the acronym LGBTQ+, despite a wide variety of possible acronyms (as for example LGBTQ2S+ in Canada) as the acronym used internationally in policy documents and because the local versions of the acronym change frequently to add more inclusive terms, which risks dating this thesis. This is not to exclude those

who live as asexual, intersex, or other non-heterosexual identities, but rather it is a strategic choice in order to balance both recognizability, and inclusiveness.

In addition, terms such as migrant, immigrant, and refugee refer to a wide variety of migrant peoples. Throughout this research “migrant” will be used in a broad manner to refer to anyone who has in their lifetime, left their homeland, is on the way to Canada, arrived in Canada or lives within Canada either long-term or temporarily (i.e., for work) and who may or may not be seeking permanent status within Canada. Migrants are distinguished from permanent residents, including generationally-removed refugees and immigrants, and from more historically established settlement/settler communities.

By “Immigrant,” I refer to newcomer migrants (not to non-Indigenous Canadians, all of whom are members of the “immigrated”) who intend to permanently settle regardless of whether or not they have achieved legal status, while “refugee” refers to those who have, or intend on seeking asylum based on the 1951 United Nation’s Convention Relating to the Status of Refugees criteria, regardless of whether or not they meet the criteria. For the purposes of clarity, unless crucial to the context, little distinction will be made between asylum seekers and designated Convention refugees, as legal status is of little concern when determining if one is entitled to basic human rights. The term “migrant” is intended to represent multiple categories of people in various stages of transition in their life-building journeys and across a broad range of circumstances in Canada.

Chapter 2: Methodology

This research methodology is multi-sited, drawing from archival, academic, legal, statistical, and ethnographic sources, with the main objective being content analysis. I focus on three broad, interconnected themes; a sense of unfamiliarity, social reactions to that which is unfamiliar, and the reactionary strategies that have become hegemonized over time for coping with that which is unfamiliar or unknown. I selected these themes as rich sites for exploring dominant discourses (i.e., androcentric, heterosexual, Western European), as well as the perspectives of those occupying "othered" or marginalized subject positions. For example, a social reaction to that which is unfamiliar can take the form of border policing by the state or alternatively self-management or self-assimilating by a marginalized individual. These perspectives bring into focus the broad project of "othering," which includes ways of socially producing and managing "others," including oppression by the power holders, inter- and intra-community pressures, and internalized means of self-disciplining. I adopt a phenomenologically-based "bottom-up" approach to examining texts and data. This is meant to enable a (re)examining of history from the positionality of those most exploited and oppressed within the power structure to amplify the voices of those who are typically silenced in the dominant narratives of history. An anthropological theory which is concerned with unravelling whose interests are served when preferred narratives are asserted provides a useful toolkit for an inquiry into the ways the ruling classes shape "others" within the historical record which has a structuring effect on "others'" embodied experiences in contemporary Canada.

The examination of documents as "active texts" is crucial to this methodology, especially in relation to when in-person research is restricted by COVID-19 policies. This is meant to reveal clues about the larger contemporary aspects of social organization at the time of the text creation. As all human experiences are largely subjective, so too are texts, despite their ahistorical appearance of objective truth, finitude, and authority. As Stuart Hall and others have persuasively asserted, texts are never finished and are always becoming – being both encoded by producers and decoded by readers who confer meanings upon them according to their social contexts and what makes sense to them (Hall, 1973). Texts do not exist independently from the social realm in which they are created and consumed and should be read critically from a variety of dominant and subordinated positionalities. While it is impossible to fully inhabit another's

positionality or to see through a lens that is entirely biased and culture-free, this approach attempts to be as reflexive as possible by decentering as much as possible the subject position from which interpretation proceeds while simultaneously remaining critical with an eye towards feminist, phenomenological approaches. I sourced documents from three main streams; archival materials, which include media reports and other historical texts, academic publications, and legal documents, including asylum claims and court proceedings. These are complemented by quantitative statistical data reports as well as qualitative, exploratory ethnographic research. Other data, such as statistical and ethnographic data, will be examined from a "bottom-up" perspective as well, albeit with slight alterations to methods. Overall, all sources are not meant to be representative of an empirical reality but are read as functioning in process – in other words, as reflective of the production and reproduction of social discourse over time.

i. Archive Sampling

I conducted archival research drawing from two broad databases, that of the Winnipeg Public Library digital collection of newspapers and the Manitoba Gay & Lesbian Archives located within the University of Manitoba's Archives and Special Collections.

Sources drawn from the Winnipeg Public Library digital collection contribute to the bulk of historical research throughout this thesis, focusing on events in Winnipeg or Central Canada, as reported in Manitoba-based newspapers only. These sources were plentiful and easily accessible by topic. I selected samples relating to LGBTQ+ and migration topics and those with an identifiable overlap between the two topics (which ultimately proved difficult). Because of the large number of sources available and the wide range of topics possible to cover, I organized this research into five separate sample groups (A, B, C, D, E hereafter), meant to target different topics for different purposes.

Sampling newspapers enhances contextual awareness regarding the production and reproduction of texts in public in relation to either LGBTQ+ or migrant populations in Canada. Both have a contentious history, stirring up a variety of opinions over time. Earlier depictions of these communities in the media reflect popular beliefs and assumptions, which did not exist in a vacuum, but would likely have real effects on the populations being discussed (Fleras, 2011). Newspapers are accessible to the broad public and, therefore, may have far-reaching effects. Over time media attitudes seem to soften toward and even embrace both migrant and LGBTQ+ communities, but this is likely to reflect the newspaper's political orientation (left or right-

leaning etc.) and may not reflect public views. Moreover, these stories may signal a growing awareness of and aversion to litigious recrimination within the cultural industries and the growing trend towards “sensationalizing” to sell -- both marketing ploys -- and therefore must not be read as straightforward support for these communities. It should be noted that “scandalous media,” or the reporting of salacious, sensationalized stories, is not isolated to the 21st century, and this analysis is conscious of the spectacularizing effect that the media may have on some of these narratives.

To sample the digital database, I selected keywords to represent a singular sample category, which I separated into five sample groups. Groups A and B utilized neutral, identity-based keywords such as gay, lesbian, immigrant, or refugee to encapsulate a broad sample of attitudes. Group C utilizes ambiguous, sexually-based keywords such as sexual crime or sexual deviant to test the relationship between these terms and LGBTQ+ and immigrant or refugee populations and the frequency at which they are connected. Group D uses the same method as group C but instead incorporates targeted, pejorative terminology. Group E mirrors Group C and D in method, instead featuring terms relating to migration. When keywords were entered into the database, they were sequentially filtered by the decade of publication and sampled randomly. For all decades, I collected a maximum of five articles. This results in a total of 14 possible sample periods between 1880 and 2019, with a total of 70 possible articles being collected, per category. The total number of articles per group is dependent on the number of categories. If a duplicate source was obtained, it was excluded, and another random selection was made.

From Manitoba Gay & Lesbian Archives, I selected three relevant boxes from the Gay & Lesbian archives, box 18 (Racial Discrimination), Box 34 (Homophobic Violence) and box 48 (Naturalization, Citizenship and Immigration). While the archive itself is very large, there was a relative paucity of sources on these topics to draw from. In total, while I examined numerous sources, I chose 35 specifically for the purpose of qualitative data. There were not enough sources to separate by category (the method used with the digital newspaper collection). I, therefore, conducted a qualitative content analysis rather than tracking trends in attitudes over time. These sources range from roughly 1978 to 1996. However, some of the original documents lacked dates. While more limited in a time frame, these sources include Winnipeg-specific sources, correspondence between LGBTQ+ community leaders at the time, and other valuable qualitative data that was absent in the newspaper's digital collection.

ii. Qualitative Content Analysis

In my analysis of the two largest newspaper-based sample groups (A and B), I used a subjective judgement technique similar to that originally employed by Fleras (2011) in order to interpret attitudes toward minorities based on newspaper headlines. This technique involves separating sampled newspaper articles into three subjective categories; positive, neutral, or negative. These categories are based largely on the implied tone, context, and intention of the article. As Floras (2011) suggests, headlines and media reports create and convey information, attitudes, and lasting impressions. They may communicate emotions and opinions, which is especially relevant to a context analysis regarding Canadian attitudes towards both migrants and LGBTQ+ populations. This used this method to examine the attitudes towards LGBTQ+ populations (Group A) and immigrant or refugee populations (Group B) over a set period from 1880 to 2019. I detailed how often articles fell into each category and how these categories evolved over time.

Group A was the largest sample group. I used nine broad identity-based terms, including gay, lesbian, homosexual, queer, asexual, bisexual, transgender, transsexual, and homophobia. I sorted these samples into either positive, neutral, or negative categories to examine the general patterns in use over time. Positively sampled articles would either use the word in a positive context or in the context of defence/advocacy for LGBTQ+ individuals. Neutral articles are those with no expressive language, no opinion, and neither support nor derision of LGBTQ+ views. Negatively sampled articles use the term(s) in a pejorative context, challenge LGBTQ+ advocacy or deride LGBTQ+ persons (e.g., pro-criminalization of homosexuality). The articles were a mix of news stories and opinion pieces. Group B repeats the methods of sampling of group A, with the introduction of immigrant and refugee terminology. For this sample group, I used two main keywords, “immigrant” and “refugee,” along with the presence (but not a requirement) of additional key words, including invasion, crime, deportation, foreigner, illegal, migrant, and xenophobia, to narrow results.

I used the keywords sexual deviant, sexual crime, sexual psychopath, sexual perversion (group C) and gay-bashing, queer-bashing, transvestite, sodomy, buggery, homosexual offence, and deviates (group D) and immigrant, refugee (Group E) when employed in relation to either LGBTQ+ or immigrant or refugee populations. When the keyword was used in relation to either

community, I sorted it into the classification of "presence," and when no overt connection was made, "absence."

Unlike in the attitude analysis, I used no neutral category in this phase. This method is used to identify the frequency at which certain terms are connected to these populations, not necessarily the context in which they are used. This form of sampling can also aid attitude analysis in uncovering broader social trends in attitudes and in language over time. Presence-or-absence analysis helps isolate when new terminology is introduced and to track its use over time. For group C, I purposefully used ambiguous terms to highlight any possible relationship between the keywords and the LGBTQ+ or migrant communities. I did this not attempting to determine negative or positive values but rather a frequency of use identifying presence or absence. Group D is sampled in a similar way, but I focused on negative terminology. Due to the nature of these keywords, all sampled articles would count as "presence. Mostly terms here were explicit, male-centric terms, whereas female-centred terms did not deviate from "lesbian." It is notable that many of the keywords used within groups C and D may now be considered slurs or insults. However, for the purposes of sampling, they are relevant to the attitudes and common usage at the time.

For sources derived from the Manitoba Gay & Lesbian Archives, I engaged in content analysis, as connections with LGBTQ+ migrant peoples were limited. The sampling from the Gay & Lesbian archives box 18 (racial discrimination) yielded six sources, box 34 (homophobic violence) yielded 18 sources, and box 48 (naturalization, citizenship, and immigration) yielded 11 sources. Box 48 was limited in size but very useful as it was difficult to find such a topic in the general newspaper search, suggesting it has not received sufficient attention in the media..

iii. Thematic Analysis

I sampled Canadian Refugee Appeal Division (RAD) publications to form a case study surrounding the judgement of LGBTQ+ asylum seekers. These documents are obtained through The Canadian Legal Information Institute (CanLII) and scrubbed all identifying information, aside from case numbers. Refugee appeal cases include a summary of why the original claim was rejected by the Refugee Protection Division (RPD) and how the adjudicator made their decision, as well as a secondary decision and review by the RAD. I included these to represent a broad picture of the appeal process for all LGBTQ+ claimants and to isolate possible trends in decision-making using a qualitative thematic analysis approach. Specifically, to complete a

thematic analysis of asylum claim appeals, I isolated two groups; 25 of the most recent sexual orientation or gender-based cases at the time of writing between 2018 and 2020 randomly selected from the Refugee Appeal Division (RAD) via the CanLII database, and another 25 cases from 2013 to 2017, creating a total sample group of 50 cases. These cases are separated by publication date (i.e., before and after) in relation to the implementation of *Guideline 9: Proceedings Before the IRB Involving Sexual Orientation and Gender Identity and Expression* in May 2017, which attempted to address ongoing issues in relation to stereotyping and other issues that may disadvantage SOGIE claimants. The purpose of these sample groups is to highlight themes that emerge both prior to and after the implementation of Guideline 9, as well as to explore notable cases and their results. I chose thematic analysis to examine qualitative data to identify coded themes, patterns, or structures by examining the overall content of the material (Lapadat, 2010). This is a primarily deductive approach, with minimal guidance in predetermining the categories used for analysis. I used three broad categories for these appeal cases; explicit “narrative versus narrative” inconsistencies, explicit “narrative versus material” inconsistencies, as well as subjectively determined plausibility inconsistencies according to the decision-maker.

Chapter 3: From Sanctuary to Asylum: Creating a Space for "The Stranger"

The rise of Christianity during the 4th century CE saw the first written form of sanctuary law in the West, with the creation of the Theodosian Code of 392 CE (Carro, 1985). With the support of the first Christian emperor, Constantine, sanctuary became imbued with newly Christian sentiments. Christian churches came to represent spaces of safety as "no one was permitted of his authority to remove by force from churches those who had fled to them" (De'Mazzinghi, 1887, 90). Christian sanctuary was meant to operate above and beyond secular laws, as it was seen to exist as a privilege granted by God and therefore exceeding the reach of any legal entity. De'Mazzinghi (1887) notes that many legal systems at this point in history were either ineffective or unjust, which caused individuals to seek forms of protection outside the law. Over the next several centuries, the power dynamic would shift between the church and the ruling powers of the state, which resulted in changes to the context of sanctuary. These alterations included new restrictions on who was permitted legitimate sanctuary and how long they would remain protected.

The nature of sanctuary shifted greatly with the encroachment of independent nation-states and eventually ceased to exist in ancient forms once sovereignty was understood to be a right inherent to these states. It is important here to draw distinctions between sanctuary and what is referred to as asylum in contemporary law. Following the 1648 *Peace of Westphalia* treaties that were produced after the Thirty Years War, nation-states began to assert control over their physical territories in the form of sovereignty (Rabben, 2016). This increased secular and legal authority, limited interventions by other states, and caused a momentous shift in political international relations. As a result, sanctuary in its medieval form lost support and was largely reduced to a morally and religiously-based act of humanitarianism.

It is noteworthy that the context under which one could seek sanctuary versus modern asylum is significantly different. Sanctuary served to protect people from multiple sources of harm or legal punishment (which in the medieval period was commonly severe or inhumane) primarily based on religious justifications. Asylum, in contrast, is based upon strict legal definitions and can only be evoked in the event of the violation of state protections, or other forms of human rights abuse that qualify within legal guidelines. Many of those who qualified

for early forms of sanctuary, would not be considered legal refugees today (e.g. those convicted of murder and sentenced to death).

Sanctuary did not end altogether in modern Western states, and in fact resurged in America in the 1980s as a result of Latin American conflicts. As citizens from El Salvador fled violence by escaping to Arizona, roughly 400-500 American churches provided safety for those at risk following the failure of the American legal system to do so adequately (Rabben, 2016). This can be seen to represent an interesting dynamic between the legal authority of states to reject asylum seekers and the moral authority of the public to pursue humanitarian efforts. I would argue that the frameworks advanced by sovereign nation-states have reduced the capacity to aid persons outside of physical borders, while simultaneously undermining the legitimate claims of those seeking asylum.

(3.1) Exclusion & Agamben's *Homo Sacer*

To outline the contemporary challenges of asylum seekers, Giorgio Agamben's seemingly contradictory and exclusionary notion of *homo sacer* can be examined. In addition to the use of sanctuary, the early Greek philosophers' defined two separate ways of thinking about the nature of life. Bare life, or Zoe, represents life at the basic level, which is shared by all living creatures. In contrast, bios represent a more complex social life that is informed by politics and culture. This ontological split informs Agamben's re-formation of homo sacer, originally adopted from early Roman law. Under Roman law, *homo sacer* represented a figure who, after being legally banished from society, could be executed but could not be sacrificed for ritual or religious purposes (Agamben, 1998). In other words, the individual was removed from the realm of *bios* (political life) and was only permitted to occupy the realm of *Zoe* or animalistic life. However, Agamben's definition of homo sacer is not the same as inhabiting bare life itself, but rather someone who has been reduced to bare life by forceful means. This can be argued to be partially analogous to the subject position that many displaced persons occupy, by nature of expulsion from their homelands or displaced within the borders of their homelands.

This is, of course, not to conflate refugees with animal life, but rather to argue that segregation from human rights is a form of condemnation to bare life. While this appears contradictory, Agamben argues that the figure of *homo sacer* represents the ultimate form of

exclusion, both from human jurisdictions (in that *homo sacer* can be killed with impunity), yet may not be sacrificed, which simultaneously banishes *homo sacer* from the realm of the sacred. To clarify this complex liminal status, Agamben invokes the myth of the Germanic-Anglo Wargus, or wolfman, who upon banishment transmutes into a half wolf, half human. A representative of both *bios* and *zoe, homo sacer,* paradoxically belonging to neither (Agamben, 1998).

Preceding Agamben, Hannah Arendt (1973) theorized something like bare life in the context of the failure of states to protect displaced persons following the chaos of World War II. Those who were emancipated from states, regardless of if by choice, acquired a new liminal status that previous human rights efforts largely failed to foresee (Arendt, 1973). Arendt argues that the rights of humans, if conceptualized to be given at birth were ineffective without state intervention in enforcing them. While rights were theorized as autonomous from the state, the situation of many refugees following World War II showed that those emancipated from states were simultaneously emancipated from their rights. The plight faced by stateless persons was not that "they are not equal before the law, but that no law exists for them" (Arendt, 1973, 49).

For Agamben however, the element of forcible removal from the social world, *bios*, and the intersecting effect of state sovereignty is theoretically significant. For Agamben, the original act of sovereignty is the production of bare life through the ban used in the creation of *homo sacer.* The sovereign in this context is one who wields judicial power to create the state of exception necessary to designate an individual as *homo sacer*. Here, we can see the intersections between state sovereignty, the reduction of individuals to a bare life and the stripping of human rights through an exclusion from societal life.

(3.2) Constructing the Sexual Stranger

We can consider Ahmed's (2000) "figure of the stranger" when exploring the socially-constructed notion of "the other" as an individual occupying the space of homo sacer. Ahmed designates the stranger as a figure formed through encounters and fetishized to represent an "other" while the factors producing this social category remain concealed. The stranger is subjected to pre-existing techniques for differentiating between the familiar and the "strange." Challenging postmodern theory, which posits that the "stranger" is an amalgamation of all that is

excluded, Ahmed argues discourses which construct the stranger are more noteworthy than what the figure itself represents, thus departing from Agamben. In this thesis, I will argue that the stranger is more than what has been excluded and that scholars should attend instead to the ways and methods of exclusion in Canada. Diken's (1998) definition of the stranger as one who is excluded, and neither "us nor them," for instance, obscures the differences which define the parameters of exclusion and the factors which contribute to this othering.

Ahmed integrates concepts such as spatial and bodily theories which are topics commonly broached by feminist and post-colonial theories to address the "stranger figure." From the perspective of post-colonial theory, the stranger is one who has been socially excluded, especially in the context of a nation state, a stance also supported by Diken (1998). However, essentialist insider versus outsider perspectives are insufficient to an examination of the motivating factors surrounding the creation and understandings of differences.

An intersectional approach combined with grounded anthropological theory, on the other hand, prohibits essentializing and permits greater contextualizing. Stranger fetishism – the creation of an abstract "type" divorced from its historical creation -- is evinced in the phenomenon of "stranger danger," which locates the stranger as an origin of danger. In 1970s North America, these strangers often included pathologized gay men and lesbian women, who were made to serve as scapegoats for social turmoil during this period (Minton, 2002). These individuals were depicted as posing a threat to social values such as the nuclear family, therefore legitimizing their othering within social circles. When those who are recognized as strangers push the boundary limits of social orders (e.g., advocating for inclusion), they are met with drastic enforcement of attempts to protect the "inside" from the "outside."

Lancaster speaks to stranger fetishism in *Sex Panic and the Punitive State* (2011). When stranger figures come threaten to erode the social power of the centre it may inspire a moral panic. Lancaster argues rather than fetishization however, "condensation" of composite figures that are partially real, partially imagined, are created from moral panics. Moral panic, a term drawn from work of Stanley Cohen (1972) is a broad, mass movement response to "false, exaggerated, or ill-defined moral threat to society and proposes to address this threat through punitive measures" (Lancaster, 2011). Lancaster notes that within anthropological terminology, these panics may fall under the category of "social revitalization movements" as well, which construct new social regulations to solve a real/imaginative threat to the social order. Stranger-

fetishism or “condensation” transforms vague fantasies into a figure with a seemingly tangible, sometimes dangerous, presence (Ahmed, 2000; Lancaster, 2011).

In this example, “the homosexual” becomes a symbol or type, removed from individual identities. The symbol was employed to represent a collective social threat without any actual evidence. The stranger is therefore assumed or imagined to be the origin of danger emerging from anxious and uncertain encounters. Ahmed argues that there is a need for a more complex investigation of how we designate others as strangers and that the social relationships concealed in this fetishizing process are a better indicator of how inclusion and exclusion boundaries form in a metaphysical way. Fetishism “invests the figure of the stranger with a life of its own, insofar as it cuts the ‘the stranger’ off from the histories of its determination” (Ahmed, 2000, 5). This “character” or representation has its own life in the stories the moral majority narrates, but no actual connection to any empirical reality.

Sexuality appears as a common source of stranger danger and moral panic throughout the Western world, as sexuality challenges both personal and social boundaries (Weeks, 1985). Collective fears of moral decay challenge those involved to differentiate between real and imagined, and as Lancaster suggests, this may entail “magical thinking.” Magical thinking is a form of contagious, associative logic that can spread to other aspects of an individual’s life, leading to increased suspicions and paranoia of the supposed threat (Ahmed, 2000; Lancaster, 2011).

The West has experienced multiple sex panics since the 1800s; for instance, transient, unemployed and unpropertied men during the Great Depression, or family unity-threatening working women in the post-WWII era. The discomfort with these challenges to gender role stasis evolve into a general fear of sexual non-conformity in the mid-20th century McCarthy era, which developed specifically around so-called “homosexual predators” (Weeks, 1985)

These are important examples because moral panics can have the effect to make sexuality, gender identity, and the human body vulnerable to policing by the state. Weeks argues that these panics commonly follow a predictive structure (1985). Take the contemporary “transgender bathroom panic” for instance.[3] First, the boundary transgression is perceived as a threat (i.e., a person using a bathroom aligned with their gender, but not necessarily their

[3] The United States Government is continuing to introduce bills which threaten transgender rights, including bathroom use restrictions on youth, notably in Alabama and Tennesse in 2022 (Thoreson, 2020).

physical biology), potentially evoking fears about "mismatched" bodies sharing space. This transforms into a stereotyped fear about a "particular form of monster", here, someone who weaponizes the gender-based bathroom system to spy on or assault the opposite sex – a threat which need only be *perceived* to be real (Weeks, 1985; Lancaster, 2011). This escalates when personal opinions become public, at which point often moral or legal barricades are created, and solutions are imagined (i.e., laws)[4]. Finally, so-called transgressors must endure discrimination which could mean civil rights violations, harassment, or assault of transgender persons in bathrooms (Weeks, 1985; Thoreson, 2020).

To create a cohesive argument surrounding the figure of the stranger in relation to sex, gender, and, ultimately, LGBTQ+ identities, we can turn to Judith Butler. In Bodies that Matter, Butler proposes an approach to the creation of a sexed body and, therefore, subsequently, a gendered body (Butler, 1993). Butler argues that sexual difference is a material difference that is created through the production of discursive practices that define and create boundaries around what is possible or not possible. In *Bodies that Matter*, Butler introduces the exclusionary matrix, which produces the abject and the domain of the abject apart from that of the subject (Butler, 1993). This exclusion is defined by the creation of zones of social life which are populated by those that do not enjoy the privileges commonly enjoyed by the subject. The formation of the abject subsequently forms the boundaries of who or what the subject is. For Butler, this includes the formation of the familiar subject through the identification with the normative social guides surrounding sex and gender. Here, the process of identification is stressed by both Butler and Ahmed in the creation of the abject, or in other terms, the stranger.

First, the creation of the subject can be explored, then in turn the creation of the other. Historically, two main approaches have dominated social science theory in relation to the creation of identity. The first, identity as initiated *by* the subject, implies a somewhat conscious use of agency but ignores outside forces. The second is a more deterministic approach, suggesting that construction is a singular occurrence and leads to unchangeable and immutable results. Butler argues against both, asserting that construction is a process that occurs over time

[4] A connection can be made here to immigrant populations as well. In 2003 the American government launched "Operation Predator" which linked sexuality, terrorism, and immigration policies to rid the country of sex predators. If effective, this program may have had a positive impact on public safety however there are recorded instances of individuals who pose no threat being deported as sex criminals (Lancaster, 2011).

resulting in identities being created and recreated behaviourally or performatively (Butler, 1993, 9).

This challenges what we assume to be natural or inherent to bodies, sex, and gender characteristics. As Butler argues, nature has its own history which we must not neglect in our critical analysis. To properly examine this topic, we can examine two concepts; that of performativity and that of either the inclusion or exclusion connected with this performativity. Performance practices have been the centerpiece of Judith Butler's work in both *Bodies that Matter* in addition to *Gender Trouble.* Performances of sex and gender are never a singular, independent event, as they are dependent on notions of construction and therefore a reiteration of a norm. However, Ahmed suggests that the figure of the stranger conceals the nature of its formation, so too does a performance hide the social aspect of its repetition.

Here, several points put forth by Butler can be used to examine the nature of performance. First, sex and gender performances must not be separated from the normative regimes that shape them. Additionally, they should not be examined independently from discourse and power. Second, the "materialization of norms" relies upon identificatory and construction processes by which these norms are assumed (or rejected). The identification process dependent on norms precedes that of construction and, subsequently, performance. Finally, the boundaries of all these processes are illuminated by the eventual creation of accepted or rejected bodies and identities. Those that fail to be legitimated do not enjoy inclusion into the realm of the subject.

However, for Ahmed, the fetishization of the stranger rests heavily on the vague and stereotypical notion of what constitutes the rejected non-subject. It can be argued that following the initial identity rejection discussed by Butler, Ahmed's stranger construction represents a secondary rectification process. Following exclusion from the subject realm, a mass of illegitimate bodies are construed by denying their human qualities, and it is possible to fetishize qualities which constitute this group. It is additionally possible that from these fetishized imaginings, a reaction from the subject against the non-subject is possible and justified through the danger that strangers are assumed to pose. In other words, when identity construction operates to create the subject, it is simultaneously creating the rejected or inhuman by the very nature of creating boundaries for itself. From here, the fetishization of the stranger can adopt qualities of those rejected to create a metaphysical, imaginary enemy. It is no coincidence that

target populations throughout Canadian history have included both LGBTQ+ populations as well as "foreigners" of all kinds (D'Emilio, 1983; Carro, 1989).

Ahmed's postcolonial perspective is key in relation to the topic of bodies as subjects, as historically determined by a past of Western influence; the white, male (heterosexual) body, though unnamed, is most framed as the familiar (or the centre). In other words, this body is not conceptualized as a stranger within Western viewpoints. Cultural history, therefore, can have a direct influence on the strangeness and differentiation other those who are deemed to be separated by the boundaries of social and political order. Touching on Julia Kristeva's concept of abjection, Ahmed highlights how the parameters of social order function to "expel" bodies through abjection based on pre-established subjectivities that ultimately stem from strange encounters and the reification of strangers through fetishization (Ahmed, 2000; Kristeva, 1986). Strange bodies are placed in the domain of objects, separate from the realm of familiar subjects.

Ahmed's theorization of the stranger, and by extension, stranger fetishism is crucial to the theoretical feminist and reflexive underpinnings on which this thesis rests. With this foundation, it is possible to link a deeper contextual meaning of "othering" with sexuality and with the sexual-strangers Michel Foucault identifies in *The History of Sexuality*. While human sexuality is arguably the main theme of this work, its implications are far-reaching beyond this subject alone and can offer a wider conceptual framework addressing how, precisely, strangers are constructed and altered in time and with ideological shifts. While Ahmed argues that stranger fetishism works to conceal history, context, and social differences, Foucault's work pushes back against this concealment, illuminating how hidden meanings come to exist and how often they are taken for granted.

Chapter 4: The Othering of Sex & Gender

The anthropology of sex and gender was reinvigorated in the 1980s, but the writings of the sexed and gendered lives of others long preceded this theoretical reawakening. Examining "others'" sexualities in early ethnographies raised questions surrounding how Western populations should be conducting their own lives. Often non-Western sexualities were characterized as free, less socially restrained, and by extension, closer to nature. It should be no surprise that while ethnographers, such as Margaret Mead, intended to broaden Western understandings of how variable human sexuality is, some reinterpreted these retellings of sex lives as proof of their own moral superiority. The history of the relationship between anthropology and sex has, from its origins, always been raced, classed, and gendered, something which recent reflexive theory has only begun to correct with community-integrated enthnography and feminist-orientated research projects.

The 19th century produced a great many more encounters with unfamiliar sexualities for those at the so-called centre. Previously, these were concealed from the scrutinizing gaze of the public. Early ethnographers travelled home with romanticized (or horrified) tales of peoples, which they used to construct moral tales presenting "others" usually as lacking in libidinous control and rationality (Lyons & Lyons, 2004). Over time these retellings would focus more on sexualities as deficits, namely the tabooed (lacking moral order), superstitions (lacking scientific rationality), and underdeveloped (lacking economic order). These fictive depictions of othered sexuality fueled Western anxieties around sexual health, moral degeneracy, and other social anxieties of the early 20th century. As a result, sexologists, psychiatrists, and sexual reform advocates emerged to tackle a new and disturbing social problem, the "sexual stranger."

Just as strangers may be constructed through discourse, so too can our attitudes towards human sexuality, and by extension sexual strangers. Through *The History of Sexuality* Foucault attempts to reveal where these discourses originate, who creates them, and from which positionalities they are sustained.

Foucault introduces to the understanding of strangers, the "analytics of power." While post-modern theory may suggest that strangers exist as an amalgamation of excluded traits and bodies, Foucault encourages a deeper inquiry; into the ideologies which perpetuate exclusion over time and the mechanisms by which this is sustained through social and cultural power

relations. For Foucault, there are no inherent human characteristics which are innately otherable, Foucault argues that sexual ‘strangering’ is sustained instead by often-hidden power relations.

Foucault’s “truth of sex” and taboo, or “perverse” categories, are also useful. These inform “othering” by targeting exclusionary tactics in relation to an alleged “objective” truth of sex. Contemporary Western culture-groups have largely based their truth upon *Scientia Sexualis* (biological models of sex), as opposed to the *Ars Erotica* (erotic art) that was embraced by ancient Rome, India, and China. This falsely objective scientific “truth,” when weaponized by the powerholders, would prove to be very destructive. For Foucault, the non-dominant or peripheral sexualities (i.e., anything not strictly monogamous, heterosexual, etc.) were paradoxically not constrained from occurring but rather socially identified, isolated, and solidified as concrete categories of sexuality through overarching forms of power. While classically framed as repressed, Foucault argues that such suppression and prohibition consequently led to a multiplication of visible unorthodox sexualities as well as persecution and legal sanctions. All practices deemed outside the norm were carefully categorized and subsequently attributed to various sins, evils, mental illnesses and other “problems.” Foucault poses the question (yet does not provide the answer) as to whether this mass categorization and condemnation occurred to control population reproduction and to create a sexual structure that would better benefit capitalism.

Ultimately, and unfortunately, this ideological development within the Western world has led to persecution. Persons who defied norms were fetishized to the point that their bodies, physiologies, and minds became a metaphysical (and sometimes physical) threat. Sexuality in this regard overtook an individual’s whole being, diminishing their humanity, and rendering them animal or monster-like. For Foucault, “the sodomite had been a temporary aberration; the homosexual was now a species” (Foucault, 1978). Both Weeks (1977) and Foucault identified this change in the social construction and interpretation of homosexuality from an act to personal identity. While sexual categorization extended beyond homosexuality, the identities as we understand them today - i.e., most persons who identify with or under the LGBTQ+ umbrella – did not yet exist. The lesbian, gay, bisexual, transgender, queer, or other non-heterosexual identities are largely new concepts in the Western world in relation to the entire history of sexuality studies.

(4.1) Pathologies of Sex & Gender

Historical records narrate a long, complex Western tradition of hostility towards same-sex activities, largely informed by Christian notions of sin. Throughout the colonial era, homosexuality, or other explicitly non-heterosexual acts, fell under the categories of either sodomy or buggery. These terms have proven to be somewhat interchangeable and, depending on the geographic location in which they are used, could refer to a wide variety of acts. Sodomy or buggery laws ultimately conflated same-sex acts with bestiality, masturbation, rape, necrophilia, and the use of birth control methods (Weeks, 2017). Originating out of Anglo-Saxon culture, these terms were interpreted through the English common law as a catch-all method of punishing “crimes against nature” that was “not to be named among Christians” (Weeks, 2017). Those convicted under these laws were treated harshly, as in 1806, it was reported that England executed more sodomites than murderers (Weeks, 2017). While, in theory, these laws were universally applicable, sex researcher Alfred Kinsey could not identify any American cases between 1696 and 1952 in which a woman was convicted of sodomy (Weeks, 2017). The interpretation of female sexuality as less threatening to the social order would continue throughout the later centuries. As a result, these laws and their more modern counterparts would often target male-centric sexual acts, including anal intercourse, which disproportionately affected those with biologically male anatomy over time (Bowman & Engle, 1956).

Imported from English law, North American colonial law adhered closely to these severe principles of punishment, including their connections to certain sexual acts as sin. In 1642, William Bradford wrote of the American Plymouth colony and the ongoing “outbreak of sodomy, bestiality, fornication, adultery, and rape” (Katz, 1983). For Foucault (1978), the uniformity of these terms would later break apart to create distinct discourses surrounding sex within multiple institutions beyond religion and law, including science and medicine. Beyond rudimentary understandings of sodomy and buggery, and by extension homosexuality, the later centuries would bring in new terminologies and new ways to discuss and frame sex and, eventually, gender. This would, unfortunately, lead to specific and effective ways to discriminate and persecute those with non-heterosexual orientations.

i. Persecution of the Peripheral

Early persecution of "deviant" individuals was dependent on the emergence of certain sexual discourses that began in the late 18th and early 19th centuries. While laws laid the foundation for attributing sinful acts to illicit crimes both against nature and society, the specific persecution of individuals who violate these laws simply by existing was not yet a facet of Western societies. Instead, the development of two specific discourses was required; the approval of sexual relations between heterosexual and monogamous couples for procreation and the scrutiny of sexuality concerning virtually all others (Foucault, 1978). These peripheral sexualities, as named by Foucault, include the sexuality of children, single women, criminals, and anyone not exclusively attracted to the opposite sex. The term first used in 1869 by Karl Maria Kertbeny, "the homosexual," would later become integral to virtually all aspects of studies of same-sex relations in the later centuries (Minton, 2002).

In turn, the labelling of peripheral sexualities as perverse transformed these acts beyond the category of taboo activities and instead rendered and reduced the entirety of the individual to be defined by these acts. Homosexuality "transposed the practice of sodomy" onto the very soul of being, formed by mysterious physiology, foreign anatomy, and incomprehensible desires. A habitual sinful act was now a singular nature, one that informed every aspect of the person (Foucault, 1978). It is possible to argue that the conflation of behaviours or actions with one's body and personhood is a form of stranger fetishization, as mentioned previously (Ahmed, 2000). During this period, "homosexual degeneracy" was connected to other fears of depravity, insanity, and evolutionary failures or "contamination" resulting from racial mixing and the degeneration of white European populations by "foreigners."

However, the pathologizing of these individuals was not entirely universal, nor did it stop them from living their lives as they wished (within constraints). Now considered one of the first homosexual rights advocates, German sexologist Magnus Hirschfeld began his work in the spirit of *Per Scientiam ad Justitiam* or, through science to justice. (Minton, 2002). While one of the first to use science in the late 19th century to pursue some degree of advocacy for non-heterosexual persons, Hirschfeld would not be the last. As Hirschfeld worked in the 1870s, there was already an emerging gay subculture in North America.

ii. Early Science and Criminalization

Within the decade, as such studies became more well-known, the visibility of sexual minorities would garner attention from law enforcement, the government, and the general public.

In 1910 the Ontario courts began officially charging individuals with homosexual offences, with one of the earliest cases being recorded in 1905 (Maynard, 2012). In 1920, "Daniel," a 22-year-old man from Toronto, was caught having sexual relations with another man and subsequently declared mentally defective, a harbinger of events to unfold (Maynard, 2012). Five years later, in 1925, Ontario opened the Toronto Psychiatric Hospital to house men like "Daniel" and others deemed deviant. A large portion of patients would be identified through the court system, with 150 noted sex-related offenders before 1933. This number would only represent a fraction of the roughly 1,100 sex-related charges in Toronto during the same period (Maynard, 2012; Chenier, 2012). As the connection between mental health and sexuality grew stronger, the number of individuals who suffered because of their sexualities would rise

A 1908 article entitled "The Defective and Insane Immigrant" highlighted degeneracy "rarely seen among Canadians," attributing it to "sexual perverts of the most revolting kind" (Maynard, 2012, 159). A similar article argued that the newly opened Toronto psychiatric facility was filled with those of "foreign birth," and several were sexual deviants. *Sex Delinquency: A Review of 100 Court Cases* (1933), published by Dr. A.J Kilgour, details the types of sex acts that were criminalized by the Ontario courts, including homosexuality (Maynard, 2012). It is important to note that many similar publications were written by and for other doctors, perpetuating and spreading the connections between homosexuality and crime. Arguably, this medical discourse pathologized sexual characteristics to the point of representing an inhuman, immoral criminality.

Widely influential sex and gender research would begin reaching public consciousness in the 1930s, with the work of The Committee for the Study of Sexual Variants and later with the work of biologist Alfred Kinsey. Formally established in 1935 by Robert Latou Dickinson, the Sexual Variants Committee would be guided by the work of other researchers such as; Karl Heinrichs Ulrich, a gay man himself, who began publishing on the topic of homosexuality as early as 1864, and Iwan Bloch who called for a *Sexualwissenschaft* (the science of sex) in 1906 (Minton, 2002). While not the first to broach the topic, as shown by the variety of publications before 1935, the Sexual Variants Committee would have a large socio-cultural impact in the West in part due to the sheer size of the research subjects studied.

The eventual publication of the Sex Variants monograph in 1941 was largely guided by the principles of these medical professionals, leading many to be disappointed with the

Committee's outcome, including Jan Gay (Minton, 2002). The resulting monograph would perpetuate certain stereotypes and reinforce medical diagnostic tools including the Terman-Miles M-F Test, which relied on socially informed, gendered characteristics to extrapolate one's sexual orientation. Similar tests were developed by the Royal Canadian Mounted Police department to target potential homosexuals in military and civil service positions. Some researchers would vouch for the Terman-Miles test in determining male versus female binaries as late as 1978 (LaTorre, 1978).

Alfred Kinsey, arguably one of the most widely-known sex researchers of the early 20th century, would soon follow after the formation of the Sex Variants committee. Formally trained as a biologist, Kinsey would introduce participatory research to publish two volumes; *Sexual Behaviour in the Human Male* (1948) and *Sexual Behaviour in the Human Female* (1953). While the former would become a best-seller, the latter was met with heavy criticism, likely for touching on certain tabooed topics around women's sexuality (Minton, 2002). Kinsey undertook the daunting task of collecting personal histories from roughly ten thousand men and women, which would later enable him to construct a "spectrum" of human sexuality in a way that challenged the strict binaries of the time (D'Emilio, 1983). Existing as a product of their time, Kinsey's attitudes toward homosexuals were arguably more scientifically objective than some of those presented by the Sex Variants committee. It is important to note, however, that these volumes fall far short in the anthropological sense of questioning which cultural norms would influence sexuality.

The most noteworthy challenge to the status quo was Kinsey's collected statistics and stories surrounding homosexuality. Within *Sexual Behaviour of the Human Male*, Kinsey notes that roughly 50 percent of participants interviewed experience same-sex erotic responses to other men, with 37 percent engaging in sexual activity after adolescence. This is especially interesting as only 4 percent claimed to be exclusively homosexual, showing a greater degree of sexual fluidity than was expected (D'Emilio, 1983). The later publication of *Sexual Behaviour of the Human Female* reported that 28 percent of women reported same-sex erotic attractions, with 13 percent engaging in physical sex acts with other women.

Kinsey's study shows that not only are same-sex relations not rare, but strict hetero/homosexual binaries may not even persist throughout life as one's sexuality may change and evolve over time. The fixity of sexual orientation proposed by the medical community

(without medical intervention, of course) was not capable of explaining the findings within Kinsey's publications. Studies that presented "the homosexual" as a subject within human sexuality informed the public with both positive and negative consequences. Studies like Kinsey's may have led to self-awareness among some individuals, who may have been questioning themselves. At the same time, a greater awareness that "homosexuals" are more common than previously thought, may induce a sense of threat to the social order, especially to the nuclear family norms.

iii. Criminalization & Sexual Psychopath Laws

Earlier scientific studies paved the way for discussions about sexuality, often hitting on controversial and contradictory points. Winnipeg's police chief in 1937 argued that sex education would not affect the rate of sex crimes, while the Dean of Medicine at the University of Manitoba agreed; he instead argued that it was still worthwhile to teach (*Winnipeg Tribune*, 1937). There was a general mixed consensus as to who should talk about sex and in what manner. The very same year, the state of Michigan to the South would be one of the first to introduce "criminal sexual psychopath" laws. Sex crimes, although possible to refer to heinous crimes such as assault and rape, also included consensual homosexual acts (Chenier, 2012). This argument is not meant to minimize the fact that harmful acts against children or vulnerable persons did occur, but rather will focus on the behaviours that were unduly persecuted, such as those between consenting adults.

Using an umbrella legal term led to a close connection between homosexuality and crime throughout much of the Western world, especially the United States and Canada. The sex psychopath was commonly a dangerously impulsive man, to the point where their mental instability was thought to lead to sexual crimes against others. In other words, the disciplines of law and psychiatry in the 1930s directly contributed to the persecution of "deviant" behaviour in a way that differed from earlier notions of immoral sinners, who were believed to be inherently evil people. In a later 1939 Winnipeg Tribune publication, a horrible act of violence undertaken by Nazi soldiers was directly conflated with their sexuality. The article titled "Horrors in Nazi Prison Camp" uses the explanation that "this outbreak of sadistic cruelty may be the sexual perversion and particularly the homosexuality that is very prevalent in Germany" (*Winnipeg Tribune*, 1939). The connection between "offensive" sexualities and political or foreign

opponents was not novel, nor would it end soon after as the fear of homosexuals as violent criminals would begin cementing itself into the public consciousness.

Following the end of the war, Kinsey's first volume would be published at a time when Canada was introducing sexual psychopath laws into its criminal code in 1948 (Chenier, 2012). These laws would have repercussions not only for those inside Canada but also for those attempting to enter the country. *The Canadian Immigration Act* of 1952 would explicitly bar those with psychopathic personalities, or homosexuals, from immigrating (Girard, 1987). Such laws would not be repealed until 1976, with the introduction of a new Immigration Act. As detailed in the Lethbridge Herald, a Ukrainian immigrant new to Canada was deported in 1955 after being discovered wearing women's clothing and makeup. The judges' defence for deporting the individual was, "he was either a dangerous criminal, a homosexual pervert, or a lunatic and was a dangerous person to be wandering about in the city" (*Lethbridge Herald*, 1955, 1). There was no evidence that the Ukrainian was gay; however, his clothing qualified him as a psychopathic personality. Around this time, the Winnipeg media is seen to begin reporting on similar topics, as homosexual crimes in the United Kingdom were said to be rising four times over since the end of World War II. While in 1954, it was reported that 86 members of the Royal Air Force were convicted of homosexual offences (*Winnipeg Tribune*, 1954; *Winnipeg Tribune*, 1954b).

There are several explanations and theories possible to describe exactly what caused the resurgence in criminalizing homosexuality after World War II. From other gendered anxieties (i.e., women in the workforce) to a sense of moral panic first noted by Stanley Cohen, it is unclear exactly why anti-homosexual laws became widespread during the same period. Possibly, early activist efforts led to the emergence of reactionary attitudes to preserve the status quo by tightening sex and gender norms. The combination of psychiatry and law mentioned previously had tried to move away from punishment and criminalization. However, this would only be partially successful.

While the medical community may have been able to spare some individuals from prison sentences, the stigma of mental illness already-present in Western society would also cause undue harm. Rerouting those convicted of homosexual offenses from jail cells to medical facilities for “treatment” was arguably not a significant step forward, but instead an equally humiliating and harmful outcome. While the notion of medically curing someone of their sexual

orientation is severely misguided, it would be the effort to decriminalize homosexuality that would be one of the largest positive contributions from the sex science of the 1930s and 1940s. In addition, public awareness also contributed to an awakening of discourse and discussion surrounding human sexuality that would eventually lead to the possibility of gathering for civil/human rights activism, despite being decades before this movement would largely catch on.

(4.2) Sexuality & Modern Discrimination

i. The Origins of Advocacy

Aided by activist Franklin Kameny, Evelyn Hooker began research in 1957 that would directly challenge the ideologies of the 1960s regarding homosexuality. As the first American to undertake ethnographic research with homosexual men, Hooker revealed there were no distinct psychological differences between heterosexual and homosexual men (Minton, 2002). Hooker's population sample, men not institutionalized or in prison, set the research apart in that it studied a wider variety of individuals using a tool known as the "Chicago Inventory of Beliefs," first developed by researcher George Stern (Minton, 2002). What Hooker uncovered was a multitude of communities that were available to offer support to other gay men, initially utilizing public spaces to make connections (i.e., baths or bars). This research supported the argument that gay men were not inherently more promiscuous, as assumed, but rather the public spaces in which socialization is permitted created a "market" for men to promote a public side of themselves, as opposed to their deeper, personal selves, ultimately creating an illusion of less emotionally involved relationships and rampant promiscuity (Minton, 2002). One of the most influential aspects of Hooker's research was the argument that there was no reliable way to determine differences between a heterosexual and a homosexual, as variations in personalities, preferences, and relationships extended far beyond stereotypical assumptions. Hooker's work was widely reprinted and would contribute to the founding of advocacy groups such as the Mattachine Society and Daughters of Bilitis, among others (D'Emilio, 1983).

Following the founding of advocacy groups such as the Mattachine Society in 1951 and the Daughters of Bilitis in 1955, advocacy took on a new meaning. While organized initially for gay men and lesbians respectfully, groups such as these would lead the way for the "gay

emancipation" movements in North America (D'Emilio, 1983). Significantly supported by Evelyn Hooker's research, it would be her associate Franklin E. Kameny who would carry on developing a project based on homosexuality and civil rights. After losing employment because of his sexual orientation, Kameny advocated for a more aggressive, militant political stance, which at the time was unknown within many of the queer communities (Minton, 2002). As a result, The East Coast Homophile Organization was formed in 1963, largely to push back against medical professionals. A year later, The Association for Social Knowledge was formed in Vancouver to support the legalization of homosexuality within Canada.

The resulting media reports during this time in Winnipeg mirrored the sentiments of these advocacy groups. On the topic of legalizing homosexuality, article entitled, "Better Care of Mentally Disturbed", suggests jailing queer people is not a real solution, but rather "teach[ing] them to take place out in the community again" is more viable (*Winnipeg Tribune*, 1960). Here, the idea of medical treatment being required persisted into this decade. Sterling Lyon, attorney general and future Premier of Manitoba echoes this argument and suggests "sex deviates" will be taken from jails to hospitals, but "isolated from other patients" (*Winnipeg Free Press*, 1961b). Meanwhile, Professor Jack Stevenson of the University of Manitoba Philosophy Department is quoted as saying, "sex deviates are not dangerous to the public" (*The Manitoban*, 1965).

ii. Stonewall & the End of the Medical Model

On a Friday night in 1969, June 27, two Manhattan detectives set off with several officers to raid the New York Stonewall Inn, a known gay bar in the Greenwich Village area (D'Emilio, 1983). Raids were a tactic used to clear out these kinds of bars in one sweep while arresting patrons on gross indecency charges like those used against Canadian George Klippert in 1967. When the patrons did not easily comply, they began, arguably, the first collective act of resistance on behalf of the gay and lesbian community, starting a snowball effect of later political movements (Minton, 2002; Smith 2012). Rioting broke out and continued into the night as patrons led "charges against rows of uniformed police officers", screamed and yelled, and threw objects to resist arrest (D'Emilio, 1983). It was not long after that groups such as the Gay Liberation Front and the Gay Activists Alliance formed and mobilized. Such groups would inspire the creation of the Toronto Gay Action Coalition for Gay Rights in Ontario, and many other independent groups throughout the early 1970s (Smith, 2012).

These so-called “gay liberationists” took over from their earlier “gay emancipation” counterparts and adopted a narrative of anti-oppression, and resistance which not only attracted the emerging LGBTQ+ community but also heterosexual community allies (D’Emilio, 1983). This was especially true for the previously underrepresented lesbian communities, as the women’s rights movements and abortion rights movements catalyzed in a similar timeframe. Stonewall, a one-night event in 1969, would become the foundation for a much larger grassroots movement and mobilization of previously silenced communities. Ultimately, the goal was to shift the parameters of sexual discourse until non-heterosexual or non-conforming orientations and genders were equitably represented (D’Emilio, 1983).

As a result, Canada had a gay liberation demonstration at Parliament Hill in Ottawa in 1971. The demands made by demonstrators included removing gross indecency as a qualifier for sex offender status, equalizing the age of consent, stopping RCMP programs, and including anti-discrimination legislature within the Canadian Human Rights Act (Smith, 2012). Throughout the next several decades, activism and visibility would correlate to higher occurrences of violence and social reactions from the media and the public. In 1969, a jury found a Portage La Prairie man, 20-year-old Gregory Wright, guilty of manslaughter following the murder of Gareth Jones, a Welsh immigrant. As stated by the defence, “Wright killed Mr. Jones to protect himself from Jones’ homosexual advances” (Wildgust, 1969).

A major form of resistance took to challenging the historical models of homosexuality as a mental illness, according to the Diagnostic and Statistical Manual of Mental Disorders (DSM). During a 1970 conference meeting of the American Psychological Association (APA), protesting demonstrators openly challenged experts on the DSM definition of homosexuality. As tensions rose, one psychiatrist shouted, “they should be killed!” (Minton, 2002, 256). As one emotionally charged *Winnipeg Free Press* article describes, “two thousand psychiatrists gather in Washington for the meeting of the [APA], were listening placidly to a paper when 30 angry homosexuals invaded that auditorium and seized their rostrum” (Malamud & Lubenow, 1971). While initially unsuccessful, a later 1973 conference, a panel was held titled, “should homosexuality be in the APA nomenclature?” which was attended by roughly one thousand experts and a variety of opinions (Minton, 2002). As experts argued, many homosexual patients show no “impairment in social functioning or subjective distress”; homosexuality on its own therefore did not qualify as a mental illness. The APA board then voted in favour of the activists, removing homosexuality

from the DSM, at least partially. Additionally, during this period, Psychologist George Weinberg would be one of the first to propose the concept of "homophobia" in 1972, categorized as a "dread of being in close quarters with homosexuals" (Moroz, 2019).

An increase in visibility after legalization, however, does not represent an increase in acceptance. As reported in a 1977 Gallup poll, roughly half (52 percent) of Canadians supported protecting gay and lesbian people from discrimination in employment, while 30 percent were opposed, and 18 percent expressed no opinion at all (Girard, 1986). Well-known public figures were especially scrutinized, as detailed in an article entitled "Fans Won't Tolerate Gay Athletes' Lifestyle," published in 1975. The career of Bill Tilden, a tennis player, ended when his sexuality became public, which was appropriate according to Tom Mee, then-public relations manager of a major league baseball team. When *The Advocate*, a gay-centric newspaper, reached out to Mee to get in touch with gay athletes, Mee responded, "the immoral lifestyle of the tragic misfits espoused by your publication… has no place in organized athletics at any level" (Rosellini, 1975, 59). One reader of the *Winnipeg Free Press* was especially upset by the legalization vote, even years later in 1978, expressing distaste with the *Free Press* for covering LGBTQ+ themes. The reader wrote in, "when I buy the *Free Press,* I consider it a family paper… not a paean of praise for this degenerate way of life. I wonder who is behind this upsurge – surely it must be the work of the devil" (Rubis, 1978, 166).

iii. Same-Sex Marriage Legalization & Homonegativity

Several breakthroughs occurred in the early 2000s. Manitoba updated legislation to permit same-sex couples to adopt in 2001, making Manitoba the eighth province to do so (Brandon Sun, 2001). By 2004, on average, 60 percent of Canadians agreed that homophobia and homophobic discrimination were as negative as racism (*Brandon Sun*, 2004). A year later, in 2005, the Liberal government of Canada, led by then-Prime Minister Paul Martin, legalized same-sex marriage, which was supported by anti-discrimination laws in all provinces and territories (Smith, 2012). The violence and discrimination reported in the 1990s appeared to decrease following the legalization of same-sex marriages for some time. However, in 2018 Canadian police reported a total of 173 sexual-orientation-motivated hate crimes, with eight of ten targeting the gay or lesbian communities (Statistics Canada, 2020). Consistent with historical trends, violent crimes accounted for a large share of sexual-orientation-motivated hate crimes, as opposed to religious or ethnically-motivated crimes. Roughly 62 percent of the 173 hate crimes

were violent, in contrast to 24 percent of religious hate crimes or 53 percent of ethnicity-based hate crimes (Statistics Canada, 2020).

Several breakthroughs occurred in the early 2000s. Manitoba updated Concerning reports, however, may suggest that a resurgence in anti-LGBTQ+ attitudes is occurring in some social situations. To examine the potential increase, we must explore the discrepancies between "traditional" and "modern" modes of discrimination. A recent 2018 survey conducted by GLAAD (formerly the Gay and Lesbian Alliance Against Defamation) suggests that LGBTQ+ acceptance may be faltering in the North American general public. Results from the survey report that after years of general decline, more non-LGBTQ+ adults recently began responding "very" or "somewhat" uncomfortable in certain situations with LGBTQ+ individuals (GLAAD, 2018). In addition, more people responded feeling uncomfortable with learning a family member was LGBTQ+. There was an increase of 3 percent between 2016 and 2018 -- a jump from 27 percent to 30 percent in respondents reporting they were uncomfortable with their child having an LGBTQ+ teacher , or learning their doctor was LGBTQ+ (GLAAD, 2018).

These small increases directly correspond with LGBTQ+ community members experiencing an increase in discrimination, with 55 percent self-reporting discriminatory events, an increase of 11 percent from the last survey (GLAAD, 2018). Despite these troubling results, support for equal rights for LGBTQ+ individuals remained stable among the non-LGBTQ+ respondents at 79 percent (GLAAD, 2018). According to the organization, this should be interpreted as dominant groups wishing to end discrimination while leaving space for recovery and progressive attitudes in the future, despite temporary negative upsurges. Such results should not be examined separately from social trends, particularly the increase in rhetoric targeting LGBTQ+ individuals in a negative way, including; transgender rights issues, bathroom bans, military restrictions, and public opposition to marriage equality in the United States, in addition to multiple American laws created to allow denial of service to LGBTQ+ individuals based on moral or religious reasons (GLAAD, 2018).

To further examine the data reported by GLAAD in 2018, research conducted by Moroz (2019) and the theoretical construction of modern homonegativity can be introduced. Originally known as the Modern Homonegativity Scale (MHS), developed by Morrison & Morrison (2003), this theory attempts to isolate how "old-fashioned" discrimination has shifted into a more contemporary form of negative social attitudes towards sexual minorities. As argued, blatant

prejudice, such as some of the opinions published in the 1980s and 1990s are largely no longer acceptable to express publicly without repercussions.

This is consistent with the findings of the LGBTQ+ archive sampling within this thesis, as the frequency of many keywords declined over time. However, prejudice did not cease altogether, but rather according to Morrison & Morrison (2003), such attitudes transformed into a more subtle, hidden expression of discrimination, acting as the foundation for modern homonegativity (Morrison & Morrison, 2003; Morrison et al., 2005). In other words, earlier traditional views of biological inferiority or mental illness have been replaced largely with ideologies surrounding minorities making too many claims to rights, having too many rights, or the perception of sexual minorities receiving special treatment (Morrison et al., 2005).

These two forms of prejudice, traditional and modern, manifest into two separate realms of homonegativity. First, traditional homonegativity presents as similar to attitudes expressed in the media before the 1990s, surrounding beliefs or misconceptions of LGBTQ+ populations as immoral, sick, or dangerous (see LGBTQ+ Archive Analysis). Conversely, modern homonegativism (MH) is complex and subtler, therefore harder to detect and, by extension, harder to survey for. In general, as argued by Morrison & Morrison (2003), MH is defined by three ideologies; LGBTQ+ individuals are making undeserved demands for social change, discrimination against LGBTQ+ populations is an issue of the past, and LGBTQ+ individuals place too much emphasis on their sexuality and by extension are responsible for their discrimination (Morrison & Morrison, 2003; Morrison et al., 2005).

The clearest separation between traditional and modern homonegativity is the target of negative attitudes, as while traditional discrimination was concerned with the act of homosexuality itself (i.e., sodomy or gross indecency laws), modern homonegativism is more strongly connected to policies, behaviours, or ideologies which may ultimately benefit LGBTQ+ individuals (i.e. changing social policies to promote inclusivity).

Arguably, MH works in conjunction with “heteronormativity” which generally privileges heterosexual populations or lifestyles, resulting in a distinctly unequal binary. As defined by Luibheid (2011), heteronormative sexual regimes normalize heterosexual behaviours (e.g., patriarchal marriage, childbearing), while stigmatizing others that do not fit easily within this framework. As suggested, heteronormativity has been prevalent throughout the Western world as

it defined nuclear families, marriages, social organization, laws, and even economic realms of gendered work (Luibheid, 2011).

(4.3) LGBTQ+ Archive Analysis

i. Group A

In Group A, I sampled generalized LGBTQ+-centric terms to trace positive, neutral, or negative attitude formations over time throughout the Manitoba media. The two highest sampled keywords are "gay" and "queer," as they had the previous usage to define something that is happy/fun or strange/interesting respectfully, later to be coopted by LGBTQ+ activists and the community. Due to their high sample rates, gay and queer also returned the most positive articles, while homosexual, a term with a more precise common meaning, returned the most negative. The term that was least used, transgender, could not be found before the 1980s. For all other keywords, most terms are used negatively at least once after the 1960s, consistent with the prior research, which suggests an anti-LGBTQ+ wave began around the decade leading up to legalization and beyond.

The term gay[5] had early connotations separate from the LGBTQ+ community[6]. The first examples which equate gay to homosexuality begin in the 1970s, although some outlets were still using it up to the mid-1970s in its prior context[7]. As with the keyword gay, the term lesbian[8] is used most frequently beginning in the 1970s in direct relation to homosexuality among women. Earlier usage includes references to Greek Mythology and the location of Lesbos in Greece[9]. Negative implications begin after this point, as is evinced by a 1964 review of Richard Sale's novel, *The Oscar.* Egler (1964) argues that *The Oscar* portrays immoral acts, "the first

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[5] Gay is sampled 70 times in total; 53 positive, eight neutral, and nine negative usages. In 1974, the Brandon Sun ran a reader response article, in which a man self-identifies as gay and argues he is not different from anybody else (Landers, 1974). By 1980 however, negative opinions equate gay with homosexuality, occasionally into the early 2000s as the debate on gay marriage heats up. Despite this, the general negative usage of gay as a keyword seems to decline around the late 1990s when personal ads seeking "same-sex partners" are published, arguing such activities are more publicly tolerated.
[6] Gay is frequently used to describe something which is visually appealing, for example, gay is used in 1949 to detail a nicely hand-painted ceramic dining set (*Winnipeg Free Press*, 1949c).
[7] Beautiful Christmas lights are described as gay, as late as 1974 (Manor, 1974).
[8] Lesbian is sampled 39 times in total; 19 positive, eight neutral, and 12 negative usages.
[9] The term lesbian is also used in relation to Sappho and female to female relationships, in the context of mythology (Durant, 1927).

chapter… mentioned the lesbian, the homosexual, the unrighteous, the fornicator, adulterer, murderer, the inventor of all evil things" (Egler, 1964, 30). Despite publications such as this, a Winnipeg Lesbian Society became well established within the next decade, as is consistent with other activist movements in North America (*Winnipeg Free Press*, 1977). Overall, there are fewer moral debates over the concept of lesbianism than over the activities of gay men[10], with debates in the 1980s and 1990s instead surrounding the ability of lesbian women to raise/adopt children.

Homosexual[11]is the highest negative rated term throughout the sample group. Aligned with previous research, many of these articles before 1960 focus on crime, morals, and mental health of gay men, while post-1969 legalization articles center around gay-bashing, violence, and rights activism. The questioning of legalization can be seen in a 1949 article detailing sex crimes, and the prison system's inability to properly manage those convicted. By the late mid-century, many of the public opinions stated in the media were aggressively anti-gay, especially as activism gained a footing[12]. Albeit gradually, negative usage appears to taper off in the early 1990s, as debates over human rights emerge[13], by 2010 all articles sampled are categorized as positive[14]. Before the 1970s, all usages of the term Queer[15] sampled were in relation to something strange, interesting, or fascinating, with this definition still being occasionally used even after being associated with LGBTQ+ terminology. By the late 1980s, the word queer had caught on, however, many queer-sampled articles from this decade onwards are either neutral or positively categorized. Organizations such as Queer Culture and Queer Nation, both setting out

[10] According to one article, lesbian activity was of so little concern to some cultures, the Russians did not explicitly have a word that translated to lesbian (*Brandon Sun*, 1974).
[11] Homosexual is sampled a total of 42 times; with nine positive, seven neutral, and 26 negative usages. As stated, Walter Zielke, a Winnipeg man, was found guilty of "indecent acts", and after being deemed not mentally deficient, but rather consumed by "homosexual tendencies". The magistrate does not believe the three-month jail sentence Zielke received was helpful (*Winnipeg Free Press*, 1949).
[12] Detailing the activism and reactionary violence of the 1970s, one article claims, "a minority of homosexuals bring this treatment upon themselves" (Malamud & Lubenow, 1971).
[13] Opponents to amending the human rights code voiced opinions as recently as 1987, as Don Scott (Inkster MLA) is quoted as saying, "it's essentially the morality of the (homosexual) practice I'm opposed to" (Thampi, 1987).
[14] Prime minister Justin Trudeau announced in 2017 that all previous convictions for "gross indecency" and "homosexual acts" would be erased from criminal records, reversing decades of criminalization in Canada (*Brandon Sun*, 2017).
[15] Queer is sampled a total of 70 times; with 57 positive, seven neutral, and six negative usages. In 1960, an article attributes queerness to mental illness, while another in 1968 links queerness directly to schizophrenia yet no sample mentions conflating "queer" with "homosexual" until 1970 (Alvarez, 1960; *Winnipeg Free Press*, 1968b). In this example, the author discusses Denmark's decision to lift homosexual censorship, comparing treating homosexuals with respect as being kind to lepers, "it doesn't necessarily mean that you would ever dream of inviting a queer into your home, or let him anywhere near your children" (Gotzsche, 1970).

to combat homophobia and discrimination, effectively changed the discourse surrounding the term, coopting it to their benefit (Walker, 1993; *Brandon Sun,* 1991). By 2011, the term is used positively, describing Winnipeg's Pride Festival events and performances (Mayes, Alison, 2011).

Asexual[16] is not specifically used in conjunction with any sexual orientation contexts until 2008, with previous examples referring to either plant biology or platonic (non-sexual) relationships between men and women (Frayn, 1962). The first example found of bisexual[17] in the context of a sexual orientation was in the 1970s, with prior mentions used in reference to plant/animal biology, or in some cases androgynous characteristics combining masculine and feminine traits, literally (bi)sexual. More negative, use of the term throughout the 1980s is found in relation to bisexual men, and the alleged threat they posed in spreading AIDS to heterosexual women (*Winnipeg Free Press*, 1988).

No explicit mentions of the term transgender[18] were found before the 1980s, as the term transsexual was more commonly used, which has since been deemed a derogatory term. Transgender was most often sampled in the context of "cross-dressing", with one of the first examples found in 1984, albeit entirely removed from any association with gender identity or sexual orientation. Instead, the article details "transgender dressing" in the context of women wearing a fashionable men's suit for fun (*Winnipeg Free Press*, 1984b). A later 1999 article uses transsexual and transgender interchangeably, with most sources after this point abandoning the term transsexual (Rosborough, 1999). Additionally, many sources using the word transgender are positively categorized, until 2017. Transsexual[19] was first mentioned in the 1960s concerning a "sex-change operation", a procedure that was rarely performed at the time[20]. In contemporary

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[16] In 2008, an article was published explicitly explaining that asexual orientations exist, claiming that roughly one percent of the population is asexual, or not interested in sexual activity at all. However, as stated within the article not all experts agree that asexuality is an orientation, but rather may be a "hypoactive sexual desire", resulting from "depression, endocrine problems, chronic illness, worry, or sexual trauma", among other causes. This brings into question the legitimacy of asexuality in the public eye (Parks, 2008). Overall, asexual proved to be a seldom used term unless in relation to other LGBTQ+ issues.

[17] Bisexual was sampled a total of 28 times; nine positive, nine neutral and 10 negative uses.

[18] Transgender was sampled a total of 17 times; 11 positive, three neutral, and three negative usages.

[19] Transsexual was sampled 27 times; eight positive, 14 neutral, and five negative usages. Performer Christine Jorgensen underwent one of the first gender-affirming surgeries in 1952, and attribute it to her successful career. Jorgensen is notably supportive of the development of "gender identity clinics" something unheard of during the 1980s (McKenzie, 1985).

[20] At the time of publication in 1966, only 2000 surgeries of this kind were reportedly done in Europe, while the one being undertaken in 1966 is the first of its kind in the United States. The doctor involved refers to his patients as transsexuals (*Brandon Sun*, 1966).

Canada, this is now referred to as gender-affirming surgery, often dropping the "sex" connection in favor of gendered terminologies. While in recent years the term transsexual is not common, when it is used in the 1980s and 1990s it is found to be in context of violence against transgendered individuals[21]. Homophobia[22] is not present in any articles prior to the 1970s, and when it is used, it is often utilized to support LGBTQ+ rights or bring awareness to LGBTQ+ discrimination.

The positive use of keywords declines from the first half of the sample period (1880 – 1949) to the second half (1950 – 2019), as gay and queer begin to shift meanings in North American discourse[23]. As expected, the negative use of keywords increased after 1950. When these selected terms are analyzed in the first period (1880 – 1949), roughly seven percent are categorized as negative. From 1950 onwards, this increases to 26 percent for negative usage. The most notable increase in negative mentions is "bisexual," with a 40 percent jump, in addition to "lesbian," with a 38 percent jump. The largest decrease in negative mentions between the two time periods is homosexual, with a decrease of 28 percent, but it is still sampled relatively negatively, with over half of mentions categorized as negative (57 percent) after 1950.

ii. Group C

Group C is a sample group designed with a presence-or-absence analysis method, focused on broad, ambiguous terms. The sample group attempts to isolate how often these terms are used in conjunction with LGBTQ+ themes, rather than positive or negative implications. Overall, sexual deviant proved to have the highest association with LGBTQ+ topics, at 30 percent of mentions concerning LGBTQ+ themes. Almost all articles for all keywords that are connected to LGBTQ+ themes relate to male homosexuality.

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[21] Jackie Farrell, who has a "sex-change" operation at 18 was sentenced to seven years in a men's prison after robbing a customer in 1985. The New York Corrections Department has decided "she's a man" and was kept in solitary confinement for most of her five years served. Eventually, she was awarded 25 000 US dollars for the mistake (*Winnipeg Free Press*, 1990).

[22] Homophobia is sampled a total of 25 times; 15 positive, seven neutral, and three negative uses. Specifically, homophobia is detailed as a belief which has the ability to negatively affect those who identify as LGBTQ+, as Dr. Jamie Smith argues that "society will have to change its attitude about homosexuality", continuing on to say, "I would hope that in the future homophobia would... become less and less and issue" (*Winnipeg Free Press*, 1984). By the 1990s articles begin mentioning anti-homophobia education in schools and continuing activism, a progressive trend which would continue into the 21st century (Martin, 1999; Kirbyson, 2013.).

[23] Between 1880 and 1949, roughly 75 percent of keyword use is positive (68 of 89) while this drops after 1950 to 46 percent (121 of 161), largely once gay and queer become associated with LGBTQ+ themes. Together, these two keywords alone drop a combined 37 percent in positive mentions between the two periods of time.

Sexual Deviant [24] is first used in relation to homosexuality in the 1960s, with one 1967 article linking homosexuality to sexual deviance, while constructing the argument *against* criminalization, instead supposing that homosexuals could be cured of their deviancy through psychiatry[25], and suggesting that a cure is possible for "deviants"[26]. Sexual deviancy as a term proved to be the most highly connected keyword to LGBTQ+ matters, as evidenced by its continuing usage. Early uses of the term sex crime[27] are in relation to obscenity laws[28], brothels, sexually-motivated violent crimes[29], or prostitution, with explicit connections to LGBTQ+ matters being rare. In addition, the term is used in a vague manner to discuss statistics[30]. One clear LGBTQ+-linked example is mentioned in a 1968 *Winnipeg Free Press* article detailing six Royal Navy crew members who were sentenced in the United Kingdom for engaging in "squalid and drunken homosexual orgies", likely a sensationalized statement (*Winnipeg Free Press*, 1968). After homosexuality was legalized in 1969, the focus turns to crimes against women and children. This is consistent with the trend seen in relation to "sexual deviant" terminology.

Sexual psychopath[31] was surprisingly sparse, given the historical connections between homosexuality and crime prior to 1969 in Canada. One of the first mentions occurs in 1948, along with the introduction of 40 new amendments to the criminal code, which cover both "petty and violent" crimes. A convicted sexual psychopath, previously called a sex maniac, is now

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[24] Sexual deviant is sampled a total of 30 times, with nine identified as explicitly LGBTQ+-related. From the 1980s onwards, the term seems to be repurposed in relation to sex crime targeting women and children. However, similar usages as shown in the 1967 article are common over time, with one 1998 source uses sexual deviant in a discussion around tolerance, in a negative manner. Sexual deviant is equated with an "alternative" lifestyle, one that is "unnatural and distasteful to many, many Canadians" (McGuinness,1998). The most recent example is found in a 2014 publication of *The Steinbach Carillon*, with one reader stating that sexual deviancy is sexual immorality.

[25] As argued, "A New York Psychiatrist suggested here Tuesday that homosexual relations between consenting adults should be legalized" (*Winnipeg Free Press*, 1967).

[26] Stanley Reitsma, the author of the statement discusses the hostility towards homosexuality in Russia. Reitsma argues, "We should not tolerate homosexuality anywhere including in school, or deviant sex education. The Russians are smarter than Canada's pro-homosexual elite" (Reitsma, 2014).

[27] Sexual crime is sampled a total of 54 times, with only two identified as explicitly LGBTQ+-related.

[28] One article discusses the social impact of "smut" or pornographic images in relation to sexual crimes (Lerner, 1970).

[29] "Sex maniac" was used in relation to schizophrenia to explain the perpetrator of a crime resulting in the murder of two Winnipeg men, Roy McGregor, and George Smith. The term "sexual pervert" is used as well, however no more details are provided (*Winnipeg Tribune*, 1946c).

[30] One source claims that sex crimes are on the rise in the United States, more so than in Canada. A debate over whether sex education would help those who are suffering from a "lack of balance", or "mental defectiveness" is detailed (*Winnipeg Tribune*, 1937).

[31] Sexual psychopath is sampled 42 times, with only two identified as explicitly LGBTQ+-related. Another source follows up in 1960, arguing the amendments and the law in Canada "dealing with the criminal sexual psychopath is not accomplishing its purpose", as only 23 people were sentenced using this law between 1948 and 1955 (*Winnipeg Free Press*, 1960b).

subjected to indefinite detention as Canada embarks on experimental treatment of "perverts" (*Winnipeg Free Press*, 1948). A clear connection to sexual perversion[32] is made in one source that argues that the sadistic cruelty shown by German troops during WWII may be attributed to a sexual perversion, "particularly the homosexuality that is very prevalent" (*Winnipeg Tribune*, 1939). Similar use is seen throughout these decades, however, not all usages are as explicitly negative or discriminatory[33]. Sexual perversion continues to be used as a term after this point, however, like other keywords, it is used more in the context of crimes against women and children.

While some terms come into use in the second half (1950 – 2019), representing a significant increase, other dated terms surrounding the criminality of LGBTQ+ topics decrease over time, most notably "sexual psychopath" mentions. The use of sexual perversion also increased. This suggests that as discourse shifted away from the legal and criminal aspects of LGBTQ+ communities in the first half of the period, other debates gave way to a discussion surrounding the treatment of "deviance," illness, and morality.

iii. Group D

Group D is a sample group designed with a presence-or-absence analysis method similar to Group C but rather focused on targeted, negative-leaning terms. Due to the nature of the keywords selected, all sampled articles potentially have LGBTQ+-linked contexts, differing from Group C therefore no separate is made between total and LGBTQ+-themed articles. It is notable to mention that these are most explicitly, biological male-centric terms, as female-centered terms largely do not seem to deviate from "lesbian" in the media. In reference to gay-bashing, an 1982 article focuses on Winnipeg's Legislative building grounds, a notorious place for both LGBTQ+ encounters and homophobic assault[34]. Other articles throughout the 1980s linked gay-bashing to

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[32] Sexual perversion is sampled 45 times, with eight identified as explicitly LGBTQ+-related. This term is used strongly in the 1960s and 1970s against homosexuals (Nielsen, 1965). Perversion, it is argued, is becoming more common because of the acceptance of homosexuality according to Inspector Herbert Thurston of Toronto's "Morality Squad" (*Winnipeg Tribune*, 1963).

[33] One reader writes into an advice column stating a male friend has admitted he is gay. Doris Clack, the columnist responds calling it a perversion and an illness, but also states "your friend is a human being, needing kindness and friends, but not your love". This is an example of semi-tolerance towards gay men that appears to be common to the period (Clark, 1975).

[34] Gay-bashing was sampled a total of 25 times, first appearing in the 1980s. As noted in reference to this term, "the [neighborhood] brings forth visions of chain gangs, gays and gay bashers, muggers and sex maniacs", however, some residents in the area wish to make their neighborhood safer again (Brosnahan, 1982). According to Jim Johnson, head of provincial security at the time, gay-bashings have been decreasing over the years, a statement which first-hand testimonies from the LGBTQ+ community appear to refute. This 1982 article is one of the first

homophobia, specifically in light of the AIDS epidemic. Queer-bashing, very similar contextually to gay-bashing, was sampled less frequently for a total of 6 times. These sampled articles can support the previously introduced research regarding the rise in anti-LGBTQ+ violence in the 1980s in Canada[35].

Transvestite[36] sampled for the first time as early as 1912, detailed by a *Brandon Weekly Sun* article focused on a German Baron who prefers to wear women's clothing (*Brandon Weekly Sun*, 1912). Following this article are no other explicit uses until the 1960s[37]. Sodomy and buggery[38] are terms that are used somewhat interchangeably. These terms are most used in reference to legal definitions of (formerly) illegal sex acts between men. Homosexual offense[39] is the least sampled term with only three articles. The first is a somewhat shocking excerpt from 1948, detailing Adolf Hitler's decree that any SS members violating Article 175 (a homosexual perversion law) would be subjected to the death penalty. The unnamed author in the *Winnipeg Tribune* calls this decree "wholesome" and effective at ridding the party of "this cancer" (The *Winnipeg Tribune*, 1948). The term deviant, sampled 17 times is used for a period to imply anyone who "deviates" sexually from the heterosexual norm and who may require treatment or incarceration of some kind. The use of this term is not seen after the 1980s concerning LGBTQ+ matters.

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sampled which explicitly discussed and explained the issue of gay-bashing to the Winnipeg public, specifically at the legislative grounds, through the media. (Blackwell, 1991).

[35] A "gay street patrol" was organized in Toronto following an increase in violence, to protect victims and prevent assaults (*Winnipeg Free Press*, 1981).

[36] Transvestite, a now-outdated term, was sampled a total of 31 times.

[37] A reader writes in regarding her "effeminate son problem" and is told by the columnist that her son is likely a transvestite and advises the mother to remind her son that he is a man, not a woman. The columnist also suggests possibly taking the child to a child guidance clinic, "until you feel he has outgrown this particular desire" (Eldred, 1960). During this period, it does not appear to be an overly negative term, but instead used to describe a man who "cross-dresses", and issue that can be fixed with therapy. By 1976 however, the term transvestite is notably equated with homosexual, as one source states, "some behavioural specialists say all transvestites are practicing homosexuals" (Landers, 1976). The first notable case of "transvestite harassment" is published in 1988. An indigenous individual went public with claims of police harassment is published, a likely underreported phenomenon even in contemporary Canada (*Brandon Sun*, 1988).

[38] Sodomy returned a result of 63 sampled articles, while buggery was less common with 31 mentions. In a later article detailing New York youth crime in 1957, one source claims that juvenile sodomy rates were up 100.9 percent, however no evidence for this is provided save for one questionable police commissioners report (W*innipeg Free Press,* 1957). Buggery is used interchangeably with sodomy in a 1993 article, in the context of homosexuals and AIDS research. In this source, buggery is used directly to describe male homosexual acts (Watson, 1993). The term buggery is also found most recently in a 1999 publication of the *Steinbach Carillion*, suggesting schools are trying to "change attitudes towards sodomy and buggery to a celebrated and promoted gay lifestyle" (LaLonde,1999).

[39] The other examples are equally as negative with one 1978 article supposing homosexuals are weak-minded, thrill-seeking, and hetero-phobic (Wasteneys, 1978). After the 1970s, the term is not used in any notable context.

Overall, despite several terms not being sampled regularly after the 1980s[40], usage of these terms increase over time from the 1950s onwards.

[40] "Homosexual offense" and "deviants" are not sampled after the 1980s, while "queer-bashing" is only used twice.

Chapter 5: Arrival & Integration of Migrants

(5.1) History of (LGBTQ+) Immigrants in Canada

Following John Cabot's accidental arrival on Newfoundland shores in the 16th century, the slow colonization of Canadian lands began through multiple European attempts, some more successful than others (Knowles, 1997). Both French and British empires would compete for access to a rich abundance of flora and fauna in the pursuit of their respective mercantile economies, with aggressive colonization efforts by the French resulting in the first identifiable era of Canadian immigration lasting from the 16th to 18th centuries (Buckner, 1993). Towards the end of this period, Canada would also accept some of its first refugees, including an influx of British Loyalists from America and Puritans from Europe attempting to escape religious persecution (Knowles, 1997). After a century of French control, the territory of Canada was ceded to the British Empire through the Royal Proclamation of 1763, spurring large waves of British settlers arriving over the next century.

By 1867, the year the Federal union was officially instated, over half of Canada's population was composed of British nationals (Knowles, 1997). At this point, there was a need to populate Canada's vast landscapes beyond the rate of increase achieved naturally through reproduction to successfully grow the budding economy. "Immigration salesmen" would target potential immigrants overseas as immigrants were not only desirable but required for the success of Canada as a country (Knowles, 1997). A report entitled, *The History, Condition, and Resources of Canada,* first published in 1852, is an early example of the materials distributed through English-speaking communities to persuade farmers or labourers to emigrate. Canada is advertised optimistically with vast geographical opportunities and limitless flora and fauna. Agricultural potential, specifically "vegetables of every description, grown in abundance, with a luxuriousness that is truly astonishing," was important to stress (De Bow, 1852). Similar materials would be later utilized by the John A. Macdonald administration to attract as many desirable immigrants as possible, such as those used for the 1872 Dominion Lands Act[41].

[41] This act would grant anyone 21 years of age or over, who met the standards of the 1869 Immigration Act, 160 acres of land for a small free, granted they settle in Canada for a minimum of three years and cultivate at least 30 acres of that land (Knowles, 1997).

While migration was largely unrestricted, the introduction of Canada's first *Immigration Act* in 1869 attempted to limit and define which classes of people were "desirable". The Immigration Act delegated power to the cabinet to develop laws and adapt them as necessary to meet the needs of Canadian society. This period in Canadian history was defined by a mixture of relying upon immigrants for labour, while simultaneously some sources described resentment towards these new arrivals. For some, "people had a horror of immigrants then", while others claimed Canada was not effectively attracting labourers but instead "the ignorant, lawless, idle" populations (*Winnipeg Daily Sun*, 1884; *Gladstone Age*, 1888).

As with the regulation of sexuality, doctors, and psychiatrists at the turn of the 20th century were concerned that unregulated immigrants were a potential threat to public health and safety. While it should be noted that outsiders bringing diseases like cholera to Canadian ports was a very real concern[42], prejudice generally expanded beyond this in the 1900s as immigrants were perceived to be prone to insanity, degeneracy, or violence (*Winnipeg Daily Sun*, 1884; Comeau & Allahar, 2001). While homosexuality would not be an explicit exclusionary factor until the mid-20th century, other laws could adversely affect the acceptance of sexual or gender minorities. Two influential provisions, as argued by Canaday (2009), include; a "public charge" clause and the "crimes of moral turpitude" law, both of which would have had a potential impact on those not abiding by strict heterosexual norms.

Perceived morality was not independent of physical appearances during this period. The "Manual for the Mental Examination of Aliens" was created early on to guide officials through rigorous and often invasive physical and mental exams (Canaday, 2009). Public Health Service doctor, Howard Knox, argued that facial expressions or physical appearance were all that was needed to determine one's sexual habits. In addition, those whose sexual development was "arrested" (i.e., smaller genitals) were also subjected to exclusion. This affected men disproportionately, as it was assumed they would be less likely to have a family or stable employment, therefore becoming a public charge. Ultimately, these men proved to be "undesirable in any community" (Canaday, 2009).

In situations where an individual presented ambiguous sex or gender characteristics, conflicting results occurred. A 1912 example surrounding one Hungarian immigrant, Verona

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[42] "Cholera refugees" escaping Europe posed a threat to public health once they arrived in Canada, if still contagious (Winnipeg Daily Sun, 1884).

Sogan, details how influential one's body could be to immigrant acceptance. Verona arrived in feminine clothes, referred to herself as a woman, and in addition, her parents considered Verona a daughter. Upon physical examination, however, it was determined that Verona was an underdeveloped, "malformed male" and she was rejected. Verona's ambiguous combination of the physical body and gendered presentation were perceived to make her less likely to retain employment if discovered, therefore risking a public charge (Canaday, 2009).

i. Exclusion of Non-Heterosexual Migrants

While great strides were made in the acceptance of refugees and displaced persons in need abroad, others were more restricted in the 1950s. During this period, both the United States and Canada implemented explicit restrictions targeting the sexuality and gendered characteristics of potential immigrants through the 1952 *McCarran-Walter Act* (US), as well as the 1952 Canadian amendment to the *Immigration Act* (Canaday, 2009). For the first-time, homosexuality and citizenship were interconnected in a significant way. The Immigration and Nationality Act, also known as the *McCarran-Walter Act*, paved the way for other legislation by containing two explicit anti-homosexual provisions. Firstly, the Act isolated homosexuality as a behaviour and followed the "crimes of moral turpitude" provisions included in deportation laws decades earlier. In other words, behaviour or conduct that is deemed homosexual provided grounds for barring immigrants from entry. Secondly, a provision moves beyond the targeting of behaviour and instead focuses on the homosexual as a type of person "afflicted with psychopathic personalities" (Canaday, 2003). In the United States, these laws should not be isolated from important political contexts, as the Cold War helped develop the concept that "homosexuals, like communists, are not only unnatural but dangerously subversive," and therefore, a potential threat to political and social institutions as a whole (Canaday, 2003). While the final Act passed did not use the term homosexual, the provision of psychopathic personality included "those suffering from sexual deviation" (Canaday, 2009).

The *Immigration Act of 1952* in Canada would be passed with similar intentions, concerns over national security, and limiting the types of people allowed into the country. Canada likely followed America's lead in restricting entry as the sharing of information during

the Cold War period was vital to both countries[43] (Girard, 1987). Like American provisions, the 1952 Immigration Act targeted both homosexual acts, as well as homosexual persons as a separate category of being. Three dimensions explicitly prevented entry to gay men and lesbians; homosexuals could not enter as visitors, they could not arrive in Canada as immigrants or permanent residents, and they were subject to deportation if they were found to have "practiced, assisted in the practice of, or shared in the avails of homosexualism" (Girard, 1987; LaViolette, 2004).

Technicalities limited the application of such laws, as unless previously convicted for homosexual acts, it would be difficult to classify an immigrant as a homosexual without the evaluation of a medical professional. Statistics suggest that such laws were rarely used in the United States and Canada, with 9-22 individuals being turned away in three years following its implementation. This is likely an underrepresentation, as border officers likely dissuaded immigrants from trying to enter before they could be officially rejected. According to the National Organization of Women (NOW), the numbers may be as high as 2000 per year in the United States alone (National Organization of Women, 1980). Women displaying masculine appearances (e.g., short hair) may have been subjected to automatic rejection.

This is evidenced by the 1967 case of Canadian national, Clive Michael Boutilier, who faced challenges when applying for American citizenship after living in the country for nearly a decade (Stein, 2010). Initially arriving in America in 1955, he was arrested, but not charged for sodomy in New York City until several years later. Upon Boutlier's application for citizenship in 1963 he admitted he engaged in homosexual acts before and after his arrival into the country, which classified him as a psychopathic personality under the *McCarran-Walter Act* of 1952 (Stein, 2010). Boutlier's legal defense presented a similar argument to Quiroz's, in that the law was too vague in its definition of psychopathic personality, and there was no scientific basis that sexual conduct was indicative of such personalities. Nevertheless, status was not able to be separated from conduct, as Boutlier's case was dismissed and the deportation order was upheld (Canaday, 2003).

[43] In other words, the barring of homosexuals at the border was a "gesture of appeasement" to the American officials, like RCMP crackdowns on LGBTQ+ Canadian citizens as there does not seem to be a consensus among the public that this was necessary (Girard, 1987).

ii. Beyond the 1969 Refugee Act

In 1969 Canada would officially sign the *UN Convention Relating to the Status of Refugees*. Despite previously recognizing refugees as a special class of migrants, there was no official processing system to manage asylum claims (Dirks, 2006). Over the next decades, many changes would be made to both the refugee and immigrant management in Canada, largely to clear out backlogs of appeals and cases. By 1973 the Canadian immigration appeal board was overloaded with an estimated 25-30 thousand cases, which could result in decades-long waiting periods. By 1976, the Canadian government would introduce a new *Immigration Act,* which would also cement refugees as a distinct category within the law. This new Act would additionally display Canada's demographic, cultural, and social goals, including; the fulfillment of international obligations to aid and resettle refugees, the reunification of families, and the practice of non-discriminatory policies (Knowles, 1997). The addition of a humanitarian class would be influential as those who may not qualify as refugees may still gain entry based on other compassionate grounds.

In 1977, the discriminatory provisions preventing gay or lesbian individuals from entering Canada were repealed. In America, this did not occur until 1990 (Shubert, 2001)[44]. Canada began accepting some of the first sexual orientation or gender identity expression (SOGIE) refugee claims in the 1980s (Turk, 2013). One of the first such publicized cases occurred in 1992 when 28-year-old Jorge Alberto Inaudi was granted refugee status. Originally an Argentinian national, Inaudi was targeted by his government and raped and tortured between 1989 and 1990, at which point he was able to escape and arrive in Canada. Despite the landmark ruling, John Abbot, a then-senior official for the Canadian Immigration Service, expressed concerns saying the ruling was "a very doubtful decision and could be a very dangerous precedent (Ozjewicz, 1992). It would not be until 1993 that the Supreme Court of Canada would rule in Canada (A.G.) v. Ward that "membership of a particular social group," a qualifier of refugee status as dictated by the U.N. Convention, did include sexual orientation (UNHCR, 1951; Rehaag, 2008).

Around the time which SOGIE-based refugee claims began, same-sex immigrant or transnational couples were engaged in battle to improve their rights. Under the *Canadian*

[44] Some gay men or lesbian women reported being married to opposite-sex spouses to make a life with their real partners in Canada under these restrictions (LaViolette, 2004).

Charter of Rights and Freedoms, constitutional challenges were possible with respect to same-sex immigration. In 1991, a community of 23 individuals came together to form the Lesbian and Gay Immigration Task Force (LEGIT). According to a letter from LEGIT addressed to the Federal Sexual Orientation Lobby, LEGIT describes its motivations as reuniting binational couples in Canada in a time that did not yet recognize same-sex spouses (Bernier, 1996). Another letter, addressed to Doug Sanders, co-chair of LEGIT, mentions a potential brief to be presented to the Minister of Immigration, seeking Sander's help in presenting the document (Warner, n.d.). Soon after, the Department of Employment and Immigration would begin granting same-sex partners entry based on "humanitarian or compassionate" grounds, although such instances were unevenly applied. When Christine Morrissey, co-founder of LEGIT, was not permitted to sponsor her Irish American partner, Morrissey brought her case to the federal court on the grounds of sexual orientation discrimination (LaViolette, 2004). It would not be until 1999 that changes would officially be proposed allowing same-sex partners sponsorships under the "family class" route (LaViolette, 2004).

An emphasis on connecting crime, immigrants, and refugees appears to be a continuing trend, especially in the United States. Largely based on xenophobic ideologies, or according to Yakushko (2018), "prejudices towards other minority groups, through demonizing immigrants as part of an effort to pronounce the host nation-states… as pure or good." In a now-infamous presidential candidacy speech in 2015, Donald Trump described the immigrants and refugees arriving from Mexico; "They're not sending their best. They're sending people that have lots of problems, and they're bringing some of those problems. They're bringing drugs, they're bringing crime. They're rapists, and some, I assume, are good people". While in the context of California aiding Mexican nationals crossing the border, President Trump states, "These aren't people. These are animals" (Yakushko, 2018).

(5.2) Management by the Majority: Securitization, UNHCR Definitions & Consequences

Securitization is the process by which a threat is deemed as existential, justifying exceptional measures to be taken outside the bounds of the typical procedure (Hemmerstad, 2011). In other words, border securitization is the act of increasing security measures at the threshold of the physical state to negate threats to that state. In this situation, the threat to be

managed is the invasion of allegedly illegitimate or dangerous outsiders. A focus on security preservation has preoccupied Western states since the Cold War and increased following the September 11th, 2001 terror attacks in the United States. Refugees and immigrants have historically been scapegoated as a compelling threat[45] to the integrity of the nation-state, a trend that has experienced a contemporary resurgence. The implementation of new security measures not only impacts the lives of refugees and immigrants seeking to make Canada their home but also shapes how these populations are received and integrated. It can be argued that these attitudes not only allow for the delegitimizing of refugee claims at borders but may also lead to exclusionary practices following arrival, rationalized as "security measures." These measures can be examined through the discourse of an official body, the United Nations High Commissioner for Refugees.

Hemmerstad (2011) argues that the language and discourse utilized by the UNHCR must address public claims regarding managing "the refugee security problem." Hemmerstad does not see the UNHCR as causing the deterioration of refugee protections but rather as responding to widespread attitudes shaped by the increase in refugee populations and the rise of terror attacks in the Western world. This analysis will focus on a cause-and-effect process; the securitization of refugees represents the cause, and the decline in humanitarian protection attitudes is the effect (Hemmerstad, 2011).

To trace this trend, we can look at Hemmerstad's (2011) illuminating analysis of UNHCR discourse changes over time from its founding in 1951. This change can be represented by two separate approaches; early legally-based, non-political discourse used in the earlier years and the shifting interventionist efforts that peaked in the 1990s. These changes represent a switch from a refugee-specific orientation to one that experiments with a more proactive homeland orientation in favour of the host states (Hemmerstad, 2011). Statistically, the use of "security" related terms within the UNHCR *Reports to the General Assembly* has increased. From 1970 to 1986, "security" is featured roughly three times in a report. By 1986 mentions triple, as reports from this year to 1999 use "security" on average 17.5 times. This peaks in 2001 with 38 mentions of "security" in different forms (Hemmerstad, 2011).

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[45] Early blame on "bestial" immigrants suggested that they would change the constitution of Canada's population for the worse within the first centuries of settlement in Canada. These xenophobic views were based more closely on biological determinism than the cultural discrimination seen today (Luciuk, 2001).

Security terminology has eventually diminished in frequency within UNHCR discourse since 2001; however, many states, including Canada, introduced policies in later years that inextricably linked the security of individuals to that of the whole state. As argued by many political theorists, including Agamben, overarching refugee regimes that de-individualize claimants may be problematic. However, this analysis would be unbalanced without consideration given to why the UNHCR adopted a securitization stance.

It would be erroneous to assume that the UNHCR introduced security measures to the detriment of refugees, but rather adopted these measures to use a “people-friendly” concept of security that is meant to be used in favor of refugees within new security paradigms enacted by the state (Hemmerstad, 2011). In other words, the UNHCR is not arguing to support illegitimate fears around asylum seekers, but rather to create a comprehensive, protective security-based discourse in the claimant's best interests.

Nevertheless, these developments have had a structuring effect on the ways the refugee regime currently functions.[46] A visible example of this would be the perceived threat of outsiders breeching the United States border shared with Mexico, resulting in problematic reactions by United States policymakers[47]. In Canadian history, various populations have been framed equally as threats both from inside and outside the state including Quebec sovereigntists, immigrants, Indigenous rights activists, high school students, and non-heterosexual individuals (Kinsman, 2012). The variation in “scapegoat” populations which pose a threat, which often, in turn, prove to be baseless fears, arguably supports the notion that many of these threats are socially created and based on unsupported claims.

While the war on terror has been complexly intertwined with border security in North American consciousness, it is also worth examining other sources of unease such as social insecurities. Many mechanisms construct refugees as undesirable “others” belonging to

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[46] Illegitimate fear of refugees and asylum seekers is resurging in North America through media and political figure influence, with little to no basis. The fears are linked to claims of increased crime and other threats allegedly posed by newcomers. This had been particularly publicized in 2018, with attention given to a false narrative of a “migrant caravan of criminals” approaching the US border (Long, 2018).

[47]The introduction of policies such as the Migrant Protection Protocol (MPP) at the US/Mexico border are argued to control the entry of dangerous individuals. These policies often result in vulnerable persons being held in “custody without sunlight in an overcrowded cell with no shower or ready access to water” with no reassurance as when their case will be processed (Sawyer, 2019).

exclusionary spaces. This can include metaphors of threat [48], invasion [49], or contagion [50] that are representative of xenophobic fears. Additionally, framing all migrants as illegitimate or illegal, despite their rights to claim asylum at borders granted by the *Universal Declaration of Human Rights* (1948) has become a detrimental contemporary narrative, which will be argued as a direct result of misdirected securitization efforts. The language of security can be argued as constructing the image of "bogus" asylum seekers, undermining refugee claims as a whole (Pratt, 2005). Through securitization, a "bogus" or false state of existence analogous to Agamben's *Homo Sacer* is created for many refugees, that is, separated from home state protections, while simultaneously excluded from protection from host states.

The influence of securitization frameworks on the international refugee regime as a whole provides insight into how "illegal" refugees are theorized. This is not to argue that migrants never make false claims at borders, but rather those with legitimate claims may be targeted with undue prejudice. Agamben's *Homo Sacer* can be introduced to represent an undeserving asylum seeker who is twice excluded from both home and host states. As a result of this separation, they are seen as having no inherent rights and as previously mentioned, are reduced to a state of bare life, which paradoxically produces no legitimate claim to human rights autonomous from states. The *Homo Sacer* is one whose life "is ruled by law but has no access to the law or protection from it" (Agamben, 1995; Molinaro, 2015). This can be argued as a reduced non-being under the guise of the state. Emancipation from the state results in their exclusion from the benefits of citizenship, including citizen rights (Arendt, 1973; Molinaro, 2015). In other words, security may justify exclusion whether required or not.

i. Spaces of Exclusion Within Canada

To frame the tangible outcomes of securitization policies, I will examine two practices for managing vulnerable refugees. This includes the "border spectacle" as a visible reinforcement of exclusionary practices, in addition to the use of detainment as a hidden practice, each of which that takes place in its own space of rejection. Border spectacle is by definition, "a grandiose

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[48] On February 23, 2018, President Trump compared refugees to "vicious and poisonous" snakes that attack the countries that take them in (Human Rights First, 2018).

[49] In 2017 American government officials claims that a "surge of illegal immigration" was taking place and that the system was "overloaded" by false claims (Human Rights First, 2018).

[50] NATO Supreme Commander warned that ISIS members are "spreading like cancer" among refugee groups (Frelick, 2016).

gesture of exclusion" created by hegemonic laws which resist common questioning (Genova, 2013). The physical border becomes its own space of exception, where interaction occurs between the state and the asylum seeker, often with mixed results. The concept of the spectacle as noted by Genova derives from Guy Debord's (1967) theory of visible social relationships. Specifically, the spectacle is not a static visible object (e.g., a border fence), but the representation of social relations that are "mediated by images" – for example, in the meaning imbued in the border fence (Genova, 2013).

The power of the border as a filtering mechanism is reified visually through the display of power in the walls, fences, guns, and uniformed officers who patrol the area. Borders, therefore, are visible spaces in which the creation of the "other" and subsequent creation of Homo Sacer can be determined through official state means. Detainment and spaces of detainment are less visually available but similarly reinforce spaces of exclusion. In Canada, most detention centres function to uphold administrative requirements. These locations are used to house a variety of immigrants and asylum seekers, including; those suspected of violating immigration law by working in Canada without permission, illegal migrants, rejected asylum seekers, asylum seekers with ongoing claims, as well as others who have been rejected entry into Canada for other reasons and are awaiting deportation (Walia & Tagore, 2012; Pratt, 2005). It is important to note that not all asylum seekers face detainment. However, those who are detained as a result of security practices will be the focus of this analysis[51].

The Celebrity Inn, located near Toronto's Pearson International Airport, exists as part hotel, part detainment centre. There are two entrances into the building, one for those free to leave and alternatively one for those who cannot (Pratt, 2005). While meant to function to protect Canadian society from those held within, many of those held in locations such as the Celebrity Inn face risks. Those in detainment centres can endure harassment from both guards and other detainees, and restrictive conditions can exacerbate a range of physical or mental

[51] Multiple government entities are involved in the detainment process, dependent on situational needs. First, the Canada Customs and Revenue Agency (CCRA) will investigate on behalf of Citizenship and Immigration Canada (CIC), who can then assign an immigration officer to detain a person if required. Within forty-eight hours, the individual's case will be reviewed, and a conditional release may be granted. If not released, the case will be reviewed on an ongoing basis first after seven days, then every thirty days following. Justification for detainment can vary and is largely based on the recent bills passed by Canadian legislators mentioned previously (Bill C-36 and Bill C-11).

health issues [52]. In 1995, the Celebrity Inn received publicity owing to the death of Michael Akhimien, a Nigerian national, who died in custody after requests for a doctor were ignored (Pratt, 2005). The use of detainment to hold non-criminals can be argued to create a sense of *homo sacer* by the tactics of exclusion from both host society, and the homeland they left behind. The complex nature of these spaces is detailed by Pratt (2005) who states that those confined "within Celebrity [Inn] are quasi-criminal transgressors of quasi-judicial law or quasi-rights bearing noncitizen subjects who are subjected to quasi-legal, quasi-administrative, quasi-criminal rituals of exclusion" (Pratt, 2005, 24). Those who live within the confines of locations such as the Celebrity Inn exist within a state of exception, or *Homo Sacer*, in that they live within a strange blend of government authority, non-punitive confinement, and everyday processes such as raising young children (Pratt, 2005).

(5.3) Immigrant & Refugee Archive Analysis

i. Group B

Archive sample Group B adopts an attitude analysis method similar to that utilized for Group A. Two keywords were required for sampling articles; immigrant, and refugee. Due to the wide variety of topics relating to these keywords, additional, optional keywords were included within the search parameters when searching for either "immigrant", or "refugee", to narrow the focus to articles relevant to this argument. The tone and coverage of immigrants and refugees in the media, such as in article similar to those sampled have been argued by some to have a significant link to public policies and attitudes (Jenicek et al., 2009).

The keywords here were chosen to present results that were targeted towards the discussion of immigration or accepting refugees into Canada, as well as the management of migrants. The earliest mentions of immigrants[53] are generally in reference to Canada's efforts to seek immigrants to settle and work in Canada permanently[54], however often this comes with a

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[52]. Even brief periods of detainment have shown to cause an increase in psychological problems such as anxiety, depression, PTSD, and long-term effects (Human Rights Watch, 2019).

[53] Immigrant was sampled a total of 68 times; 17 deemed positive, 31 neutral, and 20 negative usages.

[54] Immigrants from Great Britain, the United States, and Northern Europe are stated as having the highest degree of contribution to Canadian society, in "its future progress and advancement". The source also states that arrivals from other countries including "Hindoos", Turks, Arabians, and Egyptians are "needless to say, limited" (Winnipeg Free Press, 1906). Largely, this is a reference to attracting white settlers from Great Britain or the United States, which are "most needed" especially in the areas of agriculture, railway construction work, and domestic servants (*Brandon*

certain selective opinion on which immigrants Canada should be attracting. This theme of *selective* immigration is pervasive throughout this period in Canadian history[55].

In later decades, the association of immigrants with a rise in criminal activity is clear. One source states, "immigrants like to set wheels of justice buzzing", and from the viewpoint of law officials, "the non-English speaking foreigner is the worst citizen of Manitoba" (*Winnipeg Tribune,* 1917). In terms of crime reporting in Winnipeg, immigrants are blamed for three-quarters of all crimes and make up a large portion of the inmate population (*Winnipeg Tribune*. 1917). In somewhat of a warning, one author describes Argentina's "open-door, everybody welcome" immigration policy which has led to the country being overrun by "undesirable immigrants and violent radicals" (*Brandon Daily Sun*, 1923). In addition to crime, the Great Depression also raised questions of immigration causing unemployment among Canadian-born citizens, despite officials arguing otherwise[56].

By 1987, xenophobic statements are increasingly apparent in texts sampled for evidence of fear of immigrants and refugees. This source details the differences between immigrants, refugees, and illegal aliens to educate the public and argues against "all or nothing positions" on allowing migrants into Canada (Spicer, 1987). Other popular topics during the late 20th century and early 21st century include ongoing debates on deportations[57], migrant labour concerns[58], and mistreatment of immigrants or refugees[59].

Weekly Sun, 1907). Within the United States, several vocal opinions are found concerning "watering our lifeblood" with the overflow of "ignorant, lawless, idle and dangerous" populations from foreign countries (Gladstone Age, 1888).

[55] Immigration from populations which do not wish to assimilate appears to be causing anxiety, especially in relation to the changing nature of Canadian ethnic groups. Woodsworth argues, "assimilation is a task of national magnitude" (Woodsworth, 1913). Bruce Walker, then-Canadian Immigrant Commissioner, reportedly resides in Winnipeg most of the time and is spoken very highly of in one publication of the *Winnipeg Tribune* in 1913 as a "nation builder" (Healy, 1913) suggesting that at this time, immigration was a large portion of advancing Canadian society for the better, granted candidates were of a certain racial or ethnic background. As stated, "we deliberately discourage any attempts to bring in people from Southern Europe… They are unsuited to our climatic conditions and are out of accord with our racial traditions" (Healy, 1913).

[56] Senator Robert Forke, former minister of immigration, argued in 1930 that immigration is not the cause of unemployment (*Winnipeg Free Press*, 1930).

[57] Debates over removing immigrants or refugees convicted of crimes in Canada, raising moral questions when the homeland they would be deported to is a significantly more dangerous environment for them (Winnipeg Free Press, 2007).

[58] Asian women, as migrant workers in Canada, are reported to sometimes be exploited by employers because they assumed to be "docile and easy to control" (Matsuda, 1985).

[59] Immigrant women who leave abusive spouses may be subjected to deportation, if the women are dependent on those spouses for economic support or are required to be married for legal immigration purposes. This arguably forces immigrant women into abusive marriages to remain in Canada (*Brandon Sun*, 1994).

After 2016, however, a notable change begins largely in American newspapers after President Trump takes office. As a result of mass migrations of people attempting to escape political and/or social unrest, borders begin to be built, literally. Media reporting beginning in 2015 shows that more physical barriers were being constructed between countries than "any other point in modern history", as up to 63 walls now separate countries globally (Granados et al., 2016). As President Trump ends programs protecting immigrants[60], many are now waiting at the border for processing[61] or possible deportation.

The earliest sampled article referencing the term "refugee" details a "cholera refugee[62]", living in Quebec in 1884 yet does not offer any other context (*Winnipeg Daily Sun*, 1884). Another early record American is not so neutral, detailing "anti-messiah half breeds and ghost dancers" originating from the "Indian country" that are causing violent conflicts in a town full of refugees, to be avoided. Beginning around the 1960s as well, more focus appears to be concerning refugees on a global scale within the media. Refugees leaving communist China are reported to be "flooding" into other areas, especially Hong Kong, then a British Crown colony (Kirkwood, 1968). In Canada in the following decades, the debate centers around the management of refugees, and the laws that aid in the processing of asylum claims[63].

Beginning in the 1990s concerns with security and the personal histories of the refugees accepted into Canada become central concerns. The efficacy of Bill C-44, for instance, is questioned fearing that it "cannot prevent the world's dangerous criminals from taking sanctuary in Canada" as they wait in Canada until an asylum hearing takes place (Lett, 1994). In addition, the media begins covering migrant boats arriving on Canadian shores carrying large numbers of potential refugees. Canadian officials were reported to be monitoring "rusty boats jammed with illegal Chinese migrants", as "a rising tide of illegal migrants and waves of anger over immigration policies" (*Winnipeg Free Press*, 1999). "People-smuggling" along with other

[60] The Deferred Action for Childhood Arrivals (DACA) act was repealed, leaving many prone to deportation and unable to legally work within the United States despite many of those protected by this act arriving in America as children (Colvin, 2017).
[61] Many of those at the border are parents and children who have been separated while awaiting processing, and face long waiting periods apart (Weissert et al., 2018).
[62] Refugee was sampled a total of 70 times; 17 deemed positive, 43 neutral, and 10 negative usages.
[63]One Winnipeg priest argues that Canadian policies on refugee protections are not working but are rather "in shambles". Reverend Robert Foliot works to aid in the resettlement and protection of young refugees, through other church groups in America that can get the youths into Canada. Changes to Canadian policy in 1988 would dictate that once on American soil they must claim asylum there, not continue to Canada effectively preventing Foliot from aiding any more refugees from Latin America (Roberts, 1988).

terminology such as gangs, crime, illegal migrants, a threat to security are used throughout other sources likely to stir up public emotion or outrage at the migrants arriving at Canadian borders (Ayed, 1999). Overall, the majority of mentions appear to fall under the neutral categorization, with increases in neutral uses after 1949. Simultaneously, negative usages decrease over time, while positive use increases.

ii. Group E

Archive sample Group E[64] utilizes a presence-or-absence method similar to that seen in Groups C and D using themes relevant to immigrant or refugee topics to isolate more specific examples than those found within the broad categories of Group B. These terms are purposefully ambiguous or negative to sample how often these keywords appear in the media.

"Invasion threat"[65], due to its close connection to global affairs and events, was seldom used concerning any other contexts, leaving few relevant samples. "Foreign danger"[66], like the previous keyword, is used most often in connection with global events or large-scale political issues. Dominant early 20th century themes include the idea of accepting too many immigrants, or letting in the wrong kinds of people, especially "oriental immigrants"[67] who allegedly do not integrate and form problematic communities (Woodsworth, 1913).

It would not be until several decades later that the popular media would begin discussing danger, not *from* migrants, but rather danger *endured by* migrants. As detailed by one 1961 article, Canadian farmers were attempting to compete with Americans who employed migrant workers in "inhumane conditions" and may have to place restrictions on American imports until they stop exploiting migrants (*Winnipeg Free Press*, 1961). Migrant labour discourse appears to

[64]This sample group resulted in 325 relevant articles. The single sampled article is presented in a 1989 publication of the Swan Valley Star and Times, in which the author expresses anxiety not explicitly about immigration, but rather ideological takeovers from other countries, in this case as a result of the Free Trade Agreement with the United States during this period. Concerned that Canadian borders will be "thrown open" to Americans working in Canada, the article utilizes other terms such as "American invasion", "domination", and "overrun". Ultimately, the argument becomes, "The real threat, of course, is to Canadian sovereignty" (Stone, 1989). While not solely focused on permanent immigration, economic migrants, and the culture they may bring, are now a concern.

[65] While sampled a total of 70 times throughout all decades between 1880 and 2019, only one article proved relevant.

[66] This resulted in a total of 61 total samples, with only three relevant to this thesis topic. However, early 20th century mentions connections are made to immigrants, with the first use found in 1891, detailing foreigners as a danger to the wellbeing of society (*Winnipeg Free Press*, 1891). A later 1906 story connects Winnipeg's "large foreign population" and their reluctance to boil water as an element in a recent typhoid outbreak within the city potentially spreading the disease to "more comfortable homes" (*Winnipeg Tribune*. 1906). For other keywords such as "migrant danger", discussions surrounding migrant cleanliness continue. Early mentions of migrant danger are explicitly anti-migrant or anti-newcomer, espousing the dangers of immigration for Canada.

[67] Orientals are "dragging the whites down" as stated by one author (*Winnipeg Free Press,* 1907).

become more popular during this period onward, both in favor of protecting migrants[68], as well as fearing them[69].Sources mention "immigrant crime[70]" as early as 1914[71]. Most early samples before the 1950s focus on random crimes committed by immigrants, sometimes headlined by the title "Immigrant Arrested", with a name mentioned later in the article (*Winnipeg Tribune*, 1923; *Brandon Daily Sun*, 1924; *Winnipeg Tribune*, 1955; *Winnipeg Tribune*, 1961).

By 2010 there are new concerns about the effects of political rhetoric targeting immigrants in the United States. The long-term consequences of public statements by officials have yet to be seen. "Refugee crime[72]" appears in samples quite similarly to "immigrant crime" albeit less frequently. Deportation[73] was the most frequently relevant, and consistent keyword. First mentions are used in the context of racially or ethnically based deportations of "undesirable" populations, which later develops into deportation arguments surrounding economically destitute or criminal migrants as defined by 1906 amendments to the *Canadian Immigration Act*[74].

[68] Ethnic violence abroad is detailed in the context of Russians targeting migrant workers, motivated by xenophobia. The author details the organizations that may get involved in aiding the situation, and how migrant workers may be scapegoats for other social unrests (Rodriguez, 2009).

[69] One Canadian Armed Forces member in Iraq submits, "hordes of immigrant laborers" are a danger to both Canadian forces overseas, and the country of Iraq (Steinbach Carillion, 1991).

[70]Immigrant danger was sampled a total of 38 times.

[71] In an interesting turn of events, a newspaper-editor was working undercover, posing as an immigrant, and was subsequently arrested for vagrancy. He reported being upset with the treatment he received after being arrested (Winnipeg Tribune, 1914).

[72] The total sample for this keyword, refugee crime, is 18 articles. The first mention is a short article detailing a refugee who attacked an immigration officer after being told to move to less comfortable living quarters, yet this does not have the sensationalized titles of later articles found closer to the mid-20th century (Winnipeg Daily Sun, 1882). The common discourse in the following decades during WWII appears to be managing the "refugee problem" of too many displaced persons, and not necessarily a crime.

[73] This keyword was sampled with 67 examples. One source links the two factors of being ethnically undesirable and poor, as a group of over 100 Hindus were facing deportation later in 1908, as assimilation would become a large factor in migrant acceptance (Winnipeg Free Press, 1908)[73]. By 1927, crime waves were being blamed on immigrants, with deportation viewed as an appropriate solution.

[74] Arguments were made in favor of deporting all immigrant deemed undesirable. As defined by the immigration act this includes, "an immigrant [that] has within one year of his landing in Canada committed a crime involving moral turpitude, or become an inmate of a jail or hospital, or other charitable institution" as deportable (Winnipeg Free Press, 1906b).

Chapter 6: Queer Migrants & the Building of Non-Physical Barriers

(6.1) At the Intersection Between Sex & Migration

The Immigration and Refugee Board (IRB), Canada's largest tribunal, oversees the Refugee Protection Division (RPD) which is ultimately responsible for the adjudication of asylum claims in Canada. Decision-makers referred to commonly as "members" or "board members"[75], must determine if the claimant before them meets the UNHCR-dictated definition of a "Convention Refugee" adopted in Section 96 or the Canadian Immigration and Refugee Protection Act (IRPA) (Hersh, 2015). Successful claimants must demonstrate a well-founded fear of persecution, which in the case of sexual orientation or gender identity claimants qualify them as a "member of a particular social group." This has the effect of requiring many LGBTQ+ persons to remain in precarious situations abroad to qualify. Canada has recognized SOGIE-related factors as "innate and unchangeable" personal characteristics following the decision made in Canada (A.G) v. Ward (1993).

Decisions made by RPD members differ significantly from other legal judgments typically seen. Successful claims are not necessarily defended with accepted forms of empirical evidence (e.g., similar to criminal defence cases) but rather on an "assessment of current or future persecution," more like domestic violence cases, which rely almost exclusively on the personal judgements of court officers (Thomas, 2005). As with cases of domestic violence, there is a high rate of challenging original decisions through appeals – though the power differential is reversed with those charged with abuse seeking to claim damages, while in the case of denied refugee claimants, it is vulnerable who seek to have their cases retried. This appeal process seeks to determine the correctness of the original decision and considers new evidence that may not have been available at the time of the original decision. The Refugee Appeal Division (RAD) was introduced in 2012 and reformed the appeal process entirely. Failed claimants no longer have to petition the Federal Court of Appeals for a review, which was seldom successful (Colaiacovo, 2013).

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[75] To retain independence, these members are appointed and hold the position for a set period to reduce government pressure or outside interference in decision-making.

When persecution is claimed to be based on SOGIE-factors, such decisions can be complex, and possibly problematic for both parties involved. The focal point of the following chapter will remain on the experiences and narratives of migrants after arrival, not necessarily the motivations behind their migration (Fobear 2014). This analysis will focus on LGBTQ+ refugees' experiences of creating narratives of persecution, and on the judgements of these narratives by the Refugee Protection Division.

i. Creating & Judging the Narrative

Before examining how narratives are accepted by Canada's International Refugee Board and eventually judged by the Refugee Protection Division, we must first examine how they are created and shaped within contexts with cultural norms of sexuality and hegemonic gendered expectations. For refugees, sense-making narratives must illustrate their experiences of displacement, conflict, and persecution to serve as foundational support for their asylum claims. Specifically, these voices are "dismembered and reassembled as a legal narrative" to be presented before the RPD (Sigona, 2014).

However, these stories are created with functions in mind, guided by predetermined criteria that must be met to prove persecution or hardship according to Canadian requirements. This combining of emotional or physical trauma and legal definition creates the condition for a unique retelling of one's lived experience, resulting in a personal identity narrative (Berg & Millbank, 2009). This process can present problematic questions surrounding both the creation and the judgment of such narratives.

SOGIE-based refugees face unique challenges, as this stereotypical narrative may also be required to encompass stereotypical Western characteristics of what it means to be LGBTQ+. This significantly complicates the process, highlighting tensions between lived experience, sexuality, and cultural conceptions of asylum and law (Ou Jin Lee & Brotman, 2013). Since the 1990s, Canada's RPD has made decisions on thousands of SOGIE-based asylum claims (LaViolette, 2009). In an exploration of similar testimonies, Ricard (2014) reveals how sexual narratives may be altered according to the perceived expectations of the RPD[76].

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[76]Both gay men and lesbians were making claims of bisexuality for several reasons; bisexuality was argued to be less stigmatizing than homosexuality, some applicants may not perceive strict homosexuality as being an option, while other claimants found claiming bisexuality may be an easier way to explain why they already had children. According to Ricard (2014), roughly one-third of applicants had children either due to social norms of their host country, or other circumstances (Ricard, 2014). Not only are claimants with underrepresented sexualities required to prove persecution, but they are also additionally required to prove that their sexuality is credible (Murray, 2014).

The tendency of public attitudes towards skepticism or disbelief concerning asylum claims is not isolated from those making decisions for the RPD, especially concerning SOGIE. The conception of "bogus refugees" created by increased securitization or neoliberalism introduced earlier pervades all dimensions of claims (Sigona, 2014). In effect, the subjective retelling of one's experience of persecution is deconstructed into a more objective version of the truth, one that will be judged by the RPD. Unfortunately, there are many complications to consider when examining a narrative retold by an applicant. LGBTQ+ applicants, in particular, may find it difficult, or expect hostile reactions, when explaining their SOGIE status resulting in other claims of persecution being self-identified as more prominent or the disclosure of SOGIE not revealed by the claimant at all (LaViolette, 2009; Berg & Millbank, 2009).

In 2017, guideline changes implemented by the IRB were introduced to address some of the challenges claimants may face before or during hearings. The purpose of *Chairperson's Guideline 9: Proceedings Before the IRB Involving Sexual Orientation and Gender Identity and Expression* is to promote a broader understanding of SOGIE-based issues within the immigrant or refugee processing systems in Canada. Such guidelines appeal to all divisions of the IRB, including the Immigration Division (ID), Immigration Appeal Divisions (IAD), the Refugee Protection Division, as well as the Refugee Appeal Division. The principles laid out within these guidelines are an important step forward for twofold reasons; they bring attention to the diversity of SOGIE, as well as the challenges these individuals face including mental health issues that may impact the retelling of narrative, while also aiding the proper decision making on behalf of the RPD or RAD. Clear definitions of sex, sexual orientation, gender identity, and gender expression are presented to encompass a wide variety of individuals, making asylum claims based on SOGIE-related factors accessible to many persecuted individuals.

A reliance on tangible or written documents, common to the legal discipline, can present challenges to SOGIE refugees as medical or police records may not exist to support their claims (Ricard, 2014). The production of such documents would arguably present hardships for the majority of LGBTQ+ persons already inside Canada as well, as sexual orientation or gender orientation is a largely intangible concept. As a result, the scarcity of written evidence proves to be a challenge to both the claimant and the decision-maker. Even with the existence of anti-LGBTQ+ laws in their home country, the claimant must prove that they also experience

persecution and lack of state protection. Documentary evidence obtained after arrival, such as letters or testimonies from sexuality advocacy organizations, may also lack credibility, as these sources may be perceived to be "one-sided" (LaViolette, 2009).

Determining persecution over discrimination with a paucity of evidence is difficult, even if the claimant is given the benefit of the doubt that they are indeed a sexual or gender minority. As defined by the UNHCR guidelines, those who seek refugee status must prove past persecution or reasonable fear of persecution that cannot be remedied by their state of origin (Hathaway & Pobjoy, 2012). In some cases, discrimination can amount to persecution if experienced cumulatively. As defined by the IRB, this can include a combination of restrictions on employment, education, healthcare, housing, or being the victim of intimidation or harassment by the police (IRB, 2017). The expectation of an individual to hide their SOGIE or modify their behaviour to avoid such discrimination is not a valid option, as "being compelled to conceal" one's SOGIE status interferes with fundamental human rights and is, therefore, not a way to avoid persecution (IRB, 2017).

After evidence is presented, it is the responsibility of the adjudicator to judge the credibility of the materials or narratives given. The purpose of judging credibility is to determine if the evidence proves persecution or a valid fear of persecution and therefore qualifies the claimant as a convention refugee. As defined by Thomas (2006), there are three dimensions under which the credibility of a claim may be questioned. First, "internal inconsistencies" arise when a claimant has altered parts of their narrative over time, raising concerns over the validity of the entire claim. Second, "external inconsistencies" originate from discrepancies between the narrative and any material evidence, such as written documents. Finally, an overall assessment of the likelihood of narrative events taking place as a subjective decision on the part of the adjudicator (Thomas, 2006). Ultimately, the entire processes require a sufficiently detailed, plausible, and consistent retelling of one's truth of experience (Berlit et al., 2015).

When determining the credibility of SOGIE-based arguments, officials may also face the task of judging the claimant's sexual orientation or gender identity itself. Lines of questioning presented to determine SOGIE risk retraumatizing and humiliating the claimant, exacerbating ongoing discrimination, and robbing them of what little dignity they have retained (Berlit et al., 2015). There are many avenues of inquiry that these claimants may expect to hear; questions surrounding the "discovery" of one's sexuality or the progressive development of sexual identity

may be especially problematic if their previous home state completely outlawed any non-heterosexual expressions, as the "discovery" of sexuality in these environments may be completely different from the expected Western norm. Other lines of questioning may include self-perception of SOGIE status, past partners or social environments, or knowledge of SOGIE-related topics in Canada (Berlit et al., 2015). Throughout the course of questioning, both omissions of certain facts and vagueness may impact the credibility of answers. The guidelines introduced by the IRB in 2017 address this to some degree concerning SOGIE claimants. Vague answers or omissions of certain facts must not automatically be assumed to be willful deception. Instead, it is the responsibility of the decision-maker to determine if this behaviour is due to other barriers, such as psychological, linguistic, or cultural factors (IRB, 2017).

Amidst the implementation of relatively new guidelines, Western notions of LGBTQ+ individuals or communities may influence and affect the credibility of asylum claimants who have limited knowledge of such stereotypes. These stereotypes may rest on a series of events in which the individual "discovers" their SOGIE, acted upon it after the individual decides to be "out", or reveals their SOGIE publicly[77] (Berg & Millbank, 2009; Dawson & Gerber, 2017). Guidelines, such as those introduced in 2017, may help decision-makers; however, preconceived notions of human sexuality may consciously or unconsciously create a bias toward a lack of credibility on the part of the claimant (Berg & Millbank, 2009). Overly simplified or misleading understandings of SOGIE may work to the detriment of such claimants. Certain stereotypes also extend into the media, as noted by Jenicek et al., 2009). Through sampling of Canadian media reports concerning SOGIE refugees, terminology commonly included "passive, emotional, and weak adjectives" and framed these individuals as vulnerable yet saved by the Canadian state (Jenicek et al., 2009). Gay male stereotypes were also deployed, including hyper-feminized men who were "immaculately groomed," "flamboyant," or other expected cultural tropes to construct a narrative of refugees who already conform to Western expectations (Jenicek et al., 2009).

ii. Determining the Status of Vulnerable LGBTQ+ Refugee Claimants

The refugee determination process requires that an objective truth be deduced from the analysis of objective factual evidence to prove persecution in a prior home state. However, this becomes highly problematic, as proving a subjective personal trait cannot often be properly

[77] Such expectations not only cannot be applied to LGBTQ+ Canadian citizens but are especially problematic for those who originate from nations in which such expected life stages are not acceptable.

accomplished within this legally-based framework. Evidence to prove a genuine claim may entail the collection of letters, testimonies, and medical or police records that give weight to the claimant's narrative (Jordan, 2009). Once again, this is highly problematic as these gathering materials from other states may prove to be impossible, or this form of proof may simply not exist if the claimant is coming from a state which does not allow alternative expressions of SOGIE (Murray, 2014).

The narrative constructed by the claimant forms the basis on which the individual is deemed genuine or not. Adjudicators may expect a cohesive narrative of persecution, however, in the face of claims which are personal and sensitive in nature, this can become a challenge in itself (Shidlo & Ahola, 2013). Proving an identity in this manner is complex and problematic, as a guided "template" may be imperative for an asylum seeker to fit the narrative sought by adjudicators. This arguably is why advocates may encourage "reverse covering" upon arrival in the host country (Yoshino, 2006) In this context reverse-covering SOGIE-based claimants matching Western appearances and expectations to avoid appearing fraudulent[78]. Here, questions can be raised concerning the state actor's competency to determine the credibility of a citizen's (or noncitizen's) sexuality, or other forms persecution without expertise or specialized intensive training – neither of which is required of immigration administrators or legal practitioners (Murray, 2014).

(6.2) Chairperson's Guideline 9 & SOGIE-based Asylum Claims: Case Study

Significant progress was made in 2017 with the introduction of *Chairperson's Guideline 9: Proceedings Before the IRB Involving Sexual Orientation and Gender Identity and Expression (SOGIE)*, meant to address complex issues faced by SOGIE-based asylum claimants. The purpose of *Guideline 9* is to highlight specific, focused challenges that may arise in such cases, as well as to create guiding principles for adjudicators to adhere to in the interest of sexual orientation and gender identity equality and procedural fairness. Along with defining various concepts such as sex and gender, *Guideline 9* remains cognizant that "There [are] no standard set of criteria that can be relied upon to establish an individual's identification as an individual with

[78] This can include attending LGBTQ+ events and bars to be seen as "out" in public to gather photographs, testimonies, or other materials for review boards whether this would be done voluntarily by the claimant or not.

diverse SOGIE" (IRB, 2017). In addition, *Guideline 9* lays out principles for language use, stereotype avoidance[79], as well as principles for assessing the credibility of SOGIE-based claims. Various forms of persecution are also well-defined and range from the concealment of sexuality, criminalization or discrimination, and overall lack of state protection; all factors which may lead to the individual attempting to seek asylum in Canada.

Overall, Guideline 9 represents an overdue attempt to improve SOGIE-based claims in favour of those who face unique circumstances not otherwise commonly seen in asylum proceedings and draws attention to the intersection of multiple factors at play in such claims. The ultimate purpose of this case study is to centre Guideline 9 in the thematic analysis to measure the impact such Guidelines have had and to identify any notable changes to SOGIE-based asylum claims over time as a direct result of Guideline 9's implementation.

I will focus specifically on publicly available Refugee Appeal Division cases, or cases that were previously rejected and facing appeal wherein the initial denial of refugee status is explained, as are the factors which contribute to overturning a negative decision. This illuminates how primary and secondary decisions are made within the Immigration and Refugee Board and any impacts Guideline 9 may have on a secondary assessment. It should be noted that the decision to choose RAD appeal cases is related to the bias toward positive IRB decisions not being published (Hersh, 2015). As of 2012, following IRPA guidelines, only negative decisions require written explanation, and only a portion of these are publicly available. Therefore, the scope of this analysis is limited to publicly available RAD cases to determine when, if ever, Guideline 9 have an impact on RAD decisions.

i. Sample Overview

Following the analysis of pre-guideline cases from 2013 to 2017, there were a total of 28 individuals involved, with only two cases having multiple associated claimants[80]. The majority of all claimants originated from African countries (15 claimants), with five from Latin/South American locations, two from Asian/South Asian regions, and two originating from

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[79] Specific stereotypes noted include; masculine or feminine appearance or mannerisms, religious participation or non-participation, sexual history, sexual activity, or participation in "LGBTQ+ culture in Canada" (IRB, 2017).

[80] A total of 18 individuals identified as male, while seven identified as female. No claimants presented themselves as fluid, intersex, or transgender while all identified as non-heterosexual except for one individual who claimed asylum due to their association with a LGBTQ+ individual, not their own sexuality or gender identity. One lesbian couple made a claim together, and including the primary claimant of this lesbian couple, there were only three additional lesbian claimants. The other two women identified as bisexual. The primary orientation revealed by this sample is male, and gay with 13 claimants, while bisexual men totaled five cases.

European/Middle-Eastern regions. Overall, 16 cases upheld the original decision, meaning the claimants were denied refugee status. Five were overturned and granted status, while four claimants were given new panels due to various issues with the original decision in these circumstances a new hearing was scheduled with the RPD, with a new panel. The results show that the rate of denying claims drops after the *Chairpersons Guideline 9* were introduced in 2017.

Out of a total 25 post-guideline cases from 2017 and onwards, there were 35 individuals involved. There was a relative balance between the gender identities of the primary claimants, with 15 men and 10 women[81]. The majority of claimants were from African regions, a total of 14, with five from European/Middle-Eastern origins, five from Latin/South American origins, and one claimant from Asian/South Asian origins. Overall, the RAD approved more claims than it denied, with 12 appeals overturned to grant refugee status to appellants, while eight were upheld as dismissed. Four other cases were not able to be decided upon due to issues with the original decision-making. In these instances, a new hearing was scheduled with the RPD, with a new panel of decision-makers.

ii. Primary Judgement by the Refugee Protection Division (RPD)

To conduct thematic analysis, these cases were separated into two components; factors that led to the original dismissal of the cases (primary judgement by the RPD) and the factors that were examined upon review to make a secondary decision (secondary judgement by the RAD. I organized claim denials according to material inconsistencies, narrative inconsistencies, or other thematic elements revealed by the case proceedings. Overall, five major themes related to primary judgement emerged in all 50 cases; narrative inconsistencies[82] involving complication relating to narrative retellings of experiences, material inconsistencies[83] relating to lack of

[81] In terms of sexual orientation variety, 15 claimants were explicitly mentioned to be homosexual (i.e. either lesbian or gay), seven were bisexual, 3 heterosexuals (making a claim of persecution based on a relation to a LGBTQ+ individual), while one woman has identified as both bisexual and a lesbian in the past. Notably, no claimants presented themselves as non-binary, intersex, or transgender in this sample group either.

[82] Narrative inconsistencies were categorized as conflicts between either the claimants' past retelling of their experiences or conflict with testimony provided by others. Over half (62 percent) of all cases stated some form of narrative inconsistencies upon the primary judgement. Between the two sample groups, 15 cases pre-guidelines stated narrative issues, while 16 cases post-guidelines mentioned similar inconsistencies for a total of 31 of 50 identified examples.

[83] Material inconsistencies relate to physical/tangible evidence brought forward that conflicts with either a claimant's narrative or another part of their claims. For example, misdated documents, documents that cannot be proven to exist, or even documents that do not align with narrative testimony timelines. See IRB-RAD, 2015e; IRB-

documentation or other physical materials, sexual orientation credibility[84], persecution credibility[85], and vague/omissive testimony[86].

While not a commonly reoccurring theme, Internal Flight Alternatives (IFA) may also be a reason for a negative decision. An IFA may be substituted for asylum, as the claimant would have a safe alternative in another part of their home state. Four out of 50 cases determined the claimant to have an IFA, however only one of these decisions was upheld, as two were overturned, and one claimant was granted a new RPD panel (i.e., restart the claim). The only IFA upheld, in 2019 case *MB8-01239*, occurred after the introduction of *Guideline 9*, as the claimant, a Mexican national, would have a safer option of living in Mexico City as opposed to his smaller home town.

The five factors concerning consistency, credibility and clarity appear to carry the weight in determining decisions -- most prevalent being sexual orientation credibility, followed by narrative inconsistencies, with 36 and 31 examples respectively. Many cases exhibit more than one credibility issue, with only five cases exhibiting a singular major issue for their original denial.

Half of all 50 cases (25) had a minimum of three identified themes, with these examples being distributed relatively evenly over time[87]. The ultimate approval rate for those with a minimum of three identified issues, however, differs over time. While overall 11 cases with at least three credibility issues were approved or given new panels (44 percent), only two of these

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RAD, 2015. Material inconsistencies explicitly stated in the pre-guideline sample totaled 9, while the post-guideline sample totaled 13, for a sum of 22 of 50 cases.

[84] Sexual orientation credibility is defined by a disbelief of the claimant being LGBTQ+, commonly linked to other inconsistencies in either narrative or material proof that undermines overall credibility. For all cases, nearly two-thirds (72 percent) identified disbelief of sexual or gender identity as a major factor. SOGIE-based credibility issues identified in the pre-guideline sample totaled 19, while the post-guideline sample totaled 17, for a sum of 26 of 50 cases. Interesting, this theme stays relatively consistent over time throughout the introduction of *Guideline 9*.

[85] Persecution credibility is commonly linked to the credibility of the claimants SOGIE overall, as if one cannot prove they are LGBTQ+ by extension they likely cannot prove persecution. This form of credibility issue is found in roughly half (48 percent) of all cases. Persecution credibility themes identified in the pre-guideline sample totaled 10, while in the post-guideline sample 14 examples were isolated. Overall, 24 of 50 cases explicitly mentioned doubts over the credibility of persecution faced by the claimant.

[86] Vague or omissive testimony entails the claimant failing to adequately explain or describe events or situations, sometimes stated as omissive if the adjudicator believes the claimant to be hiding details on purpose. Overall, being too vague or omitting details undermines credibility for the rest of the claim. Similar to persecution credibility, vague or omissive answer was mentioned in nearly half (48 percent) of cases. Issues with vagueness or omission of details totaled 10 examples in the pre-guideline cases, while in the post-guideline sample group this increased to 14 examples, for a total of 24 of 50 cases.

[87] In the pre-guideline sample, 11 cases had a minimum of 3 identified themes, while 14 in the post-guideline sample met these requirements.

decisions are represented by the pre-*Guideline 9* samples. In other words, those in the pre-*Guideline 9* samples with three or more credibility issues had an overturn rate of 18 percent, a large difference as opposed to the 81 percent overturn rate found in the post-*Guideline 9* sample. This discrepancy, after an examination of RAD secondary judgements, seems to be the standardization of processes offered through *Guideline 9.*

One notable case highlights the amount discrepancy possible between the two panels. Case *MB8-17233,* which took place in 2019, featured a self-identified female, a lesbian citizen of Haiti and resulted in a new RPD panel being ordered. The claimant alleges she experienced violence from her husband after beginning a relationship with another woman, fearing imprisonment and more mistreatment from her husband she eventually left the area at which point she travelled to Canada to claim asylum. Upon primary judgement, the RPD made a negative inference referencing her vague answers and doubted both her sexuality and risk of persecution resulting in the original claim being denied. However, the RAD explicitly states the RPD made multiple critical errors stating, “the RPD made critical errors in its analysis of the appellant’s credibility with respect to her sexual orientation and the risk she would face in returning to Haiti”.

This includes an explicit mention of disregarding *Guideline 9* especially concerning a reluctance to testify owing to gender-based or sexual violence before the RPD. As a result, the RAD determined a new panel would be required and states, “The matter will be referred to the RPD for re-determination by a different member, who must take into account the Chairperson’s Guideline in their assessment of the appellant’s credibility with respect to the risk she would face, based on her sexual orientation, should she return to Haiti*”*.

This is the clearest example found in the sample cases of possible differences in the decision-making of the RPD and the RAD. However, it should be noted that given these cases are appeal cases, meaning they were previously denied once, it cannot be concluded how often this situation occurs as there are no examples of the RPD approving such claims forthright. Therefore, these examples may over-represent instances in which the RPD does not closely adhere to *Guideline 9.* Nevertheless, it is important to examine the process under which SOGIE-related factors are judged by both departments. Overall, the pre-*Guideline 9* sample groups exhibited 66 instances of these theme examples over 25 cases, while the post-*Guideline* sample had 75 identified examples of these themes, for a total of 141 examples of all themes combined.

As demonstrated, there appears to be a relative consistency to the identified themes over time between both sample groups, with a slight notable decrease in explicit SOGIE-based credibility issues. Instead, an increase in vague or omissive testimonies and material inconsistencies appears to conversely rise. Overall, these themes appear to be relatively evenly distributed by the RPD decision-making process, with no clear theme being relied upon resulting in asylum claim denial.

iii. Secondary Judgement by the Refugee Appeal Division (RAD)

The second portion of the analysis features themes that are explicitly present in the RAD decision, as well as any new evidence introduced before the adjudicator. The RAD has the power to confirm or substitute refugee decisions made by the RPD or, in some instances, refer the case back to the RPD to make a new decision (new panel). As noted in example TB4-03922 by panel decision-maker Edward Bosveld, there exist three main types of appeals, a mixture of which the RAD generally oversees. First, true appeals or *appel veritable* is a narrow appeal that focuses solely on an error of law, fact or procedure. Second, *appeals de novu*, in which the original decision is disregarded in place of a new decision altogether. Lastly, hybrid appeals place the burden of proof onto the claimant to demonstrate the error while simultaneously allowing new evidence to be presented. Generally, RAD appeals sit at the intersection of true and hybrid appeals, allowing the RAD to review the lower tribunal procedures undertaken by the RPD for standards and correctness.

Examining the decision-making by the RAD reveals six prominent themes through all 50 cases that factor into either overturning, upholding decisions recommending a new RPD panel. These themes include; new evidence provided by the claimant or other parties[88], general

[88] In many cases, the claimant will attempt to provide evidence that was not available at the time of the original hearing to aid with the appeal process. Over half of all cases (60 percent – 30 cases) examined presented new evidence upon appeal, however, this evidence was only accepted in 15 cases total, meaning roughly one-third (30 percent) of cases involved new, accepted evidence. While "crucial" new evidence refers to evidence that substantially altered the refugee decision upon appeal. While 15 cases saw new evidence introduced, six of these cases were notably overturned in large part due to the introduction of evidence that was not available at the time of the RPD decision. In several examples, this included evidence of relationships or even marriages with same-sex partners after arrival in Canada.

RPD errors[89], persecution-judgement errors[90], credibility-judgement errors[91], narrative-credibility errors[92], micro-focusing[93], and judgement confirmation[94].

When examining the distribution of these themes between both sample groups, interestingly, new evidence was introduced roughly half as frequently in the post-*Guideline 9* sample however when new evidence was presented, it was accepted more often[95]. Critical new evidence, that is evidence that was instrumental in overturning a negative decision, remained constant with 3 instances in both sample groups. Also, notable, the uphold versus overturn rate of RAD decisions shifts considerably over time with the introduction of *Guideline 9.*

The pre-*Guideline 9* sample resulted in 14 cases being upheld. In other words, 56 percent of claims were rejected by the RAD. For analysis, "new panel" decisions will be considered with overturned rulings as the appeal was ultimately granted in favour of the claimant despite not yet being granted Convention refugee status. Within both samples, the cases resulting in new RPD panels remain constant. When examining this same theme within the post-*Guideline 9* samples, this decreases to 8 decisions being upheld by the RAD. This results in only a 32 percent rejection rate, a notable difference.

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[89] General errors encompass a wide variety of missteps taken by the RPD primary decision-maker that were significant enough to influence the appeal process. Out of all 50 cases, there were 12 instances (24 percent of cases) in which the RAD determined the RPD to have erred in some significant way. In total, the pre-guideline sample included five specific mentions of RPD general errors, while in the post-guideline sample this increased to seven

[90] Persecution-judgement errors emerge when the primary decision-maker has failed to consider all evidence relating to the persecution of an individual if returned to their country of origin or has misjudged the evidence as determined by the RAD. This specific theme was identified in 12 instances (24 percent) of all cases.

[91] Credibility-judgement errors relate to the secondary decision-maker identifying issues with the judgement of claimant credibility, most often the primary decision made by the RPD will find the claimant not credible, while the RAD disagrees. Overall, this is the largest theme identified in RAD cases with 38 assorted instances explicitly mentioned by the RAD. This theme can also be broken down into sub-categories including SOGIE-based credibility errors and Material-credibility errors relates to the disregard of material evidence, or misjudgment of material evidence as not credible or influential in the claim. All cases (with the exception of *TB4-06494* mentioned previously) of material-credibility errors occurred in the post-guideline sample for a total of six, or 12 percent of all appeals.

[92] Narrative-credibility errors relate to the consideration or belief of narrative aspects of the original claim. A total of seven instances (14 percent of all appeals) were noted to have narrative-credibility errors, all of which occurred in the post-*Guideline 9* sample.

[93] Micro-focusing errors arise when primary judgement is made while focusing on smaller aspects of a bigger issue, undermining credibility to an unfair degree. For example, minor discrepancies in the narrative or specific dates could be explained by memory errors on the claimant's part. Such instances of "micro-focusing" on details are found in six instances (12 percent) of all appeals, all of which occur in the post-*Guideline 9* samples

[94] Judgement confirmation relates to the RAD's findings that the RPD did not err in judgement, and instead upholds the primary decision. Judgement-confirmation occurred in 22 (44 percent) of all 50 cases, resulting in roughly half of all cases being overturned throughout the entire sample.

[95] New evidence was introduced in 20 of 25 cases pre-*Guideline 9* (80 percent), while in the post-*Guideline 9* sample new evidence was only introduced in 10 cases (40 percent). However, when accounting for acceptance rate of new evidence, this increased from 40 percent (8 accepted out of 20) to 70 percent (7 accepted out of 10).

Distribution of all themes regarding RAD secondary decisions, except for "new evidence" and "judgement-confirmation" appears to skew heavily towards the post-*Guideline 9* sample group. Between both sample groups, 113 instances of all RAD-centric themes were identified out of 50 cases; 47 examples from the pre-*Guideline 9* samples, with an additional 66 from the post-*Guideline 9* samples. This is consistent with the previous analysis of RPD decision-making themes, as the post-*Guideline 9* sample has more explicit mentions of themes. However, in contrast to the RPD decision analysis, the distribution of these themes is not consistent over both sample periods. A thematic analysis of both sample groups reveals noticeable differences between periods, asylum appeals and decision-making by the RAD. While the RPD decision-making themes stayed relatively constant over time, there appears to be a significant change within the review process.

iv. Overall Decision-Making Discrepancies

The largest discrepancy between the two groups sampled was the total number of cases overturned, versus upheld. The secondary judgements made by the RAD in the pre-*Chairperson's Guideline 9* sample resulted in five cases being overturned (i.e., refugee status granted), 16 upheld (i.e. claim dismissed), and four new RPD panels needed[96]. This contrasts with the post-*Chairperson's Guideline 9* group; 13 cases were overturned, eight upheld, with four new panels. A refugee approval rate of 52 percent is significantly higher, demonstrating more conflicting opinions between primary and secondary adjudicators. To explore why this approval rate has changed over time, we must examine contexts for overturning decisions and the reasoning behind the appeal judgement.

As detailed in the previous section, there is a large increase in credibility judgement errors between periods, and with the introduction of *Chairperson's Guideline 9.* Within the pre-*Guideline 9* samples, there are only three notable instances mentioned explicitly by the RAD; two involving SOGIE-credibility, and one regarding material evidence. This contrasts with 22 mentions by the RAD in the second sample group.

As demonstrated, a notable discrepancy between the two sample groups is the increased tendency for the RAD to disagree with RPD decisions regarding the credibility of the appellant's narratives, SOGIE-status, or material evidence. This is not significantly impacted by a change in

[96] Ultimately, a refugee approval rate of 20 percent indicates that more often than not, the appeal adjudicator supports the primary judgement made.

new evidence being presented before the RAD upon appeal (fewer cases introduced new evidence over time, while "crucial new evidence" remained a stable theme throughout), and instead is based primarily on the RPD-decision making process. Within the three categories of credibility-based errors identified by the RAD, the RAD was most likely to find that the RPD erred in its decision-making regarding the appellant's claim to their sexual orientation or gender identity, with 11 specific examples within the 25 cases in the post-*Guideline 9* samples. The majority of cases in which SOGIE-credibility errors occurred were overturned, while two required a new panel altogether. The RAD also identified an increase in material-credibility errors as well as narrative-credibility errors.

An interesting theme associated with negative-credibility decisions is "micro-focusing". No mentions were made by the RAD regarding micro-focusing in the pre-*Guideline 9* samples, while the post-*Guideline 9* samples made explicit mentions of 6 such errors; an increase of 9 per cent. The paucity of mentions regarding the pre-*Guideline 9* sample is troubling, as is the infrequent mention of credibility-based errors on the part of the RPD. It is not likely that the RPD is erring more frequently in their decision-making between sample groups, but rather the RAD was not identifying these issues as often before 2017.

General RPD errors, more critical errors, in overall judgement by the RPD, appeared to occur at a relatively consistent rate. This again refutes the claim that the RAD is finding the RPD to be erring more frequently overall, but rather decision-making regarding SOGIE-based claims in specific has led to more disagreements between the two decision-making bodies. However, over time general RPD errors identified by the RAD increases slightly in presence as a theme, with five and seven instances respectively between the two samples. This is supported by the requirements of a new RPD panel in some cases to also remain relatively consistent over time, with four examples of "new panel" decisions for each sample group. Unlike other themes, "general errors" can range in context and potentially affect decision-making in a variety of ways.

Overall, an increase in RPD-identified errors relating to sexual orientation or gender identity appears to occur over time, while RPD decision-making simultaneously appears to show the same consistent trends between the two sample groups over time. In other words, more themes relating to errors in judgment surrounding SOGIE-based claims are explicitly mentioned in the second sample group. As previously argued, this could be a result of the implementation of

Chairperson's Guideline 9 in May 2017 by the IRB of Canada, drawing attention to the intersectional complexities of judging SOGIE-based asylum claims. While it could be suggested that this discrepancy is the result of errors occurring more often on the part of the RPD, it is more likely due to these errors being noticed more often by the RAD as a result of the *Chairperson's Guideline 9*. In effect, there is a notable difference in the decision-making process occurring as a result of the implementation of Guideline 9. However, the extent to which this impacts the RPD and RAD independently is unclear. However, the difference in decisions upheld versus overturned is undeniable between these two samples.

There is much room for improvement to prevent appeals from reaching the RAD, when in fact according to the *Guideline 9* standards, these cases should have been approved upon primary decision. The difference in the impact these standards appear to show between the RPD and RAD decision-making bodies is unclear, as evidenced by one notable case mentioned prior in which the RPD did not effectively consider *Chairperson's Guideline* 9, as determined by the RAD (case *MB8-17233*). Identifying exactly why this discrepancy is occurring is necessary, and leaves room for future research into asylum decision-making processes by the RPD and would require analysis of more cases. It is also important to recognize that several of these cases were overturned with the introduction of new evidence, at no fault of the RPD, reinforcing the fact that in some situations, appeals are necessary to procedural fairness.

v. Case Study Conclusions

The decision to examine Refugee Appeal Division cases is twofold; to reveal any discrepancies between the decision-making bodies of the RPD and RAD, as well as examine cases that were initially rejected and the reasoning behind this decision. This allows for a more holistic, albeit shortened, overview of how both the RPD and RAD manage less-than-straightforward SOGIE-based decisions. For this thematic analysis, only explicitly SOGIE-based claims were selected in no particular order within the two time periods; from the creation of the RAD in late 2012 to the introduction of *Chairperson's Guideline 9* in 2017, and from that date to the current day (2020), creating a roughly three-year period for each sample group. From these sample groups, a thematic analysis applied the guiding principles outlined by Lapadat (2010). In this situation, thematic analysis was helpful in identifying reoccurring situations, problems, or decisions identified by either the RPD or RAD. The structured nature of these published cases is especially

suitable for thematic analysis, in contrast to the other qualitative methods, such as content analysis used prior when examining archival materials.

One of the largest shortcomings of this analysis is the absence of transgender or non-binary representation. Without being explicitly stated as such, the number of transgendered, intersex, or non-binary individuals included within these 50 cases appears to be non-existent. It is unclear whether this is due to the limitation regarding labelling applied by the RPD/RAD (i.e., applying labels such as gay *man* or bisexual *woman*) or if none of these individuals would consider themselves transgender, intersex, or non-binary. Regardless, there is no information available within this thematic analysis to appropriately address the intersections of gender and sexual orientation which may arise from claimants who would identify as such. However, this hopefully leaves room for and encourages future studies which can expand the scope of SOGIE-based factors.

Identifying reoccurring themes within primary decisions (RPD decisions) revealed that over time there was not a significant amount of change between the two periods, regardless of the introduction of *Chairperson's Guideline 9*. As mentioned previously, five specific themes occurred in both samples; narrative inconsistencies, material inconsistencies, SOGIE-credibility issues, persecution-credibility issues, as well as vague or omissive testimony. In contrast, the secondary decisions (RAD decisions) revealed an increase in overturned cases, as well as more frequently identified RPD errors in judgment. The six most commonly identified themes in RAD decisions, new evidence, general RPD errors, persecution-judgement errors, credibility-judgement errors, micro-focusing, and judgement confirmation, did not adhere to the same level of stability over time concerning primary decision themes. Except for "new evidence" and "judgement confirmation" themes, there was a notable increase in the frequency of other themes. As can be argued, this increase corresponds to the introduction of *Chairperson's Guideline 9* and may be a result of such changes. The frequency in which the RAD identifies specific errors made by the RPD increases over time. In addition, the RAD overturned more decisions in favour of the appellants than in previous years.

There appears to be a paucity of impact studies following the implementation of *Chairperson's Guideline 9*. However, from this short thematic analysis, it can be argued there are notable shifts in themes over the two time periods sampled. While limited conclusions can be drawn from such a minor sample of cases, it can be argued that there is reason to pursue this

topic in the future when more published cases become available or with the introduction of further guidelines. Studies examining previous guidelines, however, advise caution when approaching the topic of adjudication shifts or trends. As argued by Masoumi (2019), feminist, legal-based progress does occur. However, limitations are significant to note, especially in the context of non-legally binding guidelines. Gender-based guidelines in refugee protection began largely to protect vulnerable women, as Canada accepted Turkish nationals suffering from gender-based violence in 1987; however, these categories would eventually be expanded to include more than just women (Masoumi, 2019).

It would not be until 1993 that the IRB officially released gender guidelines for uniquely gendered forms of violence, paving the way eventually for LGBTQ+ inclusivity. Recognizing gender-based violence refutes the definitions of "historically masculinized" forms of violence as the only form of persecution warranting asylum (e.g., religious, political, or war-based violence is typically experienced by men) (Masoumi, 2019). Legal changes, however, do not directly translate into increased equal access to human rights. The refugee system in Canada is still largely situated in a Westernized context, translating complex subjectivities into more objective notions of identity that are palatable by board members when making decisions (Shakhsari et al., 2014). Gendered guidelines additionally cannot impact other external factors that disproportionately affect women and vulnerable LGBTQ+ populations, such as economic limitations, travel restrictions, and other technical intersectional complications.

vi. Critical Spaces

Fair asylum decision-making requires the acknowledgement of the "presence of self" and awareness of potential personal bias (Crépeau & Nakache, 2008). The management of such bias can be mitigated by the creation of "critical space," as advocated by Robert Thomas (2005; 2006; 2008). Critical space in this context is a theoretical notion defined as a space of "debate, of interaction, and of decision" as it relates to the functioning of Canada's asylum system (Crépeau & Nakache, 2008, 51). Jurgen Habermas' *The Structural Transformation of the Public Sphere* (1962) describes critical space as a "public sphere" in which there should be open, critical debate for the benefit of the common good. In the context of asylum decision-making, there are many available opportunities for such critical debate, including discretion over specific aspects of cases, critical analysis in the interpretation of facts, in addition to any review or appeal that is in itself a critical undertaking (Crépeau & Nakache, 2008).

Broader, more generalized spaces are available within the structure of the IRB itself, identified by Crépeau & Nakache (2008), existing in three categories; internal critical spaces that leave room for self-criticism, jurisdictional space that includes critical interactions with review boards and other internal officials, and finally external critical spaces such as other governmental bodies, the media, and the public at large (Crépeau & Nakache, 2008). While these spaces, in theory, exist and allow for the proper "presence of self" awareness Thomas advocates for (2005; 2006; 2008), how these spaces are utilized is crucial. In 2002 the Canadian government removed a significant opportunity for critical space with the decision to discontinue two-member panels due to caseload pressure (Millbank, 2009). Working alone, board members must continue to uphold the "first-level decision" format, which attempts to produce a correct decision from the outset and ensure procedural fairness from the beginning of the claim, something which is not consistently done in other nations (Crépeau & Nakache, 2008). Critical spaces such as these are crucial to the process of asylum adjudication, especially with one of the most contentious tasks revealed by the earlier case study, assessing claimant credibility.

A significant portion of refugee appeals note credibility as a determining factor in decision-making. However, the concept of plausibility raises complicated questions of objective evidence and subjective perceptions of "reason".

The burden of proving identity for SOGIE claimants often involves a Western-based, Canadian interpretation of queerness or LGBTQ+-based preconceived notions of identity (Rinaldi & Fernando, 2019). There is evidence of decision-makers in Canada relying on preconceived notions of how queer or LGBTQ+ identities are experienced, expressed or understood (Millbank, 2009). Shuman and Hesford (2014) note there exists a privilege of visibility in SOGIE decisions, as the claimant's gender or sexual identity is quite literally linked to their identity or outward physical appearance. Within a study of 1,000 asylum decisions spanning 14 years and multiple Western countries, including Canada, Millbank (2009) also identified instances of appearance being used to justify positive decisions, implying that at least a portion of negative decisions may also incorporate some aspect of stereotypical "LGBTQ+ appearances."

This once again raises questions about the extent to which easily recognized SOGIE-based factors determine a claimant as valid or truthful. Rinaldi & Fernando (2019) posit that such preconceived notions tend to exclude problematic stereotypes of "queer lives of the past"

including sex workers, bathhouse patrons, or those who live with HIV/AIDs, and are considered too subversive for social inclusion. This places immigrants and/or refugees' disproportionality at risk due to misalignment between their identities and the expectations of decision-makers or immigration officials in Canada. Those who refuse to conform to dominant expectations of LGBTQ+ behaviours and appearance, or whom adjudicators are unable to adequately cross-culturally assess, risk social, and even physical exclusion from Canada.

For LaViolette (2004), the strongest basis that decision-makers may have in assessing SOGIE credibility is a line of questioning that focuses more closely on personal experiences as a person persecuted based on sexual or gendered identity in their country of origin. However, there appears to be no unifying consensus within the RPD or IRB on how credibility is to be evaluated by decision-makers. In interviews with former IRB board members, Crépeau & Nakache (2008) noted there were no standardized methods of credibility assessment. However, there were several themes present. These four reoccurring mentions included; reasonableness of the alleged facts, consistency and coherence of the narrative, corroborative evidence, and consistency with common knowledge (Crépeau & Nakache, 2008). These demonstrate a mixture of objective and subjective elements similar to those identified by the case study presented earlier. Credibility determinations, therefore, are not fully reliant on objective "truths" but rather subjective choices on which evidence is to be accepted and which evidence is rejected. Millbank (2009) notes that some of the cases examined in the Canadian context in the last decade have had less than satisfactory credibility determinations.

While provisions such as *Chairperson's Guideline 9* exist to promote such consistency, there are still issues identified by scholars in terms of the emphasis that decision-makers place on the factors involved in cases, including the judgement of overall credibility. In the context of credibility, consistency, or the absence of contradictions appears to be emphasized quite strongly (Millbank, 2009). For example, oral narratives should not contradict earlier statements or written claims, in addition to not contradicting "known facts" of the world at large. In one example identified by Millbank (2009) credibility doubt was cast on one claimant because in one instance the claimant referred to a "gate" and later described it as a "high fence" in later statements [97]."Micro-focusing" on minor details such as these may unnecessarily undermine wider credibility assessments. In general, Millbank (2009) identified two other issues in addition to

[97] See case 2005. X (Re). CanLII 59997 (CA IRB), TA4-13566.

matching arguably minor details in credibility assessments; strong emphasis between two or more accounts made by the claimant separated by a period, as well as plausibility findings that rest on “assumptions about human behaviour”.

Findings based on the plausibility of certain actions generally conflict with cautionary anthropological teachings of universalizing human behaviour. Such judgements specifically refer to “assumptions in how people would behave in certain situations,” which implies there are objectively correct and incorrect reactions to certain situations which are inherently problematic on their own. This posits situations that are unlikely or irrational as not truthful. In addition, assumptions are problematic in that they tend to oversee “cultural silences,” or cultural aspects which challenge the retelling of events, situations, or even certain subjects (Millbank, 2009). For example, a taboo on discussing one’s sexuality or same-sex relations. Such silences create translation errors and misalignments in narratives that appear deceptive, untruthful, or not plausible.

The asylum process itself processes certain expectations, such as how gender/sexuality-based violence should be narrated and visible displays of emotion that adhere to Western norms (Shuman & Bomer, 2014). However, it should be noted that such “silences” are tremendously diverse within Canada already and may be thoroughly incommensurate between the many subcultures within Canada and other nations. A relative minimization of LGBTQ+ silences in Canada in comparison to many other cultures shapes how officials judge new arrivals, leading to mistranslations which can ultimately create exclusionary spaces. As noted, many other factors can lead to situations in which truthfulness and plausibility may be doubted, including mental health challenges, PTSD, and internalized homophobia (Hersh, 2015).

Hersh (2015) offers valuable insight into how plausibility determinations factor into decisions made specifically regarding the context of same-sex relationships. SOGIE-based asylum claimants pose two significant plausibility challenges for adjudicators; although seemingly irrational many engage or reveal their same-sex relationships in countries that criminalize such relationships, while on the opposite side of the spectrum, many may not arrive in Canada and openly engage in same-sex relationships simply because they are free to do so (Hersh, 2015). In Hersh’s study of 458 IRB decisions, 275 contained the testimony of same-sex relationships either abroad or in Canada. According to UNHCR SOGIE guidelines, relationships are defined as “enduring, physical, romantic, and/or emotional attraction to [specific

gender/sex]" (Hersh, 2015, 539). However, when Hersh examined the role of same-sex relationships in asylum claims, it appeared to uncover a credibility paradox. For claimants in which overall credibility was an issue, 93 percent of claims with relationship testimony were discredited. In contrast, 78 percent of cases with no evidence of past relationships contained no significant credibility issues, and at first glance, it may appear as though no evidence of past relationships appears to be more advantageous. Hersh (2015) suggests this discrepancy may be the result of several factors; in overall credible cases, relationship testimony may not even be necessary to consider, suggesting that such testimony may frequently act as "backup support" when other aspects of the claim are questioned. Either way, the plausibility of same-sex relations outside of Canada is an aspect that requires more cross-cultural consideration, especially the development of same-sex relations in non-Western constraints.

Similar issues of plausibility include factors of preconceived notions of how romantic relationships develop and function between partners. As noted by Hersh (2015), non-marriage-like relationships may come under heavier scrutiny when judged by Canadian officials. While outside the scope of this thesis, it should be noted that partner relationships take many forms that are not reliant on "romantic love," including economic necessity, raising children, or pre-arranged relationships (Hersh, 2015). An emphasis on legal marriage in the immigration and refugee system prioritizes the sponsorship of spouses with official paperwork or is reliant on proof of 12 months of "conjugal" cohabitation (Hersh, 2015). As detailed in the earlier archive research, same-sex partner sponsorship activism began in the 1990s and earlier 2000s in Canada and is now relatively flexible to individual circumstances in the context of immigration. Nevertheless, in the context of asylum adjudication, relationship diversity may lead to negative credibility inferences. An assumption of "embracing a gay lifestyle" after arriving in Canada is especially noteworthy. Such expectations involving the plausibility and credibility of same-sex relations are generally Eurocentric and can disregard other barriers, including mental hardships and personal conflict of publicly embracing an identity, poverty, racial exclusion, as well as religious, community, or family pressures. As stated by Hersh (2015), it is "imperative to take a closer look at adjudication practices and to ensure that decision-makers refrain from relying on Western narratives of sexual minority lifestyles – including evidence of same-sex relationships – when determining refugee status" (Hersh, 2015, 569).

It is necessary to also emphasize another factor in the judgement of SOGIE asylum claims, which is the decision-makers themselves. Just as credibility is a focus of asylum claims, consistent and fair decision-makers are crucial to making accurate determinations. In a large study of 68 000 claims from 2006-2011, board member characteristics and their impact on decisions are identified by Colaiacovo (2013). As argued, the characteristics and identities of adjudicators themselves do have at least a partial influence on the outcome of claims. The process of case assignment to decision-makers may play a role in discrepancies between rates. However, as supported by Rehaag (2008b), case assignments cannot explain all differences. The main characteristics of adjudicators, as explored by Colaiacovo (2013), include education, gender, professional experience, and other background knowledge. As of 2013, the 264 board members within this study were majority male (53.9 percent), often holding law degrees (43.2 percent), while only roughly 14 percent had worked with immigrants or the IRB in the past, and only 8.6 percent had previous adjudicator experience (Colaiacovo, 2013).

Two specific characteristics appeared to positively influence decisions in favour of the claimant; higher educational achievements, specifically educational experience outside Canada/US resulted in up to an 8.5 percent increase in the probability [98], in addition to working with the IRB or immigrants/refugees in the past, which had a positive impact of up to 4.5 percent. Interestingly, experience in law enforcement may reduce granting rates, possibly due to familiarity with harsher credibility judgements or suspicions. Data suggests there may be a possibility that gender also plays a role, with female decision-makers having higher granting rates however Colaiacovo (2013) cautions there is a paucity of studies that focus solely on gender discrepancies.

While these differences sound minimal, Rehaag (2008b) notes that when breaking down granting rates by specific adjudicators strong discrepancies appear. Some decision-makers had grant rates of 100 percent, while others had only 6.67 percent (Rehaag, 2008b). This difference can be found in American claims as well, with some judges having a 100 percent denial rate out of 144 cases, while another had a 3 percent denial rate on 959 – a significant difference (Snyder, 2019). However, US decisions may be impacted by unique challenges such as the structure of asylum decision-making in America, random assignment of judges, quality of legal

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[98] Colaiacovo (2013) argues this discrepancy may be the result of more inter-cultural education and experience outside of North America.

representation, and the decision-makers' professional experience that may differ from a Canadian experience. These discrepancies still appear to occur in the US when examining the same immigration office, with large numbers of claimants travelling from the same nation of origin (Ramji-Nogales et al., 2007).

In contrast, the IRB asserts that cases are *not* randomly assigned and therefore explains the discrepancy between decision-makers. Instead, cases are often assigned by the geographical origin of the claimant and the expertise of decision-makers (Rehaag, 2008b). This implies that grant rates do not vary significantly between adjudicators, but rather differences represent situational aspects of cases and country of origin. In addition, Rehaag (2008b) notes that some decision-makers are more often assigned "expedited" cases in which there is a clear or obvious well-founded fear of persecution, bumping up grant rates of a single adjudicator. However, as argued by multiple sources, the process identified by the IRB does not cover all possible discrepancies, pointing towards some complex web of other outside factors at play, including decision-maker characteristics (Snyder, 2019; Colaiacovo, 2013; Rehaag, 2008b).

Such arguments only assert the importance of critical spaces, including the relatively new RAD and appeal process that may contribute significantly to reducing decision-maker bias in combination with *Chairperson's Guideline 9.* General issues related to uneven decision-making span a wide range of complex factors, including; time constraints are leading to improper investigations, less patience with claimants, and more aggressive lines of questioning, in addition to making preconceived decisions based on the case file before the hearing (Crépeau & Nakache, 2008). A process known as "pattern decision-making" may also pose challenges as it puts claimants pre-emptively into "yes or no" categories without considering the full range of evidence and testimony as identified by former IRB board members (Crépeau & Nakache, 2008).

Similar challenges can include; judgement on whether anti- LGBTQ+ laws themselves constitute persecution, expectations of concealment/revealing of identity, difficulty obtaining contextual information from abroad, the emphasis on private/domestic forms of violence, and finally lack of proof or witness testimony (Millbank, 2009). While difficult, such challenges are not impossible to overcome with the right considerations. As Hersh (2015) suggests, the testimony of relationships and experiences as a SOGIE-minority in their country of origin may be an avenue for claimants to support their narratives. In addition, questioning by decision-makers that focuses more on personal experiences, knowledge of persecution, and other open

questions may be a more reliable way of judging credibility in SOGIE-based claims (LaViolette, 2004; Millbank, 2009).

Chapter 7: Contemporary Progress & Future Solutions

i. Context in the Pandemic-era of COVID-19

The effects of the coronavirus pandemic, multiple closures and lockdowns, and shift in the structure of everyday life globally have affected SOGIE claimants' circumstances. In December 2019, a novel respiratory disease, later named SARS-CoV-2 by the World Health Organization, spread throughout Wuhan, Hubei Province, China. This new coronavirus would later become widely publicized as COVID-19 (Chakraborty & Maity, 2020). Pandemics represent not only the devastating health impacts of some of the world's most vulnerable but also socio-economic and political turmoil (Chakraborty & Maity, 2020). The pandemic has already revealed fissures in the structures, institutions, and practices that are meant to protect the most vulnerable of individuals in Canada. The forcibly displaced do not have the option to abide by the popular "stay at home" slogans.[99]

The occurrence of the pandemic has brought about "existential angst" as argued by Mattar & Piwowarczyk (2020), defined by a sense of collective vulnerability and the inescapable reality of current global situations. In the current stress of a post-COVID-19 world, borders and human movements are still restricted, bolstering trends towards securitization and national sovereignty. Triandafyllidou (2020) observes, that under pressure, citizenship appears to be the foundational aspect of solidarity, ranking above many other factors. This can be seen in newly-developed anxiety in Canada about "illegal" American tourists, motivating the government to impose heavy fines for willful violations[100].

Despite this travel ban, the state made exceptions for returning Canadian citizens stranded abroad. In other words, "states weigh their obligation towards solidarity and protection of citizens above the risk that they may be carrying the virus" (Triandafyllidou, 2020). It should be noted that there is a required period of quarantine on new arrivals to minimize the risks of spreading COVID-19[101]. This highlights the stark difference in solidarity towards citizens versus vulnerable, non-citizens. While Canada is not the only nation responsible for mitigating the spread of COVID-19, protection tactics should be extended as a global effort. As the virus is

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[99] See Ljunggren & Martell (2020)
[100] See Public Health Agency of Canada (2020b)
[101] Ibid.

transnational, so should the efforts to eradicate it. Despite the support of one of the most prolific medical journals, *The Lancet*, stating “this virus disregards all borders. COVID-19 responses must not overlook refugees and migrants”, states thus far have favoured isolation and closing borders (The Lancet, 2020).

Managing advocacy efforts to protect the most vulnerable is always a challenge, especially so with the additional pressure of a global pandemic. Many populations face unique risks, including children, the elderly, the immune-compromised, and the socio-economically marginalized. The UNHCR notes that LGBTQ+ populations may also coincide with several intersectional categories, adding to personal risks. In response, it is proposed that this is managed by risk identification and community engagement (while adhering to COVID-19 restrictions) to identify context-specific needs and barriers to assistance for the LGBTQ+ refugee community (UNHCR, 2020). As noted by the *Diversity Consideration* guidelines, “members of the LGBTQI+ community are highly likely to experience disproportionately adverse impacts,” including barriers to proper medical care, isolation, stigmatization, and forms of violence (UNHCR, 2020).

ii. Resisting Homophobia & Xenophobia: Social Solutions Through Solidarity

According to Yakushko (2018), there are several layers to combatting xenophobia which can be extended to other forms of prejudice, including homophobia. First, humanizing the subject of discussion (i.e., LGBTQ+ migrants) is critical as understanding that these groups of individuals are humans, not just statistics, with complex emotions, experiences, and histories. Humanizing LGBTQ+ migrants refute the positionality of *Homo Sacer*, re-entering the individual into the social world, as well as resisting stereotypes, generalizations, and the consequences of dehumanization. Second, the humanized subject must be contextualized. This includes creating an awareness of history, including; contexts of human migration, colonization, international conflicts, and localized crises that motivate human movement. Humanizing and contextualizing subjects aid in creating a depth of understanding that negates prejudices such as xenophobia, homophobia, or a complex mixture of both. The third and final suggestion put forth by Yakushko (2018) is the creation and projection of migrant subjectivities. In other words, supporting the proliferation of discourse through migrants themselves to create genuine self-representations and accurate narrations regardless of whether they align with dominant discourse or not. These three layers of humanizing, contextualizing, and creating subjectivities can be seen

as a way to challenge population prejudices and discourses and reverse the designation of the "stranger figure" that builds barriers for all forms of migrants (Ahmed, 2004).

In the contemporary (COVID-19 pandemic) era, digital realms are contested domains that simultaneously may allow progressive political activism while also eliciting a "politics of hostility and racism" (Nikunen, 2018). Anti-immigrant or anti-LGBTQ+ online discourse is not novel; however, the broad dissemination of such information is unique to digital platforms. Using the example of early anti-immigrant online discourse in Finnish media space, Nikunen (2018) highlights that such discourses have been in circulation since the early 2000s. Over time, "memes," jokes, and ironic statements have normalized "platform racism," or racism encouraged by the algorithmic nature of platforms that recommend content, groups, or topics relating to past online activity (Nikunen, 2018). In this way, "affective digital practice," defined as social formations and the ways in which communities come together, can generate discourse and perform actions that can work both against migrants while simultaneously allowing opposite reactions that are in their favour to highlight the complexity of social media realms.

Nikunen (2018) depicts the differences in approaches to online activism and solidarity through an illustration of both "collective" and "connective" paradigms. The more traditional approach, collective action, tend to be highly organized through formal means, uniting participants through common goals, not unlike Russo's (2018) solidarity witnessing. As collective actions are formalized, it is, in turn, less personalized and aligns closely with "pre-set" socialized identities (Bennett & Segerberg, 2012). In contrast, connective action is less formal, with less emphasis on the "we" or ingroup versus outgroup dynamics in favour of bringing people together who may not have otherwise been involved. In this way, there is less guidance through formal sources, with emphasis on the connective nature of social, digital realms to form social connections. As argued by Nikunen (2018), connective action efforts have begun to emerge more frequently, reaching a broader range of individuals than ever before due to the prevalence of online communication in everyday lives..

Social media and activist efforts can support and drive social change. In part, this is propelled by the nature of digital online communication and its potential to contextualize and amplify marginalized voices. Communication for social change, especially with the introduction of social media, can be affected by the emergence of "intimate publics." As defined by Dobson et al. (2020), intimate publics are "scenes centred around media and culture – of the

commodification of intimacy, self and political identities… as well as scenes that promise and generate feelings of belonging and consolation" (Dobson et al., 2020, 4). While one must remain aware of the potential exploitation or commodification of such platforms for economic gain, there is a potential to create "mass intimacy" between communities that provide social support and drive progress (Dobson et al., 2020). The creation of a sense of belonging that social media may offer that may not otherwise be found in the offline world has benefits for activism and solidarity efforts that cannot be ignored.

Reoccurring themes in both online and offline realms include; increasing visibility of injustices, advocating for the marginalized or aggrieved, uniting through a common goal, and organized resistance tactics. Engaging in solidarity witnessing in a traditional sense may not be possible during the pandemic, but in a post-COVID-19 world, digital efforts still enable solidarity across borders, albeit through different measures.

iii. Human Rights Supports & Other Institutional Solutions

Creating social change that influences institutional, systematic change is complex and opens a discussion of broader barriers beyond challenging social norms. The social understanding and discourse surrounding generalized groups of people, including LGBTQ+ migrants, may create a "dividing line between life and death" (Donnelly, 2017). Returning briefly to how social concepts affect institutional realities, namely exclusionary state securitization, this dividing line is crucial to explore in-depth. Security frameworks, influenced by a social understanding of difference, can play a large role in many situations, including; who is worthy of state protection (and who isn't), what "becoming secure" means for both individuals inside and outside of states, assessment of risks to the state and its citizens, the extent to which securitization impacts everyday life, in addition to the justification of more extensive security measures than were previously acceptable (Donnelly, 2017). Acknowledging statistics surrounding refugees and displaced persons is not enough to create change. Assessing how populations are framed, however, plays a key role in determining who receives protection. The UN secretary, in 2016, asserted that the refugee crisis is a "crisis of solidarity" (Donnelly, 2017). Securitization itself relies upon creating and framing outsiders as threats, both to the functioning of society and the "we" identity. To challenge these barriers, we must evaluate how labelling and our framing of outsiders influence harmful institutional policies.

The UNHCR put forth recommendations for states regarding the management of LGBTQ+ immigrants and refugees. However, it is up to the state to implement them. This includes consulting, involving, and giving a voice to LGBTQ+ individuals throughout the asylum/refugee process, as well as engaging their participation in humanitarian efforts to benefit others with similar experiences (UNHCR, 2012). Engaging with civil activists, NGOs and other organizations that provide specific, LGBTQ+-centric information is crucial to the safe incorporation of these individuals into the state. In addition, efforts after arrival in Canada, such as programming that ensure non-discriminatory protective arrangements, housing, medical care, and other factors (UNHCR, 2012). Aside from the UNHCR, The Yogyakarta Principles were adopted in 2006, consisting of an original 29 principles related to all SOGIE-based human rights concerns[102].

Concerning specific institutional programming dedicated to LGBTQ+ refugees, immigrants, and migrants, these recommendations are not without their shortcomings. The concern over the wellbeing of all migrants should be a critical point of focus for Canadian institutions throughout the process of resettlement from beginning to end. I am not arguing for an emphasis on the level of “integration” into Canadian public life, as this is a problematic concept; rather the emphasis should remain on the wellbeing of migrants. Wellbeing, according to Sarvimaki (2006), means “the experience of feeling relatively authentic and comfortable within day-to-day life, free from persistent negative feelings and fears and having an orientation toward the future with a sense that one’s potential will be realized” (Savrimaki, 2006; Kahn et al., 2017).

From the first contact with Canadian officials, whether in situ at refugee camps or with immigration officials at the border, the state must uphold recommendations from international human rights bodies to the fullest ability. Beginning with the first in-depth point of contact for many, submitting an asylum claim before the IRB, scholars have attempted to improve the experience of SOGIE-based claimants. The Difference, Stigma, Shame and Harm Model (DSSH, 2011) attempts to provide a way to manage and accurately assess the asylum claims of SOGIE-based seekers in a way that avoids humiliating and explicit or invasive lines of questioning

[102] A decade later, YP+10 would introduce nine more principles and 11 state obligations, highlighting the ongoing need for SOGIE-based human rights to continue evolving (The Yogyakarta Principles, 2007; The Yogyakarta Principles, 2017).

(Dawson & Gerber, 2017). Instead, the focus of this model relies on a “narrative of difference” to assess the consistency and truthfulness of claims while acknowledging linear narratives are variable across cultures. Dawson & Gerber (2017) highlight how these four categories, difference, stigma, shame, and harm, may be used as alternative lines of questioning. Difference focuses on an acknowledgement that SOGIE-based claimants recognized a difference in themselves apart from others in terms of gender and sexual orientation without relying on norms regarding when/how this recognition occurred. Stigma centres around the acknowledgment of state, cultural, or religious norms in place that disapprove of their personal SOGIE identity.

While lines of questioning surrounding shame explore how these understandings of stigma have affected the claimant’s life, whether through isolation, discrimination, or other means. A harm emphasis explores the fear of state criminalization or non-state violence. In other words, a claimant’s perception of persecution becomes the focus (Dawson & Gerber, 2017). The DSSH Model provides an improvement in the way that SOGIE-based claims are assessed while navigating around stereotypes such as linear developments of SOGIE or other misconceptions held by the members of the IRB. While not formally implemented in Canadian contexts, the UNHCR advocated for the DSSH Model in 2015, along with a release of other training resources targeted to those who assess SOGIE-based claims. As noted, the UNHCR supports the DSSH Model as it advocates for an emphasis on identity rather than sexual practices (Dawson & Gerber, 2017).

For social workers and other advocates working on behalf of SOGIE-based asylum claimants, Yoshino’s (2006) concept of “covering” versus “reverse-covering” comes into play. A distinct mode of assimilation found in many LGBTQ+ communities globally, covering complicates the asylum determination process. Covering demands that mutable traits relating to SOGIE are diminished, while reverse-covering demands the opposite, leading to an emphasis on stereotypical traits (e.g., acting over masculine or feminine). In many situations, individuals will cover in their country of origin as a protective measurenwhile being encouraged to reverse-cover in Canada to prove their asylum claim is legitimate (Heller, 2009).

In situations where stereotypes guide judgements, an individual may be inadvertently punished for refusing to reverse-cover or not aligning with dominant preconceptions surrounding their SOGIE identity. Therefore, it is the responsibility of the service provider and board members to acknowledge that individuals perform identities in a variety of ways and to not

overtly encourage covering or reverse-covering, as both are problematic. This is, in part, complicated by lines of questioning that deviate from past experiences and identity in favour of past sexual history. Heller (2009) suggests that service providers are challenged by a need to navigate an “oppressive asylum process” yet understand there are systemic benefits for reverse-covering.

After arrival, service providers such as social workers, NGO employees, or other community volunteers continue to face challenges specifically elicited by the unique circumstances faced by LGBTQ+ migrants. In a 2017 study, Kahn et al. identified four prominent themes in resettlement efforts; facilitating safety, buffering social rejection, interpreting mental health challenges, and negotiating identity paradigms. First and foremost, service providers must foster a sense of safety in the provider/client relationship to navigate LGBTQ+ migrants' past experiences of mistrust or avoidance of state officials, as well as understand how LGBTQ+ migrants perceive themselves and others. Strategies should be employed to connect migrants with others, avoiding isolation while acknowledging "survival strategies" of protecting oneself from harm that does not end immediately upon arrival to Canada. This issue can be evidenced by avoiding co-ethnic community members or religious communities to avoid social rejection. In addition, the identification of unique mental health needs is crucial to promote well-being. All factors combine to facilitate a provider/client relationship that assists in navigating complex, intersecting issues regarding race, class, ethnicity, culture, experience and SOGIE status (Kahn et al., 2017).

Chapter 8: Conclusion

This thesis employs immigrant and refugee theory and a historically-informed, feminist, anthropological approach to illustrate complexities at the intersections of both LGBTQ+ and Canadian migrant experiences and identities. The focus has been to expose exclusionary practices that depend on and are informed by “othering” and discrimination in Canadian administrative regimes and popular media over the last century. In addition, this exploration is informed by theoretical notions of homo sacer, of people or identities who do not seem to have roots of belonging, as well as the “stranger figure” that is constructed from a generalized amalgamation of foreign identities (Agamben, 1998; Ahmed, 2000). I have also demonstrated that these concepts are *not* static over time, opening the door to future activism.

Resting in a niche between queer theory, immigration theory, and historical studies, this inquiry into LGBTQ+ immigrant and/or refugee experience represents an attempt to build upon a body of work that examines challenges arising when individuals occupy *both* positions. The cases presented are intended to enable a historically-informed, reflexive analysis at the intersections of multiple underrepresented perspectives simultaneously in a way that closely aligns with anthropological principles of respect and human rights. A crucial purpose of this thesis has been to expose and explore discrimination, prejudices, and misconceptions of identity that are reflected in Canadian immigration policies. I argue that advocacy and human rights benefitting sexual, gendered, ethnic, and cultural minorities have not reached an acceptable endpoint and that discrimination and exclusion persist, often in hidden or insidious ways that are worthy of serious examination and remediation.

The evidence I present asserts that the Canadian state and its people cannot approach challenges faced by LGBTQ+ migrants from a one-size-fits-all perspective. Intersectionally and situationally complex issues that are experienced by diverse communities of people should be approached by building “cultural bridges” in areas including legal contexts, among medical and social services providers, by means of outreach NGO programming and via other points of contact (Kahn, 2015). Barriers to overcome include; skepticism of personal identity based on appearances, stereotyping, racism, and modern forms of homophobia or xenophobia, among others. The creation of social change in systemic realms is not novel to LGBTQ+ nor immigrant or refugee communities, as is evidenced by the long, storied history of activism in Canada.

However, there is much more work to be accomplished, especially focusing on more covert forms of discrimination and exclusion that may otherwise go unnoticed by those unaffected by it. In many cases, the consequences of systemic change may be a "dividing line between life and death" for many, especially refugees escaping persecution (Donnelly, 2017).

The purpose of this research has been to discuss both historical and ongoing challenges from a feminist, intersectional, reflexive perspective. I show that discriminatory or exclusionary factors facing LGBTQ+ migrants, including homophobia or xenophobia, have *not* been remedied and that barriers to LGBTQ+ migrants' well-being have not disappeared but rather have been exacerbated.

Additionally, the intention of this analysis stresses how two unique yet intersecting identity paradigms of SOGIE-status and immigrant, refugee, or migrant identities introduced here may face the consequences apart from only SOGIE-based discrimination or only ethnic/cultural/racially-based discrimination. Instead, the intersectional identities discussed herein face barriers due to occupying both categories. Exclusion, whether centring around notions of Agamben's (1998) *Homo Sacer*, a neither-here-nor-there identity, or Ahmed's (2000) stranger figure, a foreign sense of danger, or through other means, must remain a focus of inquiry. These two identity factors were chosen purposefully to emphasize the importance of historical and contextualized data when framing ongoing challenges and barriers that prevent migrants to Canada from experiencing personal and community well-being. Subsequently, this data obtained has been arranged to identify social and institutional challenges that must be improved and solutions to how this may be achieved through solidarity activism. For the many who make Canada their temporary or permanent new homeland, there must be continued efforts to combat exclusion and ongoing discrimination and to support solidarity.

Appendix

Table 1

Archive Sample Group A: Complete Sampling

Keywords	Total Sampled for years 1880 - 2019
Gay	70
Lesbian	39
Homosexual	42
Queer	70
Asexual	32
Bisexual	28
Transgender	17
Transsexual	27
Homophobia	25

Table 1.1

Archive Sample Group A: Positively Sampled Data by Decade-Grouping

Terms Sampled Positively	1880-1949	1950-2019
Gay	33	20
Lesbian	N/A	19
Homosexual	N/A	9
Queer	35	22
Asexual	N/A	8
Bisexual	N/A	9
Transgender	N/A	11
Transsexual	N/A	8
Homophobia	N/A	15

Table 1.2

Archive Sample Group A: Negatively Sampled Data by Decade-Grouping

Terms Sampled Negatively	1880-1949	1950-2019
Gay	N/A	9
Lesbian	N/A	12
Homosexual	6	20
Queer	N/A	6
Asexual	N/A	N/A
Bisexual	N/A	10
Transgender	N/A	3
Transsexual	N/A	5
Homophobia	N/A	3

Table 2

Archive Sample Group C: Complete Data Sampling

Keywords	Total Sampled	Samples with Presence of LGBTQ+ topics
Sexual Deviant	30	9
Sexual Crime	54	2
Sexual Psychopath	42	2
Sexual Perversion	45	8

Table 2.1

Archive Sample Group C: Presence- Sampled Data by Decade-Grouping

Keywords	Sampled Articles with Presence of LGBTQ+ Topics for Years 1800-1949	Sampled Articles with Presence of LGBTQ+ Topics for Years 1950-2019
Sexual Deviant	N/A	9
Sexual Crime	1	1
Sexual Psychopath	1	1
Sexual Perversion	1	7

Table 3

Archive Sample Group D: Complete Data Sampling

Keywords	Total Sampled
Gay-Bashing	25
Queer- Bashing	6
Transvestite	31
Sodomy	63
Buggery	31
Homosexual Offense	3
Deviates	17

Table 3.1

Archive Sample Group D: Sampled Data by Decade-Grouping

Keywords	Sampled Article for Years 1880-1949	Sampled Articles for Years 1950-2019
Gay-Bashing	0	25
Queer-Bashing	0	6
Transvestite	1	30
Sodomy	28	35

Buggery	1	30
Homosexual Offense	1	2
Deviates	0	17

Table 4

Archive Sample Group B: Complete Sampled Data

Keywords	Total Sampled Articles
Immigrant (with optional keywords)	68
Refugee (with optional keywords)	70

Table 4.1

Archive Sample Group B: Positively Sampled Data by Decade-Grouping

Keywords	Positive Articles Between the Years 1880-1949	Positive Articles Between the Years 1950-2019
Immigrant (with optional keywords)	11	6
Refugee (with optional keywords)	8	9

Table 4.2

Archive Sample Group B: Negatively Sampled Data by Decade-Grouping

Keywords	Negative Articles Between the Years 1880-1949	Negative Articles Between the Years 1950-2019
Immigrant (with option keywords)	10	10
Refugee (with optional keywords)	7	3

Table 4.3

Archive Sample Group B: Neutrally Sampled Data by Decade-Grouping

Keywords	Neutral Articles Between the Years 1880-1949	Neutral Articles Between the Years 1950-2019
Immigrant (with optional keywords)	12	19
Refugee (with option keywords)	20	23

Table 5

Archive Sample Group E: Complete Sampled Data

Keywords	Total Sampled Articles
Invasion threat	70 (*1 relevant)
Foreign danger	61 (*3 relevant)
Migrant danger	30
Immigrant crime	38
Refugee crime	18
Deportation	67
Xenophobia	41

Table 5.1

Archive Sample Group E: Complete Sampled Data by Decade-Grouping

Keywords	Sampled Articles Between the Years 1880-1949	Sampled Articles Between the Years 1950-2019
Invasion threat	35 (*0 relevant)	35 (*1 relevant)
Foreign danger	28 (*3 relevant)	33 (*0 relevant)
Migrant danger	11	19
Immigrant crime	9	29
Refugee crime	7	11
Deportation	32	35
Xenophobia	6	35

Table 6

SOGIE-based Asylum Claims Case: Study Base Data (2012-2017)

Case Number	Year	Refugee Status	Country of Origin	Gender*	Orientation at Time of Asylum Claim**
TB3-03290	2013	Granted	Nigeria	Male	Bisexual
VB3-01710	2013	Granted	Uganda	Male	Gay
VB3-02152	2014	Denied	Nigeria	Male	Gay
VB3-03036	2014	Denied	Iran	Male	Gay
MB3-04995	2014	Denied	Comoros	Male	Gay
TB4 -06494	2014	New Panel	Cameroon	Male	Gay
TB4-08130	2014	Denied	Jamaica	Female	Lesbian
TB4-08126	2014	Denied	Jamaica	Female	Heterosexual
TB4-08945	2014	Denied	Jamaica	Male	Gay
TB4-10827	2015	Denied	Nigeria	Male	Bisexual
TB4-03922	2015	Denied	Ghana	Male	Gay
TB4-11308	2015	Denied	Jamaica	Female	Bisexual
MB5-00120	2015	Denied	Senegal	Male	Gay

TB5-05088	2015	Granted	Uganda	Female	Lesbian
TB5-08306 TB5-08307 TB5- 08308	2015	Denied	Nigeria	Male	Bisexual
TB5-09378	2015	Denied	Barbados	Female	Bisexual
TB5-11491 TB5-11492	2015	Denied	Bahamas	Female	Bisexual
MB5-02681	2016	New Panel	Cameroon	Male	Gay
TB4-10379	2016	Granted	Nigeria	Male	Bisexual
MB5-04078	2016	New Panel	Nigeria	Male	Bisexual
VB5-02988	2016	Granted	India	Male	Gay
MB5-03341	2016	Denied	Sri Lanka	Male	Gay
TB6-02078	2016	Denied	Nigeria	Female	Bisexual
TB6-05668	2016	New Panel	Ukraine	Male	Gay
TB6-05016	2016	Denied	Cameroon	Male	Bisexual

* Gender as recorded by the RPD

**Orientation is based on main claimant when more than one individual is included

Table 6.1

SOGIE-based Asylum Claims Case: All Judgement Factors Identified (2012-2017)

Case Number	RPD Judgement Factors	RAD Judgement Factors*	Refugee Status Outcome
TB3-03290	Narrative Inconsistencies Sexual Orientation Credibility Persecution Credibility	New Evidence	Granted
VB3-01710	Sexual Orientation Credibility Internal Flight Alternative	New Evidence General RPD Errors	Granted

		Sexual Orientation Credibility Errors	
VB3-02152	Sexual Orientation Credibility Persecution Credibility Vague or Omissive Testimony		Denied
VB3-03036	Narrative Inconsistencies Sexual Orientation Credibility	New Evidence	Denied
MB3-04995	Narrative Inconsistencies Material Inconsistencies Vague or Omissive Testimony	New Evidence	Denied
TB4 -06494	Narrative Inconsistencies Material Inconsistencies	New Evidence General RPD Errors	New Panel
TB4-08130	Narrative Inconsistencies Material Inconsistencies Sexual Orientation Credibility Persecution Credibility	New Evidence	Denied
TB4-08126	Persecution Credibility	New Evidence	Denied
TB4-08945	Narrative Inconsistencies Sexual Orientation Credibility Persecution Credibility Vague or Omissive Testimony	New Evidence	Denied
TB4-10827	Narrative Inconsistencies Material Inconsistencies		Denied

	Sexual Orientation Credibility Vague or Omissive Testimony		
TB4-03922	Narrative Inconsistencies Sexual Orientation Credibility Persecution Credibility Vague or Omissive Testimony	New Evidence	Denied
TB4-11308	Material Inconsistencies Sexual Orientation Credibility Persecution Credibility	New Evidence	Denied
MB5-00120	Narrative Inconsistencies Sexual Orientation Credibility	New Evidence	Denied
TB5-05088	Material Inconsistencies Sexual Orientation Credibility Persecution Credibility	New Evidence Credibility-Judgement Errors	Granted
TB5-08306 TB5-08307 TB5- 08308	Sexual Orientation Credibility Vague or Omissive Testimony	New Evidence	Denied
TB5-09378	Narrative Inconsistencies Sexual Orientation Credibility Persecution Credibility Vague or Omissive Testimony	New Evidence	Denied

TB5-11491 TB5-11492	Narrative Inconsistencies Material Inconsistencies Sexual Orientation Credibility	New Evidence	Denied
MB5-02681	Narrative Inconsistencies Sexual Orientation Credibility	New Evidence General RPD Errors	New Panel
TB4-10379	Sexual Orientation Credibility	New Evidence	Granted
MB5-04078	Sexual Orientation Credibility	New Evidence General RPD Errors	New Panel
VB5-02988	Persecution Credibility Internal Flight Alternative	General RPD Errors Persecution-Judgement Errors	Granted
MB5-03341	Narrative Inconsistencies Sexual Orientation Credibility Vague or Omissive Testimony		Denied
TB6-02078	Narrative Inconsistencies Material Inconsistencies Vague or Omissive Testimonies		Denied
TB6-05668	Internal Flight Alternative	Persecution-Judgement Errors	New Panel
TB6-05016	Narrative Inconsistencies Material Inconsistencies Sexual Orientation Credibility Vague or Omissive Testimony	New Evidence	Denied

*Blank field represents judgement confirmation by the RAD

Table 7

SOGIE-based Asylum Claims Case: Study Base Data (2018-2020)

Case Number	Year	Refugee Status	Country of Origin	Gender*	Orientation at Time of Asylum Claim**
MB6-07686	2018	Granted	India	Male	Gay
TB8-07529	2018	Denied	Bahamas	Female	Lesbian
TB7-24284	2018	Granted	Nigeria	Male	Bisexual
TB7-19467	2018	Granted	St. Vincent	Female	Lesbian
TB8-11808	2018	Granted	Nigeria	Female	Bisexual
TB7-22051	2018	Granted	Uganda	Female	Lesbian
TB8-02885	2018	Granted	Turkey	Male	Gay
TB8-02353 TB8-02354	2018	Denied	Nigeria	Male	Heterosexual
MB7-00755	2018	Granted	Guinea	Male	Gay
TB7-21967	2019	Granted	Uganda	Male	Gay
TB8-20265	2019	Granted	Pakistan	Male	Gay
TB8-06756	2019	Denied	Nigeria	Female	Bisexual
MB7 -18280 MB7 -18281	2019	New Panel	Haiti	Female	Lesbian
MB6-06609	2019	Granted	Rwanda	Male	Gay
TB8-19024	2019	Denied	Nigeria	Male	Bisexual
TB8-04216	2019	New Panel	Albania	Female	Lesbian
TB8-27511	2019	Granted	Nigeria	Female	Heterosexual
TB8-11422 TB8-11423 TB8-11424 TB8-11425	2019	Denied	Nigeria	Female	Bisexual
TB8-05718	2019	New Panel	Albania	Male	Gay
TB8-07974	2019	Denied	Pakistan	Male	Gay

MB8-01239	2019	Denied	Mexico	Male	Bisexual
TB8004603 TB8-04604 TB8-04605	2019	Granted	Jamaica	Female	Lesbian
MB8-17233	2019	New Panel	Haiti	Female	Lesbian
TB8-18459	2019	Denied	Cameroon	Male	Gay
TB8 -26599 TB8-26600 TB8-26601 TB8-26602	2019	Granted	Nigeria	Male	Bisexual

* Gender as recorded by the RPD

**Orientation is based on main claimant when more than one individual is included

Table 7.1

SOGIE-based Asylum Claims Case: All Judgement Factors Identified (2018-2020)

Case Number	RPD Judgement Factors	RAD Judgement Factors*	Refugee Status Outcome
MB6-07686	Narrative Inconsistencies Sexual Orientation Credibility Vague or Omissive Testimony	Persecution-Judgement Errors Credibility-Judgement Errors Micro-Focusing	Granted
TB8-07529	Narrative Inconsistencies Material Inconsistencies Sexual Orientation Credibility Persecution Credibility Vague or Omissive Testimony	New Evidence	Denied

TB7-24284	Narrative Inconsistencies Sexual Orientation Credibility Vague or Omissive Testimony	Credibility-Judgement Errors Micro-Focusing	Granted
TB7-19467	Narrative Inconsistencies Sexual Orientation Credibility	New Evidence Persecution-Judgment Errors Credibility-Judgement Errors	Granted
TB8-11808	Narrative Inconsistencies Sexual Orientation Credibility Vague or Omissive Testimony	New Evidence General RPD Errors Persecution-Judgement Errors Credibility-Judgement Errors Micro-Focusing	Granted
TB7-22051	Material Inconsistencies Persecution Credibility Vague or Omissive Testimony	General RPD Errors Persecution-Judgement Errors Credibility-Judgement Errors	Granted
TB8-02885	Narrative Inconsistencies	Persecution-Judgement Errors Credibility-Judgement Errors Micro-Focusing	Granted
TB8-02353 TB8-02354	Narrative Inconsistencies Material Inconsistencies Persecution Credibility	New Evidence	Denied
MB7-00755	Narrative Inconsistencies Material Inconsistencies Persecution Credibility Vague or Omissive Testimony	New Evidence Persecution-Judgement Errors Credibility-Judgement Errors	Granted
TB7-21967	Sexual Orientation Credibility	New Evidence General RPD Errors	Granted

	Persecution Credibility	Persecution-Judgement Errors	
TB8-20265	Persecution Credibility	Persecution-Judgement Errors	Granted
TB8-06756	Narrative Inconsistencies Sexual Orientation Credibility Vague or Omissive Testimony		Denied
MB7 -18280 MB7 -18281	Sexual Orientation Credibility Vague or Omissive Testimony	General RPD Errors Micro-Focusing	New Panel
MB6-06609	Narrative Inconsistencies Sexual Orientation Credibility Vague or Omissive Testimony	New Evidence Credibility-Judgement Errors	Granted
TB8-19024	Narrative Inconsistencies Material Inconsistencies Persecution Credibility Vague or Omissive Testimony		Denied
TB8-04216	Material Inconsistencies Vague or Omissive Testimony	General RPD Errors Credibility-Judgement Errors Micro-Focusing	New Panel
TB8-27511	Material Inconsistencies Persecution Credibility	Persecution-Judgement Errors Credibility-Judgement Errors Micro-Focusing	Granted
TB8-11422 TB8-11423 TB8-11424	Narrative Inconsistencies Material Inconsistencies		Denied

TB8-11425	Sexual Orientation Credibility Persecution Credibility		
TB8-05718	Narrative Inconsistencies Material Inconsistencies Sexual Orientation Credibility Persecution Credibility	New Evidence General RPD Errors Credibility-Judgement Errors	New Panel
TB8-07974	Narrative Inconsistencies Material Inconsistencies Sexual Orientation Credibility Vague or Omissive Testimony		Denied
MB8-01239	Sexual Orientation Credibility Persecution Credibility Internal Flight Alternative	Credibility-Judgement Errors	Denied
TB8004603 TB8-04604 TB8-04605	Narrative Inconsistencies Material Inconsistencies Sexual Orientation Credibility Persecution Credibility Vague or Omissive Testimony	New Evidence Credibility-Judgement Errors	Granted
MB8-17233	Persecution Credibility Vague or Omissive Testimony	General RPD Errors	New Panel
TB8-18459	Narrative Inconsistencies Material Inconsistencies		Denied

	Sexual Orientation Credibility		
TB8 -26599 TB8-26600 TB8-26601 TB8-26602	Material Inconsistencies Sexual Orientation Credibility Persecution Credibility	Persecution-Judgement Errors Credibility-Judgement Errors	Granted

*Blank field represents judgement confirmation by the RAD

Table 8

SOGIE-based Asylum Claims Case: All Judgement Factors Possible

RPD Judgement Factors	RAD Judgement Factors
Narrative Inconsistencies	New Evidence
Material Inconsistencies	General RPD Errors
Sexual Orientation Credibility	Persecution-Judgement Errors
Persecution Credibility	Creditability-Judgement Errors
Vague or Omissive Testimony	Micro-Focusing
Possible Internal Flight Alternatives	Judgement Confirmation

Figure 1

SOGIE-based Asylum Claims Case: Distribution of RPD Themes (Pre-Guidelines)

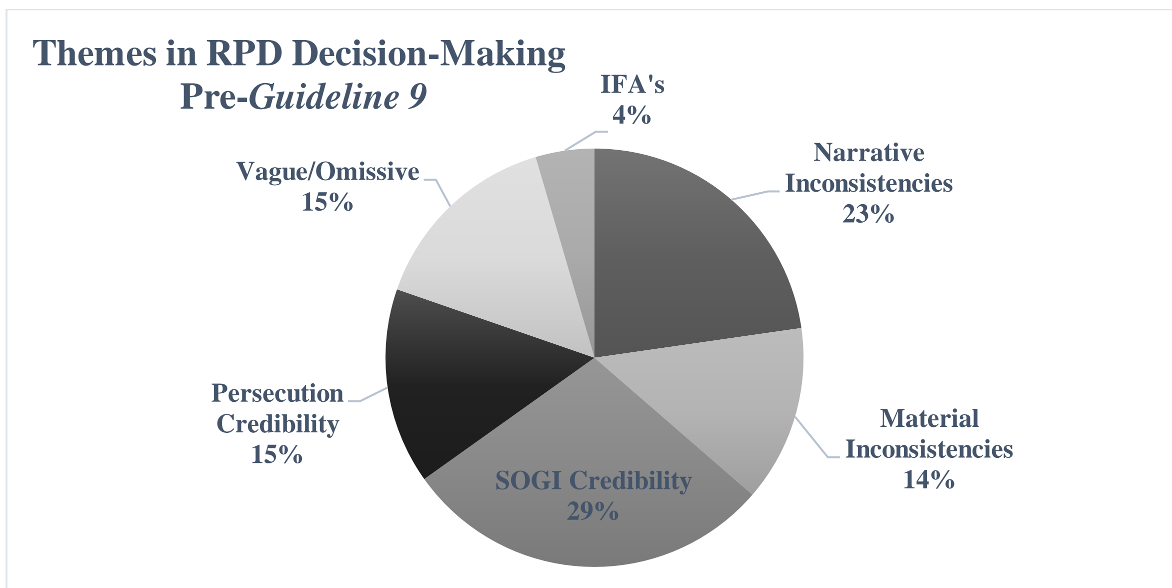


Figure 1.1

SOGIE-based Asylum Claims Case: Distribution of RPD Themes (Post-Guidelines)

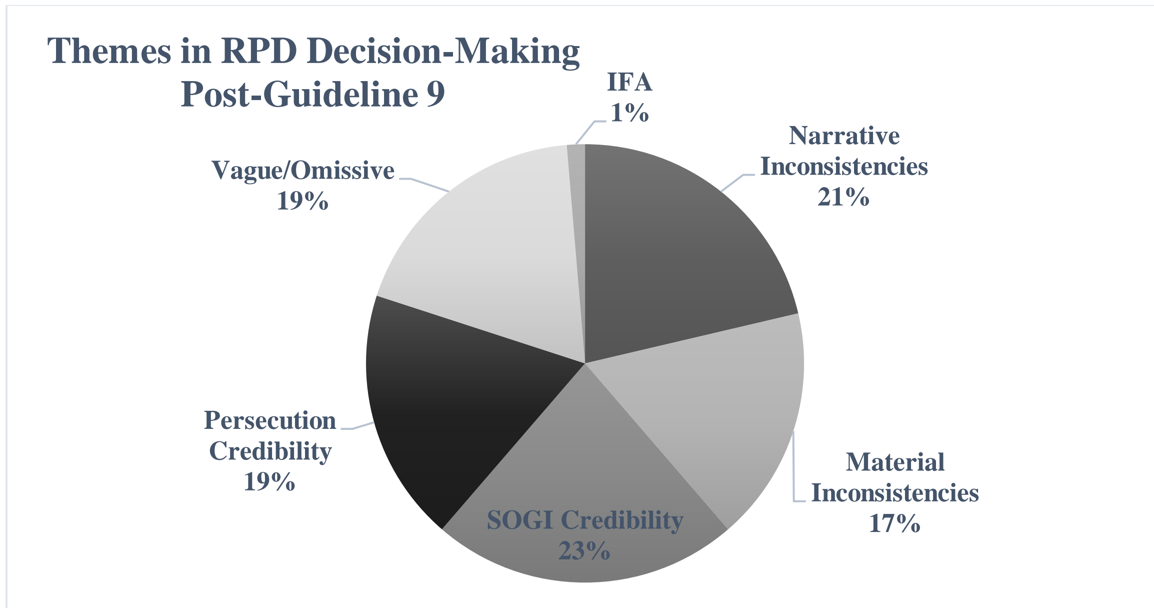


Figure 2

SOGIE-based Asylum Claims Case: Distribution of RAD Themes (Pre-Guidelines)

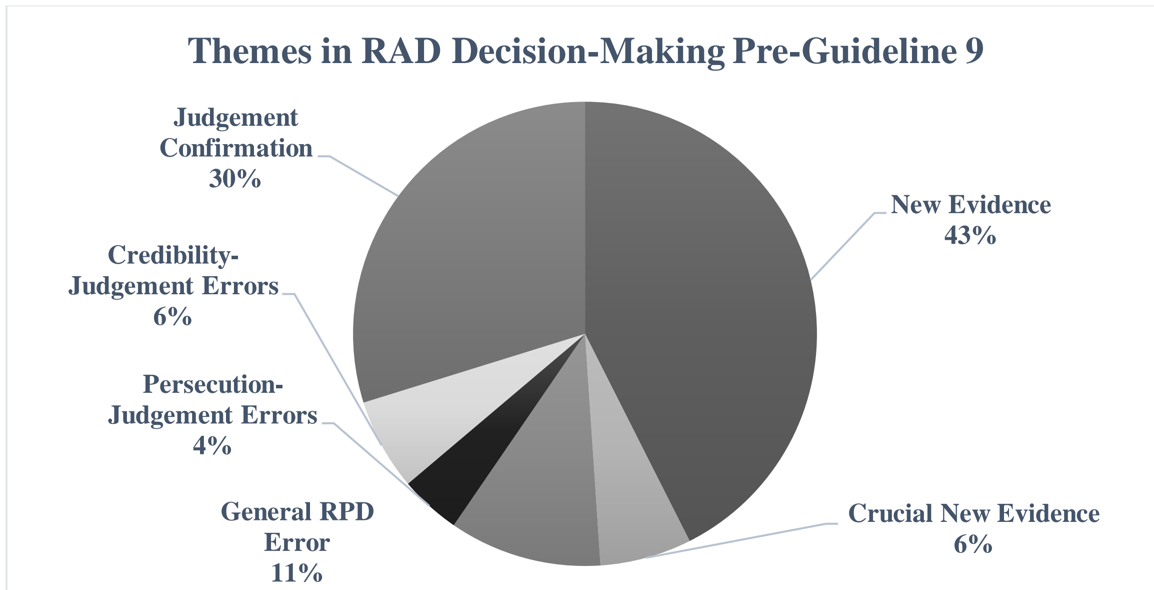
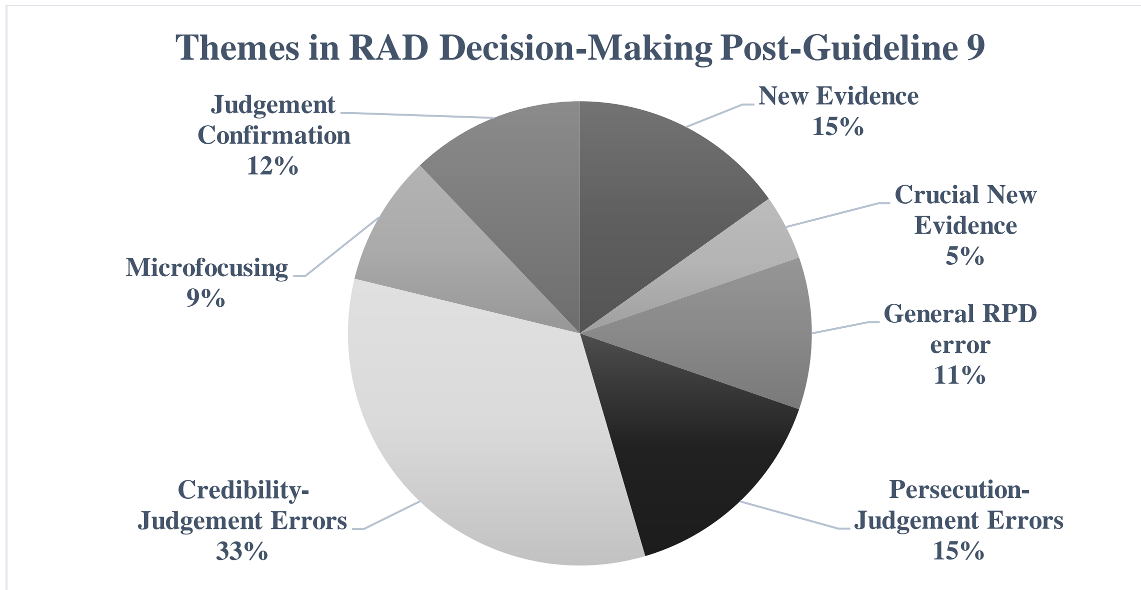


Figure 2.1

SOGIE-based Asylum Claims Case: Distribution of RAD Themes (Post-Guidelines)



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_____2018g. X (Re), 2018 CanLII 142990 (CA IRB), TB8-02885.
_____2018h. X (Re), 2018 CanLII 143895 (CA IRB), TB8-02353, TB8-02354.
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_____2019b. X (Re), 2019 CanLII 100255 (CA IRB), TB8-20265.
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_____2019d. X (Re), 2019 CanLII 127344 (CA IRB), MB7 -18280, MB7 -18281.
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_____2019f. X (Re), 2019 CanLII 120842 (CA IRB), TB8-19024.
_____2019g. X (Re), 2019 CanLII 120776 (CA IRB), TB8-04216.
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_____2019j. X (Re), 2019 CanLII 114411 (CA IRB), TB8-05718.
_____2019k. X (Re), 2019 CanLII 118240 (CA IRB), TB8-07974.
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