

Asylum and resettlement in Canada

Historical development,
successes, challenges
and lessons

a cura di
Ervis Martani
Denise Helly



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è il marchio editoriale dell'Università di Genova



This project has received funding from the European Union's Horizon 2020 research and innovation programme under the Marie Skłodowska-Curie grant agreement No. 835466. The content of this publication reflects only the authors' views and the Agency is not responsible for any use that may be made of the information it contains.



UNIVERSITY
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*Il presente volume è stato sottoposto a double blind peer-review
secondo i criteri stabiliti dal protocollo UPI*

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ISBN: 978-88-3618-194-0 (versione eBook)

Pubblicato a dicembre 2022

Realizzazione Editoriale

GENOVA UNIVERSITY PRESS

Via Balbi, 6 – 16126 Genova

Tel. 010 20951558 – Fax 010 20951552

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<https://gup.unige.it>

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Book presentation

For quite some time, migration has been and continues to be one of the main concerns in a rapidly evolving and transforming world. By the year 2020, there were more than 280 million international migrants across the globe, that is, about 3.6% of the world's population. There were more than 80 million forcibly displaced people at the end of that year, with 11.2 million newly displaced people that same year. Of this figure, 26.4 million belong to the category of refugees, who have fled for a variety of reasons, including persecution, violence and human rights violations. During 2019, Canada resettled 30,100 refugees, surpassing the United States as well as Australia. Three in five refugees who arrived in Canada in the past decade have been admitted under the private sponsorship program. Meanwhile, in the same year in Canada, 58,378 people claimed asylum, about 60% of whom were approved. In 2021, around 405,000 more people were admitted as permanent residents in various immigration categories: 253,000 economic immigrants, 81,000 family class immigrants, 60,000 refugees and protected persons, and 11,000 in other immigration categories. No wonder Canada is considered the world leader in the management and protection of immigrants and refugees. Notwithstanding this generally positive perception, the Canadian protection system exhibits a series of deficiencies, ranging from detention policies and deportation in the case of asylum seekers, down to the integration obstacles and other associated challenges encountered by resettled refugees. In addition, other challenges including violence, vulnerability, denial of rights, and growing hostility toward migrants and refugees undermine the overall health and image of the system.

This book is a project aimed at addressing this topic and the challenges associated with it. More specifically, the overall goal of it is to provide readers with an in-depth account of Canada's refugee protection programs, their origins and development, their achievements, challenges and metamorphoses, with a particular accent given to the role of community involvement in these programs. It is intended to offer a comprehensive and a thorough account of the entire system and of the role of community engagement in its success and refinement. However, the book is designed to appeal to a wide range of audiences and it may be of greater interest to European readers since some features of the Canadian immigration system presented here are also to be found within the European context.

In the first part of this book, the authors focus on Canada's migration policy since the *British North America Act* and discuss the challenges of contemporary Canadian migration policy. Here readers can learn about the history of the Canadian protection system and compare it to the development of the refugee protection regimes across Europe.

The second part explores *In-Canada Asylum Program*, which was designed for people seeking protection from within Canada, i.e., at a port of entry or within the country. This program bears certain similarities to traditional refugee protection in Europe (one can try to gain access to it, and their attempt will be assessed as to whether or not the person is entitled to protection).

The third part of the book focuses on the *Refugee and Humanitarian Resettlement Program*, which is aimed at people located outside of Canada who are in need of protection, who are selected abroad, and who undergo various screening processes before being allowed to come to Canada as permanent residents. In a similar vein, several European countries have recently adopted resettlement programs in which refugees are selected on the basis of cases submitted by UNHCR or via screening missions abroad. However, the status of resettled refugees varies upon arrival, which represents a complex facet of the European framework. While some countries grant permanent residence (e.g., Belgium, France, Ireland, the Czech Republic, Finland, Portugal, the United Kingdom, and Sweden), others grant only temporary residence permits (e.g., Italy, Denmark, Norway, Iceland, Germany, the Netherlands, and Spain). Of particular interest to European readers might be the description and analysis of *Canada's Private Sponsorship of Refugees (PSR) Program*, introduced in 1976. Through this program, private citizens and organizations voluntarily participate in the resettlement of refugees by identifying them and providing them with financial or a combination of financial and in-kind support for one (1) year, or until such time as they are able to be self-sufficient. Due to its manifest success in Canada, the program has been widely promoted around the world, including Europe, as a best practice on the issue. Since the onset of the Syrian refugee influx, European Union (EU) institutions have called for the establishment of private sponsorship schemes as a means to secure and legal access to Europe. Various EU and non-EU countries have established short-term private sponsorship programs in response to the increased refugee flows. However, the Canadian PSR program is the product of a set of unique – and favorable – national circumstances and therefore may not be as easily transferable to other settings. Nonetheless, European countries can learn from Canada's experience with private sponsorship of refugees and further assess its appropriateness and applicability in the European context.

Lastly, in the fourth and final section, the authors discuss the involvement of the community stakeholders in the protection of refugees. In particular, the authors focus on the role of civil society organizations in the collective sponsorship of refugees in Quebec and on the solidarity with those crossing the border between the United States and Canada. In addition to the political commitment to resettle refugees, the active involvement of private sponsors and the resources made available to them constitute key aspects of the Canadian program. While the mobilization of civil society organizations and citizens on behalf of refugees is widespread in Europe, in Canada, the level of mobilization has reached tremendous proportions. In fact, over 2 million Canadians, with or without prior involvement with refugees, have reported having participated in the Syrian operation and over 250 communities across Canada have sponsored refugees.

Policy makers, students, social scientists, lawyers, educators and the general public interested in refugee protection systems will find in this book useful details about the Canadian system and will be able to compare and learn from how the Canadian experience could be applied to the broader context.

List of contributors and chapters' presentation

Ervis Martani is post-doctoral fellow (Marie Skłodowska-Curie fellow) at Università di Genova, Italy. Since 2012, he holds a PhD on «Democracy and Human Rights» from the University of Genoa. From October 2019 to September 2021 he was postdoctoral fellow at Institut National de la Recherche Scientifique, Canada. From May 2016 to September 2019, he was the chair holder of the UNESCO Chair in «Multiculturalism, Intercultural Dialogue and Human Rights in the Balkans» at Marin Barleti University in Albania. He was also guest lecturer on Human Rights at Aleksander Moisiu State University. Ervis Martani's research works mostly focus on refugee integration issues, intercultural dialogue, human rights and minority rights.

Denise Helly is full professor at the Institut National de la Recherche Scientifique (INRS), in Montreal, Québec. Dr. Helly was trained in anthropology (PhD, 1975), sociology, political science and sinology in France, and specializes in ethnic and religious minority studies. Her publications include 11 books and a large body of articles on topics ranging from Chinese diaspora and Chinese minorities in Canada to Canadian multiculturalism, Quebec's policy towards ethnic minorities, citizenship and nationhood, private international law and Islamophobia. Her ongoing research interests include the recognition of Muslims in Canada and Europe, anti-hate crime legislation, the regimes of state and religion, the private sponsorship program in Canada, and Canadian far-right groups. Some of her recent publications include *À la recherche d'une définition pragmatique de la haine* (with S. Bachand and A-M. Benmoussa, 2021), *Asylum policies and resettlement. Insights and lessons from Canada's experience* (with E. Martani, 2021), *Justiciabilité et droit international privé québécois: les statuts matrimoniaux libanais* (with S. Saint-Onge, 2021), *Violence Against Muslims in Canada* (with G. Dalphond, 2021), and *Rétablir l'ordre. Peur, méfiance, haine des minorités culturelles et sexuelles* (2021) a book about the various forms of hostility towards minorities in Canada. Her forthcoming book *Liberté d'expression v. haine: Débats et législations en Amérique du Nord* is due to be published in late 2022.

In this first chapter, the authors present an overview of diverse refugee protection regimes and current developments in the sector. Beginning with a review of the international and national frameworks that regulate the issue of migra-

tion, they argue that in recent decades, the prevailing outlook regarding migration tends to imply the curtailment of non-economic migrants. This increasingly mainstream approach involves a significant reduction in the number of non-economic migrants, such as refugees and asylum seekers, including women and children, resulting in tighter border controls, the construction of walls and the signing of agreements with third states to prevent irregular crossings or even to extradite asylum seeking migrants. Moreover, the obstacles, deportations, re-foulement, and violence against migrants and refugees in the West are illustrative of an increasingly hostile climate. The final part of this chapter explores Canada's portrayal as an example for refugee protection, particularly through its pioneering private sponsorship program. The authors conclude that Canada's policy is one marked by effective management of immigration and diversity, combined with positive Canadian public attitudes toward immigration. Nonetheless, Canada's protection system suffers from a number of critical flaws that need to be addressed by policymakers.

Valerie Knowles is an Ottawa, Ontario writer who has a BA (Honours History) from Smith College in Northampton, Massachusetts (1956), an MA (History) from McGill University in Montreal (1957) and a Bachelor of Journalism degree from Carleton University in Ottawa (1964). In addition to writing for newspapers, magazines, and federal government departments, Valerie has taught history and worked as an archivist. She has published 12 works of non-fiction, four of which are trade books, available online and in stores. Among her published works is an award-winning biography of Sir William Van Horne and a best-selling survey history of Canadian Immigration and Immigration History, now in its fourth edition.

In this chapter she traces the history of Canada's immigration policy since the British North America Act. After describing the first waves of arrivals to Canada and the political debate regarding the issue of immigration, the author explores features of Canada's immigration policy between two World Wars arguing that this period was characterized by restrictions, exclusions and xenophobia. Subsequently she analyses changes after the WW2 by focusing on the liberalization Canada's immigration policy and the introduction of point system policy and removal of racial and geographical discrimination. The chapter ends with a description of Canada's present refugee policy, which includes the Private Sponsorship of Refugee Program, introduced in 1976.

Anna Purkey (DCL) is a lawyer, an Assistant Professor and the Director of the Human Rights Program at United College at the University of Waterloo. Dr. Purkey's research employs an inter-disciplinary approach to examine internation-

al refugee law and policy, with a special emphasis on protracted refugee situations. Her recent work focuses on the ways in which legal and political institutions, both in Canada and internationally, create disadvantage and vulnerability, and on the strategies that refugees and other precariously placed migrants can use to claim their rights and reclaim their dignity.

Anna Purkey's chapter is focused on challenges of Canada's contemporary migration policy. She starts by exploring characteristics and trends that distinguish the Canadian migration system and subsequently focuses on the ways in which the current system creates and exacerbates precarity and vulnerability of certain migrants and asylum-seekers through an over-reliance on temporary status, an absence of pathways to permanent status, and an increasingly insecure «permanent status». The author concludes that despite Canadian government has made some steps to address precarity, Canada's immigration policy is mainly reactive. It should develop a long-term, rights-based vision for migration to Canada in order to address both current and future challenges – from demographic changes and labour needs, to climate-change induced migration and new conflicts.

Colin Grey is associate professor at Queen's University Faculty of Law, specializing in immigration and refugee law. Previously, he held positions at the Université du Québec à Montréal and the Immigration and Refugee Board of Canada. He is the author of *Justice and Authority in Immigration Law* (Hart Publishing, 2015) and co-editor and co-author of *Canada's leading casebook on immigration and refugee law*. He has previously published articles in *Legal Theory, Philosophy & Social Criticism*, the *Canadian Journal of Law & Jurisprudence*, the *Supreme Court Law Review*, and, most recently, a chapter in *The Research Handbook on the Law and Politics of Migration* (Edward Elgar, 2021).

Colin Grey's chapter explains Canada's system for in-land refugee protection. The author starts by distinguishing Canada's asylum system from its immigration system. He states that Canada's asylum system is commendable for its procedural robustness and for the multiple guarantees within the system against *refoulement*. Nonetheless, after explaining the ways of becoming a protected person and the grounds for granting or denying protection, the author explains how the logic of immigration control at times prevails over the logic of rights protection in Canada's asylum system.

Hilary Evans Cameron is an Assistant Professor at the Lincoln Alexander School of Law at Toronto Metropolitan University in Toronto, Canada. A former litigator, she represented refugee claimants for a decade and holds a doctorate in refugee law from the University of Toronto. Her research largely focuses on credibility assessment in the refugee law context. She is the author of numerous publications including a book about the law of fact-finding in refugee status de-

cision-making (*Refugee Law's Fact-finding Crisis: Truth, Risk, and the Wrong Mistake*, Cambridge 2018).

Talia Joundi is currently a Master of Law candidate at Osgoode Hall Law School at York University in Toronto. Her studies are focused on investigating Canadian deportation decisions. Previously, she practiced as a refugee lawyer, advocating for immigrants and refugees at the tribunal, appellate, and federal level. Talia is admitted to practice law in both Canada and the US.

Recalling that Canada is under a legal obligation to provide refugee protection to foreign nationals who have a well-founded fear of persecution in their country of origin, the authors start with an overview of the procedures for claiming asylum from within Canada. Highlighting the role of the Canada Border Services Agency, which is potentially present at every stage of the refugee claim process, the authors focus on each step from making a claim at a port of entry or in-land to the final decision. Later they provide a critical appraisal of how the Canadian system decides whether to accept or reject claims. They argue that the Canadian system is profoundly unjust since it does not reliably accept and reject refugee claims on their merits, rather its decisions often depend more on the identity of the decision-maker. Winning or losing a claim too often depends on luck.

Idil Atak is an associate professor within the Faculty of Law and the Faculty of Arts' Department of Criminology at Ryerson University. She received her PhD from the Université de Montréal's Faculty of Law. The former editor-in-chief of the *International Journal of Migration and Border Studies* (IJMBS), Idil is a past president of the Canadian Association for Refugee and Forced Migration Studies (CARFMS). Her research interests include irregular migration, the criminalization of migrants, and the protection of the rights of irregular migrants, asylum seekers and refugees in Canada.

Claire Ellis is a PhD candidate in Policy Studies at Ryerson University. Her research critically analyses Canadian border policy and impacts on refugee claimant mobility and access to protection. Claire holds an MA in Immigration and Settlement Studies (Ryerson University) and a BA in Sociology from the University of British Columbia. She currently works in research operations coordination at the Canada Excellence Research Chair in Migration Program and with a research team at Ryerson University examining Canadian border controls, asylum-seeking, and immigration detention.

In this chapter authors focus on recent policy developments that aim to externalize Canada's border controls. They explain how irregular migration has long been a priority for Canada's immigration policies and how the purpose of externalization is to stop migrant smuggling and at the same time to protect the integ-

rity of the refugee system. Authors argue that in order to achieve its aims Canada has engaged both in capacity building and technical assistance with transit and source countries and enhanced cooperation with some other destination countries with a focus on sharing information and border technologies as a privileged to track and exclude asylum seekers. They conclude that despite the rationale of such initiatives is to combat smuggling, a direct consequence is the restriction of the access to asylum in Canada and the circumvention of Canada's obligations under national and international law.

Shauna Labman is an Associate Professor, Human Rights at the Global College, University of Winnipeg. She holds a PhD from the University of British Columbia, Faculty of Law. Her research examines the layered influences of law on public policy and government positioning with respect to asylum and refugee resettlement. She writes and speaks extensively on refugee law and is the author of *Crossing Law's Border: Canada's Refugee Resettlement Program* (UBC Press, 2019) which received the K.D. Srivastava Prize for Excellence in Scholarly Publishing.

Shauna Labman's chapter sets out the legal and policy framework of Canadian refugee resettlement programs and highlights where there are tensions between and within the different resettlement programs. She argues that the private sponsorship program and government-assisted program are meant to operate complementarily, while BVOR program situates in the middle. According to the author, while all programs focus on protection needs, the differing selection processes influence where that protection response is targeted. Whereas government sponsorship responds to the protection prioritizations of UNHCR, private sponsors often provide protection to those outside of UNHCR's submission categories. In Labman's view there is a shifting from government resettlement commitments towards private sponsorship which places the complementarity of the programs in question.

Damaris Rose is Adjunct Professor (retired) at the Institut National de la Recherche Scientifique, Centre Urbanisation Culture Société. Rose is an urban geographer (MA, Toronto; PhD, Sussex) with longstanding research interests in the housing dimensions of refugee and immigrant settlement in urban contexts as well as in gentrification and other social and economic dynamics of neighbourhood change in cities of the global North, and gender and housing. She has led numerous research projects on these topics. She taught courses in urban social policy and research methods to graduate students for many years. She is an executive committee member of the Building Migrant Resilience in Cities research partnership.

Damaris Rose's chapter focuses on process, governance, and challenges regarding housing of government-assisted refugees in Canada. The author starts by highlighting that moving into self-contained, stable, safe, and affordable housing

is a critical step in resettlement experiences. Dwelling represents a material and ontological anchor point for re-establishing well-being for refugee newcomers to Canada. The recent experiences of settling government-assisted refugees into their first permanent housing in cities with a major rental housing affordability problem stretched Canada's resettlement system to its limits. In general, housing is slightly more affordable in smaller centres; however, the author argues that successfully resettling GARs in smaller cities also requires careful attention to personal mobility issues and accessibility to resources and services, which are indispensable for social and economic integration of refugees.

Michaela Hynie, PhD. is a Professor in the Department of Psychology, and resident faculty in the Centre for Refugee Studies at York University. Dr. Hynie conducts interdisciplinary multi-method community-based research on social determinants of health with communities experiencing social conflict, social exclusion, or forced displacement and migration. This work includes the development and evaluation of social, institutional and/or policy interventions that can improve mental health and well-being. Funded by CIHR, Grand Challenges Canada, IDRC, and SSHRC, her work has been situated in Canada, the Democratic Republic of Congo, India, Kenya, Liberia, Nepal, Rwanda, Sierra Leone and South Africa. Dr. Hynie is the past president of the Canadian Association for Refugee and Forced Migration Studies.

Rachel Samuel, MPH, MACP (candidate) holds a Bachelor of Science (hons.) degree from University of Toronto and a Master of Public Health degree from Queen's University. Currently, Samuel is pursuing a Master of Arts in Counselling Psychology at Yorkville University. Her main areas of interest include global health, health equity, mental health, and refugee health. Samuel is currently working on research projects that focus on finding solutions to mental health and well-being challenges among refugees and newcomer immigrants as well as frontline workers supporting these populations. Samuel is also the project coordinator for the University of Toronto African Alumni Association (U of T AAA) Annual Refugee Awareness Week (RAW) initiative.

In this chapter authors explore social determinants of refugee health in the Canadian context and highlight ways that refugees as a group may experience unequal access to the conditions that ensure health and well-being. They affirm that health status is a reliable marker of social inequality and injustice, and provides a lens for assessing the fairness and adequacy of political and social policies. Authors conclude the chapter by analyzing the impact of structural factors and determinants of refugee health in Canada and they warn that within the group «refugees» there is considerable variation. An intersectional approach is critical to capture the complexity of the impact of these structures at various levels. Ref-

ugees' settlement experiences are further nuanced by variation of local social, political and economic conditions over time.

Myriam Richard is a PhD candidate at the School of Social Work at Université de Montréal. For the last 12 years, she has been involved in the field of immigration and refuge as a researcher, trainer, and social/community worker in Québec/Canada and internationally. Her work aims to defend the rights of immigrant and refugee people by better understanding the impacts of migration on family dynamics, especially experiences of family separation and reunification across borders, as well as the challenges faced by social and community workers supporting migrant families. It mobilizes applied critical family, transnational and feminist studies through narrative and participative methods. Her personal and professional engagements have brought her to be anchored transnationally across the borders of Québec/Canada, the United States and Lebanon.

Her chapter discusses reconsidering vulnerability and its strategic use in refugee protection. The author states that resettlement is increasingly seen as a strategic migration management tool, that legitimates the creation and enforcement of restrictive measures. Narratives about the necessity to resettle the most vulnerable people who are «lawfully waiting» in neighbouring countries are put forward, while asylum seekers coming to the borders are depicted as «queue jumpers». After outlining how resettlement and vulnerability developed within the global refugee regime and exposing some of the tensions associated with its increasingly strategic use, the author concludes that the need to renew the conceptual and political vocabulary around the notion of vulnerability has been exacerbated by the global COVID-19 pandemic, which has brought to the forefront the multiple forms of vulnerabilities that affect the entire population unequally, including access to health services, rights to mobility and family reunification.

Lisa Kaida is an Associate Professor of Sociology at McMaster University. Her research specializes in the economic and social integration of immigrants and refugees, work and occupations and the sociology of sports. Her recent work has appeared in *International Migration, Population, Space and Place* and *Canadian Ethnic Studies*.

Max Stick is a PhD Candidate in Sociology at McMaster University. His research interests include immigration, gender, and sport, with a specific focus on the gendered dynamics of immigrant integration. His work has appeared in *Journal of Ethnic and Migration Studies, Men and Masculinities* and *Sport in Society*.

Feng Hou is Principal Researcher with Social Analysis and Modelling Division, Statistics Canada. His research focuses on the socioeconomic integration of immigrants and the second generation, dynamics of social diversity and minority-majority social interaction.

In their chapter, the authors investigate the short-, medium- and long-term employment-related outcomes of resettled refugees from three admission programmes in Canada. After explaining the recent research on refugee economic integration, the authors analyze the 2019 version of the Longitudinal Immigration Database (IMDB) to compare the short- to long-term labour market outcomes of privately sponsored refugees (PSRs) and government-assisted refugees (GARs) and Blended Visa Office-Referred Refugees (BVORs). They show that PSRs maintain higher employment rates than GARs during their first 15 years after arrival. This difference may be attributed to the impact of sponsors' support and PSRs' relatively advantageous human capital characteristics. The short-term labour market outcomes of BVORs are similar to those of GARs, and this may reflect that the two resettled refugee groups are selected on the same criteria.

Antoinette Gagné has been a professor at the University of Toronto since 1989. Her research has focused on teacher education for diversity and inclusion in various contexts. She has also explored the experiences of newcomers and their families in Canadian schools as well as multilingual students in post-secondary education. Much of her research has involved collaboration with teachers and multilingual learners and has culminated in multimedia products which can be found on the DiT – Diversity in Teaching and the Refugee Education websites. Knowing the key role of teachers in the lives of multilingual learners, Professor Gagné has been an advocate and activist for improved learning opportunities for preservice and in-service teachers. In addition, she is actively involved in three research programs and supervises MA and PhD students.

Gagné's chapter focuses on Canada's educational policies, programs, and pedagogical approaches for children and youth of refugee background. In particular she highlights the challenges involved in developing and maintaining effective programs and the promising practices that support children, youth, and their families in elementary and secondary schools. The article brings together the four educational support dimensions – linguistic support, academic support, outreach, and cooperation with newcomer families and communities, and intercultural education – proposed by the European Commission (2013) for an integrated approach to the inclusion of migrant students and two additional support dimensions proposed by Lara and Volante (2019) to adapt the EC model for the Canadian context – the provision of counselling services, partnerships between schools, and community health clinics and bullying prevention policies and strategies as well as assistance for students with low socioeconomic status (SES) and schools in low SES neighbourhoods. The author concludes that the multidimensional educational support model does not adequately capture the dynamic na-

ture of the resettlement process of children and youth of refugee background in schools as the challenges newcomer students face and the support they receive are often interconnected and linked to more than one of the multiple worlds in which newcomer students live including home, school, and community.

Clothilde Parent-Chartier is a PhD candidate in International Development at the University of Ottawa. For her doctoral thesis, Clothilde is studying the private sponsorship program for refugees in Québec. More specifically, she is interested in the impacts of the relationships between sponsors and sponsored refugees on the integration process. She draws on feminist theories to understand power relations at play in sponsorships as well as to conceptualize integration. She holds a Master's degree in International Development and Globalization from the University of Ottawa and a Bachelor's degree in International Relations and International Law from the Université du Québec à Montréal. Her broader research interests include transnational solidarity, access to resources, and migration studies. Clothilde has worked with NGOs in Senegal and Malawi and has also worked in Montréal for the immigration department of Cirque du Soleil. Since 2015, she has been actively involved in refugee sponsorship in Québec.

Neal Santamaria has a Masters in Anthropology and did doctoral studies in Sociology at the École des Hautes Études en Sciences Sociales in Paris, France. Prior to moving to Canada, Neal Santamaria has worked on immigration in France and in the Dominican Republic. Since settling in Canada, he has worked with numerous community organizations and institutions serving immigrants and refugees in Quebec. He was the Associate Director of the Centre for Oral History and Digital Storytelling (COHDS) at Concordia University. More recently, he was responsible for the private sponsorship section of La Table de concertation pour les organismes au service des personnes réfugiées et immigrantes (TCRI). Neal Santamaria also has a strong experience in research in a context of diversity. He did various research on immigrant employment from the perspective of employers as well as immigrant job seekers. Since January 2022, Neal Santamaria is the Quebec Director for the Canadian Race Relations Foundation (CRRF).

Ian Van Haren is a PhD candidate and course lecturer in sociology at McGill University in Montreal, Quebec. His dissertation research is funded by a Joseph-Armand Bombardier Canada Graduate Doctoral Scholarship and examines migration policy, refugee resettlement, and the experiences of newcomers in Canada. This work has been published by *Migration Information Source* and he has also published an article on the impact of changing visitor visa policies on migration flows in the *Journal of Immigrant & Refugee Studies*. Before his doctoral studies, he worked for Immigration, Refugees and Citizenship Canada in Ottawa

and in England, Lebanon, and South Africa. He has also been involved in refugee sponsorship initiatives in Ontario and Quebec.

This chapter explores the involvement of civil society organizations (CSOs) in the collective sponsorship of refugees in Quebec. By focusing on organizations with significant experience in facilitating and supporting sponsorships, the authors investigate their roles and some of the challenges they face. The authors provide an overview of key actors in collective sponsorship and explain five key roles within the collective sponsorship ecosystem, showing that the role of private sponsors goes beyond basic service delivery as they play different roles such as mediators, advocates for refugee rights and initiators of policy changes. Then, they highlight recent developments in Quebec and discuss the specific challenges faced by organizations involved in collective sponsorship including how the government has regulated and constrained sponsorship efforts. The authors conclude by identifying how increased collaboration between CSOs and the government could improve the sponsorship program.

Adèle Garnier is an Associate Professor and the Director of undergraduate studies at the Département de géographie, Université Laval, Canada. Her research investigates the interplay of regulatory levels (local to global) in migration and refugee policy in comparative perspective. She holds a PhD in Politics from Macquarie University, Australia and the University of Leipzig, Germany. She has done postdoctoral research at the Interuniversity Research Centre on Globalization and Work (CRIMT), Université de Montréal, Canada, the Group for Research on Ethnic Relations, Migration and Equality (GERME), Université Libre de Bruxelles, Belgium, and has been a Lecturer and Senior lecturer in Political Science at Macquarie University in Sydney, Australia.

Danièle Bélanger holds a PhD in demography from the Université de Montréal, Canada (1997). She was a Professor of Sociology at the University of Western Ontario until 2012. Since 2013 she is a Full Professor at the Département de géographie, Faculté de foresterie, de géographie et de géomatique, Université Laval, Canada. Danièle Bélanger also holds the Canada Research Chair in Global Migration Processes since 2017. Her expertise pertains to international migration, the impact of migration policies on migrants with precarious status, refugee mobility, social demography, gender and social inequality. Her work focuses on several world regions including South-East Asia (Vietnam), the American continent (Mexico, Canada) and the Middle East (Turkey). She supervises about 15 Masters and doctoral students investigating migration-related issues.

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member of the Canada Research Chair in Global Migration Processes held by Danièle Bélanger. Mireille Lajoie holds a B.Sc. in geography and a Certificate in public communication from Université Laval. She is particularly interested in the migration trajectories of asylum seekers in Canada.

This chapter analyzes the solidarity discourse of four civil society organizations which played a key role in supporting asylum seekers at various levels in the Province of Quebec. In light of recent refugee and migration scholarship, the chapter argues that solidarity is a polysemic concept and that its understanding can change over time. Authors start providing the context on key events from the Roxham Road crisis to the labelling of asylum-seekers as 'guardian angels' by Quebec's Premier. Then they present four civil society organizations which played a key role in supporting asylum-seekers since 2017: the Canadian Council for Refugees; the Table de concertation des organismes au services des personnes réfugiées et immigrantes; Solidarity Across Borders; and Bridges Not Borders. After identifying four types of solidarity, authors conclude they have identified continuity and change in the selected organizations' solidarity discourse towards asylum-seekers.

INTRODUCTION

1. Seeking protection abroad. An overview of refugee protection regimes and current developments

Ervis Martani and Denise Helly

1.1 Introduction

Although migration has been an intrinsic part of humanity's journey since its earliest stages (Crépeau, 2018) – both as a formative factor of the nation-state (Bloemraad, 2012) and as a catalyst for national and international tensions (Kosłowski, 2002; Adamson and Tsourapas, 2019) – in the recent years, the issue of migration and refugee influxes has emerged as a major subject of public discourse in Western countries, including and particularly in the U.S., U.K., Austria, Germany, Italy, and France (Maurer *et al.*, 2021; Shabi, 2019; Sevastopulo, 2018; Mayda, Peri, and Steingress, 2018; Otto and Steihardt, 2017). The political and social effects of the 2008 financial crisis, that is, a renewed political and ideological polarization as well as the rise of populist movements, have resulted in an increased emphasis on the issue of migration (Makunda, 2018).

Various initiatives and policies have been put in place to either facilitate migration or to erect new barriers. In this chapter, we examine international and national frameworks for refugee protection and focus on current developments marked by the erection of walls, deportations and refoulement. Finally, we outline the context of the Canadian refugee protection system, which will serve as an introduction to the subsequent chapters in this volume.

1.2 International and domestic frameworks on refugee protection

The international framework for the protection of refugees is laid out by the 1951 *Refugee Convention* and its 1967 *Protocol*, which comprise 146 and 147 State parties respectively, defining the term and outlining the rights of refugees. According to Article 1A of the Convention, a «refugee» is any person who:

owing to well-founded fear of being persecuted for reason of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country (art. 1A, 1951 Refugee Convention).

The principle of *non-refoulement* constitutes the most fundamental tenet of the Convention. It establishes that refugees cannot be expelled or repatriated to a country where they fear serious threats to their lives or freedoms (Nicholson and Kumin, 2017). With its mandate to oversee the Convention, the United Nations Refugee Agency (UNHCR) (Kalin, 2003) plays an important role not only in the protection of refugees but also in generating new knowledge on the subject. The Convention establishes only an optimal set of requirements for the signatories, and the parties are given the freedom to adopt higher standards of protection. To date, the Convention continues to influence refugee policy, not only in signatory parties, but also in the refugee policies of non-signatory states (Janmyr, 2021). Constituting the foundation of the current international protection system, it has since been enhanced by other protection regimes and instruments at the regional and national levels.

Within the European Union (EU), the legal framework for the asylum proceedings is the Common European Asylum System (CEAS). Established in the late 1990s, it sets forth the common norms for asylum procedures in the EU. Since then, various regulations and guidelines have come to strengthen and harmonize the basic standards for asylum. Currently, the CEAS consists of six comprehensive instruments: Asylum Procedures Directive; Reception Conditions Directive; Qualification Directive; Dublin Regulation; EURODAC Regulation; and the European Union Agency for Asylum (EASO), which contributes to the functioning and the implementation of the overall system. According to critics, the CEAS engulfs significant structural deficiencies with regards to all stages of the asylum process, namely the registration of arrivals on the territory of member states, the failure of national reception capacity, discrepancies on asylum procedures and protection rates (Beirens, 2018). In addition, it has been pointed out that the system is hampered by a lack of solidarity among its members, inconsistent implementation practices, lack of conformity with the EU's core values, and an approach that is punitive towards secondary movements. As Jakulevičienė (2019) has argued, the EU needs to strike a balance between the incentives and the restrictions with respect to secondary movements. The use of coercion and disincentives is not adequate because it does not address the root cause, namely the uneven sharing of responsibilities among EU member states (Guild *et al.*, 2015; Jakulevičienė, 2019).

It is only in 1969 that Canada signed the Refugee Convention, and while Canada's contemporary approach to refugee issues is considered a 'gold standard' to be emulated, it was not always so. Until the aftermath of World War II, its policies were characterized by exclusion, xenophobia, anti-Semitism, and racism

(Adelman, 2017; Carrière, 2016). For years, refugee status was consistently denied to certain non-European populations. In 1923, the government excluded immigrants «of any Asiatic race» (CCR, 2009, p. 1; Adelman, 2017) and did the same with Jewish refugees fleeing Nazi persecution during 1930-1948. The case of the *St. Louis* cruise liner is perhaps one of the most illustrative examples of Canada's xenophobic and anti-Semitic policies of that time (see chapter 2). As a matter of fact, in 1939, more than 900 Jews were denied entrance to Canada while fleeing one of the most horrific regimes after an unbelievably difficult journey, and the denial was based on the premise that their plight was not a Canadian problem. Forced to return to Europe, many would perish at the hands of the Nazis (Abella and Troper, 1968). Yet Canada did admit refugees, but only White ones: from 1923 to 1930, more than 20,000 Mennonite refugees emigrated from Ukraine in fear of persecution by the Soviet Union. It wasn't until 1970 that Canada began to admit non-Europeans by resettling some Tibetan refugees.

The current Canadian asylum system is governed by the 2002 *Immigration and Refugee Protection Act* (IRPA). In his independent review of the Canadian asylum system, Yeates (2018) highlighted the system's inability to handle the growing number of asylum claims, pinpointing the inadequacy of funding and poor information sharing among supervising agencies, as the system's main shortcomings. Other authors have pointed out at the involvement of the authority of the Canadian Border Services Agency in the determination of eligibility of the claims by conducting security checks and intervening in hearings, which has transformed the Canadian system into an unfair process for many asylum seekers (Atak, Hudson, and Nakache, 2019).

Similar to Canada, Australia's *Refugee and Humanitarian Program* offers protection to people both abroad and within the country. The inland portion of the program allows persons who have landed legally and arrived in the country on a regular basis to apply for asylum and subsequently reside and work in Australia as permanent residents. However, it does not accept applications from people who entered the country without a valid visa (Kaldor Centre for International Refugee Law, 2019). Whereas, the Program's portion dealing with people overseas has three sub-components or sub-categories. The Refugee Program, designed for people outside Australia who have been recognized and referred for resettlement by UNHCR; the *Special Humanitarian Program*, which allows individuals and organizations in Australia to offer protection to people suffering from discrimination in their country and the recently implemented *Community Support Program* as a typical sponsorship program, where individuals, community organizations, and other entities are allowed to support the resettlement of refugees (Kaldor Centre for International Refugee Law, 2019).

The United States has not ratified the 1951 *Refugee Convention*, but is nevertheless a member of the 1967 Protocol. By extension, the United States is bound to the original 1951 document through its commitment to the majority of standards and principles. The core of the U.S. system is the *Refugee Act* of 1980, which harmonized domestic legislation with international norms. There are currently three main programs in place to provide protection: the resettlement program for people abroad, the asylum program for people already in the United States, and the temporary protection program. In general, the U.S. refugee protection system is a generous and benevolent one. It has been a leading model for the rest of the world for several decades. The country has admitted more than 3.5 million refugees (resettled and asylees) since the enactment of the *Refugee Act* of 1980. Annual admissions have ranged from 207,000 in 1980 to 11,800 in 2020 (Monin *et al.*, 2021). Until 2019, the United States was the leading resettlement country in the world. That year, Canada resettled 30,100 refugees, surpassing the United States (27,500) in admitted refugees. This was an outcome of the U.S. government's decision to continually lower the cap that was set at 100,000 in 2017 down to just 15,000 by 2021. Over the past five years, the country has been severely criticized for failing to meet international standards. Critics have pointed not only to the reduction of the annual admissions cap, but also to the overall unfavorable climate for refugees and asylum seekers, particularly bans based on nationalities, the «remain in Mexico» order, and attempts to terminate temporary protection status for nationals of several countries. While the current U.S. administration pledged to restore the earlier situation, it initially maintained the cap of 15,000 resettlement slots and pledged to increase it to 62,500 by 2021. However, in fiscal year 2021, only 11,400 refugees have been resettled.

1.3 Current developments: barriers, deportations, pushbacks and violence

The ongoing migration situation has been aggravating in the past years. By the end of 2020, more than 80 million people were forcibly displaced, of whom 11.2 million became newly displaced that year whereas 26.4 million are refugees, who have fled for a variety of reasons, including persecution, violence, and human rights violations (UNHCR, 2021). The Afghan crisis, the war in Ukraine, and the Covid-19 pandemic, the impact of which is not yet fully known, have all aggravated the situation. In some Western countries, some discourses have been depicting refugees as invasive and the influx as an invasion (Castelli Gattinara, 2017; Berry *et al.*, 2016), yet figures show that at the end of 2020 only a small

portion of the refugee population has been hosted in the developed countries. As a matter of fact, 86% of them were hosted by developing countries such as Turkey (3.7 million), Colombia (1.7 million) and Pakistan (1.4 million). By the end of 2020, Germany had taken in 1.2 million refugees, followed by France (440,000), and Italy (130,000). As of 2020, more than two out of every three refugees worldwide were from five countries, namely Syria (6.7 million), Venezuela (4 million), Afghanistan (2.6 million), South Sudan (2.2 million), and Myanmar (1.1 million) (UNHCR 2021).

Following more than two years of consultations and deliberations, in 2018 the UN General Assembly adopted the *Global Compact on Refugees* (GCR), a non-binding document which «represents the political will and ambition [...] for strengthened cooperation and solidarity with refugees and affected host countries» (UNHCR, 2018, p. 2). Asserting that the refugee situation requires a comprehensive multi-stakeholder response, the GCR aims to alleviate pressure on first-line host countries, promote refugee self-sufficiency, improve third country solutions, and facilitate safe and decent return to countries of origin (UNHCR, 2018). For critics, the GCR fails to address imperative needs, including the arrival of large flows to Western countries, clear commitments on the ability to seek asylum once they arrive, and the prevention of the erection and maintenance of walls (Aleinikoff, 2018). Barriers to obstruct the movement of the poorest and least educated appear to be a feature of the global North. Indeed, policies such as funding policing in transit countries, prohibiting access to ports for relief vessels, and enforcing tough visa requirements continue to proliferate (Crépeau, 2018). In recent decades, the prevailing view of migration seems to involve reducing the number of non-economic migrants, such as refugees and asylum seekers, resulting in tighter border controls, the construction of walls and the signing of agreements with third states to stop irregular crossings. Higher walls, more restrictive immigration policies and a reduction in the number of admitted foreign nationals illustrate the current adverse climate in the West towards migrants and refugees. For example, Canada and the U.S. did sign a *Safe Third Country Agreement* (STCA) in 2002, a deal that states that both countries are safe for refugees. Asylum seekers attempting to cross the Canada-US border are turned back to the U.S. on that very pretext. As a result, this agreement represents a barrier for accessing to the Canadian refugee protection system. A further consequence of the STCA is an increasing number of irregular crossings. This is due mainly to the fact that the agreement stipulates that it is applied only when the claim is made at an official port of entry to Canada. Thousands of people have crossed the Canada-U.S. border irregularly in order to avoid being turned back to the U.S.

These irregular crossings may potentially put their lives at risk (i.e. *Roxham Road* in Quebec). The increasing level of irregular border crossings has been fostered by U.S. anti-refugee measures pushing a significant number of people without permanent status in the United States to flight towards Canada. In addition, the Trump administration's travel ban on individuals from certain targeted countries has prompted many individuals, fearful of not being able to reunite with family members, to seek protection in Canada (CCR, 2017).

The situation in Europe is not significantly different, and there, too, policies are remarkably characterized by increased border enforcement and other barriers. The *European Border and Coast Guard Agency*, founded in 2004 and known as Frontex, is responsible for ensuring the security and smooth operation of the external borders. In addition, the Dublin Regulation and several other agreements between the EU and third countries (Turkey, Serbia, Albania) are also aimed at strengthening the control of external borders. There has been an increase in the expansion of border control and the construction of both mental and physical walls in the European Union since the 1990s: 10 out of 28 Member states have built walls or fences to prevent immigration (Benedicto and Brunet, 2018) and others have promised to follow suit. While the metaphor of «Fortress Europe» might realistically represent policies toward refugees, it is not entirely adequate to describe the immigration policies of some Western countries that have increased admissions of skilled foreign workers (Czaika and de Haas, 2011) and simultaneously adopted measures to limit access for low-skilled immigrants and those from poorer countries. Canada and Australia are examples of a points-based immigration policy aimed at admitting thousands of skilled workers each year. Similar selection of skilled workers is underway in the United States and the United Kingdom.

Migrants and refugee journeys are tough and difficult ones as they experience various types of violence, both while attempting to access host countries and while in them. This violence, whether direct or indirect, includes refoulement, physical abuse, labor and sexual exploitation, extortion, and trafficking (CoE, 2016). Below are some examples. In March 1997 during a deterrence operation to counter the wave of immigrants heading to Italy, the Italian navy ship *Sibilla* collides with the vessel *Katëri i Radës* carrying migrants, causing the death of what is estimated to be over 100 Albanians (Scovazzi, 2014). In February 2014, approximately 400 migrants were attempting to cross the border between Morocco and Ceuta (Spanish enclave). In order to prevent them from entering Spain, members of the Civil Guard shot them with rubber bullets and used other deterrents such as blank bullets and tear gas. Fourteen people lost their lives and

more than twenty-three others were summarily evicted (ECRE, 2018). Another illustrative case was that of March 2020, when thousands of migrants attempted to cross the border between Turkey and Greece. It was reported that Greek security forces detained, brutally assaulted, sexually abused, robbed, and stripped them, before summarily deporting them to Turkey (HRW, 2020).

The EU and its member states have implemented a border control policy aimed at making their territory an impenetrable stronghold for migrants and refugees, by deporting them and denying them access to asylum procedures (Amnesty International, 2014), by allowing mistreatment against them by the guards (The Economist, 2020), by using the threat of detention as a deterrent (Crépeau, 2013), neglecting them, by «let[ing] them die because this is a good deterrence» (Crépeau, 2014, p. 1), by subsidizing welcome and detention centers in countries where there are serious human rights violations and where access to asylum procedures is threatened (Amnesty International, 2014). The intensification of the use of force and physical brutality against migrants and refugees is also observed in the United States and Canada. In the United States, aggressive migration policies have trapped migrants and refugees in a cycle of violence and abuse at the hands of border guards (DWB, 2020). In the past two years, the Canada Border Services Agency has investigated over 500 cases against staff members where bribery, abuse of authority, and sexual harassment were some of the allegations (Tunney, 2020).

These are merely a few examples involving the use of direct violence against migrants and refugees attempting to gain access to Europe, the United States and Canada. Direct violence is experienced by migrants and refugees in daily basis; however, this visible violence is only the tip of the iceberg. The overall violence experienced by them goes far beyond and is hardly measurable. Social injustice, marginalization, racism, Islamophobia and unfavorable migration policies in host countries have a serious impact on their physical and psychological well-being. To note but a few examples, in the last decade in Europe, several attacks against Muslims have been documented and there has been an increase in Islamophobic incidents throughout (Massoumi, 2020) and we have assisted in the rise of Islamophobic rhetoric in different European countries (ECRI, 2020). Other reports show that migrants are victims of racism, discrimination, and xenophobia in EU member states (EUMC, 2006). In addition, migrants and refugees who have survived the journey to Europe have faced fear and incarceration (Pai, 2020). EU integration statistics show that the risk of poverty and social exclusion for non-EU citizens was twice as high as for nationals (EUROSTAT, 2020).

Related to the current sanitary situation, a recent report in Canada comparing rates of COVID-19 among immigrants and refugees to those among Cana-

dian-born individuals in Ontario showed higher rates of infection among the former. Various variables and circumstances including insecure employment, language barriers, and overcrowded households were found to contribute to these disproportionately high infection rates (Guttmann *et al.*, 2020). As aforementioned, the U.S. administration had announced a cap of 15,000 refugees to be accepted for resettlement in the country during 2021 fiscal year, resettling only 11,400. In the previous year, the cap was set at 18,000, but only about 12,000 refugees were accepted. These numbers represent the lowest record since the modern program began in 1980 and are a far cry from the estimated 110,000 cap in 2017 (Cooke and Rosenberg, 2020).

1.4 Holding up Canada as an example of refugee protection

At the time of the 2015-2016 refugee waves, there was a significant attention that was given to the complementary channels for the admission of refugees, including community and private sponsorship programs. In Canada, the *Private Sponsorship of Refugees* (PSR) program has officially been operating since 1978. This program enables groups of citizens and organizations to support the resettlement of refugees to Canada for up to one year. For more than 40 years, this private sponsorship program has successfully secured the protection of more than 350,000 refugees. The program is considered more effective and suitable than the government-assisted sponsorship program because it allows for smoother, faster, and better long-term integration of refugees (IRCC, 2016; Dhital, 2015; Hyndman, Payne, and Jimenez, 2016). In addition, it is claimed to be a sustainable and a good solution to refugee protection and a pertinent way to sharing responsibilities among frontline host countries (Garnier *et al.*, 2018; Couldray and Herson, 2017).

Given its tremendous success in Canada, the program is being broadly championed as a best practice for the rest of the world. If until recently, it was only Canada that allowed organizations or citizens/permanent residents to sponsor refugees, with or without a prior relationship to them, the PSR has now become a model emulated in many other countries.

In 2016, the then Minister of Immigration, Refugees and Citizenship Canada (IRCC), John McCallum (2015-2017), emphasized the potential exportability of the program to other countries, including in Europe, as the involvement of private sponsors in refugee protection could help ease the pressure on countries dealing with refugee flows (Ugland, 2018). The UNHCR High Commissioner had qualified the program as «exemplary» and encouraged the development of

an PSR program in other jurisdictions, given that it not only provides additional resettlement opportunities but also, by involving citizens in the endeavor, it generates positive societal attitudes towards refugees (Levitz, 2016). In fact, despite the number of refugees admitted through PSR is considerable (more than 350,000), an innovation of Canada's program was the involvement of Canadians in the support of refugees fleeing violence and abuse. More than 1.5 million Canadians aged 25 and older have been involved in supporting refugees in the 2015-2020 cohort and 4 million of them would consider sponsoring refugees in the future (Neuman and Adams, 2021). Since 2016, Canada has been sharing its unique experience and history via the Global Refugee Sponsorship Initiative, which seeks to raise awareness, increase and improve the resettlement of refugees globally through the involvement of private sponsors. Most recently, the Minister of Immigration, Refugees and Citizenship, Marco Mendicino (2019-2021), reiterated that Canada serves as a model for other countries implementing community-based sponsorship initiatives (Harris, 2019). Since then, a growing interest in Canada's experience has already been expressed by several countries, including Australia and some European Union countries. In fact, in 2013, Australia introduced a private sponsorship program based primarily on the Canadian model, and a range of EU member states have been piloting short-term private sponsorship programs in response to the increasing refugee flows (European Commission, 2018). Canada's program has also attracted the interest of its neighbor, the United States. After his inauguration as President of the United States, Joe Biden issued an executive order on exploring the implementation of community and private sponsorship of refugees in his country (The White House, 2021). It is anticipated that in 2022, the United States will pilot a program enabling private groups to support the resettlement of refugees of any nationality to the United States (Kight, 2021).

As mentioned earlier, the PSR program was introduced with the 1976 *Immigration Act*, which went into effect in 1978. However, two groundbreaking initiatives that were undertaken by the government in the 1940s constitute the forerunners of the current program. For instance, in 1946, sponsorship of close relatives in Europe was authorized by an *ad hoc* executive order adopted on humanitarian grounds. A year later, the *Bulk Labor Program* facilitated the relocation of displaced persons from European camps to labor-intensive Canadian industries (Evans, 2018; Cameron, 2020). Yet, a major milestone on the way to the program's formal adoption was the negotiation of several relocation agreements between religious groups and the government during the 1950s and 1960s (Cameron and Labman, 2020). Perhaps not insignificantly, the first sponsorship

agreement under the nascent PSR program was signed between the Mennonite Central Committee and the Government of Canada in 1979.

There are certain domestic circumstances, specific to Canada, that can help explain and understand why this program was conceived and developed in Canada. It was primarily economic and labor needs that shaped Canada's overall approach to immigration after World War II. These needs led to the admission of 186,154 displaced persons to Canada between 1947 and 1953 (Epp, 2017). Between 1945 and 1951, over 160,000 refugees (displaced persons) resettled in Canada. Subsequently, Canada resettled some 77,000 Eastern Europeans by the end of 1970s – including 37,000 Hungarians in 1956-1957 and 11,000 Czechs in 1968-1969 – 7,000 Chileans and other Latin Americans in the 1970s, and more than 7,000 Asians from Uganda in 1972 (Carrière, 2016; CCR, 2009). Whenever it was possible, the government blend and make converge both humanitarian and economic reasons by targeting for resettlement mainly skilled workers and their families, as in the case of the 1962 Chinese Refugee Program (Madokoro, 2016). Madokoro (2009) argues that the resettlement of Czech refugees in 1968 was driven by both humanitarian concerns as well as the country's own needs. Whilst officials were concerned about the humanitarian consequences of the Soviet invasion, they considered the resettlement of Czech refugees against the background of the country's urgent need for skilled workers (Madokoro, 2009).

Furthermore, an additional national factor that led to the creation of the program was the advocacy of religious groups for the institutionalization of the private sponsorship. Religious groups gathered around organizations such as the Canadian Christian Council for the Resettlement of Refugees, the Canadian Jewish Congress and the Mennonite Central Committee played a pivotal role in refugee resettlement, paving the way for the establishment of a formal program in 1976 (Labman, 2019; Cameron, 2020; Gingrich and Enns, 2019). The 1976 *Immigration Act*, in fact, as Cameron (2020) argues, only formalized an already established practice, given that resettlement programs had been regularly conducted for years in the country.

The formal adoption of the program in 1976 accommodated the needs of all parties involved, namely the refugees, Canada's immigration objectives and needs, as well as the aspirations of religious groups that supported private sponsorship of refugees. Since this time, thousands of refugees have been resettled through the support of private sponsors, including 34,000 Indochinese refugees (1979-1980), 49,000 Polish refugees (1980-1996), 9,000 Iranian refugees (1982-2018), 63,000 Iraqis, Afghans, and Somalis (1988-2018), 17,000 Eritreans (2004-2018) (Government of Canada, 2019), and 35,000 Syrians (2015-2020) (IRCC, 2021).

At times of refugee crisis, PSR program has provided protection to thousands of people over a short period of time, such as in the resettlement of 34,000 Indochinese refugees in 1979-1980 (Government of Canada, 2019).

In terms of overall immigration policy, Canada plans to further increase intake ratios. Despite the pandemic, in 2021 Canada admitted a record number of new permanent residents (405,000) and in 2022 the government plans to further increase this number to over 430,000. While this is an indication that Canada remains a welcoming society, critics say that a backlog of about 2.7 million immigration applications is forcing people to wait years to obtain permanent residence. Delays due to the pandemic and the higher number of applications have been identified as possible causes of the backlog by the Canadian government, which has pledged to speed up the processing time for immigration applications. Unlike Europe and the United States, due to its geographic location, Canada has been virtually immune to the illegal entry of asylum seekers. However, over the past decade, there has been a significant increase in asylum claims in Canada. Whilst in the 2011-2016 cohort, 23,870 asylum claims were filed, in 2017, 2018 and 2019, a significant increase was recorded, with 50,390, 55,000 and 64,000 claims respectively. This increase could be the result of the Trump administration's anti-refugee policy in the United States, which has pushed more and more people without permanent status in the United States into Canada. The travel ban on individuals from specifically targeted countries may have been an encouragement for individuals to seek protection in Canada (CCR, 2017). In addition, as mentioned above, Canada and the U.S. have signed a *Safe Third Country Agreement* (STCA), effective December 1, 2004, which prevents asylum seekers from seeking protection at the Canada-U.S. border on the grounds that both countries are safe for refugees. This agreement has been severely criticized by pro-refugee organizations who have pointed out that the U.S. is not actually a safe country for refugees and that the real purpose of the agreement is to curtail asylum claims in the country. At first, the designation of the United States as a safe country was contested and while the Federal Court ruled that the U.S. was not safe, the Federal Court of Appeal overturned that decision and later the Supreme Court declined to hear the appeal (CCR, 2017). In 2017, the agreement was again challenged. In 2020, the Federal Court ruled that the rejection of refugee claims by people leaving the United States and seeking protection in Canada violated their rights guaranteed by the Canadian Charter of Rights and Freedoms. The Government of Canada challenged this decision and the Federal Court of Appeal accepted the government's appeal, leaving the STCA in force. Last December, the Supreme Court of Canada (SCC) decided to hear the appeal and a final decision is expected sometime soon. A direct consequence of the STCA is the increase in

irregular crossings from the U.S. to Canada. Because the agreement only applies to people crossing at an official point, thousands of people have reached Canada through an informal corridor, such as *Roxham Road* in Quebec (see chapter 14). This corridor was closed from March 2020 to November 2021 due to public health concerns related to the pandemic. Once the ban was lifted, irregular crossings resumed and 2800 people crossed in December 2021 alone. Since 2017, over 60,000 people have applied for protection in Canada and the acceptance rate is approximately 54% (Ring and Spagat, 2022).

In Canada, the jurisdiction over immigration policy is divided between the federal and provincial governments. In particular, due to a somewhat asymmetrical federalism, the province of Quebec is by far the most autonomous province with respect to immigration. In fact, Quebec was the first province to sign an agreement with the federal government relating to immigration. The 1991 *Canada-Quebec Accord Relating to Immigration and Temporary Admission of Aliens* (known as the Gagnon-Tremblay-McDougall Accord) constitutes the actual framework of shared competence on immigration matters. This agreement, which is in line with several previous agreements on immigration issues between Canada and Quebec, establishes that Quebec is responsible for the selection and integration of immigrants in its territory, including resettled refugees (Proulx-Chénard, 2021). The agreements give Quebec the right to veto the admittance of refugees selected abroad by the federal government. According to section 19, «Canada shall not admit a refugee or person in similar circumstances identified by Canada who is destined to Québec and who does not meet Québec's selection criteria». In other words, Quebec can select those who have a greater potential to settle in the province (Proulx-Chénard, 2021). However, Canada remains solely responsible for decisions on refugee claims from within Canada and for setting the criteria for determining who is a refugee or a person in a similar situation (Béchar, 2011).

With respect to private sponsorship of refugees, which is a key component of the Canadian protection system, the province of Quebec has had its own private sponsorship program since 1997, administered by the Ministère de l'Immigration, de la Francisation et de l'Intégration (MIFI) (see chapter 13). Quebec collective sponsorship has been temporarily suspended twice in the past 5 years. In early 2017, the program was suspended due to a high number of applications that resulted in significant delays. In 2020, after lifting the suspension, the province accepted a total of 750 group sponsorship applications, including 100 from groups of two to five people on a first-come, first-served basis. A partial suspension was introduced the following year. Namely, in October 2020, the Quebec government suspended private sponsorship for organizations until November 1, 2021 following serious

allegations about the program. That year, only groups of 2 to 5 people were allowed to apply for the 750 available spots. These applications were selected through a lottery. In fact, the Quebec government decided to proceed with a random draw of applications «under the supervision of an external auditor and in the presence of witnesses». This lottery system has been confirmed for the year 2022, where Quebec will accept 825 applications, 425 from groups of 2 to 5 individuals and 400 from organizations (MIFI, 2022). Initially, the Quebec government did not elaborate on the decision to suspend the program for organizations, except to say that there were serious allegations regarding the integrity of certain practices within the program (Valiante, 2020). This decision was preceded by a request for organizations to provide detailed financial reports on recent sponsorship applications. This decision was criticized by both academics and pro-refugee organizations as «ill-advised» and «unfortunate», especially since the pandemic had already trapped refugees and in the context, the government was shutting down well-experienced organizations instead of increasing the provinces' resettlement capacities (Garnier and Labman, 2020; Valiante, 2020). By October 2021, the government provided some additional details on the reasons behind the suspension. Indeed, after reviewing applications for commitments since 2019, the government confirmed «the existence of stratagems aimed at circumventing the humanitarian objective of the program» (Pinard-Fontaine, 2021). As a result, 18 organizations were suspended for two years. They were charged with a variety of suspected fraudulent practices, including profiting from the program, soliciting payment from refugees in order to submit a sponsorship application, or failing to provide financial support to the refugees they had committed to sponsor (Bergeron and Gervais, 2022; Schué, 2021).

1.5 Final remarks

This chapter began by presenting some key aspects of the international and national refugee protection framework and current developments. Despite the existence of modern legislation, at the international, regional and local levels, there are several concerns related to refugee protection. We have argued that some Western countries have adopted a number of measures that have contributed to creating a negative sentiment towards migrants and refugees, who are often portrayed as invaders and queue-cutters. Tightening border controls, building walls, constant refolements and signing agreements with third states to stop irregular crossings are some of the main features of current refugee policies in the West. This situation could worsen with the current war in Ukraine, the Afghan crisis and the Covid-19 pandemic.

Canada is generally depicted as a welcoming society for immigrants. Its effective management of immigration and diversity and its PSR program are widely promoted as a best practice to be transferred abroad. However, detention and deportation of asylum seekers and barriers to integration of resettled refugees represent a big challenge of the current policy. In addition, violence, vulnerability, denial of rights and growing hostility towards migrants and refugees may undermine the overall success of the system.

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PART I
CANADA'S MIGRATION POLICY

2. Canadian immigration and immigration policy 1867-2020

Valerie Knowles

Abstract

In this chapter I trace the history of Canada's immigration policy since the British North America Act. After describing first waves of arrivals to Canada and the political debate regarding the issue of immigration, I explore features of Canada's immigration policy between two World Wars arguing that this period was characterized by restrictions, exclusions and xenophobia. Subsequently I analyse changes after the World War 2 (WW2) and describe Canada's present refugee policy.

2.1 Introduction. First waves of immigration to Canada

Immigration has always been central to the economic and cultural development of Canada, a young country that came into being on July 1, 1867, with the implementation of the British North America Act (BNA), which united four provinces: Nova Scotia, New Brunswick, Ontario, and Quebec. Enacted by the British parliament, the act created a federal union in which powers were distributed between the federal and provincial governments. Immigration figured in Section 95 of the act, which provided for concurrent jurisdiction with respect to immigration and agriculture. In the event of conflict, federal legislation prevailed.

Section 95 of the BNA set the framework for the administration of immigration. By determining the means of selection and by controlling the number of newcomers, the federal government sought to fulfill several national objectives. However, since the provinces quickly lost enthusiasm for administering immigration, the role soon fell largely to the federal government, which exercised full authority in this area until the 1960s. It was then that Quebec, began to take a direct interest in the selection of prospective immigrants. Its example was later followed by other provinces.

Between Confederation and the outbreak of the First World War, the federal government focused on attracting settlers to this infant country, which by 1873 stretched from the Atlantic to the Pacific. With the entry of Rupert's Land (now Manitoba), the Northwest Territories, and British Columbia into Confederation, there was a great need to fill the sparsely settled plain that stretched from the Great Lakes to the Rocky Mountains. But not all kinds of immigrants were wel-

come. In its immigration recruitment campaigns the federal government targeted farmers with capital, agricultural labourers, and domestics in that order from Great Britain (the 'Mother Country'), the United States, and northern Europe (the preferred countries). Not so welcome were individuals with a profession, clerks, or prospective newcomers from southern and eastern Europe. Even less welcome were individuals of colour.

Selecting newcomers from non-traditional sources could create a backlash. This became all too evident when Clifford Sifton, in charge of immigration from 1896 to 1905, stressed a new region for recruiting immigrants to farm the West – eastern and central Europe. As he explained, «I think that a stalwart peasant in a sheepskin coat, born on the soil, whose forefathers have been farmers for ten generations, with a stout wife and a half-dozen children is good quality» (Kelley and Trebilcock, 1998, p. 120). The vast majority of English-speaking Canadians, however, deplored the idea of Canada admitting «illiterate Slavs» in overwhelming numbers. In fact, from 1896 to the 1930s, most Canadians, their politicians, and immigration officials were not receptive to the idea of Canada accepting these types of immigrants. Still, by dint of his forceful personality, determination, and status, Sifton managed to proceed with his controversial plan.

To attract these «stalwart peasants» and the desired type of immigration the government did everything it could to establish bloc settlements of the different ethnic groups. Such settlements, it was thought, would exert a powerful magnetic effect, and often they did. By far the largest group to immigrate to Canada were Ukrainians, the collective name applied to Slavs from regions of the Russian and Austro-Hungarian empires in eastern and southern Europe. Approximately, 150,000 Ukrainians, most of them small farmers, settled in this country between 1891, when the first wave of Ukrainians arrived, and the outbreak of the First World War (Swyripa, 1988). These years also saw the arrival of Mennonites determined to maintain their faith and independence. Attracted by the offer of free land and religious concessions, they immigrated to Canada after Czar Alexander II embarked on a policy of Russification. In the 1870s, some 7,500 Mennonites established themselves in Manitoba, where their industry and successful farming practices earned widespread praise (Knowles, 2016).

The first great wave of European immigration to Canada also included the Doukhobors, members of a peasant sect whose pacifism and communal lifestyle had led Russian authorities to wage a campaign of brutal persecution and harassment against them. In late January 1899, the first of over 7,500 Doukhobors headed west and settled in what is now Saskatchewan (Knowles, 2010). Japanese immigrants also arrived in these years. Because it faced the Pacific Ocean, British

Columbia drew not only Japanese but also Chinese and Indian newcomers. The first wave of Japanese immigrants arrived between 1877 and 1928, while Chinese males arrived in significant numbers in the 1880s to participate in the construction of the Canadian Pacific Railway through the mountains of British Columbia.

Frank Oliver, who succeeded Sifton as Minister of the Interior and Superintendent of Indian Affairs in 1905, differed markedly in his approach to immigration. Oliver, in fact, had been one of the sharpest critics of Sifton's policies, at one time denouncing Slavic immigrants as a «millstone» around the necks of western Canadians. The former newspaperman and transplanted easterner favored a vigorous immigration policy, but he wanted to see the West settled by newcomers who shared the values and aspirations of established Canadians. In Oliver's hierarchy of desirable settlers for the West newcomers from eastern Canada, «our own people», occupied the top rung. British immigrants ranked next, closely followed by Americans. It didn't matter to Oliver if British immigrants came from rural areas or from Britain's teeming towns and cities. Indeed, he preferred Britons from the towns and cities to agriculturalists from eastern and central Europe who violated the prevailing social mores. When he oversaw immigration, Oliver introduced two acts that were exclusionary in nature. Both conferred on Cabinet the authority to exclude «immigrants belonging to any race deemed unsuited to the climate or requirements of Canada» and strengthened the government's power to deport individuals, such as anarchists, on the grounds of political and moral instability (Knowles, 2016).

Notwithstanding these acts, immigrants continued to pour into Canada. Among them were large newcomers from Britain because Oliver was determined to bolster British immigration, claiming that Canada had to reinforce its British heritage if it was to become one of the world's great civilizations. Accordingly, he adopted assorted measures to encourage British immigration. Thanks largely to these measures the number of British newcomers soared from 86,796 in the fiscal year that ended March 31, 1906 to 142,622 in the fiscal year that ended March 31, 1914 (DIC, 1924). Most British immigrants in the prewar period immigrated to Canada hoping to find a higher standard of living and freedom from the rigidities of the hallowed British class system. These newcomers included not only people of modest means but also individuals with substantial funds who often invested in large-scale ranching or farming ventures in Western Canada. Not all of them were greeted with open arms. Indeed, there was widespread resentment against those Brits who seemed to expect special treatment in the «colony». Not infrequently, employment ads in western newspapers included the words, «No English need apply».

The great influx from Britain in these years also included poor immigrants who had been assisted by charitable organizations seeking to rid the United Kingdom of paupers and to help them make a fresh start in the colonies. Although most of the British poor who immigrated to Canada in this first European wave came in families, an impressive number did not. Conspicuous in these ranks were thousands of young boys and girls who arrived in this country unaccompanied by an adult family member. Once they had arrived here, these children were apprenticed as agricultural labourers or, in the case of girls, sent to small towns or rural homes to work as domestic servants. These were the «home children», youngsters plucked from philanthropic rescue homes and parish work-house schools and dispatched to Canada (and to other British colonies) to meet the soaring demand for cheap labour on Canadian farms and household labour in family homes. Most of these youngsters ranged in age from eight to ten, many coming from families too poor to care for them. Others had been orphaned, abandoned, or were run-aways. Over fifty philanthropic agencies were involved in this movement, which petered out in the Great Depression (1929-1939).

While promoting British and American immigration, Frank Oliver moved further along the path of restrictive immigration. Several developments conspired to push him in this direction, one being the Vancouver Riot of September 1907, which resulted in extensive damage to buildings occupied by Asians. Although the rampage had complex origins, its principal roots lay deep in an anti-Asian sentiment that had been smoldering for years in British Columbia. It reached new heights in 1907, when reports circulated that the Grand Trunk Pacific Railway was planning to import thousands of Japanese labourers to work on that railway's western section.

Following the riot, the Liberal government of Sir Wilfrid Laurier sought to placate British Columbia and Japan simultaneously. In response to British Columbia's insistent demands that Asian immigration be halted, Ottawa negotiated an agreement with Japan whereby Japan would limit the immigration of Japanese to Canada to four hundred a year. As part of the same initiative, the government dispatched William Lyon Mackenzie King, the deputy minister of Labour and a future prime minister, to Vancouver to investigate and settle Japanese claims for damage. After conducting his hearings, King awarded \$9,000 in compensation to Japanese victims of the riot. Chinese victims, who had sustained more damage, later received \$26,000.

In determining the origins of the recent Asian influx, King attributed the abnormally high numbers of Asians to substantial immigration from Hawaii and to the activities of immigration companies based in Canada. His one-man Royal Commission therefore concluded that immigration via Hawaii should be banned,

that Canadian companies should be prohibited from bringing in contract labour, and that Ottawa should severely restrict the admission of Japanese newcomers. It also implied that immigration from India should be discouraged. In response to King's findings, the Laurier government introduced an important amendment to the Immigration Act. Known as the «continuous journey» regulation, it required all immigrants to travel to Canada by continuous passage from their country of origin or citizenship on a through ticket purchased in that country. Since no shipping company provided direct service from India to Canada, this device served to ban all Indian immigration. It also closed the door on the Hawaii route for Japanese immigration. The «continuous journey» regulation did not go unchallenged. The most dramatic challenge occurred on May 23, 1914, when 376 East Indians (22 were returning Canadian residents) arrived in Vancouver's harbour on board the *Komagata Maru*, a Japanese tramp steamer, chartered by a wealthy Sikh. The reception that greeted the steamer could not have been more hostile. For weeks on end, immigration officials maneuvered to prevent the passengers from disembarking. Only after a court case finally decided the issue did the federal government deport most of the passengers. With the local citizenry cheering from the docks, the ship left Vancouver harbour exactly two months after its arrival. It left behind only a handful of passengers, who were previous residents of British Columbia that had been permitted to land by Ottawa (Knowles, 2016).

In a further attempt to make Canadian immigration policy more restrictive, Frank Oliver instituted an immigration inspection service at 37 points of entry along the Canada-United States border in the Central Canada District, which stretched from Toronto, Ontario to Prague, Manitoba. Frank Oliver may have wanted to see his government pursue a more restrictive immigration policy, but it was widely believed that Canada's prosperity required a large dose of immigration. So, despite the introduction of restrictive immigration legislation and head taxes, people continued to stream into the country. In 1906, the influx exceeded 200,000 and in 1913, the number of newcomers climbed to a record figure of 400,810 (Knowles, 2016). In the year that immigration crested, however, the country started to slide into a deep depression. This and the First World War, which erupted in 1914, triggered a dramatic decline in the movement of newcomers to Canada.

2.2 Restrictions, exclusion, and xenophobia: features of Canada's immigration policy between two world wars

Besides slowing down the movement of immigrants to Canada, the First World War created difficulties for many foreign-born Canadians and not just Germans,

who had previously ranked high on the list of desirable newcomers. Other 'enemy aliens' – Hungarians, Poles, Romanians, Czechs, and Ukrainians – who had once been citizens of the Austro-Hungarian Empire, also became objects of intense hostility on the part of Anglo-Canadians. Many Ukrainians, for example, were interned and almost all were disenfranchised.

The conclusion of hostilities in Europe found that continent's economy in shambles and destruction widespread. Canada could have responded to the situation by opening its doors to Europe's homeless and dispossessed. Instead, this country began to erect one roadblock after another to immigration from that part of the world. The anti-foreign sentiment of the pre-war and First World War years played no small role in this. Also, Canadians, like their neighbours to the south, had succumbed to a «red scare» following the Russian Revolution of 1917. As a result, they took a jaundiced view of accepting European immigrants lest they bring with them dangerous ideologies in addition to their foreign languages and strange lifestyles. In any event, Canada was not prepared to welcome immigrants because of the widespread unemployment that followed the war.

In 1918 and 1919, a wave of labour unrest rolled across Canada, exacerbating fears of a Bolshevik conspiracy, and resulting in numerous general strikes, including the notorious Winnipeg General Strike of 1919, in which European workers figured prominently. During the Winnipeg General Strike, the largest general strike in Canadian history, the federal government threw its support behind the employers. In addition to employing armed force to crush the strike, Ottawa implemented legislation that made the Immigration Act even more restrictive. To previous grounds for deportation, it added new ones. That same spring, the federal government, influenced by the prevailing anti-foreign sentiment and by the economic realities of the day, used the revised Immigration Act to bar entry to specified classes of immigrants. Among those denied entry were Doukhobors, Mennonites, and Hutterites, as well as all persons who then were, or during the war had been, enemy aliens.

The revisions made in the Immigration Act in 1919 and the Orders-in-Council issued under its authority signaled a dramatic shift in Canadian immigration policy. Prior to the First World War, economic considerations had reigned supreme, now a prospective immigrant's cultural and ideological complexion weighed more heavily in the selection process. This resulted in immigrants from the white British Commonwealth countries, the United States, and, to a lesser extent, newcomers from the so-called preferred countries (i.e., northwestern Europe) being welcomed but not agriculturalists from central and eastern Europe.

When Canadian workers began leaving in alarming numbers for the United States, Canadian industrialists and farmers joined transportation and mining in-

terests in lobbying the federal government for a more liberal immigration policy. In response to this pressure, the Liberal government gradually removed most of the barriers erected against large-scale European immigration, starting with the 1923 repeal of the regulation that restricted the entry of immigrants from Germany and from its wartime allies. The real breakthrough came two years later when the federal government signed an agreement with Canada's two largest railways allowing them to recruit cheap foreign workers under the guise of bona fide European agriculturalists. This paved the way for Canada to receive newcomers from countries previously designated «non-preferred» by immigration authorities.

If the Railway agreement of 1925 led to a surge in the influx of immigrants from continental Europe, the Great Depression of the 1930s choked off almost all immigration to Canada. The federal government attempted to seal off Canada not only to prospective immigrants but also to refugees fleeing Nazi Germany. To do this, Ottawa passed Orders-in-Council that stipulated that only agriculturalists and British and American non-agriculturalists with means could be admitted. This highly restrictive immigration policy reflected the attitude of Canadians towards large-scale immigration. Caught in the grip of the Great Depression, they took the view that immigrants and refugees threatened scarce jobs in an economy that saw one-quarter of the labour force unemployed in 1933. Coupled with this was an unwillingness to become involved in Europe's quarrels and problems.

Underlying the federal government's refusal to lower immigration barriers was not only the perceived threat to employment but also Quebec's attitude towards refugees in general and to Jews in particular. Anti-Semitism existed throughout Canada, but it was most overt and ugly in Quebec, where it was fed by the Roman Catholic Church and the revival of French-Canadian nationalism. Among those barred from entering Canada during the 1930s were thousands of desperate refugees, many of them Jews fleeing persecution by the Nazis. By and large their appeals were ignored. In 1938, Canada stalled for months before accepting an invitation to a refugee conference in Evian, France because it knew that attendance suggested an interest in liberalizing its immigration legislation and admitting substantial numbers of Jews, which the government was not prepared to do. The shrewd politician Mackenzie King had a genuine sympathy for refugees, but he was committed to keeping Canada united and this required that he not ignore political realities and the will of most Canadians.

Canada's anti-refugee stance found its most notable expression in its refusal to let the S.S. *St. Louis* dock at a Canadian port when she sought in vain in the spring of 1939 to find a country of asylum for her desperate human cargo. In Canada, forty-four well-known Torontonians sent a telegram to the Prime Min-

ister urging the Canadian government to provide a sanctuary for the homeless, anti-Nazi exiles, but their request was turned down. Having exhausted all her options, the ship returned to Europe, where almost certain death awaited most of her passengers.

As dismal as this picture appears, there were in fact many Canadians who wanted to see Canada liberalize its immigration policy and admit larger numbers of refugees. In addition to pro-refugee organizations and leading spokesmen for the Jewish community, these included prominent members of the Protestant churches, newspaper editors and commentators in English-speaking Canada, as well as members of the Cooperative Commonwealth Federation (forerunner of the New Democratic Party). Foremost among the non-sectarian refugee lobbies was the Canadian National Committee on Refugees and Victims of Political Persecution, later shortened to the Canadian National Committee on Refugees (CNCR). Founded in 1938 by the League of Nations Society in Canada, it was headed by Canada's first woman senator, Cairine Wilson, who was so devoted to the cause that she became known as 'Mother of the Refugees'. For the next ten years, the Committee devoted itself to educating Canadians about the plight of refugees and the contributions they could make to Canadian society, combating anti-Semitism, and assisting those refugees who succeeded in gaining entry to this country. However, despite its energy and dedication, the Committee was ineffective in persuading the government to adopt a more humane immigration policy. That would have to wait until after the Second World War.

2.3 Liberalizing Canada's immigration policy

The first tentative steps to liberalize Canada's immigration policy were taken in 1946, when the government allowed residents of Canada, who could care for them, to sponsor the admission of first-degree relatives in Europe plus orphaned nieces and nephews under sixteen years of age. Not until the following year, though, was a real breakthrough made. On May 1, 1947, Mackenzie King responded to those Canadians who advocated a more liberal immigration policy. In a landmark statement, made in Canada's House of Commons, he declared, «The policy of the government is to foster the growth of the population of Canada by the encouragement of immigration» (Mackenzie King, 1947, p. 2644). He stressed, however, that the number of new arrivals would be related to the «absorptive capacity» (Mackenzie King, 1947, p. 2644) of the Canadian economy. To pacify those opposed to Asian immigration, he defended Canada's right to discriminate. There would be no large-scale immigration from Asia. However,

deference to the United Nations Charter, the Chinese Immigration Act of 1923, which had barred the entry of most Chinese, would be repealed, and Chinese residents of Canada, not already Canadian citizens, could apply for naturalization. Despite its vagueness, King's statement paved the way for hundreds of thousands of Europeans, many of them refugees, to enter Canada in the next decade. For the first time since the turn of the century, a Canadian government decided to use immigration as an instrument to expand the Canadian population and economy. Today, this would not be considered a bold move, but at the time it represented a watershed in Ottawa's approach to immigration policy.

Five years after King's statement on immigration, a long-awaited immigration act was passed, the Immigration Act of 1952. In its major provisions, the act simplified the administration of immigration and defined the wide-ranging powers of the minister and his officials regarding the selection, admission, and deportation of immigrants. The large degree of discretionary power invested in the minister and his officials would have far-reaching, often negative, implications for Canadian immigration. But when used creatively and responsibly, it could be an invaluable tool in assisting desirable and/or humanitarian immigration. Such an occasion arose three years later, in 1955, when Canada took the bold step of admitting some Palestinian refugees displaced because of the Israel-Arab war in 1948. In 1955, when the idea for such a scheme was conceived, there were over nine hundred thousand such refugees living in Lebanon, Syria, Jordan, and Gaza, where they served as a pawn in inter-Arab machinations and posed a dangerous threat to the political balance in the Middle East. The resettlement of these refugees abroad was nothing, if not a politically explosive issue in the Middle East. Canada's participation in such an operation meant that it risked incurring the wrath of Arabs who might charge that it was part of a Zionist plot to deprive Palestinian refugees of the United Nations Relief and Rehabilitation Administration (UNRRA)'s care and their right to return to Palestine. Nevertheless, the federal government eventually succeeded in arranging for thirty-nine heads of families and their dependents to come to Canada in the summer of 1956 (LAC, n.d.).

Canada's acceptance of Palestinian refugees in this period has attracted little, if any, attention by historians. By contrast, its admission of close to forty thousand Hungarian refugees in 1956-57 has attracted a lot of coverage. What is sometimes overlooked, however, is how ingeniously Jack Pickersgill, the minister of immigration, and his officials used the 1952 Immigration Act's discretionary powers during this exciting chapter in Canada's immigration history. The refugees accepted by Canada had fled Hungary after Russian troops crushed that country's revolt against Soviet domination. Fortunately for them Canada was

experiencing a buoyant economy and Canadians were deeply moved by the Hungarians' plight. Reacting to intense pressure from the Canadian public, Ottawa decided to simplify all immigration procedures and to allow Jack Pickersgill to cut formalities to the bone. The result was a generous admission program that eventually included free passage for all those Hungarians who met this country's admission standards. In the future, Canada would adopt a similar can-do approach to other refugee crises.

Refugees were also spotlighted in 1959, World Refugee Year, when Canada admitted 325 tubercular refugees and 501 members of their families. They were among a total of 6,912 refugees admitted that year, which saw seventy countries intensify their efforts to close the world's refugee camps (Knowles, 2016). During the boom period, 1947-1957, the Liberal government had gradually eased immigration restrictions. This was always done, however, with a view to preserving the fundamental character of the Canadian population. The Liberal governments of the day were not prepared to abolish Canada's racist immigration policy. The nominal credit for this bold achievement belongs to the Progressive Conservatives who won the federal election of June 10, 1957. Their achievement was made possible by the passage of the Canadian bill of rights in 1960, and the growing recognition that a racist, Euro-centered immigration policy was not compatible with Canada's self-image as a progressive middle power. On January 19, 1962, Ellen Fairclough, the immigration minister and the first female federal cabinet minister, tabled new regulations in the House of Commons that represented a major watershed in Canadian immigration policy. For the first time, race and nationality would no longer play a role in the selection of non-sponsored immigrants.

2.4 The introduction of point system policy and the removal of racial and geographical discrimination

Five years later came the introduction of the point system, an objective and fair method for selecting unsponsored immigrants. Henceforth, education, training, and skills would determine who could be selected and the authority to admit newcomers would devolve on immigration officials who would use general instructions as their guide when making selections. The new regulations also contained a special provision that allowed visitors to apply for immigrant status while in Canada. These new regulations would be followed by the introduction of a new policy governing the acceptance of refugees. Although Canada had been involved in drafting the UN Refugee Convention and Protocol, it did not ratify the protocol when it

opened for signature in 1951. The federal Cabinet feared ratification would hinder Canada's ability to deport individuals on national security grounds. Ratification did not take place until 1969. When a year later, Cabinet reviewed the implications of this ratification, it noted that while the point system had made the immigration system universal, the refugee acceptance system had remained focused entirely on European refugees. There was need for change and the result was the issuing of a new set of instructions to immigration officials in January 1971.

The new policy had three main features:

1. Canada abandoned its own refugee definition and adopted the UN Refugee Convention's definition; it broadened its resettlement activities to include non-European refugees.
2. The point system would be employed in the selection of refugees.
3. Canada would accept oppressed individuals who did not fit the UN definition of refugees because they were still in their home countries (Molloy *et al.*, 2017).

The removal of racial and geographical discrimination in Canadian immigration policy and Canada's belated signing of the Geneva Convention relating to the status of Refugees and its 1967 protocol paved the way for refugees outside Europe to apply for and frequently gain admission to this country. As if to signal the import of these changes, Allan MacEachen, then Minister of Immigration, declared in 1969, following Canada's acceptance of some 11,000 Czech refugees the year before, «Greater attention will be given to the acceptance of refugees for resettlement in Canada from other parts of the world» (Knowles, 2016). In the 1970s, the government would be given plenty of opportunity to live up to this promise. One such opportunity arose in 1970-71, when Canada accepted 226 Tibetans who had fled their homeland after it had been seized by China in 1959. Unfortunately, they experienced loneliness and loss while attempting to adjust to their new environment, in part because government policy favoured dispersal across the country instead of group settlement (Kelley and Trebilcock, 1988).

By contrast, Canada's acceptance and settlement of Ugandan refugees was a success story. When Britain appealed to other countries to accept Asian holders of British passports expelled by dictator Idi Amin Dada's decree of August 1972, Canada responded with alacrity.

By the end of 1973, more than seven thousand of these refugees had arrived in Canada, where they were greeted by well-organized receptions staged by *ad hoc*, largely volunteer committees funded by the federal government. A year later, interviews revealed that 89% of those who wished to enter the labour force were employed (Kelley and Trebilcock, 1988).

The next major refugee movement was prompted by a military coup that overthrew Chile's democratically-elected leftist government on September 11, 1973, and replaced it with a right-wing military dictatorship that launched a brutal crackdown against the former government's supporters. In the wake of this upheaval Canadian churches and numerous other organizations urged the Canadian government to grant many exiles and asylum seekers refugee status. Ottawa was slow to react to this pressure, however, fearing that doing so would antagonize the United States which supported the new regime. It also feared the possible implications of admitting alleged Marxists into Canada. But eventually the government yielded and ultimately the immigration department admitted almost seven thousand Chileans, all the while brooking constant criticism (Kelley and Trebilcock, 1988).

2.5 Canada's modern refugee protection policy

In 1975, the Communist victories in Vietnam, Laos, and Cambodia led Canada to participate in a refugee resettlement movement that in 1979-80 would become the largest refugee movement in its history. Canadians were so appalled by TV images of desperate refugees fleeing their homeland in leaky boats the Canadian government had no option but to respond to the crisis of the 'Boat People'. The overwhelming size of this response, however, was unique. Shortly after taking office in the short-lived, Conservative government of Joe Clark, Flora MacDonald, Minister of External Affairs, and the immigration minister Ron Atkey increased the previous government's commitment to accept five thousand refugees to eight thousand and challenged ordinary Canadians to sponsor another four thousand. But more had to be done. On July 18, 1979, the ministers announced that Canada would resettle an unprecedented fifty thousand Indochinese refugees. At the same time, they challenged Canadians to sponsor twenty-one thousand of them (Molloy, 2015).

Thus, began the astounding story of the acceptance and resettlement of what turned out to be sixty thousand refugees. More than half of them were sponsored by Canadians participating in the Private Sponsorship of Refugees Program (PRSP), introduced in 1976 (see chapter 7). This earned for the «People of Canada» the United Nations prestigious Nansen Medal in «recognition of their major and sustained contribution to the cause of refugees». Between the arrival of the boat people and 2019, 327,000 privately sponsored refugees were resettled in Canada under the PSRP (Harder, 2019).

Even before the resettlement of the boat people was under way developments were dictating the drafting of new immigration legislation. This was because the

implementation of new laws and regulations had unforeseen consequences. One of these was a sizeable backlog of cases involving visitors to Canada who had learned that the fastest way to circumvent normal immigration procedures was to travel to Canada, apply for landed immigrant status, and, if turned down, submit an appeal to the Immigration Appeal Board. By 1972, the backlog of cases had become critical and the newly installed Liberal government, headed by Pierre Trudeau, was forced to take act. Under Robert Andras, Minister of Manpower and Immigration, a dramatic and sorely needed overhaul of Canadian immigration was carried out. The highlight of this overhaul and the cornerstone of immigration policy between 1978 and 2001 was the Immigration Act of 1976. It broke new ground by not only spelling out the fundamental principles and objectives of Canadian immigration policy but also by including a new class. This was an identifiable class for refugees, selected and admitted separately from immigrants. By providing such a class, the act explicitly recognized Canada's obligations under the United Nations Convention relating to refugees and its protocol to protect foreign nationals against involuntary repatriation to countries where they have justifiable fears of persecution. This new class also established criteria for the determination of refugee status. The Refugee Status Advisory Committee was established to determine the validity of refugee claims made by individuals already in Canada and to prevent the arbitrary deportation of individuals to countries where their lives and freedom would be threatened. This new class of protected persons and refugees joined three other main classes by which Canada admitted and still admits new permanent residents. The most significant of these is the economic or independent class, which includes professionals and skilled workers. Next in importance is the family class. There is also a humanitarian class by which permanent residency is granted to a small number of people on broadly defined humanitarian and compassionate grounds.

Not recognized as a class are asylum-seekers, people who arrive in Canada without having obtained prior government approval. Probably most Canadians are prepared to accept genuine refugees, but in the 1980s increasing numbers of these same Canadians began to deplore the fact that «economic migrants» could leapfrog over the immigration queue to move ahead of genuine refugees selected overseas and other prospective immigrants. A major deterrent to the smooth, efficient operation of Canada's refugee determination system was the so-called Singh decision, handed down by the Supreme Court of Canada in 1985. Viewed as a great victory by refugee advocates, it required that all refugee claimants be granted a full oral hearing at some stage of the refugee determination process. The Singh decision did not in itself create a refugee claims backlog, but it certainly contributed to it.

During the early 1980s, the number of refugee claimants arriving annually increased dramatically, resulting in a huge backlog of cases. To clamp down on what it perceived to be rampant abuse of the refugee claims system, the Canadian government introduced legislation intended to streamline and maintain the integrity of Canada's refugee-determination system. It provided for the establishment, in 1989, of a quasi-judicial body, The Immigration and Refugee Board (IRB) and a two-stage screening process. In 1991, it granted refugee status to 64% of the people who sought it. This meant that on a per capita basis Canada then accepted more than five times more refugee claims than the United States (Knowles, 2016, 229)

The most controversial feature of this legislation, was a provision in Bill C-55, that allowed Canadian immigration officers to refuse entry to refugee claimants who arrived from a safe third country, where they could have filed a refugee claim. Critics of this feature claimed that it was reprehensible that the Cabinet would draw up a list of «safe» third countries so that immigration officers could quickly screen refugee claimants. Bill C-55 was finally enacted in 1989, but without this feature.

Fifteen years later, in 2004, Canada and the United States signed a Safe Third Country Agreement (see chapter 5, 6 and 14). It would ignite fierce controversy and even legal challenges, the most recent one in 2017, by the Canadian Council for Refugees and other organizations, which claimed that the United States was not a safe country for refugees. Their arguments were rejected, however, by the Federal Court of Appeal, which ruled in 2020 that the agreement did not violate Canada's Charter of Rights and Freedoms.

Meanwhile, the federal government had embarked on the first large-scale overhaul of Canada's immigration policy since 1976. The outcome was the implementation of the Immigration and Refugee Protection Act in 2002. Notable among its provisions was a reference to multiculturalism, considered to be integrally linked to immigration, and the outlining of several basic economic, social, and cultural goals for Canada's immigration program. The act also set out humanitarian goals of refugee protection. These humanitarian goals were honoured years later when Canada began accepting thousands of Syrian refugees who had escaped the violent conflict that had raged in Syria since 2011. Initially, the government's response to the Syrian refugee crisis was glacial. But this all changed in the fall of 2015 when Canadians viewed images of a Syrian toddler's body lying on a Turkish beach.

In response to the public and media outcry, the newly elected Liberal government of Justin Trudeau unveiled its goal of resettling 25,000 Syrian refugees

before the end of February 2016. This goal was met. Eventually, the total number of Syrian refugees accepted by Canada between 2015 and 2019, reached 60,000 (Houle, 2019). The year 2015 also saw the federal government introduce Express Entry. It is designed to provide a «faster pathway» for professionals and skilled workers to settle in Canada by shortening the processing time of their applications and by assigning them to existing job vacancies.

China's implementation of the new security law in Hong Kong on June 30, 2020, inspired the introduction of still another immigration initiative. To attract students and youth from Hong Kong, the Canadian government announced on November 12, 2020, that it would offer a new open work permit and broaden their pathways to permanent residency. It would also enhance existing immigration programs to support people from Hong Kong to who are currently in Canada and want to stay or who want to come to Canada when COVID_19 restrictions are lifted.

In 2018, Canada welcomed 321,000 permanent residents, the highest number since 1913. Of that number, 28,000 were refugees, making Canada the number one resettlement country in the world (IRCC, 2019). Amendments to Canada's asylum system in 1988-89 and subsequent revisions to it had given her the most generous refugee claims system in the world (Girard, 2021)

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3. Challenges of Canada's contemporary migration policy

Anna Purkey

«Everyone knows the country was built by immigrants, but we don't often acknowledge that the country is still being built by immigrants» (Century Initiative, 2019, p. 23)

Canada has long prided itself on its reputation for being a country that is open, welcoming and generous to migrants. In recent years, concerted efforts have been made to solidify this reputation; these efforts have included the resettlement of 25,000 Syrian refugees between November 2015 and February 2016 (Government of Canada, 2020), a 2021 commitment to resettling 40,000 Afghan refugees (Government of Canada, 2022a), a range of special immigration measures for people affected by the Russian invasion of Ukraine (Government of Canada, 2022b), and through Canada's engagement and leadership in the negotiation processes for the Global Compact on Refugees (GCR) and the Global Compact for Safe, Orderly and Regular Migration (GCM) (Atak and Nakache, 2021). These initiatives, along with Canada's good record in terms of immigrant integration, relatively liberal naturalization processes, and recognized expertise in refugee resettlement and private sponsorship create an opportunity for Canada to emerge as a world leader on migration management. However, the moral authority that Canada possesses to lead in terms of migration governance on the international stage is being undermined by a failure to address the ways in which the current Canadian system creates and exacerbates the precarity of certain groups, creating opportunities for exploitation, abuse, and the violation of basic rights.

In the discussion below, we will explore some characteristics and trends that distinguish the Canadian migration system, focusing primarily on the non-asylum/humanitarian related migration pathways. We will then examine the ways in which the current system creates and exacerbates precarity and vulnerability of certain migrants and asylum-seekers through an over-reliance on temporary status, an absence of pathways to permanent status, and an increasingly insecure «permanent status». The real and potential impacts of these challenges demonstrate the need for a clearer rights-based vision if Canada is to be a global leader in migration governance.

3.1 Domestic Trends

Canadian exceptionalism in the realm of migration is well recognized and is characterized by consistently high levels of immigration, support for immigration among all major political parties, and general support for immigration among the majority of Canadians (Boyd and Ly, 2021). In recent years, Canada has largely managed to resist the anti-immigrant populism and increasingly toxic nationalist discourse that has permeated the political scene in many destination countries (Triadafilopoulos and Taylor, 2021, p. 33). However, this optimistic picture conceals a more nuanced reality.

Immigration is presented to the Canadian public and consistently accepted by a strong and increasing majority of Canadians as a net benefit to the Canadian economy and as essential to building a strong, vibrant economy (Triadafilopoulos, 2020; Environics Institute for Survey Research, 2020; Century Initiative, 2019). 68% of Canadians believe that immigrants actually make Canada stronger (Glavin, 2019). This is perhaps unsurprising considering that over 20% of the population of Canada was born elsewhere (Statistics Canada, 2021). When the statistics are parsed more carefully, however, certain fault lines emerge related to ethnicity and diversity suggesting that for some the acceptance of immigration and multiculturalism is conditional (Besco and Tolley, 2019). For example, a national survey conducted by Dynata Research and researchers at McMaster University in 2020 found that over 50% of respondents felt that too many immigrants were not adopting «Canadian values» (Newbold, 2020). Additionally, increasing incidents of racism, support for more populist (moderately xenophobic) political positions in Quebec, and additional studies that suggest an equivocal attitude towards visible minority immigrants among a large minority of Canadians raise concerns about the potential fragility of Canadian support for immigration (Glavin, 2019).

Permanent immigration to Canada is divided into five main categories: Economic Class, Family Class, Protected Persons, Refugees, and Humanitarian and Compassionate. More than half of the permanent immigrants to Canada come through the Economic Class and most of these arrive through the Express Entry pool. Applicants are ranked in the Express Entry pool through a points system which allocates points based on employability (skills and experience), language skills, and education (Government of Canada, 2021). The immediate outcome of the points system is that immigrants admitted to Canada tend to be highly skilled, well-educated and proficient in at least one official language (MacIsaac, 2021). While immigrants still face challenges such as skill gaps and mismatches (Standing Committee on Citizenship and Immigration, 2021, p. 8) and prob-

lems with recognition of foreign credentials (MacIsaac, 2021), these qualifications mean that Canada's immigrant population tends to be better integrated and more successful than that of many other countries. Thus, the success of the economic migration programs stimulates further support for the system in a positive feedback loop.

3.1.1 Conditional support and irregular migration

Perhaps the most important factor in the support for immigration in Canada is that the country is largely immune from the type of large-scale irregular migration that has influenced public opinion in the United States and in many European countries. With the global levels of irregular migration rising, migration governance is an increasingly important topic on the international stage. No single country can control or 'manage' international migration on its own. Both the Global Compact on Migration and the 2030 Sustainable Development Goals call upon states specifically to facilitate migration, which includes opening up pathways to legal migration and ensuring that the rights of migrants are respected at all stages of the migration process. In contrast, Canadian support for migration is predicated on the assumption that migrants come in through the «front door» and that migration will be highly managed; thus it is dependent upon a largely invisible (at least to Canadians) system of interdiction and deterrence which includes expansive visa restrictions, high rejection rates and collaboration with (occasionally questionable) foreign governments to halt irregular migration (Atak and Nakache, 2021; Keller, 2018; Bureau and Robillard, 2019).

With respect to irregular migration, Canada's first and best defense is its natural barriers. Surrounded by water on three sides and sharing a border with only one other country, its location makes it uniquely challenging to reach. Additionally, historically immigration has flowed through Canada to the United States, not vice versa (Keller, 2018). Even so, Canada used the events of 9/11 and the American Government's desire for increased security at the border as a bargaining chip to conclude the Canada-US Safe Third Country Agreement (STCA) which prevents the vast majority of asylum seekers from claiming refugee status in Canada at official land border ports of entry, requiring them instead to make their claims in the US (see chapter 6). Thus, while Canada presents itself as an open, welcoming country, behind the scenes successive governments have engaged in widespread, deliberate, and largely successful efforts to deter and impede migrants trying to reach its borders (Bureau and Robillard, 2019; Atak and Nakache, 2021).

The conditionality of Canadian support and the strong preference for managed migration can be seen in the diverging political responses to refugee resettlement

versus spontaneous arrivals. Canada is without doubt a leader in refugee resettlement, able to muster both financial and human resources to welcome and assist in the integration of large numbers of resettled refugees who have been selected and screened overseas. In contrast, the irregular arrival of 492 Sri Lankan Tamil asylum seekers on the MV Sun Sea in 2010 set off a chain of events that included the detention and interrogation of those onboard for months, in an attempt to exclude them from the refugee process. This event was followed quickly by the amendment of Canada's immigration legislation to give the Government expansive new rights to detain people, particularly those arriving irregularly, and to restrict their access to certain rights (Canadian Council for Refugees, 2015). Similar tensions arose when the number of migrants crossing the Canada-US border at informal crossings (where they would be exempt from the STCA) increased sharply following changes in US migration policy under President Trump. Fortunately for Trudeau's Liberal government, the COVID-19 pandemic provided it with an excuse to close the Canada-US border to all asylum seekers, thereby diffusing any political conflict (to the detriment of potential asylum seekers). Where resettled refugees are seen as «victims» and «new Canadians», inland asylum seekers and irregular migrants have been described as «queue-jumpers» and «bogus refugees». Thus, the migration with which most Canadians are familiar, and for which they express their support, is the well-managed migration of highly skilled, well-educated migrants on the one hand and the resettlement of refugees on the other hand. These two streams fuel Canada's perception of itself as an open multicultural society that offers opportunities to new immigrants and as a morally 'good' state that manifests its support for human rights and justice in its immigration policies.

3.1.2 Economic self-interest

While this image of a benevolent, welcoming state is not entirely inaccurate, it fails to fully acknowledge the extent to which Canada is acting in its own self-interest. Canadian immigration policies have focused primarily on economic migrants with the objective of strengthening and expanding the Canadian economy (MacIsaac, 2021). An ageing population and low fertility rates mean that by 2030, population growth in Canada will come uniquely from immigration (Standing Committee on Citizenship and Immigration, 2021, p. 13). So far, the impact of the peaking labor force has been mitigated by immigration, but as the costs of healthcare and social services increase, so too will Canada's dependence on immigration, even as birthrates decline and quality of life increases in traditional sending countries. The potential competition between countries for immigrants in the future reinforces the need for current and long-term plan-

ning and the importance of facilitating migration as noted in target 10.7 of the 2030 Sustainable Development Agenda and in the GCM. Although lacking a clear long-term vision, the general trend in Canadian politics in the last two decades has been towards an increase in immigration with the Trudeau government announcing in late 2020 that it was increasing immigration targets in 2021 and 2022 from 351,000 and 361,000 new permanent residents respectively to 401,000 and 411,000, 60% of whom will be in the economic class (Statista, 2021; Immigration.ca, 2020)¹.

3.1.3 Increases in temporary and precarious migration

The final trend of note is the one that is most concerning. While permanent migration to Canada has increased modestly each year, temporary migration has increased exponentially from 60,000 migrant workers in 2000 to over 400,000 in 2020 (Standing Committee on Citizenship and Immigration, 2021, p. 16). Historically, Canada has admitted more permanent residents than temporary ones. This changed around 2006 and has resulted in a dramatic reversal. In 2019, three temporary residents were admitted for every one permanent resident, while in 2021, one out of every 23 people in Canada was a non-permanent resident (Yalnizyan, 2021; Standing Committee on Citizenship and Immigration, 2021, p. 16). The majority of foreign workers arrive under the Temporary Foreign Workers Program (TFWP) which «aims to help fill genuine labor needs as a last and limited resort when qualified Canadians or permanent residents are not available» (Standing Committee on Citizenship and Immigration, 2021, p. 15). Other temporary residents arrive as international students or through the International Mobility Program. Unfortunately, the use of temporary migrant work in many fields is not exceptional at all, nor is it particularly temporary. Whether due to long-term labor shortages or employers looking for a competitive advantage, the use of temporary migrant labor has been built into many industries in Canada. While some migrant workers are employed in seasonal industries in the hospitality or agricultural sectors, many are used to fill permanent labor shortages in agriculture, construction, in-home care, health care, food processing, and cleaning services. Thus, while their status may be temporary, their work and the need for their labor is not.

¹ Of course, it is likely that these new targets were at least partially influenced by the impact of the COVID-19 pandemic which resulted in a drastic reduction in new permanent residents arriving in 2020.

The TFWP is managed jointly by Employment and Social Development Canada and Immigration, Refugees and Citizenship Canada and includes a variety of different streams and pilot projects (e.g. high-wage stream, low-wage stream, agricultural stream, Global Talent Stream, the Caregiver Program, etc.). The application processes, operating procedures, and requirements for these different streams vary, and in some cases change with little notice which can result in confusion and instability in the work force (Hennebry, 2021). Under the TFWP, employers must obtain a *Labour Market Impact Assessment* (LMIA) indicating that hiring a temporary foreign worker will have either a positive or neutral effect on the Canadian labor market before migrant workers may apply for a work permit. Over the years the TFWP has undergone many changes, some of which were intended to push employers to make greater efforts to hire domestically before applying for TFW and to more closely align the program with labor market considerations. Few of these changes however sought to improve the enforcement of employer commitments regarding pay and working conditions, and many did not apply to the increasing number of temporary migrant workers in low-wage and low-skill jobs who are most at risk of abuse and exploitation (Hennebry, 2021, p. 197). Admittedly, the TFWP at least partially fulfills the needs of many stakeholders: employers are given access to a flexible, lower-cost labor force; local, provincial and federal governments are able to address changing labor needs without major disruption to the economy; and migrant workers are able to earn higher wages than they could in their home countries. Indeed, the Seasonal Agricultural Workers Program, one stream of the TFWP, is recognized internationally as a best practice (Hennebry, 2021, p. 186). Unfortunately, what is obscured by these «benefits» is the fact that the system is dependent upon a vulnerable, rights-poor workforce and the existence of «massive economic inequality between Canada and the countries where the workers come from» (Ayres, 2020). Unlike permanent residents who are viewed as key contributors to the process of nation-building, temporary migrants are viewed instrumentally as economic units of labor rather than as full, rights-bearing individuals (Chow, 2011).

Combined, these trends and characteristics result in an immigration system that works reasonably well for many groups: politicians and the government, employers, highly skilled and well-educated migrants, resettled refugees, and the general Canadian population. Complaints are often made that applications take too long to process, LMIA's are too expensive, the distribution of immigration targets between economic, family and humanitarian classes is skewed, etc., but compared to the vast majority of immigration systems around the world, Canada's regime is generous, well-regulated and largely successful. However, the

current system's focus on restricting and 'managing' migration, along with the increasing numbers of temporary migrants admitted to fill essential labor needs, has not only failed to address, but has exacerbated the precarity of already vulnerable and marginalized groups including temporary migrants, undocumented workers, and other migrants including asylum seekers who are at risk of falling into illegality or irregularity.

3.2 The creation and exacerbation of precarity

The concepts of vulnerability and precarity are often used interchangeably. In this analysis precarity is used in reference to legal status from which various other forms of vulnerability (to deportation, to exploitation, etc.) flow. In an excellent discussion of precarious legal status in Canada, Goldring, Berinstein and Bernhard (2009, p. 240) define precarious status as involving:

The absence of any of the following elements normally associated with permanent residence (and citizenship) in Canada: (1) work authorization, (2) the right to remain permanently in the country (residence permit), (3) not depending on a third party for one's right to be in Canada (such as a sponsoring spouse or employer), and (4) social citizenship rights available to permanent residents (e.g., public education and public health coverage).

Thus, precarious legal status is status that is temporary, insecure, or dependent. While individual migrants may lose their status as a result of their own action or inaction, from a systemic perspective the precarity experienced by many migrants is socially and politically constructed and a result of the institutions and structures, including the laws and policies, that are applied to them (Crépeau, 2018). More often than not, precarious legal status is not accidental; vulnerable migrants are not falling through the cracks, they are being deliberately positioned at the edge of the chasm.

3.2.1 Temporary migration regimes

The Canadian immigration system creates and exacerbates precarity in a number of different ways. Most importantly, temporary migration regimes, such as those used in Canada, are inherently precarious. The TFWP is primarily designed to address the needs of employers and while there are provisions intended to protect the rights of workers, it is inherent in the system that there is a trade-off between opportunities to work and rights – the more rights that are granted to

the workers, the less demand there is from industry (Smith, 2020). This system depends upon the existence of a flexible (i.e., temporary), vulnerable workforce that checks several of the «precarity» boxes noted above: lack of permanent status, status that is dependent upon a third party (employers), and unequal access to rights and benefits.

Some temporary residents, particularly those who come to Canada for education or to work in high-skilled sectors, are provided with pathways to permanent residence; however, most lower-skilled migrant workers, including those in food production and health care who were labelled as «essential» during the COVID-19 pandemic, have no path to permanent residency or Canadian citizenship despite returning to Canada year after year (MacIsaac, 2021). The assumption that underpins the TFWP is that migrants will come to Canada for a defined length of time, contribute their work to Canadian society in return for a higher wage than they could earn at home, and then return to their country of origin, only to repeat the cycle again becoming what Yalnizyan (2021) refers to as «permanently temporary». This temporary status means that migrants are constantly at risk of having their legal authorization to be present and work in Canada revoked or not renewed, and that they are vulnerable to sudden changes in government policy, many of which have been made in recent years through relatively non-transparent or accountable executive decision-making (Trebilcock, 2019, p. 837).

The precarity of this temporary status is further exacerbated by the fact that migrant workers are often highly dependent upon their employers for their status as well as in other ways. Many Temporary Foreign Workers for instance are subject to employer-tied contracts and may be required to reside in employer-provided housing, allowing employers an intimate level of control over their workforce. By tying migrant workers' legal status in Canada to their employment (often for a particular employer), the TFWP has created a state of precarity which leaves migrants vulnerable to abuse and exploitation. Unable to easily change employers without endangering their legal status and livelihoods, migrants live under constant fear of dismissal and deportation (and potential blacklisting) (Standing Committee on Citizenship and Immigration, 2021; Caregivers' Action Centre, 2020). They are consequently unable to exercise their agency to assert their rights and demand compliance with the applicable labor and human rights standards. This vulnerability exacerbates enforcement challenges given that existing enforcement mechanisms frequently depend upon the workers themselves to make complaints and report violations (Migrant Workers Alliance for Change, 2020; Caregivers' Action Centre, 2020). Thus, it should come as no surprise that advo-

cates and migrant workers have long reported a wide range of problems including substandard, overcrowded employer-provided housing with poor ventilation and inadequate sanitation, along with insufficient health and safety training and personal protective equipment, discrimination, sexual harassment, wage theft, and generally poor working conditions (McLaughlin and Hennebry, 2010). A pre-COVID-19 study in Quebec found that less than half of that province's farmers employing temporary migrant agricultural workers were observing legal health and safety requirements (McGrady and O'Hagan, 2015), while a 2016 study in Ontario found that 55% of migrant workers surveyed continued to work despite illness or injury for fear that disclosing their condition might jeopardize their employment and immigration status (Hennebry, McLaughlin and Preibisch, 2016). Despite regulations governing wages, employers are able to reduce costs by turning to migrant workers as their lack of bargaining power and insecure status means that they (whether temporary or not) will generally work longer hours for less wages under worse conditions than most Canadians would (Bélanger, 2018; Yalnizyan, 2021).

Finally, the precarity of temporary residents in addition to being a result of their temporary status and dependence on third parties, is also a result of their lack of equal access to rights and benefits. As explained by Hennebry (2021), what we have now

[...] is an immigration system with greater differentiation of access and rights – with heightened control and surveillance for some and greater access to employment and permanent residency for others – with few substantive changes bolstering human rights and social protections for vulnerable migrant workers (p. 184).

As noted above, temporary migrants benefit from fewer rights *de facto* as a result of their vulnerability and consequent inability to exercise their agency effectively (Yalnizyan, 2021). They also benefit from fewer rights *de jure*, due to the fact that the most vulnerable migrants are concentrated in sectors such as agricultural work where labor laws offer fewer protections, including exemptions from maximum hours of work, overtime pay, and minimum wage requirements, and restrictions on the right to organize (Migrant Workers Alliance for Change, 2020; Landry *et al.*, 2021). Indeed, for a time, the Canadian government permitted employers to pay migrant workers in certain sectors up to 15% less than Canadian workers in the same sector. Temporary residents of all types benefit from fewer social rights than permanent residents: some do not have access to health care services despite paying income taxes, while others do not have the right to work legally (Bélanger,

2018). The structural conditions inherent in the Canadian immigration system which result in the unequal treatment described here are inconsistent with both provincial and federal human rights legislation, including the *Canadian Charter of Rights and Freedoms*, which guarantees respect for and protection of the fundamental rights of all persons present on Canadian territory regardless of their migration status.

3.2.2 Insufficient pathways to permanent residence

A related cause of precarity is the absence of pathways to permanent residence for many migrants, including temporary workers but also other groups such as undocumented migrants. As previously alluded to, the majority of pathways to permanent residence discriminate against lower-skilled, less educated migrants regardless of the need for their labor. Under the current system, higher-skilled migrants are provided with opportunities to «work their way in» while lower-skilled migrants are not (Smith, 2020; Hennebry, 2021; Banerjee and Hiebert, 2021). These pathways, along with their associated language, education and work experience requirements, also disproportionately disadvantage racialized and female migrants (Faraday, 2021). While the Canadian government has implemented some pilot programs aimed at opening limited pathways to permanent residency for some temporary migrants, these tend to be too narrow, short-term, and small in scale (Banerjee and Hiebert, 2021). They also often include requirements that are difficult, if not impossible, for the most vulnerable migrants to meet. Take for example the government's announcement in April 2021 of the creation of a limited pathway to permanent residence for 90,000 migrants. 40,000 of those applications were reserved for international students from Canadian institutions, while another 20,000 were reserved for temporary residents working in health-related (and several other) occupations. Only 30,000 applications were reserved for lower-skilled migrants in the essential job category. Unfortunately, a survey conducted by the Migrant Rights Network (2021) found that of those nominally eligible to apply for the Essential Workers Stream (including, for instance, agricultural workers), 45.4% would be excluded based on program conditions and requirements (duration of presence in Canada, etc.), while a further 67% might be excluded solely due to the language requirements of the program.

Even in the case of migrant caregivers who are now provided with their own pathway to permanent residence following 24 months of employment, the regulations of the programs create unnecessary barriers that can impede access to permanent status. Previously, like many other temporary foreign workers, caregivers were admitted to Canada on work permits that were tied to their employers.

Changing an employer, for instance in cases of abuse, required the worker to find a new employer who would complete a LMIA and then apply for a new work permit, all of which could easily take close to a year, putting the migrant's permanent resident application in jeopardy and leaving both the worker and his or her family in a precarious situation (Caregivers Action Centre, 2020). Nevertheless, between 2006 and 2014, an average of 10,740 caregivers and their dependents received permanent status every year. Then in 2014, the Conservative government launched a new program which imposed additional language and post-secondary education requirements on caregiver permanent resident applicants and capped the number accepted at 5,500 per year (Keung, 2018). The program was modified yet again under the subsequent Liberal government. The new Home Child Care Provider and Home Support Worker pilots provide caregivers with an open, occupation-restricted work permit and do not require that employers obtain a LMIA, but have retained the language and education requirements and the cap on total applications. These more strenuous requirements mean that some caregivers will be unable to obtain permanent resident status despite completing the 24 months of work and other will be forced to expend substantial resources on repeating costly language testing. According to a 2021 Report of the Standing Committee on Citizenship and Immigration (2021), very few applications for permanent residency have been accepted under the new programs; thus, caregivers who are not able to transition to permanent status are forced to remain in a precarious situation, often separated from their families (p. 39).

The pathways to permanent residency announced in 2021 also exclude another category of temporary migrant, those who are undocumented (Rodriguez, 2021; Faraday, 2021). There is no accurate measure of the number of undocumented migrants in Canada. The Migrant Workers Alliance for Change uses the figure of 500,000 which is based on a 2007 report by the Royal Canadian Mounted Police (Hussan, 2021). Given the increase in all forms of migration, it is likely that the actual number is substantially higher today. Some undocumented migrants may enter into Canada clandestinely, but the great majority enter legally and then fall out of status for one reason or another, including due to the actions of unscrupulous employers and recruiters, failed asylum claims, and administrative barriers (Caregivers' Action Centre, 2020). Indeed, the substantial increase in temporary workers with few pathways to permanent status is likely to precipitate an increase in the number of undocumented migrants in the future (Bélanger, 2018; Trebilcock, 2019; Rodriguez, 2021). Without documentation, these migrants are among the most vulnerable people in Canada. They are at constant risk of deportation, do not benefit from many rights and services (such

as health care or the right to work) and are unable to claim their rights for fear of revealing their status. Thus, they are highly susceptible to exploitation and their avenues to permanent residence are even more limited. In addition to being excluded from the 2021 pathways to permanent residence, there has been no major regularization program in Canada since the 1970s (Yalnizyan, 2021).

For undocumented migrants (and most failed asylum-seekers), the only pathway to permanent status is through an application on Humanitarian and Compassionate (H&C) grounds. Decisions on H&C grounds are highly discretionary and based on several different factors including the best interests of any relevant children, the hardship that the applicant would face if required to leave Canada, and the degree to which the applicant is established in Canada. Statistics on rejection rates of H&C applications released in spring 2021 raise significant concerns regarding the continued availability of this pathway. Between 2016 and 2019, the rate of applications refused after processing (not counting those that were withdrawn) varied between 35 and 41 percent. In 2020, the rejection rate spiked to 57 percent and in the first two months of 2021, that number increased further to closer to 70 percent (Alhmidi, 2021). Without a clear explanation or any announced change in policy or practice that could provide some degree of public accountability, the reasons for this increase remain obscure and undocumented migrants are left shooting for an even smaller target, failing which they are consigned to deportation or a precarious existence on the margins of society.

3.2.3 Increasingly precarious and inaccessible permanent status

Last but not least, the Canadian immigration system has exacerbated the precarity of non-citizens by making permanent status less secure in recent years. The very idea of permanent resident status is that it is exactly that, «permanent». Those who are able to obtain this status are entitled to virtually the same rights as Canadian citizens (with the exception of political participation). Nevertheless, one of the key strengths of the Canadian system is that it does not require immigrants to remain permanent residents indefinitely but allows them to access that most secure status of all, citizenship, which transforms immigrants into Canadians with equal rights and opportunities for political participation. The ability of immigrants to become Canadian citizens contributes to the generally positive opinion of immigration. High naturalization rates mean that today's immigrants are tomorrow's electorate, and political parties are aware that adopting anti-immigrant politics is not to their benefit (Triadafilopoulos and Taylor, 2021, p. 33; Trebilcock, 2019).

While Canada still has high naturalization levels compared to many countries, these rates have fallen in recent years which is concerning, particularly as

the decrease is most substantial among non-economic migrant streams (those granted status under the refugee and humanitarian programs) (Nakache, Stone and Winter, 2020; IRCC, 2020). Moreover, not only has the percentage of successful applicants fallen, the number of applications has also declined (Nakache, Stone and Winter, 2020, p. 77). While some recent efforts have been made to make citizenship more accessible, for instance by allowing children to apply for citizenship even if their parents are unable or unwilling to and by allowing certain applicants to count some of the time spent in Canada prior to becoming a permanent resident towards the 3 year residency requirement (Canadian Council for Refugees, 2018), these initiatives do not counterbalance changes that were imposed in the early 2010s that tightened naturalization requirements.

Currently, permanent residents who wish to be naturalized must meet the following criteria (5(1) *Citizenship Act*):

- Have been physically present in as a permanent resident in Canada for at least 1,095 days during the five years preceding the application.
- Filed personal income taxes for three years within that five-year period.
- Not be inadmissible or under a removal order.

Additionally, all applicants that are 18-54 years of age must:

- Demonstrate an adequate knowledge of one of Canada's official languages.
- Demonstrate, in one of the two official languages, sufficient knowledge of Canada and of the responsibilities and privileges of citizenship.

These final two criteria are the most problematic. In 2012, regulatory amendments raised the language requirements for the citizenship test from a Canadian Language Benchmark Level 3 to a Level 4 and imposed a requirement that applicants provide «objective evidence» of their language skills rather than be evaluated by immigration officers as was previously the practice (IRCC, 2011). For many applicants, this requirement means providing the results from an IRCC-approved third-party test. These tests can be expensive and are not equally available throughout Canada, imposing an additional costly burden on applicants. The increased language requirement also disproportionately affects non-economic migrants who generally have lower education levels and for whom language ability is not a criterion of admissibility to Canada in the first instance (Canadian Council for Refugees, 2014). The second, «adequate knowledge», criterion is evaluated through a mandatory citizenship test. The current test is based on an expansive guide issued in 2009, *Discover Canada: The Rights and Responsibilities of Citizenship*, which covers a wide range of topics, including Canada's history,

political system, judicial system, economy, symbols, values and military achievements (Elke, 2014). It is much more difficult than previous versions and must be taken in either French or English whereas before, applicants could take the test in their native tongue. The score required to pass the test was also raised from 60 percent to 75 percent (IRCC, 2010). Ironically, a 2019 poll by Forum Research found that almost 90 percent of Canadians would fail the current citizenship test and that the average grade of those polled was just 50 percent (Vomiero, 2019). Last but not least, there has been a steep increase in the application fee, which is currently \$630 per adult, up from \$200 prior to 2014. While it is possible to apply for compassionate waivers for some of these requirements (though not the fee), evidence suggests that waivers are difficult to obtain and are typically granted based on a medical opinion (IRCC, 2020). Many of these challenges were noted in a 2020 evaluation report by IRCC but have not yet been addressed. The existence of these requirements means that while most permanent residents eventually do obtain citizenship, many are postponing their applications, retaining a more precarious legal status for longer. Importantly, the trend towards restricting citizenship and imposing access barriers that disproportionately affect more vulnerable migrants, such as refugee claimants, low-skilled migrants, and women (La Presse Canadienne, 2019), suggests that «naturalization is no longer viewed as an important stepping stone on the long road to integration, but as the “first prize” for “successful” integration» (Nakache, Stone, and Winter, 2020, p. 81).

As concerning as these changes in naturalization may be on their own, they are doubly so when viewed in conjunction with recent changes to the cessation provisions of the *Immigration and Refugee Protection Act (IRPA)*. Cessation is the process through which individuals with refugee or protected person status may lose their right to remain in Canada and then face deportation. Actions that can make a person subject to cessation proceedings include travelling to their home country (even for a short time), applying for or traveling on a passport from their home country, or becoming a citizen of a country other than Canada. Previously, an individual who arrived in Canada and was granted refugee status could lose that status under cessation proceedings, but once a refugee or protected person was granted permanent resident status, they were no longer at risk. As a result of amendments to *IRPA* in 2012 (s. 40.1 and 46(1) (c.1)), successful cessation proceedings now result in a permanent resident losing his or her «permanent» resident status and becoming inadmissible to Canada and subject to removal – a potentially life-threatening outcome for former refugees (IRB, 2019). Thus, the new provisions essentially created a category of former-refugee «second-class permanent residents» (Forrest, 2017) whose status is less permanent and thus more precarious.

The permanent residents who are vulnerable to cessation, former refugees, are some of the same permanent residents who are having increasing difficulty applying for and obtaining citizenship. Unfortunately, not only have the impacts of cessation increased in severity, so has the number of cessation proceedings. Between 2013 and 2018, cessation applications brought by the Minister annually varied from 92 to 182. In 2019 and 2020, the Minister brought 442 and 399 applications for cessation respectively, while 124 were brought in the first 3 months of 2021 alone (IRB, 2021). While as of yet unexplained, these numbers suggest a continuation of the trend of making permanent status both more difficult to obtain and also less permanent.

Given the overall strength and relative generosity of the Canadian immigration system in comparison to that of many developed countries and the relatively low levels of irregular migration, it might be tempting to dismiss the increase in precarity as a relatively minor flaw in an otherwise admirable system. Nevertheless, the consequences of this increasing (in degree and scope/number) precarity for both individuals and society requires a response.

The most important consequence of the trends outlined above is that, combined, they are likely to push ever more people into irregularity in the future. Globally, there has been a massive increase in international migration since 2000, but this increase in migration has not been matched by an increase in secure pathways to permanent status. As noted earlier, Canada has benefited from its geographical position and tightly controlled admissions, but the dramatic increase in the use of temporary labor is likely in the future to push up the population of undocumented migrants as increasing numbers of migrants are vulnerable to falling out of status (Bélanger, 2018; Trebilcock, 2019; Hennebry, 2021). Similarly, the absence of pathways to and erosion of permanent status (whether permanent residence or citizenship) will also increase the number of migrants who are vulnerable to becoming undocumented or alternatively who simply exist in an extreme state of precarity. Policies that create and perpetuate the precariousness of many groups of migrants in Canada have already resulted in the creation of a vulnerable underclass of often low-wage, low-skilled migrants that is disproportionately racialized and feminized (Barbara Schlifer Commemorative Clinic, 2018; Faraday, 2021; Caregivers' Action Centre, 2020; Goldring, Berinstein and, Bernhard, 2009). Migrants in this underclass lack stable, secure, permanent status and are thus vulnerable to exploitation and abuse and less able to exercise the rights to which they are entitled, not to mention the fact that they are often entitled to fewer rights.

3.3 Responding to Migration Precarity in Canada

Addressing the issue of precarity in the migration context is not simple; politics, economics, human rights, all intersect at this point. Restricting temporary labor migration immediately would result in higher costs for Canadians or in the offshoring or collapse of certain industries and would do nothing to address Canada's need for a broader labor base. Likewise, the ability to speak and understand one of Canada's official languages has been linked to successful integration, thus eliminating that requirement entirely may create other problems down the road. There is no simple solution, yet implementing policies and practices that clearly increase precarity, such as the use of cessation and the restriction of access to permanent resident status on H&C grounds, is certainly not the answer.

The Canadian government has made some steps in the right direction. For instance, in 2019 it implemented a program that allows migrant workers in Canada on an employer-specific work permit to apply for an open permit if they are experiencing or at risk of abuse (Government of Canada, no date). The most recent iterations of the care workers programs also eliminated the requirement that the workers live with their employers (though the majority still do) and offer a pathway to permanent residence for at least some workers (Caregivers' Action Centre, 2020). The 2021 budget also introduced more inspections and enforcement mechanisms in order to protect foreign workers (Banerjee and Hiebert, 2021, p. 8). Nevertheless, many of the initiatives are weighed down by administrative requirements and are short-term, pilot projects as opposed to indications of a genuine effort to address the fundamental problems in the Canadian immigration system. Canadian immigration policy is highly reactive: the arrival of irregular migrants on the MV Sun Sea led to knee-jerk changes to the asylum system; the COVID-19 pandemic resulted in the acceptance of 90,000 permanent resident applications in the space of mere weeks. Looking forward, the lack of a long-term coherent vision in the face of a looming crisis of increased climate-change induced migration, labor shortages and an aging population, along with the constant changes in policy and short-term programming creates insecurity for both the migrants and for Canadian society.

Canada seeks to position itself as a leader in the global governance of migration but doing so requires the development of a long-term, rights-based vision for migration to Canada, one that leads by example and addresses both current and future challenges – from demographic changes and labor needs to climate-change induced migration and new conflicts. The Global Compact on Migration is based upon a set of guiding principles that includes the «effective respect, protection and

fulfilment of the human rights of all migrants, regardless of their migration status» (GCM); yet Canada, like most other receiving countries, has not yet ratified the only international treaty to specifically protect the rights of migrants, the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. Regardless, Canada has the obligation to respect and protect the basic equal human rights of all migrants present on its territory. An important step towards a revision of the Canadian immigration system would be a shift back to the idea of migration as part of the nation-building process and creation of additional pathways to permanent residence that specifically target migrant populations that have already contributed to Canadian society and from which Canada has already benefitted. Importantly, not all migrants granted permanent residence will necessarily want to remain in Canada, but the security of permanent resident status means that they will be better able to exercise their rights and enjoy the benefits of their labor, including access to social services. Still, while permanent resident status is central to the ability of migrants to live and work in Canada, it is access to naturalization that sets Canada apart from many countries – the promise of a truly secure and equal status. Thus, addressing discrimination in naturalization practices is also critical to fulfilling Canada's obligations (both domestic and international) under the GCM which include addressing and reducing vulnerabilities in migration (Objective 7) and empowering migrants and societies – including Canadian society – to «realize full inclusion and social cohesion» (Objective 16). Human mobility is an inescapable reality of human existence and of a world that is increasingly inter-connected and under pressure. Whether Canada is able to fully benefit from the depth of knowledge, experience and resources that migrants possess will depend on its ability to take on a leadership role and plan for what lies ahead.

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PART II
IN-CANADA ASYLUM PROGRAM

4. Canada's contemporary asylum system

Colin Grey

4.1 *The different logics of Canada's asylum and immigration systems*

This chapter explains Canada's system for in-land refugee protection, *i.e.* its asylum system. Doing so requires that we distinguish Canada's 'asylum system' from its «immigration system». And to do that I will provisionally (and ideal-typically) say that Canada's immigration system is defined by a concern with national self-interest and control when creating structures and processes to determine who may enter or stay in the country, while our asylum system prioritizes non-citizens' rights. In the language of legal theory, when someone claims asylum or is found to be a refugee, our international obligations impose «exclusionary reasons»: reasons not to engage in the kind of self-interested reasoning permitted with respect to immigration generally under international law (Raz, 1999, p. 39). This manner of seeing things suggests a straightforward way of setting out Canada's asylum system: one need only turn to the *Immigration and Refugee Protection Act's* (IRPA) provisions on refugee protection, in Part 2 of the legislation and subject to a separate set of objectives (IRPA, s. 3(2)). A person leaves the immigration system for the asylum system when they make a refugee claim, completing the reverse journey if the claim is rejected or if they later lose protection.

Yet things are not so simple. Underlying much of the criticism directed at Canada's asylum system is a suspicion that it is permeated with immigration logic: that, more often than should be the case, considerations of national self-interest and worries about control infuse structures, processes, and decisions that should only be about rights protection, full-stop. That worry is not ill-founded, but it is also hard to substantiate. Canada's asylum system is commendable for the procedural robustness of refugee status determination, and for the multiple, alternative discretionary means of ensuring *non-refoulement*. But, as I will argue, the many-layered complexity of the Canadian asylum system also allows for its imbrication with, and frequently its subordination to, Canada's immigration system.

I can only treat some of the more observable manifestations of this imbrication and subordination in this short chapter. I begin by summarizing the two main procedures for obtaining asylum in Canada in para. 4.2, before turning to

the substantive grounds for evaluating claims in para. 4.3. In these paragraphs, I endeavour to bring out latent violations of our international obligations – «latent» in the sense that the legislation contemplates the possibility of such violations, whether or not they occur in practice – seemingly motivated by immigration considerations. I then show in para. 4.4 how the combination of the logics of immigration control and refugee protection impedes challenges to these latent violations on constitutional or international-law grounds. Para. 4.5 briefly concludes.

4.2 Two ways to become a protected person in Canada

Refugees are one of three broad classes of foreign nationals who may be selected for permanent residence under Canada's *Immigration and Refugee Protection Act* (IRPA, s. 12(3)), alongside the family and economic classes (IRPA, ss. 12(1) and (2)). To apply for permanent residence as a refugee from within Canada under the IRPA, one must first receive «refugee protection», thereby becoming a «protected person» (IRPA, s. 95(2)) with a statutory guarantee against *refoulement* (IRPA, s. 115).

There are two ways of getting refugee protection within Canada (IRPA, s. 95(1))¹. First, one may succeed in a claim for refugee protection at the Immigration and Refugee Board (IRB), an independent administrative tribunal. Almost all decisions by the IRB are made after an oral hearing at the first-level Refugee Protection Division (RPD) (IRPA, s. 170(b)), although expedited positive decisions may be made in simpler cases if the government has not intervened to oppose the claim (IRPA, s. 170(f)). In most cases, there is also a right to a (typically²) paper-based appeal to the Refugee Appeal Division (RAD) (IRPA, s. 110). Claims deemed eligible to go to the RPD, with a subsequent appeal to the RAD, provide the greatest procedural safeguards for those seeking refugee protection. Such safeguards include a statutorily-enshrined role for the United Nations High Commissioner for Refugees (UNHCR), under which it is permitted to observe

¹They may also apply for resettlement from abroad. Resettlement is dealt with elsewhere in this volume.

²Oral hearings may be held before the RAD only where there is new evidence (i.e., evidence that could not reasonably have been expected to be presented to the RPD) raising a serious issue of credibility: IRPA, s. 110(6). Detailed discussion of the appeal system is found in Grant and Rehaag 2016.

refugee-related proceedings and participate in precedential RAD appeals (IRPA, ss. 166(e), 110(3)).

The second way to get refugee protection in Canada is through «pre-removal risk assessment» (PRRA) applications, which are largely paper based (IRPA, s. 113(b); *Immigration and Refugee Protection Regulations* [IRPR], s. 167). PRRA applications are submitted to the Minister of Immigration, Refugees and Citizenship and decided by a Minister's delegate once a non-citizen nears the end of the deportation pipeline (IRPR, s. 160). They may be made either by persons deemed ineligible to make a refugee protection claim to the IRB or by persons whose claim for refugee protection was rejected by the RPD or RAD more than 12 months earlier (IRPA, s. 112(2) (b.1))³. PRRAs are not considered appeals of prior IRB decisions (if any) and may only be based on «new» evidence that could not reasonably have been expected to be submitted to the IRB (IRPA, s. 113(a)).

The rate of success on PRRA applications is significantly lower than at the IRB: in the low single digits (2.8 percent in 2013 and 3.1 percent in 2014 (Atak and Giffin, 2018, p. 309)), compared to about 70% at the RPD for claims decided on the merits in 2020 and a 32.3% on appeal to the RAD (Rehaag, 2021)⁴. A refugee who only has access to a PRRA – because they have been deemed ineligible to go before the IRB – thus may face a greater risk of *refoulement*. This is not certain, however, since it is possible most «genuine» refugees are granted protection by the IRB, with only a very small pool of «genuine» refugees going to the PRRA. Since it would be extremely hard to resolve this issue, what can be said is that the grounds for ineligibility to claim refugee protection at the IRB deserve scrutiny.

Some of these grounds are based on previous grants or denials of refugee protection, either on the merits or because of the abandonment or withdrawal of a claim (IRPA, s. 101(1)(a)-(c)). They also include ineligibility for what I will call 'bad-guy' inadmissibility on grounds of security and various forms of criminality, discussed further in the next section (IRPA, s. 101(1)(f)). Finally, they include grounds related to previous access to asylum systems in other countries. This last

³ On average, however, unsuccessful claimants are removed 197 days after a negative IRB decision (Kreishan 2019, para. 123).

⁴ Sean Rehaag has for years produced analyses of the outcomes of refugee protection claims showing a high rate of variance among decisionmakers. Rehaag's full datasets are available at the websites for the Refugee Law Lab (<https://refugeelab.ca/projects/refugee-law-data/>) and the Canadian Council for Refugees (<https://ccrweb.ca/>).

cluster of ineligibility grounds have proved most controversial. Claimants may be ineligible if they came to Canada from the United States, which in accordance with a bilateral agreement is designated by regulation as a «safe third country» (IRPA, s. 101(1)(e); IRPR, s. 159.3). Beginning in 2017, this much-litigated ineligibility ground (*Canadian Council for Refugees*, 2008; *Canadian Council for Refugees*, 2021) had the perverse effect of leading to a significant rise in irregular border crossings – because the safe-third country bar does not apply to irregular entries (IRPR, s. 159.4(1)(a)) – by asylum claimants fearful of deportation under the Trump administration (Mayrand and Smith-Grégoire, 2018). This surge led the government in 2019 to introduce yet another new ineligibility ground, this time for persons who have previously made claims in countries with which Canada has an «information-sharing agreement»; these are the other so-called «five-eyes» countries with which Canada shares biometric and other border processing data *i.e.*, Australia, New Zealand, the United Kingdom and the United States (IRPA, s. 101(1) (c.1); IRPR, part 19.1). Subsequently, the government added a legislative provision mandating oral hearings for such claimants at the PRRA (IRPA, s. 113.01). Measures to close off the land-border with the United States during the Covid-19 pandemic make it impossible to know what effect this new ineligibility provision has had⁵. It is also too soon to say how the fairness of such PRRA hearings will compare to those at the RPD, although even if they are as fair as RPD hearings there will be no subsequent appeal to the RAD.

Some assurance is given as to the reliability of both the IRB and the PRRA because both are subject to judicial review by the first-instance Federal Court, with limited rights of appeal to higher courts. Judicial review in Canada of refugee decisions has been criticized both by academics (Rehaag, 2012 and 2018) and international bodies (Organization of American States, 2000)⁶. First, access to judicial review is only with leave of the court, and leave applications are de-

⁵There were 3,302 interceptions of asylum claimants at the border in 2020 (with 18,500 total new inland claims), compared to 16,503 in 2019 (out of 58,378 inland claims). 2017 saw the highest number of interceptions, at 20,593. Statistics on interceptions are from Canada, 2021; statistics on total claims, from IRB 2021. An overview is provided by Keung, 2021.

⁶Note that UN Treaty Body case law is inconsistent in its evaluation of judicial review. It may treat the failure to seek judicial review as a factor in rejecting complaints at the admissibility stage (*e.g.*, *Nakawunde*, 2018), but it also has criticized judicial review in Canada for not being an effective remedy (*e.g.*, *Singh*, 2011). For discussion, see Atak and Giffin, 2018, pp. 307-310.

cided without reasons based on whether an applicant's materials disclose a «fairly arguable» case (*Bains*, 1990); historically, leave has been granted in about 16.8 per cent of cases, with 46.2 per cent of judicial reviews succeeding from among those granted leave (Rehaag, 2019, p. 16). Second, for the most part judicial review occurs on a deferential standard that asks whether a decision was «reasonable» rather than «correct». United Nations Treaty Bodies have criticized such review for not being on the «merits» (see *Singh*, 2011 at para 8.9). This is not entirely accurate. Reasonableness review seeks to identify whether a decision exhibits an «internally coherent and rational chain of analysis» and «is justified in relation to the facts and law that constrain the decision maker» (*Vavilov*, 2019, para. 85). Therefore, while perhaps more deferential than some would like, such review does concern itself with the merits of a decision. Third and finally, automatic stays of removal apply only during applications for judicial review of RAD decisions (IRPR, s. 231). Therefore, persons challenging RPD decisions – because they do not have a right of appeal to the RAD – or PRRA decisions must apply to the court for a stay or to an immigration officer for an administrative deferral of removal (discussed further in section IV) during their judicial review (IRPA, s. 50(a)). This is yet another way in which persons ineligible to make claims at the IRB – such as those coming from the United States or those who made previous claims in one of the five-eye countries – are disadvantaged.

4.3 The substantive grounds for conferring or denying protection

Two provisions in the legislation provide the grounds for receiving refugee protection. Section 96 of the IRPA reproduces the definition found in the 1951 *Convention relating to the Status of Refugees* (CSR): a «Convention refugee» is a person facing a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group, or political opinion. Section 97 sets out alternate grounds for «complementary protection», based on the *Convention against Torture* (CAT) and the *International Covenant on Civil and Political Rights* (ICCPR). Thus, paragraph 97(1)(a) states that a person will be deemed a «person in need of protection» (as opposed to a Convention refugee) if they face a danger of torture, as defined in the CAT. Under paragraph 97(1)(b), a claimant may also be considered a person in need of protection if they face «a risk to their life or to a risk of cruel and unusual treatment or punishment» with exceptions for risks that arise from «lawful sanctions», risks due to inadequate «health or medical care», or risks «faced generally by other individuals in or from that country». This last, «generalized risk» exception appears inconsistent with our obligations under

the ICCPR. The rights protected in the ICCPR are nowhere qualified based on the extent of a population facing violations (HRC 1992, para. 9; HRC 2018, para. 55). Nor is it easy to see how such an exception could coherently be part of a system of human rights protection. Murder and cruel or unusual treatment or punishment do not cease to be human rights violations simply because they are widespread or indiscriminate. It is notable that the most influential decisions on the generalized risk exception do not discuss international human rights instruments at all, treating the interpretive exercise as an entirely domestic matter (e.g., *Prophète* 2009; *Portillo*, 2012). As it happens, the generalized risk exception has proved useful for rejecting a particularly inconvenient variety of claims, *i.e.*, claims based on an alleged fear of gang- and drug-related violence in Latin American and Caribbean countries⁷.

Sections 96 and 97 are both considered concurrently in claims before the RPD, appeals to the RAD, and in PRRA applications (IRPA, ss. 107(1), 113(c)). Everyone who succeeds under either provision may apply for permanent residence (IRPA, s. 21(2); IRPR, ss. 175 to 178), thereby fulfilling Canada's obligations to refugees under the CSR and arguably going beyond our obligations under general human rights instruments. Conversely, a claim will fail – before either the RPD or RAD, or through a PRRA – if the claimant cannot show they meet the section 96 or 97 criteria. A claim will also fail if the claimant is excluded from refugee protection under articles 1E or 1F of the CSR, directly incorporated into the legislation via section 98. Article 1E excludes claimants who enjoy the «rights and obligations [...] attached to the possession of nationality» in a third country. Article 1F applies if a claimant has committed one of the types of crimes listed in that provision: (a) a crime against peace, a war crime or a crime against humanity; (b) a «serious non-political crime»; or (c) an «act[] contrary to the purposes and principles of the United Nations» (IRPA, Schedule). Although neither the CAT nor the ICCPR contain exclusion clauses, articles 1E and 1F are also applied to section 97. This extension of article 1F – which, unlike article 1E, does not ask whether a claimant has safe access to status in a third country – may also infringe Canada's international obligations. As McAdam has written: «The absolute protection conferred by human rights *non-refoulement* means that no matter how abhorrent the individual's conduct, he or she cannot be returned to a place where that protection principle

⁷The exception has received almost no scholarly treatment, but see Liew 2014. McAdam (2007) makes clear the impetus for complementary protection was in fact to cover situations of generalized violence not captured by the CSR.

might be violated» (McAdam, 2007, p. 197). However, whether there is such an infringement depends on whether the person facing human rights violations is ultimately *refouled* to their country of origin. That depends in part on what happens at the PRRA, where exclusion has two significant consequences.

Canadian case law establishes that the RPD and RAD are not supposed to consider whether a claimant falls under sections 96 and 97 of the IRPA once the decision-maker determines they are excluded under articles 1E or 1F (Xie 2004). That is important because if neither the RPD nor the RAD assesses the risk facing a claimant – although they often do, despite the jurisprudence – the risk assessment will be conducted only via the PRRA, generally without benefit of an oral hearing and with the constraints on the ability to present evidence noted above. That is the first consequence. The second is that, if the claimant was excluded under article 1F at the IRB, they receive only a «restricted PRRA», where risk is only considered under section 97 (IRPA, s. 113(d)). The omission of section 96 from restricted PRRAs is consistent with the mandatory nature of exclusion under the CSR, which prohibits granting refugee status to persons excluded under article 1F. Potentially inconsistent with Canada's international obligations, though, is the fact that any danger of torture or risk to life or of cruel and unusual treatment or punishment (*i.e.*, the human rights protected by section 97) is balanced against «the nature and severity of acts committed by the applicant» or «the danger that the applicant constitutes to the security of Canada» (IRPA, s. 113(d)). Denial of a «restricted» PRRA leading to the return of a person to a country where they face a substantial danger of torture would be a clear violation of article 3 of the CAT. If the risk were one to their life or of cruel and unusual treatment or punishment, there would be a violation of articles 6 and 7 of the ICCPR (HRC, 1992, para. 9; HRC, 2018, para. 55). So, violations of the CAT and ICCPR seem latent in the legislation for persons excluded under article 1F. Excluded persons may fail to become protected persons, notwithstanding a danger of torture or risks to their life or of cruel and unusual treatment or punishment, and thus not enjoy statutory protection against *refoulement* to that danger or risk.

It may be surprising that similar consequences may be visited on persons who have not been found excluded under article 1F. As noted in section II, persons found inadmissible on 'bad-guy' grounds are ineligible to make claims before the IRB (IRPA, s. 101(1)(f))⁸. They also get access only to a restricted PRRA, in

⁸ Findings of inadmissibility will be made in most cases by the Immigration Division (ID), a separate division within the IRB: IRPA, s. 45. Determinations of inadmissibility

which section 96 is not applied and the risks from section 97 are balanced against other factors. They are thus exposed to a greater likelihood of having their PRRA application refused, even if they face a risk and even though they are not excluded under Article 1F. Moreover, a successful restricted PRRA does not lead to permanent residence, but a stay of removal that may be re-examined and cancelled if circumstances change (IRPA, s. 114(1)(b) and (2)). On its face, this seems like another violation of Canada's international obligations latent in the legislation.

One question is whether there is not significant overlap between bad-guy inadmissibility and Article 1F exclusion, such that most people inadmissible for security- and criminality-related reasons are also excluded under article 1F. If so, the latent violation just described may be more theoretical than real. But in fact, there are many cases of inadmissibility where exclusion under article 1F would be doubtful. One source of such divergence is that one may be inadmissible under section 34 of the IRPA for «membership» in a group that engages in, among other things, terrorism or subversion without either having been complicit in a war crime, crime against humanity, or act contrary to the principles and purposes of the United Nations (leading to exclusion under Article 1F(a) or (c))⁹ or having committed a serious non-political crime (Article 1F(b)). As an example, in *Poshteh* (2005), the Federal Court of Appeal upheld a determination that a minor who distributed pamphlets once a month for a terrorist group over a two-year period was a «member» of that organization, and therefore inadmissible on security grounds, even though he was almost certainly not complicit in their terrorist acts¹⁰. Moreover, to the extent there is overlap between 'bad-guy' inadmissibility and Article 1F exclusion, it is probably greater than it should be. The grounds of inadmissibility are driven by immigration logic, that is, by wide-ranging considerations of national self-interest and control, deployed to «ensure [...] undesirable alien[s] should not be able to stay in Canada» (*Kindler*, 1991, p. 834). They may thus be as broad as a government wants. Article 1F exclusion, on the other

may also occur through a certification process, in which the two ministers responsible for immigration matters personally sign a certificate stating the person is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality. The certificate must be referred to the Federal Court for determination of whether the certificate is reasonable: IRPA, ss. 76-87.2.

⁹This is implied by the Supreme Court of Canada's decision in *Ezokola* (2013), which rules out «guilt by association» as a means of excluding a person under Article 1F(a). *Ezokola* is also applied to exclusion under Article 1F(c).

¹⁰For similar facts in a recent case, see *Ali*, 2018.

hand, is meant to apply to persons whose acts are «so grave as to render their perpetrators undeserving» of protection against persecution (UNHCR, 2003, para. 2). Considering that persecution has been interpreted as a «serious and systemic violation of basic human rights» (*Ward*, 1993, p. 734; *Chan*, 1995, para. 69), acts leading to exclusion should be very grave indeed. Article 1F exclusion therefore should not be assumed – as the IRPA does – to correspond to bad-guy inadmissibility. So potential violations of the CSR are also latent in the legislation, to the extent the inadmissibility provisions in the IRPA capture a larger subset of persons than Article 1F captures or ought to capture.

Finally, beyond inadmissibility on security or criminality grounds as a bar to eligibility to making a claim at the IRB, the IRPA also provides that a person found inadmissible on those grounds may be deported to a country where they would be at risk even after having become a protected person. This may occur, for instance, if the government only learns of the evidence establishing inadmissibility after a successful claim or application has been made to either the IRB or PRRA. Although subsection 115(1) of the *IRPA* bars *refoulement* for protected persons, subsection 115(2) allows for their removal to a country where they would be at risk. Removal may occur if the Minister of Immigration, Refugees and Citizenship issues a «danger opinion» stating removal is justified by the danger the individual poses to the public or security of Canada or based on the severity of the person's acts. These considerations are weighed against the risk faced by the person, their constitutional rights under section 7 of the *Canadian Charter of Rights and Freedoms* – which guarantees «fundamental justice» wherever government action affects the rights to «life, liberty, and security of the person» –, and other «humanitarian and compassionate circumstances» (*Ragupathy*, 2006, paras. 16-19; *Nagalingam*, 2008, para. 44). Such balancing is again contemplated by the CSR (art. 33(2)), but not by the CAT or ICCPR. This, then, is another latent violation of Canada's international obligations.

4.4 The insulation of Canada's «asylum system» from constitutional and international law scrutiny

Refoulement of someone facing a risk of persecution and who is inadmissible but not excluded under article 1F would violate Canada's obligations under the CSR. *Refoulement* of someone facing a danger of torture or a risk to their life or of cruel and unusual treatment or punishment – regardless of whether, in the latter case, the risks are 'generalized' and regardless of whether the person is inadmissible or excluded – would violate its obligations under the CAT and the ICCPR. You

might also wonder whether *refoulement* would violate protections under the *Canadian Charter of Rights and Freedoms* (the Charter), the rights-protecting part of Canada's constitution. The answer is a yes, with many qualifications. «Yes» because the Supreme Court of Canada in the *Suresh* decision confirmed that the Charter is applicable when someone faces a risk of deportation to torture. The qualifications are necessary because the Supreme Court of Canada also found the Charter «leaves open the possibility of deportation to torture» in «exceptional circumstances» (*Suresh*, 2002, paras. 77-78). Still further qualifications are needed because, as I will explain, it is hard to mobilize international and constitutional law arguments on any issue of refugee law other than just before deportation.

That there are such challenges in bringing international and constitutional law to bear on Canadian refugee law is itself something of a mystery. The IRPA's express legislative objectives and interpretive principles evince an intention that the legislation be applied so that it complies with international and constitutional law (IRPA, ss. 3(2)(b), 3(3)(d) and (f)). Furthermore, under Canadian constitutional jurisprudence, there is a presumption that «the Charter [...] provide[s] protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified» (*Re Public Service Employee Relations Act* 1987, p. 349). So, while Canada is «dualist» – *i.e.*, its international obligations are given legal effect in its domestic legal system only once incorporated into Canadian law – both the IRPA and Canadian constitutional jurisprudence suggest that decision makers should continually check their interpretations and applications of the law against international human rights law and the Charter. That would mean potentially finding the kinds of provisions outlined in the previous section unconstitutional and a violation of our international obligations; indeed, finding them unconstitutional in part because they are a violation of our international obligations.

The foundation for such a virtuous feedback loop was seemingly laid by *Singh*, a 1985 Supreme Court of Canada decision, in which Justice Bertha Wilson declared that it would be «unthinkable that the Charter would not apply to entitle [asylum claimants] to fundamental justice in the adjudication of their status» (*Singh*, 1985, p. 210)¹¹. Therefore, section 7 of the Charter at least seemed to apply to the determination of asylum claims. It was not long until lower-level courts began to whittle down *Singh*'s impact. By 1992, the Federal Court of Appeal had interpreted *Singh* as saying that the Charter only guaranteed the rights of asylum

¹¹ This paragraph draws on Grey, 2016.

claimants when the statute granted the right to apply for refugee protection (*Ber-rahma* 1991). This holding made constitutional protection conditional on the existence of statutory rights, a weak form of constitutional protection that rules out challenges to the provisions governing eligibility to claim refugee protection at the IRB. This interpretation of *Singh* gave Parliament a free hand to add grounds of ineligibility denying access to the IRB, including for reasons that seem purely deterrent, as it has seemingly done with the new ground of ineligibility discussed in para. 4.2 for persons who have made previous claims in a five-eye country. (Indeed, the constitutionality of this new ground has already been upheld by the courts (*Seklani*, 2020)). Other federal court decisions have also held that constitutional challenges are premature if raised prior to removal (*Barrera*, 1993; *Jekula*, 1999). The result is the Charter has «no role to play» (*Febles*, 2014 at para. 67) procedurally or substantively: in determinations of inadmissibility leading to ineligibility to claim refugee protection before the IRB (*B010*, 2015, para. 75); in analyses of inclusion or exclusion by the IRB (*Laidlow*, 2012, paras. 62-63; *Febles*, 2014, para. 67); or even during a PRRA, despite the PRRA's function as a backstop against *refoulement* (*Savunthararasa*, 2016; *Atawnah*, 2016).

In addition to these limitations on *Singh*'s impact, the courts and government have made a practice of answering constitutional and international-law challenges by relying on the availability of discretionary forms of relief as «safety valves» (for this recurrent metaphor, see *e.g.*, *Atawnah*, 2016, para. 23; *Seklani*, 2020, para. 31), along with the judicial review of decisions on applications for relief. Most broadly, there is a general power to grant «humanitarian and compassionate» (H&C) exemptions from «any applicable criteria or obligations» in the IRPA (IRPA, s. 25(1)). When exercising this power, immigration officers consider hardship alongside other factors including whether the applicant has established themselves in Canada, their family relationships and community ties, and the best interests of any children affected (*Kanthasamy*, 2015, paras. 27, 40). Considerations of risk can be overridden by «public interest reasons» in light of «the general context of Canadian laws and policies on immigration», as well as «past conduct» (*Legault*, 2002, paras. 17, 31). H&C applications are available only to persons who were not rejected by the IRB within the previous 12 months (IRPA, s. 25(1.2)(c)). Persons inadmissible on grounds of security, international criminality, and organized criminality cannot apply at all (IRPA, s. 25(1))¹². Fur-

¹² However, persons inadmissible on these grounds can apply for a different kind of discretionary relief: IRPA, s. 42.1. Such applications are determined based on «national

ther, there is no automatic stay during the application process. Notwithstanding these limitations and the overall discretionary nature of H&C relief, the Federal Court of Appeal has said this process «accommodates whatever rights to liberty and security of the person [applicants] have» (*Lemus*, 2014, para. 16).

Besides H&C applications, discretionary relief for those facing deportation is also available through requests for «deferrals of removal». The power is based on subsection 48(2) of the IRPA, which states that «[i]f a removal order is enforceable, the foreign national against whom it was made must leave Canada immediately and the order must be enforced as soon as possible». The idea is that enforcement of the removal order is not «possible» if it would mean *refoulement*. Upon request, a removals officer must consider whether the individual has offered «new» evidence not previously assessed before the IRB or in a PRRA application that they would be exposed to «a risk of death, extreme sanction or inhumane treatment» if deported (*Baron*, 2009, para. 51). These grounds for deferral are considered alongside factors such as «illness, other impediments to travelling, and pending [humanitarian and compassionate] applications» (*Simoës*, 2000 para. 12; *Fatola*, 2018 para. 29), as well as whether «the conduct of the person seeking a deferral of his or her removal either discredits him or creates a precedent which encourages others to act in a similar way» (*Baron*, 2009, para. 65). A successful request for a deferral leads to consideration of their risk through a PRRA, or consideration on H&C grounds of whether to exempt the person from restrictions on their access to a PRRA (*Atawnah*, 2016, para. 16).

United Nations treaty bodies have found these discretionary exemptions are not adequate alternative remedies to claims for refugee protection before the IRB or applications for protection through a PRRA (*Nakuwunde*, 2018, paras. 6.8-6.9; but see *Contreras*, 2017, para. 7.3). H&C exemptions, in particular, have been dismissed as a form of relief granted «ex gratia» (*Kalonzo*, 2012, para. 8.3; *J.K.*, 2015, para. 9.2)¹³. That is not quite right. While H&C exemptions may have a greater subjective component, they are nonetheless constrained: if the equities all pointed toward the exemption (*i.e.*, significant hardship to the individual and their family, firm establishment in Canada, no criminality or violations of

interest», encompassing «only [...] national security and public safety considerations»: IRPA, s. 42.1(3). There is also the possibility of exemptions on «public policy considerations»: IRPA, s. 25.2(1).

¹³I owe these references to Atak and Giffin, 2018. Jane McAdam (2007, p. 21) makes the point that such «humanitarian» relief is distinct from international protection.

immigration law for which they might be faulted, etc.), it is nearly inconceivable a decision denying relief would be upheld on judicial review. What is worrisome instead is that the forms of discretionary relief that putatively ensure the rights of asylum seekers take into account considerations, such as «public interest» and «conduct» that seem outside the set of reasons that should come into play within an «asylum system». Moreover, reliance on these forms of relief supports a situation in which neither the Charter nor international law may be called upon to interpret or challenge substantive provisions or procedures before the key institutional loci – the IRB and PRRA – for determining refugee protection¹⁴. That is, by finding that the possibility of H&C applications and deferrals of removal satisfy constitutional and international law requirements, the courts are able to deny scrutiny on those grounds of decisions made at these earlier stages.

4.5 Conclusion

There have been only seven Supreme Court of Canada decisions on substantive aspects of refugee law – inclusion, exclusion, and *non-refoulement* (Ward 1993; Chan, 1995; Pushpanathan, 1998; Suresh, 2002; Németh, 2010; Ezokola, 2013; Febles, 2014). The first six of these in one way or another recognized the «overarching and clear human rights object and purpose» of refugee protection (Pushpanathan 1998, para. 57). The most recent case, Febles, took an abrupt swerve, accepting a characterization of the refugee protection regime as «a compromise between competing interests, in this case between the need to ensure humane treatment of the victims of oppression on the one hand and the wish of sovereign states to maintain control over those seeking entry to their territory on the other» (Febles, 2014, para. 29; citing *European Roma Rights Centre* 2004, para. 15). The Court in Febles was talking about the CSR. We have seen, however, that compromises run throughout the Canadian asylum system. They enter the legislative scheme through the exceptions to section 97 of the IRPA, which sets out the grounds for complementary protection, as well as in the treatment of claims by non-citizens excluded from refugee protection or found inadmissible to Canada on grounds of security or criminality. They also come into play via discretionary «safety valves» invoked to limit constitutional and international-law scrutiny of those aspects of the system designed to consider asylum claims. Finally, although I have not had

¹⁴ It is possible in rare cases to succeed in a challenge on the constitutional ground that procedures are discriminatory: YZ 2015.

the space to touch on it here, we would expect to see such compromises reflected in the refugee law jurisprudence, as I believe we do in, for example, the Canadian case law on state protection (Zambelli, 2010 and 2020; Liew, 2017).

All this seems regrettable if you hold to the conception of an asylum system from the introduction: as a scheme meant to prioritize the rights of asylum seekers and refugees, even if that means some loss of control and some admissions that do not serve self-interested policy goals. The rebuttal is that this starting point – as with all ideal-types – does not match reality: That asylum systems are in fact not meant to exclude considerations of national self-interest and immigration control. If so, many of the «immigration» elements in the Canadian asylum system may be unobjectionable. This answer has some merit. After all, the CSR itself permits *refoulement* in certain circumstances. The answer comes, though, at a cost, namely that it makes it harder to say when concerns about rights, on the one hand, or self-interest and control, on the other, ought to prevail. It makes it harder, that is, to say when a given compromise has gone too far, leaving those who need protection at the mercy of politics.

Acknowledgements

Many thanks to Sharry Aiken for early discussion; to David Vinokur and Julian Jubenville for detailed, extremely helpful and, in Julian's case, merciless comments; Justin Saunders and Michael Cui's for excellent research assistance.

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5. Procedures for claiming asylum from within Canada, acceptance and rejection

Hilary Evans Cameron and Talia Joundi

Abstract

The first part of this chapter introduces the procedural elements of the Canadian refugee status determination system. The second part looks critically at how the system decides which refugee claims to accept and which to reject.

Part I: Procedures

5.1 Claiming refugee protection

Canada is party to the *Convention Relating to the Status of Refugees*. As such, the country is under a legal obligation to provide refugee protection to foreign nationals who have a well-founded fear of persecution in their country of origin based on their race, religion, nationality, political opinion, membership in a particular social group, or on an intersection of the above (*Immigration and Refugee Protection Act 2001*, c. 27 s. 96).

Broadly stated, Canada's domestic refugee adjudication process is made up of immigration officers, tribunal-level decision-makers, and judges. The *Immigration and Refugee Protection Act* (IRPA) along with the *Immigration and Refugee Protection Regulations* (IRPR) are the primary laws and regulations relating to immigration. The IRPA is administered jointly by two governmental departments being Immigration, Refugees and Citizenship Canada (IRCC) and the Canada Border Services Agency (the CBSA). IRCC regulates the arrival of immigrants to Canada, the refugee protection system, and citizenship grants. The agency's mandate also extends to offering settlement programs to newcomers and to «promoting multiculturalism» (CIC News, 2016). The CBSA is the enforcement arm of the IRCC. According to the CBSA, the agency enforces more than ninety acts and regulations that «keep our country and Canadians safe» (CBSA, 2021). Canada's immigration and customs legislation together grant CBSA officers wide-ranging powers, including the power to arrest, detain, search and seize, and initiate deportation proceedings. The CBSA is charged with border control, including the investigation of activities pertaining to both human migration and trade at the border.

The role of Canada Border Services Agency

For any non-Canadian wanting to remain in Canada to visit, work or study, or to claim refugee status, the CBSA is the first point of contact. When a foreign national first applies for refugee protection, a CBSA officer is tasked with determining their eligibility. Immigration officers thus hold the power to exclude people from Canada's refugee protection system before they present a case. The CBSA is also responsible for managing the immigration detention and deportation process. In that sense, there is a potential CBSA presence at every stage of the refugee application process.

Making a claim at a port of entry or in-land

Foreign nationals who enter Canada via one of Canada's official ports of entry have their refugee claim entered and processed through the CBSA. Upon asserting that they seek to claim refugee status, foreign nationals meet with a CBSA officer for an eligibility interview. The purpose of the questions is to identify if any grounds of ineligibility apply (IRCC, *Claim refugee status from inside Canada*, 2021). If deemed eligible to apply for refugee protection, the CBSA seizes the foreign national's travel documents and provides the foreign national with refugee protection application forms.

Those entering Canada at an official port of entry from the United States will be subject to the Canada-U.S. *Safe Third Country Agreement* and will therefore be barred from making a refugee claim (IRCC, *Canada-U.S. STCA*, 2020; CCR, *Safe Third Country*, n.d.). This agreement does not apply to in-land applicants.

In-land claims refer to claims made by persons who are already inside Canada. These claims follow the same procedure as port of entry claims save for some technical differences. The first encounter with the CBSA is upon submission of completed application forms to one of IRCC's physical offices. These forms can be accessed online. IRCC offices house CBSA officers who accept refugee applications on a first-come-first-serve basis, and conduct eligibility interviews. Claimants who are inside Canada can submit their claim at any time, although any delay in claiming will likely be questioned at the hearing stage. All claimants must complete and submit a «Basis of Claim» (BOC) form as part of their refugee claim, as set out below. Claimants who enter Canada via a port of entry have fifteen days to complete and submit their BOC form, while those who submit in-land claims are not subject to a fifteen-day deadline.

Filing the Application Forms

To claim refugee status from within Canada, applicants must complete IRCC forms as well as a «Basis of Claim» form (IRCC, *Applying for Refugee Protection*

from within Canada, 2020). The BOC form is administered by the Immigration and Refugee Board (the IRB) and is arguably the most important document for claimants¹. The answers in this form present the alleged grounds for protection to the Refugee Protection Division (the RPD) of the IRB. The BOC form requires the applicant to give details about their identity and why they are claiming refugee protection.

Claimants can appoint a legal representative, whether paid or unpaid, to provide advice and guidance throughout the application process. Legal representatives or claimants themselves, may create a separate attaching document resembling an addendum, which is referred to as a «BOC Narrative». Properly done, the narrative should answer all the questions contained in the BOC form, and expand as needed beyond the confines of the form.

Referral to the Refugee Protection Division of the Immigration and Refugee Board
Completed refugee applications are automatically referred to the IRB. The IRB also receives the port of entry notes, which include a transcription of the claimant's eligibility interview with the CBSA. Prior to their hearings, claimants may submit personal or documentary evidence corroborating the facts alleged in their BOC form or clarifying anything stated in their initial interview.

Refugee Status Determination at the RPD
The Immigration and Refugee Board of Canada (the IRB) is Canada's largest independent administrative tribunal². The RPD is the largest of the IRB's four divisions and is tasked with deciding whether those who have been deemed eligible to make refugee claims qualify for protection under the law. Under Canadian law, a claimant appearing before the IRB has the right to be heard and to present evidence and arguments to an impartial decision-maker (IRB, *Code of Conduct*, 2019).

The decision-makers
The RPD adjudicators who hear and determine refugee claims are not judges and are not required to have legal training; in fact, many of them do not (*GC*

¹ Prior to December 15, 2012, this form was titled «Personal Information Form» or PIF.

² The IRB is made up of four divisions: the Immigration Division (ID), the Immigration Appeal Division (IAD), the Refugee Protection Division (RPD), and the Refugee Appeals Division (RAD).

Jobs, Decision-Maker (Member), 2021). The IRB Chair and IRB Director are responsible for selecting members to serve on the IRB. This decision is taken in consultation with the Institutional Office, Deans, Department Chairs, and other IRB adjudicators (referred to as Members). Once IRB adjudicators are selected, they are appointed by the Governor-in-Council³. IRB adjudicators serve 3-year renewable terms. The names of adjudicators currently serving their terms is public information (IRB, *List of Members*, 2021).

Scheduling the refugee hearing

Hearings can take anywhere from several months to over a year to be scheduled (IRB, *Backlog and wait times*, 2020). Certain claims are eligible to be expedited under the IRB's «Instructions Governing the Streaming of Less Complex Claims at the Refugee Protection Division» (IRB, *Less Complex Claims*, 2020). If a refugee claim is chosen for «file-review processing», the IRB can determine the claim without a hearing, pursuant to the IRPA. Claimants and counsel can also request that a claim be reviewed and considered for potential processing under the file-review process, providing reasons why the claim justifies a decision without a hearing (*IRPA 2001* s. 170(f)).

Hearings are scheduled for half-days, beginning either in the morning or afternoon. An average hearing lasts about 3.5 hours. However, some hearings are not completed on the same day, and may take place over the course of several days. RPD hearings are usually held in person, but they can also be held by videoconference. In most cases, the claim is heard by a panel of one adjudicator only. Refugee hearings are usually held in private, although observers may be given permission with the consent of the claimant.

The conduct of the refugee hearing

The primary function of the hearing in practice, as discussed below, is to allow the adjudicator to make a credibility determination – that is to say, to determine whether the claimant's evidence can be accepted as true. The credibility of the claimant either confirms or puts into question their factual allegations and corresponding fear of persecution. During the hearing, claimants must establish the factual elements of their claim on a balance of probabilities (*Ramanathy v. Canada* (2014) FC 511). The evidence must show that the claimant has a «well-found-

³The Governor in Council is the Governor General acting on the advice of the federal cabinet. An order in council formalizes an appointment made by the GIC.

ed» fear of persecution, and that «there is a reasonable chance that persecution would take place were the applicant returned to his country of origin» (*Adjei v. Canada* (1989) 2 FC 680).

The RPD adjudicator presides over the refugee hearing, and canvasses the information presented by the claimant in their refugee protection application and other immigration documentation. RPD adjudicators have the same powers as commissioners who are appointed under the federal *Inquiries Act* (*Inquiries Act 1985*). These powers include the power to take evidence, issue subpoenas, enforce the attendance of witnesses, compel them to give evidence, and to otherwise lead the inquiry. Proceedings before the RPD are inquisitorial and therefore non-adversarial because the decision-maker plays an active role in the hearing (IRB, *Weighing Evidence*, 2020).

By law, the IRB is required to «deal with all proceedings before it as informally and quickly as the circumstances and the considerations of fairness and natural justice permit» (*IRPA, 2001* s. 162(2)). It is not bound by the same technical or legal rules as a formal court proceeding (*RPD Rules 2012*). The IRB maintains and relies upon «National Documentation Packages» (NDP) to support the refugee determination process (IRB, NDP, n.d.). The NDP database includes regularly updated lists of public documents that provide «country of origin» information. In addition to the claimant's personal circumstances, the RPD adjudicator assesses whether there are country condition documents that corroborate the claimant's fear of persecution.

A person appearing before the IRB has the right to be represented by counsel at their own expense. While refugee claimants can apply for government funding, they do not have a right to publicly funded legal representation; this leaves open the possibility for refugee claimants to proceed with their claim without a lawyer. Indeed, the definition of counsel provided by the RPD includes lawyers, immigration consultants, or even family members (IRB, *Interpreter Handbook*, 2017).

IRB proceedings may be held in English or French, Canada's two official languages. The right to a fair hearing in Canadian law includes the right to be heard and understood in one's native language. If a claimant does not understand or speak either of the two official languages, the hearing must be interpreted to the claimant in the language of their choosing. The claimant will be asked to ensure that they understand the interpreter in attendance and vice versa. Claimants have the right to ask for a different interpreter if they do not believe the interpreter is able to adequately understand them.

The RPD decision

A decision by the RPD to accept a refugee claim results in the conferral of refugee protection on the claimant. The claimant is designated as a «Protected Person» as of the issue date of the decision. A protected person is defined as «a person who has reason to fear persecution in his or her country of origin due to race, religion, nationality, membership in a social group, or political opinion» (*IRPA 2001*, s. 96, s 97). The decision includes the reasons for the decision, whether administered orally or sent by mail (*IRPA 2001*, s. 95). A person whose claim is refused has no status in Canada and is generally subject to deportation. However, if the refused claimant files an appeal with the Refugee Appeal Division (the RAD) (IRB, *Filing an Appeal*, 2020) or with the Federal Court of Canada (Federal Court of Canada, *How to file an Application for JR*, 2019), their removal is unenforceable until the appeal or review process is completed (Government of Canada, *Apply to the FC for JR*, 2019).

5.2 Appeal and judicial review of negative RPD decisions*The Refugee Appeal Division*

The RAD decides appeals of decisions of the RPD to allow or reject claims for refugee protection. The RAD has the jurisdiction to decide whether the RPD made an error of law or fact or both. Like all Divisions of the IRB, the RPD is not bound by any legal or technical rules of evidence. The RAD generally takes a decision on paper – based on the RPD file, and the evidence and submissions provided on appeal. New evidence can be submitted to the RAD under narrow rules, which are drawn to prevent claimants from submitting evidence that they could have presented at their refugee protection hearing (*IRPA 2001*, s. 110(4)). The RAD can order an oral hearing if any such new evidence warrants.

The RAD has the power to confirm or change the RPD's decision. In changing the decision, it may send the claim back to the RPD for redetermination, or it can confer protected person status on the claimant if it believes there is sufficient evidence to warrant an acceptance of the claim. If the RAD confirms the RPD refusal, the claimant's sole adjudicative recourse is the Federal Court of Canada.

An exceptional out-of-court path to permanent residency is the Humanitarian and Compassionate application, which is based on an individual's establishment in Canada, the best interests of any children, the hardship they would face if removed from Canada, which is distinct from the risk assessment in the context of a refugee claim (*IRPA 2001*, s. 25; *Kanthasamy v. Canada* (2015) 3 SCR 909).

The Federal Court

The Federal Court of Canada is the last venue capable of overturning the initial RPD refusal, by way of a judicial review of the decision. In order to have a decision reviewed by the Federal Court, a claimant must first receive permission from the court, known as «leave». The application for leave and judicial review must be served on the other party and filed with the registry of the Court within 15 days of receiving a negative decision from within Canada. The decision of whether to grant leave is made by a Federal Court judge. Leave applications are granted, on average, in fewer than 20% of applications (Federal Court of Canada, *Statistics*, 2021).

Part II: Acceptance and rejection

The remainder of this chapter will provide a critical appraisal of how the Canadian system decides whether to accept or reject refugee claims⁴.

The Canadian refugee system is routinely held up as a model for the world. Certainly, as set out in the previous section, it has many noteworthy strengths. Claimants tell their stories at a full oral hearing to a professional adjudicator, not a bureaucrat or a border officer. This adjudicator is not answerable to the government and has no competing priorities like protecting the country's alliances or conserving its resources. Canadian adjudicators are well trained in the law, develop a good familiarity with the country of origin information, and are instructed to be sensitive to claimants' vulnerabilities. Legal counsel plays an important role in most Canadian refugee hearings (Rehaag, 2011) and the system provides trained interpreters. Meritorious claims are often expedited, and when claimants lose their cases, the majority have the right to an appeal. Moreover, at the level of the legal doctrine, both the IRB and the Federal Court have broken ground with progressive doctrinal interpretations, such as by presuming that claimants' sworn testimony is credible (Evans Cameron, 2018); by recognizing gender-based claims (LaViolette, 2007); and by taking an expansive view of claims based on sexual orientation, gender identity, and expression (IRB, *Chairperson's Guideline 9*, 2017). Because of these and other positive aspects of its design, the Canadian system recognizes many refugees and sends fewer back to persecution than it otherwise would.

⁴The following section has been adapted from Hilary Evans Cameron, The failures of a 'model' system: RSD in Canada, *Forced Migration Review*, 65, p. 8.

Yet for all this, the Canadian system is profoundly unjust in a crucial respect: its decisions often depend to a greater extent on the identity of the decision-maker than on the merits. Winning or losing a claim too often comes down to luck. For many years, there have consistently been «vast disparities» in the grant rates of the IRB's first-instance decision-makers (Rehaag, 2020; CCR, *2018 Refugee Claim Data*, 2019)⁵. Year after year, Canadian adjudicators are reaching opposite conclusions in very similar cases:

In recent years, some Canadian adjudicators have accepted all, or nearly all, of the claims that they have heard. Others have rejected everyone. And the same adjudicator will sometimes decide very similar cases differently. One recently reached opposite conclusions in two hearings held hours apart, on the same package of evidence, for members of the same family, who feared the same people, for the same reasons (Evans Cameron, 2018).

Over the years, the IRB has taken many measures designed to foster consistent decision-making, some of which have been principled and progressive. For example, the RPD recently implemented a dedicated task force to hear gender-based claims and undertook a revision of its Gender Guidelines to address high profile instances of biased decision-making (IRB, Chairperson's Guideline 4, 1996; IRB, Annual Report on Complaints 2020). Other measures have been widely criticized as prioritizing efficiency over fairness (Ramji-Nogales, Schoenholtz and Schrag, 2009; Macklin, 2009; IRB, *Weighing Evidence*, 2020, ss. 3.3.3, 4.1). As Macklin has noted, while some of the Board's materials «mainly instruct decision makers about “getting to yes” on the law» others «mainly counsel decision makers about “getting to no” on the evidence» (Macklin 2009, p. 158)⁶. None of these measures has succeeded in eliminating the wide disparities in the decision-makers' grant rates. Researchers suggest that the reasons for the persistent variance

⁵ Similar disparities have been identified in other jurisdictions. See *e.g.* Noll, 2005; Ramji-Nogales, Schoenholtz, and Schrag, 2009; Gill, Rotter, Burridge, Griffiths, and Allsopp, 2015.

⁶ This tendency is illustrated by the Board's new policy on weighing evidence, which highlights, for example, the presumption of state protection, the limits on the 'benefit of the doubt' principle, and the fact that the claimant bears the legal onus, without mentioning the counterbalancing presumption of credibility or the fact that the burden of proof is to be shared between the decision-maker and the claimant (Immigration and Refugee Board of Canada 2020, *Weighing Evidence*).

are complex and include individual psychological as well as broader socio-political and institutional factors (Colaiacovo, 2013, p. 128; Rehaag, 2008, pp. 350-51; Rehaag, 2011; Tomkinson, 2014). What has largely escaped attention, however, is how the law that governs fact-finding in Canadian hearing rooms contributes to this dysfunction.

As noted above, Canadian refugee law has been notably liberal on questions of doctrinal interpretation – but refugee status determinations rarely turn on questions of doctrinal interpretation. Most cases turn on findings of fact and, in particular, on credibility judgments (Macklin, 1999; Noll, 2005). In a recent study of several hundred Canadian decisions, in 85% of the RPD’s rejections the adjudicator had made a negative credibility finding, and in 84% of these cases, the negative credibility finding was the only live issue in the claim. In sum, 72% of the rejections were based on the adjudicator’s conclusion that the claimant was lying (Evans Cameron, 2022). The law that governs these kinds of findings is unprincipled and incoherent. This, combined with the role that unreliable factual assumptions play in Canadian refugee law, means that Canadian adjudicators hearing a claim will often be legally entitled to reach either conclusion. In many cases, they will be able to choose which decision they prefer to make and to justify that conclusion on the facts while keeping within the law.

5.3 The law of fact-finding in Canadian refugee status decision-making is unprincipled and incoherent

In any legal domain, the law of fact-finding is supposed to help decision-makers to move from uncertainty to a finding of fact. It does this by telling them how to resolve their doubts: how certain they need to be before they accept an allegation as proven; how actively they need to search for contrary explanations; what they can presume for the sake of argument; what to do if they cannot make up their minds. The law that sets these parameters derives from a single normative premise: which kind of mistake is worse? Is it worse to accept a false allegation or to reject a true allegation? The law will set the fact-finding parameters accordingly.

Blackstone’s Maxim is one of the most famous ideas in the Anglo-American common law: «it is better that ten guilty persons escape, than that one innocent suffer». Throughout the ages, the architects of this body of law have felt strongly that convicting the innocent is the wrong kind of mistake, and they have tried to impose this error preference on judges and juries through the design of the law’s decision-making landscape. In any legal system, burdens of proof, standards of proof, and presumptions combine to create the obstacle course that the parties’

allegations must run on the way to the finish line of being accepted as proven. The obstacle course in the Anglo-American common law is uniquely hard on the prosecution: the state bears the burden of proof, and it must meet a very high standard of proof with the help of only an occasional and hard-won presumption. As a result, in theory, in keeping with Blackstone's preference, the prosecution should pay the price for judges' and jurors' uncertainty.

The Refugee Convention is clear: it is by orders of magnitude a worse mistake to send a refugee home to persecution than to grant protection to someone who does not need it. But international refugee law has yet to recognize, let alone emphasize, this error preference. In the absence of a catchy maxim on point, the creators of refugee law in Canada – the judges of the Canadian Federal Court – are divided on this fundamental normative question. As a result, they have designed two parallel legal landscapes. Those most worried about sending refugees home to persecution have built an obstacle course that resolves doubt in the claimant's favour. Those most worried about giving people a benefit that they do not deserve have built an obstacle course that resolves doubt at the claimant's expense. Canadian adjudicators are free to choose which course they would rather have the claimant run.

Evidence presented in narrative form leaves ample room for questions – and for doubt. The ability to decide, therefore – in any case, for any reason – whether their doubt will help or hurt a claimant will often allow an adjudicator to reach either conclusion on the same evidence. Concretely, this looks like this:

If [the adjudicator] is inclined to err in [the claimant's] favour, she will conclude from the shared burden of proof that she should take an active helping role. She will look for grounds that might support a positive decision even if the claimant has not raised them. She will 'sift through the evidence' to find support for his case, even if he himself has not done so, and she may send his documents for verification if she has doubts about them. Throughout, she will see her role as determining whether the claimant is at risk. She knows that a very low degree of risk is needed for her to accept his claim, and his state's protection efforts will not matter to her unless they will make him safer. She will enter the hearing room genuinely assuming, for the sake of argument, that the claimant is telling the truth. She will only conclude otherwise if she is strongly convinced that he is lying, and even then, she will revisit this conclusion in light of his evidence. At the end of the day, even if she does not believe his story, she will still ask herself whether he needs protection.

If [the adjudicator] is inclined to err against him, however, the claimant will find himself in a very different hearing room. The [adjudicator] will conclude from the fact that the claimant bears the legal onus that he alone is responsible for making his case. She need only judge the claim as he presents it, and only then if he articulates it clearly enough. She need only consider the evidence that he submits, and only then if he draws it to her attention and explains its relevance. If his documents seem suspicious, there is no need to have them verified. She can use her own expertise to conclude that they are fraudulent. She will enter the hearing room genuinely assuming, for the sake of argument, that the claimant's state is able to protect him, and she will be careful not to ask too much of authorities who are trying their best. Throughout, she will see her role as getting to the bottom of the claimant's allegations, and she knows that to accept any of his statements, she must be convinced that they are more likely than not to be true. She will be alert to the possibility that he is trying to deceive her and if she sees any potential signs of deception she will not hesitate to conclude that he is lying. And if she does, she will look no further. She will dismiss all his supporting evidence, and will not consider whether he may yet be at risk (Evans Cameron, 2018).

Under such circumstances, the «vast disparities» in the grant rates of Canadian adjudicators are hardly surprising. And any time a legal system allows its decision-makers to make whichever decision they want for whatever reason they want, the people who depend on it will be vulnerable to abuse.

5.4 Unreliable assumptions play a key role in Canadian adjudicators' credibility judgments

Canadian adjudicators consider evidence, of course: they consider the claimant's statements and documents, the country of origin information, sometimes a government dossier or the testimony of third parties. But their reasoning process is not evidence-based. In deciding what conclusions to draw from this evidence, the adjudicators are guided entirely by their own common sense. And their common sense is often squarely at odds with the best available social scientific research.

Canadian adjudicators' common sense regularly tells them, for example, that we form clear, stable, and consistent memories of our experiences – complete with date and time stamps – that we can play back in our minds like a video recording. On this theory, if a claimant cannot clearly remember the dates, times, frequency, or order of the events that they are describing, or if their testimony contains minor errors, gaps, or inconsistencies, it is fair to infer that they must

have invented their story. Yet for many decades a major thrust of the study of cognitive psychology has been to document extensively how incomplete, fallible, and changeable our memories are, including our everyday autobiographical memories – to say nothing of traumatic memories and the memories of those who have been affected by trauma (Evans Cameron, 2010; Herlihy, Jobson, and Turner, 2012; Herlihy, Jobson, and Turner, 2010; Herlihy, Scragg, and Turner, 2002; Herlihy and Turner, 2007; Rogers, Fox, and Herlihy, 2015).

Similarly, Canadian adjudicators routinely assume that when danger arises, people will quickly take effective measures to protect themselves. If the claimant persevered for a while before deciding to flee, if they hesitated to ask for refugee protection when they finally reached safety, or if they ever dared to return home, then surely their story must be a lie. They would have acted more sensibly if the danger were real. In the above-noted study, in nearly two thirds of the decisions in which the adjudicator concluded that the claimant was lying, this finding rested at least in part on the adjudicator's impression that the claimant's response to an alleged danger was too unreasonable to be believed (Evans Cameron, forthcoming 2023). Yet if the pandemic has taught us anything, it is that people will respond in a variety of ways even to risks that are obvious, potentially fatal, and easily addressed. If we were surprised to discover this, it is because we have not been paying adequate attention to the psychologists, sociologists, anthropologists, economists, and political scientists who have been making this point since at least the middle of the last century (Evans Cameron, 2008).

The Appeal Division adjudicators and the Federal Court judges who review the decisions of Canadian refugee status adjudicators variously uphold and reject findings based on flawed assumptions about memory and risk perception. Their responses to these findings – responses based on their own impressions of what is reasonable, not on evidence – create, again, two competing bodies of case law in which adjudicators can find full support for conflicting conclusions. As a result, adjudicators can, «while remaining firmly within the law, draw either contrary inference from the claimant's testimony on a wide range of aspects about how she responded to danger, and about what and how she remembers» (Evans Cameron, 2018, p. 167).

The Canadian refugee system provides its adjudicators with hundreds of thousands of pages of «country of origin» information to help them to do their job well. It gives them not one single page of social scientific evidence about how people think and act. Adjudicators need this kind of evidence to decide fairly where to draw the line between plausible and implausible memory failures, for example, or between plausible and implausible risk or trauma responses. In

the third decade of the twenty-first century, Canadian adjudicators make life and death decisions grounded in unreliable assumptions – assumptions that were already facing serious and sustained empirical challenge throughout the social sciences as the ink on the Convention was drying.

Conclusion

Many refugee claimants in Canada are lucky. They will have a fair hearing with a well-trained adjudicator, one who is prepared to give them the benefit of the doubt and whose ideas about how the world works happen to reflect a good understanding of how people think and act. Other claimants are unlucky. They will find that their fate rests in the hands of a decision-maker who is more concerned with keeping out liars than with ensuring that refugees are protected and whose assumptions about human cognition are many decades out of date with the best available social scientific evidence. For all of its many strengths, the Canadian system does not reliably accept and reject refugee claims on their merits.

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Refugee Protection Division Rules 2012 <<https://laws.justice.gc.ca/eng/regulations/SOR-2012-256/index.html>>

6. The externalization of Canada's border policies: extending control, restricting mobility

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Introduction

Preventing irregular migration has long been a priority area for Canada's immigration and refugee policies. Authorities regard irregular migration as a security threat often associated with terrorism and other criminal activities, such as money laundering, corruption, drug and arms trafficking (Robinson, 1984; Global Affairs Canada, 2016). Irregular arrivals of migrants, including asylum seekers, have been associated with migrant smuggling and the alleged manipulation of Canada's refugee system.

Measures designed to curb irregular migration pursue the aim of «pushing the border out» by moving the controls away from Canada's border to overseas, where potential irregular migrants, including asylum seekers, are interdicted prior to their arrival (see for instance, preamble to the 2003 Statement of Mutual Understanding between Canada and the United States; Auditor General of Canada, 2003). Initiatives include international cooperation to obstruct the mobility of migrants without proper documentation and surveillance tools that expedite the sharing of migrant data for purposes of entry control and exclusion. The strategy of pushing the border out, also called border externalization, enacts the border as «a multiple, moving barrier that can be selectively positioned outside Canada's territorial boundaries to expand state power outward» (Arbel, 2016, p. 825). A rich body of literature has examined border externalization which refers to «measures preventing asylum-seekers from entering safe territory and claiming international protection, or transfer of asylum-seekers and refugees to other countries without sufficient safeguards» (UNHCR, 2021). The process includes the direct involvement of the externalizing state's border authorities in other countries' sovereign territories, and the outsourcing of border control responsibilities to another country's national surveillance forces (Casas-Cortes *et al.*, 2015; Frelick *et al.*, 2016).

This chapter examines recent policy developments that aim to externalize Canada's border controls. In fact, border externalization has gained salience in Canada's immigration and refugee laws and policies in the last decades. Although the main purpose is to stop unauthorized movements of migrants, externalization

initiatives are rationalized by the need to combat migrant smuggling – depicted as an organized crime – and to protect the integrity of the refugee system. We focus on the legislative changes and operational measures designed and implemented following two developments. First, the irregular arrivals of two boats with Tamil asylum seekers from Sri Lanka in 2009 and 2010. Second, the intensification of irregular border crossings across the Canada-US border by third country nationals with the intent to claim refugee status in Canada since 2017. We argue that these events have played a significant role in shaping governance decisions and international cooperation dynamics that ultimately fortify and shape Canada's current border policy priorities. On the one hand, Canada has engaged in capacity building and technical assistance with transit and source countries for irregular migrants in the name of combatting migrant smuggling. On the other, the Canadian government has pursued cooperation with other refugee destination countries, including the US, with a focus on biometric information sharing as a privileged tool to track asylum seeker mobility. We discuss these trends together with their negative implications for asylum seekers who found themselves barred from accessing protection in Canada and at risk of human rights' violations with limited recourse to challenge border externalization measures.

This chapter begins by reviewing the policy developments that aim to reinforce Canada's anti-migrant smuggling initiatives following the unauthorized boat arrivals of Tamil asylum seekers in 2009 and 2010. We discuss how capacity building and technical assistance have become the main features of Canada's cooperation with the countries of transit and origin for asylum seekers. We then examine the expansion of information sharing and border technologies pursued by the Canadian government in cooperation with international partners. We argue that such practices work in tandem with anti-smuggling initiatives to strengthen and diversify the assemblage of border enforcement tools employed. This has resulted in significant restrictions to asylum seeker mobility and access to international protection, as well as circumventing obligations under international and Canadian law.

6.1 'Capacity building' to prevent migrant smuggling

Boat arrivals of refugees to Canada are rare, yet the few that have made it to Canadian waters catalyzed media and public attention and were followed by repressive government intervention (Van Liempt and Sersli, 2013). An early example is the *Komagata Maru* which arrived off the shore of Vancouver carrying over 350 Sikh and Muslim Indian nationals seeking asylum in 1914 (see chapter 2). Intense

racially charged public and governmental opposition eventually led to a refusal to dock, forcing the ship to turn back and return to India (Moffette and Vadasaria, 2016). Several maritime arrivals from Fujian, China in 1999 triggered similar reactive, ad hoc procedures that resulted in the use of detention and reduced access to justice for the claimants on board (Mountz, 2004). More recently, in 2009 and 2010, cargo ships MV Ocean Lady and MV Sun Sea arrived unauthorized off the coast of British Columbia carrying nearly 600 Tamil asylum seekers from Sri Lanka. Here the Federal Government, led by the then Conservative Prime Minister Stephen Harper, maintained an anti-refugee narrative by suggesting that the asylum claimants on board may be suspected human smugglers and supporters of or potential contributors to terrorist activities. The Government stigmatised the passengers of the MVs Ocean Lady and Sun Sea by portraying them as «bogus refugees» and «queue jumpers», alleging that the integrity of Canada's immigration system was undermined by the costs of processing illegitimate claims (Atak *et al.*, 2018, pp. 6-7).

6.1.1 Migrant smuggling events and the Canadian response

Regardless of the refugee protection needs of individuals arriving by boat, governmental reactions have consistently made linkages of smuggling and irregular refugee mobility as a criminal threat that overshadows international human rights obligations.

Parliament's response to MVs Ocean Lady and Sun Sea was to introduce the *Balanced Refugee Reform Act* (2010) and the *Protecting Canada's Immigration System Act* (2012) which transformed the face of refugee protection in Canada with reduced procedural guarantees, broadened penalties for regulatory and criminal offences, and increased immigration detention. Part of the landslide legislative changes was the Designated Foreign National (DFN) regulation which created a new set of rules for groups suspected of entering Canada through smuggling means. This includes mandatory and lengthy detention for anyone over the age of 16, a five-year bar on permanent resident applications, and travel restrictions (Silverman, 2014), resulting in prolonged barriers to accessing stable employment, family reunification, and freedom of movement. Government officials described the changes as the best way to make Canada a «less attractive destination for these criminal ventures» that «puts lives at risk and threatens the integrity of Canada's immigration system as well as the security and safety of Canadians» (Public Safety Canada, 2015). Yet a further message was also relayed loud and clear: «we have no tolerance for those who abuse our generosity or cheat the system to jump the queue», spoke the then Minister of Citizenship and Immigration, Jason Kenney, «today, we are sending a

strong message to those who are thinking of using the services of criminal human smugglers to sneak their way into Canada – don't do it» (Public Safety Canada, 2015). The DFN regulation has rarely been used. It yet remains in place should the government decide to invoke the designation in response to migrants arriving through unauthorized migration channels.

Similarly, the *Protecting Canada's Immigration System Act* amended and expanded the definition of what constitutes «human smuggling» under *Immigration and Refugee Protection Act* (IRPA) s. 37. It imposed mandatory minimum prison sentences on convicted human smugglers. Those declared inadmissible under section 37 were denied access to humanitarian and compassionate considerations and lost the right to appeal unfavourable Immigration and Refugee Board (IRB) decisions and removal orders (IRPA, section 64). Although directed to migrant smugglers, in reality, the amendments meant to deter irregular migration to Canada and to criminalize asylum seekers who use the services of smugglers.

6.1.2 Interdiction measures overseas

In addition to the legislative changes at home, a Migrant Smuggling Prevention Strategy was elaborated to amplify the Canadian government's anti-smuggling operations overseas. In 2010, Ward Elcock, the former Canadian Security Intelligence Service (CSIS) director was named as special adviser to prime minister on human smuggling and illegal migration. The special advisor and other Canadian officials actively collaborated with local authorities in transit countries in Southeast Asia to track, intercept, and return to their home countries asylum seekers who were presumably waiting to board ships destined for Canada. In October 2010, after the arrival of the MV Sun Sea in Vancouver, the Harper government assisted Thai authorities in a raid of apartments in Bangkok that led to the arrest of Tamil refugees alleged to be associated with the Liberation Tigers of Tamil Eelam (LTTE) (Ranford-Robinson, 2020).

To sustain overseas operations, the government created the so-called «Human Smuggling Envelope» (HSE) in 2011 as part of its Anti-Crime Capacity Building Program (ACCBP)¹. The HSE is focused on preventing maritime migrant smuggling bound for Canada and provides capacity-building assistance to bene-

¹ ACCBP was established in December 2009 to enhance the capacity of beneficiary states, government entities and international organizations to prevent and respond to threats posed by transnational criminal activity in the Americas (Global Affairs Canada, 2016).

ficiary States in Southeast Asia and West Africa with the detection and prevention of human smuggling operations destined for Canada (Global Affairs Canada, 2016). Canada mobilized several federal institutions and law enforcement agencies. A task force comprised of the Royal Canadian Mounted Police (RCMP), the Canada Border Services Agency (CBSA) and other federal officers were deployed to the region to work with local governments in Thailand, Malaysia, Vietnam, Myanmar, Cambodia, and later in West Africa to thwart migrant smuggling operations. According to Global Affairs Canada, the program works «to increase the capacity of local authorities in both origin and transit countries to disrupt, interdict and deter human smuggling ventures» (Global Affairs Canada, 2019, para. 5). The government further rationalized the program as a means to mitigate the increased cost to Canada associated with the arrival of irregular migrants on Canadian shores, such as social welfare costs. It held that the program provides some assurance to transit states that they will not be solely responsible for the cost of assisting stranded migrants and without such programs, there would be little incentive for transit states to cooperate in the detection and interception of irregular migrants, especially in resources-scarce countries (Immigration, Refugees and Citizenship Canada, 2015; International Organization for Migration, 2015). From 2011 to 2015, the HSE program supported over 50 projects, ranging in scope from 11,000 Canadian dollars to \$1.9 M in over 30 countries across Asia and West Africa (Global Affairs Canada, 2016). According to media reports, the efforts led to the interception of at least two boats carrying migrants. In 2011, Indonesian authorities intercepted the *Alicia*, carrying 84 Sri Lankan Tamils, followed by *The Ruvuma* intercepted in Ghana in 2012, which according to authorities was bound for Togo and Benin, where hundreds of Sri Lankan refugees were stranded (Bureau and Robillard, 2019; *The Times*, 2011).

Canada's capacity-building assistance relies on diplomatic outreach and inter-governmental dialogue. It consists mainly of providing training, equipment, technical and legal assistance to transit and source countries (Ranford-Robinson, 2020; Global Affairs Canada, 2019). Moreover, the government worked in cooperation with intergovernmental organizations. From 2010-2015, the International Organization for Migration (IOM) assisted Canada to implement 18 projects to 'build local capacity' across Southeast Asia and West Africa. With funding from Canada, the IOM undertook a number of activities, ranging from border officer training programs and specialized equipment that uses biometric data to check for fraudulent documents and identify smuggling operations, to information campaigns – such as video adverts and flash movie clips, text message campaigns,

children's story books with safe migration messages- aimed to deter irregular migration and recourse to migrant smuggling (IOM, 2015).

A notable example is the Global Assistance for Irregular Migrants (GAIM) program, an overseas operation conducted by Immigration, Refugees, Citizenship Canada (IRCC) with the assistance of the IOM. The operation lasted from January 2012-September 2015 and targeted Sri Lankan migrants destined to Canada, in 11 countries in West Africa. Initially intended to intercept over 500 migrants to return them back to Sri Lanka, the program failed to reach the target, according to the IOM (see below) (IRCC, 2015).

In a similar vein, in June 2013, Canada contributed to the creation of a Port Intelligence Unit in the Cambodian port town of Sihanoukville to combat migrant smuggling. This time the government collaborated with the UN Office on Drugs and Crime (UNODC) to run the regional project that aimed to dismantle the smuggling of migrants by boat through intelligence units established in ports at Cambodia, Indonesia, and Thailand (UNODC, 2013).

Canada's financial and technical support to source and transit countries has expanded under the federal Liberal government that came to power in October 2015. Based on data obtained through access to information requests, the Canadian Broadcasting Corporation (CBC) revealed that the government dedicated nearly \$18 million a year to the capacity building programs (Bureau and Robillard, 2019). Examples include Canada's collaboration with the IOM to provide training to passport and border officials from 18 countries, to improve border management and reduce irregular migration in the Americas (Government of Canada, 2019). In 2017 and 2018, the Trudeau government contributed funding to «Project Relay», an Interpol operation to better equip seven Southeast Asian countries in the detection of irregular migrants and smugglers. According to Interpol, Canada also took part in and funded Operation Turquesa in South America. The operation which took place in October 2019 was intended to disrupt the primary smuggling routes used by migrants to make their way to the US and Canada. The operation has led to arrests and interceptions of migrants by Mexican border guards (Bureau, 2020).

The externalization of border controls comes with a high human and financial cost, meanwhile the stated policy objectives seem to be largely unmet. The number of would-be asylum seekers intercepted overseas is unknown. The evaluations of most programs run under the Human Smuggling Envelope and more broadly within the Migrant Smuggling Prevention Strategy are not publicly available. As well, most projects do not track the outcomes of initiatives such as short-term training delivered due to capacity (financial and human resources) constraints (Global Affairs Canada, 2016). However available information reveals that the

government has not always reached its stated intentions. Take for example the above-mentioned GAIM program. The IOM received \$6M over two years (FY 2013/14 and FY 2014/15) from the Canadian government, based on estimates of 100 returned migrants to Sri Lanka a year. The actual number of returned migrants was significantly lower than planned with a total of 64 for the entire period from May 2013 to September 2014 (IRCC, 2015).

Similarly, the government wasn't successful in bringing human smugglers before the courts. In a 2019 interview with the CBC, Ward Elcock, Special Adviser to former Prime Minister Steven Harper on human smuggling and illegal migration, acknowledged that few of the smugglers caught in Southeast Asia or West Africa were prosecuted between 2010-2016, when he was in charge. Elcock admitted that most of the prosecutions «were [for] relatively small-time offences, whether it was procuring false documents, illegally crossing a border or something like that» (Bureau and Robillard, 2019). The nature of the offences belies the government's demonizing depiction of smugglers as being part of highly organized crime rings. There is incongruity between government rhetoric, action, and the reality that smuggling and irregular migration often operates outside of organized criminal networks. As observed by Anna Triandafyllidou (2018):

Instead of discouraging migrants and dismantling smuggling networks, these policies lead to migrants investing more money and facing more risks (and often death) along their journeys, while the networks become professionalized. Trust and community relationships are increasingly replaced by pure profit-seeking and dependence, leading to higher risks and more ruthlessness (p. 219).

Whether intentional or not, the outcome of border externalization has been the obstruction of asylum seekers rather than prevent migrant smuggling and organized crime. The objective to prevent unauthorized mobility, including that of refugees, is further supported by a parallel policy regime of international cooperation and digital border technology.

6.2 Cooperation with the United States and other strategic partners

Canada and the United States have long collaborated for the purposes of controlling migration, in particular asylum seeker migration, across the Canada-US border. Sharing the world's longest land border, policy developments have seen an increasing emphasis on information sharing agreements and the introduction of biometric data collection and surveillance to help reconfigure the border outside

of Canada's territorial jurisdiction. More recently, Canada has increased interoperations with other strategic partners, namely other refugee receiving countries within the 'Five Eyes' alliance – Australia, United Kingdom, New Zealand (see below). We first discuss policy developments with the US that have been built on the last twenty years of border cooperation, before turning to measures that create new border enforcement linkages between all Five Eyes countries.

6.2.1 Confronting asylum migration across the Canada-US border

Since 2017, Canada has seen an increase in the number of asylum seekers undertaking border crossings made at unofficial points along the Canada-US border. Between 2017-2019, over 56,000 asylum seekers crossed the US-Canada border between designated ports of entry (IRCC, 2022), mostly through Roxham Road and surrounding areas on the Quebec-New York and Vermont border (see chapter 14). This pathway was disrupted in 2020 with border closures due to the Covid-19 pandemic, yet since the borders were reopened in 2021 rates have again began to increase with over 13,000 crossings made between January to May of 2022 (IRCC, 2022). The impetus for crossing the border at a location other than an official port of entry is to avoid being found ineligible to make an asylum claim in Canada and sent back to the US, by virtue of the 2004 *Canada-US Safe Third Country Agreement* (STCA). The STCA is a bilateral responsibility sharing instrument which directs asylum seekers to make their claim in the first safe country – the US or Canada – they pass through (IRPA s. 101(1)(e)). The STCA only applies to asylum seekers who seek to enter the country from the US at an official border crossing point, therefore permitting those who instead manage to arrive on Canadian soil, albeit irregularly, to stay and make an asylum claim (IRPR s. 159.1 to s. 159.7). Research has shown that a significant driver of migration from the US to Canada has been due to the anti-immigrant rhetoric and changes in the US's asylum policies made by the Trump administration that have increased risks of deportation and made claiming asylum seem untenable for many refugees (Smith, 2019).

The Canadian government reacted to the growing number of asylum seekers arriving irregularly from the US by implementing an Irregular Migration Border Action Plan and allocating \$1.18 billion over five years, with \$55 million ongoing, to fund activities designed to increase border security and to reduce so-called non-genuine asylum claims (Government of Canada, 2019). An Ad Hoc Intergovernmental Task Force on Irregular Migration was formed in August 2017 to coordinate the government's response to asylum seekers arriving between official ports of entry (IRCC, 2017). In addition, a new Ministry of Border Security and Organized Crime Reduction was created in 2018, under Public Safety Canada,

to lead the efforts against the secondary asylum movements from the US (Prime Minister of Canada, 2018).

6.2.2 Cooperation with the Five Eyes alliance

Canadian authorities have also sought the assistance of their «strategic» partners, namely the United States, the United Kingdom, Australia, and New Zealand which together with Canada form the so-called Five Eyes alliance. The Five Eyes is an intelligence-sharing and strategic cooperation partnership established during the Cold War. It operates through a network of forums, such as the Border Five (B5), Migration Five (M5), to tackle migration and security related issues through cooperation. As illustrated by this quote from the Canada Border Services Agency, referencing a Five Country Ministerial 2018 Position Paper, the partners share a common vision of irregular migration:

There is a shift in irregular migration, from people seeking to evade detection in order to join underground economies, to using irregular routes in order to enter and remain in Five Eye countries as asylum seekers. This creates new challenges for our countries' asylum systems as increased volumes lead to a growing administrative burden and increased strain on health and social services, which erodes public confidence in government institutions and immigration programs (CBSA, 2020, Annex C).

With the intensification of border crossings in 2017, Canadian authorities placed a greater emphasis on information sharing as can be seen in the CBSA's Risk Assessment program². At a 2018 high level meeting, Five Eyes Ministers endorsed a program entitled «Border of the Future Strategic Vision 2030» and committed to «work together with industry to build the 'touchless' border at ports of entry for legitimate travellers». Ministers further agreed to a strategy to

leverage each other's investments in emerging technologies, including digitalisation and artificial intelligence, to improve facilitation and mitigate risks through real-time intelligence and information sharing, while protecting privacy (CBSA, 2020, Annex F).

² According to the CBSA, «the Risk Assessment program «pushes the border out» by seeking to identify high-risk people as early as possible in the travel continuum to prevent inadmissible people from entering Canada» (CBSA 2018).

Immigration information sharing agreements between Canada and the US began in the early 2000's. The 2003 Annex Regarding the Sharing of Information on Asylum and Refugee Status Claims to the Statement of Mutual Understanding on Information Sharing, also known as the Asylum Annex, signed between Canada and the US allows the automated, systematic sharing of information about asylum seekers (IRCC 2003; see also Arbel 2016, p. 837). The Asylum Annex complements the 2003 Statement of Mutual Understanding on Information Sharing to enhance co-operation between Canada and the US with respect to information sharing in relation to border security and management. Of note, the US-Canada Smart Border Declaration, signed in 2001 and instated a 30-point Action Plan for Creating a Secure and Smart Border, already set the ground for the development of common biometric identifiers, increased security screening within refugee/asylum processing, and exchange of information (Canada–United States Smart Border Declaration, 2001, paras. 4 and 5). These were considered as structural changes needed to address the risk of terrorism and criminality/security presumably linked to cross-border mobility in the aftermath of 9/11 terrorist attacks against the US (Atak *et al.*, 2019).

Within the last decade, the government has doubled efforts to pre-emptively identify unwanted migrants through information sharing. The 2012 Biometric Visa and Immigration Information Implementation Arrangement which supplemented the aforementioned 2003 Asylum Annex governs «the initiation of a direct, electronic fingerprint query» through an automated data base for the purpose of enforcing the immigration laws (IRCC, 2012, art. 3). Canada has also entered into similar agreements with the United Kingdom (2015), Australia (2016), and New Zealand (2016) for the purposes of sharing (biometric) information on an automated basis. Prior to this, the High Value Data-Sharing Protocol between the Five Eyes countries was signed in 2009 to share a number of cases, including refugee claimant cases, for biometric (fingerprint) data exchanges (IRCC, 2009). Exchanged information includes citizenship status, criminal history, and biometrics (fingerprint, photo, and physical description). The transition to the automated data exchange – as opposed to more traditional approaches of document verification performed at the border – was rationalized by the need to easily accumulate digital data from a variety of sources to sort and control migrants' mobility (Topak *et al.*, 2015). The information collected through these bilateral and multilateral agreements mainly serves to pre-emptive screening of migrants, determining whether a foreign national is eligible to make a refugee claim and whether they are admissible to Canada as well as enhancing deportations. Under IRPA, a refugee claim can be inadmissible on grounds of

security, criminality (serious or organized), or violation of international law or human rights (IRPA ss. 34-37)³. The rationale is to ensure that «individuals who might pose a risk to Canada would not be granted protection and could not use the refugee determination process to gain admittance to Canada» (IRB, 2018).

Perhaps the best example of Canada's increased reliance on information sharing to manage asylum is the legislative change introduced in Parliament in 2019, by Bill Blair, Minister of Border Security, and former Toronto chief of police. The *Immigration and Refugee Protection Act* was amended to make asylum seekers ineligible for protection if they have made a previous refugee claim in a country that Canada shares an information-sharing agreement with (IRPA s. 101(1) (c.1)). Such agreements are currently in place with Canada's Five Eyes partners: the US, Australia, the United Kingdom and New Zealand. The new ineligibility ground applies regardless of whether a decision was ever made on the previous claim. Canadian authorities are not directed to consider whether effective protection is accessible in the first country of asylum or elsewhere.

By barring asylum seekers who already made a refugee claim in the US from making a new claim in Canada, the government anticipated that the change would be instrumental in deterring irregular border crossings from the US and removing ineligible asylum seekers quickly. Reliance on international cooperation, including information-sharing agreements to exclude those with previous refugee claims allows Canada to optimize control over access to its refugee system in the name of responsibility sharing and preventing alleged abuse of the system. It illustrates the multifaceted nature of the externalization of border controls and its negative impacts on the rights of asylum seekers.

6.3 Border externalization: Human rights implications and State responsibility

Border externalization impedes access to international protection and other fundamental human rights of migrants. For instance, the implementation of the above-mentioned refugee ineligibility ground (2019) has been criticized for exacer-

³ A front-end security screening of in-land refugee claims is conducted by the CBSA in partnership with the RCMP and CSIS. In cases where individuals are considered to pose a risk to Canada or to abuse the system, inadmissibility issues are raised by Ministers of Public Safety and Emergency Preparedness or IRCC, who may intervene in the refugee claim (IRB, 2018).

bating the risk of rights' violations, notably the right to a hearing before the Immigration and Refugee Board and *refoulement* (Atak *et al.*, 2020). Externalization also enhances a common definition and prioritizing of threats within forums, such as the Five Eyes, whereby officials share common perceptions of fraud associated with some groups of migrants and the risk they allegedly represent for national security and develop common responses through a range of technologies (Bigo, 2020). It lumps together border management, immigration, and refugee protection, blurring the lines between these distinct policy areas (Guild, 2019). The process has therefore had the effect of criminalizing irregular migration through the design and implementation of repressive policies against migrants moving unauthorized (Vallet and David, 2016). Externalization has become reliant on a web of alliances between foreign affairs, immigration, intelligence, and law enforcement officials within Canada and with the partner states as well as international organizations and private companies. Key institutional contacts with high-level immigration and border officials of partner countries have been critical since they offered ample opportunity for these actors to socialize and share a set of «understandings and disagreements, implicit social and cultural norms, skills, competencies, informal knowledge, attitudes and embodied dispositions» with their Canadian counterparts (Côté-Boucher *et al.*, 2014, p. 198). This speaks to what Bigo refers to as «a profound reconfiguration» that brings together a new «transnational guild» of security specialists such as IT professionals, engineers, and border enforcement (2020, p. 76). In the Canadian context, Lalonde (2019) contends that officer socialisation through informal networks and training are aligned to support border control objectives.

In addition, the externalization process enables Canadian authorities to co-opt their counterparts in transit and source countries in Southeast Asia and Western Africa. Canada contributed to the reinforcement of these states' capacity to contain unwanted migrants through personnel training, infrastructure building, and technology transfer. Some of the countries with which Canada cooperates with are not signatories to the 1951 *Convention relating to the Status of Refugees* (Refugee Convention) and therefore, are not bound by the same international obligations toward refugees as Canada. In this context, the criminalization of migrants exacerbates the risk of *refoulement* for asylum seekers and other fundamental rights' violations at the hands of Canada's partner states and private security companies who made major inroads into border management with lucrative contracts procured by governments (Molnar, 2019). As governments such as Canada adopt new border technologies such as multi-state integrated databases, algorithmic decision making, AI, and predictive analytics, the 'border market' has expanded the role

of the private sector such as software firms and communication companies (Vallet and David, 2016; Molnar, 2019). Digital border tools require types of actors beyond border enforcement personnel, such as software developers, engineers, system analysts, and data analysis teams in governmental departments (Vukov and Sheller, 2013). One illustration combining overseas engagement and private sector involvement is the partnership agreement concluded in June 2020 with Nigeria, one of the top source countries for asylum seekers in Canada. The new initiatives under the agreement were arranged «to strengthen the data and intelligence collection and analysis capabilities» in the response to smuggling of migrants in Nigeria (UNODC, 2020). An international communications company, ARK, was hired to provide intelligence and communications expertise to aid irregular migration deterrence campaigns in Nigeria (IRCC, 2020). This example points to the increasing role played by for-profit private companies in the management of migration and border enforcement. Yet there remains the question of accountability, since the actions of private companies as well as the initiatives undertaken by Canadian authorities overseas are not subjected to any independent monitoring or assessment mechanism. There are important privacy risks and potential for discrimination and error associated with border technologies and the companies that provide digital infrastructure. While the Canadian government has introduced proposals to establish standards for AI implementation in automated immigration decision making, for example, there remains a substantial gap in regulations that ensure transparency, accountability, and fairness when it comes to the fusion of AI technology and immigration bureaucracy, particularly for initiatives undertaken overseas (McKelvey and MacDonald, 2019).

Border externalization in the form of capacity-building and responsibility sharing is a convenient strategy for destination states, like Canada, to minimize, if not evade, their obligations under the Refugee Convention and general human rights law, when asylum-seekers are intercepted far from their national territories and often with the complicity of transit and source countries. Gammeltoft-Hansen and Hathaway point out that externalized border controls enable destination countries a pattern of minimalist engagement under which the formal commitment to refugee law can be proclaimed as a matter of principle without risk that the wealthier world will actually be compelled to live up to that regime's burdens and responsibilities to any serious extent (2015, p. 242; see also Aleinikoff, 1992, p. 134). Indeed, some recent legislative measures – which produce effects on Canadian soil – discussed in this chapter have been challenged before courts in Canada and struck down because their inconsistency with the *Canadian Charter of Rights and Freedoms*. For instance, in 2015, the Supreme Court of Canada chastised the government for its treatment

of some Tamil asylum seekers who arrived in Canada aboard MV Ocean Lady in 2009. The Supreme Court found the definition of human smuggling overbroad and ruled that acts of humanitarian and mutual aid (including aid between family members) should not constitute people smuggling under the IRPA (*R. v. Appulonna*, 2015, para. 45). The Court also decided only people who act to further illegal entry of asylum-seekers in order to obtain, directly or indirectly, a financial or other material benefit in the context of transnational organized crime can be deemed inadmissible to Canada (*B010*, 2015, para. 76). Despite its unconstitutional nature, it is highly likely that the overbroad definition of smuggling still rationalizes and continues to inform Canada's migration controls overseas.

Similarly, the *Canada-US Safe Third Country Agreement* was found unconstitutional by the Federal Court of Canada on 22 July 2020. The Court determined that those asylum seekers returned to the US by Canadian officials were detained as a penalty, and without regard to their circumstances, moral blameworthiness, or their actions. The Court concluded that detention and the resulting hardship and risks, including denial of access to a fair refugee process, violate asylum seekers' right to liberty and security protected in the *Canadian Charter of Rights and Freedoms* (*Canadian Council for Refugees v. Canada* 2020 FC 770, paras. 135 and 146). Importantly, the Court emphasized that Canada is not a «passive participant» in the rights' violations of asylum seekers returned to the US. On the contrary, Canada is directly responsible for the fate of these individuals since the actions of Canadian officials in returning claimants to US officials facilitate a process that results in detention. The STCA is still in effect, since the decision was overturned by the Federal Court of Appeal on almost exclusively technical grounds in April 2021 (CARL, 2021). Nevertheless, the Federal Court decision which drew on the testimonies of asylum seekers affected clearly illustrates the negative implications of the border externalization on access to justice and the human rights of migrants.

There is an emerging consensus that international law will hold states responsible for aiding or assisting another state's wrongful conduct⁴ (Gammeltoft-Hansen and Hathaway, 2015). According to a growing body of international and domestic case-law, externalization of border controls doesn't insulate states from legal liability.

⁴The authors namely refer to Article 16 of the International Law Commission's Articles on State Responsibility: A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) That State does so with knowledge of the circumstances of the internationally wrongful act; and (b) The act would be internationally wrongful if committed by that State.

For instance, the European Court of Human Rights has recognised that a state's jurisdiction may extend to acts of its authorities which produce effects outside its own territory (*Al-Skeini and others v. the United Kingdom*, 2011, para. 133)⁵. Whenever the state through its agents operating outside its territory exercises control and authority over an individual, and thus jurisdiction, the state is under an obligation to secure to that individual the rights and freedoms that are relevant to the situation of that individual (*Hirsi Jamaa and others v. Italy* 2012, paras. 74-75). The prohibition of *refoulement* has extraterritorial reach in case of effective control over a refugee means that returning the refugee to the frontiers of territories where his life or freedom would be threatened breaches the principle of *non-refoulement*, regardless of where it takes place (Zieck, 2018; Gammeltoft-Hansen and Tan, 2021).

Canadian jurisprudence clearly lags behind the case-law of international and regional human rights adjudication bodies. Courts in Canada have held that non-citizens who are not on Canadian soil can claim the Charter's protection only if they can «establish a nexus to Canada», for example by being subject to a criminal trial (*R v Hape* 2007, para 14). Drawing on the *Khadr* case in which the Supreme Court held that the Charter precluded Canadian officials from acting in a manner inconsistent with our international obligations, Waldman contends that «it is not correct to assert that Canadian officials acting outside of Canada are not bound by the Charter» (p. 21). The Federal Court of Canada's above-mentioned decision on the *Canada-US Safe Third Country Agreement* confirms this understanding. However, unlike other jurisdictions, such case-law has been scarce in Canada. The policies that are extraterritorially implemented continue to be considered as falling outside the ambit of Charter review (Arbel, 2016).

Conclusion

More than 30 years ago, UNHCR expressed concern that,

many States, some of whom were among the architects of the international refugee protection structures, are adopting responses to asylum-seekers attempting to enter their territories which result in denial of admission and hindering of access to procedures for determination of status (UNHCR, 1990, pp. 5-6).

⁵ A State's jurisdiction outside its own border can primarily be established in one of the following two ways: a. on the basis of the power (or control) actually exercised over the person of the applicant; b. on the basis of control actually exercised over the foreign territory in question.

Border externalization measures have since become more diversified and widespread. The Canadian government has accelerated and expanded its efforts to «push the border out» after the MVs *Ocean Lady* and *Sun Sea* arrivals in 2019 and 2020, followed by unauthorized land border crossings from the US. These efforts have been further legitimized in the name of cracking down on migrant smuggling and preventing the 'abuse' of the refugee system.

Canada's overseas capacity building initiatives, pre-emptive surveillance of migrants and data sharing impede the right to seek and enjoy asylum and other fundamental human rights of migrants, such as the right to liberty and the principle of non-refoulement. Alliances and agreements reached with several countries criminalize migrants and further obstruct the mobility of asylum seekers at the earliest point possible away from Canada's borders (Topak *et al.*, 2015). Due to these barriers, many asylum seekers are left with no other option but hiring the services of migrant smugglers to reach safety. Despite its counterproductive effects, Canada has pursued border externalization without any meaningful oversight and accountability mechanisms. These developments highlight the broadening scope of border enforcement capable of restricting migrant mobility and access to asylum in Canada through multiple layers of control.

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PART III
REFUGEE RESETTLEMENT PROGRAM

7. Canada's resettlement programs: framework and tensions

Shauna Labman

7.1 Introduction

This chapter serves two purposes. First, to set out the legal and policy framework of Canadian refugee resettlement and the resettlement programs of Government-Assisted Refugees (GAR), Private Sponsorship of Refugees (PSR) and Blended Visa Office-Referred (BVOR). As is set out in Chapter 13, the Province of Québec also has an agreement with the federal government, the *Canada–Québec Accord relating to Immigration and Temporary Admission of Aliens*, whereby it makes its own resettlement selections in a manner that the other Canadian provinces and territories cannot. Given it is detailed elsewhere in this volume, the Québec exceptions will not be addressed here. The second purpose of the chapter is to highlight where there are tensions between and within the different Canadian resettlement programs.

7.2 Legal and policy framework

The *Immigration and Refugee Protection Act 2001 (IRPA)* is Canada's federal legislation setting out the laws related both to immigration to Canada and the granting of refugee protection. Resettlement in Canada operates through a legal framework set out in the *Immigration and Refugee Protection Regulations 2002 (IRPR)*. These are regulations authorized by *IRPA* (s. 5). Within the regulations there are two classes of individuals who can be issued a permanent resident visa for resettlement to Canada: the Convention Refugees Abroad Class and the Humanitarian-Protected Persons Abroad Class. The two classes enable resettlement of both refugees recognized under the 1951 *Convention Relating to the Status of Refugees* and those persons with a humanitarian need for protection beyond the parameters of convention recognition. To an extent this parallels the in-country protection Canada offers to both Convention refugees as defined in s. 96 of *IRPA* and complementary protection to a «person in need of protection» defined in s. 97 of *IRPA* which applies to those who are not persecuted under an enumerated ground of the refugee definition set out in s. 96 but face either a risk of death, torture or cruel and unusual treatment (see chapters 4 and 5).

Canada's resettlement program differs from its in-country protection of refugees which arises out of the state's commitment in international law to non-refoulement. In contrast to this legal obligation, the Canadian government opts to voluntarily offer resettlement spaces on an annual basis in a process similar to its much larger admission of economic immigrants and those admitted through family reunification. Historically this resulted from Canada's distance from refugee flows, commitment to responsibility sharing, and foreign policy decisions (Labman, 2019, p. 41). Susan Kneebone and Audrey Macklin (2021, p.1081) contrast the international legal obligation that triggers when asylum seekers make a claim for protection to the «moral appeal to humanitarian discretion [...] untethered to obligation» at play with resettlement. In a government evaluation of the Canadian resettlement program as recently as 2016 it was highlighted as the first finding that «There is a continued need to provide protection to refugees and resettlement assistance upon arrival» (Immigration, Refugees, and Citizenship Canada, 2016, 3.1). Such strong confirmation of the need for a continued resettlement program also speaks to the continued space in which the necessity of offering a resettlement program is questioned. While relatively stable over the long history of the Canadian resettlement program, this commitment to resettlement must be viewed with some understanding of its fragility. The significant diminishment of resettlement spaces under the Presidency of Donald Trump in the United States as well as the global halt by UNHCR and International Organization for Migration (IOM) of resettlement in March 2020 due to the Covid-19 pandemic highlight some vulnerabilities.

One shift in Canada's resettlement regulations is that previously two sub-classes existed under the Humanitarian-Protected Persons Abroad Class – both the Country of Asylum Class and the Source Country Class. The Country of Asylum Class, which remains intact, encompasses those outside their countries of nationality (or habitual residence) who «have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries» (s. 147). The Source Country Class, no longer intact, enabled resettlement of individuals still residing in their country of nationality (or habitual residence) without the need to cross an international border. This required the designation of a source country in the regulations and the eligible persons were either seriously and personally affected by civil war or armed conflict, had been detained without charges, or punished for an act that in Canada would be considered a legitimate exercise of civil rights pertaining to political dissent or trade union activity, or had a fear of persecution for reasons of race, religion, nationality, political opinion, or membership in a particular

social group (s. 148 Repealed, Canada Gazette, 2011, s. 6). In 2011 the Source Country Class was repealed with the Canadian government emphasizing challenges with referrals and access to the program. The Regulatory Impact Analysis Statement explaining the rationale for the repeal justified «the Government is proposing to repeal the class so that resources can be focussed on populations where Canada can work with partners like the UNHCR, private sponsors and other resettlement countries» (Canada Gazette, 2011).

UNHCR's partnership with Canada is by way of UNHCR's designation as a referral organization. The regulations set out that a «referral organization means a) the United Nations High Commissioner for Refugees; or (b) any organization with which the Minister has entered into a memorandum of understanding under section 143» (s. 138). The referenced Minister is the Minister of Citizenship and Immigration (as per s. 4 of *IRPA* and s. 2 of *IRPR* although the title was changed by the government in 2015 to Minister of Immigration, Refugees and Citizenship). Section 143 permits the Minister to enter into memorandum of understandings with other organizations for the purpose of «locating and identifying Convention refugees and persons in similar circumstances». Beyond referral organizations there can also be referrals as a result of «an arrangement between the Minister and the government of a foreign state or any institution of such government relating to resettlement» (s. 140.3(1)(b)) or referrals as a result of «an agreement relating to resettlement entered into by the Government of Canada and an international organization or the government of a foreign state» (s. 140.3(1)(c)). The Minister may also determine that no referral is necessary in a particular geographic area where referral organizations advise they cannot make the requisite referrals specified in their MOU, the inability of the referral organization to make referrals in the area, resettlement needs in the area and the «relative importance of resettlement needs in the area, within the context of resettlement needs globally» (R140.3(3)(a-d)). Referrals are otherwise required for resettlement applications unless the individual is being sponsored (r.140.3(1)).

The regulations define sponsors as «a group, a corporation or an unincorporated organization or association [...] or any combination of them, that is acting for the purpose of sponsoring a Convention refugee or a person in similar circumstances» (s. 138). The regulations permit the Minister to enter into an agreement with a sponsor which covers settlement plans, financial requirements, Department assistance, expected standard of conduct of the sponsor, reporting requirements and grounds for suspending or cancelling the agreement in order to process sponsorship applications (s. 152). Sponsor organizations holding such agreements with the Minister are referred to as Sponsorship Agreement Holders

(SAHs). Eligibility to become a SAH requires an organization to have been incorporated for at least 2 years, be physically located in Canada, have the interest and ability to sponsor more than 5 refugee families per year and possess the resources and support network to be effective. There were 130 SAHs across Canada as of 2021 (Immigration, Refugees and Citizenship Canada, 2021a).

Whether sponsored or supported by the government, there are a number of requirements (s. 139) that must be met before a permanent resident visa will be issued to resettle an individual or family. Basic requirements include that the individual is outside of Canada, is seeking to establish permanent residence in Canada and has no other durable solutions available within a reasonable period of time. Financial requirements require either an accepted sponsorship application, the availability of government assistance (through the GAR program) or that the individual has «sufficient financial resources to provide for the lodging, care and maintenance, and for the resettlement in Canada, of themselves and their family members included in the application for protection». Resettled refugees are exempted from general immigration financial inadmissibility provisions and the general immigration health inadmissibility on the basis of excessive demand on health or social services but they are inadmissible on health grounds if their health condition is likely to be a danger to public health or public safety (s. 139(3) & (4) *IRPR*; ss. 38 & 39 *IRPA*). Like others seeking access to Canada, resettlement applicants may be deemed inadmissible following criminal and security screenings.

Applicants for resettlement must also show the ability to successfully establish in Canada. The assessment of successful establishment in the regulations (s. 139(1)(g)) takes account of:

1. their resourcefulness and other similar qualities that assist in integration in a new society;
2. the presence of their relatives, including the relatives of a spouse or a common-law partner, or their sponsor in the expected community of resettlement,
3. their potential for employment in Canada, given their education, work experience and skills;
4. their ability to learn to communicate in one of the official languages of Canada.

In the program delivery instructions for officers making these determinations it is made clear to «focus on the economic sufficiency and adaptability of the entire family unit, including those accompanying the applicant and those already in Canada» (Immigration, Refugees and Citizenship Canada, 2013). The guidance emphasizes that «Protection is the most important goal and must be con-

sidered: when protection needs are high, less weight can be put on the potential for integration» and that there «should be specific evidence that clearly shows integration will be difficult, and conclusions must be reasonable and justifiable» (Immigration, Refugees and Citizenship Canada, 2013). Applicants who have been deemed by an immigration officer to be «in urgent need of protection» or «vulnerable» do not need to meet the successful establishment criteria (s. 139(2)).

Both terms «in urgent need of protection» and «vulnerable» are defined in the regulations (s. 138). «Urgent need of protection» means the applicant in either the Convention Refugee Abroad or the Country of Asylum Class has their life, liberty or physical safety under immediate threat and without protection they are likely to be «a) killed, b) subjected to violence, torture, sexual assault or arbitrary imprisonment; or c) returned to their country of nationality or of their former habitual residence». This is referred to as Canada's Urgent Protection Program (UPP) where decisions on resettlement referrals are within 24-48 hours and the intent is to have the accepted refugees travelling to Canada within 3-5 days (Immigration, Refugees and Citizenship Canada, 2021a). Vulnerable signifies «a greater need of protection than other applicants for protection abroad because of the person's particular circumstances that give rise to a heightened risk to their physical safety». Somewhat frustratingly «emergency» in UNHCR terminology is the equivalent of «urgent» in Canada's program while «urgent» in UNHCR's terminology is the equivalent of «vulnerable» in Canada's program (Government of Canada, 2018, p. 7).

Canada also offers extended settlement supports to some refugees under a Joint-Assistance Sponsorship (JAS) program for refugees with special needs related to settlement assistance. Needs can be connected to the large size of the family, trauma resulting from violence or torture, medical disabilities or the effects of systemic discrimination (s. 159). JAS refugees are included in the GAR program but also matched with sponsors who are exempted from financial support as this is provided by the government. The settlement support time for JAS refugees can be extended from the regular 12 months to 24 months and sponsor support sometimes extends to 36 months (Immigration, Refugees and Citizenship Canada, 2020). Only SAHs and Constituent Groups who are authorized by a SAH to sponsor under their agreement can apply to sponsor refugees under JAS.

Where the distinctions between GAR, PSR and BVOR resettlement come into play is in the selection process and the settlement support. GAR resettlement initiates by way of a referral usually from UNHCR or another referral organization. In contrast, private sponsors directly refer the refugees they wish to resettle in the PSR stream. More commonly this is referred to in Canada as «naming» the

refugees to be sponsored. As UNHCR is the primary referral agency most GAR and BVOR refugees are in the Convention Refugees Abroad Class. Sponsored refugees may be in either the Convention Refugees Abroad Class or the Country of Asylum Class. Some sponsorships do however require refugee recognition by either UNHCR or a foreign state (s153(1)(b) *IRPR*). The refugee recognition requirement does not apply to SAHs or to Constituent Groups under the SAH agreement but applies to those who wish to sponsor outside of a sponsorship agreement. These can be either «Groups of Five» being a group of five or more Canadian citizens or permanent residents who come together or «Community Sponsors» who can be organizations, associations or corporations who sponsor.

Upon arrival in Canada, the settlement support for resettled refugees differs depending on how they were selected for resettlement. The Resettlement Assistance Program (RAP) provides the GAR settlement support. This support includes both direct income support (both start up and monthly) to resettled refugees and as well as funding to Service Provider Organizations (SPOs) who then provide the settlement support (Bechard, Elgersma, van den Berg, 2011). PSR settlement is the responsibility of the sponsors who provide the initial and on-going financial support as well as emotional support to the refugees they resettle.

The BVOR program mixes both the selection and settlement responsibilities of the GAR and PSR programs. Sponsors do not have the referral capacity to name the refugees to be sponsored as these refugees are «Visa Office-Referred» meaning they are selected by Canadian visa officers from UNHCR referrals. In exchange for the loss of naming power, sponsors only take on the responsibility to financially support the resettled refugee(s) for 6 months instead of 12 months. The Canadian government, through the RAP, covers the other 6 months of support.

It is important to note that transportation costs are outside of the supports provided for resettled refugees. The Government of Canada does offer an «Immigration Loans Program» which encompasses transportation loans as well as loans for settlement assistance and fees. Medical exams are paid for by the government through the Interim Federal Health Program.

7.3 Tensions

In design, the PSR and GAR programs are meant to operate complementarily. The sponsorship community has always expressed their contribution to resettlement as additional to the government resettlement program. Jennifer Hyndman, William Payne and Shauna Jiminez (2017, p. 59) point out that «In Canada, the principle of additionality ensures that private efforts expand refugee protection

spaces by complementing government commitments to resettlement». It is less clear that the Canadian government is equally committed to this principle. In fact, in their 2016 evaluation of the resettlement programs it is specifically noted that «the principle of additionality is not part of the PSR program theory» (Immigration, Refugees and Citizenship Canada, 2016, 4.2.2.).

Much has been written on the precursors of the program (Cameron, 2021), advocacy for its legislative inclusion (Labman, 2019), uptake in early years (Molloy *et al.*, 2017) and reinvigorated recent success in the large-scale Syrian resettlement to Canada (Hamilton, Veronis and Walton-Roberts, 2020). The operation of the sponsorship program has not been without tension, a topic I discuss in detail elsewhere (Labman, 2016). Here though I will focus on the relationship between government resettlement through the GAR program and private sponsorship in the PSR program with the recognition of how the BVOR program situates in the middle.

While all programs focus on protection need and offer access to safety, the differing selection processes influence where that protection response is targeted. Primarily, government resettlement responds to the protection prioritizations of UNHCR. UNHCR (2011) has three priority levels for resettlement Emergency, Urgent and Normal and seven submission categories: Legal and/or Physical Protection Needs, Survivors of Torture and/or Violence, Medical Needs, Women and Girls at Risk, Family Reunification, Children and Adolescents at Risk, and Lack of Foreseeable Alternative Durable Solutions (p. 243). In contrast to Canada's consideration of successful establishment in its resettlement criteria, UNHCR (2011) does not consider integration:

The notion of integration potential should not negatively influence the selection and promotion of resettlement cases. For example, educational level or other factors considered to be enhancing the prospects for integration are not determining factors when submitting cases for resettlement. (p. 245).

Accepted referrals to Canada fitting within the Convention Refugees Aboard Class and meeting the requirements detailed above fill the GAR allocation of resettlement spaces. In contrast, sponsors often direct their protection offering to those outside of UNHCR's submission categories and referrals and named refugees selected for sponsorship tend to fit within the wider Country of Asylum Class. In this way, sponsorship fits the model of additional complementary protection. In the recent language of the Global Compact on Refugees (2018) this can be seen as «complementary pathways for admission» (3.3)

distinct from traditional resettlement. Similar to family reunification, which is likewise recognized as a complementary pathway in the Global Compact on Refugees, sponsorship is an expansion of access to protection for some in need and yet, by its design, it is limited to the select few with the required connections to Canadians. In their exploration of the intentions and consequences of sponsorship selection by way of naming Sabine Lehr and Brian Dyck (2020, p. 52) note:

In a system of referral by private individuals, the person who makes the referral must know the refugees they wish to sponsor. This interaction typically comes about in one of two ways: (1) the private person who wants to sponsor has met the refugees in their country of first asylum during a leisure or work-related trip; or (2) a family member of the refugees proposes them for sponsorship. In either case, the main selection criterion is the existence of a personal relationship.

Lehr and Dyck (2020, p. 52) acknowledge this raises an «equity and fairness issue» as «named sponsorship is only available to those with connections to Canada where sponsors or family members have the necessary funds». In the same volume, Patti Lenard (2020, p. 64) frames this sceptically:

given the real unmet need with respect to resettlement spaces for refugees, the connection to a Canadian citizen or permanent resident gives refugees in need a significant advantage in the tragic competition to find a safe and permanent home.

The Canadian refugee protection system as a whole does not create a formal competition for protection spaces. Inland asylum recognition numbers do not deduct from resettlement numbers and sponsorship numbers do not pull from government resettlement. The reality however is that resettlement spaces in Canada and globally fall far short of ever meeting UNHCR identified resettlement needs or wider protection risks and needs, making the competition for spots an undercurrent of all selection.

Canada makes annual commitments on immigration intake and since 2017 has made multi-year plans. What is telling in these numbers and the resulting admissions is the shifting relationship between government resettlement and private sponsorship keeping in mind the differing perspectives on additionality. In recent years sponsorship allotments have increased significantly (400% between 2010 numbers and 2020 pre-pandemic intentions)

while government numbers grew 25% (Hyndman *et al.*, 2021). A significant numeric surge came with the electoral promise and new federal government commitment in 2015 to resettle 25,000 Syrians to Canada. While this was a commitment to government resettlement through the GAR program it was met with an influx of interest in private sponsorship. Between the start of November 2015 and the end of February 2016, Canada resettled 14,995 Syrians through the GAR program, 8,953 Syrians through the PSR program and 2,224 Syrians through the BVOR program (Government of Canada, 2017). In contrast, Canada's overall resettlement in 2014, not limited to Syrians as the above numbers are, totalled just over 12,000. While government admissions had previously accounted for the majority of yearly resettlement admissions to Canada (Labman, 2019, p. 57) by 2015 the GAR and PSR programs were close to parallel in their admissions and by 2017 PSR numbers had greatly surpassed GAR admissions.

GAR/PSR/BVOR Admissions 2014-2020

YEAR	GAR Admissions	PSR Admissions	BVOR Admissions
2014	7,573	4,560	177
2015	9,411	9,350	810
2016	23,523	18,362	4,434
2017	8,823	16,873	1,284
2018	8,156	18,763	1,157
2019	9,951	19,143	993
2020	3,871	5,313	52

Table based on: Immigration, Refugees and Citizenship Canada, Annual Reports to Parliament on Immigration 2015-2021.

The Covid-19 pandemic commencing in 2020 significantly slowed all movement in the Canadian resettlement context and globally. UNHCR and the IOM temporarily suspended all resettlement on 17 March 2020 and a resumption of departures was announced on 18 June 2020. Pre-pandemic Canada aimed to resettle over 30,000 refugees in 2020, yet just over 9,200 ultimately arrived (Immigration, Refugees and Citizenship Canada, 2021b). Intentions moving forward in the 2022-2024 plan still point to PSR numbers accounting for over 60% of admissions in each year.

GAR/PSR/BVOR Planned Admission Targets 2022-2024

YEAR	GAR Targets	PSR Targets	BVOR Targets
2022	19,790	31,255	1,000
2023	17,260	30,795	1,000
2024	13,000	23,00	1,000

Table based on: Immigration, Refugees and Citizenship Canada, Supplementary Information for the 2022-2024 Immigration Levels Plan.

In 2021 the Canadian government committed to bringing 40,000 Afghan nationals to Canada by 2024 through targeted programs that included a special immigration program that does not require Afghan nationals to have left Afghanistan or remain in Afghanistan, but only that the applicant or family members were in Afghanistan on or after the program start date in July 2021 (Government of Canada, 2021). The government struggled to actualize this program and less than 15,645 Afghan nationals arrived as of June 2022 (House of Commons, 2022, 51). Canada's 2022 response to Ukrainians is entirely outside of any resettlement program by way of a temporary travel visa, the Canada-Ukraine authorization for emergency travel (Government of Canada, 2022).

One of the issues when considering the government – private citizen duality of Canada's resettlement programs is the sustainability of each. A government resettlement program depends on discretionary government willingness and support which can vary with the government in power as well as the pull of other commitments as illustrated above. It has been highlighted in government research that a benefit of the PSR program is that it «has proven successful in sponsoring and integrating large numbers of refugees while keeping the government costs of sponsorship to a minimum» (Coleman, 2020, 5.1). In the 2021 Canadian Federal Election, the Conservative Party of Canada (2021, p. 129) included in their platform the elimination of most government resettlement by proposing to

[re]place public, government-assisted refugee places with more private and joint sponsorship places. All refugees arriving in Canada will do so under private or joint sponsorship programs, with exceptions in cases of emergency or specific programs.

While not elected into power, the Conservative Party now serves as the Official Opposition and previously governed from 2006-2015. A recent policy brief examining the PSR increases flags the challenge to the complementary nature of the GAR-PSR relationship:

This raises the question of whether “additionality” is still being honoured as a basic principle of the PSR program. In other words, whether the program will supplement the state's efforts or will the state shift much of its responsibility for refugee resettlement to private sponsors. (Ali, 2021, p. 4)

It is conceivable to see a future Canadian government shifting resettlement commitments entirely away from government resettlement and squarely focussed on private sponsorship.

In terms of sustainability, the private sponsorship program tends toward demand exceeding allotted capacity. To alleviate processing congestion, the government introduced global and regional caps commencing in 2012 on SAH resettlement applications as well as the requirement on non-SAH applications for proof of refugee status. Allocation caps were met with a mixed reception with some sponsors feeling this unnecessarily limited their resettlement efforts while others viewed them as a necessary response to backlog (Chapman, 2014, p. 8). Advocates have called for the revocation of the proof of refugee status requirement arguing there is an exclusionary effect that heightens risks without improving program efficiency (Balasundaram *et al.*, 2022).

Much of the interest in sponsorship comes from the ability to name those one seeks to sponsor (Lehr and Dyck, 2020). But there is also a continual «echo effect» as it is colloquially called with the potential to perpetually name those left behind. Audrey Macklin *et al.* (2018) have studied the sponsorship of Syrians from 2015 onward and more than half of those sponsors indicated that those they sponsored requested they assist with further sponsorship of other connected refugees. This is an example of the echo effect but further speaks to the reality that the need and want of resettlement spaces is far exceeds state willingness to resettle. Moreover, whether refugees enter Canada by way of an asylum-claim or any of Canada's three resettlement routes, private sponsorship offers the only opportunity to directly influence the admission of others. The backlog on PSR applications is reported to be over 65,000 (Mennonite Central Committee, 2021). Inevitably this challenges the intended complementarity of Canada's resettlement streams. This power and draw of naming are highlighted by the inability of the BVOR program of sponsorship to garner similar sustained support.

The BVOR program was introduced in 2013 accompanied by a budgetary shift re-allocating some government resettlement spaces to the BVOR program. The Canadian Council for Refugees did challenge this move suggesting «Canadians who stepped up to sponsor BVORs were not adding to the number of refugees resettled: they were rather saving the government money» (Canadian

Council for Refugees, 2016). The government itself acknowledged in its program evaluations that some SAHs perceived the program as «contravening the Principles of Naming and Additionality» (Immigration, Refugees and Citizenship Canada, 2016, 5.2.1). This recognition of sponsor concern with additionality is in the same document within which it is earlier asserted that additionality is not part of the «PSR program theory».

Nevertheless, a stated goal of the BVOR program with referrals coming through UNHCR by way of Canadian visa officer referrals and the Canadian government and sponsors jointly sharing resettlement responsibility is to «engage in a 3-way partnership between the Government of Canada, the UNHCR and private sponsors» (Immigration, Refugees and Citizenship Canada, 2019, 3.1). In its first year the target was to bring over 100-200 refugees through the BVOR stream, with this goal increasing to 400-500 in 2014 and doubling to 800-1000 by 2015 (Labman and Pearlman, 2018, p. 442). These goals were not met in either 2013 or 2014 with numbers reaching only 153 and 177 respectively. With the Canadian public's interest in resettlement sparking in 2015 in response to the evolving crisis in Syria and the engaged humanitarian efforts of the Canadian government, BVOR numbers did rise significantly as it offered the lesser financial commitment for those interested in sponsoring unknown-to-them Syrians (a very different context than the echo-effect and family linked sponsorships that tend to otherwise dominate the program). In other words, the BVOR option served as a clear tool for Canadians to express their humanitarian concern much in the same way the sponsorship program itself grew through the Indochinese crisis in the 1970s (Adelman, 1982). BVOR sponsorships jumped from 810 in 2015 to 4,434 in 2016 (Labman and Hyndman, 2019, p. 2). In the subsequent years the numbers fell downward from 1,284 in 2017, to 1,157 in 2018 and only 993 BVOR arrivals in 2019 (Immigration, Refugees and Citizenship Canada, 2015-2020). It is important to note that a BVOR Fund was created in 2018 and renewed in 2019 with donor support to provide sponsors with the funding for the BVOR sponsorship so that finances were not a constraint. Just over half (1,185) of the total BVOR resettlements in 2018 and 2019 came through BVOR Fund support (The Shapiro Foundation, 2021). One contention is that the sustainability challenge of the BVOR program is the lack of awareness of its potential as a tool: «A primary challenge for the program is the absence of any proactive marketing or promotion to the potential audience of Canadians who might have an interest in participating» (EnviroNics Institute, 2021, p. 1). Recent research and a survey of Canadian awareness and engagement in resettlement concludes that the BVOR program «is well positioned to be more actively promoted among Canadians»

(EnviroNics Institute, 2021, p. 4). There is indeed potential for the BVOR program to engage a wider Canadian community in resettlement support. McNally (2020) has demonstrated the wider appeal of BVOR in rural communities in Canada where there is no settlement of GARs.

The PSR program has benefits over both the BVOR and GAR streams by the self-creating and self-sustaining support sponsors themselves provide. The SAH Association speaks of broad organizational goals including promoting a more welcoming society for refugees in Canada and advocating for fair and efficient resettlement policies and procedures (The Canadian Refugee Sponsorship Agreement Holders Association, 'Home' 2021). Their missions is

to be a collective voice for the Sponsorship Agreement Holders of Canada in promoting and enabling Canada's Private Sponsorship of Refugees Program, whether among its members' own constituencies, with the Canadian public, with national and international organizations, or with the governments of Canada, its provinces and territories (The Canadian Refugee Sponsorship Agreement Holders Association, "Mission" 2021).

The SAH Association incorporated as the national membership association for SAHs in 2011. In addition to this the *Refugee Sponsorship Training Program* had been established in 1998 to offer a support framework for sponsorship and is funded by the Federal government and administered by the Catholic Cross-cultural Services, a national non-profit organization. In September 2016 during the UN Summit on Refugees and Migrants in New York City, the Government of Canada, UNHCR and the Open Society Foundations announced a joint initiative to increase global resettlement through private sponsorship (Government of Canada, 2016). With the Giustra Foundation and the University of Ottawa joining, the initiative launched as the Global Refugee Sponsorship Initiative in December 2016 (Bond and Kwadrans, 2019, p. 88). In recent work by Hyndman *et al.* it has been suggested that sponsorship efforts in Canada are sustained because it transforms into a «community practice» (2021, p.10). In combination with the Canadians who have now brought over 325,000 privately sponsored refugees to Canada, Canada's sponsorship program is buoyed by an increasingly strong foundation of support that the government program lacks.

There are questions as to the post pandemic potential of sponsorship when health and financial realities may have shifted that limit citizen abilities to take on the responsibilities of sponsoring newcomers. Numeric targets for each category (GAR, PSR and BVOR) moving forward indicate a continued commitment to

refugee resettlement but this chapter has highlighted where there are tensions between and within the different Canadian resettlement programs.

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8. Finding housing for government-assisted refugees in Canadian cities: process, governance, and challenges

Damaris Rose

8.1 Introduction and context

Moving into self-contained, stable, safe, and affordable, housing is a pivotal step in the resettlement experiences of refugee newcomers to Canada. More than just a roof, this dwelling is a material and ontological anchor point for re-establishing well-being and building an ‘ordinary’ everyday life after an often-protracted period of profound dislocation. In the words of a government-assisted Syrian refugee temporarily housed in a Toronto hotel, «The most important thing now is to have [a] residence and go to school, and learn, and start our lives» (Martin, 2016, p. 2). The geographic location of the first permanent housing is also of paramount importance. It needs to be accessible to resources and services that support specialized health needs and that help refugees make progress in their social and economic integration: learning a new language, decoding a new culture and society, employment training, and job opportunities. It needs to be located in a place that feels secure, that can help refugees make social connections, and that can foster an overall sense of inclusion in the receiving society (Carter *et al.*, 2009; Fozdar and Hartley, 2014). Governments and non-profit organization involved in planning and managing the early stages of resettlement thus need to ensure the suitability of potential destination cities – a critical mass of newcomer support services, a diversified employment base – and also consider the qualities of neighbourhoods in terms of social composition, public transportation and other social infrastructure. From a policy perspective, resettling refugees into housing that meets these criteria within a reasonable timeframe respects international humanitarian principles (United Nations High Commissioner for Refugees UNHCR, 2002; European Council on Refugees and Exiles, 2016); it is both an enabler and an indicator of a successful integration trajectory (Ager and Strang, 2008; Ziersch *et al.*, 2017).

Hence, since its inception in its current form in 1998, a major component of Canada’s Resettlement Assistance Program (RAP) for government-assisted refugees (GARs) has been the provision of intensive assistance to find suitable permanent housing for newly arrived refugees as soon as possible – ideally within two to three weeks after arrival – and provide all necessary support for moving

and settling into this housing. This covers everything from ensuring that the first government support payment arrives in time to secure the rent deposit, to coordinating the delivery of the furniture, to coaching the refugee newcomers about heating, plumbing, cooking and domestic appliances found in Canadian homes, landlord-tenant relations and conventions for the use of common spaces in apartment buildings. The housing search and the housing life skills preparation are conducted while the newcomers are staying at a hotel or other temporary accommodation where they will have received initial orientation services in the first days after arrival. The housing assistance offered within RAP is thus integral to both the immediate and medium-term (one year) outcomes that the government expects from the RAP program, which are, respectively, that «[i]mmediate and essential needs of resettled refugees [are] met» and that «[r]esettled refugees have the tools to live independently in Canadian society» (Immigration, Refugees and Citizenship Canada, 2021, p. 6). It is important to recall in this context that resettled refugees to Canada are admitted as permanent residents who will be eligible for citizenship three years later.

In recent years, however, implementing the housing commitments of RAP, especially during major refugee resettlement operations carried out under strict time pressures, has become an increasingly challenging conundrum for the resettlement service provider organizations (RAP SPOs) who are responsible, under the terms of a contract from the federal government, for finding and installing GARs into their first permanent housing. These organizations have to find this housing almost entirely within the private market rental sector. The latter has a small, and shrinking, segment that is affordable for low-income households, such as resettled refugees who receive a living allowance equivalent to the meagre social assistance payments «of last resort» provided by Canadian provinces. Moreover, the scarcity of affordable and suitable private sector rental units is even greater for families needing three or more bedrooms. Yet recent cohorts of government-assisted refugees (GARs) resettled to Canada, notably the Syrian wave of 2015-2017, have been characterized by larger family sizes and more multi-generational families than previously. Furthermore, since 2002, Canada has strengthened its commitment to resettling «high needs» refugees, *i.e.* those with major physical or mental health challenges, low levels of formal education and mother-tongue literacy, and protracted experiences of displacement and trauma. Settling refugee newcomers with these types of profiles adds to the challenge of identifying housing of suitable design and in proximity to the appropriate support services.

The first key contextual element here is the market-dominated nature of the Canadian housing system, which is very strongly based on private market pro-

vision, corresponding to the «liberal» or «residual» welfare state model in Esping-Andersen's classic typology (Esping-Andersen, 1990; Hulchanski, 2006). While just under one-third of households in Canada are renters, less than one in seven of these renters lives in social or affordable housing (operated by a government body, non-profit, or cooperative organization) (Claveau, 2020). Access to deeply subsidized social housing – where rent is geared to income – is reserved for households deemed to be high priority on account of their severe poverty, the urgency of needing to be rehoused, or special health needs. There has been very little investment in creating new social housing stock or rehabilitating old and decrepit public housing since a neoliberal turn in the mid-1990s. Thus, the task of finding housing for resettling refugees has to be accomplished almost entirely within the market rental housing stock. The second key contextual element is major increases in private sector rents and a significant loss of private rental housing affordable to low and modest income households, especially housing suitable for families with children, over the past decade or so in all of Canada's major cities, most mid-size cities and even some smaller cities. Housing allowances and rent supplements for private sector tenants are uncommon in the Canadian housing policy landscape (although this is starting to change), and may be subject to local residency requirements that exclude newcomers. The reasons for the inflationary pressures on rents include economic boom, population growth fuelled largely by economic immigration, gentrification, the financialization of rental portfolios, and a lack of new construction at the low end of the market. As a result, social housing waiting lists have grown even longer. Yet the concept of a «right to housing» only began to enter the Canadian policy vocabulary in 2017. No doubt because the success of the Canadian federal government's programs to resettle refugees depends very largely on buy-in by civil society (*e.g.*, participation in the private sponsorship scheme (discussed elsewhere in this volume), and volunteer work to support social integration at the local scale), it has consistently argued that considerations of «fairness» preclude providing housing support to newly arrived refugees that would go beyond the general income assistance programs that Canadian provinces offer to those in severe financial need (Harris, 2015).

Thus, rapidly escalating rent levels without equivalent increases in the monthly living allowance granted to GARs, combined with larger and more complex family configurations, have created growing challenges to the work of matching GARs' housing needs with the available supply. In this respect the Canadian refugee sector is now facing the same problems as experienced in the other major refugee-receiving country with a similar welfare regime – Australia (Fozdar and Hartley, 2014). Among the cities designated as initial resettlement centres, this

housing crunch has worsened in recent years, not only in the major metropolitan centres but also in many of Canada's mid-size and smaller cities. In this chapter, we examine how the RAP SPOs have addressed this conundrum. We draw primarily on a research project, led by the author, that focused on the process of finding the first permanent housing for the 26,000 Syrian government assisted refugees who were brought to Canada over a four-month period in winter 2015-2016, the first wave of the largest refugee resettlement operation undertaken by the Canadian government in some 35 years. The study, based on interviews with senior RAP SPO staff, complemented by documentary sources, covered 14 cities of varying sizes, in 7 of the 10 provinces; over 60% of the incoming Syrian GARs to Canada over this period were assisted by the SPOs in our sample (Rose, 2019; Rose and Charette, 2017; Rose and Charette, 2020). We also draw on secondary sources to present the perceptions of Syrian and other recent GARs as to their housing experiences in the first year of resettlement, and to consider their subsequent housing trajectories. We conclude with lessons learned and recommendations, in particular those that could be relevant to European contexts.

8.2 Settling government-assisted refugees into permanent housing: governance, process and challenges

Once refugees are selected for resettlement into Canada as GARs, the federal government selects a destination city for them, with the aim of encouraging them to settle there for the long term (Perzyna and Agrawal, 2022). This «destining» process takes into account available information – which is not always complete, especially in the case of rapidly arranged resettlement operations – about their family configuration, health needs, official language preferences, and presence of relatives in Canada. The destination is selected from a list of cities across the country where a local civil society organization (referred to in North American parlance as «community organizations») experienced in refugee resettlement holds a contract to operate the Canadian government's RAP program or its Québec provincial government equivalent (Québec has a high degree of autonomy over immigration and resettlement). These RAP SPOs are multiservice organizations of varying sizes, typically also holding contracts to deliver other (non-refugee) settlement and integration services as well as various anti-poverty and community development programs, in which volunteer labour also plays a key role. While generally lacking stable funding, their sources of income are multiple, including charitable foundations. Traditionally, the RAP program operated in the main immigrant gateway cities, in other large metropolitan areas and in a

number of mid-sized cities. The Syrian operation was accompanied by the start of an effort to settle a growing share of GARs in smaller cities. As of 2022, the Canada-wide total of cities where GARs are resettled has surpassed 60. Whatever the city size, RAP contracts are only granted where there is a suitable array of newcomer settlement services, specialized services for refugee needs, adequate community infrastructure such as hospitals and public transportation, and a diversity of job opportunities including low-skilled work. Affordable permanent housing for a range of household sizes, including special needs, is also supposed to be available in cities with RAP programs (Immigration, Refugees and Citizenship Canada, 2019).

Although the RAP providers are subject to very rigorous implementation rules and monitoring procedures –which is typical of the neoliberal model that characterizes the relationship between the State and the newcomer settlement sector more generally (Richmond and Shields, 2005) – the national organization representing the RAP sector as well as the larger, longer-established RAP providers seem to have succeeded, over the years, in establishing a less hierarchical, more partnership-like relationship with the Ministry. The Ministry relies on the expertise and institutional memory of RAP SPOs who in many cases have been engaged in resettlement work for several decades, as well as their detailed knowledge of local context and connections with other organizations and networks that can contribute to various dimensions of integration of refugee newcomers at the local scale. The challenges of the Syrian resettlement operation, whose housing dimensions we will now outline, seem to have increased government openness to a more flexible and collaborative approach to carrying out the RAP: as one RAP provider manager in a large metropolitan city put it, «there was a shift in the planning culture from “does it fit program/policy?” to “how can we make it happen?”»

RAP SPOs typically approach their housing responsibilities in two key and interrelated ways: by maintaining a core of experienced housing search staff on their payroll, and by keeping an inventory of suitable and potentially available rental units managed by a subset of the city’s landlords with whom they have established a good working relationship and who have demonstrated an openness to renting to newcomers who cannot fulfill some of the usual requirements demanded of new tenants, such as a Canadian credit rating, a deposit or a guarantor for the lease. A large body of previous research has shown that these requirements, as well as discriminatory practices, are major barriers to immigrant newcomers’ access to decent housing (Francis and Hiebert, 2014; Teixeira and Drolet, 2018; Rose and Charette, 2014). «We’re constantly reaching out to local landlords and getting a sense of what is available in the community that is safe and affordable housing»

as one RAP manager put it in a media interview (Canadian Broadcasting Corporation, 2021).

When major resettlement operations are announced, this work has to be ramped up significantly. In general, the determination to meet the challenges of the Syrian operation generated an unprecedented degree of intergovernmental, intersectoral, and multi-scalar cooperation, beginning at the advance planning stage, and this was crucial to the capacity of service organizations to find housing and react to contingencies once the newcomers began to arrive. With less than three months' advance notice of the Syrian operation, most cities and city-regions designated for Syrian arrivals set up or expanded the scope of existing settlement and integration networks and tables, including the recently established and increasingly popular Local Immigration Partnership model (Janzen *et al.*, 2021; Mahaffy, 2019; Walton-Roberts *et al.*, 2020). Housing was a major component of city-level advance planning, with RAP SPOs taking the lead in several cases. Over and above renewing their existing relationships with sympathetic landlords, they reached out to local housing providers not previously involved in refugee resettlement, who were unfamiliar with the RAP, and sought to help them overcome any misapprehensions they might hold about renting to refugees. In those cities where this outreach to existing and potential new providers of housing to refugees went as far as inviting them to sit on the planning and coordination tables, this had major positive impacts on RAP SPOs' capacity to find suitable housing in a timely manner once large numbers of refugees began to arrive over a very short space of time.

Notwithstanding advance planning, in many cities the Syrian operation posed intense challenges for the RAP SPOs tasked with finding housing that was both suitable and affordable, given the context of Canada's general affordable housing crunch and the widening gap between the RAP monthly housing allowance and the income needed to pay market rents without depriving the family of other necessities. Regarding suitability, both existing inventories and new offers of housing that came in from private citizens keen to support the resettlement effort often turned out to be mismatches for the large family sizes of the Syrian government assisted refugees. Especially in the early weeks of the resettlement operation, the information flow about family size and composition was often incomplete:

We have seen the population has changed to more higher-needs clients...But we were not prepared or not realizing what it means to work with a family of nine [...] We had a long list [...] of empty apartments, but the majority is one- and two-bedroom apartments [...] And we didn't see that trend before people were starting to arrive (RAP-SPO, mid-size city).

Over 40% of GAR families in the first wave of Syrian resettlement had six or more members, 10% were families of eight or more, and 60% of these newcomers were minor children. Moreover, even when housing with a sufficient number of bedrooms was located, the RAP housing search workers had to «convinc[e] landlords to rent units to people with four or five children under [the age of] five» (RAP-SPO, large metropolitan area). The prevalence of families with multiple special needs linked to health and disability issues created further challenges for the housing search and placement process.

Consequently, there were a number of instances where the time spent in temporary hotel accommodation extended into several weeks, or even months. The rapid pace and high numbers of arrivals in some of the cities with the tightest housing markets heightened the challenges of identifying suitable housing for large families, especially since the flow of government funds to hire and train an increased number of housing search workers did not initially keep up with this timeframe. Although there was an outpouring of volunteer interest in helping with the housing search, RAP providers were understandably reluctant to involve untrained people in such a delicate task with a fragile clientele. Housing for solo refugees could also take a long time to set up, since apartment-sharing with other single persons – the most affordable option – would not necessarily be suitable or safe for refugees with fragile mental health or a non-heteronormative identity. In cases of long hotel stays, the RAP SPOs had to assume additional tasks beyond their normal mandate: coordinating with civil society and voluntary groups and city services to help make daily life in these environments more ‘normal’ for the newcomers by catering with Syrian cuisine, organizing recreation programs for children, and in some cases getting them into schools.

Once suitable housing of acceptable quality was found, the RAP workers had to find ways of making it affordable, given that the RAP allowance was generally inadequate to cover market rents without consuming more than 50% of the household income in the cities covered by our study (see also Silvius *et al.*, 2021). First, the outreach to local landlords at the planning stage mentioned above proved to be invaluable, in that the feeling of being active participants in the resettlement process encouraged some of them not only to contribute inventory but also to offer temporary rent discounts to the refugee newcomers. Second, the federal government had also anticipated the affordability gap, having been alerted to this growing problem for many years by the resettlement organizations’ network and in program evaluation reports. The then Immigration Minister persuaded some of Canada’s largest private corporations to donate to a «Welcome Fund» to be disbursed by community foundations in the most unaffordable

cities to create a temporary rent subsidy. These and other *ad hoc* philanthropic measures created an ethical dilemma, however, in that they specifically targeted Syrian GARs, leaving out other needy refugee newcomers. Third, after three months' residence in Canada, the Syrian refugee families with children became eligible for the federal Child Benefit. RAP housing support workers would thus calculate what a family could afford to pay in rent once this additional income supplement became available. This was not a new stratagem in the RAP SPOs' toolkit to cobble together affordable housing for the refugee newcomers (Centre for Refugee Studies and Joint Centre of Excellence for Research on Immigration and Settlement, 2001), but substantial increases to the Child Benefit coinciding with the arrival of the Syrian cohort increased its importance. While the Child Benefit turned out to be invaluable in mitigating the affordability crunch for larger families, if Child Benefit is used for rent it is not available to pay for daycare services, children's clothing and other needs. Likewise, the public transportation allowance built into the RAP was often used instead for rent. Moreover, there was no assistance in lieu of the Child Benefit for refugee households without children, who also faced high rents.

Within the tight confines of available housing options, RAP housing search workers also have to make decisions about suitable neighbourhoods within their city. Avoiding spatial isolation that could lead to social isolation and increase mental health risks is an important consideration. For practical reasons and to help foster a sense of integration into the broader local community, housing needs to be located along public transportation routes, accessible to settlement services and, if need be, to specialized support services, as well as to «family-friendly» amenities (Oudshoorn *et al.*, 2020). As well, the RAP workers try to take into account the requests that refugee newcomers may make to live near friends or «familiar strangers», *i.e.*, other people and institutions associated with their ethnocultural community. As one RAP-SPO housing search manager in a large city explained with regard to the Syrian resettlement:

when we have a group of people that came together on the same plane, lived together in the same hotel: [...]. If that building had more than one unit [available], we tend to see two good friends or two families that like each or know each well want to be together in that building [...]. Because otherwise, if they are the only one [...], they don't feel that comfortable or safe.

In a few cities, private landlords, or even social housing providers, were able to offer several dozen housing units to Syrian families, in complexes where the va-

cancy rates were high for various reasons including reputational aspects of the neighbourhood, though the housing was still of acceptable quality. In such cases of residential clustering, RAP SPO housing workers, in collaboration with other local organizations and volunteer groups, mobilized various newcomer settlement programs and resources to assist the refugee newcomers in developing social connections with the surrounding neighbourhoods and to increase the opportunities, especially of women, for exposure to the English language in everyday situations. For the refugee newcomers, the accessibility to services and the cultural comfort obtained by living in these housing complexes far outweighed concerns about stigmatization of the neighbourhood (Bragg, 2020).

Although the RAP providers ensured that the newcomers were placed in housing that met adequacy norms, RAP SPO interviewees in our study did recount instances where having to work with a new and untested landlord inadvertently compromised the standard of practice such that the families had to be relocated. These findings reflect a much broader and growing problem with the aging condition and often-inadequate maintenance of the low-end of market rental housing stock in Canada built from the 1940s to the early 1970s, which is the major housing resource for low-income households in urban Canada, be they immigrants or not. According to our RAP-provider interviews, the mediocre or very basic quality of their first permanent housing came as something of a shock to many of the GAR newcomers. Housing search workers thus had to assist them in reconciling their unmet expectations with local housing market realities for families on a very tight budget. This challenge was not unique to the resettlement of the Syrian cohort (Wilkinson *et al.*, 2019), but may have been exacerbated by the decision not to offer the usual pre-arrival orientations at the points of departure to Canada on account of time pressures (Immigration, Refugees and Citizenship Canada, 2019).

8.3 Medium-term housing outcomes and housing satisfaction

Large-scale longitudinal data on the housing progress of GARs after the first year of RAP support is sparse. The only extant national Canadian survey dates back to 2001-2005 when affordable rental housing was not as difficult to obtain as at present. Indicators of rent as a proportion of income, rates of living in crowded conditions, and access to homeownership all improve after two years' residence in Canada, but the progress of newcomers admitted as refugees is slower than that of economic or family class immigrants (Hiebert, 2009; Hiebert, 2017). Overall, in 2016 former GARs who had been in Canada less than 5 years were more than

twice as likely as households in general, and also considerably more likely than immigrants entering through other pathways including private sponsorships, to be in what the Canada Mortgage and Housing Corporation identifies as «core housing need», an indicator of affordability and/or suitability or adequacy of their housing (Shan, 2019). More limited employment opportunities and lower earnings among GARs, linked to their social-demographic, linguistic and educational profiles at the time of entry to Canada, are the primary factors explaining these differences (Immigration, Refugees and Citizenship Canada, 2019).

Surveys conducted with former RAP clients in two of the largest metropolitan areas found that more than two years after arrival 69% (Vancouver) and 79% (Toronto) were still living in the first housing they moved into after leaving temporary accommodation (Immigrant Services Society of British Columbia, 2018; COSTI Immigrant Services, 2018), which further underscores the pivotal importance of the first housing in the medium-term trajectory of resettling and integrating. Interestingly, in the Vancouver study, almost a quarter of former Syrian GARs had moved into provincial public housing, a guarantee of long-term housing stability and affordability since public housing rents are geared to income. Demonstration of major special needs based on family size or health/disability issues combined with fortuitous availability of suitable housing stock and an openness to trying to assist the neediest refugees probably explains this atypical outcome, according to our interviews with the RAP provider. Overall, in Canada, there is a much higher proportion of dwellings suitable for large families in the social housing sector where almost 27% have three or more bedrooms, compared to less than 11% in the private rental sector (author's calculations from data tables in Canada Mortgage and Housing Corporation, 2020a; Canada Mortgage and Housing Corporation, 2020b).

There is limited information about the housing satisfaction of the Syrian government-assisted refugees after the initial settlement period, and such research faces methodological challenges in that their feelings of gratitude with having been resettled to a safe country may lead recent refugees to underplay their housing concerns when responding to interview questions (Oudshoorn *et al.*, 2020). Nevertheless, the physical condition of private rental housing has been identified as a source of dissatisfaction (Oudshoorn *et al.*, 2020; Wilkinson *et al.*, 2017). Importantly, a major qualitative study, conducted in three cities, has shown that the timing of the COVID-19 pandemic – which began when the Syrian cohort had been in Canada for about four years – had significant negative impacts on housing experiences and opportunities. For some, expectations of an upward housing career were dashed as loss of employment meant having to live off sav-

ings intended for a down payment for homeownership. For others, public health restrictions on access to outdoor public spaces and facilities exacerbated the stress of living with young children in cramped apartments (Rabiah-Mohammed *et al.*, 2022).

8.4 Key lessons learned

This chapter has shown that the recent experiences of settling a relatively large cohort of government-assisted refugees into their first permanent housing in cities with a major rental housing affordability problem stretched Canada's resettlement system to its limits. The skills of the housing search and placement staff at the RAP SPOs, combined with government officials' newly found capacity to be nimble and flexible in applying the rules and procedures, and outpourings of goodwill by private sector organizations, civil society groups, and volunteers, made it possible to ensure a broadly successful outcome – albeit by incorporating various *ad hoc* tactics into their strategies for making the housing affordable. Within months if not weeks of arrival, all the refugee newcomers were moved into adequate housing, mostly in the low end of the private rental housing market. Nevertheless, the housing component of the Syrian resettlement operation raises important questions about the sustainability of the model. How can a housing system built essentially on a liberal welfare regime model with only residual provision for those unable to afford market rents be adapted to meet the periodic yet unpredictable demands imposed it by episodes of major humanitarian resettlement operations? With no abatement in sight in the upswing of rents relative to the incomes of low-income residents of Canada, including those of refugee newcomers, and without major investment in the upkeep of the existing low-end-of-market rental stock, will it be possible to succeed to the same extent in settling the next major wave of refugee newcomers into their first housing? Similar questions are also being asked in those European countries that participate in planned humanitarian operations while relying increasingly on the private market, rather than social rental housing, to rehouse refugees with dignity (Mouzourakis *et al.*, 2020).

In part as an outcome of the Operation Syrian Refugee experience, the Canadian government is committed to further expanding and diversifying the numbers, types and regional locations of cities in which the RAP social infrastructure will be set up. This is being done in concert with an expansion of programs designed to enhance refugees and other 'vulnerable' newcomers' access to a range of settlement services and help them develop social connections with the rest of the receiving local community (Immigration, Refugees and Citizenship Cana-

da, 2021). In general, housing is somewhat more affordable in smaller centres. However, the COVID-19 pandemic has drastically altered the housing market in many smaller cities and towns across Canada, due to a surge in demand by affluent white-collar workers who have shifted to telework. Moreover, successfully resettling GARs in smaller cities requires careful attention to personal mobility issues – notably the quality of public transportation networks, and facilitating the process of obtaining drivers' licences while ensuring that car ownership does not place an excessive drain on family resources (Perry and Scott, 2021; Farber *et al.*, 2018).

Finally, the prevalence of large family sizes and multigenerational households in the Syrian GAR cohort and the intensification of the housing challenges this created for the service provider organizations has helped to increase awareness of a major lacuna in the Canadian housing supply system. Incentivizing or requiring rehabilitation and new construction rental projects in all income segments to incorporate a wider variety of housing unit sizes and configurations, as well as permitting the construction of small rental units for extended family members in the backyards of owner-occupied houses, would help improve the health and well-being of cultural minorities that currently have little choice but to live in cramped conditions in order to be able to afford their housing and/or to maintain important traditions of family solidarity.

Acknowledgements

This study was funded through the Social Sciences and Humanities Research Council of Canada's Syrian Refugee Arrival, Resettlement and Integration (SRARI) targeted research program (project no. 890-2016-4027) in partnership with Immigration, Refugees and Citizenship Canada. The contributions of the following were invaluable: Research collaborators Valerie Preston (York University) and Kathy Sherrell (Immigrant Services Society of BC); senior research assistant Alexandra Charette (University of Ottawa); the fifteen Resettlement Assistance Program informants from thirteen SPOs interviewed for this study (for the list, see Rose and Charette 2017, table A-1); Sara Lyons, vice-president of Community Foundations of Canada; interview transcribers Robert Jennings and Christine Lafontaine-Meunier (INRS).

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9. The social determinants of refugee health in the Canadian context

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Health equity has been a growing concern in health policy and research. In 2008, the World Health Organization launched a report from the Commission of the Social Determinants of Health stating that addressing health inequities required going beyond technical and medical solutions to health conditions (WHO, 2018). The report highlighted long-standing concerns regarding the manner in which political, economic and social conditions contribute to inequities in health status among social groups. These are the Social Determinants of Health (SDOH), and the report called on world governments to take action on these determinants to address disparities (Solar and Irwin, 2010). The calls for action have intensified during the COVID pandemic, with increasing visibility of disparities emerging in the prevalence, outcomes, and prevention of COVID, both within and between countries, bringing into sharp focus the social, economic, policy and political conditions that give rise to them (Bambra *et al.*, 2020). Health status is thus a powerful marker of social inequality and injustice, and provides a lens through which to assess the fairness and adequacy of political and social policies as they apply to, and create, disparate groups.

Populations experiencing forced migration are vulnerable to poor health as a result of environments of extreme social exclusion and hardship both pre- and post-migration (Newbold and McKeary, 2018). This includes populations forced to migrate across international borders as a result of changing environmental conditions (environmental migrants; IOM, 2021); those seeking asylum (asylum seekers or refugee claimants), or achieving asylum (refugees), because of persecution or hardship in their country of origin; and those who have attained permanent status in a settlement country through resettlement (resettled refugees; UNHCR, 2021). This chapter will review how global and local policies affect the social conditions of health for refugees resettled in Canada, with a brief introduction to social determinants of health, and Canadian health and settlement policies. A social determinants of health lens is particularly valuable in considering the relationship between policies and experiences of resettled refugees, as it points to ways in which policies can be strengthened to create equitable conditions for these newcomers.

9.1 Social determinants of health

The social determinants of health (SDOH) refer to the conditions of individuals' and populations' lives that shape their health and well-being, but also to the social factors that distribute these conditions unequally to groups that hold different positions in society (Graham, 2004). Several theoretical models of the SDOH have been developed, many of which place more emphasis on the social and material conditions within which people live, some of which place more emphasis on the ways that policies, politics and economics differentially shape these conditions, and the disparities between them, while a small number of theoretical models consider the mechanisms through which these factors influence morbidity, mortality and well-being (Islam, 2019; Solar and Irwin, 2010). The model generated by the CSDH of the World Health Organization, reproduced below, distinguishes between structural determinants, and intermediate determinants (CSDH, 2008). Structural determinants include the contextual factors which give rise to the structural mechanisms that shape individuals' and groups' social realities. The most important of these structural factors, according to the CSDH, are income, education, occupation, social class, gender, and race or ethnicity. These then shape the intermediary circumstances of people's lives that can have a direct effect on people's health and well-being, including health systems and material conditions. They also have indirect effects through health-related behaviors and psychosocial factors such as stress or perceptions of control (Braverman and Gottlieb, 2014). The material conditions that have been identified as having the greatest impact are poverty, housing, the physical environment (e.g., pollution, access to green space), and access to healthy food. The social conditions that have been focused on include inequality, discrimination, exposure to violence, and environments that facilitate, model or encourage unhealthy behaviours, such as smoking (Braverman and Gottlieb, 2014; CSDH, 2008; Ramirez, Metzler and Baker, 2008).

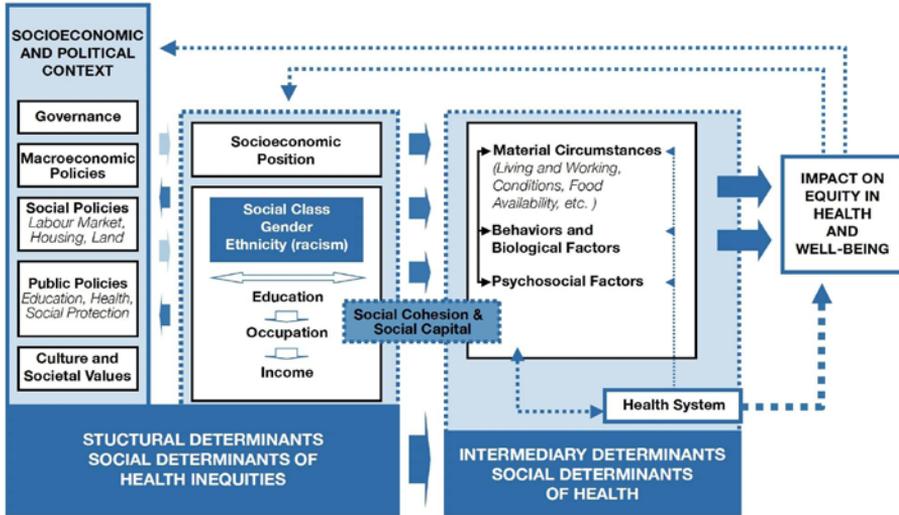


Figure 1: Social Determinants of Health (Commission on Social Determinants of Health, 2018)

9.2 Pre-migration

The most obvious pre-migration political and social factors relevant to refugee health are the political and social systems that give rise to forced migration. Situations of war or civil conflict, or societies and states that tolerate or enact persecution of individuals or groups, create conditions that undermine the health and well-being of individuals, groups and entire populations. Exposure to violence and/or torture is the most extreme and direct impact of these conditions, resulting in injuries and death, but also elevated risks of mental health problems, like PTSD, that can continue for years after the events have occurred. The likelihood of serious mental health problems among those who have been exposed to conflict has been found to be directly related to the frequency and extremity of their exposure to violence (Steel *et al.*, 2009). Beyond violence, however, all of the systems identified in Figure 1 are threatened by war and conflict. For example, five years into the conflict in Syria, unemployment had gone from 15% to over 50%, almost 70% of the population was living in extreme poverty, over 45% of children were no longer attending school, there was a lack of safe drinking water and adequate food due to collapsing infrastructures, and over 50% of healthcare services were fully or partially closed (Ibrahim, 2022). Thus, refugees and asylum seekers have already endured harmful social conditions prior to migration, often for extended periods of time prior to departure and often including multiple displacements (Crawley and Jones, 2021; McMahon and Sigona, 2018).

9.3 Migration and asylum

A global shift towards increased barriers to the entry of asylum seekers and other forced migrants has also contributed to extremely hazardous conditions for forced migrants (Scipioni, 2018). Research suggests that these barriers to entry do not in fact decrease the rate of asylum seekers (Hatton, 2016), but rather increase the dangers and hazards that migrants are exposed to on their migration pathway by forcing them into more dangerous routes (Horwood *et al.*, 2018). The act of migration is often associated with both physical and social risks. A study of mixed migration flows across Africa found that, depending on the route taken, between one to two thirds of the 10,000 migrants interviewed reported having experienced sexual violence, physical violence, robbery or kidnapping (Horwood *et al.*, 2018). The IOM's Missing Migrants Project has recorded 45,147 deaths of migrants from 2014 to 2021 (IOM, 2021). Thus, the act of undertaking migration is associated with physical, social and emotional conditions that are harmful and even fatal in forced migration circumstances, and are the result of national and international policies intended to deter or prevent people from claiming asylum.

Those who succeed in reaching asylum have a very small chance of achieving a permanent residence in a third country. Over the past 10 years, only 1 million refugees have found a permanent solution to displacement through resettlement; for example, only 107,800 were resettled in 2019 (UNHCR, 2021a). By comparison, for 2020, UNHCR reported 26.4 million refugees worldwide, plus another 4.1 million asylum seekers and 3.9 million Venezuelans displaced over international borders. Global resistance to offering permanent residence, or even temporary asylum, contributes to the prolonged time refugees spend in asylum, 86% of whom are residing in low- or middle-income countries that are in the region of their countries of origin (UNHCR, 2021b). The average length of time in displacement for refugees is between 10 and 15 years but among the 77% of refugees who are in protracted situations, where 25,000 or more refugees of the same nationality have been in exile for at least 5 consecutive year (UNHCR, 2020), the average length of displacement is 20 years (Devictor and Quy-Toan, 2017). Protracted asylum means protracted exposure to harmful material and social conditions. In addition to direct exposure to material risks, the prolonged stress of protracted displacement contributes to allostatic load, the physiological changes in biological regulatory systems that can result in physiological dysregulation, including of the inflammatory, cardiovascular and metabolic systems (Braverman and Gottlieb, 2014). This in turn increases rates of morbidity and mortality in affected populations.

For those living in refugee camps, there are limited opportunities for education or employment and most residents live in conditions of material deprivation. Refugee camps are intended to be short-term solutions for providing for the immediate needs of displaced persons (UNHCR 2021c). However, in light of the limited solutions for those in situations of forced migration, residents frequently live in camps for years and even decades (Devictor and Quy-Toan, 2017). The social and material conditions of refugee camps, and their impact on health and well-being, has been well-documented. Refugee camps have been associated with poor sanitation, inadequate protection from heat and cold, noise, crowding, and inadequate access to food and clean water (Grant, 2020; Kluge *et al.*, 2020; Lowenberg, 2011). Refugees resettling from camps are therefore at increased risk of diseases associated with poor sanitation and infectious diseases like tuberculosis; prolonged stays represent prolonged risk of exposure to these factors (Murshidi *et al.*, 2013; Pryce and Madhar, 2014). Refugees living in camps also have limited access to health care, as services in camps focus on immediate health care needs. Many therefore arrive in Canada with undiagnosed, untreated and/or undertreated chronic health conditions (Pottie *et al.*, 2011). Camps have also been associated with relatively high rates of sexual and gender-based violence (Crisp, 2000). Those living in camps for prolonged periods also have limited opportunities to develop employment skills or complete the education needed for establishment of their desired livelihoods in their country of resettlement (Hynie *et al.*, 2016).

Less work has been conducted on conditions for refugees living outside of camps even though they actually represent the majority; over 60% of refugees currently live in urban settings (Yotenbieng, 2017; UNHCR, 2021b). It has been suggested that the most vulnerable forced migrants go to camps, and that those with more resources and opportunities seek out urban settings, which may offer more opportunities for them (Landau, 2014). Conditions for urban refugees are therefore more variable as a function of their resources and opportunities, and also local conditions. Nonetheless, studies of urban dwelling refugees have documented elevated levels of poverty, unsanitary and poor-quality housing, crowding, and experiences of discrimination and harassment (UNHCR, 2015), and limited access to health care (Amara and Aljunid, 2014; Kumin, 2012). Many states also have policies that restrict refugees' access to employment, thereby limiting their ability to access livelihoods (Carciotto and Ferraro, 2020). During COVID, urban dwelling refugees were particularly vulnerable, as pandemic related social restrictions resulted in the closure of many informal income generating activities and had severe impacts on their livelihoods (Bukuluki *et al.*, 2020; Elçi *et al.*, 2021).

Prolonged asylum also has negative psychological consequences. The difficult material conditions described above have been proposed to explain higher rates of anxiety and depression found among refugees living in refugee camps in low-income countries relative to other settings of asylum (Alfadhli and Drury, 2016). A systematic review of mental health outcomes for conflict induced forced migrants found that increased length of time displaced was associated with poorer mental health (Siriwardhana *et al.*, 2014). Beyond the material stressors, those living in prolonged asylum also face psychological stressors such as prolonged separation from family members and social support networks, which has also been associated with poorer mental health outcomes (Lin *et al.*, 2020; Löbel, 2020; WHO, 2008). It is important to note that while poor mental health is a concern in its own right, it is also a pathway to poorer physical health through the stress pathways described above.

9.4 Refugee resettlement in Canada

Canada has two major pathways for permanent refugee settlement (see Chapter 4, 5 and 7). People who are recognized as refugees by the UNHCR and by Canadian authorities can be resettled permanently into Canada from a hosting nation (resettled refugees). Those who claim asylum after arrival in Canada are labeled refugee claimants and, if their claim to refugee status is accepted, they too become permanent residents. Approximately half of those living in Canada with a history of forced migration claim asylum after entering and are accepted as permanent residents if their claim is accepted. The other half are actively resettled, although numbers have fluctuated since 2015 as a function of government resettlement initiatives, such as Operation Syrian Refugee in 2015-2016, and global events (IRCC, 2021b).

For resettled refugees, who are selected and approved while abroad, there are three resettlement pathways, and the nature of these pathways have implications for newcomers' material and social circumstances. Government Assisted Refugees (GARs) are selected by the Canadian government, typically following recommendations by the UNHCR. They receive resettlement support and orientation and a year of financial support through the Refugee Assistance Program (RAP; IRCC, 2020). In many provinces, they also receive a year of intensive support from a settlement agency to facilitate the transition to Canada and linkages to needed services, after which they can continue to receive services through regular settlement programs. Privately Sponsored Refugees (PSRs) can be 'named' or specifically requested by private sponsors. Private sponsors may be groups of private

individuals or sponsorship agreement holding organizations (SAHs, which are often faith-based organizations or community organizations), who provide a year of financial and settlement support equivalent to what would be provided to GARs. PSRs must still be approved by the Canadian government and meet criteria to be officially recognized as a refugee (IRCC, 2020b). The private sponsorship pathway has often served as a form of family reunification; it has been suggested that prior to Operation Syrian Refugee as many as 95% of PSRs were sponsored at least in part by family members currently in Canada (Labman, 2016). Normally, approximately equal numbers of resettled refugees come to Canada through one of these two pathways. A less common third resettlement pathway, Blended Visa Office Referred (BVOR), was introduced in 2013. BVORs are selected by the Canadian government and offered resettlement support by private sponsors, but the financial support is shared between private sponsors and the government Refugee Assistance Program.

9.5 Structural factors and determinants of refugee health in Canada

9.5.1 Social Identity and Intersectionality

Social locations or identities play an important role in the experience of settlement in Canada. Women and men experience different challenges and barriers following migration. Gender roles shape every aspect of settlement including expectations regarding caregiving, employment, utilization of health care, and family relationships (Shishehgar *et al.*, 2017). The ability to fulfill one's desired gender roles, or to escape unwanted gender roles, have both been found to be associated with poorer mental health outcomes among women and men (Affleck *et al.*, 2018; Hynie *et al.*, 2011; Stewart *et al.*, 2015; Zivot *et al.*, 2020). Gender roles intersect with programs and policies to the extent that these create different barriers or opportunities as a function of gendered expectations or activities. For example, language programs that do not take childcare responsibilities into account have been found to play a role in women's ability to participate in language learning (Ives *et al.*, 2022). Given the central role that language ability plays in access to education, employment and social networks, this can have pervasive gendered effects.

Experiences of racism, discrimination and social exclusion are reported by immigrant and refugee respondents in a number of Canadian studies (e.g., Beiser and Hou, 2013; Drolet and Moorthi, 2018; Edge and Newbold, 2013; Patel *et al.*, 2018). Experiences of racism play a direct role on health and well-being through psychological responses to discrimination and exclusion (Matheson *et*

al., 2021). Race and ethnicity also play an indirect role through systemic racism, which affects racialized refugees through the implementation of policies that selectively inhibit or enhance opportunities, including access to employment and housing, and experiences with the health care system and social services (King *et al.*, 2021). For example, research on national data for labour market outcomes for refugees in Canada has found large disparities in employment and income as a function of country of origin, disparities that persist over time, and that remain even after controlling for social capital factors like education, suggesting that some groups are facing greater discrimination in employment in the Canadian labour market (Picot, Zhang and Hou, 2019). Whether this is due to a greater dismissal of their prior educational achievements or other forms of discrimination was not clear in this research.

Age and dis/ability also play important roles in the settlement experiences of refugees in Canada. Older refugees can take longer to learn one of the official languages, may be less likely to find employment, and report greater social isolation (Hynie *et al.*, 2019; Hynie *et al.*, 2012; Johnson *et al.*, 2019). Some of the challenges faced by older refugees are shared by other older adults, such as challenges in finding employment, but are exacerbated by migration. Dis/ability can also intersect with other determinants of health, not only for individuals but for whole families, affecting their economic security (Hynie *et al.*, 2021; Korntheuer *et al.*, 2021; Maroto and Pettinicchio, 2020). For refugee newcomers, living with a disability can impede access to services or resources that facilitate social and economic well-being, such as language learning or transportation (Hansen *et al.*, 2017; Osei Poku, 2018). Access to appropriate housing is also a challenge because of an overall shortage of supportive housing (Hynie *et al.*, 2016).

9.5.2 Policies Regarding Selection for Resettlement

The nature of the different settlement pathways, including selection criteria, interact with resettlement policies to influence the social determinants of resettled refugees' health. GARs are selected based on vulnerability and so may have more serious health or social challenges, which both determines where they will be destined on arrival and what opportunities are available to them (Korntheuer *et al.*, 2021). The nature of these resettlement programs also select for different pre-migration experiences. In a study by Hynie *et al.* (2019) looking at the characteristics of GAR and PSR Syrian refugees, GARs spent twice as long living in asylum. As noted above, stressors are thought to have a cumulative effect on health, suggesting that even if they come from similar circumstances, GARs and PSRs may arrive with differing levels of accumulated risk. Consistent with this, a

study of health and health needs of 400 recently arrived Syrian refugees in Toronto that was conducted at the beginning of the major Syrian resettlement initiative found that PSRs reported better physical and mental health than GARs, even after controlling for other social determinants (Oda *et al.*, 2017; 2019). It is not clear if these differences between GARs and PSRs also exist for other cohorts of refugee newcomers; processing times for PSRs are typically longer than for GARs so this difference may have been unique to the Syrian cohort (IRCC, 2016).

In addition to prolonged displacement, GARs and PSRs also differ on arrival on some of the most important social determinants of health. Relative to PSRs, a lower proportion of GARs can speak one of the official languages on arrival and GARs are more likely to arrive with very low levels of formal education (IRCC, 2016). As noted above, these social factors are among the most important determinants of subsequent material conditions, such as health care access and employment, and thus one would expect greater settlement challenges for GARs over time, which in turn would emerge as poorer health outcomes. In terms of employment outcomes, this is not necessarily the case, with PSRs reporting better employment outcomes early in the settlement process, but the gap between PSRs and GARs narrows over time (see Chapter 11 in this volume; Kaida, Stick and Hou, 2021). The reason these early advantages of PSRs do not persist is a source of debate but may be due to PSRs feeling pressured to take ‘survival’ jobs as quickly as possible, in order to remove the obligation of financial support from their sponsors, and these jobs may offer little opportunity for advancement or investment in language learning (Bridekirk, Hynie and SyRIA.lth, 2021).

9.5.3 Income and Poverty

In the Canadian context, most resettled refugees are supported either through the refugee assistance program (RAP) or by their private sponsors or a combination of the two. The amount of financial support that is provided through RAP is often not sufficient to meet the basic needs of families, and the minimum required to privately sponsor is set to an equivalent amount. According to many researchers, poverty is itself one of the greatest or most powerful determinants of health, shaping both material and social conditions (Braverman and Gottlieb, 2014). Poverty affects health directly by increasing exposure to hazardous living conditions, poor nutrition, and environments that support poorer health behaviors and/or discourage healthier behaviors, for example by not providing safe spaces for exercise or outdoor activities, and through the presence of noise pollution, air pollution, and hazardous living conditions. Poverty also affects health indirectly through its effects on psychological well-being, through experiences of exclusion

and lack of control. Income is particularly closely tied to food insecurity in Canada, with both lower income and being on social assistance predicting increased levels of food insecurity (Tarasuk, Fafard St-Germain and Mitchell, 2019). The impact of poverty on food insecurity also appears to be racialized in the Canadian context. In the Canadian Community Health Survey, Black households had a greater likelihood of food insecurity at every level of income, and also did not show the protective effects of immigration on food insecurity that are typically found among White households, suggesting that the increased risk may be specifically linked to race (Dhunna and Tarasuk, 2021). Thus, racialized refugees may be both more likely to experience low income, and face greater health risks when they do.

9.5.4 Employment

Employment is a key determinant of health, with a direct relationship to income, social roles, and social inclusion. Newcomers in Canada often face barriers in finding employment that is commensurate with their previous experience and education, particularly in the first years following migration (Steeve *et al.*, 2017; Yanar *et al.*, 2018). While this is true for all immigrants it is exacerbated for refugees (Picot *et al.*, 2019; Reitz, Curtis, and Elrick, 2014). Barriers to employment include challenges in having foreign credentials recognized, and a reluctance of employers to hire newcomers who lack «Canadian experience» (Wilkinson and Garcea, 2017). Women refugees face greater barriers in finding employment, often being responsible for childcare as well as having greater language barriers (Picot *et al.*, 2019; Senthanaar *et al.*, 2019). They also reported other gender specific barriers such as discomfort working closely with men in the labour environment. Senthanaar and colleagues (2021) interviewed Syrian refugee women who gravitated to starting small businesses in «feminized» sectors (*e.g.*, catering) in response to these labour barriers, evidence of their resourcefulness in navigating these challenges but also often resulting in precarious and low-paid labour.

Both cross-sectional and longitudinal studies with a range of populations consistently show that unemployment is associated with stress, depression, and poorer psychological health (McKee-Ryan, Murphy and Athanasou, 2005; Wanberg, 2012). Stressful life events have been shown to increase systemic inflammation, which is associated with depression and cardiovascular disease (Hughes *et al.*, 2017). Biomarkers of inflammation have been found to be elevated for the unemployed, relative to the employed (Hughes *et al.*, 2017), and to persist for as long as 5 years following periods of unemployment of 2 months or longer (Janicki-Deverts *et al.*, 2008). Consistent with this research, a study with a large

recently arrived Syrian cohort found that lack of employment, and lack of appropriate employment, are associated with decreasing mental health over time (Ahmad *et al.*, 2020; Bridekirk *et al.*, 2021). Similarly, a meta-analysis of predictors of mental health among refugees globally found that access to employment and socio-economic status are directly related to mental health (Bogic, Njoku, and Priebe, 2015). The chronic un- and underemployment experienced by refugees in Canada may therefore have long-term effects on their physical and mental health.

9.6 The impact of structural factors on intermediary determinants of health

9.6.1 Healthcare Policies

Canada has a single payer universal health insurance program that is administered by provincial or territorial insurance programs (Government of Canada, 2016). This program, called Medicare, provides full coverage for medically necessary services that are provided by hospitals, physicians, and those dentists who provide hospital-based services. Dental and vision care, ambulance services, home care and prescription drugs are only covered for seniors, children and those on social assistance through provincial supplemental coverage (Government of Canada, 2016; Martin *et al.*, 2018). Resettled refugees are eligible for provincial insurance but also receive one year of federal health insurance through the Interim Federal Health Insurance Program (IFHP). The IFHP provides coverage for supplemental services on par with what is typically provided to residents on social assistance (Government of Canada, 2012; Government of Ontario, 2019; WelcomeBC, 1999).

9.6.2 Barriers to healthcare access

Although access to supplemental services through IFHP is available, there have historically been challenges in its use. These range from service providers being unwilling or unable to accept IFHP because it is a complicated alternative system that is associated with long delays in reimbursement, or because they are unfamiliar with the program, underlining how policies regarding health insurance for this population create inequities in health care access (Hynie *et al.*, 2016; McKeary and Newbold, 2010; Miedema, Hamilton, and Easley, 2008; Reddit *et al.*, 2019).

Healthcare access is also shaped by barriers in finding services that are culturally and/or linguistically appropriate, which is a common issue for newcomers who have entered Canada through all migration pathways (Kalich, Heinemann

and Ghahari, 2016). It has been suggested that a lack of language appropriate services is the primary barrier to health care access among refugees (McKeary and Newbold, 2010). Even when interpretation services are available, both providers and newcomers note that these services are not always utilized, and the costs of interpretation are typically only covered in hospitals or agencies providing services specifically for newcomers (Hynie *et al.*, 2016). During the COVID pandemic, when most services moved on-line, those refugees arriving with less access to and knowledge of technology, characteristics associated with age and overall education levels, faced even greater barriers in accessing health care services (Bridekirk *et al.*, 2021; Sherrell, 2020). Barriers to health care access can be gendered, with women having different concerns, such as the gender of the practitioner, and greater barriers, such as greater likelihood of low official language ability (Floyd and Sakellariou, 2017; Guruge *et al.*, 2018). Finally, healthcare providers may be unaware of healthcare issues faced by recently arrived refugees, who may arrive with unfamiliar health conditions that may require specialized knowledge on the part of their healthcare providers, and thus the health care that is available may not be appropriate, or needs may go unmet (Pottie *et al.*, 2011).

9.6.3 Rural Resettlement

Canadian resettlement policies determine the location that resettled refugees are destined to. GARs settle into a small number of urban centres that have agencies offering RAP services; over 35 in 2017, but numbers fluctuate, with new sites opening during Operation Syrian Refugee, and additional sites presently being sought in new locations, based on evidence of potential settlement success in these locations (IRCC 2021). GAR resettlement sites include Canada's largest urban centres but many are also smaller cities. In contrast, PSRs settle in the same community as their sponsors, who may be anywhere in Canada. During Operation Syrian Refugee there were over 350 communities in which Syrian newcomers resettled, including small cities and towns in all provinces and territories in addition to larger centres (IRCC, 2016). There is limited research on the impact of the size of the settlement community on social determinants of health for resettled refugees and the findings are difficult to interpret, given the diversity of small cities and rural communities (Haugan, 2019). Nonetheless, some patterns clearly emerge and there has been a flurry of recent publications, focused primarily on Syrian refugees.

Research on the health of rural versus urban populations in Canada tends to find poorer health outcomes with increased remoteness for the general population. While there are various reasons for this, including environments that seem

to elicit or encourage unhealthy behaviours, there are systemic factors affecting the health of those in rural or more remote regions that are particularly relevant to refugees. Rural and remote regions are associated with poorer access to primary and specialized health care, a challenge that is greater for immigrants in these communities, who also have even fewer alternatives for culturally and linguistically appropriate care in these settings (Patel *et al.*, 2019). The challenge with finding appropriate and accessible health care is part of a larger pattern of limited language appropriate service availability and limited translation services in smaller centres (Dauphin and Veronis, 2020; Drolet and Moorthi, 2018; Hellstrom, 2018). Health care providers in these settings are also less likely to be familiar with the unique health needs of refugees (Pottie *et al.*, 2011).

Social isolation and discrimination are also issues that emerge for refugees, and immigrants more generally, in rural settings in Canada (Agrawal and Sangapala, 2021; Esses and Carter, 2019; Patel *et al.*, 2019). Some research suggests that immigrants in general report feeling like outsiders in tight-knit communities, and racialized Canadians regardless of migration status are more likely to report experiences of discrimination outside of typical urban immigrant-receiving centres (Patel *et al.*, 2019). However, studies with Syrian refugees in their first few years of settlement often report that they felt welcomed in smaller communities (*e.g.*, Haugen, 2019). It should be noted that, in the smallest communities, resettled refugees would have been privately sponsored, and the experience of being privately sponsored in a small community may differ from the experience of GARs (Agrawal and Sangapala, 2021; Drolet and Moorthi, 2018).

9.6.4 Housing

Urban settings are often the most desired destination for newcomers to Canada because they provide greater opportunities for education, employment, and access to cultural and language-specific resources. However, they are also associated with high housing costs and limited housing stock for large families, which is a particularly difficult issue for GARs, who are more likely to arrive in larger family groups (see Chapter 8 in this volume; Bhattacharyya *et al.*, 2020; Hynie *et al.*, 2016; Rose, 2019; Sherrell, 2017). Vacancy rates are low for rental units in most cities in Canada, rental costs are high, and there is limited access to subsidized housing (Rose, 2019). Many recent refugees find themselves unable to afford adequate housing, settling in homes that are too crowded or that have health and safety issues such as insect infestations, poor ventilation or mold (Francis and Hiebert, 2014; Sherrell, 2017; Woodgate *et al.*, 2017). These conditions can create or exacerbate health problems. Refugees may also experience racism and

discrimination from landlords as an added barrier (Hynie *et al.*, 2016; Mensah and Williams, 2013). The risks of crowded conditions and poor-quality housing became highly salient during the COVID pandemic, as families with members who were working in essential services were sharing crowded homes and could not ensure physical distancing to protect one another from exposure to infection. The combination of poor housing and high risk work may have contributed to the relatively high positivity rates of COVID infection among refugees in Ontario during the first wave of the pandemic (Guttman *et al.*, 2020).

In an effort to find affordable housing, refugee newcomers often move to less desirable neighbourhoods and/or the outer suburbs (Rose, 2019). The accessibility of public transportation in these neighbourhoods is a result of municipal or regional policies and can disproportionately affect those of low income, resulting in increased social and economic exclusion (Allen and Farber, 2019). Transportation barriers may be more acute for refugees than other residents in these neighbourhoods. Refugees can face systemic barriers in accessing drivers' licences, for example (Ontario Tribunal to Hear Closing Arguments About Discrimination Against Refugee Drivers, 2019), struggle to afford to purchase cars, and can find public transportation difficult to navigate, expensive and inefficient as a means of travel (Wilkinson and Garcea, 2017). They may therefore need to rely on others to drive them to appointments, whether they reside in suburbs or rural areas (Haugen, 2019; Lam, 2019). This can have a greater impact on women refugees, who are less likely to drive than are men, leaving them more socially isolated and facing greater challenges in accessing services or employment (Guruge *et al.*, 2018).

9.7 Conclusions

Economic and political systems affect refugee health and well-being by shaping their social and physical environments in ways that determine their lifestyles, material conditions, and social relationships. For refugees resettled in Canada, policies and programs at the global, national, provincial, and municipal level all play a role in shaping their migration pathways and resettlement experiences. The goal of this chapter was to highlight ways that refugees as a group may experience unequal access to the conditions that ensure health and well-being. Within the group we are calling «refugees» however, there is considerable variation, and an intersectional approach is needed to capture the complexity of the impact of these structures at various levels. Moreover, conditions vary by local social, political and economic conditions over time, and this further nuances refugees' settlement experiences.

Finally, a *caveat*. A focus on health outcomes of refugees is vulnerable to a portrayal of refugees as passive victims of the conditions of their lives. It is imperative that the agency and resourcefulness that exists within refugee communities be acknowledged. These are individuals who actively choose and shape their environments and opportunities upon resettlement. It is the responsibility of policy makers to ensure that the economic and social context in which they settle are just and equitable and ensure that refugee newcomers can thrive through them, rather than despite them.

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10. Reconsidering vulnerability and its strategic use in refugee protection: a conceptual framework based on the life stories of refugee women from Syria in Quebec/Canada and Lebanon

Myriam Richard

10.1 Introduction

The profound transformations that the global refugee regime¹ has undergone since the events of September 11, 2001 have put the protection of refugees and the control of migration in tension (Dauvergne, 2016). Refugees face increasingly precarious situations at all stages of their journeys, the duration of their exile is lengthening, in parallel with the transformation of the nature of armed conflicts and the reasons that lead displaced people to flee (Hyndman and Giles, 2017; Schmoll, 2020; Vergès, 2020). More than 80% of refugees, who are considered to be reaching unprecedented numbers (in absolute numbers if not in proportion²), find themselves in neighbouring countries of the Global South.

Although they are receiving less forced migrants than their counterparts in the Global South, the countries of the Global North are witnessing a great deal of backlash in relation to the arrival of migrants and refugees. This situation suggests that Global North states are not really facing a «refugee crisis», but rather a «political crisis of asylum», whereby they are increasingly trying to control spontaneous arrivals at their borders (Dauvergne, 2016; Tissier-Raffin, 2018). As a result, the

¹ Here I adopt Betts' (2015) conceptualization according to whom «The global refugee regime encompasses the rules, norms, principles, and decision-making procedures that govern states' responses to refugees. It comprises a set of norms, primarily those entrenched in the 1951 Convention relating to the Status of Refugees, which defines who is a refugee and the rights to which such people are entitled».

² Despite the major rise in the number of displaced people documented by global refugee regime stakeholders, the numbers currently and historically available cast considerable shadow on the reliability of such comparisons and statements (White, 2019).

protection space for refugees is shrinking, which is especially the case in European countries (Mesarič and Vacchelli, 2019; Smith and Waite, 2019; Tissier-Raffin, 2018), but also in traditional settlement societies such as Canada, the United States and Australia (Dauvergne, 2016; Bradley and Duin, 2020). The forced migration management models in countries of the Global North are thus becoming increasingly similar: security imperatives are at the forefront, in relation to rising fears of Islam. Another convergence point has to do with traditional settlement societies that are experiencing a significant erosion of the multicultural ethos on which their national imaginaries were built (Dauvergne, 2016). Since the beginning of the 21st century, as a result of this political crisis of asylum, there is an increasing tension between the protection needs of those forced to move and state interests (Dauvergne, 2016; Smith and Waite, 2019; Tissier-Raffin, 2018). In this context, access to durable solutions³ is becoming a distant hope for an ever-greater number of people – which encourages thousands of them to try and claim asylum at the borders of Global North countries. For the latter, resettlement is thus increasingly seen as a strategic migration management tool, that legitimates the creation and enforcement of restrictive measures. Narratives about the necessity to resettle the most vulnerable people who are «lawfully waiting» in neighbouring countries are put forward, while asylum seekers coming to the borders are pictured as unwanted «queue jumpers» (Bradley and Duin, 2020; Tissier-Raffin, 2018).

This chapter will therefore tackle this increasingly strategic use of resettlement by Global North states, including Canada, through a (re)conceptualization of the notion of vulnerability, which is central to the global refugee regime (Mesarič and Vacchelli, 2019; Richard, 2019, 2021; Smith and Waite, 2019). In doing so, it will attempt to answer Dauvergne's (2016) call to renew the conceptual and policy vocabulary for the management of forced migration in the context of the political crisis of asylum of the last 20 years. This chapter is based on the premise that, despite its ubiquity, vulnerability is rarely defined beyond its common sense meaning – the risk of harm – and its use as a tool to measure socioeconomic precariousness (Janmyr and Mourad, 2018; Richard, 2019, 2021; Smith and Waite, 2019; UNHCR, Unicef and WFP, 2020). It builds on a conceptual framework of vulnerability that was developed in the context of a master's thesis in Social Work in which the author

³The United Nations identify three durable solutions for refugees: voluntary repatriation to the country of origin in safety and dignity, resettlement to a third country and local integration in the country of asylum (UNHCR, 2011).

analyzed the life stories of 12 Syrian refugee women living in Québec/Canada and in Lebanon (Richard, 2019, 2021)⁴. These two sites were chosen because of their respective importance in receiving people fleeing the Syrian conflict – which will be explained in more details in the methodological segment of this chapter. These women belonged to a group that is deemed particularly vulnerable within the global refugee regime: they were holding the main responsibility for the financial support and care of their family (UNHCR, 2014). Their life stories revealed the ambivalent nature of their everyday experiences: they had to face various forms of violence, discrimination, and abuse, but they were also exposed to new opportunities and elements of continuity with their lives before forced migration. The conceptual framework developed in this chapter thus reflects this ambivalence, in line with the work of critical feminist researchers that inspired the analytical framework of the thesis (McLaren, 2017; Mohanty, 2003; Oliviero, 2016; Zeweri, 2017). It puts refugee women's voices at the center of the narrative in order to develop more adequate responses to the challenges of forced migration (Abu Lughod, 2008; Caron *et al.*, 2017; Freedman, 2017).

The chapter is organized as follows: it first outlines how resettlement and vulnerability developed within the global refugee regime and exposes some of the tensions associated with its increasingly strategic use by states in the Global North. Examples from the Canadian context, known for its commitment to the resettlement of refugees throughout the years, are used. It then presents the methodological framework of the master's thesis where the conceptual framework of ambivalent vulnerability was developed (Gilson, 2016; Oliviero, 2016; Richard, 2019, 2021). It calls for a more comprehensive understanding of vulnerability as a condition of potential (rather than fixity), something that is fundamental and shared (rather than inequitably and hierarchically attributed), and that can manifest in diverse ways (rather than homogeneously), (Gilson, 2016). In other words, vulnerability appears as a condition that is experienced in ambivalent and ambiguous ways and that has ambivalent and ambiguous value (rather than inherently negative ones). The chapter concludes with a reflection on the ethical and political salience for the way refugee resettlement is conceptualized and operationalized in the recent context of the global COVID-19 pandemic in order to

⁴This Master's thesis was realized within the framework of a broader research project led by Roxane Caron (2017-2020) - *Woman, Syrian and Refugee: Being and Becoming*. The author participated in all stages of development and realization of the in close collaboration with the main researcher who was also the thesis' supervisor.

try and move away from a reductive conceptual ground which «does an injustice to those whose vulnerability is exploited» (Gilson, 2016, p. 95).

10.2 Research puzzle: the increasingly strategic use of resettlement and vulnerability by global north states

10.2.1 A brief review of the history of refugee resettlement

Those forced to leave their home countries to seek refuge have not always been able to benefit from durable protection measures that allow them to obtain legal status in a country that agrees to host them on a permanent or prolonged basis, in the spirit of what has eventually become refugee resettlement (Lochak, 2013). The first emergency measure formally put in place by the international community to deal with the thousands of displaced persons following the First World War was the creation of the Nansen Passport⁵. However, it was the Second World War that constituted the real turning point in the establishment of a legal framework leading to the development of 'durable' protection solutions, in the wake of the establishment of the United Nations and the drafting of the five Geneva Conventions, including the 1951 Convention relating to the Status of Refugees. It has been ratified by 154 countries until now, and sets out the official definition of a refugee «a person who has fled his/her country because of a well-founded fear of persecution on one of five grounds: race, religion, nationality, membership of a particular social group or political opinion».

This definition enshrines the «[...] concept of the individualized and universal refugee who, as abstract as it were, is potentially applicable to any new political situation» [free translation] (Lochak, 2013, p. 41). The idea behind the definition of the refugee, which was developed during the Cold War, was to solve the issue of displaced people in Europe and to share the burden of solving it between European countries (Dauvergne, 2016). Until the 1990s, the idea of welcoming refugees was not the subject of much debate or controversy. Western countries accepted refugees relatively easily, probably because most of them were European and, in the case of other groups, the liberal West gained symbolic capital by granting them asylum, in opposition to the communist block (Dauvergne, 2016;

⁵ Between 1922 and 1945, it allowed nearly 800,000 people to be resettled in the United States, Canada, Australia, New Zealand and Latin America (Tissier-Rafin, 2018). It served as an identity and travel certificate for people who needed to cross borders to file an asylum claim in a third country.

Wihtol de Wenden, 2018). As Tissier-Raffin (2018) points out, «the history of the 20th century is punctuated by several migration crises during which states, in an *ad hoc* manner, developed resettlement procedures to protect thousands of people forced to flee en masse» [free translation] (p. 5). Most of these initiatives remained *ad hoc*, with only a few states gradually developing permanent resettlement programs, notably Canada from the late 1960s onwards⁶.

The principle underlying the asylum system as stipulated in the Geneva Convention and its 1967 Protocol relating to the Status of Refugees⁷ is non-refoulement, *i.e.* the «protection of a person from being returned to a country where his or her life or freedom is seriously threatened» (UNHCR, 2011, p. 455). It is the only principle that is part of customary international law, and thus has the power to compel states that do not implement it, regardless of whether they are signatories to the Convention. In practice, the possibilities of compelling states are very limited. It is also arguable that, as the space for protection by states in the Global North narrows, being recognized as a refugee under the Geneva Convention is increasingly detached from the potential for obtaining a permanent residence permit. Multiple additional criteria must be met at the discretion of states, on top of the five persecution motives, and the vulnerability criterion that is at the core of the selection for resettlement (Bradley and Duin, 2020). Even though it clearly goes against the principle of *non-refoulement*, several states have gradually developed «non-entry policies» that undermine the effectiveness of international refugee law (Tissier-Raffin, 2018). It thus appears that resettlement is increasingly used by states in the Global North strategically to maintain a commitment to refugee protection while increasingly significantly blocking spontaneous arrivals of asylum seekers at their borders (Bradley and Duin, 2020; Tissier-Raffin, 2018). In this context, the development of resettlement or humanitarian admissions programs is based on a logic of crisis and vulnerability that appears to be conceived in an essentializing manner, that is fixed and attributed according to homogeneous and hierarchically assigned criteria (Gilson, 2016).

⁶Most of these operations were therefore rapid and massive, targeting easily identifiable national groups like Jewish dissidents from the former USSR, Hungarians, Chilean nationals or Vietnamese boat people (Ngo, 2016; Tissier-Raffin, 2018). For more information, see Canadian Council for Refugees' Brief history of Canada's responses to refugees (<https://ccrweb.ca/fr/bref-historique-canada-refugies>).

⁷Until 1967 the Convention only applied to European nationals. The 1967 Protocol extended protection to all people regardless of where or when they were persecuted. Canada ratified it in 1969.

10.2.2 At the heart of the protection and resettlement system: common sense conceptualizations of vulnerability

Since the late 20th century, the language of vulnerability has become increasingly prevalent in debates about migration (Atak *et al.*, 2018; Smith and Waite, 2019). It has become a cornerstone of the global refugee regime, as evidenced by its very frequent use in the documents of governing bodies as well as international and local non-governmental organizations (UNHCR, 2014; UNHCR, Unicef, and WFP, 2020). Used in conjunction with the notion of risk, it conditions the chances of resettlement as well as access to targeted assistance from refugee assistance organizations (Janmyr and Mourad, 2018; UNHCR, 2011). The meanings these stakeholders attribute to it refer to the common meaning given to vulnerability, close to its Latin etymology *vulnerare* which means to injure. It thus locates its scope in the individual conditions of physical suffering manifesting through hunger or physical attacks (Oliviero, 2016). This vulnerability is usually measured in terms of socioeconomic indicators that guide the assistance provided by humanitarian and psychosocial actors, such as housing conditions, poverty levels, food (in)security, household demographics as well as strategies to compensate for the lack of food (UNHCR, Unicef and WFP, 2020). This humanitarian understanding of vulnerability is based on the fact that certain marginalized groups such as women who are heads of households, members of LGBTQ+ communities, the elderly, or people living with disabilities require increased support (Janmyr and Mourad, 2018; UNHCR, 2011). This conception of vulnerability thus takes for granted its meaning and the term is seen as needing no further explanation: to be vulnerable, is to be susceptible to harm (Gilson, 2014). It is also in this sense that Atak *et al.* (2018) point out that «the ubiquity and the elasticity of [the term] vulnerability generates a sense of familiarity and common-sense or assumed understandings which conceal diverse uses with enormously varied conceptual dimensions» (p. 2).

This common-sense conception of vulnerability is at the core of the resettlement program. The following seven criteria determine eligibility: people with legal and/or physical protection needs, survivors of torture and/or violence, people with acute medical needs, women and girls at risk, people eligible for family reunification, children and adolescents at risk, and people for whom there are no foreseeable alternative durable solutions (UNHCR, 2011). However, refugees must meet several additional criteria defined by resettlement states in order to access protection, which means that vulnerability alone is not

sufficient to access protection (Smith and Waite, 2019)⁸. States like Canada are targeting individuals belonging to certain specific groups which are not necessarily meeting the seven criteria, like the «intact families» that were prioritized during the 25.000 Syrian Refugees Operation in 2015-2016: 85% of people resettled through the Operation were families consisting in a couple with an average of 2,8 kids compared to 63% of refugee families from other countries (Statistics Canada, 2019). Another noticeable trend in the recent Canadian landscape of resettlement, backed by UNHCR efforts at developing alternative pathways, is the interest for refugees who display «strong economic settlement potential» (IRCC, 2020). Take for example the recent «Economic Mobility Pathways Pilot Project» that was implemented in 2018 to resettle 10 to 15 skilled refugees from the Middle East and East Africa who meet the requirements of Canada's economic immigration programs. The intent here is not to point fingers: the need for complementary pathways is dire and real. However, it has to be done in a way that does not amount to the detrimental consequence that «those who are deemed too vulnerable may find themselves undeserving of protection [...]» (Smith and Waite, 2019, p. 2). The following section presents the methodological foundations of the research in which I developed the conceptual framework of ambivalent vulnerability on which I draw to renew the conceptual vocabulary at the heart of the global refugee regime's response to forced migration.

10.3 Methodological framework of the initial empirical research

As mentioned previously, this chapter aims to reconsider the notion of vulnerability in light of findings from empirical research conducted in Quebec/Canada and Lebanon with Syrian women considered to belong to a particularly vulnerable group since they hold primary responsibility for supporting their families in exile (Richard, 2019; 2021). This research was part of an exploratory qualitative approach aimed at documenting women's lived experiences through life story interviews anchored in thematic (Bertaux, 2010) and chronological (Ghorashi, 2008; Eastmond, 2007) approaches. The results of the analysis allowed for a reconsideration of the notion of vulnerability based on ambivalent understanding of the women's lived experiences: they were facing hardships,

⁸As the actual numbers of resettled people amounting to less than 0,5% people in recent years show.

but were also exposed to transformative opportunities, and elements of continuities with their lives before they were forcibly displaced (Oliviero, 2016; Richard, 2019, 2021).

The life stories at the heart of this research were collected through a transnational fieldwork approach conducted in two sites that have played an important role in hosting Syrian refugees fleeing the recent civil war. Seven women were interviewed in Lebanon and five in Québec/Canada. As a country bordering Syria, Lebanon has hosted more than one million refugees for multiple years (Government of Lebanon and United Nations, 2019) – as many as the entire European Union despite being 440 times smaller geographically and 120 times less populous. Consistent with the transnational feminist theoretical framework that underpinned the research (Mohanty, 2003; McLaren, 2017; Zeweri, 2017), the logic of analysis of the narratives collected in the two fields did not rely on a comparison⁹. In line with researchers that challenges methodological nationalism, that is, the nation-state as the ‘natural’ scale of analysis of social phenomena in the social sciences (Wimmer and Glick Schiller, 2008), it linked the lived experiences of the women based in these two national spaces by focusing first and foremost on what they have in common – having had to flee Syria as a result of the recent armed conflict and holding primary responsibility for supporting their families. Their experiences in each site were then contextualized according to the conditions characterizing their journeys within the different sites. It is beyond the scope of this chapter to revisit the detailed results of the analysis. However, it must be stated that the impacts of forced migration on family dynamics were central to the findings (Richard, 2019, 2021).

Participants were initially approached with the help of local organizations (*e.g.*, organizations working specifically with refugee women or advocating for refugee rights) and interpreters associated with the project. The interviews were kept as open-ended as possible to allow the women to talk about the issues that they considered important¹⁰. Most of the participants chose to tell their stories in Arabic with the help of three different interpreters who translated either to

⁹The transnational approach also allows us to see Syria, Lebanon, and Quebec/Canada as ultimately linked to each other, insofar as many of the Syrian refugees resettled in Canada/Quebec transited through Lebanon (Blain *et al.*, 2019) and the Syrian and Lebanese presence on Canadian soil dates back over 135 years (Asal, 2016).

¹⁰ Unless the person asked for more specific questions.

English or French. The rest of the interviews were conducted directly by the author in English or French. Participants were selected to ensure a diversity of issues and life contexts represented (*e.g.*, age, time spent in exile, marital status, migration status, education level, religious affiliation, etc.). The primary criterion for inclusion in the research was that they considered themselves to be primarily responsible for the financial support and care of their families' daily lives. Their family configurations were multiple: two lived with a spouse, two were separated/divorced, two were widowed and two were single. Half had young children while one had adult children and grandchildren living in another country and the rest had no children. It is important to note that the exploratory nature of the research did not allow for generalization.

10.4 A transnational feminist conceptualization of vulnerability based on the life stories of refugee women from Syria in Quebec/Canada and Lebanon

The lack of conceptualization of vulnerability in the grey literature about refugees therefore led to a review of the scientific literature, which proved to be very rich. The analysis of the narratives of Syrian refugee women met in Quebec/Canada and Lebanon from a transnational feminist theoretical framework allowed for a deeper analysis by showing how being responsible for the main support of their family exposes them to suffering, violence and marginalization, but also to elements of transformation and continuity with their life before forced migration (Gilson, 2016; Oliviero, 2016; Richard, 2019, 2021; Zeweri, 2017). Building on the idea of vulnerability as an intersubjective experience that can be experienced physically, legally, psychologically, economically, or socially (Gilson, 2014), the proposed conceptualization is broken down into three main strands: 1) ontological vulnerability; 2) situational and relational vulnerability; and 3) ambivalent vulnerability.

10.4.1 Ontological vulnerability

A first strand of work on vulnerability is work on ontological vulnerability, which refers to its embodied and inherent dimensions (Gilson, 2014; Soulet, 2005; Butler, 2012). The embodied nature of vulnerability means that it is experienced first and foremost in a physical way through obvious conditions of physical suffering such as hunger or physical assault. It also includes psychological and moral suffering, which affect both the physical and social being. This conception is the one that most closely resembles the common-sense definition of vulnerability

mobilized by the global refugee regime stakeholders mentioned previously. The inherent character of vulnerability refers to the idea that it is an integral part of our human experience as a result of our corporeality (the embodied nature of (Butler, 2012; Atak *et al.*, 2018). In this sense, vulnerability can be thought to affect us all through our lives inevitably in the form of various illnesses and age, or through uneven systemic forces such as globalization, unemployment, or discrimination (Gilson, 2014; Oliviero 2016).

The ontological conception ultimately opens to what philosopher Guillaume Le Blanc (2011) identifies as the «ethical and political imperative» to recognize our common vulnerability with refugees:

by recognizing each of us in our own way as vulnerable, as exposed to all forms of violence, physical, social and psychological, we take a step towards understanding exclusion as a common thing rather than as the sole concern of the excluded [free translation] (p. 13).

For the author, who draws on the work of Judith Butler (2009, 2012), this amounts to arguing that «vulnerable lives» form a shared world with lives that consider themselves «not vulnerable».

However, this conceptualization has some important limitations. Although it emphasizes its inevitable and fundamentally shared nature, it can paradoxically lead to the idea that vulnerability is a state that must be avoided or at least minimized, by promoting responses that rely on protection and assistance (Gilson, 2014; Soulet, 2005). When it is the only one to be mobilized, there is a strong risk of locking so-called vulnerable people into representations that elude their agentivity and power over their own existence (Butler *et al.*, 2016; D’Cruze and Rao, 2004). On the other hand, supporting the idea of a common vulnerability can lead to a form of universalism that denies the specificity of the experiences of certain individuals and groups, and consequently, the need to put in place support measures adapted to their specific realities. Following Chatel and Roy (2008, p. 85), we might therefore think that «to fight against vulnerability is to fight against the unequal exposure to the possibility of being hurt». This unequal distribution and the factors that underlie it are central to the conceptualizations of situational and relational vulnerability outlined below.

10.4.2 Relational and situational vulnerability

It therefore appears that some aspects of the vulnerability experienced by individuals are related to circumstances that go beyond them and place them in a

relationship of interdependence with those around them. These dimensions are part of structural and systemic dynamics, which the situational and relational conception of vulnerability aims to expose. It implies the need to shift the focus from the ontological conception of vulnerability to the situations, processes, or contexts in which «their» vulnerability unfolds (Butler *et al.*, 2016). Thus, the situations of vulnerability that people experience are part of circumstances that go beyond them. This is in part due to the interdependence that links them to other individuals, but also to the characteristics of the physical and social environment that surrounds them. Thus, vulnerability is necessarily contextualized and can be caused or exacerbated by the personal, social, political, economic, or environmental situations of individuals or social groups, including abusive relationships, oppression, or injustice (Atak *et al.*, 2018). Refugees and asylum seekers, as well as women and racialized minorities, fall into the category of situational vulnerability, which describes experiences of adversity, transgressions, or groups of people who may find themselves in circumstances of social hardship (Brown *et al.*, 2017). Through its consideration of the differentiated effects of power relations on marginalized people, however, the situational and relational conception of vulnerability allows for the recognition of vulnerability as «universal potential activated by socially mediated unequal power relations enables practitioners to address the specific factors that are producing [people’s] vulnerability to harm» (Mesarič and Vacchelli, 2021, p. 3097).

As with the ontological conception of vulnerability, questions arise about the operationalization of the relational and situational conceptions of vulnerability. In addition to affecting them to varying degrees, the interdependence between individuals exposes them to the actions of others and to those of institutions that govern their lives in unequal ways. An interesting proposal in this sense is that of Goodin (1985 cited by Gilson, 2014) who develops a model of responsibility towards the vulnerable based on the idea that our responsibilities towards others are proportional to their vulnerability towards us. Responsibility would thus fall on the one who is in a position to improve or remedy the situation. It also addresses the idea of global justice as a responsibility that encompasses all those who are vulnerable to us regardless of their «proximity» to us. Here, we join the principles underlying conceptions of responses to refugee vulnerability that emphasize that the political asylum system is based on the ethical recognition of our obligations to «distant others» (Shuman and Bohmer, 2016). Yet, as discussed in the first part of this chapter, recent trends expose the increasingly strategic nature of resettlement and vulnerability. Patterns of refugee status recognition based on increasingly narrow criteria that place state

interests as well as modes of arrival at the forefront appear to be increasingly at the core of the accessibility of protection (Bradley and Duin, 2020; Smith and Waite, 2019). This shift in perspective broadens the scope of what is observable in relation to the experience of those in vulnerable situations. This is precisely what researchers inscribed in the transnational feminist approaches propose through the concept of ambivalent vulnerability, which is presented in the following section.

10.4.3 Ambivalent vulnerability or the importance of a complexified understanding of refugee people's experiences

Whether ontological or situational and relational, these conceptions induce a sense of familiarity and common sense whereby some individuals belonging to targeted groups – based on their personal characteristics, modes of arrival, belonging to a specific minority group prioritized by the nation-state, etc. – have access to protection while others are deprived of it. The transnational feminist approach at the core of this conceptual framework invites us to challenge monolithic representations that reduce people's experience to their mere group membership (Caron *et al.*, 2017; Mohanty, 2003; McLaren, 2017).

Following Chatel and Roy (2008), it is more appropriate to consider that vulnerability is both an individual and a collective experience that has an influence on the ability to act and that takes different and sometimes contradictory forms such as suffering, passivity, victimization or on the contrary mobilization. The notion of ambivalent vulnerability proposed by Oliviero (2016) is directly in line with this desire to broaden our understanding of the concept, to also include the potentialities that situations of vulnerability induce in people's lives. Refugees may thus face oppression, discrimination, and arbitrary restrictions throughout their journeys, but they may also benefit from specific windows of opportunity in time and space. This conception therefore recognizes the ontological character of vulnerability, but sees it as directly framed and produced by structural forces such as nation-states and local and global refugee regime stakeholders – which produce vulnerability as much as they prevent it, selectively determining which kinds of 'precarious lives' matter and which do not (Oliviero, 2016).

The theoretical contributions on ambivalent vulnerability provide an opportunity to reflect on the flaws in the refugee protection and assistance system and to think about the ways in which the broader recognition of refugee vulnerability can be a driver of ethical action (Le Blanc, 2011; Oliviero, 2016). It appears as a powerful conceptual tool in order to develop a more compre-

hensive understanding of vulnerability as a condition of potential (rather than fixity), something that is fundamental and shared (rather than inequitably and hierarchically attributed), and that can manifest in diverse ways (rather than homogeneously) (Gilson, 2016). It is a condition that is experienced in ambivalent and ambiguous ways and that has ambivalent and ambiguous value (rather than inherently negative ones) (Gilson, 2016; Oliviero, 2016; Richard, 2019, 2021). Let us now see how this effort at a renewed understanding has become even more important in the aftermath of the global COVID-19 pandemic that has deeply affected vulnerable people – especially refugees and asylum seekers – all around the world.

10.5 Conclusion: toward more extensive responsibility for and responsiveness to others who are especially vulnerable

The need to renew the conceptual and political vocabulary around the notion of vulnerability in the context of the political crisis of asylum of the last 20 years has been exacerbated by the global COVID-19 pandemic that was officially declared in March 2020. It has brought to the forefront the multiple forms of vulnerabilities that affect the entire population unequally (including access to health services, rights to mobility and family reunification). Refugees and asylum seekers were quickly identified as the most vulnerable populations in terms of risk of contracting the virus, access to vaccines, food insecurity, access to Internet and computers, and other challenges related to the disruption of services offered by several humanitarian organizations worldwide (Perzyna, 2020).

The pandemic dramatically revealed one of the most glaring paradoxes of the political crisis of asylum: the consideration of vulnerability criteria was literally shattered for both resettled refugees overseas and local asylum seekers. In Canada, refugee resettlement has been suspended for months, as well as the reception of asylum applications at land and air borders¹¹ which were closed to non-essential travelers until late summer 2021¹². The treatment of asylum seekers within Canada was tragically cruel, in ways that don't align with the country's reputation as a global leader for refugee protection: asylum seekers were overrepresented in the jobs most at risk of COVID-19 infection (Cleveland *et al.*, 2020; Meer *et al.*,

¹¹ With the exception of persons with family members in Canada.

¹² At the time of writing, resettlement and the reception of asylum applications had tentatively resumed.

2021), and the federal government deported more than 12,120 asylum seekers in 2020 – the largest number on an annual basis since the Steven Harper Conservative era in 2015 (Christoff, 2021).

This situation clearly illustrates the tensions that have been occurring in the refugee protection system for the last 20 years. It reflects important changes in which the two main channels of arrival of refugees on the territory of the countries of the Global North are in opposition: spontaneous asylum requests at the borders and the resettlement of refugees selected in neighbouring countries according to multiple criteria, sometimes prioritizing their vulnerability. The role of the nation-state in controlling borders and restricting the right to mobility has been reaffirmed in a way that one would have thought impossible. Security imperatives and protectionist measures were legitimized almost unilaterally under the umbrella of strict sanitary measures aimed at limiting the spread of the virus. In this context, it is important to re-establish a meaning of vulnerability that is in tune with the ambivalent experiences of people undergoing forced displacement and that can provide avenues for response that go beyond the strategic essentialization and victimization of people who are considered vulnerable but not necessarily eligible for protection (Bradley and Duin, 2020; Gilson, 2016; Richard, 2019, 2021; Smith and Waite, 2019).

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11. Short-, medium- and long-term employment-related outcomes of resettled refugees

Lisa Kaida, Max Stick and Feng Hou

11.1 Introduction

While many facets of integration are of concern to the states and civil societies of refugee resettlement countries, economic integration, employment-related outcomes in particular, is often considered as a key indicator of successful integration (Vijaya, 2020). Employment not only signifies self-sufficiency but also can facilitate a stronger sense of belonging to the resettlement country, community inclusion and enhanced access to power and status (Beiser, 2003; Hynie, Korn and Tao, 2016). Moreover, refugee employment is crucial for resettlement countries like Canada as high refugee unemployment rates and welfare dependency may contribute to anti-refugee sentiment and the perception that refugees are a burden to the national economy (Vijaya, 2020).

In this chapter, we present the short-, medium- and long-term employment-related outcomes of resettled refugees from three admission programmes in Canada: Government-Assisted Refugee (GAR), Privately Sponsored Refugee (PSR) and Blended Visa Office-Referred Refugee (BVOR) programmes. Using the 2019 version of the Longitudinal Immigration Database (IMDB), we address the following three questions:

1. how do the short- to long-term labour market outcomes of PSRs compare with those of GARs?;
2. do the changes in refugee selection policy have short- to medium-term consequences for the labour market outcomes of GARs?;
3. how do the short-term labour market outcomes of BVORs compare with those of GARs and PSRs?

11.2 Recent research on refugee employment outcomes

Since the 2015 migration crisis, research on the labour market integration of refugees (including asylum migrants and resettled refugees) in Western resettlement countries has burgeoned (*e.g.* Bakker, Dagevos and Engbersen, 2017; Bevelander, Mata, and Pendakur, 2019; Brell, Dustmann, and Preston, 2020; Carlbaum, 2022; Fasani, Frattini, and Minale, 2022; Qi *et al.*, 2021; Ruiz and Vargas-Silva,

2018; Stempel and Alemi, 2021; Tervola, 2020; Ukrayinchuk and Havrylchyk, 2020; Vogiazides and Mondani, 2020; Young, 2020). Broadly, three themes are emerging from this recent literature. First, research generally finds refugees face notable disadvantages integrating into the labour market of their resettlement country upon arrival. However, they quickly overcome their initial challenges, catching up to other immigrants (*e.g.* family reunification immigrants, economic immigrants) and/or the native-born population in the long run (Bevelander, 2020; Brell *et al.*, 2020; Hou, 2021; Jestl *et al.*, 2022; Ortensi and Ambrosetti, 2021; Vijaya, 2020).

Second, refugees encounter various barriers to securing employment, including barriers common to immigrants in general (*e.g.* language barriers, non-recognition of international qualifications/credentials, lack of local job networks, discrimination) and refugee-specific ones (*e.g.* prolonged wait times for administrative procedures, post-traumatic stress) (Andersson, 2021; Khan-Gökkaya and Mösko, 2021; Ukrayinchuk and Havrylchyk, 2020; Verwiebe *et al.*, 2019).

Third, research finds that the labour market outcomes of refugees vary by their admission categories and that resettled refugees tend to fare less well than asylum migrants (Bevelander, 2020; Tervola, 2020). For instance, Bevelander (2020) shows resettled refugees in Sweden have lower employment rates than asylum refugees throughout their first 20 years in the country. The researcher speculates resettled refugees often settle in areas with fewer employment opportunities as a result of refugee dispersal policy. Asylum refugees, not subject to the dispersal policy, may choose to live in municipalities where job opportunities abound, utilizing their personal networks and financial means.

While the three main findings summarized above generally apply to the recent research on refugee labour market integration in Canada, the labour market outcomes of Privately Sponsored Refugees (PSRs) and Government-Assisted Refugees (GARs), Canada's two long-standing resettled refugee categories, have attracted scholarly interest (Boyd and Perron, 2020; Houle, 2019; Hynie *et al.*, 2019; Kaida, Hou, and Stick, 2020; Lu, Gure and, Frenette, 2020; Picot, Zhang, and Hou, 2019; Prokopenko, 2018). This research generally agrees PSRs have more advantageous labour market outcomes than GARs in the short-term resettlement period. For example, an analysis of the IMDB by Kaida, Hou and Stick (2020) finds PSRs who arrived between 1980 and 2009 have higher employment rates and annual earnings than their GAR counterparts during the first 15 years in Canada, with some differences for women and men. While the employment advantage of PSR women over their GAR counterparts steadily declines over time, PSR men have consistently higher employment rates over their GAR coun-

terparts (four to five percentage points) up to the 14th year in Canada. Employed PSRs also maintain their earning advantage over their GAR counterparts (about \$2,000 for men; \$1,000 for women) throughout the first 15 years in Canada.

The more favourable labour market outcomes of PSRs over GARs are also evidenced among various subgroups. In an examination of Syrian refugees who resettled in Canada in 2015 and early 2016, Houle (2019) finds PSRs had higher employment rates than GARs in 2016. Focusing on resettled refugees who landed in 2002-2005 and obtained Canadian post-secondary education, Prokopenko (2018) demonstrates PSRs are more likely to be employed and have higher employment incomes than GARs eight years after landing.

One explanation for PSRs' relative labour market advantage over GARs is that the former greatly benefit from sponsors' financial and social support upon arrival in Canada. Sponsors may help PSRs quickly find employment, learn English and/or French, secure higher-paying jobs and gain familiarity with Canada (Haugen, 2019; Picot *et al.*, 2019). Further, as sponsors are responsible for providing PSRs financial support for the first 12 months in Canada, many are motivated to ensure their sponsoring refugees quickly achieve economic self-sufficiency (Leonard, 2019).

Conversely, GARs' labour market disadvantage over PSRs may be explained by the former's disadvantageous human capital, demographic and other characteristics. This is partly attributable to Canada's current selection policy for GARs, which is based on the 2002 *Immigration and Refugee Protection Act* (IRPA) (Hynie *et al.*, 2019; Kaida, Stick, and Hou, 2021; Lu *et al.*, 2020). With the implementation of IRPA, Canada shifted its selection criteria for GARs from their ability to economically establish themselves in the resettlement country (adaptability) to their need for protection (vulnerability). As a result, high-needs refugees referred by the United Nations High Commissioner for Refugees (UNHCR) or other international organizations with limited literacy, lower levels of education, experiences of trauma, mental and/or physical health issues are increasingly resettled in Canada as GARs (Anderson and Soenneken 2022; Rose, 2019; Senthana *et al.*, 2021).

In the following analysis, we report the short- to long-term labour market outcomes of PSRs and GARs using the 2019 version of the IMDB. Moreover, we compare the short- to medium-term labour market outcomes of GARs who arrived before and after the implementation of IRPA. Further, we consider the short-term labour market outcomes of Blended Visa Office-Referred Refugees (BVOR), a new and underexplored category of resettled refugees. To date, only a handful of studies have explored the integration experiences of BVORs and/

or assessed the BVOR programme (IRCC, 2019; Labman and Pearlman, 2018; McNally, 2020).

11.3 Data and methods

We analyze the Longitudinal Immigration Database (IMDB), an administrative data that contain landing records of immigrants admitted to Canada as permanent residents from 1980 and onward and their annual tax records (based on the T1 Family Files) starting in 1982 (Statistics Canada, 2021). We use the 2019 version of the IMDB which covers immigrants landing in Canada up to 2019 and their tax records up to 2018. The IMDB is virtually a 100% sample of immigrants who have landed since 1980 and filed taxes in Canada since 1982 (Hou and Bonikowska, 2018). An advantage of using the IMDB in refugee economic integration research is that detailed information on admission category (*e.g.* GAR, PSR, BVOR) is available. This allows researchers to track labour market outcomes of resettled refugees over time without inferring this population using proxies such as country of origin and year of arrival (Donato and Ferris, 2020). Academic researchers can access the confidential IMDB microdata in Statistics Canada Research Data Centres located in over 30 universities across Canada (Brochu, 2021; CRDCN, no date).

In this chapter, we focus on three resettled refugee groups, GARs, PSRs, and BVORs, who landed in Canada aged 20-54. We exclude those born in the US, Northern/Western Europe and Oceania and stateless individuals due to the small number of cases.

We consider two labour market outcomes: employment and employment earnings. Because the direct measure of employment is unavailable in the IMDB, we draw on the information on annual employment income (including wages, salaries and self-employment incomes) to infer employment status. We deem those with positive annual employment incomes as employed in a specific tax year. Likewise, the earning variable is based on annual employment incomes. To account for inflation over time, we adjust the earnings amount to the 2019 constant dollars.

In this chapter, we term refugees' duration in Canada for 1-5, 6-10 and 11-15 years as short-, medium- and long-term resettlement, respectively (Wilkinson, Peter and Chaturvedi, 2006). The cut-off years of these three time periods follow Statistics Canada's classification of very recent, recent and long-term immigrants (Crossman, Hou and Picot, 2021; Yssaad and Fields, 2018).

11.4 Results

11.4.1 The short- to long-term labour market outcomes of GARs and PSRs

We begin our analysis with descriptive statistics on the employment rates and mean annual earnings of GARs and PSRs who landed between 1981 and 1999 during their first 15 years in Canada separately by gender (Figures 1 and 2). For comparison, we also present the outcomes of economic and family class immigrants, the other two main immigration categories in Canada. The former are admitted based on their ability to contribute to the Canadian economy, while the latter are granted permanent resident status to reunite with their family in Canada (Statistics Canada, 2021). During the 1980s and 1990s, 46% and 37% of the total entering immigrants (including refugees) were economic and family class immigrants, respectively, although the percentage distributions of these categories fluctuated widely each year (IRCC, 2016a).

Figure 1 shows PSRs maintain higher employment rates than GARs throughout their first 15 years in Canada. PSRs' employment rates in year 1 are particularly high compared to GARs'; 87% and 70% of PSR men and women are employed, respectively, 10 and 15 percentage points higher than their GAR counterparts. Similar results are reported in Kaida *et al.* (2020) and IRCC (2016b), and the noticeably high employment rates of PSRs during their first year in Canada may reflect expectations from sponsors that refugees quickly achieve economic independence before their financial support period ends. Meanwhile, the initial employment rate of GARs may be lower because they are expected to focus on government-funded language training during their first year, leaving them little time to find jobs. After year 1, the employment rate gaps between GARs and PSRs narrow quickly. By years 3-5, the gaps are under one percentage point. After that period, the gap stabilizes at around 1-3 percentage points throughout the medium- to long-term resettlement period.

When we compare the employment rates of resettled refugees with those of economic and family class immigrants, we see divergent patterns by gender. For men, family class immigrants' employment rates are consistently higher than those of other categories of immigrants/refugees up to year 11, and the employment rates of economic immigrants are the lowest, even lower than GARs'. Despite such variations in employment by admission category, the gaps between GARs, PSRs and economic and family class immigrant men diminish in the long run. By year 11 and onward, the employment rates of these four immigration categories range less than six percentage points.

11. Short-, medium- and long-term employment-related outcomes of resettled refugees

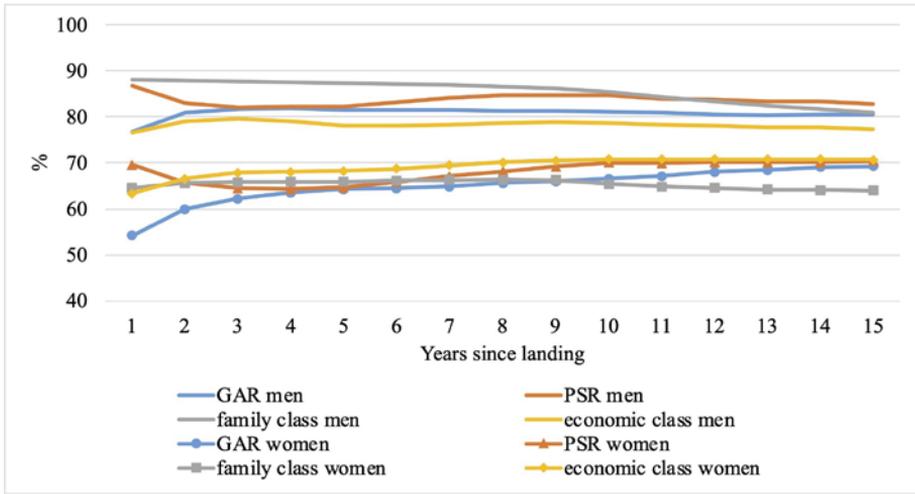


Figure 1. Employment rates of immigrant/ resettled refugee women and men, by admission category and years since landing.

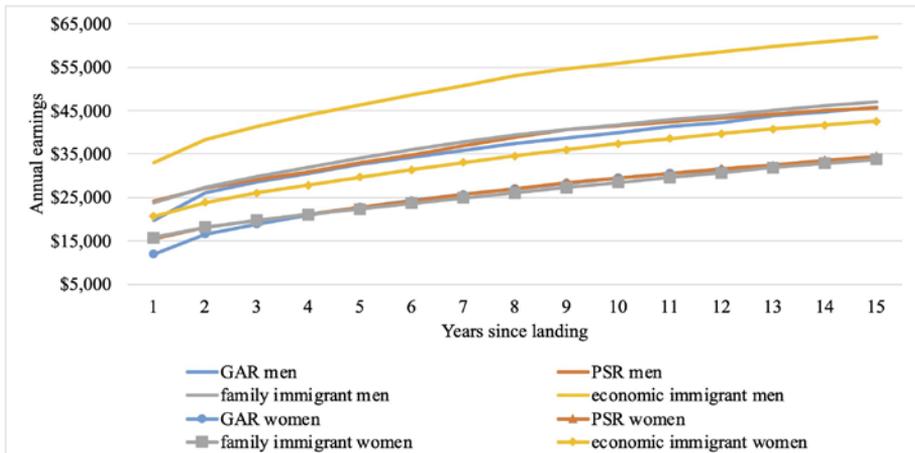


Figure 2. Mean earnings of immigrant/ resettled refugee women and men by admission category and years since landing.

In comparison to men, the differences in employment rates in the short- and medium-term resettlement periods among the four categories of immigrant/refugee women (except for year 1 when the employment rates of GARs are notably low) are smaller, below six percentage points between years 2 and 11. Although the employment rates of economic immigrant women are relatively high throughout the first 15 years in Canada (63-71%), their advantage (especially over PSR women's) is minimal.

Limiting the sample to employed individuals, we also look at the mean earning trajectories of PSRs and GARs during their first 15 years in Canada (Figure 2). Overall, PSR men earn higher than their GAR counterparts on average, but the former's advantage fluctuates over the course of resettlement. It continues to decline up to year 5 and starts to increase, reaching \$1,800 in year 10. It then decreases in the long-term resettlement period. By year 15, the mean earning gap between PSR and GAR men is virtually none (\$45,800 and \$45,700 for GARs and PSRs, respectively).

By contrast, PSR women's earning advantage quickly diminishes during their first five years in Canada and is almost non-existent by the medium-term resettlement period. In the long-term resettlement period (years 11-15), however, PSR women's earning advantage slightly increases, yet the difference in the mean earnings remains small (\$34,000 and \$34,500 in year 15 for GARs and PSRs, respectively).

When we compare the mean earnings of GARs and PSRs with those of economic and family class immigrants, we observe economic immigrants' notable advantage throughout the first 15 years in Canada. Meanwhile, family class immigrants' earning trajectories are similar to those of PSRs.

The results in Figures 1 (employment rates) and 2 (mean earnings) are unadjusted, meaning that we are not considering differences in sociodemographic characteristics between the four admission categories of immigrants and refugees. However, as Table 1 shows, the demographic and human capital characteristics of GARs, PSRs and economic and family class immigrants differ widely, which may partially explain the variations in the short- to long-term labour market outcomes by admission categories. GARs in our sample (1980s and 1990s arrivals) are more likely to come from Southeast Asia (including Vietnam, Laos and Cambodia), have no knowledge of English or French at the time of landing and arrive in Canada during the 1980s than the other categories of immigrants and refugees. PSRs, by contrast, are more likely to be born in Eastern Europe (including former Yugoslavia) and arrive in the early 1990s. Overall, GARs, PSRs, as well as family class immigrants, have lower levels of education than economic immigrants.

11. Short-, medium- and long-term employment-related outcomes of resettled refugees

Table 1. Descriptive statistics of Government-Assisted Refugees (GARs), Privately Sponsored Refugees (PSRs) and family class and economic immigrants who landed in Canada in 1980-1999 at age 20-54, by gender

	Men				Women			
	GAR	PSR	family class	economic immigrants	GAR	PSR	family class	economic immigrants
Rounded Ns	79,665	78,485	225,090	397,980	51,335	50,175	319,275	398,805
World region of birth	%							
South and Central America, Caribbean	13.6	9.3	24.2	8.1	16.6	10.1	20.0	10.5
Eastern Europe	27.1	37.1	4.2	10.6	28.3	38.2	9.1	9.6
Southern Europe	7.1	1.3	4.4	4.1	10.4	2.1	2.7	3.0
Africa	10.5	10.7	7.0	9.3	8.0	9.5	5.9	6.9
Middle East, West Central Asia	13.6	12.7	4.9	11.6	10.7	11.5	5.6	8.3
Southeast Asia	26.3	18.7	15.0	7.8	24.8	23.2	14.5	17.3
Other Asia	1.8	10.2	40.2	48.6	1.2	5.5	42.3	44.4
Highest level of education at landing								
Less than high school	50.1	47.4	54.8	26.6	59.0	55.9	59.0	38.7
High school completion or trade	29.8	30.9	22.2	20.1	22.7	24.6	19.4	22.2
Some post-secondary	6.9	8.8	6.0	9.0	7.6	8.5	6.5	10.1
Bachelor's degree or above	13.3	12.9	17.1	44.2	10.8	11.0	15.2	29.0
Knowledge of official language								
English and/or French	30.0	40.7	61.0	78.2	20.6	30.6	49.8	72.1
Neither English nor French	70.0	59.3	39.0	21.9	79.5	69.5	50.2	27.9
Year of landing								
1980-84	28.7	13.6	14.9	9.8	27.1	16.8	14.1	9.4
1985-89	35.1	24.9	18.2	19.9	31.3	25.9	17.3	19.1
1990-94	20.2	56.2	42.0	31.1	21.5	49.9	39.8	34.1
1995-99	16.0	5.3	25.0	39.2	20.0	7.5	28.9	37.5

Note: The percentages may not add up to 100 due to rounding errors.

Excludes those from the US, Northern/Western Europe, Oceania, and stateless persons.

Source: Statistics Canada. 2021. Longitudinal Immigration Database.

11.4.2 The short- to medium-term labour market outcomes of GARs who arrived before and after the introduction of IRPA

Readers may note the differences in labour market outcomes between GARs and PSRs over the first 15 years in Canada shown above are smaller than what was reported in Kaida *et al.*, (2020). This may be due to the differences in the arrival cohorts of resettled refugees under study. While Kaida *et al.* (2020) analyse the 1980-2009 arrivals, the above analysis only considers the 1980-1999 arrivals, omitting the post-2000 arrivals. As discussed earlier, the 2002 IRPA led to increased admission of vulnerable GARs, who may have greater difficulty integrating into the Canadian labour market. Exclusion of the post-2000s arrivals thus may make the short- to long-term labour market integration of GARs look less disadvantageous than Kaida *et al.*'s results (2020). Relatedly, Boyd and Perron's (2020) analysis of refugees arriving from Vietnam, Cambodia and Laos in 1980-1990 does not find GARs' labour market disadvantage over PSRs.

To consider the possibility of the impact of policy change on the labour market outcomes of GARs, our next analysis looks at the short- and medium-term labour market outcomes of GARs from three different arrival cohorts, 1997-2001

(pre-IRPA), 2002-2004 (the transition period) and 2005-2009 (post-IRPA). Figure 3 clearly shows post-IRPA GARs' employment rates, especially those of GAR women, are lower than pre-IRPA GARs' throughout their first 10 years in Canada. For both men and women, there are some differences in the starting employment rates in year 1 for pre- and post-IRPA GARs— 61% and 58% for pre- and post-IRPA GAR men and 37% and 30% for pre- and post-IRPA GAR women, respectively. After year 1, the employment rates for post-IRPA GARs climb at a slower pace than their pre-IRPA counterparts during the short-term resettlement period, leading to a widening employment gap between pre- and post-IRPA GARs. The gap peaks during the short-term resettlement period; eight percentage points for men in year 3 (79% and 71% for pre- and post-IRPA GARs, respectively) and 16 percentage points for women in year 4 (62% and 46% for pre- and post-IRPA GARs, respectively). The gap starts to narrow after years 3 and 4 for GAR men and women, respectively. By year 10, the employment rate gap for GAR men is only one percentage point. However, for women, it remains rather high at nine percentage points in year 10.

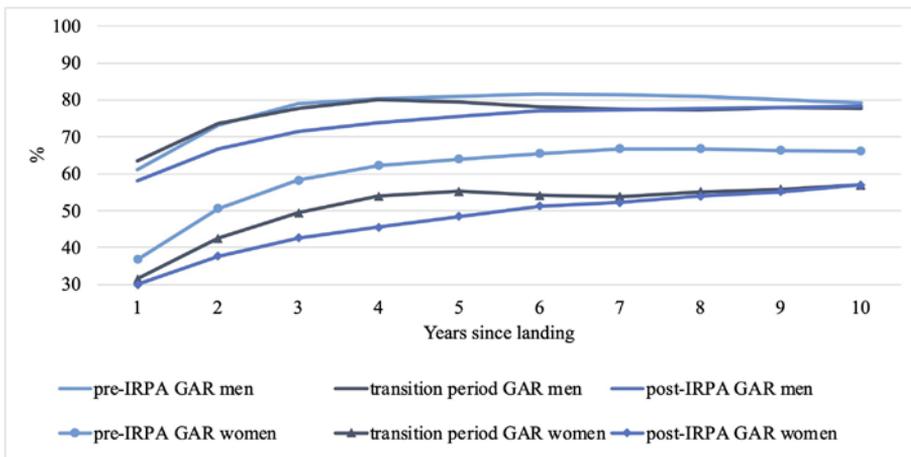


Figure 3. Employment rates of Government-Assisted Refugee women and men, by landing cohort and years since landing.

The employment rates of the transition period GARs (the 2002-2004 arrivals) increase faster than the post-IRPA cohort's in the short-term resettlement period. The employment rates of GAR men who arrived in 2002-2004 are comparable to their pre-IRPA counterparts' during the first five years in Canada. Meanwhile, the employment trajectories of transition-period GAR women in the first five years lie between those of their pre- and post-IRPA counterparts. After year 5,

the employment rates of the transition period GAR men and women slightly dip, and their employment trajectories converge to those of the post-IRPA GARs. This may be because of the impacts of the Great Recession. Years 6-8 for the transition cohort coincided with the 2008-2009 Recession. Although Canada's economy and labour market were affected by this global recession to a lesser extent than those of the US, it may have contributed to the drop in employment rates of the transition cohort in years 6-8 (Boivin, 2011; Carmichael, 2018).

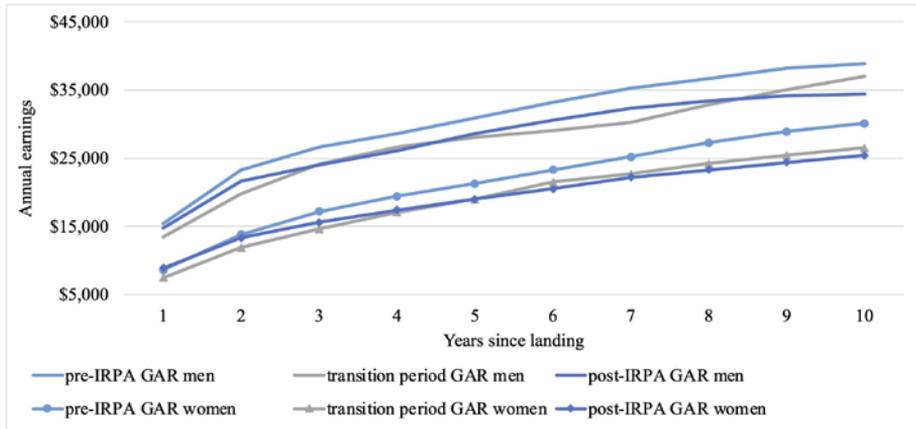


Figure 4. Mean earnings of Government-Assisted Refugee women and men, by landing cohort and years since landing.

Figure 4 shows the mean earning trajectories of GAR men and women who had positive employment incomes in a tax year during their first 10 years in Canada. The mean earnings for all the six study groups (pre-IRPA/transition period/post-IRPA GAR men and women) steadily rise, which is a positive sign of their short- to medium-term economic mobility.

However, a cautionary note is that the earning gaps between pre-IRPA GARs and the transition period/post-IRPA GARs (in dollar amount) stabilize or even widen in the medium-term resettlement period. In year 1, the gaps in mean earnings between pre-IRPA GAR men and their transition period/post-IRPA counterparts were \$600 (pre-IRPA vs the transition period) and \$1,900 (pre- vs post-IRPA). The gap reaches \$5,000 in year 7 for pre-IRPA/ the transition groups (mean earnings: \$35,300 for pre-IRPA GARs; \$30,300 for the transition period group) but starts to narrow after that year. By contrast, the earning gap between pre- and post-IRPA GAR men continues to grow in the medium-term resettlement period, amounting to \$4,500 (mean earnings: \$38,900 for pre-IRPA GARs; \$34,400 for post-IRPA GARs) by year 10.

The mean earning gaps between pre-IRPA GAR women and the transition period/post-IRPA GAR women widen more steadily than those of their men counterparts. In year 1, the transition cohort GAR women earn \$7,500 on average, \$1,100 less than their pre-IRPA counterparts (\$8,600). By year 10, the gap increases to \$3,600 (mean earnings: \$30,100 for pre-IRPA GARs; \$26,500 for the transition group). While the post-IRPA GAR women on average are in fact earning \$300 more in year 1 than their pre-IRPA counterparts (mean earnings: \$8,600 for pre-IRPA GARs; \$8,900 for post-IRPA GARs), the former earned on average \$25,400 per year, \$4,700 less than the latter by year 10 (\$30,100).

Such slower economic mobility of GARs who arrived in Canada after the implementation of IRPA can be partially explained by their demographic and human capital characteristics. As Table 2 shows, they are less educated and more likely to originate from non-European countries, although post-IRPA GARs are more likely to know English and/or French at arrival. If we consider the differences in such observable characteristics between the pre-IRPA and transition cohort/post-IRPA GARs, the employment/ earning gaps observed in Figures 3 and 4 may be much smaller.

Table 2. Descriptive statistics of Government-Assisted Refugees (GARs) who landed in 1997-2009 at age 20-54, by gender

	Men			Women		
	pre-IRPA (1997- 2001)	transition period (2002- 2004)	post-IRPA (2005- 2009)	pre-IRPA (1997- 2001)	transition period (2002- 2004)	post-IRPA (2005- 2009)
Rounded Ns	4,110	2,755	5,695	3,715	2,505	4,865
World region	%			%		
South and Central America, Caribbean	2	5	2.1	3	7	4
Eastern Europe	16	1	0.1	16	1	0
Southern Europe	10	0	0	10	0	0
Africa	26	52	51.8	22	41	41
Middle East, West Central Asia	43	38	42.8	47	46	52
Southeast Asia	1	1	1.6	1	1	2
Other Asia	2	2	1.6	1	3	1
Highest level of education at landing						
Less than high school	51	68	68.4	59	75	75
High school completion or trade	25	16	12.8	22	12	11
Some post-secondary	11	7	8.2	9	7	6
Bachelor's degree or above	14	9	10.6	10	7	8
Knowledge of official language						
English and/or French	34	39	58	25	29	45
Neither English nor French	66	61	42	75	71	55

Note: The percentages may not add up to 100 due to rounding errors.

Excludes those from the US, Northern/Western Europe, Oceania, and stateless persons.

Source: Statistics Canada. 2021. Longitudinal Immigrant Database.

11.4.3 The short-term labour market outcomes of GARs, PSRs, and BVORs

Finally, we compare the short-term employment and earning trajectories of the new Blended Visa Office-Referred Refugee (BVOR) category who arrived in 2014-2017 with those of their GAR and PSR counterparts. Since observation periods are short due to the recency of the BVOR programme, we calculate the employment rates and mean earnings in each tax year from 2014 to 2018 (the last available year) of BVORs and other refugees arriving in 2014, 2015, 2016, and 2017, respectively.

Figure 5 shows compared to the other resettled refugee groups (GARs in particular), the employment trajectories of BVORs vary widely by the year of landing, likely due to their relatively small numbers. As Table 3 indicates, only 1,355 and 1,415 BVOR men and women aged 20-54 landed in Canada in 2014-2017, respectively. That said, however, BVORs' employment outcomes are roughly between those of GARs and PSRs. The employment rates in year 1 of BVORs range between 59% and 74% for men and 20% and 47% for women, which are generally higher than the employment rates of GAR men (39-52%) and women (10-23%) but lower than PSRs (88-91% for men and 47-57% for women) in year 1. We see a sign of an upward employment trajectory of BVORs, which is slightly more advantageous than GARs.

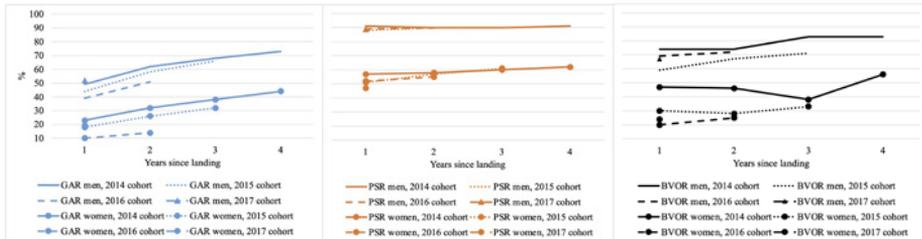


Figure 5. Employment rates of Government-Assisted Refugee, Privately Sponsored Refugee and Blended Visa Office-Referred Refugee women and men who landed in 2014-2017, by landing cohort and years since landing.

Table 3. Descriptive statistics of Government-Assisted Refugees (GARs), Privately Sponsored Refugees (PSRs) and Blended Visa Office-Referred Refugees (BVRs) who landed in Canada in 2014-2017 at age 20-54, by gender

	Men			Women		
	GAR	PSR	BVOR	GAR	PSR	BVOR
Rounded Ns	10,390	15,010	1,355	10,495	12,845	1,415
World region of birth	%					
South and Central America, Caribbean	2	0	1	2	0	2
Eastern Europe	0	0	0	0	0	0
Southern Europe	0	0	0	0	0	0
Africa	25	37	16	25	29	19
Middle East, West Central Asia	68	58	78	67	65	74
Southeast Asia	2	1	4	2	1	5
Other Asia	3	4	0	4	5	0
Highest level of education at landing						
Less than high school	84	60	87	88	58	88
High school completion or trade	7	15	4	5	14	5
Some post-secondary	3	7	3	2	8	2
Bachelor's degree or above	7	19	6	5	20	5
Knowledge of official language at landing						
English and/or French	24	63	32	19	57	28
Neither English nor French	76	38	68	81	43	72

Note: The percentages may not add up to 100 due to rounding errors.

Excludes those from the US, Northern/Western Europe, Oceania, and stateless persons.

Source: Statistics Canada. 2021. Longitudinal Immigration Database.

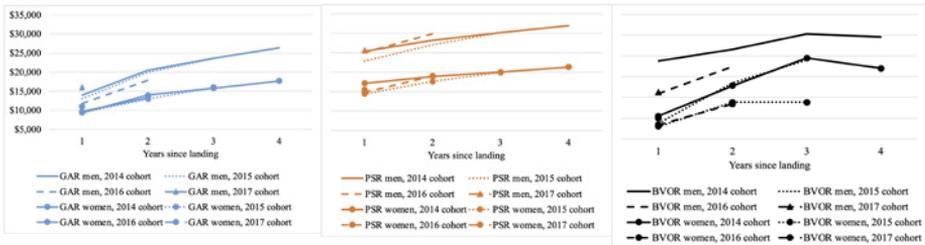


Figure 6. Mean earnings of Government-Assisted Refugee, Privately Sponsored Refugee and Blended Visa Office-Referred Refugee women and men who landed in 2014-2017, by landing cohort and years since landing.

Similar to their employment trajectories, we observe wide variations in the earning trajectories of BVORs by the arrival year (Figure 6). Of note is the earning trajectory of BVOR women who landed in 2014; their mean earnings during the first three years in Canada are consistently higher than those of BVOR men who arrived in 2015. Such earning advantage of BVOR women over men is unique, as the mean earnings of PSR and GAR women are consistently lower than their men counterparts throughout the first four years in Canada. As such, it is difficult to conclude relative dis/advantage of BVORs' earning trajectories. Overall, both BVOR men's and women's earnings in years 1-4 are lower than their PSR counterparts', yet there are some exceptions. The relative earning dis/advantage of BVORs depends on gender, landing year, and years since landing.

Table 3 displays a select set of demographic and human capital characteristics of the PSRs, GARs and BVORs who landed in 2014-2017. The majority of these three categories of resettled refugees (58-78%) were born in the Middle East or West/Central Asia, reflective of the Canadian government's initiatives to resettle Syrian refugees since 2015, including Operation Syrian Refugees in 2015-2016 (IRCC, 2019). Africa is the second largest source region, comprising 16-37% of each resettled refugee group.

Similar to their GAR counterparts, the human capital profiles of BVORs are less advantageous than PSRs'. Over 80% of GAR/BVOR men and women have no post-secondary education (less than high school or high school completion or trade certificates), 20-30 percentage points higher than those of PSR men and women. Over 60% of GAR/ BVOR men and women have no knowledge of English or French at the time of landing, while about 40% of PSRs know English or French at arrival. Similar human capital characteristics of BVORs to GARs may account for somewhat similar employment and earning trajectories in the short-term resettlement period.

11.5 Conclusions

In this chapter, we compared the employment and earning trajectories of three categories of resettled refugees in Canada, Government-Assisted Refugees (GARs), Privately Sponsored Refugees (PSRs) and Blended Visa Office-Referred Refugees (BVORs). The main findings from our data analysis of the Longitudinal Immigration Database (IMDB) are threefold. First, our analysis illuminates a promising sign of labour market integration for both PSRs and GARs in the long run, with some variations. Possibly due to concerted assistance from their

sponsors and their relatively advantageous human capital characteristics, PSRs have a head-start in finding employment and gaining employment incomes. Meanwhile, GARs take slightly longer to find employment and increase their employment incomes. However, our analysis shows the labour market outcomes of PSRs and GARs who arrived in the 1980s and 1990s converge in the 15-year span of resettlement in Canada.

Second, there is a sign of persistent labour market disadvantages faced by GARs admitted to Canada after the implementation of the 2002 *Immigration and Refugee Protection Act* (IRPA), which placed more emphasis on the vulnerability, rather than adaptability, of individuals and their families in refugee selection. Our analysis suggests while the employment rates and mean earnings of GARs who landed during the transition period (2002-2004) and post-IRPA (2005-2009) grow during the first 10 years in Canada, their earning growth is not as rapid as that of GARs who arrived pre-IRPA (1997-2001). It is unlikely especially for post-IRPA GAR women to catch up to their pre-IRPA counterparts in the long-term resettlement period, as the former are lagging behind the latter well into the medium-term resettlement period (years 6-10).

Third, our study suggests refugees admitted through the new BVOR programme have different employment and earning trajectories than their PSR and GAR counterparts in the short-term resettlement period. The BVORs' employment and mean earning trajectories vary widely by their landing year, making it difficult to generalize their short-term labour market integration. Nevertheless, their short-term labour market outcomes look somewhat similar to those of GARs, which may reflect the fact that BVORs are selected on the same criteria as GARs (*i.e.* emphasis on vulnerability, referred by international organisations like the UNHCR).

These findings demonstrate the value of administrative data like the IMDB to track the short- to long-term labour market outcomes of resettled refugees from different programmes and the importance of continuous efforts to update integration outcomes of resettled refugees, especially the new BVOR category. As high-income resettlement countries like Canada recover from COVID19-related disruptions in refugee resettlement, researchers' timely presentation of evidence-based narratives of long-term refugee integration will be crucial. In Canada, resettled refugee admissions declined drastically from 30,000 in 2019 to 9,200 in 2020, yet the government plans to substantially increase resettled refugee admissions (36,000 per year in 2021-2023, the highest since 1991 except for 2015) in the next three years (IRCC 2016b, 2021). Given that Canada has an advantageous availability of refugee data, most notably the IMDB, Canadian

empirical research like ours should be disseminated broadly to help counter misinformation about refugee labour market integration.

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12. The education of children and youth of refugee background in Canada

Antoinette Gagné

12.1 Introduction and context

This chapter focuses on Canada's educational policies, programs and pedagogical approaches for children and youth of refugee background. In particular, the challenges involved in developing and maintaining effective programs and the promising practices that support children, youth and their families in elementary and secondary school are highlighted. There are many facets of Canada that either may enhance or impede the education of children and youth of refugee backgrounds. As such, I briefly describe the Canadian landscape, the education system, the history of Canadian immigration and federal policies that may impact newcomers' experiences at school.

12.1.1 The socio-political landscape

In Canada we are in the midst of an ongoing pandemic and social movements such as Black Lives Matter, Idle No More and Stop Asian Hate as well as calls for action against anti-Black racism and Islamophobia within the context of colonizing policies and pedagogies that continue to have profoundly negative effects on the lives of Indigenous people in Canada. Children, youth and their families continue to be welcomed into communities across Canada with a heightened awareness that there are many social justice issues that we need to address in our schools and communities.

With its two official languages, many regions offer parallel support for newcomer families in French and English depending on their preferences or the policies of the province into which they are welcomed. For example, newcomer families in the province of Quebec would receive French language training and their children would attend schools where French is the medium of instruction.

The long school closures and the lack of in-person services in many parts of Canada during the pandemic have had a serious impact on the provision of supports for newcomers and for refugees in particular who may not have had sufficient economic resources to secure high-speed internet and communication devices as well as insufficient knowledge of English or French to access many of the services available virtually (Edmonds and Flahault, 2021).

In addition, because of the positive informational campaigns launched by the Canadian government regarding the benefits of immigration for all Canadians and the need for a humanitarian response to those facing forced migration, Canadians share an overwhelmingly positive attitude toward immigration and the resettlement of refugees. In fact, according to Environics (2020), Canadians became even more accepting and supportive of immigrants and refugees than in previous years in the midst of the pandemic. The majority of Canadians expressed comfort with the current immigration levels and believe that immigration is essential to building the population that Canada needs (Environics, 2020).

12.1.2 History of immigration in Canada

There is a long history of immigration to Canada reflected in some of the findings of the 2011 National Household Survey (NHS). The NHS found that 22.1% of the total population consisted of first-generation Canadians which refers to people who were born outside Canada while 17.4 % were second-generation Canadians which includes individuals who were born in Canada and had at least one parent born outside Canada. The remaining 60.7% were third-generation or more Canadians which refers to people who are born in Canada with both parents born in Canada. This group may have several generations of ancestors born in Canada, or their grandparents may have been born abroad (Statistics Canada, 2013).

In 1969 Canada signed the UN Convention Relating to the Status of Refugees and the 1967 Protocol. Since then, it has gained the reputation of being a world leader in protecting refugees. However, there have been highs and lows in the history of refugees in Canada including, for example, the turning away of a ship filled with Jewish refugees in 1939 (Ross, 2019; Canadian Council of Refugees, n.d.).

The Canadian geographic landscape

Canada is the second largest country in terms of land surface and is surrounded by ocean on three sides while sharing its southern 9,000 km land border with the USA. As such there are relatively few unaccompanied minors who are refugees or asylum seekers. Most children and youth of refugee background are in Canada with at least one family member (Barber, 2021). Across its ten provinces and three territories there is great variation in the geography as well as the needs of the local population. In addition, 81.5% of the population lives in small to large urban areas spread across the country (Statista, n.d.) and over half of the 38 million Canadians live in the provinces of Ontario and Quebec (Canada Population Review, n.d.).

City size and the experiences of refugees in Canada

Studies on the settlement and education of refugees as they relate to city size reveal significant differences in experience (Frideres, 2006; Hamilton, 2020; Arsenault, 2021; Liboy and Patouma, 2021). While larger centres generally attract more newcomers including refugees because of their size, diversity, economic opportunities and community connections (Hyndman *et al.*, 2014), these centers face challenges related to the large number of newcomers which sometimes leads to the development of ‘one size’ policies in the way communities and schools welcome immigrants. In addition, larger cities have more ethnic enclaves which usually translates into a high number of newcomer students from one background in neighbouring schools. Newcomers report a lack of sense of belonging because they do not have many opportunities to meet and interact with students from different backgrounds, including those who are born in Canada (Frideres, 2006; Gagné, 2018). Although the Syrian teens in Gagné *et al.*’s study (2018) recognized the security provided by their predominantly Arabic-speaking neighbourhood, they bemoaned the fact that they had limited opportunities to use English and meet a more diverse group of students at school and in their community.

As employment rates and income levels among immigrants and refugees are higher outside the three largest urban centers in Canada, children and youth likely experience more family stability because their parents are not juggling multiple jobs to make ends meet in medium and small-sized cities (Frideres, 2006). In fact, there is some research that suggests that smaller towns and cities may have developed effective strategies to facilitate the integration of immigrants (Derwing and Krahn, 2006; Garcea, 2006; Arsenault, 2021). Although smaller cities may lack resources or opportunities, there are often more engaged community members willing to support the integration of families of refugee backgrounds by mobilizing resources to meet their needs at school and in the community (Bonifacio and Drolet, 2017). However, as smaller cities and rural communities now receive a greater number of newcomers, the complexities and challenges of welcoming students into schools have increased because of the lack of necessary resources and experience of educators (Liboy and Patouma, 2021; Guo-Brennan and Guo-Brennan, 2021). There is evidence that some refugees choose to move to the nearest larger cities after their first year in Canada when their support system is tied to their initial settlement location. They report doing so to access increased opportunities for employment, language support and education (Abu-Landan *et al.*, 1999; Drolet and Moothi, 2018). Gagné *et al.*’s (2018) description of four schools – a rural and an urban elementary school as well as an urban and suburban secondary school in Ontario with varying numbers of students of refu-

gee background – illustrates the range of responses to refugee learners in schools across Canada.

Education jurisdictions in Canada

Although there is a ministry or department of education in each province or territory responsible for all aspects of education, each shares the goals to make education accessible, inclusive and culturally relevant for all students (Ghosh *et al.*, 2019; Campbell *et al.*, 2017). The work carried out by the Council of Ministers of Education of Canada helps to ensure the operationalization of these common goals across diverse contexts. In addition, as immigration has been fairly steady averaging about 250,000 newcomers a year for the past 20 years (Statista, n.d.), most medium to large-sized cities across Canada have had at least two decades of experience welcoming significant numbers of newcomers in elementary and secondary schools. However, there is an urban-rural divide when it comes to welcoming newcomers and refugees in particular.

Schutte *et al.* (2022) reviewed 155 education policies from Canada's 13 provinces and territories and then analyzed them for vertical coherence with the UNHCR *Refugee Education 2030 strategy* which identifies access to education, accelerated education, language education, mental health and psychosocial support, and special education as key. Schutte *et al.* (2022) found that most policies across Canada focussed on these five areas with some notable examples with a high level of coherence with *Refugee Education 2030*. However, they stated that «Canada's refugee education policy regime is characterized by many inconsistencies and significant gaps» (p. 2).

Federal government policies

Although the provincial and territorial education policies differ to meet the needs of their local populations, federal-level policies have a more consistent impact across the country. For example, when schools welcome and settle children and youth of refugee background, these students and their families have permanent residency status which is a direct pathway to Canadian citizenship. This provides a higher level of security within families who know they will not be deported or remain stateless for many years. Although the children of asylum seekers are welcome in Canadian schools, their families do not benefit from the same security as about 35% of these claims are rejected (Immigration and Refugee Board of Canada, 2020).

In addition, the increased federal funding for research on the settlement of refugees since 2015 has led to a proliferation of studies conducted on the education of refugees in different parts of Canada. In fact, in reviewing these fairly

recent studies a number of common challenges and promising practices have emerged among a range of elementary and secondary schools located in different sized communities across Canada (see for example Li and Grineva, 2016; Blanchet-Cohen *et al.*, 2017; Li, 2019; Cheyne-Hazineh, 2020; Cranston *et al.*, 2021; Liboy and Patouma, 2021; Arsenault, 2021).

12.2 Conceptual framework

As the variation in the geography and needs of the population make it difficult to succinctly describe the challenges of educating children and youth of refugee background as well as the promising practices in schools across Canada, an integrated educational support model serves as a framework to consider the experiences of students of refugee background and their families in schools across Canada. This model combines the four educational support dimensions proposed by the European Commission (EC, 2013) for newly arrived migrant students and two additional support dimensions proposed by Lara and Volante (2019) to adapt the EC model for the Canadian context.

The figure below brings together the four dimensions of linguistic support, academic support, outreach and cooperation with newcomer families and communities as well as intercultural education proposed by the European Commission for an integrated approach to the inclusion of newly arrived migrant students within the context of an inclusive and comprehensive education system. This education support model would allow newcomer students to develop within the mainstream education system providing additional support as necessary across all subject areas with additional opportunities for them to develop proficiency in the host country language and catch up academically.

The first dimension of the European Commission model is focused on language support policies and practices. As proficiency in the language of instruction is required for further learning, support for learning the language of the host country is key. The second dimension is related to academic support provided in an integrated way across the curriculum and in all school activities including co-curriculars. The third dimension involves the development of new ways to communicate and collaborate that will lead to parental and community engagement in schools. The fourth dimension highlights the need to embrace intercultural diversity at school as well as in local and national level policies. When these four dimensions are integrated, newcomer students, their families, teachers and communities can work together to meet the challenge of building and maintaining inclusion and cohesion in their context (European Commission, 2013).

Lara and Volante (2019) have added two additional support dimensions to the European Commission model to reflect the evidence from research in Canada and beyond related to the psychosocial and socioeconomic needs of immigrant children and youth. Numerous studies (see for example Ratković *et al.*, 2017) reveal that newcomer children and youth are likely to experience bullying and discrimination which can affect their mental health and negatively impact their experience of going to school in the host country. Lara and Volante (2019) call for the provision of counselling services, partnerships between schools and community health clinics, and bullying prevention policies and strategies. To address the research which shows the association between the low socioeconomic status (SES) of students and lower educational outcomes mostly caused by the lack of access to opportunities and resources (see for example OECD, 2011), Lara and Volante propose another educational support dimension to provide various types of assistance for students with low socioeconomic status (SES) and schools in low SES neighbourhoods.

Figure 1 combines the four dimensions of the support model proposed by the European Commission (2013) with the two additional dimensions suggested by Lara and Volante (2019).

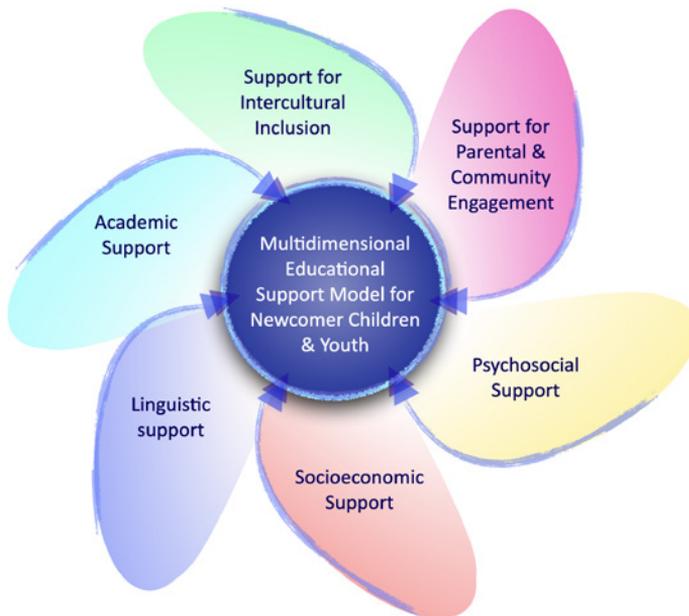


Figure 1: Multidimensional Educational Support Model for Newcomer Children & Youth.

12.3 Challenges

Although children and youth of refugee background face challenges as they negotiate the school system and day-to-day life in Canadian classrooms, many promising practices have emerged from school, classroom and community-based research studies conducted in Canada as well as from the documentation efforts of individual teachers, schools, districts and ministries of education.

I begin by delineating the main challenges reported in the literature and then focus on the promising practices which characterize the Canadian experience with students of refugee background. These challenges are in three main areas and include students' experiences of discrimination, the lack of sufficient resources to meet the needs of newcomer students at school and the connection to potential teacher burnout as well as the need for professional development opportunities for educators who work with newcomer children and youth.

12.3.1 Experiences of discrimination

Although media headlines often focus on the openness of Canadians in welcoming thousands of newcomers every year, there are numerous studies reported by Walker and Zuberi (2020) in their review which document the discrimination experienced by immigrant and refugee youth at school and in the community. Surveys of immigrants, refugees, and visible minorities in Canada demonstrate that they experience higher rates of victimization because of their race, ethnicity, skin color, language, and religious affiliation which shape their broader experiences going to school and living in their communities (Walker and Zuberi, 2020; see also Mercier-Dalphond and Helly, 2021). In addition, in a study of youth with war-affected backgrounds in Quebec (Blanchet-Cohen *et al.*, 2017), these newcomer students reported that teachers and support staff tended to overlook their pre-migration lives and post-migration realities.

In the introduction to the 2018 special issue of the *Canadian Ethnic Studies/ Études ethniques au Canada* focused on various aspects of the *Welcome Refugees* Syrian resettlement initiative, Hynie (2018), the guest editor, reports that the sponsors, the media, and the government policy makers who supported this initiative perceive the refugees as «citizens in the making». For the welcoming communities who had anticipated their arrival, these newcomers finally became 'real' people moving out of the realm of the imagination. However, through the articles in this issue we learn that the newcomer Syrians came with their own agendas, personal narratives, expectations, motivations and identities which in some cases led to tensions as well as opportunities for the development of meaningful rela-

tionships between the newcomers and members of the welcoming community and a more sophisticated understanding of what it means to be a newcomer to Canada.

12.3.2 Insufficient resources and teacher burnout

Students of refugee background often require smaller class sizes when they have experienced interruptions to their education prior to their arrival in Canada along with a more intensive core curriculum that includes learning about what it means to be a student in Canada as well as how to self-regulate in their new context. They may also require the support of a settlement worker, school counsellors and psychologists. When large numbers of newcomers arrive at the same time, stress is placed on the system and teachers must assume multiple roles. This can lead to teacher burnout as teachers of children and youth of refugee background typically spend more time with their students as they work to establish routines without the benefit of a shared language or interpreters other than Google Translate or perhaps a more proficient peer in order to form trusting relationships with their students and their families. Barber (2021) reports that teachers in her study understood the key role played by listening in supporting students which meant that teachers would spend significantly more time with students of refugee background, and, in many cases, with their parents as well when they needed help with processes that were new to them such as completing forms about their children or talking through how to support their children with homework or their behavior.

In several studies, (Stewart, 2011; Kovinthan, 2016; Gagné *et al.*, 2018; Barber, 2021), a range of teacher responses are noted with some teachers of refugee students reacting with resentment and anger, often as a result of not understanding the reasons behind their students' behavior problems or withdrawal as well as the intense settlement needs of their families. Other teachers respond with a heightened level of care for their students and families while at the same time feeling frustrated at the politics of education and immigration that do not provide sufficient resources to truly support the settlement and integration of newcomers with refugee backgrounds. Barber (2021) suggests that the voices of teachers working on the frontlines with children and youth of refugee backgrounds in schools are not being heard by politicians making decisions about funding as well as those responsible for the implementation of government policy. The perspectives and experiences of teachers need to become a part of the decision-making process as classrooms and schools are where children and youth of refugee background learn to engage in society and explore their rights and responsibilities as Canadians.

12.3.3 Teacher education and professional development

In almost every article reporting on some aspect of the education of children and youth of refugee background, there is a section highlighting the need for the inclusion of a course or a series of workshops related to the special needs of students of refugee background along with practical strategies to address these needs (see for example, Ratković *et al.* 2017; Walker and Zuberi, 2020; Barber, 2021). The most cited topic that teachers need to learn more about is working more effectively with students who have experienced trauma.

Ratković *et al.* (2017) call for professional development (PD) for teachers and other education partners for the development of collaborative settlement initiatives bringing together schools and agencies serving refugees to support children and youth of refugee background in working through the socio-psychological issues they may face in Canadian classrooms and schools. The goal of these PD opportunities is to help teachers to recognize their role as critical cultural brokers and their potential as agents of change in schools and communities adopting a multi-sectoral approach (Ratković *et al.*, 2017).

Walker and Zuberi (2020) recommend training in trauma-informed care and practice for teachers and administrators especially in parts of Canada with significant numbers of newcomer students. In addition, they suggest PD opportunities for teachers and educational support staff focused on culturally responsive and inclusive strategies geared specifically to meeting the instructional needs of children and youth of refugee background. Finally, they recommend specialized training in trauma-informed intervention strategies for school-based mental health professionals.

Barber (2021) points out that teachers are most in need of professional development because they are the professionals who work more directly and consistently with children and youth of refugee background and therefore are most likely to be with a student in difficulty potentially waiting for the arrival of a counsellor, settlement worker, or even the police. She also suggests the need for administrators to develop emergency protocols. Stewart *et al.* (2018) call for additional educator training in intercultural communication and anti-discrimination.

Amthor (2017), Lam (2018), Walker and Zuberi (2020), and Woodgate and Busolo (2021) call for teachers to adopt an intersectionality lens (Hankivsky, 2014) as well as a cross-cultural lens to understand the vastly different experiences of each refugee group and individuals within the group. Teachers of students of refugee background would benefit from learning more about the lived experiences of various groups of refugees such as Afghani, Syrian, Tamil, Roma or Sudanese refugees in Canada. Teachers also need to consider how refugees' ethnicity, race, culture, languages and other facets of their identity as well as their unique pre-

and post-migration experiences, including potential trauma and discrimination, may affect their academic achievement and overall wellbeing in the host country.

12.4 Promising practices

Examples of promising practices from across Canada illustrate how the expanded model of support for newcomer students is operationalized in different regions of the country. The practices described in this section most aptly characterize a Canadian approach to supporting children and youth of refugee background and do not comprise a complete list of what faculties of education, ministries of education, school districts and educators are doing to ensure the academic and socio-psychological wellbeing of this group of learners.

12.4.1 Policies to support inclusion and equity in schools & policies to support newcomers and refugees

Across the 13 educational jurisdictions in Canada, there are policies in support of equity and inclusion in schools. One quite typical example of the wording in such policies is from the Alberta Education website:

Inclusion is not just about learners with special needs. It is an attitude and approach that embraces diversity and learner differences and promotes equal opportunities for all learners in Alberta. Alberta's education system is built on a values-based approach to accepting responsibility for all children and students.

Every learner has unique needs. Some learners have profound and ongoing needs and others have short-term or situation-based needs. This calls for flexible and responsive learning environments that can adapt to the changing needs of learners.

(<https://www.alberta.ca/inclusive-education.aspx>)

Some of the words in *Ontario's equity and inclusive education strategy* (2009) provide a sense of the centrality of inclusion in Ontario:

We believe that Ontario's diversity can be one of its greatest assets. To realize the promise of diversity, we must ensure that we respect and value the full range of our differences. Equitable, inclusive education is also central to creating a cohesive society and a strong economy that will secure Ontario's future prosperity (p. 5).

In addition, most regions in Canada have policies related to newcomer students and some have specific guides for the inclusion of students of refugee back-

grounds in schools. For example, on the British Columbia Ministry of Education website, the following text introduces *Students from refugee backgrounds: A guide for teachers and schools* (British Columbia Ministry of Education, 2015).

Families who arrive in B.C. as refugees have overcome great obstacles and adversity. Awareness and understanding of the backgrounds and needs of students with refugee experience, in addition to their strengths and cultural differences, can help them succeed at school.

In a 2016 the Ontario Ministry of Education monograph entitled *Supporting Students with Refugee Backgrounds: A Framework for Responsive Practice* (2016), teachers are invited to reflect on current practice and consider adopting a whole-school approach to the successful integration of students with refugee backgrounds in the school community.

Ratković *et al.*'s (2017) review of the literature suggests that provinces with an asset-based orientation to newcomers create relevant policies and guides for educators that distinguish between the needs of immigrants and refugees. In fact, in several Canadian urban school districts, programs variously known as LEAD - Literacy, English and Academic Development (Calgary Board of Education, n.d.) or LEAP Literacy Enrichment Academic Program (Toronto District School Board) provide intensive instruction for children and youth (typically for students between 10 and 20 years old) who have experienced interruptions in their schooling. LEAP and LEAD programs adopt a three-pronged approach for student inclusion involving English language development, trauma-informed practice, and cultural responsiveness for up to two years so that students can accelerate their learning in a trauma-sensitive, small group environment and make the necessary gains to successfully transition to more advanced English language and content-area courses (Miles and Bailey-McKenna, 2016).

12.4.2 Curriculum policies

In various parts of Canada, there are changes made to curriculum policies every few years to recognize the needs of diverse learners. For example, in the 2016 British Columbia (BC) curriculum framework high-stakes testing and strict academic assessment was replaced with core competencies, including socioemotional learning, self-regulation, social and personal responsibility, inclusion and valuing diversity which are much more friendly to students of refugee background (BC Ministry of Education, 2020). In Ontario, newly-arrived students are exempt from province-wide assessments and students who have been in Canada somewhat

longer may receive accommodations such as having more time to complete such assessments in Grades 3, 6 or 9 and 10. Summaries and guides for parents are often provided in multiple languages on the websites of ministries of education. For example, on the Ontario Ministry of Education Parent Information webpage, parents can find documents such as a fact sheet to understand Ontario's Equity Action Plan, a parents' guide to the Grade 9 to 12 physical and health education curriculum, a guide on doing math at home with 5 to 13-year-old children and a guide called *Parents Matter* in as many as 27 languages.

12.4.3 Translanguaging pedagogy

Across Canadian jurisdictions, there is some movement away from English-only policies in classrooms with multilingual learners due to the research on translanguaging pedagogy in various contexts around the world that has revealed the power of viewing multilingual learners through an asset-based lens. Cenoz and Gorter (2020) explain that insisting that learners only use the language of the school can be problematic because it prevents students from using resources they have previously acquired in other languages. They describe pedagogical translanguaging as the intentional use of instructional strategies that integrate two or more languages and aim at the development of a multilingual repertoire as well as metalinguistic and language awareness among multilingual learners. Cummins (2021) points to an additional benefit of translanguaging pedagogy with newcomer students as it can encourage them to challenge raciolinguistic ideologies and confront societal power relations that position them as less powerful because their first language is not English. In addition, the Language Friendly School movement which is gaining some traction in Ontario schools provides guidance and examples of how to recognize and embrace their students' multilingualism, and take action to give space to these languages within the school community.

12.4.4 Arts-based programming, digital storytelling, identity-focused pedagogies

Several studies have highlighted the importance of recognizing students' backgrounds and pre-migration and post-migration experiences as well as their multiple identities through an intersectional lens (Crenshaw, 2017). For example, Woodgate and Busolo (2021) explain that it is critical for Canadian educators to create opportunities for youth of refugee backgrounds to share their migration experiences and histories of living in other countries to help them adjust to their new life that will contribute to their evolving sense of who they are. Woodgate and Busolo (2021) suggest that this may counter some of the impact of feeling 'othered'.

In a review of Canadian research, Ratković *et al.* (2017) found that school-based programs to address trauma caused by pre- or post-migration experiences can provide support for students of refugee background. In addition, such programming provides alternatives to health services that are sometimes underused by refugee families or simply not available in certain regions. Art-based programs can foster solidarity, tolerance, and resilience, provide a positive atmosphere where respectful negotiations among peers are encouraged and where new relationships between peers, students and teachers are developed (Ratković *et al.* 2017). Stewart *et al.* (2018) highlight the importance for teachers to listen to the stories of their refugee students and show empathy and respect for what they have experienced. They remind us that all students of refugee background are unique in the way they experience the world regardless of a shared religion or ethnicity. Stewart *et al.* (2018) also remind us that each newcomer's response to trauma is different. Barber (2020) explains that educators need to respect how much information students of refugee background want to share and with whom so as not to overwhelm them. She suggests that when students are ready to share but are still learning fundamental vocabulary, they can be encouraged to tell stories by expressing their emotions through dance, drama, painting and other visual arts.

In an interview study with newcomer youth (Amthor, 2017), the theme of isolation was pervasive with multiple descriptions of academic, social, cultural, and emotional isolation. Amthor states: «The desire of these youth to be seen and understood on their own terms was palpable» (p. 204). In addition, she highlights the need for educators to recognize the dynamic nature of identity positions of newcomers within an intersectionality framework (Crenshaw, 2017; Hankivsky, 2014) and the need for newcomer youth to be able to define themselves within this framework. By doing so, educators can consider the programming afforded newcomer students at school and in the community and begin to see what needs may be going unmet. In Amthor's words,

positioning newcomer youth as agents who seek self-definition and whose identity facets interact in an array of ways with the context of reception are essential contributors to truly heeding their explicit and implicit needs. (p. 204).

As a result of field-engaged studies with children and youth of refugee background as well as the educators who work with them in different parts of Canada, Gagné *et al.* (2021), Johnson and Kendrick (2021), Barber and Ramsay (2020), Stewart and Martin (2018) as well as Cummins and Early (2011) have argued for school-based projects that mesh curricular requirements with students' personal

histories so as to truly reach the potential of culturally-relevant pedagogy infusing multiliteracies and identity-focused or me-mapping pedagogy as well. Engaging children and youth of refugee background in sharing their pre- and post-migration experiences as well as defining themselves through a range of identity-focused activities is of mutual benefit to teachers and learners. Educators need to truly see and know their students while newcomer children and youth need these opportunities to express themselves as school is the main place where they can be recognized and take part in inclusive and equitable practices. As part of their research related to the social and academic integration of children and youth of refugee background, Gagné *et al.* (2020) developed a guide for educators who would like to explore me-mapping pedagogy with their newcomer students.

12.4.5 Caring

In a recent study Barber (2021) found that educators working with students of refugee background understood caring as their central emotional response towards children and what propelled them to action. Caring allows teachers to see what their students need, find ways to meet these needs and observe what is working to ensure the wellbeing of their students on a day-to-day basis. Barber (2021) also speaks of the important role of holistic care that can be witnessed ‘in the moment’ in schools in response to trauma which refugee students may exhibit in various ways. In Barber’s study, there were many accounts of how caring was operationalized to meet the needs of students of refugee background. However, there were also examples of situations where caring was insufficient because of a lack of resources or a breakdown in communication. In her study of government sponsored refugees outside of Montreal, Arsenault (2021) mentions the deep commitment and caring of the many professionals involved in their resettlement. In addition, Ogilvie and Fuller (2016) describe how restorative justice pedagogy can create a caring environment to support students of refugee background.

12.4.6 Giving and receiving

In most Canadian elementary and secondary schools there are several programs that require students to become involved in the school or community as a way to show their care in different ways. For example, all high school students in the province of Ontario are required to complete 40 hours of community service as a graduation requirement. In addition, in social studies and civics classes, there may be projects with a community focus where students have the opportunity to learn new skills, build compassion, and become more responsible citizens.

Barber (2021) points out that creating opportunities for students of refugee background to give back is important. In fact, she observed that many of the students who initially benefit from receiving support of various kinds eventually become those who provide support to others while building their leadership skills, practicing English and feeling valued as members of the community. In addition, Schmitt (2021) describes the dynamic and important relation between receiving social support and reciprocation in the lives of youth of refugee background.

12.4.7 School-community connections

In most urban settings there are numerous ways that schools and the community connect. The hub for these connections is a local settlement organization that typically connects with a network of other organizations to provide settlement services and support counselling including information and orientation to schools, language and other training programs, interpretation and translation, assistance in finding housing, supportive counselling in mental health, parenting and conflict resolution, employment services, accompaniment to appointments, liaising between clients and government agencies, language-specific services, educational workshops in a multitude of languages, assistance with transportation, social drop-in and support circles, and cultural celebrations. Westernoff *et al.* (2021) have organized a book for educators around the notion of the interconnection of the multiple worlds in which newcomer students live including home, school, and community with a focus on practices to elevate the diverse assets and identities of students new to Canada.

Georgis *et al.*'s (2017) RAISED Between Cultures model for working with children and families of refugee background was developed collaboratively by service providers working with refugees, educators, academics and policy-makers. The promising practices identified are intended to guide early years educators to learn about both the challenges and strengths of families and these practices make up the RAISED acronym: 1) Reveal culture, 2) Acknowledge pre-migration experiences, 3) Identify post-migration systemic barriers, 4) Support family and community strengths, 5) Establish connections between environments, and 6) Determine child outcomes together with families.

12.4.8 Newcomer reception centers

Several Canadian urban school districts have newcomer reception centres. For example, the Toronto District School Board has two Newcomer Reception Centres where newcomer families typically spend a day during which newcomer students' English

language skills and mathematics skills are assessed to help local schools determine the appropriate supports to put in place. Each reception centre has multilingual staff to assist students and families including settlement workers to connect families with a variety of support agencies. For examples of how reception centres are described for newcomer families you can visit the websites of school districts such as the Louis Riel School Division in Manitoba or the Edmonton Public School Board site in Alberta.

12.4.9 The Language Instruction for Newcomers to Canada (LINC) program

LINC is a free language training program for newcomers to Canada including refugees but not asylum seekers/refugee claimants. LINC is funded by Immigration, Refugees and Citizenship Canada and provides basic language skills with a focus on topics related to settling in Canada such as housing, banking, citizenship and how to get a job. LINC offers both full-time and part-time classes, and some centres have free childcare. As LINC provides language training with a focus on settlement topics, the adult members of refugee families learn about the Canadian education system and how to interact with the teachers of their children which may have a positive effect on their children's adjustment to school in Canada.

12.4.10 Settlement Workers in Schools (SWIS) Program

The Settlement Workers in Schools (SWIS) Program is also funded by Immigration, Refugees and Citizenship Canada and places settlement workers from community agencies in schools with a large number of newcomer students and in reception centres in order to provide consistent service delivery for newcomer families. Settlement workers in schools contact newcomer students and their families to connect them to available programs and services in the community. They work closely with schools to receive referrals and provide support to families and youth as soon as possible after their initial registration in school. Service areas include information about and referrals to other government settlement services including English or French language instruction for adults, employment and immigration as well as health, housing, parenting, community services and more. Settlement workers provide individual or family services as well as group programs to help participants to understand and to successfully transition into the education system and accelerate their settlement process. They help build a support system for newcomer students, their parents, and school staff to ensure successful learning.

In Gagné *et al.*'s study (2018) many educators mentioned the positive impact of settlement workers in the integration of the children and youth of refugee background that they worked with. In fact, this is the only group that was consistently

viewed as advocating for refugee students helping them navigate between their multiple worlds and their pathway in school. Barber (2021) also mentioned the various efforts made by teachers to show interest in their refugee students' families and culture. For example, some teachers would keep a tea station in their classroom so that some of the mothers who came to read to students at school would feel more comfortable. Most of the teachers believed that after-school activities coordinated with the help of settlement workers that involved parents and their children were very useful. Barber (2021) observed that by learning about Canadian education and culture, and having opportunities to spend time with educators in the school who care for their children, parents became more trusting of the adults in positions of power. Dippo *et al.* (2013) highlight that school-community connections are crucial for war-affected students and displaced communities who are often isolated and stigmatized in underserved and deprived pockets of Toronto.

12.4.11 Teacher education and professional development

Across Canada, ministries of education have recognized the importance of preparing teachers to meet the needs of their diverse students including newcomers to Canada. In fact, some provinces (*e.g.*, Ontario) have mandated a course for preservice teachers to address the specific needs of 'English language learners' understood as students either born in or outside of Canada who need to learn English to be successful at school. In addition, most faculties of education have mandatory courses related to equity and inclusion in schools. Gagné (2021) describes how one graduate level teacher education program has operationalized Ontario's mandate to support all teachers in meeting the needs of its diverse student population including children and youth of refugee background.

Gagné, Schmidt and Markus (2017) describe how they teach about working with children and youth of refugee background in their respective teacher education programs or professional development contexts. They describe the constraints of an overcrowded teacher education curriculum where there is not enough time to devote to working with refugee students. In fact, Kovinthan-Levi (2019) shares the perspectives of preservice teachers' perspectives on their preparation to teach students with refugee experiences. They report an awareness of the needs of these newcomer students but explain that there are not enough opportunities in their coursework and practice to learn how to address the needs of children and youth of refugee background. Markus (Gagné, Schmidt and Markus, 2017) describes the multiple types of professional learning and support available to teachers of newcomer students in the Toronto District School Board which are generally more effective because they are tailored to the needs of in-service teachers in their day-to-

day work with children and youth of refugee background. In addition, Manitoba Education and Training (2015) produced a multimedia resource for teachers called *Building hope: Refugee learner narratives* which has helped teachers across Canada to better understand the migration trajectories of students of refugee background.

As part of a study on the social and academic integration of students of refugee background, Gagné *et al.* (2020) have prepared a guide for teacher educators who would like to infuse me-mapping pedagogy in their work with preservice and in-service teachers. In addition, they have researched the effects of me-mapping pedagogy on future teachers and found that they benefited from learning about newcomer students through an intersectionality lens (Gagné *et al.*, 2021).

Conclusion

The multidimensional educational support model provided in Figure 1 does not adequately capture the dynamic nature of the resettlement process of children and youth of refugee background in schools. The challenges and promising practices described in this chapter do not neatly align with a particular support dimension of the model. The challenges newcomer students face and the support they receive are often interconnected and linked to more than one of the multiple worlds in which newcomer students live including home, school and community.

As such, all the dimensions of the support model need to guide the social and academic integration of children and youth of refugee background keeping in mind the local, provincial and national socio-political context as well as the particular circumstances of the newcomer students. Recognizing that refugee students live in and move across their home, school and community worlds, it is important to support them in navigating the transitions between these worlds throughout their entire educational journey rather than focusing only on their initial reception or participation in schools.

As noted earlier, the synergy between the pre-migration and post-migration experiences of children and youth of refugee background can create challenges for them related to their academic achievement, wellbeing and overall ability to make a place for themselves in Canada. As schools are central in the lives of refugee children, youth and families, it is essential to ensure positive educational experiences for them. Caring administrators and teachers who can see their students through an intersectional lens and work collaboratively with other service providers to implement multidimensional supports can reduce the effects of pre-migration trauma and/or post-migration discrimination and ensure positive social and academic integration experiences for children and refugee youth in Canada.

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PART IV
COMMUNITY ENGAGEMENT

13. Civil society organizations and collective sponsorship of refugees in Quebec

Clothilde Parent-Chartier, Neal Santamaria, and Ian Van Haren

13.1 Introduction

By allowing civil society to become involved in global efforts to combat forced migration, refugee sponsorship is a particularly good example of local civic engagement with transnational ramifications. Groups in Quebec and elsewhere in Canada become involved in selecting and supporting specific refugees for resettlement, and there are global initiatives to implement similar programs in new contexts based on the Canadian model. Although refugee sponsorship has been «depicted as a grassroots movement of civic-minded and compassionate citizens» (Ritchie, 2018, p. 668), experts are now challenging this perception. Scholars and activists argue that governments depend on private and community sectors involved in refugee sponsorship to fulfill its humanitarian objectives without providing adequate support to ensure the program is successful (Labman, 2016; Ritchie, 2018; Hashimoto, 2021). Therefore, although refugee sponsorship programs are heralded as a success, it is important to discuss the need for sustained investment and support for such programming.

This chapter focuses on Quebec to explore the involvement of civil society organizations (CSOs) in the collective sponsorship of refugees. More specifically, what are their roles and some of the challenges they face? We focus on organizations with significant experience in the sector because of their role in facilitating and supporting sponsorships. It is important to study and understand the role of organizations in facilitating migration and providing services to migrants when studying processes of migrant integration (Bloemraad, Gleeson and de Graauw, 2020). In Quebec, civil society organizations receive support from the government, but also often speak out about issues and critique the government's approach to migration (Reichhold, 2010). As we argue in this chapter, successful sponsorship relies on the engagement of many CSOs and the broader public. Continued success requires additional collaboration and investment in organizations, rather than the recent approach taken in the province which limits their work.

Quebec's approach to sponsorship is distinct from other provinces in Canada. Given our focus on the Quebec context, we follow the province's nomenclature and refer to the program as collective sponsorship. This term contrasts with the

Canadian term ‘private sponsorship’ and reflects how the program does not rely solely on private resources. As the only Francophone-majority province in Canada, Quebec negotiated some autonomy over immigrant admissions and complete control over integration funding in the 1991 *Canada-Québec Accord Relating to Immigration and Temporary Admission of Aliens*. Then, in 1997, the province gained additional autonomy over the refugee sponsorship program (CCR, 1998). As the program has evolved in Quebec and the rest of Canada, there are unique characteristics about the process and management of the sponsorship system in Quebec that differ with the rest of Canada (Garnier and Labman, 2020; Van Haren, 2021). In recent years, migration has become a particularly salient issue in Quebec politics (Gagnon and Larios, 2021; Xhardez and Paquet, 2021) and, as we show in this chapter, refugee sponsorship is no exception. Rather, recent changes have considerably transformed refugee sponsorship in the province and exposed some vulnerabilities and opportunities for improvements to the program.

In this chapter, we refer to our own knowledge and experience working and collaborating with CSOs in Quebec. Emphasis will be placed on field observations made by the authors, but also on recent work done by scholars and activists. As for our experience with collective sponsorship, Clothilde Parent-Chartier has been part of a group of citizens who have sponsored refugees in Montréal since 2015. She is also currently conducting research on this topic for her PhD thesis and has been interviewing sponsors, sponsored refugees and people working for CSOs involved in collective sponsorship in Quebec. Neal Santamaria is a researcher and worked for the *Table de concertation des organismes au service des personnes réfugiées et immigrantes* (TCRI) as a coordinator from 2019 to 2021. TCRI is an umbrella organization which represents more than 160 organizations involved with migrants and refugees in Quebec and Neal was significantly involved with sponsorship organizations, sponsor groups and sponsored refugees in Quebec. Ian Van Haren is a researcher of migration policy and refugee resettlement. He has been involved in sponsorship groups in Ontario and Quebec and previously worked for Immigration, Refugees and Citizenship Canada. Each author is writing in a personal capacity and not on behalf of any current or previous employers.

In this chapter, we give an overview of key actors involved in collective sponsorship and explain five key roles within the collective sponsorship ecosystem. Then, we highlight recent developments in Quebec and discuss the specific challenges faced by organizations involved in collective sponsorship. We focus our analysis on how the government has regulated and constrained sponsorship efforts and conclude with a discussion of the implications of the current approach to sponsorship in Quebec.

13.2 Who is involved in refugee sponsorship?

Since its earliest days, civil society has been the foundation of the collective sponsorship program in Canada and religious groups played a particularly important role in the sponsorship program (Cameron, 2021). Today, many non-state actors with diverse missions and roles are involved in refugee sponsorship. In Quebec and the rest of Canada, there is also a program called the Government Assisted Refugee (GAR) program where the state takes full responsibility for resettling refugees identified as needing protection by the United Nations High Commissioner for Refugees (UNHCR) (Garnier, 2018a). As other authors discuss in this volume (*e.g.* Chapter 7), the GAR program helps fulfill the humanitarian commitment of the state. Collective sponsorship is also part of the government's humanitarian response, but one where civil society selects and supports the refugees who receive assistance. This section provides a brief overview of civil society actors involved in sponsoring refugees and supporting the sponsorship system.

13.2.1 Sponsors: groups and organizations

In Quebec, there is a long tradition of refugee sponsorship. The sponsorship program allows individuals and organizations in Quebec to help specific refugees by sponsoring them for immigration to Canada and then providing integration support to these newcomers. In recent years, the provincial government has distinguished between three different types of sponsors: (1) experienced organizations, (2) regular organizations, and (3) groups of sponsors comprised of two to five individuals (MIFI, 2021a). Experienced organizations have at least ten years of experience and are recognized by the Ministère de l'Immigration, de la Francisation et de l'Intégration (MIFI) as being able to sponsor on a regular basis. Most are religious organizations and few community-based organizations. Experienced organizations are rare: there are only five such organizations. Regular organizations are harder to identify as there is no official list of organizations. They include a wide variety of organizations that are involved in assisting refugees alongside other civil society endeavors. When experienced or regular organizations are involved in sponsorship, they submit the documentation to the government on behalf of a local group that will be concerned with the day-to-day logistics of integration. In contrast, sponsorships submitted by groups of two to five individuals do not have any organizational backing but allow groups of citizens or permanent residents to sponsor refugees who they wish to assist.

There are similarities in how sponsorship works in Quebec and the rest of Canada. Across all types of sponsorship applications, sponsors are permitted to

identify the specific refugee who they wish to bring to Canada. Often, this results in sponsoring individuals who are relatives or friends of individuals already residing in their community (Lehr and Dyck, 2020) though not all group members will know the individual or family they are sponsoring. In both Quebec and the rest of Canada, sponsors must demonstrate that they are financially and organizationally able to support the refugees they plan to assist; though there is variation in how this is assessed. Therefore, in both contexts, sponsors select and help integrate refugees.

While the broad structure of the programs is similar, there are some differences between Quebec's collective sponsorship program and the Private Sponsorship of Refugees Program (PSR) in the rest of Canada. Outside of Quebec, there is an established network of organizations called Sponsorship Agreement Holders (SAHs). These organizations are recognized by the federal government and can submit applications through a streamlined application process, though they are limited in the number of applications they can submit each year. SAHs are mainly faith-based organizations or community-based organizations including ethno-cultural groups and non-profit organizations, similar to the organizations that are sponsors in Quebec. SAHs can authorize Constituent Groups (CGs) to sponsor under their agreement. These groups are often based in the community where resettled refugees will be established. SAHs remain responsible for submitting sponsorship applications to Immigration, Refugees and Citizenship Canada (IRCC) and are co-sharing other responsibilities with their CGs (financial, integration and emotional support). In addition, in the rest of Canada, *ad hoc* sponsorships can be submitted when community organizations or groups of at least five individuals come together to submit individual sponsorship applications (Van Haren, 2021).

13.2.2 Organizations that support the resettlement process

There is a vast community of organizations in Quebec and other parts of Canada that play important roles in supporting refugees who arrive through collective sponsorship. Some of these groups are also involved in efforts to advocate for refugees and coordinate support to refugees and other newcomers. In Quebec, the TCRI is a regional non-profit umbrella organization for migrant-serving organizations. One aspect of their work includes supporting sponsoring groups and sponsored persons at various levels (Reichhold, 2010). Similar organizations are found in other provinces, including Ontario Council of Agencies Serving Immigrants (OCASI) and The Manitoba Association of Newcomer Serving Organizations (MANSO). These organizations have significant expertise in refugee resettlement and, more broadly, supporting migrants. At a pan-Canadian level,

the Canadian Council for Refugees (CCR), represents over 200 organizations nationwide. Their general mission is to defend the rights of refugees and other vulnerable migrants in Canada and around the world. The CCR engages with the federal government on migration issues and has working groups that focus on issues of resettlement and integration.

The provincial government in Quebec spends significant amounts of money each year to fund external organizations or government agencies that provide services for migrants including language training and job coaching. For example, in 2016-17, the federal government transferred \$490 million to the provincial government for settlement services (IRCC, 2020). The provincial government then funds different types of organizations for different programs. Programs on French language and culture are generally offered by community-based organizations or educational institutions, whereas employment programs are funded through the provincial government's employment agency. Such organizations focus on implementing government programs for migrant integration and are less flexible in creating new initiatives (Bachelier *et al.*, 2020).

In contrast, community-based and religious organizations also offer support to newcomers. There is significant variation in the type of the services offered, often providing services the government does not offer or focusing on newcomers who face challenges accessing government programming. Some of these organizations are involved in collective sponsorship programs as one of their portfolios. As these organizations are relatively autonomous in the services they provide (Garnier, 2018b), they generally operate outside of the provincial government's integration and resettlement framework (Reichhold, 2010; Bachelier *et al.*, 2020; Dejean, 2020).

13.3 The role of civil society in collective sponsorship

In this section, we provide a brief overview of the main roles of the civil society in collective sponsorship to demonstrate how the different types of organizations play different roles in the process. We focus on five main roles of CSOs in sponsoring refugees. The first three focus on the selection of integration of individual refugees or their families, whereas the latter two speak to the long-term sustainability of the program.

13.3.1 Identifying refugees for sponsorship

As a voluntary program, collective sponsorship initiatives require that groups form with the mission of sponsoring specific refugees. Groups can identify who

they want to sponsor based on their own criteria and may consider a variety of criteria in this decision. Some groups focus on members of the same ethnic or religious community, others on helping refugees who have family or friends in Canada (Lehr and Dyck, 2020; Morris, Lenard and Haugen, 2021). Given the financial requirements of sponsorship applications, groups must ensure they have the funds necessary to support the individual or family they sponsor. In some cases, organizations that regularly sponsor refugees will provide some funds, but in Quebec's Groups of 2 to 5 individuals collective sponsorship program, the group members must show their capacity to support the refugees they will assist. The process of submitting applications requires extensive paperwork, and it can be challenging for groups without experience to navigate this process, particularly if they are not adept with filling out French-language forms. After this application process, for a visa to be approved, the sponsored refugee must meet the legal requirements for admission to Canada which is assessed by Canadian officials working at diplomatic missions.

13.3.2 Providing essential support for resettlement and integration

All actors mentioned above can play a role in resettlement and integration, but the collective sponsorship program emphasizes the role of the sponsor group. When groups submit applications to sponsor refugees, they complete a worksheet that identifies how group members will support the newcomers' integration into Quebec society. The government's view is that sponsors are the 'primary providers' for sponsored refugees through the first twelve months after the refugees arrive in Canada (ARI, 2019). Government-funded and community-based organizations offer some support as they already work with immigrants and other refugees. However, these organizations may be unequipped to adequately help sponsors or sponsored refugees that experience specific issues related to sponsorship including when resettled refugees encounter difficulty receiving financial or material support from their sponsors. Experienced sponsor organizations in Quebec and SAHs elsewhere in Canada have specific expertise relevant to collective sponsorship and are often in a better position to support sponsors and sponsored refugees than government-funded and community-based organizations that have a broader mission and less knowledge of the sponsorship process.

13.3.3 Providing informal support

One strength of the collective sponsorship program is the availability of informal support to sponsored refugees. In contrast to formal support which includes find-

ing employment or receiving assistance with government paperwork, informal support includes peer-to-peer support including invitations to social events or telephone calls or informal visits. Such assistance is considered very helpful by many sponsored refugees. Government documents also identify moral support as a formal responsibility of sponsors (TCRI, 2021). Some sponsorship organizations and other CSOs involved in sponsorship organize cultural and social events like apple-picking, regional tourism, or Christmas dinners. This aspect of settlement support can be perceived as secondary to essential needs. However, studies reveal how isolation and lack of social networks diminish the overall resettlement experience, even if financial and basic needs are fulfilled (Hanley *et al.*, 2018). Therefore, individuals who are sponsors or volunteers contribute to social support and social networking, which increases social capital and has a positive impact on overall well-being (Vatz-Laaroussi and Charbonneau, 2001; Hanley *et al.*, 2018; ARI, 2019). Less ‘formal’ organizations, like religious groups, provide informal and emotional support to newcomers. For example, Dejean, Richard and Jean (2019) show that some immigrants acknowledge the essential guidance provided by religious communities in terms of building social networks in the host society.

13.3.4 Training

To ensure long-term sustainability of collective sponsorship and positive integration outcomes, providing training to current and prospective sponsors is essential. In Quebec, the TCRI is the only organization that officially provides training to sponsors and sponsored refugees. However, not all sponsors are familiar with or use the assistance of the TCRI. Some Service Provider Organizations (SPOs) have been trained by the TCRI so they could more effectively support sponsored people (and sometimes sponsors) in need of their services. However, all these various training sessions are not always sufficient if they are not followed up with follow-up discussions and monitoring. Some experienced sponsors have the means and resources to provide training to groups that work with them, but this is not always the case and particularly rare with groups of individual citizens doing sponsorship alone or at recognized groups with less experience in sponsorship. In the rest of Canada, the Refugee Sponsorship Training Program (RSTP) is funded by IRCC and a central source of information for anyone involved in refugee sponsorship. The program offers free services online, including training sessions, workshops on various aspects of sponsorship and other immigration issues, tools for sponsors and even personalized support. While they have local staff in many large cities across the country, the RSTP is not available in Quebec.

13.3.5 Advocacy and outreach

Organizations as well as individuals involved in sponsorship often participate in efforts to advocate for improving the collective sponsorship program and protect the rights of refugees across Canada. Advocacy on behalf of refugees and their supporters in Canada is at the core of CCR's mission. CCR and other umbrella organizations, notably the TCRI in Quebec, act as representatives of civil society before the state. In addition, a group of sponsorship organizations and sponsors in Quebec formed the Réseau des organismes et des groupes de parrainage au Québec (ROGPRAQ) in 2016 to advocate for a sustainable approach to collective sponsorship in Quebec. These different umbrella organizations raise issues, suggest policies changes, and inform the government of the needs of their members.

Individuals involved in sponsoring or assisting refugees also act as advocates for refugee sponsorship and refugee protection among family, friends, and colleagues. On a large scale, such interventions contribute to changing views on refugees in broader society as individuals show their solidarity with refugees around the world and challenge unwelcoming attitudes towards refugees in various ways (Bond, 2021; Lim, 2019). These different forms of advocacy are important because, as discussed in the next section, aspects of the sponsorship program face challenges or restrictions in Quebec.

13.4 Current issues in Quebec's collective sponsorship program

Immigration and integration policy has become particularly politicized in Quebec in recent years, and the 2018 election saw a result where a party that campaigned on limiting migration came to power. While campaigning, now-Premier François Legault tweeted his now-famous phrase: «Immigration: En prendre moins, mais en prendre soin» (Immigration: Take fewer but take better care) to describe his position. The election of his party, the *Coalition Avenir Québec* (CAQ), continued a move towards more restrictive immigration policies and a strong focus on recruiting francophone migrants that work in high-skill occupations that are well paid. However, Quebec is also experiencing acute labor market shortages and many businesses have lobbied the government to increase migration. Following Legault's slogan, the CAQ implemented a decrease in the number of immigrants and resettled refugees coming to Quebec under the pretext that Quebec must better integrate newcomers. To decrease refugee resettlement, the government has taken an unpredictable approach from year to year on how the program will accept new sponsorships and, in so doing, undermined some of the core organizations that are central to the long-term success of the program.

13.4.1 Limiting New Sponsorships

Quebec's ministry of immigration (MIFI), controls who is eligible to sponsor refugees and how the submission process is managed. Before the 2018 election, when the Quebec Liberal Party was in power, the government began to implement limits on the number of new applications that could be submitted. At the time, they justified this decision by the need to tackle the backlog of sponsorship applications caused by the processing of Syrians applications in 2015-2017. Following the election, with the CAQ government, the limits on sponsorship became more severe.

The process of sponsoring a refugee requires multiple steps. Statistics at the provincial level provide information on the number of applications at the beginning of the process when applications are first received and, after the in-Canada and overseas processing of the applications, the number of sponsored refugees that arrive in Quebec each year. First, the province controls the number of new applications that it will approve to be sent to the federal government for overseas processing each year and, since 2017, limits on intake are used to control the number of new applications. If the provincial government approves the initial sponsorship request, it is forwarded to the federal government for processing at overseas visa offices. This can often be a multi-year process due to the complexity of in-person interviews at refugee camps and medical exams and background checks. If applications are approved, the sponsored refugees travel to Canada after a final confirmation with the Quebec government. At this stage, the number of arrivals is tracked by the province. Figure One shows the number of arrivals in Quebec through the collective sponsorship program and through the government-assisted program from 2002-2019. It shows how the number of sponsored refugees increased significantly following a broad social mobilization to support Syrian refugees in 2015.

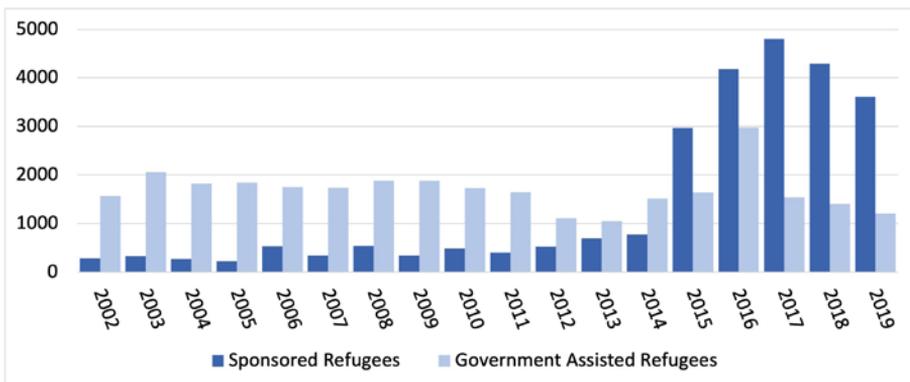


Figure 1: Number of New Immigrants in Quebec in Refugee Resettlement Programs, 2002-2019 (MIFI, 2021b).

To limit the number of arrivals, the provincial government has decreased the number of new applications that are accepted and forwarded to the federal government. The timeline in Table 1 shows the evolution of the program in Quebec since the government closed the program to new applications in January 2017. At that time, less than three weeks' notice was given to groups about the closure of the program, which prompted a rush in submitting applications before the deadline. From then on, the program remained closed except for three specific times where new applications could be submitted. In 2018 and 2020, the program was reopened on a limited basis and only a small number of applications were accepted. People who wanted to sponsor refugees had to line up in front of the MIFI's offices to be among the first to submit their application. Among those applying in the Group of 2 to 5, spots were attributed according to a 'first-come, first-served' basis which created intense competition and disparities between sponsors. For example, those who lived in rural areas encountered a complex and expensive submission process when required to use a private courier that would queue in front of the MIFI's office in Montréal. When the MIFI re-opened the program in 2020, they overlooked recommendations made by ROGPRAQ after 2018 including the abolition of the courier system. Therefore, with similar limits on the number of applications that could be submitted, some people waited for up to four days to later learn their application was not selected for further processing because the cap was reached within the first hour. In addition, since the government required applications be deposited by private courier companies which raised their prices, some people had to pay thousands of dollars to submit applications. Allegations of corruption, extortion and fraud related to the courier system were numerous and the TCRI and many sponsor groups criticized how the government managed these submission processes.

In October 2020, the Quebec government unilaterally suspended the sponsorship program for all recognized and experienced sponsor groups. Consequently, organizations that had sponsored refugees for dozens of years were unable to do so for the following year. Allegations of irregularities committed by some organizations were given as an official justification, but there was no official explanation of the nature of these irregularities or how many organizations were allegedly implicated at this time. This exclusion of experienced and regular sponsor organizations shocked members of the civil society; contravened previous recommendations for tackling issues related to fraud; and placed responsibility for submitting new applications solely on groups of sponsors, many of whom were inexperienced with navigating the application process.

Given the suspension of recognized and experienced sponsor groups, in April and May 2021 only groups of 2 to 5 citizens were allowed to submit sponsorship applications. To manage intake, the Quebec government implemented a lottery system to randomly select 750 applications to be processed. Although there were benefits to this approach over the race to line up outside the immigration ministry's offices as in 2018 and 2020, the approach had negative outcomes including family separations. For example, since all adults over the age of 22 must be placed on separate applications, elderly parents and adult children could be separated in the draw, with one selected and others not chosen. Another issue was a policy change where people with more modest incomes were no longer eligible to sponsor due to changes in how income thresholds for sponsorship were calculated that excluded spousal income.

The TCRI, ROGPROAQ and some sponsorship organizations denounced the approach to random selection and exclusion of long-standing sponsor organizations. Many sponsors and sponsored families spoke openly about the raw consequences it has had on their lives. Some opposition politicians and members of civil society organizations not directly involved with collective sponsorship provided support. The overall feeling among sponsorship organizations, sponsors, sponsored refugees and others was that the government's approach contravened the humanitarian objectives of refugee sponsorship. Government officials have indicated that about 1500 applications were received in 2021 but only 750 were selected through the random draw. Therefore, only about half of the groups that were ready to sponsor a refugee were permitted to do so. The result is that members of unselected groups live with the stress that the refugees they wish to assist – often their family or close friend – remain in a refugee situation without any clear sense of future opportunities due to the provincial government's selection process. At the same time, some refugees who were selected in the draw might not end up arriving in Quebec if their application is later found ineligible as no replacement spots are provided for those not selected.

In October 2021, after having completed their investigation, the MIFI announced the suspension of eighteen organizations involved in sponsorship. The investigation indicated these organizations had committed fraud and that many sponsored refugees had not received the material and financial support they were entitled to (Schué, 2021). The suspended organizations were suspended for a period of two years. At the same time, the government announced the program would reopen again on a limited basis in January 2022, where non-suspended groups will be able to submit applications. It is expected the lottery system will be used again, even for organizations that normally had a number of «guaranteed»

applications they could submit each year. In total, 825 applications will be selected for processing by the MIFI, including 400 for non-suspended organizations and 425 for Groups of 2 to 5 individuals (MIFI, 2021c).

An application can include up to two parents and all children under the age of 22. Adult children or siblings must be on separate applications.

Table 1: Timeline of policy approach to refugee sponsorship in Quebec since 2017.

Until January 27, 2017

- No limits on application submitted.

January 28, 2017 to September 16, 2018

- No applications accepted.

September 17, 2018

- 100 applications accepted in the Group of 2 to 5 individuals program on a first-come, first-served basis and 650 applications accepted from experienced or regular organizations.

September 18, 2018 to January 19, 2020

- No applications accepted.

January 20, 2020

- 100 applications accepted in the Group of 2 to 5 individuals program on a first-come, first-served basis and 650 applications accepted from experienced or regular organizations (see the breakdown in Bossé, 2020).

January 21, 2020-April 5, 2021

- No applications accepted.

April 6 to May 5, 2021

- 750 applications accepted in the Group of 2 to 5 individuals which were randomly selected from all applications submitted. No applications from organizations accepted.

May 6, 2021 to January 17, 2022

- No applications accepted.

January 18, 2022 to February 16, 2022

- 825 applications selected for processing: including 400 from organizations and 425 in the Group of 2 to 5 individuals.

Note: This table reflects government announcements up to December 2021. An application can include up to two parents and all children under the age of 22. Adult children or siblings must be on separate applications.

All these elements have important repercussions on the role played by sponsorship organizations in the province of Quebec. The frustration generated by the banishment of longstanding sponsor organizations from the sponsorship program in 2021, the lottery-system and the annual caps have contributed to a growing political and civic engagement that is channelled through community organizations. For example, when humanitarian crises occur and are particularly well publicized in the media, there is a strong resurgence of interest in collective sponsorship. However, the imposition of annual quotas and restricted timeframes for submitting applications in Quebec limits the ability of civil society to act quickly in response to emergencies. In 2021, the changing political situation in Afghanistan made some groups eager to act, but as the collective sponsorship program was closed from early May 2021 until January 2022, citizens were unable to submit sponsorship applications for Afghans. In the rest of Canada, there are no such limits that prevent sponsor groups from submitting new applications.

13.4.2 Challenges in Integration Support

Once refugees arrive in Quebec, a network of organizations provide integration assistance. As mentioned, the goal of the collective sponsorship program is to ensure the sponsor group primarily coordinates this assistance for the refugee or refugee family they have chosen to assist. This has benefits – such as the availability of informal and personalized support to newly-arrived refugees – but also drawbacks, including the lack of familiarity that some sponsor groups may have with institutional and organizational support available for newcomers. Sponsors are volunteers and may have limited knowledge about the immigration service sector, particularly if they have not partnered with an organization that works in this area to submit the sponsorship application. In contrast, if the sponsorship was submitted with the help of an experienced or regular sponsor organization, the sponsor and sponsored refugee should have access to organizational resources and expertise. This complex situation prompts a discussion of the challenges that some sponsored refugees face in Quebec and a reflection on the support available to organizations that serve refugee newcomers.

One of the most significant challenges in sponsorship is when the relationship between sponsor and sponsored refugees breaks down or when the sponsored refugee does not access services that would help them adjust to life in Quebec. Research on the integration of refugees who arrive in Quebec through the collective sponsorship program has identified significant variation in the support that is provided to newcomers and acknowledged that in some cases, the support provided to sponsored refugees is insufficient (Blain *et al.*, 2019). For sponsorships

submitted in the Group of 2 to 5 individuals sponsorship program, there is no officially designated organization to provide support in the case of a sponsorship breakdown. However, even in cases of sponsorships facilitated by long-standing sponsor organizations there can be difficulties detecting these issues.

Overall, sponsored refugees access government-funded settlement services at a lower rate than refugees who arrive through government-supported programs (ARI, 2019). One contributing factor to this difference is that sponsored refugees often have higher levels of education and an easier time adapting to the labor market in Quebec. However, it is important to ensure that newcomers who would benefit from the services the government provides take advantage of these opportunities. At times, groups who have sponsored refugees in the collective sponsorship program assume that they cannot access these programs, or the government-funded agencies assume that sponsored refugees are not eligible for these services (Blain *et al.*, 2019). At the same time, as Hanley and colleagues (2018) argue, cultural preferences can reduce the likelihood of asking for assistance outside the familial network. Therefore, for sponsors and service providers: «there is a need to provide education on the role of public services and community groups, promoting the concept of such services as a right or an entitlement» (Hanley *et al.* 2018, p. 144). Improving access to resettlement organizations can help reduce the degree of dependence of sponsored refugees towards their sponsors.

In order to ensure that refugees arriving in the collective sponsorship program access the services available to them, sponsor organizations and other community-based organizations have a key role to play. Quebec relies on nonprofit organizations to respond to the needs of sponsored refugees (Reichhold, 2010). These organizations have established knowledge and capacity resulting from continuous efforts made by organizations to establish mutual trust between themselves and the population. Individuals working for sponsorship organizations and other community organizations have a range of skills that often allow for flexibility responses to specific issues encountered by newcomers. At the same time, by outsourcing care and resettlement services to community partners, the government benefits from their valuable expertise while limiting expenses, particularly when considering lower salaries and the non-unionized workforce in CSOs (Reichhold, 2010; Bachelier *et al.*, 2020; Gilbert *et al.*, 2013).

Relationships between the governmental authorities and non-state actors involved in collective sponsorship require mutual respect and shared objectives in order to succeed. Unfortunately, communication between organizations involved in sponsorship and the government has proven to be difficult since the election of the CAQ government in 2018. Although there are occasional meetings between

government officials and the TCRI, they are sporadic and often organized to make announcements on program changes that have already been confirmed, which shows a top-down approach rather than an objective of partnership and consultation. In the rest of Canada, there are meetings between the CCR and government officials as well as the SAH Council, which is like the ROGPRAQ. As with in Quebec, it appears that the responsiveness of the government to such advocacy varies depending on the political party in power and its approach to migration policymaking.

Rather than increasing barriers to sponsorship, MIFI could resume regular consultation with representatives of sponsoring groups and organizations, as was the case prior to 2017. Most of these organizations have valuable expertise in how to best facilitate the integration of sponsored people in Quebec. It could be useful for MIFI to create opportunities for less experienced sponsorship organizations and individual sponsors and sponsored persons to learn from the experience of non-governmental services that can provide information and accompaniment.

13.4.3 Monitoring, support, and training

The ROGPRAQ and TCRI, as well as some other sponsorship advocates, suggest increased training and oversight would help ensure a successful and beneficial collective sponsorship program in Quebec. At present, the provincial government aims to ensure refugees receive adequate integration support by requiring sponsor groups to have sufficient finances and create a plan for integration support when they submit their sponsorship applications. However, regular follow-up with all sponsors could be put in place to support, advise, and facilitate the accompaniment of sponsored persons by their sponsors. Sponsors are often not professionals and may need support to accompany refugees with sometimes complex life paths and challenges. It is important that this new kind of monitoring does not take the form of an administrative control that could penalize resettled refugees or sponsors.

The paradox of the recent approach in Quebec is that the provincial government undermined the organizations best positioned to ensure the successful integration of sponsored refugees. Relationships between sponsors and sponsored refugees are often complex as there is an inherent imbalance of power where sponsored refugees are dependent on their sponsors. Training and oversight can help address this challenge. Experienced sponsor organizations are key to help navigate these relationships, as they have significant experience in navigating the sponsor-sponsored refugee relationship. Professionals who work for these organizations must respect ethical relationship boundaries in line with their code of

conduct which is crucial in assessing difficult situations and suggesting solutions (Lim, 2019). However, by prioritizing individual sponsorships in the Group of 2 to 5 program rather than on facilitating sponsorships through experienced and recognized sponsor groups, the Government of Quebec limited opportunities for experienced groups to ensure that the responsibilities of sponsorship are met. In many cases, experienced sponsor support individual groups that submit sponsorship applications. However, unlike the approach elsewhere, in Canada where the local group would be listed as a constituent group and the recognized sponsor organization a SAH, the provincial government does not formally encourage such partnerships and cannot track which organizations are there to support the refugee once they arrive should the sponsorship break down.

There are also opportunities to improve the plan that sponsor groups establish for refugee integration. When compared to the availability of training and support provided to sponsors elsewhere in Canada through the RSTP, very little is offered to sponsors in Quebec. Incorporating training by the TCRI or recognized sponsor organizations as part of the sponsorship process could strengthen the integration process for sponsored refugees. Within this training process, there could be a greater emphasis on an integration plan that goes far beyond the single worksheet that is currently required. In the future, if the government consults and collaborates with the sponsorship community that has for many years ensured successful resettlement outcomes, there are opportunities for enhanced collaboration where sponsored refugees are assisted by civil society as they adapt to life in Quebec.

Conclusion

Explaining the role of civil society in collective sponsorship is complex due to the diversity of actors involved in collective sponsorship of refugees. Our aim was to offer a brief overview of the main non-state actors involved and highlight how they provide support and services to guarantee the well-being of sponsored refugees. In short, sponsors are responsible to identify refugees abroad and offer formal and informal support for resettlement and integration to sponsored refugees. This occurs in a broader context where individual sponsors can rely on organizations that have knowledge about resources available to newcomers. However, the recent trend in Quebec has minimized the role of experienced and regular sponsor organizations to prefer individual sponsorships. Although experienced sponsors and the TRCI have advocated for improvements to the program, their suggestions have not been incorporated by the government in recent years. In the

future, improvements could be made to ensure successful sponsorship by creating greater access to training to all sponsors and sponsored refugees. In addition, if the government wishes, it could work with sponsor organizations to establish a process to accompany and support sponsors to ensure refugees arriving in the program are adequately supported after they arrive in Quebec.

As we have demonstrated, the role of individual and organizational sponsors goes well beyond basic service delivery at the initial phase of any sponsorship process. In order to better accompany sponsored refugees, organizations that are involved can play different roles such as mediators, advocates for refugee rights and initiators of policy changes. However, to fulfill these tasks, sponsor organizations require support and collaboration with the provincial government. In collective sponsorship programs, the state puts complex responsibilities on ordinary citizens to fulfill humanitarian obligations. Collective sponsorship provides opportunities for individuals to become involved in social change and supporting refugees, but the state has an important role to facilitate and ameliorate this process. Therefore, continued investment and collaboration from the government should be given to organizations who are involved in sponsorship to ensure ongoing success of the program.

Acknowledgments

The authors would like to thank Stephan Reichhold for reading and commenting on an earlier version of this article.

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14. Solidarity with US-Canada border-crossers: community engagement with asylum seekers in Quebec since 2017

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14.1 Introduction

Between 2017 and 2020, Canada experienced a significant increase of asylum claims. Many claims were made at the US-Canada border at places that were not deemed legal ports of entry to Canada according to the US-Canada Safe Third Country Agreement. Most claimants arrived in the Province of Quebec (Boyd and Ly, 2021, p. 107). The entrants were labelled «illegal border-crossers» in public and political discourse (Duncan and Caidi, 2018), yet their arrival also triggered support in Quebec's civil society (Pitre, 2018; Hanley, *et al.*, 2021). Many border-crossers went on to work in health care and manufacturing jobs which were labelled «essential» during the COVID-19 pandemic (Hanley *et al.*, 2021, p. 131). In recognition of their contribution, Quebec's Premier François Legault nicknamed these workers «guardian angels» (Larin, 2020). A new pathway to permanent residency for asylum-seekers working in essential jobs was established (IRCC, 2020c; 2020b). However, eligibility criteria for this pathway were very narrow. In response, civil society groups advocated for the granting of legal permanent residence to all non-status migrants, arguing that «we are all essential» (Cameron, 2020).

While some advocacy organizations were long-established, others were created as asylum claims increased. Moreover, solidarity occurred at different scales. Some solidarity action took place right at the border while others aimed for broader mobilization. And while all organizations broadly insisted on their solidarity with asylum seekers, they did not all use the same language. To investigate these elements, our chapter analyzes the solidarity discourse of four civil society organizations which played a key role in supporting asylum seekers at various levels in the Province of Quebec. In light of recent refugee and migration scholarship, the chapter argues that solidarity is a polysemic concept and that its understanding can change over time.

The next section briefly provides context on key events from the Roxham Road crisis to the labelling of asylum-seekers as 'guardian angels' by Quebec's Premier. It is followed by a presentation of four civil society organizations which played a key role in supporting asylum-seekers since 2017: the Canadian Council

for Refugees (CCR), the peak refugee advocacy body in Canada whose office is located in Quebec's largest city, Montreal; the Table de concertation des organismes au services des personnes réfugiées et immigrantes (TCRI), Quebec's provincial umbrella network representing settlement services for migrants and refugees, which is also located in Montreal; Solidarity Across Borders, an activist organization formed by migrants and allies supporting migrant rights, based in Montreal as well; and finally Bridges Not Borders, a local group which established itself in Hemmingford, Quebec at the Canada-US border to provide assistance to asylum-seekers. Drawing on Bauder and Juffs's (2020) typology, we then distinguish between four working definitions of solidarity. We analyze the four civil society organizations' mandates and asylum-seekers advocacy from the Roxham Road crisis, in 2017, to the 'guardian angels' permanent residency pathway announced in 2020, in light of these definitions. The last section discusses findings and makes connections with European experiences.

14.2 Context: key events from the Roxham road crisis to 'guardian angels'

Following the election of US President Donald Trump in November 2016 with an anti-immigration platform, many migrants in precarious situations in the US made their way to Canada to claim asylum. Yet it was impossible for them to claim asylum at official border crossings, as it is prohibited by the Safe Third Country agreement (STCA). Since the adoption of the STCA in 2004, people who have claimed asylum in either the USA or Canada cannot go on to claim asylum in the other STCA country as it is considered 'safe' and thus free of persecution (IRCC, 2020a). As such the STCA features similarities with the European Union's Dublin Regulations.

However, the STCA does not prohibit making an asylum claim after crossing the border outside of official ports of entry. This had occurred before 2016, yet crossings outside of border posts, and subsequent asylum claims in Canada, sharply increased at the end of winter 2016-2017, reaching a peak in July 2017 (Boyd and Ly, 2021: 102 and see figures on the event timeline in annex). Most crossings occurred in Quebec at the so-called Roxham Road which starts just north of the US-Canada border between the Province and the State of New York, in the municipality of Saint-Bernard-de-Lacolle. Our event timeline (in annex) shows that the peak of border crossings was followed by the establishment of federal initiatives to exchange information regarding the migration flows, such as the Ad Hoc Governmental Task Force in August 2017. Over the following

months, the federal and provincial governments (of Quebec and Ontario especially) embroiled themselves in dispute over responsibility for the cost of hosting border-crossers (Paquet and Schertzer, 2020).

The increase of border crossings caused concern in public opinion as well as demonstrations of both opponents and supporters of the border-crossers, particularly in Quebec (Boyd and Ly, 2021). Ahead of Quebec's 2018 provincial election, future Premier Francois Legault denounced «migrants [...] flouting the law» and demanded that the federal government harden border controls (Laframboise, 2017). As our event timeline shows, in August 2017, Montrealers rallied at the Olympic Stadium to welcome the border-crossers, who were provided emergency accommodation there. A few weeks later, members of Quebec's right-wing and fascist groups gathered at Roxham Road to protest against asylum seekers crossing the border and did so again in Spring 2018. There were confrontations between right-wing and left-wing protesters in 2018 and 2019 (Campbell and Kovac, 2019).

Regarding immigration, other issues dominated the provincial political agenda in the following years, especially immigration levels and the issue of a 'Quebec value test' to be eligible for permanent residency in the Province (Lau, 2019). Yet the border-crossers came back to the fore of media attention after the closing of Roxham Road due to the COVID-19 pandemic in Spring 2020, and when it became known that many of those who had settled in Quebec had become workers in COVID-stricken health facilities in jobs such as health support workers, security staff and cleaners at great personal risk. Former «illegal border-crossers» were now labelled 'guardian angels' and in late 2020, a special Permanent residency program was crafted for some of these «essential workers» (Larin, 2020). However, eligibility criteria were very narrow, particularly in the Province of Quebec¹³.

Refugee and migrant advocacy groups had strongly mobilized to defend border-crossers and they now mobilized to advocate for an expansion of the Permanent Residency pathway (Cameron, 2020; Zogalis, 2021). Thus, throughout the entire period, civil society advocacy groups expressed their solidarity with border-crossers. The following section presents four Quebec-based civil society organizations advocating at the local, provincial, and federal level.

¹³ For instance, only a number of specific, directly health-related jobs meet the eligibility threshold, and applicants need to have worked at least 120 hours between specific dates. A raft of documents has to be supplied to support an application and these can be hard to access (Gervais 2021).

14.3 Civil society support for asylum seekers in Canada and Quebec: four cases

Civil society support for asylum seekers and refugees in Canada is deployed at different scales. We have chosen four organizations who played a key role in supporting asylum-seekers during this period at different scales of action and advocacy.

At the national level the Canadian Council for refugees (CCR), created in 1978, is a non-governmental umbrella organization committed to the protection and the rights of refugees, asylum seekers and other vulnerable immigrants in Canada (CCR, 2021a). It makes regular public statements and publishes press releases on issues regarding asylum seekers and refugee rights. For instance, CCR has actively supported the suspension of the Safe Third Country Agreement (see for instance CCR, 2017c, 2017e; 2018b, 2018c, 2021c). CCR acts as an advocate and an informant for its members; the membership of CCR is composed of many organizations across Canada that are involved in the protection, sponsorship and settlement of immigrants and refugees. As of October 2021, CCR had 207-member organizations¹⁴, including 42 organizations in the Province of Quebec (CCR, 2021b). These non-profits operate at the provincial or local level with various mandates, such as the reception and integration of immigrants and refugees, language teaching, job search assistance, assistance in finding housing, administrative assistance with sponsorship applications and advocacy for the right of refugees and asylum seekers.

Most of these community groups are also members of TCRI, a central actor in civil society support in the Province of Quebec. TCRI is, like the CCR a non-profit umbrella organization, but it exclusively operates at the provincial level. It was established in 1979 and is itself a CCR member (TCRI, 2021a). As of October 2021, TCRI represented 139 community and local organizations working with all categories of newcomers in Quebec¹⁵. TCRI is dedicated to supporting and defending the rights of refugees and immigrants across the Province. As an umbrella organization, its mandate is also to support, inform and facilitate the cooperation of its members (TCRI, 2007). Among other things, TCRI issues press releases and letters to express its views on current issues and publishes newspaper articles and research reports.

¹⁴ The members list can be found here: <https://ccrweb.ca/en/members>; own calculation.

¹⁵ The members list can be found here: <http://tcri.qc.ca/membres>; own calculation.

Other actors in civil society in Quebec are operating at a more local scale but are not members of TCRI or CCR. This is the case of Solidarity Across Borders, an activist organization supporting migrant rights, based in Montreal and active since 2003 (Solidarity Across Borders, 2018c). Solidarity Across Borders, formed by migrants and allies, organizes frequent mobilization activities such as protests, marches (mainly in Montreal) or at the US-Canada border. One of their main campaigns, *Status For All!*, has been ongoing for more than a decade and advocates for a full and comprehensive regularization program for all migrants in Canada (Solidarity Across Borders, 2011). Solidarity Across Borders also supports open borders and freedom of movement for people seeking asylum (see for instance Solidarity Across Borders, 2019).

CCR, TCRI and Solidarity Across Borders were well-established long before the surge in irregular crossings at the Canada-U.S. border from 2017 and the issue of essential migrant workers in Quebec during the global pandemic, and continued to manifest their support to asylum seekers and other vulnerable immigrants after 2017. However, some advocacy groups were created as a direct result of civil society activism to support asylum seekers in 2017 and the following years. This is the case of Bridges Not Borders, a local group created in 2017 in Hemmingford, a municipality of less than 800 inhabitants at the Canada-U.S. border, to provide assistance to asylum seekers irregularly crossing the border at nearby Roxham Road (Bridges Not Borders, 2021a). The group of citizens who established Bridges Not Borders was concerned about the welfare of these immigrants, the reasons of their crossing into Canada and the manner in which they were received. Up until the pandemic-driven border closure in 2020, Bridges Not Borders offered direct material support to asylum seekers at the border and reported daily about its actions on its website (Bridges Not Borders, 2021b). The border closure led Bridges Not Borders to change its course of action since there were no more newcomers to support. Instead, the organization entirely focused on advocacy at all political levels by writing letters to ministers and op-eds in the local newspaper (see for instance Bridges Not Borders, 2020a) and general information-sharing for refugees, and about refugee issues (see for instance Bridges Not Borders, 2021c).

It can be argued that CCR, TCRI, Solidarity Across Borders and Bridges Not Borders, by advocating on behalf of asylum-seekers, supported solidarity with the border-crossers, yet this does not necessarily mean that the four organizations shared the same understanding of solidarity. In the next section, drawing on recent immigrant and refugee scholarship, we offer a detailed analysis of the ways in which the four civil society organizations expressed and promoted solidarity.

14.4 Analyzing solidarity: approach and methodology

An expanding body of refugee and migrant studies scholarships contends that solidarity is a polysemic concept that can be exclusionary as much as inclusionary (see *e.g.* Birey *et al.*, 2019; Bauder and Juffs, 2020; Schwiertz and Schwenken, 2020). In the context of the European ‘refugee crisis’, empirical analysis of migrant solidarity initiatives show how the latter can both break and reinforce borders between local residents and newcomers (see for instance Togral Koca, 2019).

Drawing on a range of social sciences and humanities studies, Bauder and Juffs (2020, p. 48) differentiate between six types of solidarity: solidarity as group loyalty; indigenous solidarity; self-centered solidarity; emotional reflexive solidarity; rational reflexive solidarity; and recognitive solidarity. Solidarity as loyalty ‘privileges the relations to people within a social group, while justifying the exclusion of others. This type of solidarity often reproduces existing practices of inclusion and exclusion’ (ivi, p. 49). Indigenous solidarity builds upon common experiences as oppressed groups. Self-centered solidarity involves the «calculated and self-interested action» (ivi, p. 50) of individuals and societies. It focuses on ensuring the prosperity of the self, and often centers on agents of the state «expres[ing] and act[ing] in solidarity with other nation states» (ivi, p. 55). Emotional «reflexive solidarity» is driven by individual moral principles especially compassion and centers on «mutual understanding, sympathy, and empathy». By contrast rational reflexive solidarity is understood as a universal moral obligation: we are all part of a single community, a shared humanity (ivi, p. 50). Recognitive solidarity frames solidarity as reciprocity to challenge oppression and change the world (ivi, p. 51). Bauder and Juffs consider that refugee and migration scholarship uses all types of solidarity but indigenous solidarity. In our textual analysis, as we focus on primarily settler-driven civil society organizations, we also did not consider indigenous solidarity. Additionally, given that we focused on mostly citizens-driven civil society organizations advocating on behalf of non-citizens, we excluded from consideration the category of solidarity as loyalty. We thus sought to identify the four following types of solidarity:

- self-centered solidarity, expressing itself in terms of the utility of others;
- recognitive solidarity, which emphasizes reciprocity and aims to foster social change with others;
- emotion reflexive solidarity, focusing on compassion and empathy for others in relation to individual moral principles;
- rational reflexive solidarity, also focusing on empathy for others yet in relation to our common humanity.

To track potential change in the expression of particular types of solidarity by the four organizations, we collected documents released at three specific times. «Time 0» documents include discourses associated with the mission or the guidelines of the organizations, as well as issues or demands that are still relevant but were present prior to 2017. «Time 1» documents focused on the increase in arrivals of asylum seekers at Roxham Road from 2017 and the issues related to this situation. «Time 2» documents relate to the issue of essential workers in Quebec at the time of the pandemic, leading up to the regularization programs put in place by the government (2020-2021). The entire corpus included 54 documents, all of which are included in the bibliography. Documents in French and in English were included: whereas CCR, Solidarity Across Borders and Bridges Not Borders release most documents in both languages, TCRI publishes exclusively in French, hence some French-language documents we refer to below are translated in footnotes.

The collected corpus includes a variety of document types. In the case of CCR, 17 documents were analyzed, the vast majority of which were press releases. For TCRI, the same number of documents were analyzed, but with a greater variety of types: activity reports, research report, open letters, as well as texts published in the media. In the case of Bridges Not Borders, the majority of the 14 documents analyzed were various web pages from the organization's website and articles published by the organization in a local newspaper, as well as a letter addressed to the Prime Minister which were reposted on the organization's website. The corpus for Solidarity Across Borders also included 14 documents, all web pages from the organization's website mostly calling for mobilization and action.

Using the qualitative analysis software NVivo, each document was identified under the period concerned (time 0, time 1 or time 2) and analyzed to identify matches with the above-mentioned types of solidarity. Given similarities between emotional reflexive and rational reflexive solidarity, 'reflexive solidarity' was first identified, and a further distinction was made between 'emotional reflexive' and 'rational reflexive' when identifiable.

14.5 Results: civil society organizations' solidarity discourses

14.5.1 CCR. Taking border management to court: right-based advocacy as solidarity

CCR's corpus mainly features a mix of rational reflexive and emotional reflexive solidarity. At time 0 we can identify rational reflexive solidarity for instance in CCR's documentation of its long court battle to invalidate the Safe Third Country Agreement, as in this statement:

The Government of Canada has a responsibility to ensure that the human dignity of all persons is respected. So, it is imperative that all who seek refuge in Canada are afforded the protections guaranteed to them under the Canadian Charter of Rights and Freedoms and international human rights treaties (CCR, 2017c).

When an increasing number of asylum seekers began to cross the border at unofficial ports of entry (time 1), CCR situated this influx in the context of the problematic Safe Third Country Agreement. It engaged in a discourse of rational reflexive solidarity, appealing to moral standards but also referring to justice. In doing so, it sought to educate and inform the population about the necessity to welcome asylum seekers.

Welcoming refugees at our borders: *a moral and legal imperative*. The Canadian Council for Refugees urges Canadians to respond positively to refugee claimants who have been arriving at our borders in increased numbers in recent months. We have the opportunity and the obligation to give protection to people whose lives are at risk and who come with the urgent hope that Canada will offer them security. Only a tiny percentage of the millions of refugees in the world will ever make their way to Canada: but for those who do, *we must live up to our reputation as a haven for refugees by giving them a warm welcome*. (CCR, 2017f, own addition of italic characters).

This call for justice also engaged a narrative of empathy (emotion reflexive solidarity) for people who take risks to protect their lives:

Refugees should not have to risk their lives to get to safety. Canadians are well aware of the tragic loss of lives when refugees are forced to take desperate measures to get to safety, such as getting into a rickety boat or crossing a border in freezing temperatures. We can save lives by making it possible for refugees to make a claim without having to resort to desperate measures. (CCR, 2017d).

During the pandemic, at time 2, CCR strategically used a more self-centered type of solidarity to advocate for the implementation of a fast-track process to permanent residency for precarious migrants already in Canada. It linked this argument to the closure of border, low (economic) immigrant intakes and need for labour. This political construction of precarious migrants, among them asylum seekers, as potential workers, was used to serve the organisation's mandate to advance «the rights and protection of refugees and other vulnerable migrants in Canada»

(CCR, 2021a). At the same time, CCR never explicitly mentioned (and thus never directly engaged with) the special permanent residency pathways created by the federal and provincial governments. CCR only once specifically advocated for the regularisation of migrants with precarious status in a letter to the Prime Minister (CCR, 2020b).

In sum, CCR's solidarity towards asylum seekers was rights-based but also aimed at educating and mobilising the Canadian public in order to put pressure on governments to respect its legal responsibilities and meet high moral standards of protection of vulnerable migrants (emotional reflexive and rational reflexive solidarity). During the pandemic, solely appealing to rights and justice seemed insufficient and portraying asylum seekers as essential labour at a time of low immigration (self-centered solidarity) was harnessed cleverly by the organisation. This strategy aimed at influencing the public rather than at endorsing governments' utilitarian take on immigration.

14.5.2 From rights and humanitarianism to economic imperatives and deservingness

The discourses of both Bridges Not Borders and TCRI reflect a shift in the type of solidarity underlying their statements and the way they report their activities. At the time of the rise of irregular border crossing at Roxham Road (time 1)¹⁶, the two organizations appealed to the need to express empathy and humanitarianism (reflexive solidarity) towards asylum seekers. Their discourse aimed to counter-balance confusing media discourse, contradictory political statements and a polarised public opinion between the supporters and the detractors of welcoming policies towards asylum seekers crossing the border at Roxham Road. The criminalisation of border-crossers was part of public discourse because some politicians and right-wing movements were associating asylum seekers to illegal migrants who were violating the border by crossing at Roxham Road. These two organisations expressed empathy and the need for justice by mobilising a discourse of rational reflexive solidarity: they appealed to rational humanitarianism, high moral standards and ideas of international solidarity.

For example, Bridges not Borders appealed to Canada's role in responding to the need for protection of those seeking protection in Canada from 2017 onwards:

¹⁶There is no «time 0 proper» in the case of Bridges Not Borders since the organization was created as border crossings increased.

We understand that people are fleeing the USA because they feel no longer safe there. We believe that Canada has the resources to help these asylum seekers and an important role to play. The world is facing the worst refugee crisis ever. [...] *We feel Canada can do more to respond to this crisis.* (Bridges Not Borders, 2021a, own addition of bold characters).

As a society we can do better by allowing asylum seekers to enter Canada *in dignity and safety.* (Bridges Not Borders 2018, own addition of italic characters).

Because Bridges not Borders provided front-line emergency services to border-crossers, it sought to be a compassionate witness by maintaining a diary of its activities at the border in the form a blog (Bridges Not Borders, 2021b). People who read the blog entries daily could thus feel closer to the reality unfolding at the border and endorse the expression of a reflexive solidarity. This strategy resulted in emotional reflexive solidarity.

Since November 2017 we've been going to the US side of the border on Sunday afternoons to be a friendly presence for people before they cross. During the winter, we hand out gloves, hats, scarves and coats to them, as many are not dressed for Canadian winter. During hot summer days, we give out water. We also monitor how the people crossing over are being treated by the RCMP. (Bridges Not Borders, 2021d).

This statement also indicates how the organization stressed its self-assigned role of watchdog of authorities to make sure asylum seekers' rights were respected.

Before 2017 (time 0) and during the rise of asylum seekers' arrivals at Roxham Road (time 1), TCRI adopted similar stances and ideological takes on solidarity than Bridges Not Borders but was more specific in its claims. TCRI sought to redress public opinion by providing information about Canada's legal responsibility to welcome all asylum seekers, regardless of their mode of entry into Canada. As an organization that did not provide direct support to asylum seekers, but rather represented multiple groups who do so, TCRI aimed to influence governments in their treatment of asylum seekers. When the flux of asylum seekers who entered Canada through Roxham Road increased, TCRI multiplied its statements to correct disinformation and negative portrayals of asylum seekers. It advocated for the abolition of the Sage Third Country Agreement, in line with CCR's campaign.

Nous nous opposons à l'imposition de quotas sur le nombre de demandeurs d'asile autorisés à s'installer au Québec. [...] Rappelons que l'arrivée d'un nombre accru de demandeurs d'asile au Québec et ce, de façon irrégulière, est la conséquence

directe de l'Accord Canada-États-Unis sur le tiers pays sûr qui n'a plus sa raison d'être en 2018. L'abolition de cet accord fait partie de la solution pour éviter les entrées irrégulières au Québec¹⁷ (TCRI, 2018a).

However, during the pandemic (time 2), Bridges Not Borders and TCRI focused in making asylum seekers visible as essential workers at a critical time. This strategy allowed them to claim better rights and access to a secure migration status. The discourse of that period evoked both empathy (emotional reflexive solidarity) and the economic role of asylum seekers as reasons to expand their rights in Canada (self-centered solidarity). When the federal and provincial governments announced their program to grant permanent residency to *some* asylum seekers who provided care to Covid patients in aged-care homes and hospitals, these two organisations endorsed governmental discourse of deservingness, while advocating opening up eligibility criteria of the program to more essential workers. Participation to the labour force remained central in their advocacy strategy.

Nous demandons à M. Legault de faire preuve d'humanité et de bon sens. *Humanité*, parce que durant la deuxième vague de COVID-19, nous avons des concitoyennes et des concitoyens sans statut qui continuent de travailler dans des conditions difficiles pour assurer le bien-être de personnes vulnérables ou *pour notre bien-être collectif*. Il n'y a aucune raison de refuser une régularisation de leur statut. Bon sens, parce que *la société québécoise a besoin de ces personnes qui travaillent avec constance et dévouement*¹⁸ (Reichhold and Goldman 2017, own addition of italic characters).

In support to its advocacy mandate, in September 2020 TCRI released a research report on a survey conducted with asylum seekers working in labour sectors deemed essential during the pandemic. The report harnessed their critical role

¹⁷ «We oppose the imposition of quotas on the number of asylum seekers allowed to settle in Quebec. The arrival of an increased number of asylum seekers in Quebec, in an irregular manner, is a direct consequence of the Canada-US Safe Third Country Agreement, which is no longer relevant in 2018. The abolition of this agreement is part of the solution to avoid irregular entries in Quebec». Own translation.

¹⁸ «We ask Mr. Legault to show *humanity* and common sense. Humanity, because during the second wave of COVID-19, fellow citizens without status continue to work in difficult conditions to ensure the well-being of vulnerable people or *for our collective well-being*. There is no reason to refuse to regularize their status. Common sense, because *Quebec society needs these people who work with constancy and dedication*». Own translation.

as workers, deserving of a secure status. Precarious status was no longer the main reason for claims of fair treatment and access to justice; rather, asylum seekers' contributions to the economy were put forward:

Les demandeur.se.s d'asile ayant répondu au sondage ont travaillé dans des secteurs essentiels variés pendant la pandémie, dont ceux de la santé et des services sociaux, de l'industrie agroalimentaire, du commerce de détail et du transport. [...] La TCRI demande, globalement, une reconnaissance des personnes ayant contribué pendant la pandémie, quel que soit leur statut d'immigration¹⁹ (TCRI 2020a, own addition of italic characters).

The comparison of time 1 and time 2 statements reveals a significant shift in solidarity discourse. This shift, we contend, results in an endorsement of federal and provincial governments' dominant ideology towards asylum seekers during the pandemic period, characterised by a self-centered and utilitarian approach. While at time 1 of our analysis these organisations' discourse aimed to counter-balance negative portrayals of asylum seekers crossing the border and to inform about Canada's legal obligation to welcome all asylum seekers, during the pandemic, at time 2 they abandoned these claims to advocate in favour of asylum seekers as economic contributors.

14.5.3 Border- crossers as part of a political struggle for change

The analysis of the material published by the organisation Solidarity Across Borders offers a counterexample of a stable political stance in the form of solidarity expressed towards asylum seekers. At times 0, 1 and 2, Solidarity Across Borders always maintained a discourse of recognitive solidarity motivated by a desire for the emancipation of marginalized migrants such as asylum seekers. The organisation appealed to values of equality, justice, and constantly advocated for open borders. It rejected any collaboration with the State or border authorities in order to maintain its claims without making compromises. In this rhetoric, migrants were but one marginalized group among Montrealers. The city as the site of struggle is center stage in their struggle for a new configuration of political subjectivities and spaces.

¹⁹ «*The claimants who responded to the survey worked in a variety of critical sectors during the pandemic, including health and social services, agri-food, retail and transportation. [...] TCRI calls for overall recognition of those who contributed during the pandemic, regardless of their immigration status*». Own translation.

We [...] actively campaign to build a Solidarity City, the creation of a *community that rejects a system that engenders poverty and anguish, not solely for immigrants and refugees, but also for other Montrealers confronting these same realities*. We support open borders and the free movement of people seeking justice and dignity, meaning freedom to move, freedom to return, and the freedom to stay. (Solidarity Across Borders, 2018c, own addition of italic characters).

In the context of the pandemic, at time 2, the discourse of Solidarity Across Borders did not change at all. A call for open borders and a liberation from various forms of oppression continued to dominate the organization's messages. Interestingly, Solidarity Across Borders reacted to the program granting permanent residence to asylum seekers in the workforce only with a call for a much more inclusive program, regardless of one's labor force participation. It is the only organization among the four analyzed that made this distinction:

We just learned that the Federal Minister of Immigration Marco Mendicino has excluded most migrants from his regularization programmes. The programme only applies to some refugees (those who risked their lives, by providing care to patients during the COVID-19 confinement). Where are the other refugees who risked their lives, where are the undocumented migrants who worked for years in healthcare centres and homes for the elderly before, during and after the confinement? Where are the other undocumented migrants who worked ceaselessly in the fields, slaughterhouses, grocery stores and many other places to ensure that you lacked nothing while you were all confined? [...] We also ask where are all the people who didn't work because they could not find work, are sick or elderly, because our society is ableist, because they refuse to be exploited? Finally, we ask, why migrants have to risk their lives to ensure your quality of life or to be accepted in this society? (Solidarity Across Borders, 2020a).

As an advocacy group demanding a secured status for all since its inception, Solidarity Across Borders maintained a clear political stance that did not change throughout the period analyzed. The organization puts forward a form of solidarity (recognitive solidarity) that is not contingent upon political opportunities.

14.6 Discussion

Our chapter has highlighted how civil society groups promoted solidarity at various scales with border-crossers in the Province of Quebec. Specifically focusing

on four civil society organizations which have played a key role in asylum-seekers' advocacy since 2017 (and before 2017, for three of them), we have identified continuity and change in the selected organizations' solidarity discourse towards asylum-seekers. We have put forward that advocacy groups can share organizational features (for instance, CCR and TCRI as umbrella organizations on the one hand; and Bridges No Borders and Solidarity without borders as grassroots organizations on the other hand) yet develop markedly distinct solidarity discourses. Whereas national refugee advocacy umbrella body CCR maintains a mix of solidarity discourses throughout the entire period, provincial peak body TCRI's solidarity discourse clearly shifts from reflexive solidarity to self-centered solidarity. And whereas Solidarity Across Borders maintains a discourse of recognitive solidarity from 2017 (and earlier) to 2020, Bridges not Borders' trajectory is close to that of TCRI from reflexive solidarity towards self-centered solidarity.

Our findings raise the question of the causes of continuity and change in solidarity discourses. An older study of CCR had argued that in comparison to the Danish and British umbrella organizations, CCR was far more peripheral to the centers of power, which granted CCR more autonomy if perhaps less policy influence (Lawrence and Hardy, 1999). No such study exists on TCRI, yet future research on both CCR and TCRI might bring together their solidarity discourses with the evolution of their funding as well as their proximity and distance to federal and provincial governmental stances beyond the issue of asylum seekers.

Regarding Solidarity Across Borders and Bridges Not Borders, further research could investigate the role of the longevity of each organization, that is, whether the fact that Bridges Not Borders was a new organization meant that its discourse was more strongly event-driven, due to the need to redefine its actions, that the discourse of Solidarity Across Borders. Also, the issues of Bridges Not Borders' direct geographic proximity to the crisis, and the impact on the border closure on their activities and advocacy, warrant further investigation.

Self-centered solidarity has the potential to be more exclusionary and less system-challenging than reflexive solidarity and especially recognitive solidarity. Our study thus contributes to scholarship, which so far has primarily focused on European cases, that points to opportunities for and challenges to expressions of solidarity in the context of 'migration crises'. Such findings can be helpful for scholars but also for migrant and refugee advocates as they might point to diverse avenues of building alliances among the refugee advocacy movement, as much as the potential opportunities and pitfalls in echoing a solidarity stance that is close to that of public authorities. In a context of rapid demographic change and post-pandemic labor scarcity, 'self-centered solidarity' with migrants and refugees

as expressed by governments might become more common in Europe and North America; yet it is doubtful whether this will advance the cause of the progressive movement.

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By the year 2020, there were more than 280 million international migrants across the globe. Of this figure, 26.4 million were refugees, who have fled for a variety of reasons, including persecution, violence and human rights violations. Canada is considered the world leader in the protection of refugees. Notwithstanding this generally positive perception, the Canadian protection system exhibits a series of deficiencies, ranging from detention policies and deportation in the case of asylum seekers, down to the integration obstacles and other associated challenges encountered by resettled refugees. In addition, other challenges including violence, vulnerability, denial of rights, and growing hostility toward migrants and refugees undermine the overall health and image of the system.

ISBN: 978-88-3618-194-0



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