

The Complexity of Refuge: The Profound Effect of Law and Policy on Refugee Claimants

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### **Abstract**

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There are a variety of laws and policies in Canada that refugee claimants must navigate in seeking asylum in Canada. This study describes how law and policy affect the experiences of refugee claimants in the Maritime Provinces, and Canada more broadly. This project builds on existing knowledge of this topic, and adds a more narrative-based and maritime-focused perspective to the academic conversation. Data collection was completed in the form of 9 qualitative interviews. 6 service providers for refugee claimants, and 3 refugee claimants with relevant experience in Nova Scotia were interviewed about the implications of law in their experiences. The service providers had anywhere between 4 and 20 years experience working with refugees and refugee claimants, and all of the refugees that were interviewed went through the refugee determination process in the last 10 years. The major themes identified include: Fairness, Time Frames, Detention, the Maritimes, and Permanent Residency Application. This project adds to the academic conversation by focusing on what is seen by claimants and providers, to significantly affect the experiences of refugee claimants and the implications of these issues; it, opens up opportunities for more research regarding the themes and associated experiences described here and their relevance to the Maritime Provinces more specifically.

**Table of Contents**

Acknowledgements.....	1
Abstract.....	2
Preface.....	4
Introduction.....	5
Literature Review.....	7
International Law.....	7
Domestic Law.....	8
Framing Refugees in Public Discourse.....	12
Experience of Refugees.....	15
Theory/Method(ology).....	16
Analysis.....	22
Introduction.....	22
Theme I: Fairness.....	24
Theme II: Time Frames.....	25
Theme III: Detention.....	33
Theme IV: Maritimes.....	41
Theme V: Permanent Residency Application.....	48
Conclusion.....	54
Appendix A: Certificate of Ethical Acceptability for Research Involving Humans.....	56
Appendix B.....	57
Questions for Refugee Claimants.....	57
Questions for Service Providers.....	57
Works Cited.....	59

## Preface

With the profound harm being inflicted on Refugee Claimants (RC) and refugees in light of exclusionary and inequitable policy, non-governmental organizations (NGO) and the Canadian Council for Refugees have tried to aid RCs in navigating the complex system (Hardy & Phillips, 1999). An example of such an NGO is the Halifax Refugee Clinic (HRC). The area of study regarding the experiences of RCs is of immense interest to me as a result of my own experiences working with the staff at the HRC. The Clinic offers legal and settlement services to RCs free of charge. I have learned much about the challenges RCs face in seeking asylum in Canada through interacting with the clinic staff and RCs. I have gained a great deal of empathy for the situations that these displaced people find themselves in. My experiences not only offered me insight regarding the implications of law and policy on settlement and the experiences of asylum seekers, but also of how more recent legal changes have further disadvantaged refugees. This experience at the clinic also urged me to find out more about our system. The barriers in the path of refugees are substantial and institutional, in that they are founded in the policy and practices of our country. As I enter Schulich School of Law at Dalhousie University this coming September, I knew that this project was an invaluable exercise for me to undertake. It allowed me to engage with the practical implications of law and in doing so gain a better understanding of legal relationships within society. I was able to see the way that law can have an overwhelming effect on people that it directs. I hope to build on my experience in completing this project and pursue my legal education so that I can obtain the knowledge and skills necessary to help RCs in navigating the complex Canadian legal system in the future.

I was writing this thesis in a time of change and crisis in the world. The current Syrian refugee crisis is substantial and made headlines all over the world daily while I was pursuing my

research. A young Kurdish boy named Aylan Kurdi washed up, dead, on a beach in Turkey in September of 2015 after the boat meant to take his family to safety overturned. The photo of his lifeless body on the shore rocked the world and opened many eyes to the immense tragedy occurring daily in our world. Stephen Harper was voted out of office during my project, and Justin Trudeau voted in, which appears to have significantly influenced the way that the public and the media engage with issues relating to refugees. The issue of how law and policy affect refugee claimants is ever changing, and calls for updated studies often. Because of the way that the situation of the world transforms and evolves, and the policies that Canadian governments change in response to world events and issues, I believe this thesis is important however limited its scope may be. Canada must address issues that act as barriers to justice and asylum for RCs, and identifying these concerns is the first step to doing so in an informed manner.

### **Introduction**

*“No problem can be solved from the same level of consciousness that created it.” –Albert Einstein*

“Refugee claimant – a person who has made a claim for protection as a refugee. This term is more or less equivalent to asylum-seeker and is standard in Canada, while asylum-seeker is the term more often used internationally” (Talking about Refugees and Immigrants, n.d., p. 1). The difference between a refugee claimant (RC) and refugee is that the claimant has submitted their claim for protection but is still waiting for the government to make a decision as to whether they will be granted asylum, and they have not been privately or government sponsored. A refugee has been victimized or persecuted. Refugees are a diverse and stratified group of people classified together because of the fact that they have been forced from their homes because of danger or persecution. Much of Canada’s law and policy is situated to dissuade, or even exclude

this vulnerable population despite the fact that our government has an international obligation to aid and protect them. A refugee claimant, if provided asylum, could be considered a convention refugee or a person in need of protection. “You are considered a Convention refugee if you have a well-founded fear of persecution in your home country (your country of nationality or, if you do not have one, the country where you usually lived in the past) based on your race, religion, nationality, membership in a particular social group or political opinion. You are considered a person in need of protection if you would be subjected personally to a danger of torture, to a risk to your life or to a risk of cruel and unusual treatment or punishment if you were returned to your home country” (Claimant’s Guide, 2016, p. 1). The definition of a refugee, and the laws and international obligations can be complex, but what is very clear is that Canada has the responsibility to protect and treat RCs and refugees that come to or across our borders fairly.

The literature has highlighted the harmful discourses and legal obstacles that act as a foundation for potentially discriminatory refugee policy in Canada, but none of the research that I encountered focuses on a Nova Scotian or Maritime policy perspective specifically. The question driving my research is, “How do recent policy changes and existing policy negatively affect refugee claimants in the Maritime Provinces and Canada more broadly.” My focus will be on how being in Nova Scotia shapes these experiences. My starting focus was the experiences of RCs, and my research question was shaped and refined as I worked through my analysis. The data provided by service providers and asylum seekers had a major influence on the form my research has taken, which allowed the themes and issues truly relevant to the participants to take the forefront in my project. Through completion of this project I learned about many concerns regarding the experiences for refugee claimants in Canada from the perspective of refugee

Service Providers (SPs) and RCs. I have engaged with the themes that arose from my interviews and provided context in terms of how they fit into law and policy.

This project will accomplish several goals in order to provide a thorough answer to my research question. In the pages to come I engage with existing literature on international and domestic law and policy that rules the way that the government treats RCs, and use the literature to get an idea of how policy is constructed and how it might affect RCs and their experiences. I will then explain my research method(ology), outline the process of my project, and, most specifically, how I conducted my open-ended interviews with SPs and people who have completed the refugee determination process as RCs. This primary research is conducive to my goal of describing the effects that law and policy have on refugee claimants. I will outline the theoretical underpinnings that have influenced my analysis of the themes that arose through these interviews. Through the central element of my descriptive thesis, the analysis, I will engage with 5 central themes from my interviews; Fairness, Time Frames, Detention, Maritimes, and the Permanent Residency application. This section will include a description of the legal context paired with the knowledgeable narrative that my informants have provided, and will include quotations from the interviews. Finally, I will close by sharing my conclusions regarding my research and potential for future projects.

### **Literature Review**

*“My students often ask me, 'What is sociology?' And I tell them, 'It's the study of the way in which human beings are shaped by things that they don't see.'”–Sam Richards*

### **Canada's Commitment to International Law**

A refugee is a person "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside



the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country" (UNCHR, n.d.). Canada is a signatory to the 1951 Geneva Convention and 1967 Protocol Relating to the Status of Refugees (Hardy & Phillips, 1999), both of which provide a construction of what a refugee is, and the international regime of how refugees should be treated (Lacroix, 2006; Gogia & Slade, 2011). Despite the country's involvement in the Geneva Convention, the Canadian government did not become a signatory of the convention nor the United Nations Convention Relating to the Status of Refugees until 1969 (Jackson & Bauder, 2013; Gogia & Slade, 2011). Canada was the recipient of the United Nations' High Commissioner for Refugees' Nansen Medal in 1986 "in recognition of extraordinary and dedicated service to refugees" but based on recent detrimental developments in the way that Canada treats RCs "this may be as good as it gets" (Dauvergne, 2012, p. 306).

### **Domestic Law**

Canada has two refugee programs. One is the Refugee and Humanitarian Resettlement program for people applying for refugee status outside of Canada (they are sponsored by the government or citizens of Canada), and the In Canada Asylum Program for people who submit their claim when they are already within Canada (Gogia & Slade, 2011). Sponsored refugees get residency upon their arrival, but people applying within the country can be rejected for a host of different reasons (Gogia & Slade, 2011). "There are no federally funded settlement services for refugee claimants... despite the need. Some provinces have stepped in to fill this gap, but this adds to inconsistency across the country (Alboim & Coil, 2012, p. 16). Bill C-31 decreased timelines for "all refugee claimants to submit their claims (15 days) and prepare for hearings (30 to 60 days)" (Albani & Coil, 2012, p. 31). This timeframe is not long enough, and puts

unnecessary pressure on RCs and legal counsel in preparing claims. It could also have a detrimental affect on the decisions made in RC hearings (Albani & Coil, 2012, p. 31).

Canada is often considered by its citizens to be a welcoming and fair country, but it is apparent that even if that were true in some capacity at one time, it is not true in the case of our current refugee policy (Simich & Mawani, 2003; Jackson & Bauder, 2013). Canada is increasing obstacles for RCs trying to make a successful claim (Dench, 2001). Though they are still able to make a claim in Canada, there are “more barriers before during and after the determination process” (Alboim & Cohl, 2012, p. 8). Canada’s refugee determination system, which is the first contact that refugees have with the state in which they make request for asylum (Lacroix, 2006) is inherently exclusionary. “Policies and practices are primarily directed at reducing the numbers of asylum seekers by any administrative means” (Lacroix, 2006, p. 19).

The world changed drastically as a result of 9/11 (Kaushal & Dauvergne, 2011). After 9/11 Canada assumed security measures to ensure that the United States would not close their border to Canada in the case of a perceived threat. In Canada there are many vested interests in preventing this from happening, and therefore government officials take measures to not be perceived as allowing a porous border (Crepeau, 2010). Following this era, it was apparent that along with discussions of security and risk comes the mention of terrorism (Kaushal & Dauvergne, 2011). “At base, terrorism is a political position, not a legal definition. Terrorism is a blanket concept that is embedded in a particular cultural, social and tactical context” (Kaushal & Dauvergne, 2011, p. 75). Since there is a lack of concreteness to the concept of terrorism, in a post 9/11 world the concept is used to justify exclusion and work its own specific political agenda. Refugees bear the brunt of the harm caused by these efforts to restrict the flow of people (Kaushal & Dauvergne, 2011) and the resulting policy has clashed with the upholding of human

rights (Crepeau, 2010). For example, such efforts resulted in changes based on the Conservative government framing citizenship as a privilege, rather than a right (Abu-Laban, 2015). Many claimants that are being excluded in the name of security have not committed violence or crimes that would have excluded them if they had arrived in Canada and made a claim for asylum under past policy (Kaushal & Dauvergne, 2011; Bossin, 2001). The ideology that the government disperses regarding security and the connection of refugees to risk is prevalent.

People who flee their own state often possess no paperwork or documentation of identity at their time of arrival, and can even become stateless (Benard, 1986). “Typical ‘illegal acts’ on the part of refugees include misrepresentations of self, of one's identity, one's qualifications and political beliefs; these are responses to the sudden and abrupt dislocation of one's former life, the irrelevance of one's former self, and the dependence on the wishes of others” (Benard, 1986, p. 628). Of course, these acts are not truly illegal as The United Nations (UN) *Convention Relating to the Status of Refugees* and Canadian law are meant to prevent governments penalizing refugees who enter the country illegally or on false documents (International Law Recognizes, n.d.). The falsification of ones identity or traits is often a response to the stressors related to refugee or RC status. People are perceived as a threat when they cannot be identified and the state has sanctions in place against this situation.

“Claimants who arrive in groups of two or more in a way that prevents the timely examination of their identity and admissibility, or allows a minister to reasonably suspect the involvement of human smuggling for profit or with the support of a criminal organization or terrorist group” are deemed irregular arrivals and considered designated foreign nationals (Albani & Coil, 2012, p. 30). As part of Bill C-31: Protecting Canada's Immigration System Act (2014), any arrival deemed an “irregular arrival” by which could involve arriving by an

undocumented boat, results in mandatory detention, and a block on any application for permanent residency for 5 years from arrival (Protecting Our Streets, 2012; Harris & Zuberi, 2014; Abu-Lahan, 2015; Cleveland, Rousseau & Kronick, 2012; Albani & Coil, 2012). There are increased penalties for illegal entry that affect RCs coming by these means including indefinite detention (Dench, 2001). There has been a clear increase in the numbers of RCs that are detained in Canada (Alboim and Cohl, 2012). “The new growth in detention may be attributed to the manner in which refugees have come to be ‘securitized’ and portrayed as a terrorist/security threat” (Abu-Laban, 2015, p. 3).

This trend towards increased detention occurs despite the fact that the Geneva Convention states that there should be no consequences for refugees arriving in irregular ways or without preauthorization. This is also an issue because detention is “a practice that impede[s] their rights to a fair hearing, communications with their counsel, the ability to obtain documents from overseas, and an adequately prepared defense” (Korenic, Mulder & Kruger, 2005, p. 73). Many “refugee claimants are housed in medium security prisons alongside convicted criminals due to the lack of immigration-specific facilities, [and] this will cause additional trauma for individuals fleeing violence, torture or other serious harm” (Albani & Coil, 2012, p. 32). This is an example of a failure by the government to uphold international human rights standards as a result of policy based on unfounded preoccupation with human smuggling and trafficking as a risk to our country’s security (Dench, 2001). This is an interception technique that prevents people from crossing into the country to make a claim for asylum (Dench, 2001; Bossin, 2001). Harsh policies will not prevent refugees from using smugglers because often they do not have any other option to flee to safety (Did You Know, n.d.).

The Designated Country of Origin (DCO) is another example of legislation within Bill C-

31 Protecting Canada's Immigration System Act. The countries on the list are considered 'safe' and have been selected by a minister to be unlikely to produce refugees (Albani & Coil, 2012). The fact that a minister makes this decision rather than a committee of people with expertise on the matter is troubling (Albani & Coil, 2012). This means that the intentions and motivations of people from these countries are scrutinized more intensely. There are countries included on this list that may still have situations in which minority groups are persecuted (Albani & Coil, 2012). Bill C-31 decreased the time that people seeking to make a claim for asylum in Canada had to prepare their claim to 60 days. Comparatively, RCs from a DCO have only 30 days to complete their claim, and also lack access to an appeal process (Harris & Zuberi, 2014). Achieving status in Canada can take time, and can be challenging, especially if you are lacking necessary documentation (Simich et al., 2005). Treatment of RCs is harsher if they fall into the DCO distinction (Alboim & Coil, 2012).

### **Framing Refugees in Public Discourse**

The Canadian government plays a huge part in the creation of negative discourse surrounding RCs and refugees (Kaushal & Dauvergne, 2011). Citizenship and Immigration Canada (CIC) declares that refugees "bring their experiences, hopes and dreams to Canada to help build an even richer and more prosperous society for us all" (Jackson & Bauder, 2013, p. 360). The positive attitude portrayed in this statement does not reflect what is happening as a result of refugee law and policy. The major source of oppression exists at a systemic level that continues to reproduce the disadvantaged social location that refugees inhabit (Simich, Beiser, Stewart & Mwakaimba, 2005; Hardy & Phillips, 1999). The myth of the dangerous and menacing refugee is a prevalent discourse that leads to exclusionary law and policy (Kaushal & Dauvergne, 2011). "Canada, like most Western countries, has not yet struck an acceptable

balance between security and asylum” (Kaushal & Davergne, 2011, p. 91). This discourse comes from recent societal developments and has many resulting effects on policy. The Canadian government does not provide adequate social services for asylum seekers (Lacroix, 2006). “Refugee policy in Canada is one of the most controversial and debated of political and social issues” (Lacroix, 2004, p. 147). The contention regarding the negative discourses regarding RCs and refugees continues to support discriminatory laws.

People with a steadfast immigration status in Canada do not realize the weight that a precarious immigration status can bear on an individual. “Canadian citizens, secure in their full legal status, often take for granted many of the rights and entitlements that citizenship bestows on them. However, for many other members of the population including, for example, non-citizens or not-yet-citizen refugees and immigrants, the question of status and thus of rights and entitlements is much less certain” (Bernhard, 2007, p. 101). This quotation highlights that established or multigenerational Canadians, comfortable in their established citizenship, often hold assumptions regarding refugees and fail to put themselves into the RCs shoes to recognize the severity of their situation.

The government’s stance is based on falsities regarding the motivation of RCs (Harris & Zuberi, 2014) and efforts are made to delegitimize the claims of refugees. The concept of undeserving refugees is commonly used. The Conservative government put in place changes that they claimed made the refugee determination system “faster and fairer by dissuading what they referred to as bogus refugee claimants” (Harris & Zuberi, 2014, pg. 1041). There is so much focus on weeding out so-called bogus claims that true claims are being disregarded. Refugees are being portrayed or perceived as unauthorized immigrants that are trying to jump the queue (Akbari & MacDonald, 2014).

Claimants requiring government welfare are perceived as undesirable and not deserving of being part of Canadian citizenship (Jackson & Bauder, 2013). Many citizens are critical of refugee policy as lenient or question the validity of asylum seekers' claims (Hardy & Phillips, 1999). It is apparent that "media and government-fuelled discourses of 'bogus refugees', [inform] public distrust" (Jackson & Bauder, 2013, p. 17). The bogus refugee is not based on fact or reason, but is a result of discourses of distrust and illegitimacy (Jackson & Bauder, 2013). It is apparent that "Claims for refugee status have become synonymous with concerns about abuse of the refugee determination system and the entry of terrorists and international criminals" (Kaushal & Dauvergne, 2011, p. 56) despite the lack of evidence for supporting such a stance. Refugees do not pose a verified risk to the country, yet they are treated with immense distrust. Our risk adverse society has created unfounded fear of refugees and it is harming a group of people profoundly. The perception of refugees having dishonest or misrepresented motivations for seeking asylum in Canada is unfounded and leads to victimization of refugees that have already gone through immensely stressful and damaging situations. Prejudice and irrationality fuel the discourse within the public about the negativity of refugees, and as much as this is shaped by the actions and discussions of the government, the way that the public discusses refugees can also have a profound affect on how the government decides to treat refugees (Benard, 1986).

According to this stream of thought, a bogus refugee is coming to take advantage of Canada's welfare system and therefore will cost taxpayers money (Harris & Zuberi, 2014). Refugees are framed as having purely economic motivation for migration to use the welfare and health care of Canada. This assumption is inaccurate and misguided at best (Harris & Zuberi, 2014). A refugee differs from the economic migrant because of their lack of choice in migration, they have not come voluntarily but are forced to leave their home in reaction to persecution

which they have or will likely face if they stay (Black, 2001). Economic migrants and refugees come under very different conditions and therefore cannot be treated in the same way. It is the violation of human rights or fear of immense harm that motivates people to leave their homes and all that they know to seek asylum in another country (Harris & Subri, 2014). Even as this discourse shapes policy, policy is becoming more sensitive to economic outcomes of refugee acceptance (Akbari & MacDonald, 2014).

### **Experience of Refugees**

Refugees are an under-researched population (Berhard, Goldring, Young, Berinstein & Wilson, 2007; McKeary & Newbold, 2010), especially it seems when it comes to how law affects their experiences. Discrimination that is inherent in our refugee law can have many profound affects on refugees in terms of “education, health care, employment and/or housing” (Dowd, 2011, p. 39). “During settlement, numerous disadvantages may affect ... refugees’ health—stress, underemployment, downward mobility, discrimination, poor housing, lack of access to services, and inadequate social support” (Simich et al., 2005, p. 260). Challenges upon arriving also include social isolation and building social connections as well as figuring out where to go for support or services (Simich et al., 2005). “Once they are forced into exile, most experience multiple losses, including those of family, support systems, lifestyle, and homeland. Finding asylum is not the end of their difficult journey; in a host country, refugees face the challenging task of reconstructing their material lives and cultural identities as they adjust to their new environments” (Ellis, Kia-Keating, Yusuf, Lincoln, & Nur, 2007, p. 461). Moving to an unfamiliar country and rebuilding one’s life is a daunting task. Barriers facing refugees include stresses related to finances, languages, employment, childcare, and the uncertainty of their status (Benard, 1986). Uncertainty of status also impedes proper settlement (Lacroix, 2006).



Policy should ease the experiences of refugees in resettlement, not create more obstacles and barriers.

Meaningful employment can be very difficult to obtain for refugees entering Canada. “Negative discourses and related public distrust may impede [refugee claimants’] ability to enter the labour market” while the same discourses blame RCs for not getting a job (Jackson & Bauder, 2013, p. 363). There are mechanisms in place that prevent refugees from meeting the requirements of being perceived as a ‘worthy’ refugee. Discrimination causes job availability to be limited for refugees and claimants; leading to unemployment or underemployment (Jackson & Bauder, 2013). Refugees often end up in undesirable jobs that do not allow them to use their experience and skills to the best of their ability (Jackson & Bauder, 2013; Lacroix, 2006). With this example it is apparent that the same suspicion towards refugees is what is often preventing refugees fitting into the category of being a desirable refugee. “The ‘bogus refugee’ label and its pervasive assumptions regarding [refugee claimants] high cost and propensity to abuse the welfare system cast doubt on RCs’ legitimacy to live and work in Canada. This narrative also reinforced assumptions about the ‘place of refugees’ within Canadian society, including which jobs refugees ought to obtain” (Jackson & Bauder, 2013, p. 17). Refugees are stigmatized and the only jobs available to them in many situations are the jobs that very few other Canadian citizens want to fill. These are ways in which the discourse surrounding refugees can truly affect their experiences in entering Canada (Jackson & Bauder, 2013).

### **Theory/Method(ology)**

*“The function of sociology, as of every science, is to reveal that which is hidden.” –Pierre Bourdieu*

Exclusionary policy and institutional barriers are inherent in the experiences of refugees and RCs, therefore research done on their behalf should truly address the concerns and needs of

this very diverse group of people. Though my project is limited in its capacity to act as anti-oppressive or action based research (it being as a small-scale Honours research project within a traditional academic institution), I wanted to be sure to prevent further marginalizing or oppressing my participants through my methods and methodology. I am an outsider in relation to the social group that I researched so I had to facilitate conclusions arising from the discussion with participants rather than allowing my own assumptions or perspective to overtake the path of my research.

The Canadian Council of Refugees (CCR) (n.d.) expresses that it is vital that those with experience and knowledge on the subject of refugee policy are the ones consulted regarding relevant issues. Organizations and claimants are often not consulted in research for media articles, and this is problematic (Serious Flaws in Reporting, n.d., p. 1). I have conducted research on similar projects that have preceded my own efforts. Many of these projects included semi structured and open-ended interviews to allow room for RCs to explain any subtleties and perceptions that they had regarding their experiences (LaCroix, 2004; McKeary & Newbold, 2010; Simich, Beiser & Mawani, 2003). Simich, Beiser and Mawani's (2003) project interviewed both refugees and informants from settlement services organizations and immigration officials. Similarly, another project interviewed service providers and policy makers and then followed this interview process with interviews with immigrants and refugees (Simich, Beiser, Stewart, & Mwakarimba, 2005). Initial interviews took place with legal and settlement SPs and the information that I gathered from this stage of my research provided me with more background and facilitated my interviews with RCs on meaningful issues.

I conducted qualitative interviews but first I had to recruit participants. The recruitment method was designed to recruit refugees and claimants as well as people who work with

refugees. I strategically placed posters in various public locations around the city and utilized social media posts as my call for participants. I posted on Kijiji, Public Facebook Groups, my personal Facebook page, and on Twitter. I sent emails to organizations asking that they share my recruitment poster with potentially interested parties or that they share the poster on their own social media. Through self-selected recruitment styles coupled with snowballing, I was able to recruit individuals that were enthusiastic about discussing the RC experience, and this made the open-ended format of my interviews effective. Once I found participants I ensured that the candidates fit with my research requirements and scheduled a mutually convenient time to meet. Snowball sampling has some limitations in reliability and generalization regarding making statements about the entire population from a sample of respondents that is not truly random, but my regional focus justified the choice to embrace this recruitment tactic. My sample is a non-probabilistic group of participants and of course this is the most realistic way to create a sample for my purposes because it is difficult to locate the entire population of refugees in order to do a more probabilistic and random of sampling. The sample that I use will be a somewhat homogeneous because it will include individuals with similarity in life experience due to their infliction by the discriminatory refugee policy of Canada. This will allow me to “gain in depth understanding about how members of a particular group experience or think about a given issue,” in this case the experience of seeking asylum in Canada (Hesse-Biber & Leavy, 2011, p. 179). All participants are required to be adults above the age of 18 that are seeking or have sought refugee status in Canada in the last 5 year(s).

My data gathering method consisted of interviews. Interview questions were informed by the literature review and data gathered during my research focus. The interviews took place individually and included 9 people in total. The goal was to include 6 refugees and/or RC, and 4

people who work in legal and/or settlement services for RCs. In reality, I was able to interview 6 people who work with legal or settlement services, and 3 people who have submitted a refugee claim in Canada. One of my participants, a service provider, speculated that people who have precarious status might have concerns about something about their lives or the claim process being revealed that would be detrimental to their status. Another participant rightly expressed that even once a RC reaches refugee status there are a variety of concerns and priorities that they would have that would supersede participating in such a project. It was apparent that RCs and people who have gone through the determination process are not an easily accessible population. My RC participants ended up being recruited through snowball sampling, as a service provider distributed my Call for Participants to eligible people for me. The interviews were open-ended and flexible. They began from a set of base questions (see Appendix B) and then often built upon themes and concepts highlighted and emphasized by the participants. The data collected in the interviews was audio recorded and then transcribed. This data collected from SP as well as people who have had an experience being a RC offered immense insight into the experiences that RCs have had in relation to the policy and law that they have come into contact with. These qualitative interviews act as a touchstone and formed more refined research question (Allen, 2009). As a result of my interview data I chose to focus on a few key issues that will be discussed in the analysis.

It was intended that refugee or RC participants from the interviews would be invited to participate in a focus group in the weeks following the interview process. Focus groups “are small structured groups with selected participants, lead by a moderator. They are set up in order to explore specific topics, and individuals’ views and experiences, through group interaction” (Litosseliti, 2003, p. 1). Groups would have been focused on themes highlighted in the

interviews already conducted with the claimants. This would have allowed participants to discuss their perceptions and experiences while responding to each other as well (Litosseliti, 2003, p. 1). Due to time restraints and unforeseen recruitment challenges, the focus group could not take place.

I acknowledge the limitations of the methods described above. Interviews can be obtrusive. The subjects of my research were aware of their being researched which can lead to socially desired responding on the part of the respondents and in some situations can lead to false consensus. The fact that interviews are a kind of research that gathers self-report data also brings a limitation to the study in terms of reliability. I believe that the limitations are justified by the fact that open-ended interviews have the potential of gaining insight into the experiences of an under researched group from their own point of view regarding the implications of policy in Canada. These methods avoid the restraining nature of a rigid and closed format.

Thematic analysis was utilized once interviews were transcribed and data was compiled. The thematic analysis method is relevant to this research because it utilizes individual points of view and descriptions of experiences and perceptions. The focus was placed on the perspectives of the participants, and the themes that I analyzed were those that were most prominent in the data. This method gives voice to the experiences of my participants. The central topics that were repeated and emphasized by participants were given the most attention in the analysis, but I must acknowledge that there were a wealth of important issues that I was not able to include due to the confines of this project.

I used primary research to delve into issues around the treatment of RCs in Canada, and the way that I went about this project is largely influenced by my experience and knowledge on the topic thus far. A variety of texts and courses that I have read and engaged with during my

undergraduate degree have influenced me to approach this project in the way that I did. Reading and taking courses that touched on the subject made me want to know more about my research focus. I constructed methods and engaged with my primary research in keeping with existing work in critical refugee studies. The methods used and the mindset present throughout the results of the project kept in mind constantly the marginality and disadvantage inflicting refugee claimants. The questions that I asked and the way that I have engaged with the meaningful answers that my informants provided to me, oriented the project towards socio-legal studies. In future research I could analyze the prevalent themes in more depth through the critical refugee and socio-legal traditions. Much of the type of work that exists and is included within my literature review reflects a critical standpoint. This is conducive to the work I've done through this thesis, which could be analyzed further in relation to power structures in our society. The way my themes are organized is based on these critical ways of understanding migration in terms of power. State power versus relative lack of power by power of an individual RC is crucial to understanding the processes at play in law and policy. This is to be said especially of the most disadvantaged of RCs. The way that power imbalances play a huge role in the way that the government deals with RCs, and how this treatment is perpetuated through various parts of the socio-legal system,, is complex and warrants abundant further research.

This project has ethics approval from the Saint Mary's University Research Ethics board and informed consent was sought of all participants. (Saint Mary's University REB file #16-145). See Appendix A for Certificate of Ethical Acceptability for Research Involving Humans.

## Analysis

*“No one leaves home unless home is the mouth of a shark.” –Warsan Shire*

### Introduction

I will now reflect upon my interviews with Refugee Claimants (RCs) and Service Providers (SP). The extent of experience that SP participants had working with RCs ranged from 4 to 20 years. They held a range of positions from lawyers to settlement or education related roles. RC participants had all gone through their refugee determination process in the last 10 years and each had received a positive decision following their hearing; their current status is Refugee. It is important to mention that there were a variety of important issues brought up by participants that will not be mentioned in my analysis. This is not meant to imply a lack of importance of these other issues. I chose the most prominently discussed themes to engage with, and focused on issues that had a maritime connection.

The themes that I will be describing are Fairness, Time Frames, Detention, the Maritimes, and Permanent Residency. All of these themes, though separate, are clearly interconnected. All of these themes arose from my primary interviews and I have engaged with the issues and their practical implications of law on RCs. My participants have provided me with the data necessary to be able to compile this information, and I have used a variety of excerpts from our open-ended interviews.

My 3 informants who shared information about their experience as a RC in Canada were as follow:

Sofia: A refugee from Yemen. She was an international student studying in Canada prior to making her claim for asylum. She made her claim in 2015 in Nova Scotia.

Jack: A refugee from Syria. He made his claim in 2014 in Nova Scotia.

Yaseen: A refugee from Iraq. He made his claim in 2010 in Nova Scotia.

My SP informants who shared their perspectives of the implications of refugee law and policy on RCs were as follows:

Liam: A lawyer with about 5 years experience as legal counsel for RCs in Nova Scotia.

Molly: A lawyer with about 4 years experience as a refugee legal caseworker in Nova Scotia.

Olivia: About 7 years experience offering settlement services for RCs in Nova Scotia.

Matt: A lawyer with about 3.5 years experience in various capacities with RCs. His work originated in Nova Scotia and he has since moved to Ontario and is a refugee and immigration lawyer there.

Maya: A lawyer with experience with legal research for RC cases, and also as legal counsel for RCs in Nova Scotia, amounting to about 8 years total (intermittent).

Ava: She has worked with the Red Cross for almost 20 years in educating the public surrounding RCs and the determination process.

In the following pages I will engage with the data collected from my interviews. I would at this time like to thank all of my participants for taking part in this project. Their narratives were crucial and deeply informative.



**Theme I: Fairness**

It is worth mentioning before problematizing Canadian policy and law involving RCs that SP participants were positive about the fact that a system exists and is generally geared to accept asylum seekers. Liam said that “the fact that you can make a refugee claim is positive and in general the laws are designed to fulfill Canada’s obligations under international law, so that is positive.” The Canadian Counsel of Refugees, a “national non-profit umbrella organization committed to the rights and protection of refugees and other vulnerable migrants in Canada and around the world” (About the CCR, n.d., p. 1), also shares this sentiment. One of the flaws that they identify in reporting on the refugee system is referring to the system as “broken” when in fact it is generally solid in an over-all sense and in upholding our international responsibilities (International Law Recognizes, n.d.). Olivia was also sure to stress the importance of this so that it was not taken for granted:

Olivia: “I also want to mention, and it’s important that this is not lost in conversation. The fact that we even have a system in the first place is good, because so many countries around the world have no determination system in place for asylum seekers or refugee claimants so that’s a good starting point, that we are at least meeting our international obligation to offer assistance when changes are made to the system that negatively impact a person’s ability to stay here in safety that’s another thing but having the system in the first place is something that is [positive].”

RC participants in my study largely perceived the refugee determination process as being fair. The biggest advice they had for other people going through the process was to make sure that people told the truth and gave no reason to doubt their credibility.

Jack: “I like the process myself, because if you legitimately, if your case is legitimate you find somebody else on the other end here and try to believe and help. The board member I got was really nice, and she basically almost knew what was going on anyways. So, for me it was easy. But I have heard that some other board members might be a little bit tougher so that one thing I actually kind of remember when people ask me, I say it doesn’t work all the same, sometimes for some cases it will be way easier than others, so that’s the only thing that sticks in my mind, plus you have to have a true story. Your story has to be true, you shouldn’t be just coming up with a story.”

**Theme II: Time Frames**

One of the primary concerns of the service providers (SP) and lawyers that I interviewed was that of the shortened timelines included in recent legislation. As part of Bill C-31, changes were made to the Immigration and Refugee Protection Act in 2012 by the Conservative Federal government. Changes were made so that refugee claim “hearings would be held within 30 days for claimants from Designated Countries of Origin who make their claim inland, 45 days for claimants from designated countries who make the claims at ports of entry, and 60 days for all other claimants” (Goodman, 2012, p.1). This means that that best case scenario is that a RC has 60 days from when their claim is submitted to the Refugee Protection Division to prepare for their hearing (Claimant’s Guide, 2016). This represented a drastic departure from the previous long timeframes of what are now known as the ‘legacy cases’. People could wait upwards of a year for their claim to be heard before these changes were enacted.

All but one SP participant emphasized the issue of the short timelines and how they can affect the experience of a RC. Liam discussed how the changes may have been intended the process quicker, but also expressed the impediment that the short timeframes offer in preparing a solid claim:

Liam: “The major issues are the recent changes to the previous government and the changes they made to the refugee system. In theory they were designed to speed the process along and deal with refugee claims that are not founded in a quick manner however they impede refugee claimants that do not have the resources to set everything up very quickly. The timelines are very short, and it is hard to bring evidence forward to support your claim in these deadlines.”

Those with the most difficult cases to prepare, and the relatively disadvantaged RCs that do not have the means or resources to prepare their claim quickly are the ones that will be disproportionately harmed by these changes. In addition to the extremely tight timeframes

leading up to a hearing, prior to the changes RCs were expected to submit the initial paperwork followed by a long period of time to submit additional information and evidence, but now everything must be submitted at once as a single package called the Basis of Claim (BOC). The BOC form is submitted 15 days after a RCs claim is sent to the Refugee Protection Division (RPD) if an RC makes their claim at a port of entry, or is due at the same day as ones eligibility interview if they make an inland claim, either way limiting RCs time to prepare documents (Claimant's Guide, 2016). This does not provide enough time to seek legal advice and gather supporting documents before submitting the BOC (Protect Refugees from Bill C-31, 2012). The form has to be completed in French or English, which provides an even greater disadvantage if an RC does not speak one of these official Canadian languages. This means the additional step of having to have this document translated in the allotted time. A board member at your hearing can ask about anything that you included or did not include in this claim, so it is very important that the BOC is prepared properly. Any additions or changes to this form must be submitted 10 days before your hearing (Claimant's Guide, 2016). It is important to seek legal advice in preparing a BOC and for the refugee hearing, but this is also difficult to do, especially in the short timeframe. Olivia further explains the impact this had on preparation of refugee claims;

Olivia: "Now everything, all the paperwork is submitted right away and then the clock starts ticking for the hearing and it happens in two months. So knowing, before, that there was this potential 1-2 year wait for a hearing, made it less [stressful], the stakes were lower in a sense, because you know that you could submit a supplemental narrative if more information came out, and now where is the time to do that?"

Besides a general critique of the 2012 legislative changes, SP participants identified several specific problems with the rushed timeframes allotted for hearing preparation. The main concerns that most SP participants had with the short timelines were that strong evidence is time consuming to gather in international contexts, convincing legal narratives take longer to prepare,

and clients often need supplemental time to recall important and sometimes traumatic information to support their claim. While some agreed that the previous system took far too long, a few participants highlighted that this had some marked benefits in that it provided plenty of time to prepare a strong, evidence-based claim.

Interviews with SPs presented a variety of practical implications of operating with a shorter timeline to prepare a refugee claim. Liam stated “the short deadlines do not make it easier for people to get the evidence that they need to support their claim.” All the SP participants who highlighted the time limitations supported this sentiment. When a RC comes forward they have a short window of time to work through their claim and gather evidence to support their claim. It is not as though the refugee process is simple or in any way easy. The process is complicated to navigate even if given an appropriate amount of time to prepare. Matt summed this up by stating that, “if people are trying to get refugee status in Canada they have to meet a very specific and very exacting legal standard, in a very short period of time. I’m generally concerned with the fact that our system is quite fast, very specific, and there is not much wiggle room.” At the hearing RCs are expected to present documents to prove their identity and to support their case, or else provide proof that you did everything you could to try to obtain these documents. These documents must be submitted with the BOC Form, or else 10 days before the refugee hearing. This is also difficult because any documents that must be translated to an official language of Canada must be done so in this timeframe as well. The translator must also complete a signed translator’s declaration for you to send with the document(s) (Claimant’s Guide, 2016). Documents that are not obtained can have a detrimental affect on the outcome of a hearing. Sofia described a situation in which this may be a problem. Documents are not easily attained in many

situations. In many situations, it can be an excruciatingly slow process to obtain documents from a RCs country of origin, if it is possible to obtain them at all:

Sofia: “There was a requirement list of some identifications you have to provide, a police check for example, you cannot get a police check from my country for example, because there is a civil war and if you don’t have anyone there is no way, so some requirements don’t make sense. It doesn’t take into consideration the situation in the other country; we do not have the same system like here, organized. Maybe they have to send people to live in all of these countries to know what they should expect.”

Though multiple SP participants acknowledged it as a possibility, here is how one participant expressed the positive impact of shorter wait times for certain RCs.

Olivia: “The reduced wait lines or timelines for claimants to wait for their hearing, for some is helpful. Prior to these amendments to [The Refugee Protection Act], which happened December 2012, Claimants here especially in Atlantic Canada, they wait 1 year, sometimes 2 years. Actually we have claimants, that are still waiting because of part of the backlog, or the legacy cases as the government likes to call them, and they have been waiting, some 3, 4, 5 years, but how it worked before is a board member would be flown here from, the Montreal division of the Immigration and Refugee board. We don’t have an Immigration and Refugee Board here and they would hold hearings in the fall or in the spring, usually for a week or two weeks and so we’d have a block of hearings, generally twice a year, and they got heard within a year. For some that was far too long to wait, for some it wasn’t enough time, even a full year. So, now the process is about 2 months and that is great for some refugee claimants that have their documents readily available that are in a state of mental health to be able to tell their story and process that and just be ready for their hearing, now for others, 2 months is far too short a time, and it might not be enough time for lawyers as well.”

Sofia, a RC participant also acknowledged the fact that in her situation she preferred the prospect of a short wait time because she had a very straightforward case. She had been an international student in Ontario, and had obtained a postgraduate work permit following her degree. She pursued the RC procedure once her work permit expired but she was unable to safely return to her country. Her case was postponed and she was forced to wait past the two-month mark and this was extremely frustrating for her.

“A negative [experience] was that I was expecting to do a hearing in October, like I thought, it was a clear case, nothing ambiguous about it, but then they had to postpone it

without giving me any information of when it will be, so having to wait and without having a work permit, and I am used to just working, it was frustrating.”

This highlights an interesting point, for some RCs the old wait times would have been extremely frustrating or detrimental. Sofia felt as if her having a previous status in Canada should have eased the process. She described how it was never a for-sure even with her case being clear and not complex. She wanted to have a quick decision on her case so that she could move on with her life in whatever way that decision dictated.

Sofia: “I would say, because I was an international student I have lived in this country so I should have at least, a different path, I shouldn’t have had to go through the refugee thing because this is the last option, if you get refused, I don’t want to just keep waiting for another year, so if I was refused I was planning on heading to another country which was not easy because I have a sister in Ottawa, and wanted to just stabilize.”

Some of the SPs that I interviewed also discussed clients wanting to speed up the process and in some cases rushing into submitting their story because they were unable to apply for social assistance or work permits until they did so. This clearly means putting poor RCs or RCs without resources to hold them over while waiting for their claim to be prepared at a huge disadvantage. It is apparent from my interviews that the situation must be changed so that there is reached a “happy medium” that provides enough time to prepare but also does not prevent people from reaching status in Canada in a reasonably timely manner. As Molly states:

Molly: “It also sets up certain kind of problematic situations ... because we know that there are these time lines in place, we wont even put in a claim until we have done a lot of the upfront work and a lot of the getting to the bottom of the clients situation and story and so that results in us kind of, we have the breaks on and the client wants to get the claim in so it can set up kind of an opposition, not to mention that there are certain settlement challenges when a person perhaps might be here without status or with another status and isn’t eligible for certain things until they actually get their claim in. So if people are here and are lacking the means to support themselves, they are not even eligible to apply for income assistance for example until their claim goes in so we are rushed in that sense to get it in, but not wanting to get it in because we know once it goes in we are hardly going to have any time at all to prepare to the hearing so, and that is sort of a new aspect under the new system.”

This is an example of how the new legal framework means that RCs may be stuck between making a well-prepared claim to the best of their ability and obtaining basic survival resources, like purchasing food and obtaining shelter. This type of structural barrier will unavoidably impact the most vulnerable RCs disproportionately, including families and/or single mothers. Clients may rush into submitting their claim or rush their legal counsel despite the potential risks of missing part of the story or failing to provide necessary evidence. If the process is too hurried they may not remember all elements of the story the first time, because as a few SP participants mentioned memory is not always constant and perfect, Matt stated, “that’s just how human memory works.” Molly discussed this issue as well:

Molly: “It is really hard for people, regardless or not if they are finding it traumatizing to try to talk about their story, but even just getting all the details and the timelines some people have really complicated stories and don’t always remember the series of events or certain details correctly the first time which is perfectly natural but if that comes out in their hearing and the board member says, ‘oh on your paper you said this, this is affecting your credibility, right?’ It’s so important to get that work done to the point that is to the very best of your abilities, and we know that because we know what can happen, we’ve all seen hearings go off the rails a little bit when these contradictions have come up so we know how important that is but [RCs] don’t have that inherent knowledge.”

Before a claim is initiated by submitting the BOC, people without status are unable to apply for receive social assistance or for a permit to work legally. This puts many individuals in a position where in order to begin to support themselves, they must rush to submit their story. This could be extremely damaging if it results in an unwarranted negative decision. The problem is that people want to submit their story so that they can begin the process. The CCR highlights that denying social assistance to refugees is “contrary to international human rights obligations” (Refugees and Social Assistance, 2015, p. 1) so by this logic, putting people that need social assistance and/or to apply for a work permit into a situation where they may rush their claim preparation to move towards these needs, is detrimental. If law creates a negative consequence in

terms of access to social assistance in taking ones time submitting their story, Canada is not upholding their human rights obligations effectively. This kind of a situation makes the severely quick timelines potentially even more harmful. This sentiment is well explained in the next quotation by Matt:

Matt: “Another very serious concern for me is that people in a lot of provinces, I can speak for Ontario and Nova Scotia in my experiences, people with irregular or temporary status do not benefit from social entitlements like public health care or social assistance so a lot of times, a person will come to my office and they are very badly out of status, they might have been living without immigration status for a year, I’ve seen people live without immigration status for 14 years, and when you don’t have status that means you can’t legally work, and that means people are forced into really precarious areas and dangerous forms of employment... You are either forced into precarious employment or you might be in the situation where you cant work and you cant get any money to support yourself. So I’ve been in the situation before where I am preparing a refugee claim that I feel that is borderline in terms of strength and likelihood for success and I might say to the client, ‘you know we need to hold off in submitting this claim until you can get this piece of really important evidence for your country of origin, I feel like we really need this doctors report or your claim has a lower chance of success,’ and the client is like, ‘well listen, I don’t have any money, I need to get on social assistance right away, I’m homeless and I cant benefit from funding to stay in a shelter until I become a refugee claimant so submit the claim right away.’ And a person does not get to put forward the best possible refugee claim because they are rushing to get it in so that they can benefit from some social entitlements and stay alive in Canada. These are the kinds of little things when they snowball and they add up the immigration regime as it was being dreamt of by the former government had this goal of weeding people out that do not have a perfect immigration status.”

Most SP participants prioritized the timelines as the issue that they would recommend changing in the future. They collectively discussed that there should be “more flexibility with the timeline and the hearing dates” (Olivia). Matt suggested that six months would be a reasonable amount of time to prepare a claim. Extensions must be made more readily accessible, as they are currently very difficult to obtain. The government website states, “The RPD expects claimants to be ready to proceed on the date fixed for their hearing. The RPD will only agree to change the date or time of your hearing if there are exceptional circumstances” (Claimant’s Guide, 2016, p.



1). The general difficulty of preparing a claim would not be considered an exceptional circumstance in many situations. Molly engaged with how hard it is to get extensions:

Molly “Asking for an extension for submitting your appeal is in the law, [but] you can only put that request for an extension in when you submit the thing that you are asking for an extension for. It’s like asking for an extension when an assignment is already late and when it is done. They might respond by saying oh, we dismissed your appeal because you didn’t submit a request for an extension, but you’re not allowed to do that under the law so [it is a lose-lose situation]”

The situation is also intensified in the Maritime Region because the provinces do not offer legal aid access for immigration or refugee matters. This creates the unique situation in which the Halifax Refugee Clinic (HRC) picks up the slack when it comes to legal and settlement services and is therefore responsible for keeping up with the demands of their clients with only very limited resources and staff.

Olivia: “[The Halifax Refugee Clinic] has been able to respond better to the [timeframe] changes, because they’re a private salary based organization, a charity, and a non governmental [organization] and non-for-profit. So we can bring in lots of volunteers, and there is a culture here to work overtime, but for refugee claimants that are in provinces where they are getting provincial legal aid, the legal aid lawyer may not have that kind of flexibility in terms of hours that they can dedicate and so that makes a difference, the timeline has...negatively impacted legal aid lawyers more so than this type of organization, because we just have a better ability to respond.”

Maya: “I know that the relatively recent changes to the refugee determination process, so before you had a lot more time, now it’s a much more expedited process. By the time the claim is filed and its heard it’s a much more condensed time period. So, I know the clinic does a really good job of getting the documents in order, doing a lot of work up front with the claimants to talk about their story, you know the full story, fill in some holes that may be in the story.”

Conversely, despite all the concern voiced by the SP participants regarding the time frames, it must be mentioned that RC participants did not find that the composition of own cases were too rushed. Each of the RC participants expressed that they had found the refugee determination process fairly simple and fair, and they felt like they had enough time to assemble their story and provide supporting documents before their hearing. Their cases took anywhere from 3 weeks to

the 2 months to complete. All participants expressed that they had their documents in order prior to initiating their claim, were able to share their story, and felt as though they had enough time to do so. Each claimant also received a positive decision in their case and now has refugee status. 2 of the RC participants did however also comment that they had friends or had spoken to other people who went through the process who found that the allotted time was not enough for them for some of the same reasons that were of concern to SP participants. Gathering documents from home, or the inability to speak one of the official languages of Canada were mentioned as two of these concerns.

Sofia: Well, my case was not too complicated. ... I have other friends that I know [the timeframe] was not enough for them, especially if they had to contact back home, but because I was away from back home and most of my documents are here I did not have an issue with certification whatsoever.

Jack: To be honest with you, in my situation I came here speaking English so that was really easy, and I had some idea how it goes from before, so for me was easier, but for other people I don't think it would be the same case because to get your claim won you've got to get some evidence and some stuff from back home, that is required. In my case it was easier, I got that within the time limit, but I don't think it will be the same case for everybody else.

This begs the question of who is most affected by the shorter timeframes? The most disadvantaged are those that are most detrimentally affected. Claimants that may not have had time to prepare or gather documents before fleeing their country of origin, that do not speak English, or are otherwise underprivileged are those that are harmed. They are likely to have the hardest time preparing their case in the allotted time period.

### **Theme III: Detention**

Detention is another issue ingrained within current law that is problematic, particularly because in the eyes of SP participants, it is connected to the criminalization of RCs. There are a variety of criteria that could result in the indefinite detention of prospective RCs. The most

prominent of those reasons being, “under [Bill C-31, the *Protecting Canada’s Immigration System Act*, an individual 16 years of age or older arriving as part of a designated irregular arrival will be detained until a final positive decision by the Immigration and Refugee Board of Canada (IRB) is made on their refugee claim or until they are ordered released by the IRB or by the Minister (Protecting Our Streets, 2012, p. 1). People in this category are designated as foreign nationals, which has major implications on their experience entering Canada. “The UN *Convention relating to the Status of Refugees* (article 31) and Canadian law (*Immigration and Refugee Protection Act* s. 133) prohibit governments from penalizing refugees who enter or remain illegally on their territory” (Did You Know, n.d., p.1). “The criminalization of individuals who are smuggled (and possibly trafficked) into the country puts at risk each individual’s right to claim refugee status. The automatic detention of smuggled individuals and their ineligibility to make a refugee claim ignores the fact that, for many refugees, smuggling is the only possible route into Canada” (Oxman-Martinez, Martinez, & Hanley, 2001, p. 19). Suspecting criminal connection of everyone that arrives by unconventional arrival means that anti-smuggling tenets of Bill C-31 risk delegitimizing and punishing genuine refugees that may have had little other choice in the means that they used to escape their country of origin and reach safety (Oxman-Martinez, Martinez, & Hanley, 2011). Detention based on the method by which a person arrived in Canada or what documents they may or may not have presented in order to make the trip possible should not be legitimate justification for a punitive reaction.

The use of the words trafficking and/or smuggling have a negative connotation and they have been used to strategically legalize the exclusion of a specific class of refugee. Unsubstantiated fear of risk to security is connected to human smuggling and trafficking in the public eye as a result of media covering the government responding. Refugees that only have the

option of arriving in a boat or in other unconventional ways are penalized for doing so. Any arrival considered an “irregular arrival” results in mandatory detention, and a block on any application for permanent residency for 5 years from arrival (Protecting Our Streets, 2012, p. 1). Irregular arrivals are designated as such if it is suspected that claimants have been smuggled or trafficked. This occurs despite the fact that the Geneva Convention states that there should be no consequences for refugees arriving in irregular ways or without preauthorization (Seven Myths, 2010, p. 1).

Research demonstrates that punitive measures are not a deterrent for those arriving by “irregular” means or having arrived through smuggling methods (Oxman-Martinez, Martinex & Hanley, 2011). CCR’s fact sheet about myths regarding Refugees and Refugee Claimants (Did You Know, n.d.) claims that, “It is unfair and immoral to punish refugees and others seeking protection in an attempt to deter smugglers. It is also not going to work. Refugees are fleeing desperate situations and will do whatever they need to do to save their lives. They rarely know anything about the policies in place in the country they arrive in – sometimes they don’t even know where they are going” (p. 1). Molly described the problems with the punitive measures towards “irregular arrivals” in this way:

Molly: “The government gave themselves increased power to detain people without a review of detention and certain other things too, their line was this is to deter human smugglers, but deterring human smuggling by punishing the people who are using that to try to get to safety is really not productive. The smugglers are going to keep doing that, it’s just punishing the people that are so desperate that that is the only avenue that they can use to get here... one of the other things that I think is still in place that I’ve always hated and I think it is so ill-willed, is even if you have come as an irregular arrival, made a refugee claim and have been found to be a refugee– so a person that does need protection– you are barred from applying for permanent residence for 5 years, just for no reason, just to still punish you even though you are a refugee... we still want to make it clear that we don’t like how you arrived here. That means family separation, it is only when people apply for permanent residence that they can add their dependents that may still be overseas, and the government knew that, they overtly knew that, they said that family separation de-incentivizes smuggling, that’s a quote.”

Olivia also described further the implications of this punitive action:

Olivia: “Meanwhile they were amping up efforts to deter people from even getting here in the first place. We have seen a drastic reduction in what would be conceived as irregular arrivals in the last few years. We have not had a single client arrive in a container ship for example since around 2010, It’s been a few years. That is not a coincidence, I think that people who are trying to get to safety that are using smugglers overseas are just not able to as easily use that method or route.”

Olivia points out that despite the fact that she believes the amount of irregular arrivals may have decreased in the Maritime region because of the law, there is no evidence to suggest that refugees around the world are safer today than prior to the change in law. This punitive reaction has clear affects in terms of family separation. You cannot sponsor a family member to come to Canada as a refugee without Permanent Residency, but even after irregular arrival cases receive a positive decision in their case and are released from detention, the punishment continues. They are forced to wait another 5 years to be able to sponsor their family members. This begs the question, where is the benefit in these inhibitive laws.

Matt highlighted how the same thing that may make you a claimant in the first place might also put you in the situation to be forced to fake documents or deceive CBSA officers in order to reach safety. A concern is the fact that people who have no other way to escape persecution in their country of origin may have to turn to deceptive or unconventional methods of arrival. RCs are often also put into situations where they must deceive officials to escape their situation in their country of origin. Punitive reaction or punishment because of fake documents, lack of documents, or deception of immigration officials is in conflict with the UN Convention Relating to the Status of Refugees, because this convention states that RCs should not be penalized for entering a country illegally (Did You Know, n.d.).

Matt: “The very reasons that give someone a compelling refugee claim in Canada, so for instance you are a Syrian male of mandatory military service age in Syria, that is a great

reason to get refugee protection in Canada, but that is a great reason for a visa officer reviewing your visitors visa application to reject your visa, they'll say well you want to come here to claim refugee status and based on what they're assessing they would reject the visa application because of that, well I've seen cases where people have been put in very compromising positions when they are overseas in order to say contact in order to say convince a relative to give them their banking information to include it in their visa information because they are so desperate to make it to Canada and they know that they need to get the visitor visa first. They know they need to disguise their fear in their visitors visa to make it here, and then, anyways, so that's kind of like a hurdle before you can even make it to Canada in the first place. ... So if they show up and their spelling of their name on their birth certificate is different from the spelling of their name on their passport that could be a reason that an officer might be concerned about the truthfulness of their identity, if they were questioned at the border and lets say the case in the US, so they were relying on an anchor relative to enter Canada and assert their claim if their anchor relative were questioned by the officer and gave different answers about who the person was, like who the person was, where they were born or what their moms name was, what the village is like where they're from, things like that, if answers were contradictory, those could be grounds for a person to be detained. It is alarmingly easy for a person to end up in immigration detention. The previous noncompliance, if a person has had immigration dealings in Canada in the past, and they may have missed appointments or they decided not to show up for removal, or any number of things, you can end up in immigration detention, and the really awful thing about being detained for immigration reasons, is you are not held in some separate immigration holding facility, some of those exist but the vast majority of immigration detainees are held in provincial correctional facilities where you're being held with maybe people who are serving their sentences."

One of the major issues regarding the increased use of detention is that there is a lack of regard for the liberty of claimants. "The logistics of representing detained clients are much more complicated than is the case when clients are able to attend at the lawyer's office for meetings. Lawyers encounter lengthy delays in getting access to their clients. Security procedures at detention facilities create major scheduling problems" (Justice and Legal Aid Drivers, 2015, p.

1). SP participant Molly identified specific legal issues with the detention of RCs in Nova Scotia:

Molly: "When the government chooses to detain people because their identity is not properly established or they're considered a flight risk or considered a danger to the public, they can detain people so often times for example, if someone has used a false identity or are coming to Canada without documentation there is a time when they might not be able to positively affirm their identity so the government of Canada has chosen to detain people in that situation. They detain them and what happens is that they are put in jail here because there is no immigration detention center, only a few Montreal and Vancouver, but here there is not so they are taken to Burnside to the correctional facility and treated as

offenders. You can be going to visit and they say, ‘what offender are you here to see’, [and you correct them by saying,] ‘uhh detainee’, and they reply that this is the same thing, when no actually it’s not.”

Beyond the obvious restriction of liberty that comes along with indefinite periods of detention, there is also the issue of how being detained can be a barrier to the claims process. Liam pointed out that when you are detained, “obviously your ability to provide evidence of your claims and obviously your liberties are at stake, and there are all kinds of issues.” Another issue is that a correctional facility is “the absolute worst atmosphere” in which to work on a refugee claim. A SP participant pointed out that there are often not the needed services available to RCs in the jail environment. The focus of RCs in detention is not primarily on forming the claim; it is about getting out of detention as soon as possible. Many SP participants described the detention practices as both harsh and punitive. One participant believed that detention should be considered the most important necessary reform that should take place regarding refugee law and policy. Nearly all SP participants identified this as a major problem with the current law.

Canada only has 3 designated immigration detention centers, in Toronto, Montréal (Laval), and Vancouver (Canada Immigration Detention, 2012). As mentioned above, since there is no immigration detention center in the Atlantic Provinces, people who are detained for immigration or refugee related concerns are placed in the general population at the Central Nova Scotia Correctional Facility located in Burnside, Halifax Region. This facility is medium-security and has received flak recently from media critiques on several issues including that it is overcrowded and being the site of violence due to understaffing (Boon, 2016). It has even been reported by correctional officers there that it is the offenders that “run the show,” suggesting a lack of control or power being held by the prison staff (Boon, 2015, p. 1). There is no separation between the detainees and the general population. The concerns that arise from this arrangement

are endless. This is a potentially dangerous environment, if not at least intimidating and we are sending people who come to our land-seeking asylum there for indefinite amounts of time. They are treated in the same way as those that are awaiting trials or have been convicted of crimes. An SP participant reflected upon her conversation with the correctional officers at this facility. She had inquired about whether there could be a different way of dealing with detainees as opposed to offenders.

Olivia: “I suggested to guards [at Burnside Correctional Facility] that there really should be a different protocol and they were like ‘believe me you don’t want people treated differently at all in here’. I hadn’t really thought about that before. If they had special needs they would be subject to a lot of stuff. Believe me you don’t want anyone getting special anything in here.”

One participant mentioned that she believed that there was a lack of awareness of this issue in particular. There is a misconception that even though they are placed in the same facility, they must have a different arrangement. Molly said, “I think a lot of people who have never come up against this issue think that oh, well you know they are not just treated like criminals, they must be in their own wing or treated differently or not have to wear the orange jump suit.” The effects of this treatment and environment on a RC would be major. SP Participants added that only can it be a self-fulfilling prophecy since the first friends and acquaintances that many people meet when arriving in Canada in this way may be criminals, but it could also cause further trauma in the case that individuals’ persecution had resulted in a distrust for authority figures. They may believe that they are going to be viewed as criminals. Olivia said, “Of course it has negative impacts in terms of mental and physical health. Also in terms of settlement and immigration.” A participant underlined the stress that is placed on claimants that do not really understand what the situation means.

Olivia: “A big problem is that people who are detained on immigration grounds think that they’re going to end up with a criminal record because of it. They are in an institution for



offenders, they don't see the difference, and they see that they are grouped in with people who have been convicted of offences. They are really worried and often from speaking with my colleagues a lot of clients who are detained aren't easily convinced that that detention isn't going to have a negative impact on their process here in Canada, in their refugee hearing."

There can also be dangers as a refugee in detention with the general prison population. Olivia also reflected and described this as an "environment that is potentially very unsafe for you especially if you don't speak English." Being a visible minority was also a concern in detention, and people who are Muslim often have expressed to one participant that they have had issues in detention connected to this identity. This puts minority refugee RCs at an elevated risk within the prisons of being targeted by inmates.

Regardless of whether or not RCs are placed in designated immigration detention facilities or into provincial prisons, the detention of RCs is a huge issue. I attended IdeaLAW, a conference at Dalhousie University that engaged with the issue of access to justice on a variety of foci earlier this year. At this conference one of the foci was access to justice for refugees and RCs. A major point that the panelists discussed regarding the current system is detention in the region. One panelist was Alex Neve, the Secretary General of Amnesty International Canada, and he discussed how Canada should put more focus on making sure that detention should be as short as possible, only used when other options are not available, and should have a limit rather than being indefinite (Neve, Cohen, Franco-Martinez & Tinker, 2016). He also expressed that the detention should be at the very least, based on an individual case, but of course Canada's Bill C-31 means that all that fall into the category of irregular arrivals are detained. There are many international standards in place in conflict with these laws but there is a lack of accountability for Canada to follow these standards. (Neve et al., 2016). As mentioned before, aspects of Canada's detention policies are illegal under international law. Canada is falling short in our international

obligations in this realm. Lee Cohen, founder of the Halifax Refugee Clinic was another panelist at this event that discussed the detention provisions as Canada re-victimizing refugees (Neve et al., 2016). SP informant Maya also discussed this issue in her interview:

Maya: “There are probably barriers to when they come in the country, there’s the issue, I’m sure its been mentioned that we don’t have an immigration detention facility, and the impact that can have on the claimants when they first arrive and they’re lacking documentation, they get put in the general population and in other jurisdictions there’s facilities designated for immigration detention which likely abates most of the negative impacts that the practice can have here.”

This legislation that is presumably meant to quickly deal with illegitimate or inadmissible claims can seriously harm people from these countries that are fleeing genuine persecution. Matt described this kind of legislation as acting as acting as “disincentives for claimants” and Liam called these provisions, “very harsh.” These people are treated as a threat to the security of the nation, and our society, preoccupied with unfounded fear of risk, allows it to happen. The presumption of innocence is turned into presumption of guilt. Perception of possible security issues are being valued over considerations of the actual harm being caused to the lives of RCs on a systemic scale. Victims of persecution in their country of origin are ‘welcomed’ to Canada by being assumed guilty until proven innocent.

#### **Theme IV: Maritimes**

Many of the issues mentioned by my informants have a strong connection to the region and implications for RCs in the Maritime Provinces. It is also noteworthy that most of the SP participants mentioned that since changes were made to the hearings procedure in the Maritime Region, hearings happen via videoconference. There are no IRB board members located in the Maritime Provinces, but in the past a representative would be flown to Halifax twice a year to hear cases in-person. The video conference was put in place in order to facilitate hearings without consuming resources for things such as travel for the board member hearing the case,

and without the time restraints associated with providing in-person cross country service (Video Conferencing, 2004). Conferencing was adapted as a result of the backlog of claims and long waiting times (Response to Report, 2016). Videoconferences have been used in some capacity for quite some time, but use of primarily videoconferences in the Maritime Provinces is a more recent development, likely directly connected to the change in timeframes leading up to refugee hearings. Liam reflects upon the fact that hearings take place over videoconference with a representative from Montreal:

Liam: “The other thing about this region, it used to be that the refugee board members used to come to the Maritimes, and have the hearings in person, now most of the hearings are via video conference. You lose some of the complexities of person-to-person interaction and especially being in terms of assessing the credibility of persons seeking protection, I think some of it is lost. My opinion, I don’t have studies to support that, but however good the technology is for video conference, you can see the person and all that, but it’s not the same as being in the same room as them.”

Maya also had concerns about the impersonal feeling of a videoconference in terms of assessing credibility.

Maya: “One issue that I see when I come on the file and go through the hearing process here in Halifax we do the hearings through video conference, so the board member and the claimant aren’t in the same room, to the extent that a lot of these cases come down to credibility determinations, I cant think of any particular example where I would say that the fact that we’re in a video conferencing situation has impact on the outcome but you talk about tryers of fact and because they are the ones sitting in the room, they are able to better assess credibility, there may be some issue with that. And that’s a resource issue, but we don’t have sitting board members in Halifax so we video conference with Montreal.”

Lorne Sossin (2003) said that “issues arise not as an abstract question of fairness but also as a concrete trade-off involving resources. Videoconferencing, for example, is far less expensive than maintaining an office in remote centres or obtaining facilities for in-person hearings. Of course, a hearing by teleconference would be even less expensive. The question is when efficiency or cost-cutting measures begin to erode the fairness of a decision-making process” (p. 7-8). This questions the level of consideration regarding ethics and fairness of

treatment of RCs at play when decisions are made to conduct videoconferencing. The CCR expresses concern with the practices of videoconference refugee hearings for a variety of reasons. They noted that there was little work done into the impact of such a hearing style before implementation. Another major concern is that the use of such a method undermines the IRB's policy of making hearings "less intimidating and less formal" (Videoconference Hearings, 1998, p. 1). In a report completed regarding the effectiveness and fairness of the video conferencing in the case of refugee hearings, recommendations were made that included not using videoconferencing for cases involving physical or sexual abuse through video (Response to Report, 2016). This implies to me that traumatic cases should not happen through videoconference, but it is not exclusively physical or sexual abuse related cases that are highly traumatic to individuals. Though this same report, that analyzed the balance between efficiency and fairness, did not find issue in the fairness of the video conferencing many SP participants had great concern about this practice. I believe that this concern about the videoconference practice is legitimate, and that more research should take place on this topic to measure the impact on RCs and the hearing of their cases.

Another concern that arose in many of the interviews of SPs was that none of the Maritime Provinces offer legal aid to immigration and refugee matters, whereas other provinces do. This is a notable inconsistency and disparity across the country (Belluz, Erauw & Showler, 2012). Legal aid is a program of cost sharing between the provincial and federal government to ensure that economically disadvantaged individuals have access to legal aid and therefore access to justice (Legal Aid Program, 2015). A quotation from the government's website about Legal Aid in Canada claims that "The Legal Aid Program also helps to ensure that Canada is able to cost-effectively meet its criminal legal aid responsibilities in federal prosecutions, such as ... its

responsibilities for immigration and refugee legal aid” yet only 6 provinces make available legal aid in their framework (Legal Aid Program, 2015). The provinces that offer legal aid for immigration and refugee matters are British Columbia, Alberta, Manitoba, Ontario, Quebec, and Newfoundland and Labrador (Legal Aid Program, 2015). Our focus for the purposes of this project is placed on Nova Scotia and the Maritime Provinces more broadly, which do not offer legal aid support for matters that fall under the Federal Immigration Act (Legal Aid Program, 2010), but it was demonstrated by participants how the lack of legal aid in every Atlantic Province has a clear effect on the RCs experiences in the region.

Liam: “Nova Scotia doesn’t provide for legal aid for refugee matters, so you are basically on your own. If you are in a province that provides legal aid this gives you opportunities as well, people moving to the bigger centers may have support too from people from their country of origin and communities there. That’s another thing that drives people to seek those bigger centers.”

Ava highlighted how she perceived the situation being an overburdened on the Halifax Refugee Clinic. As mentioned above the Halifax Refugee Clinic is a not for profit and non-governmental organization that provides settlement and legal services to RCs free of charge.

Ava: “[There is] a small staff here trying to do things on their own [while] you see in [bigger] urban centers there are large teams of people doing the same. [The staff at the clinic] is being paid minimally and ... the work that they are doing is highly emotional and they are invested in it. There’s reasons that it’s not happening the way it should and I would like to see that change.”

Despite the huge gap in services in the Maritime Provinces that the HRC does their very best to fill, there are concerns about lack of funding and resources for the clinic. The Law Foundation of Nova Scotia, other donations, and fundraisers fund the clinic. The Law Foundation of Nova Scotia is an organization that grants funds to many different groups for projects that support their objectives of “examination, research, revision and reform of and public access to the law, legal

education, [and] the administration of justice in the Province” (Law Foundation of Nova Scotia, 2015, p. 1).

Molly: “[The HRC] existing and the fact that there is no legal aid in Nova Scotia for immigration matters, including refugee claimants, or New Brunswick or [Prince Edward Island], that is why they exist. Which is kind of frustrating that the government won’t provide that service but on the other hand now that they won’t exist, won’t fund us to do that either. [The HRC] is privately funded, funded by the Law Foundation of Nova Scotia.”

Yet, Molly also acknowledged that there might be a redeeming quality to the fact that there is not legal aid in the region. The HRC provides a more holistic approach for their client that is not possible through legal aid programs.

“We feel that people get a lot more attention with [the HRC] than they would with a legal aid lawyer, the time that we can put into things and that we are a holistic kind of body that provides not only helping you with your legal services, but also the many settlement services that people need when they are in this situation, they get it all under one roof.”

Nonetheless, there is a clear disparity in terms of legal aid offering. The Maritime Provinces do not have access to legal aid and this puts RCs without access to the HRC at a huge disadvantage.

All SP participants reflected upon the role and importance of the Halifax Refugee Clinic in providing access to justice and services in our region. Despite apparent limitations, one thing that cannot be understated is the importance of the Halifax Refugee Clinic in this region. The HRC is an example of an organization working against the existing social structures in Canada that disadvantage RCs and refugees. “The Clinic was born out of the failure of both the federal and provincial governments to maintain funding to Nova Scotia Legal Aid to provide legal services to refugee claimants” (About Us, 2012, p. 1). They are a not-for-profit and non-governmental organization that assists refugees in meeting a variety of their needs and navigating the Canadian refugee system. The HRC bridges a gap in funding and services. They amazingly adapt to challenges or changes in law, despite their limited manpower and resources. Even though they do so much, with such limited resources they cannot feasibly reach and/or

support every RC in the maritime region. The effect of this disparity is more prevalent in rural areas or areas that are not geographically close to Halifax, where the clinic operates. Transportation is not always accessible to claimants to make the trip in to work with the HRC on preparing their claim or accessing other services that the clinic provides.

Matt: “ In the Maritimes there is no legal aid funding for refugee claims. ...You cannot get a legal aid certificate to go to a lawyer to represent you in your refugee claim so that issue is alleviated by the Nova Scotia barristers society in Nova Scotia, by funding the Halifax Refugee Clinic which is a non governmental organization which provides free legal representation to refugee claimants in Nova Scotia that cannot afford a lawyer, so there’s no legal aid system but at least the clinic exists though the clinic is drastically underfunded, under resourced, and they do far more than they should be able to do with the limited budget and staff that they have, that’s just for Nova Scotia. There’s no clinic in New Brunswick, [Prince Edward Island], or Newfoundland. When I was working at the clinic we would often be contacted by people who were in those other provinces and they needed a lawyer, and then the clinic on a shoestring budget would be in the position of either travelling to NB to represent that person at their hearing or finding a way to financially support that person to travel to Nova Scotia so they could be in Halifax and work with us, but that geographical issue is a huge problem, it’s obviously really difficult to work with someone if they are a 5 hour drive away from you”

Liam: “I know of people outside of the city who have gone through the refugee process Outside of the city- there are people outside of the urban centers. Transportation is an issue for these claimants, so there are advantages to being in the city, that’s why a lot of them just come to the airport or Halifax and that’s where they stay.”

Ava: “That urban/rural divide is really relevant in terms of support of services, access to services, opportunities for integration and community engagement. It really varies from community to community.”

When I asked SP participants where RCs would go for help if the HRC was not available to them, most SP participants replied that there would not be many feasible alternatives available. There was suggestion that people may leave the region and not make their claim here. Of course this is not always possible for claimants with limited resources for transport and further resettlement. There was also suggestion that people might decide to self-represent, which results in an entirely unfair situation and disadvantage in preparing a strong case for one’s hearing. Legal expertise is vital to completing a strong claim. Olivia and Ava, reflected on these themes:

Olivia: “Some might be able to find pro bono representation by lawyers but many would self-represent, which is certainly detrimental to a positive outcome and then there’s some that would be forced to go to a province where they can get legal aid. “

Ava: “I don’t know where they would be going for help [other than the HRC]. I’ve watched the clinic grow from a very small operation to a very professional multiservice organization in the last 10 years and I can’t speak highly enough of the type of work that is happening, the quality of the work that is happening, and the quality of the individuals that work there. It is a remarkable place and I think that the gaps would be even larger if the clinic was not available. It’s a vital service to a very vulnerable group in our community.”

It was a consensus among all SP participants that the HRC is an indispensable resource, and without it there would be much less access to justice for RCs in the region. Maya discussed how the HRC staff provides invaluable legal advice and services, they also “harness” the volunteer and community support in the area.

Maya: “If there wasn’t a clinic, these individuals would be left to navigate a really complex legal system that can have some serious consequences on their lives on their own. I know the clinic does a lot of work up front, I don’t really know a lot of the mechanics of how they get their clients, I think sometimes they get calls from CBSA themselves, people walk in off the streets having arrived, they get calls from around the region not just within Halifax, there have been claims from other provinces in the Maritimes as well, they are really taking a lot of work load not only from our immediate community, and if there wasn’t a clinic these people wouldn’t have access to legal aid or other types of legal representation which can have some drastic outcomes when you’re dealing with some pretty complex legal issues, and there is a legal test that you have to meet if you want to be declared to be a refugee, and when they are working with a claimant they are asking questions. Claimant comes in and gives their story but there may be holes in the story, things that a layperson might not think is relevant or important, the clinic staff is able to ask the questions that illicit responses that indicate whether or not the certain part of that test is met and as volunteer counsel, when a claim arrives on my desk, a lot of that leg work has already been done. And to have a lot of the assistance of counsel at the hearings, to deal with issues of credibility, if you’re self rep[resented] how can you argue your own credibility. You know, to have that independent counsel there to argue these are the reasons why this person is credible, have that advocacy there which I don’t know without the clinic if, I think you almost need something like the clinic to harness the volunteer counsel within the community, I think that there are still people that would still do it on their own but the clinic I think definitely has an invaluable role to play.”

The RC participants also had nothing but positive things to say about the efforts of the HRC. All of the RC informants were clients of the clinic in some capacity.



Sofia: “My experience with the clinic was really unique, I felt like I was part of their family... They have done everything, and they are willing to think outside of the box, because everyone has a different need so they are willing to step out and suggest things. Everyone was, it was just great.”

Jack: “The clinic are doing a very amazing job, from my situation and other situations I saw there, they are trying their best, they are limited like they don’t have, they aren’t government funded they are funded by the law society, well with the resources that they have they are doing a great job, like they helped me in everything that they could, and their settlement department is really good too, the legal is great. They just, to me they did their best, that’s nice to see you don’t see so many organizations work that fast and well.”

Yaseen: “The girls are amazing, they are busy and they do the best job that they can. I think it’s like when you are lost on a highway or like a forest here let’s say, and then you suddenly see a hiker coming to you, oh do you need help? So yeah as soon as you call them, they walk you through the steps. For me, since I had the things ready it was much easier for both of us, some people they don’t have any idea what they should do. So they are really good, it’s really good, and it’s all free.”

There were sentiments from most SP and RC participants that the Halifax Refugee Clinic should be given more resources and support. Ava said that “We are already looking at a staff that is completely overwhelmed with requests, tapped and they are very stressed and tired.” Sofia also expressed this opinion: “If they get more funds I think they will be able to give more.” Jack: “They are doing their best and I think they are not funded enough, to me, that’s what I saw, that’s the only thing I could say, and the amount of services they offer for such a smaller organization are really great.” The Halifax Refugee Clinic is filling a huge gap in services, and is providing access to justice for people who have been inflicted by persecution in their home, and they need support in order to continue to do what they are doing to the best of their ability.

### **Theme V: Permanent Residency Application**

Permanent residency (PR) in Canada is described as the “right to live, work, study and remain in Canada under specific residency obligations” (Claimant’s Guide, 2016, p. 1). “If the IRB accepts your claim, you will receive the status of ‘protected person.’ This means you can stay in Canada and you can apply to become a permanent resident of Canada” (After You Apply,

2012). “You can apply for permanent residence anytime after being notified by the Immigration and Refugee Board (IRB) or by CIC that you are a Protected Person, unless you have been named as a Designated Foreign National” which, as mentioned already, excludes RCs from permanent residency application for 5 years (Applying for Permanent Residency, 2015, p. 1). Despite the fact that the refugee determination process is expedited for RCs as discussed above, the PR applications those that went through the refugee determination process in Canada takes a long time. This elongated wait time puts peoples lives on hold in a variety of ways. Even after being accepted as a refugee in Canada, people who went through the refugee determination process as a claimant often wait long periods of time for their PR. This is on contrast with privately sponsored or government-sponsored refugees who receive their permanent residency upon arrival in Canada (Understand Permanent Residence Status, 2015). The problem is that these people are just as much refugees according to legal definition than government or privately sponsored refugees but they are made to wait much longer periods of time to obtain a more secure legal status, PR, in Canada.

The biggest concern that arose from the interviews I conducted with RCs was the unfair waiting and procedural obstacles that came into play after they received their refugee status in Canada. All participants were waiting at the time of the interviews to hear if they would be awarded PR and they emphasized the frustration of this wait. This creates further barriers to integration and settlement. “In recent years an increasing number of Convention Refugees have been unable to become permanent residents or have been forced to wait long periods before they become permanent residents. Without permanent residence, these refugees are denied a whole range of basic rights” (Refugees in Limbo, 1999, p. 1). RC Participants took issue with the long wait as it produced barriers to their settlement and moving towards their desired futures in

Canada. Security checks are the reason behind some people's waits, while delays are also sometimes explained by a lack of people available to complete reviews of PR applications. The government does not have any accountability in that it is not obligatory for them to process a decision on a PR application in a specific period of time (Refugees in Limbo, 1999). Some refugees like Jack and Yaseen are waiting extensive periods of time, much longer than other people, with little explanation as to why. Yaseen reflects on the frustration of waiting for PR, after his application was lost and he had to recomplete it, just to continue to wait a long period of time:

Yaseen: "The first step is fair. But after that it is not at all. So for example, in my case I have been here [in Canada] for 6 years almost, and I still don't have PR. I'm not a permanent resident yet. So, the first application was lost, and I had signatures from Canada post sent to immigration, they said that they don't care, apply again. January 2013 and we're now April 2016 and I still don't have the PR. So many people they just get it in a couple months."

The Permanent Residency status can be stressful and involves many steps and forms. Sofia described these procedures as unnecessary. She and Yaseen took issue with the fact that they would have to renew their work permit annually until their PR status is granted.

Yaseen: "It's a little bit of a hassle renewing a work permit every year. Now the process takes four months."

Sofia: "The main thing for me was the waiting because also I don't have family here, and when you are out of school and out of work it is not easy to make relationships, so there is the emotional part that must be considered, the psychological part and it is not considered there. The work permit, working should be 4 months I had to wait just to get the work permit, and now it's just for 1 year, if after a year I do not have the PR, I still have to renew it. Unnecessary procedures."

The barriers go beyond the wait or procedural responsibilities that must be kept up with before receiving PR. Permanent Status in Canada means more job possibilities and hence smoother settlement and integration in RCs new home; refugees without PR status "face discrimination in access to education, and employment" in Canada (Refugees in Limbo, 1999).

Some educational institutions are inaccessible to refugees as they have to pay international student fees, which are much higher than the average person can afford. Notable in the interviews I conducted was the theme of employment in particular. Some workplaces require PR as a minimum for their positions. Two of the RC participants described the barriers to obtaining jobs that they could demonstrate themselves to be great candidates for due to their substantial and applicable experience and qualifications. Refugees are people who have faced great hardship and my informants went through the refugee determination process in Canada, it is unfortunate that their access to education and employment be limited by their status even after they have proved that they are legitimate refugees.

Jack: "I have to be honest, in my case [the refugee determination process] was fair, I found no obstacles though I am finding it way harder after I won the claim. My PR, permanent residency application it's taking forever. The screening they are doing here within Canada for people with my case, protected people, is really different, being a male, and single alone in Canada, for them is a big issue, so I did a lot of interviews with all kinds of security bodies in Canada and it still didn't go through. Some other claimants took less time or more time in their refugee claim and when they won it they got their PR way faster than me, so it seems like it's easier on one side, harder on the other. And after I won the claim, just after that, the waiting time for permanent residency was like 18 months. And, I passed that a long time ago, 3 or 4 months ago, and so the problem is, and now it went down it went up to 29 months and now it went down to 23, and I have like in 2 months I'll be done the waiting time and still haven't gotten anything. It's frustrating because my life is stopped, like froze at this moment, because it is really hard when trying to find employment to explain to them work permits, and I'm not even on a work visa, so they'll be like, 'okay are you like a foreign worker', 'no I'm not', so [they ask] 'what are you?' you know? To explain to for example, construction foremen, what are protected people or a refugee, that's awkward. On the phone when you start that they will be like okay, they'll put the phone [away from their face] and let you finish and then say, 'thank you, we'll call you,' they never do. So that's one thing, the other thing, I'm a merchant marine officer, and to work in my field I need a Canadian seaman book, and in order for me to get that I need to be a permanent resident, that's the minimum so with that being said, because of that, not having permanent residency, my qualifications, everything I did in my life, which is studied for 4 years, graduated with the honours and all that, and worked as a second officer, all that is gone... I lost lots of actually very good jobs that I could have if I had permanent residency, like Irving shipyard, they're asking for people with experience in ship building, I rebuilt 3 ships before I came to Canada. I worked on dry docks, I worked on ships, that's all I did so I applied. They were like asking for people for many jobs that actually required specifically what I had for qualifications, it was really easy, ... but

security clearance for Irving needs you to be a permanent resident so I lost that as well... So the jobs I lost, are just beyond. You know, to me it is really hard because it is just a waste, I could do this or I could do that. I worked, I am happy to pay taxes. I'm just waiting for Nova Scotia to decide if they want [to give me PR] or not."

Yaseen: "for example some really really great jobs with the government need security clearance, need [PR] or citizenship. I've gone for jobs with the defense department, IT [Information Technology] jobs, they're really great, like with the Canadian security agency, it's a really good job! Like, helping with Canada's security, especially with all the terrorist things going on. I speak four languages and have IT skills, so yeah but I can't do any of this [without PR], but other than that, we can't travel."

While RCs are waiting for their PR status, they are forced to delay on other endeavors. Many jobs require PR and that is a huge issue, many refugee claimants have education and experience that could add to our economy and fill jobs that we need, but they are forced to wait and take other jobs in the meanwhile. There is so much discourse surrounding the "bogus refugee/welfare cheat" yet we are presenting people with barriers to them achieving their potential in the job market. The jobs that the delays in PR processing are preventing people from obtaining are jobs that would mean paying back high taxes to the province, a win-win situation for everyone as Jack describes:

Jack: "That's a waste of everybody's time; my time, Nova Scotia's time. Everybody is losing. If I got, for example if there was a job for almost 100,000 a year, that's gone right so that's taxes to the province! It's easy and simple, it's a win-win situation. The only thing that I don't understand is I know sometimes the routine or the amount of applications but I do know that lots of other applicants got their papers done and the security part of it is done in my case because I did the interviews so they said security wise you're good. So, all I have I don't know what that is."

Family reunification is also reliant on obtaining permanent residence. "Convention refugees who have not been landed cannot bring their spouses and children (let alone other family members) until they become permanent residents" (Refugees in Limbo, 1999, p. 1). An elongated wait for a decision regarding receiving a positive decision on application for PR status means that people cannot privately sponsor their family members that may still be facing

persecution in one's country or origin. The implications of this wait mean that family reunification is difficult to pursue. Some may be able to find a group to privately sponsor their family member, as Yaseen is currently in the process of doing for his brother, but if you find yourself unable to go this route, your family member may be forced to remain in similar circumstances that have warranted your refugee status as you await PR status.

Jack: "The refugee claim is really easier before and it was ok, but after that the problems. I was helping people who just came from Syria, they don't speak English they don't integrate or know anything in the society, they got their PRs in the airport, so that was a huge difference plus ...I was going to sponsor my brother and bring him here, ... and because I didn't have my PR my family weren't sure, his parents I mean, they were scared if they send him to some other country, a neighbouring country, I wouldn't be able to [sponsor him] and that's right, I might not be able to bring him here because I still don't have permanent residency so that was one more thing and once I get that my brother we will get him outside Syria because he is just in high school now, and if he doesn't pass high school, he didn't pass once, now he's trying to do it again, if he doesn't pass the army will take him to fight. And in that war, nobody is right. I don't know who's right and who's wrong. You can't fight somebody when you don't know what you're fighting for or who. Lots of innocent people are in that fight, dying, so that's the same main reason I'm here. I didn't want to kill anybody. It's that simple. In his case it will be the same thing and one of the barriers [is] ... not having PR, I wouldn't be confident that I'd be able to bring him here."

Long delays in family reunification increases the risk to family members "who may be in conflict zones or refugee camps" or other precarious or dangerous situations (Family Reunification, n.d., p. 1). The psychological effects of the wait are also considerable for family members in both locations (Family Reunification, n.d.). The liberal government is stating that they will focus on family reunification during their coming time in office, and I hope to see this occur, but first must come the accelerating of the PR decision-making process (Mas, 2016). It must be made more efficient. The potential effects of the wait of PR are extensive, and there are barriers that still faced my informants even after their positive decision was obtained in their refugee hearing. In order to create further justice to RCs and better support refugees, the lengthy PR process must be addressed.

### Conclusion

*“If you’re not careful the newspapers will have you hating the people who are oppressed, and loving the people who are doing the oppressing.” –Malcolm X*

There is certainly room for further research on the effects of law and policy on RCs. There were a variety of important issues that arose in interviews that would not fit into the scope or size of this project. Speaking to SPs, as well as people who have gone through the refugee process, is crucial. Ava articulated: “My recommendation always is that our service providers are a wealth of knowledge, they often have limited training specific to their work and they are learning a lot of the skills and strategies that they employ with refugees in their practice, we are not learning what their challenges are and their successes are in a substantial way so engaging our immigrant service providers more in the writing and critiquing of legislation is really important. And of course, engaging refugees themselves we are not doing a good job of that either. So, I find those that are writing and creating policy are often very removed from the world of refugee protection and that is often very problematic.” There must be work done on this topic so that the law does not continue to detrimentally affect RCs.

I started this work because I was interested in the way that refugee claimants experience the law in Canada and by asking RCs and SPs about the practical implications of law I have uncovered a variety of important themes. Through this process, I discovered that though Canada has a good general framework for a fair refugee determination system, there have been recent changes to the law that are less than ideal for RCs. The information uncovered regarding time frames, detention, permanent residency application are all very important to consider in relation to the power that the state has over refugee claimants, and what the laws and policies that are imposed mean for refugee claimants. Something I considered of particular interest is that not

only are there barriers in the asylum-seeking process for the most disadvantaged of RCs, there are also barriers to refugees after they receive a positive decision and refugee status, as demonstrated by my informants discussion of the PR procedure. In my thesis I have described ways the Maritime Provinces are unique from more central regions of the country. The themes discussed impact RCs in Nova Scotia differently because of a lack of legal aid funding, immigration detention centers, IRB member representation, and other unique circumstances that have lead to the crucial development of the HRC. In the future, I hope others will build on the same tenets that I believed crucial to my work. When studying the implications of policy one must discuss the issues with those that truly experience the effects of such policy.

I hope to develop further upon this kind of descriptive work so that it can evolve into something that more analytically examines how institutional power impacts the experience of RCs in Canada. This project adds to the current body of knowledge in terms of what is seen by RCs and SPs as significantly affecting the experiences of refugee claimants and what the implications of these are, and opens up opportunities of more research regarding the themes and associated experiences described. In terms of intersectionality, it would also be conducive to this project to explore more specifically how different RC groups in terms of gender, race, sexuality, nation, class, and other identifiers can affect different experiences. The themes that arose from this project could potentially be researched with similar methods in a more targeted manner and then analyzed more in-depth in the socio-legal tradition.



## Appendix A: Certificate of Ethical Acceptability for Research Involving Humans



**SAINT MARY'S**  
UNIVERSITY SINCE 1802

RESEARCH  
ETHICS BOARD

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### Certificate of Ethical Acceptability for Research Involving Humans

This is to certify that the Research Ethics Board has examined the research proposal:

<b>SMU REB File Number:</b>	16-145
<b>Title of Research Project:</b>	The Myth of Generosity: The Profound effect of Law and Policy on Refugee Claimants.
<b>Faculty, Department:</b>	Arts, Sociology and Criminology
<b>Faculty Supervisor:</b>	Dr. Darryl Leroux
<b>Student Investigator:</b>	Emma Macintosh

and concludes that in all respects the proposed project meets appropriate standards of ethical acceptability and is in accordance with the Tri-Council Policy Statement: Ethical Conduct of Research Involving Humans (TCPS 2) and Saint Mary's University relevant policies.

Approval Period: February 09, 2016 – February 09, 2017\*

#### Continuing Review Reporting Requirements

##### ADVERSE EVENT

Adverse Event Report: <http://www.smu.ca/academic/reb/forms.html>  
Adverse events must be immediately reported (no later than 1 business day).  
SMU REB Adverse Event Policy: <http://www.smu.ca/academic/reb/policies.html>

##### MODIFICATION

FORM 2: <http://www.smu.ca/academic/reb/forms.html>  
Research ethics approval must be requested and obtained prior to implementing any changes or additions to the initial submission, consent form/script or supporting documents.

##### YEARLY RENEWAL\*

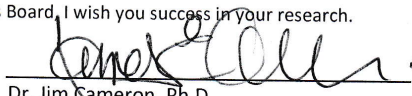
FORM 3: <http://www.smu.ca/academic/reb/forms.html>  
Research ethics approval is granted for **one year only**. If the research continues, researchers can request an extension one month before ethics approval expires.  
FORM 4: <http://www.smu.ca/academic/reb/forms.html>  
Research ethics approval for course projects is granted for **one year only**. If the course project is continuing, instructors can request an extension one month before ethics approval expires.

##### CLOSURE

FORM 5: <http://www.smu.ca/academic/reb/forms.html>  
The completion of the research must be reported and the master file for the research project will be closed.

\*Please note that if your research approval expires, no activity on the project is permitted until research ethics approval is renewed. Failure to hold a valid SMU REB Certificate of Ethical Acceptability or Continuation may result in the delay, suspension or loss of funding as required by the federal granting Councils.

On behalf of the Saint Mary's University Research Ethics Board, I wish you success in your research.

  
Dr. Jim Cameron, Ph.D.

Chair, Research Ethics Board, Saint Mary's University

## **Appendix B**

### **Questions for Refugee Claimants**

- When did you begin your claim for asylum in Canada?
- How long did you have to prepare your claim before the hearing? Did you find you had enough time to prepare your claim?
- How long did it take to get a decision on your case, or have you yet received the decision?
- What was most memorable about the asylum seeking process in Canada?
- What challenges did you face in seeking asylum in Canada?
- How do you think procedures and policy regarding seeking asylum are fair or unfair in Canada.
- What would you like to see changed about the process and regulations regarding claiming asylum in Canada?
- What would you like to tell other refugee claimants coming to Canada as advice in navigating the claim process?
- Do you think that being in the Maritime Provinces influenced your experiences of making a claim?
- Could you comment on the Halifax Refugee Clinic's a bit in its capacity and ability to help you in your claim?

### **Questions for Service Providers**

- In what capacity have you been involved with refugee claimants?
- How long have you held such a position?
- What laws do you think are providing barriers to asylum and justice for claimants?
- Are there challenges working within the existing legal framework, what are the challenges?

- What laws are in place that are aiding the refugee determination process?
- In your position and first hand experience what are the more general effects of policy changes made by the past conservative government?
- Do you think there is something unique to this region or the Maritimes in the practical implications of refugee law? If so, what would that be?
- Can you comment on the clinics role in the region? How would the experiences of refugee claimants in the region be affected if there was not this clinic?
- What changes would you like to see made to the refugee policy and law structure?
- Are there other comments or important issues regarding the experiences of refugee claimants that you would like to discuss?

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