

**Preparing and Presenting a Refugee Claim in Canada: A Feminist Analysis of Women
Refugee Claimants' Experiences and Agency in Seeking Asylum**

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Abstract

This thesis examines the experiences of women seeking asylum in Canada and the role of gender in their claim preparation, specifically focusing on three issues: legal representation, the writing of the basis for the claim, and the preparation for the hearing. Drawing on postcolonial feminism and intersectionality, as well as a three-part conceptualization of agency, this thesis aims to provide a better understanding of the diversity of women's engagements in preparing their claims by examining the challenges they encounter and the actions they take to address them. In accordance with the thesis's objectives to illuminate the experiences of women in a contextualized way, data was collected through interviews with women who had been through the refugee determination process and with immigration lawyers. In total, nine women and 14 immigration lawyers participated in the research. In addition to the interviews, three observations of meetings between refugee claimants and their lawyers were conducted.

The findings revealed the various forms of agency women exert in preparing their claims, from selecting a lawyer to represent them, to adapting their behaviour during the hearing, to their role in writing the basis of their claims. The analysis then illuminated numerous factors that could potentially facilitate or limit this agency, including gender roles, culture, and ethnicity as primary intersecting factors, followed by and interacting with language, financial limitations, and education. The findings also underscored the ambivalent role of certain lawyers, whose presence, while crucial, may sometimes create challenges for women. From this perspective, the analysis shed light on the power asymmetry that may exist in women's relationships not only with their lawyers but also with their partners and family members, and how all these relationships may sometimes overlap to create specific difficulties for women. Finally, the analysis underscored the continuing prevalence of preconceived ideas about women claimants, their perceived vulnerability, and their experiences of violence.

Résumé

Cette thèse examine les expériences des femmes qui demandent l'asile au Canada et le rôle du genre dans la préparation de leur demande, en se concentrant spécifiquement sur trois problématiques : la représentation juridique, la rédaction de la base de la demande et la préparation à l'audience. S'appuyant sur le féminisme postcolonial et l'intersectionnalité, de même que sur une conceptualisation tripartite de l'agentivité, cette thèse cherche à offrir une meilleure compréhension de la diversité des engagements des femmes dans la préparation de leur demande en examinant les défis qu'elles rencontrent et les actions qu'elles prennent pour les surmonter. En accord avec les objectifs de la thèse d'illuminer les expériences des femmes de façon contextualisée, les données ont été collectées à travers des entrevues avec des femmes qui ont traversé le processus de détermination du statut de réfugié et des avocat·e·s spécialisé·e·s dans le domaine de l'immigration. Au total, neuf femmes et 14 avocat·e·s spécialisé·e·s dans le domaine de l'immigration ont participé à la recherche. En plus des entrevues, trois observations de rencontres entre des personnes qui demandent le statut de réfugié et leurs avocat·e·s ont été réalisées.

Les résultats ont révélé les formes variées d'agentivité que les femmes exercent lorsqu'elles préparent leur demande, de la sélection d'un·e avocat·e pour les représenter, à l'adaptation de leur comportement lors de l'audience, en passant par leur rôle dans l'écriture de la base de leur demande. L'analyse a ensuite illuminé les nombreux facteurs qui peuvent potentiellement faciliter ou limiter cette agentivité, y compris les rôles de genre, la culture et l'ethnicité comme premiers facteurs se croisant mutuellement, suivis par et interagissant avec la langue, les limitations financières et l'éducation. Les résultats ont aussi souligné le rôle ambivalent de certain·e·s avocat·e·s dont la présence, bien que cruciale, peut parfois créer des défis pour les femmes. Dans cette perspective, l'analyse a mis en lumière l'asymétrie de pouvoir qui peut

exister dans les relations que les femmes entretiennent non seulement avec leurs avocat·e·s mais aussi avec leurs partenaires et les membres de leurs familles, et comment toutes ces relations peuvent parfois se superposer, créant des difficultés spécifiques pour les femmes. Enfin, l'analyse a souligné la prévalence continue d'idées préconçues à propos des femmes qui demandent l'asile, leur vulnérabilité perçue et leurs expériences de violence.

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Introduction

Over the past few years, there have been increasing numbers of studies on the relationship between migration and gender (see, for example, Boyd & Grieco, 2003; Brettell, 2016; Curran et al., 2006; Donato et al., 2006; Leinonen, 2021). Shifting from a vision of men as the sole agents of migration, different feminist analyses of migration have shed light on women's experiences and their difficulties while migrating (see, for example, Phizacklea, 1983; Morokvasic, 1984; Pessar, 1986; Simon & Brettell, 1986; Leinonen, 2021; Brettell, 2016; Curran et al., 2006; Fiddian-Qasmiyeh et al., 2014). Part of this literature has specifically been interested in the role of gender in the refugee determination process – i.e., the process through which claimants request refugee protection due to fear of persecution if they return to their country of origin.¹ This research draws inspiration from this literature and seeks to contribute to it by further investigating the experiences of women in seeking asylum in Canada and the role of gender in their claim preparation. Specifically, it focuses on three specific issues: legal representation, the writing of the basis for the claim, and the preparation for the hearing. As authors have underlined the importance of such research (see, for example, Jacobs & Maryns, 2022; Oxford, 2014), this study explores women's agency in preparing their claims, examining the obstacles they encounter and their actions to overcome them. It is an exploratory study that I undertook from a feminist perspective.

1. Access to Refugee Protection

To receive refugee protection, claimants must prove that they meet the definition of a refugee, a definition originating in the 1951 *Convention Relating To The Status Of Refugees* (the *Refugee*

¹ General information from the Government of Canada on the refugee determination process is available on: <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/claim-protection-inside-canada.html>.

Convention) and incorporated into Canadian law by sections 96, 97 and 98 of the *Immigration and Refugee Protection Act (IRPA)*. More concretely, applying for refugee status means following a complex process, made up of different stages, including the submission of a Basis of the Claim Form (containing an account of what is the basis of the fear of persecution in the country of origin) and supporting documents, and culminating in the presentation of the case at a hearing before a decision-maker. In the context of this dissertation, the terms “refugee determination process” refer to this process through which States decide whether the person qualifies for refugee protection (Tomkinson, 2019). The terms “refugee claimant” refer to persons who applied for protection in Canada and may be eligible to go through the refugee determination process.² While there is a refugee and humanitarian resettlement program for people who need protection from outside Canada, this research focuses only on the experiences of those who reached Canada on their own and made a claim for refugee status from within the country.³ In addition, this research only investigates the experiences of claimants who present their claims under section 96 of the IRPA, which defines who is a “Convention refugee”.⁴ While this is not the focus of this research, it is important to note that claimants may also present their claims under section 97 which defines who is a Person in need of Protection. Section 98 refers to causes which exclude a person from being a Convention refugee or a person in need of protection (see, for example, Baglay & Jones, 2017; Legal Aid Ontario, 2015; Liew & Galloway, 2015). These later sections have their own specificities which have not been investigated further in order to focus on section 96 of the IRPA.

² A glossary elaborated by the Canadian Council for Refugees on refugee and immigrant-related terms is available on: <https://ccrweb.ca/en/glossary>.

³ More information from the Government of Canada on Canadian refugee protection programs is available on: <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/canada-role.html>

⁴ The definition of a “Convention refugee” is developed further in the literature review.

In Canada, the number of persons claiming asylum has significantly increased over the past few years, rising from 23,860 in 2016 to 91,740 in 2022, with the majority of these claims being lodged in Ontario and Québec (Smith et al., 2021, p. 13).⁵ In 2022-23, 40% of asylum claims were made by women (Government of Canada, 2023). This is slightly lower than the two previous years when asylum claims made by women reached 44% (Government of Canada, 2021, 2022). Feminist analyses and advocacy have allowed for a better understanding of the difficulties women face when claiming asylum, including issues with the definition of a refugee and its interpretation, as well as asylum procedures (see, for example, Arbel et al., 2014; Baillot et al., 2012; Crawley, 2001, 2021; Dauvergne, 2021; Dauvergne et al., 2006; Edwards, 2010; Freedman, 2010; Spijkerboer, 2016). Despite feminist work and advocacy in the past few years, Catherine Dauvergne nevertheless argues that the “central dilemmas for women seeking protection from a risk of being persecuted are remarkably similar to those of the late 1980s” (Dauvergne, 2021, p. 728). I assess many of these dilemmas in the literature review of the thesis.

2. Broader Political Context and Dominant Representations of Women

The refugee definition and procedures come from a broader political context marked by various historical, political, and social power and domination structures. For example, how colonialism shaped the writing of the *Refugee Convention*, due to an over-representation of the Global North among UN member states and their focus on displaced people of the Second World War, has been highlighted in the literature (White, 2021, as cited in Crawley, 2022, p. 360). Stereotyped representations of refugee claimants are omnipresent in this context and play different roles, including in constructing “Us” as opposed to “Them”, the racially and ethnically different

⁵ The total number of asylum claimants processed by Canada Border Services Agency (CBSA) and Immigration, Refugees and Citizenship Canada (IRCC) offices in 2016 is available on: <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/asylum-claims/processed-claims.html>; The total number of asylum claimants processed by CBSA and IRCC offices in 2022 can be found on: <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/asylum-claims/asylum-claims-2022.html>.

“Others” and ultimately helping to categorize human beings as acceptable as refugees or not (see, for example, Chawla, 2017; Macintosh, 2005; Mohanty, 2003; Pessar, 1986; Silvey, 2004; Spivak, 1985, 1988; Wachter & Snyder, 2018). That refugees are a homogenous group with the same universal experiences and needs of powerless victims is one of these stereotypical representations. It is well-established in the literature that these specific representations of refugees as a uniform group of powerless victims particularly concern women, although those representations and their importance vary greatly depending on race, class, age, and religion among others, as well as at given times and in given locations (Aberman, 2014; McKinnon, 2016; Mohanty, 2003; Razack, 1998; Spijkerboer, 2016).

The dominant portrayal of women refugees as victims, as powerless human beings suffering uniformly the violence of others without being able to do anything about it is criticized in the literature for generalizing and not reflecting the realities of many, whose experiences, in fact, vary greatly along gendered, racial, class, and age lines (see, for example, Carastathis et al., 2018; Harper, 2012; Mohanty, 2003; Razack, 1998; Spijkerboer, 2016; Stasiulis et al., 2020). The historical invisibility of these lines and their influence in research in the field of refugee and forced migration studies have been highlighted in the literature, as well as the resulting misunderstandings about women refugees’ experiences (see, for example, Anthias, 2012; Brettell, 2016; Crawley, 2001; Fiddian-Qasmiyeh, 2014, p. 396; Herrera, 2013). As the literature review below highlights, feminist literature has helped illuminate the experiences of women by denouncing their invisibility in research and progressively seeking more and more information about their experiences (see, for example, Phizacklea, 1983; Morokvasic, 1984; Pessar, 1986; Simon & Brettell, 1986; Leinonen, 2021; Brettell, 2016; Curran et al., 2006). The development of this literature, in particular through its criticisms by Black and postcolonial feminists (see, for example, Mohanty, 2003; O’Mahony & Donnelly, 2010; Ozkazanc-Pan,

2012; Spivak, 1988; Taha, 2017; Tyagi, 2014), has allowed for the development of a more complex understanding of women refugees' experiences beyond their representations as victims only, as well as of the prejudices and barriers they may face when seeking protection in Canada. This work seeks to contribute to this literature, which I further explore in the first chapter, by focusing specifically on women claimants' experiences in the refugee determination process and in relation to the preparation of their claim. Among all the issues that could be studied, I decided to focus on three specific ones: legal representation, the writing of the basis for the claim, and the preparation for and presentation of the case at the hearing.

3. Thesis Objectives, Research Questions, and Findings

By adopting a feminist perspective in this research, one of the main objectives of this thesis is to make visible the experiences of women claimants. The research also aims to challenge the common portrayal of refugees as a homogeneous group with the same universal experiences and needs, by illuminating the diversity of experiences of claimants. Contrary to representations of refugees as powerless human beings suffering uniformly the violence of others, this research aims to explore, additionally, the participation of women in preparing their claims with the objective of understanding how they manage each step of it, the obstacles they face and the strategies they adopt (see, for example, Hunt, 2008). With these objectives in mind, the three main research questions are: How do women participate in preparing their claims? What facilitates or limits women's participation in the preparation of a claim? How do intersecting axes of social division influence this participation? As explained further below, the conceptual and theoretical framework refers to a three-part conceptualization of agency, which I use to explore women's experiences in preparing their claims. It also draws on two main bodies of theoretical work: postcolonial feminism and intersectionality.

The findings showed that women exert agency in many ways in preparing their claims. On this topic, they confirmed existing literature, notably on women's role in writing the basis of their claims (see, for example, Baillot et al., 2012; Johnson, 2011; McFadyen, 2019; Oxford, 2014). The findings also shed light on the agency that women may deploy in other aspects of the process, such as in searching and selecting a lawyer, or adapting their behaviour during the hearing. The analysis then illuminated a series of factors potentially facilitating or limiting this agency, specifically, gender roles, culture, and ethnicity but also language, financial limitations and education. It also showed the different ways several of these factors may intersect in shaping women's agency in preparing their claims and the consequences of these intersections. While the analysis confirmed certain consequences already highlighted in the literature, notably in shaping the narrative of persecution (see, for example, Baillot et al., 2012; Cleveland et al., 2012, 2018; Cohen, 2001; Crawley, 2001; Herlihy & Turner, 2009; Martin, 2004), it also illuminated potential consequences related to other aspects of the process, such as hindering women's ability to access necessary information on legal representation. The analysis also underscored the ambivalent role of certain lawyers and the complexity of the power relational context that women navigate, as well as how it may shape the deployment of agency by women. The analysis, therefore, illuminated some possible consequences for women from the overlapping of several power relationships, such as the claimant-lawyer relationship and the relationships with family members with whom they claim asylum. Finally, despite extensive literature on this topic (see, for example, Aberman, 2014; McKinnon, 2016; Mohanty, 2003; Razack, 1998; Spijkerboer, 2016), the analysis showed the pervasiveness of preconceptions about women claimants, particularly regarding their perceived vulnerability and their experiences of and reactions to violence.

From these findings, which I explore in more detail below, I have identified the following implications for policies: continue raising awareness about the diverse challenges women face when claiming asylum together with their husbands and children, and adapt services accordingly; address gaps in women's knowledge about asylum proceedings and increase reporting structures for low-quality and abusive counsel; and continue efforts to make known and deconstruct preconceived ideas about women. In Chapter 7, I also formulate implications for research, including exploring additional forms of women's agency in preparing their claims, also in relation to other steps of the process, such as those following refusal of refugee protection.

4. Structure of the Thesis

The thesis is divided in seven chapters. The first chapter offers an overview of feminist analyses of forced migration. I then explore the feminist engagement with Canadian refugee law and asylum procedures by examining the key gender issues identified in the literature in relation with the refugee definition and the procedures. In this chapter, I also present the thesis's objectives and the research questions. The second chapter presents the conceptual and theoretical framework that informs my research. In this chapter, I propose reflections on feminist standpoint epistemology. I then delve into a more detailed discussion of the theories and concepts of postcolonial feminism, intersectionality, and agency. The third chapter is dedicated to the methodology.

The following three chapters present the results. Chapter 4 is dedicated to legal representation, and is divided into two sections: one on the search and the selection of a lawyer and another addressing the challenges that can arise in working with legal counsel. In Chapter 5, I focus on participants' experiences while filling out the Basis of Claim Form, which requires them to

present details about themselves and explain why they are seeking refuge in Canada. Chapter 6 explores the particularities of preparing for and presenting the case at the hearing. More specifically, I am interested in the steps of collecting evidence, requesting procedural accommodations, preparing to testify, and presenting the case at the hearing. Throughout these chapters, I highlight the difficulties women may face at each step of the asylum-seeking process in Canada, and the specific actions and decisions they make to navigate it. Finally, I recapitulate and discuss the main findings in Chapter 7. In this chapter, I also formulate implications for policies, practice and research.

Chapter 1. Literature Review

This review aims to provide the broader context for the experiences of women claimants and for this research work by highlighting what is already known and how it inspired this research. The first part of this chapter describes the different types of feminist analyses of forced migration that exist in the literature, their evolution, specificities and the criticisms towards them. It also explores the dominant representations of refugee women as a uniform group of powerless victims. The second section presents the engagement of feminist scholars more specifically with Canadian refugee law and asylum procedures. In this section, I analyze the refugee definition and its essential components. I also examine the gender issues arising out of asylum procedures. In the last part of the chapter, I present the main objectives of this research, as well as the three main research questions.

1. A Brief Overview of Feminist Analyses of Forced Migration

Different types of feminist analyses of forced migration and refugees' experiences exist in the literature. Among those, Katharine M. Donato, Donna Gabaccia, Jennifer Holdaway, Martin Manalansan, and Patricia R. Pessar highlight a difference in scholarly research on migration and feminist theory between research on women migrants that do not use gender as an analytical category and "the analysis of gender" in the study of migration (Donato et al., 2006; see also, Boyd & Nowak, 2013). Gioconda Herrera similarly refers to two "stages" in the development of the field: an initial stage aimed at "illuminating the migration experiences of women" and a subsequent stage during which "gender gradually became more of an analytical category" (Herrera, 2013, p. 472). According to Donato et al., "the analysis of gender" has developed so much over the years that it has, to some degree, supplanted "women-centered research" (Donato et al., 2006). Herrera also mentions a third stage in the field's development due to the intersectional approach's development in the feminist analysis of forced migration (Herrera,

2013, p. 472). In this section, I explore these types of feminist analyses, and I discuss the specificities and the criticisms towards each lens.

One of the starting points of the first feminist analysis of forced migration is the now well-established fact that women were historically invisible across the social sciences (Fiddian-Qasmiyeh, 2014, p. 396; see also Anthias, 2012; Brettell, 2016; Herrera, 2013). As a result, there has been inaccuracy and/or an unavailability of statistics on the number of women refugee claimants and limited attention focused on the protection needs of women as refugee claimants (Crawley, 2001, p. 1). In this context, men have often been represented as the primary agents of migration and their experiences as the “mainstream” ones. Women, on the other hand, were sometimes constructed as “staying behind or following”, and suffering from the migration (Catarino & Morokvasic, 2005).⁶ As explained by Ratna Kapur, there were two alternatives for women at the time, either being excluded from analyses or, if included, being “perceived as either non-migrants waiting for their spouses to return or as passive dependents of male migrants or coerced into moving” (Kapur, 2010, p. 6; see also Simon & Brettell, 1986; Lingam, 2016).

As feminist literature in the social sciences and humanities that denounced the invisibility of women developed in the late 1970s and beginning of the 1980s (see, for example, Phizacklea, 1983; Morokvasic, 1984; Pessar, 1986; Simon & Brettell, 1986), migration scholars also started to seek information about women’s experiences (Leinonen, 2021, p. 42). This research has illuminated the characteristics of migrant women – their number, the reasons behind their decision to leave their country of origin and the way they adapt in the country of destination, among others (Brettell, 2016; Curran et al., 2006). As a result there is an increased awareness

⁶ “Dans cette imagerie, l’homme travaillait, la femme était à charge, visible seulement en tant que membre de la famille (*femmes et enfants*)” (Catarino & Morokvasic, 2005).

regarding women's experiences as refugee claimants and refugees, revealing the sexist male assumptions of traditional knowledge and recentering women in the analysis (Fiddian-Qasmiyeh et al., 2014, p. 396). While such research has had many positive aspects, they were also subject to criticism in the late 1980s and 90s (see, for example, Hondagneu-Sotelo, 1994, 2003)). Most of this literature did not develop a critical analysis of gender (Leinonen, 2021, p. 42). Instead, Monica Boyd and Elizabeth Grieco note the gradual use and development of an approach called "add women, mix and stir" into research (Boyd & Grieco, 2003). This approach consisted in simply adding women to existing analyses without questioning the relevance of the research's focus and the methods used to study their experiences (Timmerman et al., 2012, p. 1).

Since the 1990s, research shifted from focusing on women to focusing on gender as an analytical category and on the social construction of gender in the migration process (Boyd & Grieco, 2003; Brettell, 2016; Curran et al., 2006; Donato et al., 2006; Leinonen, 2021). The migration process itself is progressively analysed as a gendered phenomenon (Donato & Gabaccia, 2015; Leinonen, 2021, p. 42). Research on gender and migration is diversifying with research examining gender in the lives of all individuals, not only women, and questioning how migration may affect gender relations (Leinonen, 2021, p. 42). Boyd and Grieco highlighted two points that have been particularly developed by the growing use of gender as an analysis category (Boyd & Grieco, 2003). While gender was rarely considered in relation to the concept of power, Boyd and Grieco emphasize the role of the development of gender as an analytical category in the development of the study of the patriarchy's functioning or, as they write, the study of "the hierarchies of power, domination, and control men use to rule women" (Boyd & Grieco, 2003). The second point refers to the study of the interpersonal relationships between men and women. This literature has been particularly concerned with studying the different

ways in which migration may affect women's interpersonal relationships with their partners and within the family, in terms of housework and childcare responsibilities, for example (Boyd & Grieco, 2003).

Analyses using the concept of gender as an analytical category have progressively developed to interrogate how gender intersects with other axes of social division, such as race, class, and religion (Herrera, 2013, p. 472; see also Lutz, 2010; Anthias, 2012). The theory of intersectionality, which emphasizes the multiple axes of social division that shape gender experiences and how these axes work together and interact, has been progressively mobilized in the field of migration and refugee studies to the extent that, according to Floya Anthias, it became "central to the theorisation of gender and migration" (Anthias, 2012, p. 106; see also Bilge & Denis, 2010). According to Daiva Stasiulis, Zaheera Jinnah, and Blair Rutherford, three axes of social division and their intersections in shaping migration experiences are often at the center of research: gender, race, and class oppression, also referred to as the "trinity of 'gender, race and class'" (Stasiulis et al., 2020, p. 10). However, research has also been interested in the interconnections between those axes of social division with others, such as religion/religious practice, nationality/citizenship, marital status, country of residence, and generation (Bilge & Denis, 2010, p. 5). Language is also explored, as well as disability (Pisani et al., 2016) and age (Clark-Kazak, 2012, 2016). In recent years, research has also increased on the experiences of sexual minority refugees and the difficulties they may face regarding refugee law and asylum procedures (see, for example, Brotman & Lee, 2011; Laviolette, 2007; Lee & Brotman, 2011, 2013; Rehaag, 2009). As Anna Carastathis, Natalie Kouri-Towe, Gada Mahrouse, and Leila Whitley indicate, intersectional research has consistently shown how experiences of migration vary significantly depending on the position of people in relation to the different axes of social division and their interactions (Carastathis et al., 2018, p. 4; see also Stasiulis et al., 2020).

From this perspective, intersectionality has been recognized as helping deconstruct the idea that refugees constitute a homogenous group with the same universal experiences and needs (Harper, 2012). Refugee women are particularly concerned by this idea as they tend to be overly represented as a uniform group of powerless victims (see, for example, Mohanty, 2003; Razack, 1998; Spijkerboer, 2016).

These representations of refugee women as powerless victims come from a broader political context in which various historical, political and social power structures intersect in their reproduction (Aberman, 2014; McKinnon, 2016). These representations serve several goals: sustaining the binary of refugee-receiving/refugee-producing countries; reaffirming the construction of the West as superior, as the “human rights protector”, and the South as weak and barbaric (see for example Arbel, 2013; Morokvasic, 2002; Oswin, 2001). As Efrat Arbel explained, refugee-receiving countries are largely represented as “civilized”, law-abiding, protectors of human/women rights and Western countries. Inversely, refugee-producing countries are constructed as backward, rights-violating, weak and extremely oppressive to women and as Southern/Eastern countries (although what the “South” or the “East” is can vary depending on the points of view) (Arbel, 2013, p. 752; see also Morokvasic, 2002, p. 18). These constructions, however, have several significant consequences. First, they make persecutions based on gender in Western countries invisible (Oswin, 2001, p. 352). Second, the binary and related representations also make invisible the complicity of Western countries in the persecutions faced by women from the global South and their roles in creating reasons for people to migrate (Razack, 1995, p. 55, as cited in Oswin, 2001, p. 352). Countries in the global North have a responsibility for the perpetuation of systems of oppression, such as patriarchy, capitalism, colonialism, and global economic exploitation, among others, which contribute to

the creation of the violent experiences faced by women in the global South (Crawley, 2022; Pessar, 1999, p. 593; Razack, 1998, p. 90).

Representations of women as victims and the related perpetuation of the binary of refugee-receiving /refugee-producing countries cannot be analyzed separately from the process of othering, a term taken up by Gayatri Chakravorty Spivak (Spivak, 1985) in the context of postcolonial theory to refer to the process through which imperial discourse creates its "others" (Ashcroft et al., 2007, p. 156). As explained by Devika Chawla, the process of othering has traditionally been used to categorize human beings based on geography, nationality, religion and ethnicity: othering is a “process of separation”, whose objective is to create and maintain hierarchies between human beings (Chawla, 2017, p. 2). The process thus refers to the various ways different subjects are constructed – some as powerful, “Us”, to which are subjected the powerless, “Them”. This process is intrinsically linked to the construction of national identities of Western countries: constructing “Them” as racially and ethnically different, the “aliens” and the ones who have barbaric cultural practices is necessary to affirm the construction of “Us”, not only as the good ones – the ones who welcome refugees – but also as “citizens” of one particular (Western) country (Erdman & Sanche, 2004, as cited in Macintosh, 2005, p. 150; Shukla, 1997, as cited in Pessar, 1986, p. 588; Silvey, 2004, pp. 492–493). Gender, in relation to race, class, and other axes of social division, plays a role in this regard as postcolonial feminists have pointed out (Spivak, 1988; Wachter & Snyder, 2018). The construction of “Third World women” “as a homogeneous ‘powerless’ group often located as implicit victims of particular socioeconomic systems” (Mohanty, 2003, p. 29) is central here, according to Chandra Talpade Mohanty. Indeed, these constructions, Mohanty explains, feed the representations of “Us”, the West, as the “developed center”, and the South as the barbaric and undeveloped “Other” (pp. 40-42). Postcolonial feminist scholars have criticized Western feminist

perspectives and theories for participating in the construction of these representations by revealing the oversimplified portrayals and understandings of refugee women's subjectivities and experiences that circulate in forced migration studies (Taha, 2017). Ritu Tyagi identifies two major lacunae from White feminist literature in this regard: (1) the little or zero attention placed on the notion of "race" and (2) the denial of the socio-historical context in approaching "Third World" women's experiences (Tyagi, 2014, p. 47). According to Heaven Crawley, this criticism directly concerns refugee women whose experiences are often approached in Western feminist literature without considering the broader political context and the particular circumstances under which violence against them occurs (Crawley, 2022, p. 357). In the conceptual and theoretical framework chapter, I explain how these criticisms are particularly useful here as they provide a lens through which to view the impact of the broader context on women's experiences.

These constructions ultimately "help" the West to determine who deserves to be a refugee and who does not.⁷ How certain groups of women have been constructed as more or less acceptable depending on nationalist agendas was highlighted by Crawley, who, for instance, explains how policies towards refugee claimants may greatly vary depending on the openness of these agendas to incorporating some groups of women over others (Crawley, 2022, p. 8). Thomas Spijkerboer demonstrated how those constructions are directly used by different actors involved in decision-making on the legal status of refugee claimants (Spijkerboer, 2016). These constructions are also used by lawyers and claimants who know that asylum officers and immigration judges are expecting to hear about certain types of stories that will be told in specific ways (Oxford, 2008, 2014; Spijkerboer, 2016). As explained further below, some refugee claimants may, in this context, play into the stereotype of passive victimhood, a

⁷ The role of the colonial legacy in this context is outlined by Crawley (Crawley, 2022, p. 365).

technique that can have good results in certain cases (Jacobs & Maryns, 2022, pp. 559, 564). The reproduction of such hegemonic narratives has consequences, however, as it also reproduces cultural stereotypes and inadequate images of (women) claimants (Spijkerboer, 2016, pp. 53, 152–156). Authors such as Connie Oxford,⁸ Tanya Aberman, and Spijkerboer have shown how certain experiences of refugee claimants, through their choices and decisions, directly contradict their representation as powerless victims (Aberman, 2014; Oxford, 2008, 2014; Spijkerboer, 2016).⁹ While refugee claimants may indeed be restricted in many ways as they go through the different steps of the asylum process, there is also a risk, by focusing on their vulnerabilities, to render invisible some of the actions and decisions that they may indeed take in this context (Jacobs & Maryns, 2022, p. 543). In addition, there is a risk of rendering invisible their own perspectives in this regard – which reinforces privileged paradigms (Oxford, 2008, p. 42; Oxford, 2014).

Recognizing the plus-value of the analysis of gender in migration and refugee studies put forward by feminist scholars, this thesis aligns with this development of the literature by recognizing gender as a central analytical category. As indicated above, doing so allows for further analysis of women claimants' experiences, especially in terms of analyzing power hierarchies and interpersonal relationships with those around them, for example, within the family. In line with the progressive development of the intersectional approach highlighted above and its recognized added value in highlighting how experiences of migration vary significantly from one person to another, this thesis aligns with the deconstruction of the idea of refugees as a homogenous group. It examines not only gender but also the multiple axes of

⁸ Oxford, for example, highlighted different actions and decisions taken by women refugee claimants about constructing their case, such as emphasizing certain aspects of gendered violence to increase their possibility of gaining asylum (Oxford, 2014, p. 162). Oxford refers to some of these actions and decisions as “asylum seekers’ acts of resistance” (Oxford, 2008, p. 50).

⁹ Those authors have also emphasized the difficulties that challenging these stereotypes creates in constructing and assessing a refugee claim (Oxford, 2005; Aberman, 2014; Spijkerboer, 2017).

social division that shape the gendered experiences of women claiming refugee status. As indicated above, the theory of intersectionality is praised in the literature for helping to underline the varieties and complexities of human beings experiences, particularly those who have been marginalized (Anthias, 2012; Bilge & Denis, 2010; Carastathis et al., 2018; Grosfoguel et al., 2015), which is one of the objectives of this research. These elements will be addressed in detail in the chapter on the conceptual and theoretical framework.

2. Feminist Engagement With Canadian Refugee Law and Asylum Procedures

In this section, I discuss the main issues identified in the feminist literature concerning Canadian refugee law and procedures. The first subsection presents the definition of a refugee and its essential components (well-founded fear, the notion of persecution, the nexus requirement and reasons for persecution), which refugee claimants must prove they meet to obtain refugee status. For each of these elements, I discuss the main related gender issues put forward by feminist scholars in the literature. The second subsection presents the gender issues arising out of asylum procedures. More specifically, I explore the issues arising during the pre-hearing steps and hearing, as well as regarding access to legal representation, the right to counsel, and the quality of representation.

2.1 The Refugee Definition and the Gender Issues

At the center of Canadian refugee law is the definition of a “*Convention* refugee”, which originates from the 1951 *Convention Relating To The Status Of Refugees* (the *Refugee Convention*). In this *Convention*, a refugee is defined as a person who:

As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a

particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (article 1A(2)).¹⁰

Sex or gender is not explicitly included – although the question had been mentioned once regarding Article 3 of the *Refugee Convention* at the conference where the *Refugee Convention* was drafted (Spijkerboer, 2016, p.1). Crawley highlights how colonialism shaped the writing of the *Refugee Convention*, which was drafted when the Global North was over-represented in the UN membership when large parts of the Global South were still under European colonial domination and when the focus of attention was on those displaced during the Second World War, i.e., excluding refugees from the Global South (White, 2021, as cited in Crawley, 2022, p. 360). The essential elements of the *Refugee Convention* definition have been incorporated into Canadian law in section 96 of the *Immigration and Refugee Protection Act (IRPA)*.

In order to obtain refugee status, refugee claimants must prove that they have: (1) a well-founded fear – (2) of being persecuted – (3) for reasons of race, religion, nationality, membership of a particular social group or political opinion. The person must also be (4) unable or, owing to a fear of being persecuted, unwilling to avail herself of the protection of her country

¹⁰ Several years later, the State-parties adopted the 1967 *Protocol Relating To The Status Of Refugees*, which compels them to maintain a policy of non-refoulement: “(...) states could not forcibly deport asylum seekers with a reasonable fear of persecution until their claims for asylum had been fully evaluated as far as they could go through the appeals process” (Crawley, 2001, p. 4; McKinnon, 2016, p. 8; Nilsson, 2014, pp. 125–126). The *Protocol* has also eliminated the date restriction and the geographic limitations of the refugee definition initially stated in the Convention (Cianciarulo & David, 2009, p. 353; Nilsson, 2014, p. 126).

of reference (Crawley, 2001, p. 38; Liew & Galloway, 2015).¹¹ In the paragraphs below, I discuss the literature on gender issues arising from these four elements. The progressive use of gender as a category of analysis (Boyd & Grieco, 2003; Brettell, 2016; Curran et al., 2006; Donato et al., 2006; Leinonen, 2021) and the application of the theory of intersectionality (Anthias, 2012, p. 106; see also Bilge & Denis, 2010) to analyse these elements have illuminated their gendered aspects and highlighted the potential barriers that gender and other axes of social division can create for certain claimants in their search for protection.

2.1.1 Well-Founded Fear

It is required, based on the *Convention*'s definition of a refugee, that the claimant has a "well-founded" fear. In Canadian refugee law, the fear is understood to be composed of two elements: an objective component and a subjective component (Liew & Galloway, 2015, p. 299) (Cameron, 2008, p. 567). The objective component refers to the existence of an objective danger, and the subjective component is the personal fear that the claimant must experience (Baglay & Jones, 2017, p. 156). Thus, refugee claimants must convince the board members not only that they are at risk of being persecuted (the objective component, i.e. there is a "serious" possibility of persecution), but also that they are indeed afraid (the subjective component) (Canada (Attorney General) v. Ward (1993)) (Cameron, 2008, p. 567).

The evaluation of a "well-founded" fear is gendered (Dauvergne, 2021, p. 731). First, the objective component requires proving that there is an objective danger at the base of the fear. However, it is well-evidenced that in many parts of the world, there is poor recognition of women's specific experiences, with women's experiences of persecution not always

¹¹ It is on the refugee claimant to demonstrate that she meets the definition of a *Convention* refugee (Baglay & Jones, 2017, p. 140). Baglay and Jones explore the burden of proof in more detail in their book "Refugee Law" (Baglay & Jones, 2017, pp. 144-147).

documented in the sources traditionally used to establish if there is an objective danger, such as those documenting human rights violations (Adjin-Tettey, 1997, p. 137; Dauvergne, 2021, p. 731). The fact that women's specific experiences sometimes remain undetected may create barriers for women when trying objectively to prove the existence of the danger they face (Adjin-Tettey, 1997, p. 137). Then, regarding the subjective component, i.e., the claimant's personal fear, its assessment is likely gendered as the idea of a subjective fear is linked to credibility and that gender impacts the evaluation of credibility (Dauvergne, 2021, p. 731).

Preconceived ideas decision-makers may have about how this fear should be articulated have been particularly criticized. Although decision-makers claim to be neutral and objective, these concepts themselves are social constructs that may oppose the cultural understanding of fear and vulnerability (Aberman, 2014, p. 63). Hilary Evans Cameron discussed three assumptions that board members have: (1) that people will not delay in leaving if they fear for their lives, (2) they will ask for protection immediately, and (3) they will never return to their homelands (Cameron, 2008, p. 567). These assumptions are often the reasons board members provide for finding a refugee claimant incredible because their behavior is seen as inconsistent with what a person would subjectively do in the circumstances, despite research indicating that there are trauma-informed reasons for the action or lack of action undertaken (Cameron, 2008, pp. 567–568). In addition, delays can also be explained by examining the particular circumstances¹² of the person keeping in mind gender, sexual orientation, age, education, religion, and social status, all intersectional factors that feminists have long called attention to (Ensor et al., 2006; Baglay & Jones, 2017, p. 165; UNHCR, 2013).

¹² These may include the lack of financial resources to flee and the logistical hurdles of fleeing with children (Freedman, 2010).

2.1.2 Persecution

The concept of persecution is at the center of the definition of a refugee. Persecution is, however, not defined in the *Refugee Convention* and the *IRPA*.¹³ Sasha Baglay and Martin Jones explain that jurisprudence has established the outlines of persecution: “persecution must be harm that is both serious and systematic; it must be a fundamental violation of human dignity”¹⁴ (Baglay & Jones, 2017, p. 167). To determine whether there is persecution, one must thus look at (1) the interest being violated, which is generally defined in terms of human rights, and (2) the extent to which that interest is being violated (Baglay & Jones, 2017, p. 168). Regarding the assessment of the later, one way of understanding persecution is to conceptualize it as a “serious” violation of a person’s human rights (Hathaway 1991, as cited in Baglay & Jones, 2017, p. 168).¹⁵ The seriousness of a violation is often determine by referring to “a hierarchy linked to the normative strength of the human rights obligation: strong rights – unqualified and non derogable – are placed at the top while weaker rights – qualified and derogable – are placed in the lower levels” (Baglay & Jones, 2017, p. 168).¹⁶ The “strong rights” refer to absolute civil and political rights of which a violation is considered the most suitable ground for asylum, under which other civil and political rights, are considered derogable. At the bottom of the list are economic, social, and cultural rights, a violation of which may be considered a suitable ground for asylum in exceptional circumstances (Edwards, 2010, p. 26).

From a feminist perspective, at least two problems are emphasized in the literature about using this framework. The first problem concerns the misunderstanding of sexual violence by

¹³ There is no universally accepted definition of persecution (Crawley, 2001, p. 37; Hathaway, 2014; Liew & Galloway, 2015). The absence of a precise definition is said to be intentional so that what persecution is could be decided on a case-by-case basis. Due to this omission, national courts have interpreted the concept of persecution differently (Cianciarulo & David, 2009, p. 355; Crawley, 2001, p. 37).

¹⁴ Baglay and Jones offer additional information on the “systematic” requirement of persecution in their book “Refugee Law” (Baglay & Jones, 2017, pp. 170 et s.).

decision-makers and agents of the asylum process who often perceive it as a spontaneous act of some uncontrolled men rather than an act of power to be analyzed in the context of gendered relations (Crawley, 2001, p. 44; Freedman, 2015, p. 46). The second problem emphasized in the literature concerns the hierarchical nature of the framework (Crawley, 2001, p. 42) which disadvantages women who are more likely to be negatively affected economically, socially, and culturally than directly targeted politically (Edwards, 2010, p. 26).

2.1.3 The Nexus Requirement and Reasons for Persecution

According to the definition of refugee, in order to receive a refugee status, claimants must prove that they have a well-founded fear of being persecuted “for reasons of” one of the five enumerated grounds: race, religion, nationality, political opinion, and membership of a particular social group. Dauvergne highlights that many of the persistent issues related to the nexus requirement have specific relevance to women’s claims (Dauvergne, 2021, p. 739). Notably, “gender” is not mentioned as a ground in the *Refugee Convention*. This absence creates a number of difficulties for refugee claimants when they must prove that the persecution they fear is “on account of” one of the enumerated grounds (Martin, 2004, p. 34; see also Cianciarulo & David, 2009, p. 357; Nilsson, 2014, p. 123).¹⁷

“Political opinion” and “membership in a particular social group” are the most discussed grounds in the literature.¹⁸ Nevertheless, the other grounds – race, nationality, and religion –

¹⁷ The absence of “gender” in the *Refugee Convention* is, however, not always mentioned as the first reason why it is difficult to establish the nexus between the harm and the ground in such cases. According to Crawley, the actual reason is that violence based on gender has traditionally been “interpreted through a framework of male experience” (Crawley, 2001, p. 35); Dauvergne also shows how the biggest debates on the nexus requirement, such as the question of the number of grounds the risk needs to be related to, the debate over the sharing of a common protected characteristic by the perpetrator and the victim, the question of whether a person can be considered at risk if not all persons sharing the protected characteristic are at risk and the question of the size of the protected group, have been driven in part by women’s claims (Dauvergne, 2021).

¹⁸ Dauvergne highlights the consequences of focusing on the particular social group ground in debates on women’s refugee claims, including the development of only little analysis of the other grounds concerning women’s experiences and gender (Dauvergne, 2021, p. 737).

often come into play in creating the persecutory situations that refugee claimants face. In the following sections, I discuss all five grounds highlighting women-specific or gendered aspects.

2.1.3.1 Race, Religion, and Nationality

Although race is not particular to women, experiences of persecution lived by women because of their race are often gendered (Crawley, 2001, p. 64). The example cited most often in the literature concerns the attempt by a group to destroy another racial group by targeting women: men may be imprisoned and killed, but women, who are often perceived as propagating the group, will likely experience sexual violence. The conflicts in former Yugoslavia and Rwanda are often mentioned by authors when discussing this topic (Baines, 2016; Crawley, 2001; Spijkerboer, 2016).

In many countries, religious customs and traditions have a considerable impact on gender relations and on the persecution acts which may be experienced or feared by claimants (UHNCR, 1979, as cited in Crawley, 2001, p. 65; Martin, 2004, p. 35). A woman may experience persecution because she does not want to follow certain religious practices or because her beliefs are different. Nevertheless, it is impossible to make generalizations about the consequences of a specific religion on women, as it mostly depends on the country's political context and on how religion is interpreted in this country (Crawley, 2001, p. 66).

As in the case of the ground of race, persecution on the basis of nationality is not particular to women. However, in many cases, violent acts experienced by women on the grounds of nationality take a gender-specific form, often sexual violence (Crawley, 2001, p. 65). As Crawley highlights, it may also happen that a claim based on gender or a fear of persecution is

“linked to reasons of nationality in situations where a law causes a woman to lose her nationality (...) because of her marriage to a foreign national” (Crawley, 2001, p. 65).

2.1.3.2 Political Opinion

The “classical” political refugee has historically been constructed as an individual trying to flee persecution by the government because she or he is directly implicated in political activities (Dauvergne et al., 2006, p. 1). This understanding has failed to encompass experiences of violence based on gender. Indeed, unlike men who are more commonly involved in prominent political activities in the public sphere due to specific gender roles, women’s political participation is often perceived as occurring primarily in the so-called “private sphere”(Crawley, 2001, p. 5). In addition, women may not consider their activities as “political” (Crawley, 2001, p. 69; Dauvergne et al., 2006, p. 1). Dauvergne refers to cases of resistance from women against traditional social or religious mores and the risks women confront because of such resistance (Dauvergne, 2021, p. 738). She lists a number of cases that have garnered recognition as political opinion: “the desire to wear Western clothes, or to reject religious traditions, or sometimes to reject an arranged or forced marriage”. She notes, however, that there are few cases when compared to those interpreted to be as the result of being part of a particular social group. Dauvergne proposes two explanations : (1) that decision-makers are reluctant to rely heavily on the political opinion ground, which is generally analyzed in a more inclusive manner and (2) that decision-makers are still unwilling to consider resistance from women against traditional social or religious mores as political acts (Dauvergne, 2021, p. 739).

Spijkerboer identified several categories of acts that will traditionally be constructed as non-political, such as emotions or personal preferences, e.g., missing a relative, having problems with a partner and the family, not respecting the dress code, and fleeing the one-child

policy in China. The will to have a better life or a better salary, as well as subordinate or minor acts are constructed as personal and not political (Spijkerboer, 2016, pp. 66-91).

2.1.3.3 Membership of a Particular Social Group

The particular social group ground is often considered the least clear among the refugee grounds, and its interpretation has been much debated in the literature (Nilsson, 2014, p. 126). In the Canadian context, the Supreme Court's Ward decision is of central importance to the question of the meaning of the "particular social group" ground. The Court identified three possible categories of groups in the decision: "1) groups defined by an innate or unchangeable characteristic; 2) groups whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake the association and; 3) groups associated by a former voluntary status, unalterable due to its historical permanence"¹⁹ (Baglay & Jones, 2017, p. 183; Randall, 2015). Gender was mentioned as an example of a particular social group in the first category (Crawley, 2001, p. 70; Randall, 2015, p. 540). Various groups have been recognized as particular social groups since the Ward decision, including "women" (Baglay & Jones, 2017, p. 184). This recognition of "women" as a particular social group is often promoted in the literature and has also been supported by various jurisdictions. However, at least two concerns have been raised with regards to including women under particular social group: the size of the group and the fact that "women" are not a cohesive group (Crawley, 2001, pp. 72–73; Randall, 2015, p. 563). The argument that the group "women" is too large is often advanced and is related to the idea that recognizing women as a particular social group would be "opening the floodgates" – that large numbers of refugee claimants would suddenly arrive in the country (Dauvergne, 2021, p. 737; Nilsson, 2014, p. 124; Randall, 2015, pp. 563–564). This consideration however is irrelevant, not only because refugee claimants still must prove

¹⁹ Canada (Attorney General) v Ward, [1993] 2 SCR 689 [Ward].

the other elements of the refugee definition (Crawley, 2001, p. 73), but also because actual number of women able to migrate and arrive in the destination country are rather low as moving to a new country requires resources that most people from poor social backgrounds do not have (Castles et al., 2014, p. 6; Piguet, 2014, p. 48). In addition, those who migrate face many obstacles on the road (Randall, 2015, p. 565). The 2002 UNHCR Guidelines and the Canadian Guidelines (Immigration and Refugee Board of Canada, 1996)²⁰ also mention that the size of the group should not be taken into consideration (Nilsson, 2014, p. 126; Randall, 2015, p. 564).²¹

Women as a social group are not a cohesive group (Crawley, 2001, p. 73). Their experiences vary as intersectional research has shown depending on where they stand on different axes of social division and their interactions (Carastathis et al., 2018, p. 4; see also Stasiulis et al., 2020). Homogenizing the experiences of women around the world has important consequences, such as the positioning of the West as the only (powerful) subject and (re)producing colonial discourses (see, among others, Mohanty, 2003).

Over time, the interpretation of this ground evolved to become a “catch-all category”, according to Arbel, encompassing a series of characteristics such as gender, sexual orientation and disability, among others (Arbel, 2013, p. 745). Domestic violence cases figure into the nexus of “membership of a particular social group”. Marisa Silenzi Cianciarulo and Claudia David highlight problems of misunderstanding regarding the nature of domestic violence among

²⁰ The Chairperson’s Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution was revised in July 2022 and subsequently amended in October 2023. The new Guideline, Chairperson’s Guideline 4: Gender Considerations in proceedings Before the Immigration and Refugee Board, is available on: <https://www.irb-cisr.gc.ca/en/legal-policy/policies/Pages/GuideDir04.aspx>.

²¹ This floodgates concern has led some decision-makers to try to narrow the category of “women” which, according to Dauvergne, has two consequences: to create a group sometimes that is inadmissible in refugee law and to create an issue in relation to the nexus requirement and the fear of persecution, as “this approach imports all aspects of the refugee definition in the group definition” (Dauvergne, 2021, p.738; Foster, 2014, p. 28).

officials where they perceive domestic violence as random and private, or merely “bad luck”, and thus as an experience of violence not meeting the refugee definition (Cianciarulo & David, 2009, pp. 342–433). Cianciarulo and David criticize these perceptions in their article, explaining that abusers do not choose or abuse their victims at random. They refer to the theory of the “Cycle of Violence” developed by Lenore E. Walker (Walker, 1979) to demonstrate “that abusers are motivated by a need to obtain dominance and control” (Cianciarulo & David, 2009, p. 343). According to the authors, this need is similar to the dominance and control present in more traditional refugee cases, with the difference that, in cases of domestic violence, the violence is perpetrated in the home rather than the public sphere (Cianciarulo & David, 2009, p. 344). Arbel, who aimed to compare adjudicators’ approaches to forced sterilization and genital cutting claims with domestic violence claims, also underlines a broader strategy to represent domestic violence as the result of a distant, other culture (2013, p. 761). In doing so, Arbel explains, legal actors “construct domestic violence as an ‘othered’ harm perpetrated against only certain subcategories of (non-Western) women” (Arbel, 2013, p. 761). As explained above, some actors in the process, including refugee claimants, may use this strategy to play into the stereotypes and dominant representations of their own cultures and countries of origin to obtain good results in their cases (Jacobs & Maryns, 2022, p. 564). The reproduction of such hegemonic narratives has consequences, however, as it reproduces cultural stereotypes and inadequate images of claimants (Spijkerboer, 2016, pp. 53, 152–156).

2.1.3.4 Failure of State Protection

As stated in section 96 of the *IRPA*, a claimant must demonstrate that she “*is unable or, owing to such fear, is unwilling to avail himself of the protection of that country*”. Thus, in addition to proving that they have a well-founded fear of persecution, refugee claimants must also demonstrate that the harm they fear has been or will be perpetrated by the state or by a force

that the state cannot or will not control (Crawley, 2001, p. 49). According to Crawley, there is a failure of state protection in three situations: (1) if “serious harm” has been inflicted by the authorities or by associated organizations, groups or individuals; (2) if “serious harm” has been committed by others and the authorities are unwilling to give effective protection because they support the actions of the private persons concerned, because they tolerate them or because they have other priorities; and (3) if “serious harm” has been committed by others, and the authorities are unable to provide effective protection (Crawley, 2001, p. 49).

Crawley claims that persecutions related to gender committed by the authorities are often dismissed as private due to the public/private dichotomy (Crawley, 2001, p. 50). Much of the violence committed against women and gendered violence is by non-State agents, such as husbands, fathers, partners, or other women of the community in certain cases, the difficulty here being to demonstrate that the State is implicated in the violence or has failed to protect them against it (Crawley, 2001, p. 52). This issue of State protection has been “persistently problematic” for women refugee claimants (Dauvergne, 2021, p. 735). The principal reason is the gap between the laws adopted in a country to protect women from violence and the desire or effectiveness in enforcing those laws (Dauvergne, 2021, p. 735). Dauvergne thus highlights the practice of certain decision-makers “to review legal protections ‘on the books’ and to find that these are sufficient to ensure protection, even when there is evidence to the contrary” (Dauvergne, 2021, p. 736). This particularly concerns domestic violence cases. Indeed, domestic violence is an issue against which no State can guarantee protection. This, according to Dauvergne, encourages reasoning that privileges the State’s efforts to protect victims, rather than the results of those efforts (such results also being more difficult to establish) (Dauvergne, 2021, p. 736).

Refugee protection only becomes available when protection by the State is unavailable. This implies that a claimant must demonstrate that there is no reasonable internal flight alternative to leaving the country – the ability to relocate to another part of the country to live safely (Crawley, 2001, p. 59). According to Dauvergne, this requirement is gendered; however it may be so “in a way that advantages women, or that at least does not create disadvantage” (Dauvergne, 2021, p. 736) with the existence of guidelines²² highlighting the importance of taking into consideration the obstacles women may face if they must move to another area of their country, “such as living in an area where they do not have a male relative to protect them, bringing children with them in a difficult move, or issues with safe travel” (Dauvergne, 2021, p. 736).

2.2 Gender Issues Arising out of the Procedures

In Canada, the refugee system is divided in two parts: 1) The refugee and humanitarian resettlement program (for people who need protection from outside Canada) and 2) the In-Canada Asylum Program for people making refugee protection claims from within Canada. There are thus two groups of refugees (Dauvergne et al., 2006, p. 5): 1) those who are found to be refugees outside of Canada and who then come to the country (government–assisted and privately sponsored refugees) and those who reached Canada on their own and make a claim for refugee status from within the country. The experiences of the later are the focus of this research.

The inland refugee determination process begins when a person makes a refugee claim to an immigration officer, either at a port of entry or at an Immigration, Refugees and Citizenship

²² Dauvergne refers to the former Chairperson’s Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution. As indicated above, this Guideline was revised in July 2022 and subsequently amended in October 2023.

Canada (IRCC) office. Refugee claimants have thus two options regarding where to make their claim: at a port of entry, which can be at airport, seaport, or land border, or at an IRCC office.²³ The following steps vary depending on where the person made their claim. In the following paragraph, I describe the main steps of making a refugee claim from within Canada. These steps and related timelines may vary from one claimant to another and cannot be considered a universal experience, although they are common to many claimants. Instead of establishing all possible differences, the aim is rather to offer an overview of the main steps claimants have to go through and the gender issues that may arise in relation to each of them.

If the person claims asylum at a port of entry, they must complete an eligibility interview with an officer from the Canada Border Services Agency (CBSA) and complete the application package composed of a series of documents and forms.²⁴ If the claim is recognized as eligible, it will then be referred to the Refugee Protection Division (RPD)²⁵ of the Immigration and Refugee Board (IRB)²⁶ for a decision. The refugee claimant will receive a Confirmation of Referral and a Basis of Claim Form (BOC Form) to complete which, along with other supporting documents, will help the RPD determine if the person meets the refugee definition (Rehaag, 2011b, p. 74).²⁷ When the claim is submitted at a port of entry, the BOC Form must be completed and submitted to the RPD no later than 15 days after the date that the claim was referred.²⁸ If the person makes a claim at an IRCC office, they must bring all the forms in the application package to the office, including the completed BOC Form.²⁹ The officer from the

²³ More information on these options from the Immigration and Refugee Board (IRB) is available on: <https://irb-cisr.gc.ca/en/applying-refugee-protection/Pages/index.aspx>.

²⁴ Ss. 99-100 IRPA.

²⁵ The Refugee Protection Division (RPD) is one of the divisions of the Immigration and Refugee Board (IRB). More information on the RPD is available on: <https://irb.gc.ca/en/board/Pages/index.aspx#ab2>.

²⁶ More information on the IRB is available on: <https://irb.gc.ca/en/Pages/index.aspx>.

²⁷ Ss. 6-7 Refugee Protection Division Rules, SOR/2012-256.

²⁸ S. 159.8 (2) Immigration and Refugee Protection Regulations, SOR/2002-227.

²⁹ S. 159.8 (1) Immigration and Refugee Protection Regulations, SOR/2002-227.

IRCC will decide on the applicant's eligibility and, if eligible, will refer their claim to the RPD.³⁰

2.2.1 The Basis of Claim Form

The Basis of Claim (BOC) Form is the main vehicle by which refugee claimants present their claim by giving details about their identity and background and an explanation of why they are seeking protection in Canada. This information will be used, alongside other information such as that garnered by testimony from the claimant, by the Refugee Protection Division (RPD) to determine if the person meets the refugee definition.³¹

2.2.1.1 Late or Non-Disclosure: Difficulties in Providing Details

About Certain Experiences

Given that women must tell their stories to their lawyers and in an adjudicative setting, obtaining a positive decision often turns on whether their written and oral testimony is seen as credible. However, credibility is affected by trauma and mental health issues, which may be manifested through weight loss, malnutrition, a lack of sleep, and chronic pain. These factors are all challenges that impede the recollection of memories necessary to provide a credible narrative for the basis of a refugee claim (Cleveland et al., 2012, 2018; Cohen, 2001; Herlihy & Turner, 2009; Singer, 2014; Webb et al., 2022). The use of trauma-informed practices in this context has been examined in the literature (Webb et al., 2022). These approaches aim to place the realities of the client's traumatic experiences at the center of the client-advocate relationship and adapt the practice based on the client's particular experience (Katz & Haldar, 2015, p.

³⁰ S. 100 IRPA.

³¹ More information from the IRB on the Basis of Claim Form is available on: <https://irb-cisr.gc.ca/en/applying-refugee-protection/Pages/index2.aspx>.

361).³² The importance and benefits of such approaches have been put forward as they tend to encourage client empowerment and safety and improve client-lawyer relationships, representation, advocacy, and, potentially, outcomes (Webb et al., 2022, p. 7).

When it comes to gendered harms, the factors that can prevent someone from disclosing traumatizing experiences and/or developing them in a coherent and plausible way in accordance with predominant Western norms and expectations include personal feelings of shame, embarrassment, and self-blame; a fear of being ostracized and of possible negative reactions from family; and fear of not being believed by officials (Baillot et al., 2012, p. 270; Crawley, 2001, p. 203). In cases of sexual violence, Crawley specifically refers to the Rape Trauma Syndrome, and in cases of domestic violence, to the Battered Wife Syndrome, which may both make women highly reluctant to talk about their experiences (Crawley, 2001, p. 203). Women may also be more reluctant to disclose their experiences of violence due to cultural norms (see for example, Baillot et al., 2012; Crawley, 2001; Martin, 2004). Those norms, in relation to gender and other axes of social division may indeed lead to challenges for a person to talk about certain aspects of their experiences that are critical for their claim (Bates et al., 2016, p. 13). Cultural taboos around sex, gender, and sexual purity are also mentioned in the literature as barriers to disclosure (Baillot et al., 2012, p. 270). In cases where they disclose their experiences, these elements may also impede refugee claimants from producing a consistent and credible account of their experiences, as discussed below.

The presence of others, whether they are family members, representatives and/or interpreters may also be an obstacle for certain refugee claimants who may be reluctant to talk about their

³² Ann E. Webb, Robin E. Gearing and Hope W. Baker offer more information about these approaches, including the skills and techniques associated with trauma-informed lawyering (Webb et al., 2022). In their research, Webb et al. highlight the necessity of understanding systemic racial and gender biases in legal contexts for trauma-informed practice (Webb et al., 2022, p. 10).

experiences in front of these individuals for reasons related to culture and gender roles (Crawley, 2001, p. 204; Oxford, 2008, p. 44).³³ They may also be reluctant to talk about their experiences with those who identify as male and persons, whether lawyers or interpreters alike, who come from their religious, national or ethnic community (Crawley, 2001, p. 204; Jacobs & Maryns, 2022, p. 554).

The perceived benefits of a female-only environment (“gender-matching”) in helping women refugee claimants disclose personal information are also met with criticism in the literature. First, the “gender-matching” technique makes assumptions about the suitability of a person to receive certain types of testimony based solely on their gender without considering the differences between people in terms of their individual skills, beliefs, or personal characteristics (Martin, 2005, as cited in Baillot et al., 2012, p. 279). Such a technique, which is based on the idea that women may better understand specific experiences, including sexual violence, may disproportionately place the emotional labour of dealing with such experiences on women. Second, a female-only environment may perpetuate a false belief that there are no barriers anymore for the refugee claimant to talk about her experiences. Third, such an environment may render invisible the various other factors that can influence the possibility for someone to disclose her experiences of violence (Baillot et al., 2012, p. 279).

The limited timelines of the refugee determination process also affect the ability of refugee claimants to disclose certain experiences (Baillot et al., 2012, p. 270). Deadlines and processes rigidly applied disproportionately affect women since they have much to navigate including child care (Dauvergne, 2006, p. 47). Further, short deadlines (and its inflexible application) may result in more credibility problems (Dauvergne, 2006, p. 47).

³³ Crawley also mentions specific difficulties women may face in talking about their experiences due to their responsibilities as carers (Crawley, 2001, p. 202).

2.2.1.2 Discourses and Silences: To Disclose or not to Disclose, a Choice?

Contrary to research recounted above, some literature treats some refugee claimants' choice to not disclose specific experiences or aspects of those, not for reasons related to ignorance or misunderstanding but due to their "personal agency" (Baillot et al., 2012, p. 287). Thus, according to these authors:

Full or partial silence can reflect a survival strategy consciously chosen in order to (re)exert "control" or, as one respondent put it, "to avoid being completely overwhelmed". It can also reflect a deliberate calculation as to the likelihood of securing any benefit from the disclosure vis-à-vis the difficulties that its recounting may generate (...). This goes to the heart of "the resistant potential of disclosure, or (...) of withholding disclosure (...). In a system where women are often the subjects of forcible attempts to elicit their own life stories, perhaps the last power a woman retains is the choice to remain silent". (Baillot et al., 2012, p. 287)

Research has thus "reformulate[d] (some) claimants' silence not as a by-product of trauma or an indicator of disengagement but as a small but significant act that resists the demands of a potentially traumatizing process" (Johnson, 2011, as cited in Baillot et al., 2012, p. 287). In their research on agency and vulnerability in lawyer-client interaction, Jacobs and Maryns also considered the disclosure of certain information by using specific words when testifying about sexual violence as agentic (Jacobs & Maryns, 2022, p. 554).

Although a series of factors can explain the non-disclosure of certain experiences, according to Helen Baillot, Sharon Cowan, and Vanessa E. Munro (see also Bogner et al., 2010), responses such as “I don’t want to speak about that or tell it to anyone” may hint that the person’s choice to stay silent does not necessarily mean that the person is lying or that she does not have any power but, on the contrary, that she may be trying to keep some control over her claim (Baillot et al., 2012, p. 288). According to Baillot et al., decision-makers and professionals often ignore this perspective and tend to perceive a person’s silence as the result of factors other than the claimant’s agency. In the case of women, this then further helps to confine them to traditional constructions of women as victims (Baillot et al., 2012, p. 288).

2.2.2.3 Hegemonic Stories: Reproduce Them, Counter Them

In addition to disclosing their experiences, refugee claimants are expected to produce a coherent, plausible account of these experiences with respect to prevailing Western norms and expectations.³⁴ The production of this account is closely linked to the dominant representations of refugee claimants as a group of vulnerable victims explored above and the political reasons behind such representations. As explained by Jane Herlihy and Stuart W. Turner, the account produced is thus influenced by the context in which the experience is articulated. The audience to which it is articulated and its purpose also play a role (Herlihy & Turner, 2009, p. 180). Many refugee claimants don’t know the type of stories they should articulate to gain asylum. Their lawyer’s role is important in this context as it is often from them that refugee claimants “learn

³⁴ As Shuman and Bohmer explain, the process of claiming asylum is often one of “translating” personal experience into recognized rhetorical conventions: “To meet the criteria for political asylum status in the US, applicants need to reframe what they often understand as a personal trauma into an act of political aggression” (Shuman & Bohmer, 2004, pp. 396-397, as cited in McKinnon, 2016, p. 86). In lawyer-client consultations over the writing of the BOC, the fact that the lawyer does not pursue certain of the talking points raised by the client because they do not hold up as an institutionally valid element is considered by Maryns and Jacobs as “an example of how institutional dynamics can constrain the local interaction and silence the voice of lifeworld” (Jacobs & Maryns, 2022, p. 555), lifeworld being conceptualized by the authors from a Habermasian point of view as “the social world of the client beset with urgent emotional demands” (Felstiner & Sarat, 1992; Habermas, 1996, as cited in Jacobs & Maryns, 2022, p. 546). The erasure of certain experiences has been denounced as a tool of colonialism (Coulthard & Simpson, 2016).

how to articulate the required narrative of persecution” (Oxford, 2008, p. 43). The concept of gender performativity is a useful tool for understanding the presentation and reception of gender in this context (McKinnon, 2008, p. 49). The idea of gender performativity, as developed by Judith Butler, refers to a conceptualization of gender as “a form of “*ritual social drama*” and of gender identity as “an effect of the ‘*stylized repetition of acts*’ rather than the expression of an inner core” (Butler, 1990, p. 140 as cited in Lloyd, 2015, p. 575). In Butler’s perspective, gendered subjects are produced through practices of compulsory heterosexuality that institutions such as family, education and law, reproduce and that leads to decisions about “who is gendered/genderable and how they are gendered” (Butler, 1999 as cited in McKinnon, 2008, p. 49). When constituting and receiving gender, the asylum system expects one to be aligned with designated gendered performances. The constitution of gender, however, varies depending on time and space. Butler thus explains that gender is “not always constituted coherently or consistently in different historical contexts, and because gender intersects with racial, class, ethnic, sexual and regional modalities of discursively constituted identities” (Butler, 1999, p. 6; McKinnon, 2008, p. 49). When claiming asylum, there may be a rupture between actual and expected gendered performances, rendering certain cases “unreadable” for decision-makers (McKinnon, 2008, p. 50).

The literature has identified the role of third parties, including lawyers, other successful applicants, community group members, and smugglers, among others, in influencing what to write about in the BOC Form and how to write about it (see, for example, Bohmer & Shuman, 2018; Oxford, 2008, 2014; Spijkerboer, 2016). Focusing on lawyers and service providers, Oxford for example explored how some of them “practice resistance (...) by using the rules of asylum to their advantage by teaching asylum seekers to tell hegemonic stories” (Oxford, 2008,

p. 42).³⁵ In the case of women, this often means reframing their experiences to match forms of gendered harm legally acknowledged, no matter their reasons for fleeing their country (Oxford, 2014, p. 162). Oxford specifically refers to the example of female claimants who experienced multiple types of persecution, but whose political activism is rendered invisible in favor of narratives centered on female circumcision (Oxford, 2014, pp. 162- 163). Spijkerboer describes two counter-strategies for lawyers: they represent the refugee claimant either as a traditional political activist or a religious dissident, in accordance with the classical understanding of the refugee definition (which they do not do often when the claimant is a woman) or as a victim, in which case a refugee claim is more likely to be successful if it is made by a woman³⁶ (Spijkerboer, 2016, pp. 53, 151–156). This latter practice, however, makes claimants mere witnesses to the creation of their own identity (Jacobs & Maryns, 2022, p. 559).

The reproduction of such hegemonic narratives has consequences, however, as it also reproduces cultural stereotypes and inadequate images of claimants (Spijkerboer, 2016, pp. 53, 152–156). Oxford gives the example of a psychologist who, aiming to help refugee claimants be accepted, emphasized Post Traumatic Stress Disorder (PTSD) in her reports “because she knows that it is the diagnosis with which asylum officers and immigration judges are familiar” (2008, p. 47). However, according to the author, her action participates in reproducing a hegemonic narrative about PTSD constructed as the primary clinical diagnosis for claimants

³⁵ Bohmer and Shuman also discussed the role of certain lawyers in altering the stories of refugee claimants but from a deceptive perspective (Bohmer & Shuman, 2018).

³⁶ In this perspective, the author also mentions the “classical Orientalist strategy”, in which the lawyer demonizes the society of the claimant’s country of origin (in the example of the author, Iran) and how this society treats women; the idea is then to argue that the claimant’s experience is the result of cultural difference (Spijkerboer, 2016, p. 155). The author highlights the pros and cons of both strategies: “The victim strategy has the advantage of being consistent with the cultural stereotypes of Third World brutality but has the disadvantage of being too general (‘we can’t admit all victims of backward cultures’). The dissident strategy has the disadvantage of going against cultural stereotypes (Third World women are often considered incapable of the things it takes to be a dissident); once the applicant has passed that hurdle, however, the dissident strategy has the advantage of making the case so exceptional that admitting her will not be a real problem” (Spijkerboer, 2016, p. 156).

(Oxford, 2008, p. 47). The author also discusses the construction of female circumcision as torture and writes:

They act on the asylum seeker's behalf by emphasizing legally recognizable forms of harm that those who wield institutional power, such as asylum officers and judges, "are looking for" in asylum applications. Yet in doing so, they contribute toward hegemonic power by reproducing legally accepted narratives of harm. (Oxford, 2008, p. 48)

In a later research project, Oxford looked more particularly at the role of women in this context and revealed how certain women refugee claimants may emphasize particular aspects of gendered violence with the objective of gaining asylum (Oxford, 2014, p. 162; see also Bohmer & Shuman, 2018). To illustrate this, Oxford referred to the story of Zeinab, a woman from Somalia who was raped and fled due to domestic violence. She explained:

Zeinab's asylum declaration states that during the civil war she was raped, and that her husband was taken away and never seen again, and this is the reason why she left her country. During our interview, she told me that she lied about her husband being taken away because she had heard a similar story from another member of her host family who had gained asylum based on the same account of gendered violence. (Oxford, 2014, p. 165)

Marie Jacobs and Katrijn Maryns underline the impact of power dynamics in the context of legal consultations: legal clients are constrained in their interaction with legal service providers (Jacobs & Maryns, 2022, pp. 544–545). However, refugee claimants can exert agency in this context, such as taking the floor to ensure that there is a mutual understanding on specific terms

(“negotiating meaning”) (p. 552), disclosing certain information by using “specific terminology in her testimony about sexual violence” (p. 554), “trying to ‘fulfil the image of a good client’ by being cooperative and positive despite her traumatic experiences” (p. 558). Some may exert agency in “claiming their own victimhood”, using the strategy of playing into the stereotype of passive victimhood (p. 559). This technique can have good results in certain cases as “asylum authorities ‘reward’ essentialized victim narratives (...) over agentive stories that picture the act of migration as a rational decision” (Jacobs & Maryns, 2022, p. 564).

2.2.2 Evidence

Refugee claimants have the burden of proving they qualify for protection and must proffer evidence to do so. However, according to Debora Singer, it is harder for women to access and collect such evidence for myriad reasons, which I will explain below (Singer, 2014, pp. 103-104). Different types of documents and evidences need to be collected (Legal Aid Ontario, 2015, p. 39): (1) those by the refugee claimant to support their claim; (2) those by the lawyer to support the claim; and (3) those to support the objective basis of the claim.

The documents to be collected by the refugee claimant include: identification documents, education certificates, marriage and birth certificates, proof of membership to a group or an organization, letters from former employers, letters from any relevant persons, death certificates, police reports, medical reports, pictures and any other relevant documents (Legal Aid Ontario, 2015, pp. 91-92). Those documents also need to be translated and ready to be submitted before the deadline (Legal Aid Ontario, 2015, p. 39).

The documents lawyers recommend collecting include medical and psychological reports (Legal Aid Ontario, 2015, pp. 40-41). Lawyers often refer their clients to other professionals

throughout the process, for example, to obtain a report certifying their client's health problems (Baily et al., 2014, p. 4; Liew & Galloway, 2015, p. 266). These reports may corroborate their client's testimony: identify symptoms and illnesses and can be the basis for requesting a procedural accommodation (Immigration and Refugee Board of Canada, 2006).³⁷ The Immigration and Refugee Board (IRB) may accommodate a person's vulnerability by various means, including allowing a support person to participate in a hearing, varying the order of questioning, excluding non-parties from the hearing room and providing a panel and interpreter of a particular gender. Reports also lend credibility. Obtaining an expert report may help to explain to the decision-maker why it is difficult for the person claiming asylum to explain her story coherently and underline that the difficulties the person is facing in testifying or the incoherencies of her testimony are not related to credibility but to the traumas the person experienced (Rousseau et al., 2002; Wilson-Shaw et al., 2012, p. 3).

Documents to support the objective basis of the claim refer to country conditions documentation (Legal Aid Ontario, 2015, pp. 41-44): documentation providing evidence of the situation in the country or countries where the applicant fears persecution in order to demonstrate the objective basis of the claim (Legal Aid Ontario, 2015, p. 42). According to LAO, these evidences can take three different forms: documentary evidences, such as human rights reports, newspapers articles, personal documents; expert evidences, such as an expert testifying at the hearing or an expert report; and the testimony of the claimant or other witnesses who have knowledge about the country without being experts. LAO also indicates that the documents should provide

³⁷ The Chairperson's Guideline 8: Procedures with Respect to Vulnerable Persons Appearing Before the IRB was replaced in October 2023. The new Guideline, Chairperson's Guideline 8: Accessibility to IRB Proceedings — Procedural Accommodations and Substantive Considerations, is available on: <https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDir08.aspx#a4>. In this research, I refer to the former Chairperson's Guideline 8 as I conducted the research with this guideline.

evidence of the incapacity or refusal to protect the refugee claimant or people who are in a similar situation.

A woman applicant may have more difficulty accessing identity documents. In certain countries, women may not have full rights of citizenship and/or it may be that the men have control over women's identity documentation (UNHCR, 2013, p. 70, as cited in Singer, 2014, p. 104). It may also be difficult for women to collect other documentary evidence to uphold their claims. Collecting documents about their political activity, for instance, may be complicated. Indeed, women's political activities may take different forms than those of men. In addition, women may also be restricted from being active in political organizations for cultural reasons concerning gender roles, making it difficult for them to give details about these organizations although they may be involved in their activities (UNHCR, 2013, p. 69, as cited in Singer, 2014, p. 105). Women's experiences of persecution may also be difficult to corroborate with documentary evidence as they are more likely to have happened in the private sphere. When this is the case, women may face difficulties collecting documentary evidence of their persecutors and their activities (Singer, 2014, p. 100). Singer particularly emphasized the difficulty of collecting evidence of certain harm, such as domestic violence and forced marriage (Singer, 2014, p. 100). Singer also discusses the impact of the level of education on the opportunity to collect relevant documentation and the role of gender in this regard (Singer, 2014, p. 105).

2.2.3 Joining Claims

Refugee claims of close family members are generally joined together³⁸ (Baglay & Jones, 2017, p. 296; Dauvergne et al., 2006, p. 55). As explained by Baglay and Jones, this specifically

³⁸ S. 49(1) IRPA.

relates to spouses, common law partners, children, parents, siblings, grandchildren, and grandparents (Baglay & Jones, 2017, p. 296). The logic behind this is that the claims can be determined together based on a common compilation of evidence (Baglay & Jones, 2017, p. 296).

It is not clear if this practice disadvantages women or not. Indeed, although the practice “reflects a view that women’s claims may be subsidiary to those of men”, this may sometimes be appropriate, according to Dauvergne et al., due to the well-documented biases in the refugee definition (Dauvergne et al., 2006, p. 55). Still: it is common practice that all adult claimants’ evidence is taken into consideration, even if claims are joined. Dauvergne et al.’s research suggests that the joining practice alone does not automatically disadvantage those claiming asylum based on gender (Dauvergne et al., 2006, p. 55). They also highlight the small number of claims where children are joined (Dauvergne et al., 2006, p. 55). Based on data they receive from the RPD, Dauvergne et al. also mention that women are more likely than men to arrive as a sole-support parent (Dauvergne et al., 2006, p. 55). This is consistent with the well-established fact that women often remain disproportionately involved in child rearing (Veenstra, 2020). And the situation is not about to change; Mandi Veenstra highlights this when stating that “this involvement [of women] and the breadth of responsibilities associated with mothering continue to rise” (Veenstra, 2020, p. 53).

Another issue is when women never present their own stories because they rely on their husband's stories. Several elements may explain this situation, such as the reluctance women may have to discuss their story, especially if it is related to gender or family violence (Dauvergne et al., 2006, p. 55). Dauvergne et al. also indicate that certain claimants may also not be aware of the potential links between their experience of violence at home and the refugee

claim in which their family is involved (Dauvergne et al., 2006, p. 55). When there is a suspicion of family violence, it can be recommended that spouses have separate counsel and, in some cases, file separate claims to ensure that the questioning of the claimants is conducted separately during joined hearings (Dauvergne et al., 2006, p. 56).

2.2.4 The Hearing

The oral hearing, qualified by some as the “centerpiece of the process” (Baglay & Jones, 2017, p. 296; Dauvergne et al., 2006, p. 7) determines if the person qualifies for refugee protection. During the hearing, refugee claimants have the opportunity to present their case and are asked a number of questions.³⁹ According to Baglay and Jones, the hearing has thus two main objectives: “1) it provides the claimant with an opportunity to state his case and know the case he has to meet, and 2) it allows the Board to assess the credibility of the claimant” (Baglay & Jones, 2017, p. 296). The hearings are presided over by appointed IRB members. In 2014, the Ottawa IRB’s office was closed and the hearings were transferred to Montreal. The office reopened in 2018.⁴⁰

2.2.4.1 Conduct of Refugee Hearings

While many different aspects of the refugee hearing are gendered, I focus here on video conferencing, the order of questioning and the possibility of having a panel and interpreter of a “particular gender”. For each of these aspects, I highlight certain specific difficulties related to gender and other axes of social division that can occur.

³⁹ More information from the IRB on the hearing is available on: <https://irb-cisr.gc.ca/en/applying-refugee-protection/Pages/index4.aspx>.

⁴⁰ This CBC article discusses the reopening of the Ottawa IRB’s office: <https://www.cbc.ca/news/canada/ottawa/immigration-refugee-board-office-reopen-ottawa-1.4667774>.

2.2.4.1.1 Video Conferencing

Hearings can be in person or by videoconference. Several issues can arise from the hearing being conducted by video conference, such as adding an “additional layer of formality and awkwardness to the hearing” (Dauvergne et al., 2006, p. 58), not to mention the technical and logistical capability to join a video conference. Given the above noted challenges for women claimants with gender-based claims face, some authors recommend cases involving gender-related persecution being exempt from video conference settings (Dauvergne et al., 2006, p. 58).⁴¹ The impersonal, alienating experience of a videoconference hearing is the primary problem identified by S. Ronalds Ellis (Ellis, 2004). Ellis found most participants felt this alienation particularly severely in cases where allegations of physical or sexual abuse are figured in the hearing because victims of physical or sexual abuse or torture may not do well testifying to a television screen (Ellis, 2004). Language may also create extra obstacles in this context, especially as the interpreter is often located with the decision-maker, which may increase the possibility of misunderstandings (Dauvergne et al., 2006, p. 58). Videoconferencing also tends to diminish mutual trust and understanding, and intensify potential problems in non-verbal communication due to cultural reasons (Federman, 2006). Mark Federman also denounces a widening of the power imbalance between the tribunal members and the refugee claimant as the imbalance in experience with videoconferencing grows, and tribunal members become accustomed to it (Federman, 2006).⁴²

⁴¹ That cases involving sexual abuse or physical or mental torture or where the claimant has Post-traumatic Stress Disorder should be exempted from videoconferencing is also made by Ellis (Ellis, 2004).

⁴² Positive effects of videoconferencing are also mentioned in the literature (see, for example, Bradley & Farber, 2022; Salyzyn, 2012). A recent report from Vermeys and Callipel exploring stakeholders' sense of access to justice during virtual hearings, including potential positive aspects of video conferencing, is available on: <https://www.irb-cisr.gc.ca/en/transparency/reviews-audit-evaluations/Pages/access-to-justice-virtual-hearings-report-2022.aspx#s2p6>.

2.2.4.1.2 The Order of Questioning

Since 2004, the standard practice is for the RPD member to question the claimant first, before their counsel, a practice referred to as “reverse order questioning” (Baglay & Jones, 2017, p. 301). This practice has been much criticized, as explained by Baglay and Jones, for creating disadvantages for the claimant (Baglay & Jones, 2017, p. 301; see also Macklin, 2009). Concerns have also been expressed in this regard for cases where the claimant has experienced domestic violence, for instance (Dauvergne et al., 2006, p. 59). As explained above, according to the Chairperson’s Guideline 8 (Immigration and Refugee Board of Canada, 2006), the IRB may accommodate a person’s vulnerability in various means, including varying the order of questioning. In such cases, it is the lawyer who will question the claimant first.

2.2.4.1.3 A Panel and Interpreter of a Particular Gender

As mentioned above, the IRB may accommodate a person by providing a decision-maker and interpreter of a “particular gender” (Crawley, 2001, p. 205; Dauvergne et al., 2006, p. 59; Martin, 2004, p. 36). I mentioned some of the criticisms made in the literature against female-only environments (“gender-matching”) and the idea that in such an environment there are no barriers anymore for the refugee claimant to talk about her experiences. The issue of the potential influence gender may have on refugee adjudication has also been explored in the literature, where Sean Rehaag highlighted the equivocation. In his research, Rehaag explained that while the sex of decision-makers may have an influence on outcomes in asylum applications, in certain contexts, it is not the only element to take into consideration as gender differences vary depending on the context and is likely to be influenced by many other factors (Rehaag, 2011a, p. 629). In a similar vein, in their research, Dauvergne et al. cited key informants who indicate that “such panels did not make much of a difference to the hearing; ultimately, it depends on the individual decision-maker” (Dauvergne et al., 2006, p. 59).

2.2.4.2 Evidence, Testimony, and Credibility

At the hearing, part of the evidence presented is the testimony of the applicant (Baglay & Jones, 2017, p. 300). The issue of credibility, i.e. the issue of determining “whether and which of the applicants’ factual statements and other evidence can be accepted as true” (Singer, 2014, p. 98), is central in this context (Baglay & Jones, 2017, p. 300). According to Singer, this determination is often at the core of asylum refusals in women’s refugee claims (Singer, 2014, p. 100).

Decision-makers have great flexibility in assessing the credibility of a claimant. As explained by Rehaag, there are no formal rules for evidence but several principles in case law (Rehaag, 2017, p. 40). Thus, the author explains that the assessment of credibility is based on a variety of factors: unexplained inconsistencies/omissions in the claimant’s evidence, inconsistency between the claimant’s evidence and country conditions information or other documents, plausibility, and the demeanour or manner in which the claimant testifies; in addition, the decision-maker can make general negative credibility findings (Rehaag, 2017, p. 40).⁴³ The existence of many misunderstandings regarding credibility decision making, including from decision-makers, is highlighted in the literature (Cameron, 2010; Millbank, 2009).

One important criticism about credibility is the reliance on assumptions. Indeed, decision-makers often introduce their projections and assumptions when assessing applicants’ credibility (Shuman & Bohmer, 2014, p. 942). Intersecting axes of social division and related assumptions play an important role in this context, as decision-makers often rely on essentializing perceptions of gender, race, class, nation, sexuality, and religion, to name a few, to fill the gaps

⁴³ As explained by Rehaag, refugees are often represented as liars and fraudsters (culture of disbelief), such representations being a recurrent theme in the literature on credibility (Rehaag, 2017, p. 42; see also Anderson et al., 2014; Crépeau & Nakache, 2008; Jubany, 2011; Sweeney, 2009).

when they do not know how to interpret certain situations (McKinnon, 2016, p. 13; see also Aberman, 2014, p. 57). This is problem for claimants whose case does not easily fit into known or familiar rubrics and will find it more difficult to produce a “successful refugee image” based on the expectations of the host country (McKinnon, 2016, p. 13; Rousseau et al., 2002, pp. 51–52). Aberman also emphasizes the colonial aspect of these practices by the insistence on the Western character of producing the image of a successful refugee (Aberman, 2014, p. 57).

The question of the credibility of an applicant is closely linked to her behavior (Shuman & Bohmer, 2014, p. 949). The links between the behaviour of the claimant, the assumptions used in the assessment of credibility and the need to produce a successful refugee image may create particular difficulties for women (Oxford, 2005, 2014, p. 167; Shuman & Bohmer, 2014). I discuss here two constructions specific to women refugee claimants in relation to their credibility: first, the image of the “appropriate mother or wife” and secondly, the need to be “rightly emotional” (Spijkerboer, 2016, pp. 55-56). It has been established in the literature that when a woman has a husband and children, her behaviour towards them before, during and after the flight will be scrutinized during the interview. A mother or a wife must have “proper behaviour” in the eyes of (Western) decision-makers. This behaviour corresponds to the traditional image of a Western mother or wife. For example, if a mother has fled without her children, she will be considered incredible (Spijkerboer, 2016, pp. 55-56, see also Oxford, 2014, p. 168). Second, female applicants need to be “rightly emotional”, which means that they must display the right amount of emotions at the right time – not too little, but not too much – and at appropriate moments. For example, if a woman does not show any emotion when disclosing an experience of sexual violence, she will be considered unbelievable (Shuman & Bohmer, 2014). Conversely, “showing an excess of emotions is seen as play-acting” (Shuman & Bohmer, 2014, p. 947; Spijkerboer, 2016, p. 56). Spijkerboer also explains how ethnicity and credibility may

be related (Spijkerboer, 2016, p. 59). The author noticed that the three elements, the appropriate behaviour as mother or wife, the right display of emotions, and ethnicity, might intersect and that what is considered an “appropriate behaviour as mother or wife” or a “right display of emotions” may vary depending on the ethnicity of the person whose the credibility is being evaluated (Spijkerboer, 2016, p. 65).

Finally, it is important to note that social-scientific evidence often contradicts assumptions underlying credibility assessments, such as assumptions about consistency, using common sense or intuition, and credibility assessments based on claimant demeanour (Pfeiffer, 1988; Macklin, 1999; Kagan, 2003; Cameron, 2010; Herlihy et al., 2010; Eyster, 2012). Cameron for instance studied how memory works and common failures of memory (Cameron, 2010, p. 470). Other authors have highlighted the difference between memories of traumatic events and normal memories (Herlihy & Turner, 2009, p. 176). Herlihy and Turner particularly discussed the issue of memorizing dates, as making errors about dates in the claim sometimes casts doubts on credibility, explaining the difference between central and peripheral details: “the literature on eye-witness memory has found that, when an event is highly distressing to the participant, there is a tendency for central details to be remembered at the expense of peripheral details” (Herlihy & Turner, 2009, p. 179). The counsel often plays an important role in the construction of credibility. Together with the claimant, they work on reinforcing credibility through various ways (collecting proofs, training for the hearing, etc.) (Halluin-Mabillot, 2012; Murray, 2015; Tomkinson, 2019).

2.2.5 Access to Legal Representation, Right to Counsel, and Quality of Representation

The refugee determination process is a complex course that is difficult to navigate without assistance. While refugee claimants are often helped by different actors, such as community organizations, in the preparation of their claim (Dauvergne, 2006, p. 47), I here concentrate on legal representation.

Canadian immigration legislation recognizes the right to representation in refugee proceedings, that is that persons claiming refugee protection "may, at their own expense, be represented by a barrister or solicitor or other counsel"⁴⁴ (Rehaag, 2011b; Smith et al., 2021). The issue is important in that representation has been shown to be a key component of a successful asylum claim (Rehaag, 2011b; Baglay & Jones, 2017, p. 315; Smith et al., 2021, p. 15; pp. 27 et s.).

Lawyers and non-lawyer representatives may represent refugee claimants in proceedings before the IRB. Lawyers can be privately paid, accept legal aid certificates, work in legal clinics or legal aid offices (Baglay & Jones, 2017, p. 315). Non-lawyer representatives can be paid, such as immigration consultants, or unpaid, such as family, friends, and volunteer organizations (Baglay & Jones, 2017, p. 315; Smith et al., 2021, p. 21). While the lack of representation can have a negative impact on the outcome (see, for example, Barutciski, 2012; Rehaag, 2008b; Smith et al., 2021),⁴⁵ the type of representatives to which refugee claimants turn to can also affect the decision according to Rehaag (2011b). Contrary to Baglay and Jones, who noted that there is not necessarily a difference in skill between the representatives (Baglay & Jones, 2017, p. 315), Rehaag found that claimants represented by consultants are more likely to have their

⁴⁴ S. 167(1) IRPA.

⁴⁵ Barutciski indicated that from July 2002 to March 2012, the overall acceptance rate of the RPD of the IRB was of 53%. For unrepresented claimants, however, the acceptance rate is 16% (Barutciski, 2012, p. 24).

claims withdrawn or declared abandoned than those represented by lawyers (Rehaag, 2011b, pp. 86-87).

2.2.5.1 Accessing (Legal) Representation

Although section 167(1) of the IRPA recognizes the right to have representation in refugee proceedings, this right is limited. First, refugee claimants may face all sort of difficulties upon arrival that may limit their opportunities to find a representative (Liew & Galloway, 2015, p. 246). Another very concrete limit is related to the financial resources of refugee claimants, as many may not have the resources to retain counsel (Baglay & Jones, 2017, p. 320). While legal aid coverage is not provided for refugee claimants in all Canadian provinces, it is the case in Ontario. In Ontario, refugee claimants who meet the financial eligibility requirements and other conditions put in place by Legal Aid Ontario (LAO) can obtain certificates by which they may access a lawyer, either a private lawyer, community clinic or legal aid lawyers, whom they can choose from among a list of lawyers paneled by the LAO. Although adequate legal aid coverage is critical in ensuring access to justice (Smith et al., 2021, p. 15), this coverage may sometimes be insufficient concerning the kind of assistance received and the category of claimants who have access to it (Baglay & Jones, 2017, p. 320).⁴⁶ If they are not eligible,⁴⁷ there are several other options for refugee claimants, such as having access to representation through community legal clinics. Refugee claimants always can hire someone at their own expense, which may be difficult for many of them. The reduction in legal aid funding for refugee claimants have been

⁴⁶ The overall context also needs to be taken into consideration in this regard. For example, while the 2019 legal aid funding cuts for refugee claimants by the Government of Ontario have been greatly discussed, Smith et al. emphasize the “recurring pattern of funding and service cuts specifically targeting refugee claimants” (Smith et al., 2021, p. 9), in which those 2019 cuts took place.

⁴⁷ Smith et al. also refer to claimants eligible for initial phases but ineligible after that (Smith et al., 2021, p. 25). They also mention the difficult situation of those who do not qualify financially for legal aid but who are still very poor: “[...] one has to be very poor or quite wealthy to engage counsel and access procedures” (Smith et al., 2021, p. 26).

particularly criticized in this regard as having direct consequences on the availability of support for refugee claimants (Dauvergne, 2006, p. 48).⁴⁸

Among the other limits regarding the right to counsel, Baglay and Jones note “the competing statutory obligations of other actors in refugee determination” or tight timelines to submit the application (Baglay & Jones, 2017, p. 321), the practical availability of counsel and the absence of any duty that an individual be informed of the right to counsel (Baglay & Jones, 2017, pp. 321-323). The first of these limits refers to the statutory timelines to hear and process claims (Baglay & Jones, 2017, p. 321). Regarding the practical availability of counsel, Baglay and Jones refer to the effect that the reduction in legal aid had in making representatives less interested in defending such cases. Finally, while claimants are sometimes unaware that they have a right to counsel, the authors mention the absence of any duty that an individual be informed of this right (Baglay & Jones, 2017, p. 323). Failure to advise an individual that they have the right to be represented is “symptomatic of a large failure to ensure that an individual is aware of the nature and consequences of proceedings” (Baglay & Jones, 2017, p. 323). Overall, refugee claimants often lack information about refugee law and procedures (Oxford, 2014, p. 172). Yet, access to this information is critical (Dauvergne, 2006, p. 47; Smith et al., 2021, p. 21). In their 2006 report, Dauvergne et al. already made a recommendation in this regard (Dauvergne et al., 2006, p. 7).

2.2.5.2 Quality of Representation

The quality of representation is a significant and long-standing factor impacting efficiency, outcomes, and access to justice (Baglay & Jones, 2017, p. 319; Smith et al., 2021, pp. 5, 29).

⁴⁸ Rehaag also discusses this issue (2011b, p. 73) and indicates that the federal government should transfer sufficient funds to provincial legal aid programs. Access to publicly-funded legal aid is also at the center of the report developed by Smith et al., who explored how this access impacts fairness, efficiency, and outcomes (Smith et al., 2021).

Counsel may prepare claimants by familiarizing them with procedures, helping them filling in the various forms, referring them to other professionals, collecting evidence to support their claim, and advising them on how to address IRB Members. Craig Damian Smith, Rehaag, and Trevor C. W. Farrow particularly highlight the importance of representation during the pre-hearing phase since completing forms and collecting evidence without the aid of counselor or with the aid of low-quality counsel risks omissions or errors, which impact the applicant's credibility (Smith et al., 2021, p. 18). Smith et al. provide several examples of low-quality/abusive representation in their research. These examples include not communicating with the claimants, either to tell them what they have to do or to give updates on the process; not engaging with the claimant or not paying attention to their case;⁴⁹ having poor knowledge about the process and/or not being prepared enough, such as going underprepared for hearings, missing deadlines, submitting evidence that does not meet the required protocols; and neglecting aspects of the case or process (Smith et al., 2021, p. 29). Smith et al. also highlight the existence of an intersection between abusive counsel and inadequate legal aid funding, explaining that a lack of or low legal aid tariffs can incentivize abusive practices. Those lawyers “advance their own agendas by taking advantage of claimants’ lack of knowledge, the limited availability of other lawyers who are willing to accept legal aid certificates, and emergency situations such as the 2019 funding cuts in Ontario” (Smith et al., 2021, p. 33). Smith et al. also noted a concentration of abuses in specific national or linguistic communities which, they explain, are also the communities that are the most represented among the refugee claims made in the past few years (Smith et al., 2021, p. 34), highlighting the possibility of a link between abusive counsel, nationality, and/or language.⁵⁰ Smith et al. also emphasize the stress further

⁴⁹ Smith et al. explain that private lawyers giving little to no attention to legal aid files because they are not lucrative is the most common experience of abusive counsel (Smith et al., 2021, p. 32).

⁵⁰ Smith et al. note that IRB members who participated in their research mostly agreed that claimants from specific countries of origin have more significant challenges accessing high-quality counsel (Smith et al., 2021, p. 34). The most mentioned countries were Nigeria, Haiti, India, Mexico and Pakistan (Smith et al., 2021, p. 34).

created for refugee claimants due to the short timelines under which claimants are required to submit their documentation (Smith et al., 2021, p. 22).

It may be difficult for refugee claimants to realize that their representation is incompetent according to Baglay and Jones. Various reasons can explain this difficulty, such as a low-level of English or French, a lack of financial resources, and a lack of knowledge about the system and the role of counsel (Baglay & Jones, 2017, p. 323). Although the mistakes made by counsel may have grave consequences for refugee claimants, remedies available for them in case of an error are limited. The threshold set by the courts is very high for individuals who aim to challenge decisions for reasons related to the counsel's wrongdoing (Baglay & Jones, 2017, pp. 323-324). The processes and legal arguments needed to mount a claim of negligence or incompetence by counsel is complicated and inaccessible to those in vulnerable positions (Baglay & Jones, 2017, pp. 325–327; Smith et al., 2021, p. 36).

Interestingly, Smith et al. note that claimants who qualify for legal aid often face additional difficulties finding quality counsel (2021, p. 21). Indeed, the authors explain that many claimants simply receive a list of potential representatives, and that they typically call each representative one by one from the top of the list until one responds (Teklu, 2020, pp. 12-13, as cited in Smith et al., 2021, p. 21). Smith et al. also underline the difficulty for those claimants to change counsel once they have accepted a legal aid certificate (2021, p. 21).

In improving access to quality counsel, the following recommendations have been offered: (1) ensure stable and flexible legal aid funding, (2) provide early mainstream access to quality counsel and hearing preparation,⁵¹ (3) increase oversight and reporting structures for low-

⁵¹ Among the recommendations under this title, Smith et al. recommend that “In collaboration with Law Societies, Legal Aid Plans (...) make claimants aware of their rights in general in regards to what they are entitled to when

quality or abusive counsel⁵² (Smith et al., 2021, pp. 38 et s.), and (4) have continuing legal education programs offer specialized courses in refugee law, including information about gender and how, when, and why it needs to be taken into consideration in the refugee determination process (Dauvergne et al., 2006, p. 48).

3. Objectives and Research Questions

Through this thesis, I aim to provide a better understanding of women refugee claimants' experiences in preparing their claims and focus on three specific issues: legal representation, the writing of the basis for the claim, and the preparation for and presentation of the case at the hearing.

I chose to undertake this research from a feminist perspective, where one of the main objective is to render visible the experiences of women, an objective at the heart of many feminist approaches to research and knowledge building (Brooks, 2007, p. 54). As indicated above, among the different feminist approaches, I am particularly interested in the concept of gender as an analytical category to approach the experiences of women refugee claimants and documenting their experiences, opinions, and views on the refugee determination process. As also indicated above, the analysis of gender is now difficult to imagine without interrogating how it intersects with other axes of social division, such as race, class, and religion (Herrera, 2013, p. 472; see also Lutz, 2010; Anthias, 2012). Such intersectional analysis, which involves examining the multiple axes of social division shaping the gender experiences of women, is

being served by legal aid, and when encountering problematic counsel” (Smith et al., 2021, p. 39). The authors also make similar recommendations about hearing preparation: “Hearing preparation programs should include expectations with regards to lawyers and other counsel, and a clear set of actions for recourse if responsibilities and ethical duties are not met” (Smith et al., 2021, p. 39).

⁵² Smith et al. recommend, among others, that Law Societies, Legal Aid Plans, and the IRB set up a standardized reporting structure in case of problematic counsel (Smith et al., 2021, p. 40). They also note that more flexible and streamlined options should be offered by Legal Aid Plans for changing counsel when complaints are justified (Smith et al., 2021, p. 40).

particularly relevant in exploring women's diverse experiences in claiming refugee status. Exploring this diversity is another main objective of this thesis, which takes an opposing stance from their dominant representation as a homogenous group of passive powerless victims with similar experiences (Razack, 1998; Oswin, 2001; Oxford, 2005; McKinnon, 2016; Spijkerboer, 2017).

In addition to overshadowing the diversity and specificity of the experiences of women (Aberman, 2014; Oxford, 2008, 2014; Spijkerboer, 2016), such representations of refugee claimants essentialize their individualities by presenting the experience of victimhood as the ultimate and only experience (Jacobs & Maryns, 2022, p. 543). Contrary to such representations, this research aims to explore the participation of women refugee claimants in preparing their claims with the objective of understanding how they manage this preparation, the obstacles they face and the strategies they adopt (see, for example, Hunt, 2008). Oxford, Jacobs and Maryns have highlighted the importance of such research (Jacobs & Maryns, 2022; Oxford, 2014).

With these objectives in mind, the three main research questions are:

- 1) How do women participate in preparing their claims?
- 2) What facilitates or limits women's participation in the preparation of a claim? and
- 3) How do intersecting axes of social division influence this participation?

By putting forward the voices of women, the results of this research contribute to the development of a better understanding of women refugee claimants' diverse experiences and forms of participation in preparing their claims. This thesis also provides information on the contexts that favor and/or limit women's participation and the role of intersecting axes of social

division in shaping their action opportunities. This research contributes to works documenting the diversity of women refugee claimants in Canada.

4. Conclusion

In this chapter, I first offered an overview of feminist analysis of forced migration. This overview highlighted the different types of feminist analyses of forced migration that exist in the literature, particularly the specifics and development of “the analysis of gender” and the intersectional approach in the study of migration (Donato et al., 2006; see also Boyd & Nowak, 2013; Herrera, 2013, p. 472). I then specifically addressed the issue of the dominant representations of refugee women as a uniform group of powerless victims. As explained above, the literature has underscored the broader political context from which these representations come, marked by the perpetuation of several systems of oppression, including patriarchy and postcolonialism (see, for example, Crawley, 2022; Mohanty, 2003; Pessar, 1999, p. 593; Razack, 1998, p. 90). This chapter showed how these representations are used variably, depending on the context, by the West to determine who deserves to be a refugee and who does not, and the consequences (see, for example, Crawley, 2022; Spijkerboer, 2016). It also referred to authors who highlight how the experiences and decisions of some refugee claimants directly contradict their representation as powerless victims (Aberman, 2014; Oxford, 2008, 2014; Spijkerboer, 2016).

This chapter also explored feminist engagement with Canadian refugee law and asylum procedures. Specifically, this chapter discussed the definition of a refugee and its essential components, i.e., the notion of well-founded fear and its two components, the concept of persecution, the nexus requirement and reasons for persecution, and addressed the main gender issues related to these components underscored in the literature. The chapter then offered an

overview of gender issues that can occur during the main steps of making a refugee claim from within Canada, from a procedural perspective. More specifically, I explored the gender issues that may arise during the pre-hearing steps, including filling in the Basis of Claim Form and collecting evidence, and during the hearing, as well as issues related to access to legal representation, the right to counsel and the quality of representation. The literature review showed that specific gender issues are likely to occur at each of the steps under study and persist over time, despite increasing feminist work and advocacy in the past few years (Dauvergne, 2021, p. 728). In this chapter, I also outlined the objectives of the thesis and the three main research questions.

The literature review chapter thus established the broader context for the experiences central to this project, i.e., the experiences of women claimants in preparing their claims, and for the subsequent research steps in this work. The research aligns with the literature discussed in this chapter and aims to contribute to it by recognizing the importance of acknowledging gender as a central analytical category and the added value of the intersectional approach in exploring the diversity of migration experiences (Anthias, 2012; Bilge & Denis, 2010; Carastathis et al., 2018; Grosfoguel et al., 2015). In this chapter, I also introduced postcolonial feminist criticisms against the representations of women claimants and Western feminist perspectives and theories. In the following chapter, which is dedicated to the conceptual and theoretical framework, I will develop these conceptual and theoretical lenses further, as well as their role in this research.

Chapter 2: Conceptual and Theoretical Framework

In this chapter, I discuss the conceptual and theoretical framework that informs my research. First, to illuminate the diversity of women's experiences and the broader context in which they are embedded, the conceptual and theoretical framework draws on two main bodies of theoretical work: postcolonial feminism and intersectionality. As I explain below, a postcolonial feminist perspective provides a useful lens to view how the broader colonial context influences refugee claimants' experiences and to stay alert to the reproduction of colonial representations (Ozkazanc-Pan, 2012, p. 574; Lewis & Mills, 2003). Intersectionality, as a transdisciplinary theoretical framework, then recognizes and explores how experiences of human beings and the organization of power are shaped by the multiple axes of social division – such as gender, race, age, disability (to name a few) – that exist in a given society and how these axes work together and interact (Hill Collins & Bilge, 2016, p. 1). Intersectionality has particularly helped in making visible the realities of traditionally marginalized groups and in deconstructing the idea that these people constitute a homogeneous group with the same universal experiences and needs (Harper, 2012). Finally, the conceptual and theoretical framework refers to the concept of agency, which I use to explore women's experiences in preparing their claims, the focus of this research.

1. Postcolonial Feminism

The theoretical framework also draws on another body of theoretical work: postcolonial feminism. Postcolonial feminism is diverse and has many different views and perspectives (Taha, 2017, p. 110). I refer here to the postcolonial feminist scholars' criticisms of Western feminist perspectives and theories.

Postcolonial scholars have criticized “Western” representations of the “Third World” /postcolonial subjects,⁵³ highlighting and deconstructing the conceptualization/re-production in various ways and areas of the West as the dominant, the center, as opposed to the “others” as the marginal, the periphery (Ashcroft, 2002, pp. 3-4; p. 8). Criticizing the representation of others as a homogeneous group of victims with similar experiences, postcolonial authors, on the contrary, have particularly emphasized the diversity of the experiences of colonized people (Loomba, 2015, p. 36). They also argue for the recognition of these people and the worlds in which they live not only in terms of oppressions, but also of historical complexities and resistance against these oppressions (Mohanty, 1984, 2003a, p. 223). This topic has been particularly developed by postcolonial feminist scholars about Western feminist theories and writings (see below). Postcolonial feminist scholars have been interested in the intersections between the postcolonial criticisms against Western representations of “the Third World other”/postcolonial subjects and feminist interests towards gender, race, ethnicity, and other axes of social division, how they interact and the potential consequences (Ozkazanc-Pan, 2012, p. 574).

Postcolonial feminist scholars have criticized Western feminist perspectives and theories for participating in the construction of colonial discourses and in the representation of women from the Global South as a homogeneous group coming from “other” culturally backward and barbaric countries – passive victims of primitive patriarchy (Taha, 2017, p. 114). The epistemological beliefs behind these perspectives have particularly been criticized for attempting “to speak about and speak for the 'Third World woman' as an undifferentiated object/subject of Western academia” (Ozkazanc-Pan, 2012, p. 574). Postcolonial feminist

⁵³ Mohanty further explores the terms “Western” and “Third World”, as opposed to “North” and “South” or “One-Third/two-Thirds Worlds” in her book “Feminism without borders: decolonizing theory, practicing solidarity” (Mohanty, 2003, p. 226).

scholars also studied and highlighted the political implications of these perspectives and theories, as well as the connection between these perspectives and feminist political organizing in general (Mohanty, 1984, 2003a, p. 223). The broader political and economic context of Western domination, within which Western feminist scholarship has developed, is put forward and criticized (Mohanty, 1984, 2003a, p. 223).

In Chapter 1, I developed the two major lacunae from White feminist literature, according to Tyagi: 1) the little and/or no attention put on the notion of “race” and 2) “the denial of the socio-historical context that characterizes the work of Western Feminists in their approach toward “Third World” women” (Tyagi, 2014, p. 47). I also mentioned the criticism of Mohanty regarding the construction of the “Third World woman” by Western feminist scholars (Mohanty, 2003). According to Mohanty, Western feminist scholars have (re)produced, in their writings, the construction of the “Third World woman” as a “singular, monolithic subject” (Mohanty, 2003, p. 17) and of “Third World women” in general as “a homogeneous ‘powerless’ group often located as implicit victims of particular socioeconomic systems” (Mohanty, 2003, p. 23). In this representation, Dina Taha emphasized, the “Third World woman” is “portrayed as “sexually constrained...ignorant, poor, uneducated, tradition-bound, domestic, family-oriented, victimized, etc.” (Mohanty, 1984, p. 337, as cited in Taha, 2017, p. 114). Such portrayals encourage the marginalization of these women (Mohanty, 1984, p. 333-358, as cited in Taha, 2017, p. 114). As explained by Taha, they “are less concerned with the reality of Third World women and more with validating the supremacy of the West, hence justifying colonialism and imperialism in many ways” (Mohanty, 1984, p. 337, as cited in Taha, 2017, p. 114). Sherene Razack, who also criticized Western feminist theories, highlighted how these perspectives often adopt cultural deficit explanations to explain non-Western women’s experiences of violence within their communities generally described as “overtly patriarchal

and inherently uncivilized” (Razack, 2004, p. 130). Razack, in her article “Imperilled Muslim Women, Dangerous Muslim Men and Civilised Europeans”, particularly focused on the representations of Muslim women 's bodies. She explained how violence against them is explained as intrinsically linked to Muslim culture in the Western perspective, aiming to reinforce the representations of Muslim men as a threat and justify measures to control them (Razack, 2004, p. 131). She emphasized the ultimate goal of the West, by referring to gender equality and the need to end violence against women, of policing Muslim communities (Razack, 2004, p. 129).

Postcolonial feminist scholars thus propose to re-examine Western feminist perspectives and theories, as those, they argue, have been produced on the basis of privileges and positions of power in the global North (Ozkazanc-Pan, 2012, p. 574; Mohanty, 2003; Spivak, 1988). According to Mohanty, this work can be accomplished through solidarity among the existing feminisms as, from her perspective, Western and Third World feminisms do not oppose each other in a manner that renders solidarity impossible between them (Mohanty, 1984, 2003, p. 224). In her work, she also emphasizes on the need for any critique of Western feminism to be situated in the context of the critique of global capitalism. She also emphasizes the necessities of cross-national feminist solidarity and organizing against capitalism (Mohanty, 2003, p. 230).

These postcolonial feminist criticisms are particularly useful for this research in exploring women's experiences and their opportunities for action in preparing their claims. A postcolonial feminist perspective provides a useful lens to view the broader context's impact on women's experiences (O'Mahony & Donnelly, 2010, p. 441). The denial of the socio-historical context in research on the experiences of “Third World women” is one of the two major lacunae from White feminist literature (Tyagi, 2014, p. 47). The role colonialism has played and still plays

today in the context of relations between the West and the “Third World” is thus put forward by postcolonial feminists, as well as the continuing colonial strategies of the West to keep its privileges. In this context, postcolonial feminist ideas prompted me to stay alert to the risk of reproducing colonial representations through techniques such as homogenization and victimization of women's experiences. In this perspective, postcolonial feminist ideas helped me to examine how race, gender, and other axes of social division influence their experiences differently depending on the series of social, cultural, political, and economic factors (O’Mahony & Donnelly, 2010, p. 442).

This perspective highlights how identities and positions are constructed within the past and current colonial context and illuminates the diversity of experiences and material living conditions of postcolonial subjects (Ozkazanc-Pan, 2012, p. 574; Lewis & Mills, 2003). Postcolonial feminist ideas, also conceptualized as “recovery strategies” by Ozkazanc-Pan (Ozkazanc-Pan, 2012, p. 574), thus support the appreciation that the historical context shapes each woman's life and that this context must always be considered (O’Mahony & Donnelly, 2010, p. 445). It is from this perspective that the experience of each woman respondent is approached in this project.

2. Intersectionality

There are a variety of ways to describe what intersectionality is. While people understand and use intersectionality in many different ways (Hill Collins & Bilge, 2016, p. 1), I refer to the definition given by Patricia Hill Collins and Sirma Bilge in their book “Intersectionality” (Hill Collins & Bilge, 2016). According to those authors, intersectionality can be defined as a transdisciplinary theoretical framework that recognizes and explores how experiences of human beings and the organization of power are shaped by the multiple axes of social division – such

as gender, race, age, disability (to name a few) – that exist in a given society and how these axes work together and interact (Hill Collins & Bilge, 2016, p. 1). As explained by the authors, “these axes of social division work together and influence one another to shape each individual biography” (Hill Collins & Bilge, 2016, p. 6).

In the perspective of Hill Collins and Bilge, race, class, gender, sexuality, ethnicity, and citizenship status, among others, are identified as categories of analysis. They explained that those categories refer to important social divisions (they often refer to those as axes of social division). They also explained that those categories “gain meaning from power relations of racism, sexism, heterosexism, and class exploitation” (p. 15), among others (they also mention capitalism and nationalism). The concept of power and the organization of power relations are core ideas of intersectional frameworks (Hill Collins & Bilge, 2016, p. 17). In this perspective, these authors also referred to race, class, gender, sexuality, age, and disability as systems of power (Hill Collins & Bilge, 2016, p. 18). According to Hill Collins and Bilge, the organization of power relations may be described by distinguishing four interconnected domains of power: the interpersonal, disciplinary, cultural and structural domains. Each of these domains provides opportunities for using intersectionality as a analytic tool (Hill Collins & Bilge, 2016, p. 15). The interpersonal domain of power refers to the relationships between individuals and their positioning as more or less privileged within their social interactions. In this context, an intersectional framework may help illuminate the multiplicity of individual identities and how systems of power such as class, gender, race, sexuality and other categories, differently locate each individual (Hill Collins & Bilge, 2016, p. 16). The disciplinary domain of power pertains to variations in treatment and applicable rules depending on the individuals. As Hill Collins and Bilge wrote, “power operates by disciplining people in ways that put people’s lives on paths that make some options seem viable and others out of reach” (Hill Collins & Bilge, 2016, p.

16). The cultural domain of power refers to the dissemination of ideas that justify social inequalities, such as fabricated narratives aimed at establishing that competitions and their outcomes are fair (Hill Collins & Bilge, 2016, p. 17). Finally, the structural domain of power refers to how power relations are organized and structured. Here, intersectionality helps in illuminating the complexity of the intersections of these power relations and how they shape the institutionalization and organization of a given group or society (Hill Collins & Bilge, 2016, p. 18).

In his text, “We’re all just different!” How Intersectionality is Being Colonized by White People, Jamie Utt highlighted the importance for white persons to acknowledge the origins and history of intersectionality (Utt, 2017). In Utt’s perspective, white persons “colonize” intersectionality by “taking something that was originated by people of Color, divorcing it from its roots, and re-appropriating it in some way that serves White interests” (Utt, 2017). It is with this criticism in mind that I wrote here on the history of intersectionality. Indeed, although intersectionality has become very popular recently in the global North (Bilge, 2009, p. 70), the ideas behind intersectionality are “neither confined to nations of North-America and Europe nor it is a new phenomenon” (Hill Collins & Bilge, 2016, p. 13). On the contrary, intersectionality has been used as an analytical tool in the Global South for a long time, although the word “intersectionality” as such is not necessarily used (Hill Collins & Bilge, 2016, p. 13).

The theory of intersectionality as we know it today mainly takes its roots in the work of black feminist authors (such as bell hooks, Kimberlé W. Crenshaw and Hill Collins) during the 1970s-1990s who were criticizing “the violence of citizenship in a colonial, racial state” (Carastathis et al., 2018, p. 7). The first research mobilizing intersectionality allowed to render increasingly

visible the “social localisation” (“locus social”) of black women and women of color, which have been traditionally marginalized within feminist movements, as well as within antiracist movements (Bilge, 2009, p. 71). The 1977 Combahee River Collective’s statement is often said to illustrate the main ideas of intersectionality (The Combahee River Collective, as cited in Bilge & Denis, 2010, pp. 3–4; see also Tyagi, 2014):

A combined anti-racist and anti-sexist position drew us together initially, and as we developed politically we addressed ourselves to heterosexism and economic oppression under capitalism. [. . .] We believe that sexual politics under patriarchy is as pervasive in Black women’s lives as are the politics of class and race. We also often find it difficult to separate race from class from sex oppression because in our lives they are most often experienced simultaneously. We know that there is such a thing as racial sexual oppression which is neither solely racial nor solely sexual, e.g., the history of rape of Black women by white men as a weapon of political oppression. (See the Combahee River Collective Statement in Smith, 2000, pp. 264 et s.)

Crenshaw is then the first author to use the term “intersectionality” (Crenshaw, 1989; Harper, 2012). In her text, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, Crenshaw uses the word “intersectionality” to describe how race and gender intersect to shape the experiences of Black women with employment (Crenshaw, 1989). She wrote:

I argue that Black women are sometimes excluded from feminist theory and antiracist policy discourse because both are predicated on a discrete set of experiences that often does not accurately reflect the interaction of race and gender.

These problems of exclusion cannot be solved simply by including Black women within an already established analytical structure. Because the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated. (Crenshaw, 1989, p. 1244)

In her work, Crenshaw differentiated two types of intersectionality: structural intersectionality and political intersectionality (Crenshaw, 2005; Harper, 2012). Structural intersectionality is defined by Crenshaw as the ways in which the positioning of women of color at the intersection of race and gender renders their experiences of violence and the opportunities of overcoming them qualitatively different from those of white women (Crenshaw, 2005, p. 54). In her analysis of structural intersectionality, Crenshaw illuminates the multiple forms of domination lived by women and how the converging effects of these domination forms prevent women from getting out of violent situations (Crenshaw, 2005, p. 55). To illustrate this, Crenshaw provides an example from the amendments made to the marriage fraud provisions of the 1986 Immigration and Nationality Act. Crenshaw explained that these amendments require each person who has migrated to the US to marry a US citizen or permanent resident to remain “properly” married for two years before they can apply for permanent resident status. Furthermore, once this period has passed, the process must be undertaken jointly by the spouses. Crenshaw highlight how the fear of deportation dissuades migrant women from reporting their violent husbands and leaving them (Crenshaw, 2005, p. 57). Political intersectionality then refers to the marginalisation of the violence lived by women of color induced by feminist and anti-racist politics (Crenshaw, 2005, p. 54).

Another black feminist author who played a significant role in developing the theory of intersectionality is Hill Collins. In her book “Black Feminist Thought”, she defined intersectionality as the intersection of particular forms of oppression, for example, the intersection of race and gender or sexuality and nation (Hill Collins, 2021, p. 74). Hill Collins also used the notion of “matrix of domination”, which she defined as the concrete ways in which these oppressions are structured: notwithstanding the intersections involved, structural, disciplinary, hegemonic, and interpersonal power relations underlie very different forms of oppression (Hill Collins, 2021, p. 74).

Nowadays, Bilge explained how there is, for many authors, a need for intersectionality to encompass macro and micro concerns (Bilge, 2009, p. 77). In this perspective, intersectionality is understood as working at a microsocial level and a macrosocial level⁵⁴. The microsocial level (or “micro occurrences of intersectionality” (Bilge & Denis, 2010)) is interested in the study of social categories and the various sources of power and privileges. At this level, there is an interest in the power structures, specifically how they intersect and their consequences on the lives of individuals. The macrosocial level pertains to the different ways those power structures play a role in the re-production of discriminations and inequalities (Bilge, 2009, p. 73; Harper, 2012, p. 11). According to Bilge, there is also a difference regarding the understanding and the use of intersectionality depending on the geographical area: in the US context – which is more influenced by black feminist thought – authors tend to privilege analysis of the impacts of the power structures, while in Nordic countries, according to Bilge, they tend to be more interested in the different ways identities are formed (Bilge, 2009, p. 77).

⁵⁴ The distinction between the two levels is subject to discussion, with some authors criticizing an emphasis on the macro level and others on the micro level (see Bilge, 2009, 73-74).

As explained in Chapter 1, intersectionality has progressively integrated migration and refugee studies (Anthias, 2012, p. 106; see also Bilge & Denis, 2010). Three axes of social division and their intersections in shaping migration experiences have been mainly explored: gender, race, and class (Stasiulis et al., 2020, p. 10). They form, in migration and refugee studies, a “widely accepted (...) triad of socially relevant locations for study” (Bilge & Denis, 2010, p. 5). These are, however, not the only axes of social division relevant to this thesis. Research has indeed progressively developed regarding the way those three axes intersect with, among others, religion/religious practice, nationality/citizenship, marital status, country of residence, language, generation, and age (see, for example, Bilge & Denis, 2010; Clark-Kazak, 2012, 2016; Saunders et al., 2016), all elements whose interactions I consider in this thesis. The intersections that gender, race, and class may have with other axes of social division, such as with disability, sexual orientation, and gender identity (about which research has multiplied in recent years) have also been emphasized in the literature, and although these axes are not the focus of this project, further research on those must be encouraged (see, for example, Brotman & Lee, 2011; Laviolette, 2007; Lee & Brotman, 2011, 2013; Pisani et al., 2016; Rehaag, 2009).

The theory of intersectionality and its use has also been criticized in the literature. Researchers have been criticized for using intersectionality while emptying it of its power/ content (using intersectionality as a way to understand the differences between human beings instead of as a critique of power) (Bilge, 2009, p. 78; Utt, 2017). This criticism is related to the whitening of intersectionality as conceptualized by Bilge (Bilge, 2015). Another criticism is related to the difficulty to translate the theory’s ideas into concrete research methods (Greenwood, 2017, p. 27). This particularly concerns the translation of the simultaneous and complex interactions of the various axes of social division (Bowleg, 2012, as cited in Greenwood, 2017, p. 27). Nevertheless, it is admitted that the theory has helped to better understand the complexities of

systems of inequalities and social identities (Bilge, 2009, p. 84 (traduction libre)). Overall, intersectionality has particularly helped in making visible the realities of traditionally marginalized groups and in deconstructing the idea that these people constitute a homogeneous group with the same universal experiences and needs (Harper, 2012).

3. The Concept of Agency

Agency is a key idea in the literature on migrations and refugees (Hunt, 2008, p. 11). The concept is used in numerous research (to explain population movements for example), including in research specifically on the experiences of refugee claimants during the refugee determination process (see for example Halluin-Mabillot, 2012; Healey, 2006; Hunt, 2008; Oskay, 2016).

3.1 Agency in the Feminist and Postcolonial Literature

The notion of agency is particularly important in feminist literature (Grosz, 2010; Hemmings & Treacher Kabesh, 2013; McNay, 2016). Lois McNay, who refers to agency as the “ability of individuals to have some kind of transforming effect or impact on the world” (McNay, 2016, p. 39), highlights the inextricable link of this concept to the emancipatory political project of feminism to overcome gender inequality (McNay, 2016, p. 41). Given the traditional exclusion of women (in all their diversity, to a greater or lesser extent depending on privileges) from the liberal account of agentic subjects, Bilge emphasized the place agency progressively took as “a key concern for emancipatory politics, in anti-racist, feminist and anti-colonialist movements” (Bilge, 2010, p. 12). Clare Hemmings and Amal Treacher Kabesh also stressed the importance of the concept for transnational feminists and theorists of colour (Hemmings & Treacher Kabesh, 2013, p. 30). Mohanty, for example, in her book “Feminism without Borders: Decolonizing Theory, Practicing Solidarity” referred to agency in the development of her

criticism of the Western construction of “Third World” women as victims only (Mohanty, 2003; see also Anzaldúa, 1999).

Despite its importance and the seeming simplicity of the concept of agency, its meaning has been widely debated in feminist literature (McNay, 2016, p. 39). According to Orit Avishai, the feminist theories of agency can be divided into two periods (McNay, 2000, as cited in Avishai, 2016, p. 265). Until the late 1990s, feminist research referring to agency, in addition to criticizing the male bias in definitions of agency, mainly emphasized ideas of resistance, empowerment, and negotiation within oppressive social structures. At the time, Avishai explained, “many definitions associated agency with free will, autonomous preferences and desires, choices free from structural constraints, the possibility of independent action, and a free-choosing, rational subject” (Avishai, 2016, p. 265). Those definitions also often focused on male experiences (Avishai, 2016, p. 265). In the late 1990s, a shift happened with new perspectives and criticisms becoming more visible. One of these criticisms is related to a perceived underestimation of agency’s creative and generative aspects (McNay, 2000; Mahmood, 2004, as cited in Avishai, 2016). Another of these criticisms that is particularly important for this research is the formulated concern that feminist theories of agency are developed on the idea that all women share the same experiences of oppression. These concerns also include a critique of the preference given to “liberal, secular, and Western definitions of agentic action as premised on free will, individualism, choice, satisfaction of individual preferences, and capacity for rational thought” (Avishai, 2016, p. 265; see also Anzaldúa, 1999; Mohanty, 2003).

Hemmings and Trasher Kabesh raised several issues with “reclaiming agency”. The first key issue they mentioned is the over-association of agency with a choice – and the judgment of the

behaviours under study based on Western perspectives and ideals (Hemmings & Treacher Kabesh, 2013, p. 31). The association of agency with political resistance is also criticized in the literature (see Mahmood, 2011 who explored how agency may also be found in the attraction to and negotiation of norms), as well as the construction of agency as the opposite of inequality (Hemmings & Treacher Kabesh, 2013, p. 31). It is this last issue (agency understood as inequality's opposite) that is particularly problematic according to Hemmings and Treacher Kabesh, as this understanding, when associated with the idea that agency is choice, can make it difficult to analyze certain behaviours (when women act against other women for example).⁵⁵ Finally, the authors raise a further issue concerning the relationship between self and other in identifying agency. Thus, the idea of recognizing others as possessing (or not) agency not only limits the conception of agency in the first place to what is visible and exercised by an agent (Butler, 1990) but also "affirms an uneven self-other relationship at the same time as it seeks to challenge the same" (Hemmings & Treacher Kabesh, 2013, p. 32). Hemmings and Trasher Kabesh thus explain:

There is a fundamental temporality to recognition of agency in 'the other': a self is proposed that recognises an other that is to become a recognising self in turn, but only at a later point. This mode of recognition assumes not only that the self who recognises will know agency when they witness it but also that the 'other' will be interested in being brought into subjectivity in this mode. It reinforces a developmental trajectory within modernity that assumes a common endpoint already occupied by Western subjects. (Hemmings & Treacher Kabesh, 2013, p. 32)

⁵⁵ Hemmings and Treacher Kabesh emphasized the variety of consequences agency can have, including the reproduction of discriminations, inequalities, and systems of domination: "any useful account of agency must assume that all women whether in privileged or marginal locations, routinely act in ways that support regimes of power and that they may quite actively choose to do so" (Hemmings & Treacher Kabesh, 2013, p. 31).

Due to the privileges that come with my position, this research is likely to reproduce some of these criticisms. I explain below adopting a feminist standpoint epistemology in this research and reflecting upon the possible consequences of my positionality throughout the entire research project (Vanner, 2015, p. 3). While it is not possible to completely address those difficulties, adopting an intersectional perspective and including feminist postcolonial criticisms of Western feminist perspectives in the thesis framework may help in this regard (see above).

According to McNay, the debates on agency in feminist literature lie in the fact that it is well-established that agency, although a universal capacity, is “socially realized” (McNay, 2016, p. 39). That agency is socially realized refers to the idea that agency is intrinsically related to the social context insofar that “the ability to act is always mediated by the dominant norms and relations of power that shape any situation” (McNay, 2016, p. 41). In this perspective, the author also highlighted that agency is thus realized variably and unequally and, therefore, its inseparability from an analysis of power. Questions of power, culture, and domination are thus central to the conceptualization of agency. This is particularly the case in feminist theories, as women have traditionally and repeatedly been denied recognition as subjects in their own rights (McNay, 2016, p. 39), hence the use of the concept of agency to make visible the women’s capacity of action and counter such lack of recognition. From a feminist perspective, McNay explained, “the disclosure of unnoticed and undervalued forms of women’s agency is simultaneously an attempt to reflect on potential forms of action that may, in some way, empower women and contribute to the dismantling of persistent gender inequalities” (McNay, 2016, p. 42).

3.2 Agency as a Situated, Embodied, and Relational Phenomenon

In this thesis, I refer to the broadly agreed idea in feminist studies of agency as a situated, embodied, and relational phenomenon (McNay, 2016, p. 41). First, the idea of agency as a situated phenomenon refers to the importance of looking at the cultural and social contexts when studying agency: the content and form of agency are unthinkable outside the specific context (McNay, 2016, p. 42; see also Jacobs & Maryns, 2022). Another meaning of agency as a situated phenomenon refers to the idea that it is not possible to take an entirely objective perspective to understand agency but that it needs to be comprehended “from the subjective perspective of the individual’s own experience of the world” (McNay, 2016, p. 39). This meaning is in accordance with the feminist standpoint epistemology perspective. Second, the embodied character of agency refers to the idea that the intentionality of action does not always have to be complete and reasoned. Here, not only the emotional and affective dimensions of agency are put forward, but also “the ways in which dynamics of social control are internalized as bodily norms” (McNay, 2016, p. 42). This idea emphasized the naturalized character of social structures such as class, gender, and race, which are recognized as working “invisibly”. Finally, that agency is a relational phenomenon refers to the idea that it is constituted through two elements: structural hierarchies of power and intersubjective relations. In this perspective, agency is understood as “inextricably bound up in the web of interpersonal relations constitutive of social being” (McNay, 2016, p. 42; see also Jacobs and Maryns, 2022). These interpersonal relations, however, are subtended by hierarchical relations of power that shape individuals’ actions (McNay, 2016, p. 42). In their description of the organization of power in their analysis of intersectionality, Hill Collins and Bilge also highlight how “power relations are about (...) how people relate to one another, and who is advantaged or disadvantaged within social interactions” (Hill Collins & Bilge, 2016, p. 5).⁵⁶

⁵⁶ As explained above, while McNay, as other authors, refers to gender, class, and race as structural hierarchies of power, in this thesis, I refer to those concepts as axes of social division.

In the context of this thesis, this three-part conceptualization of agency helped to explore how refugee claimants interact with different facets of the in-land refugee determination process by paying particular attention to the socio-cultural context in which agency is deployed (agency as a situated phenomenon) and the naturalized character of social structures such as class, gender, and race (agency as an embodied phenomenon). This conceptualization of agency also helped explore refugee claimants' interactions with other people through the process: other people they claim asylum with and other actors of the process, such as lawyers and decision-makers (agency as a relational phenomenon).

3.3 Postcolonial Feminism, Intersectionality, and Agency

As indicated above, I refer, in my research, to McNay's definition of agency as the "ability of individuals to have some kind of transforming effect or impact on the world" (McNay, 2016, p. 39). In her work, McNay also refers to agency as "a universal capacity" (p. 39) or "a universal feature of personhood" (p. 41). In this perspective, obstacles may come limit this agency, but it will always remain present. In McNay's perspective, within a specific context, one's ability to act within autonomy is thus "restricted by social norms operating through discourses of power, which shape experiences and situations" (Hodgson, 2022; McNay, 2016). Postcolonial feminist ideas and the intersectional framework allow for a better understanding of this context in which agency is deployed, which systems influence its deployment, and how. First, postcolonial feminist ideas inform this conceptualization of agency by highlighting the role of the broader colonial context in the re-production of discourses of power and their consequences. In the specific context of the refugee determination process – which is itself part of a broader restrictive migration system – these discourses of power refer to the discourses on "Third World women" and related stereotypes, as well as their specific role in the process (for the Western states to determine who is a refugee or not) and, from a broader perspective, in feeding

processes of othering and reinforcing representations of the West as the “developed center” (Spivak, 1985; Mohanty, 2003, pp. 40-42; Chawla, 2017; Crawley, 2022). The experiences of women during the refugee determination process are shaped by these discourses of power, as they influence many aspects of the process, such as what will be expected from women to be recognized as acceptable and how they will be judged by asylum officers (Oxford, 2008, 2014; Spijkerboer, 2016). These discourses of power also influence their relationship and work with their lawyers who may perceive women, the countries they come from and certain specific aspects of their experiences in specific ways based on common stereotypes of women as victims and of their country of origin as socio-economically less developed or culturally barbaric (Mohanty, 2003, p. 39). Overall, postcolonial feminist ideas as understood above, allow to historicize and locate agency, a “necessary alternative” to formulations of the universality of oppressions and struggles (Mohanty, 2016, p. 83).

Then, intersectionality as a theoretical framework allows to look at how the socio-political locations of women at the intersections of several interacting axes of social division frame their experiences of claiming asylum. Intersectionality thus helps to show how their different social locations may shape the difficulties and obstacles women face, such as, for example, in their social interactions or regarding the treatment they receive, as demonstrated in the analysis of the interpersonal and disciplinary domains of power by Hill Collins and Bilge (Hill Collins & Bilge, 2016, p. 16). Intersectionality then also helps to reveal how they may and will exert agency in this context, that is, in connection with McNay's definition of agency reproduced above, how their ability to have an effect on their environment will take form in practice, and with how much success, depending on gender, race, class, ethnicity, citizenship status, and other axes of social division and their interactions.

McNay's three-part conceptualization of agency responds to some of the existing criticisms of the conceptualization of agency mentioned above, such as a lack of attention to its socio-historical specificity and of particular struggles (McNay, 2000), a focus on male experiences, the assumption that all women share the same experiences of oppression, and reliance on Western definitions of agentic actions.⁵⁷ My idea in connecting agency with postcolonial feminism and intersectionality is also in part to address and mitigate those criticisms (Avishai, 2016; McNay, 2016; Mohanty, 2003).

4. Conclusion

As indicated above, the concept of agency is significant in feminist and postcolonial literature which has underlined its potential to illuminate women actions and choices as agents, including against their oppressors and colonial power (Ashcroft et al., 2007; Bilge, 2010; Hemmings & Treacher Kabesh, 2013; Mohanty, 2003). In this research, I used the concept of agency to explore women's participation in preparing their claims. More particularly, I referred throughout the research to the three-part conceptualization of agency presented above, which underscores its situated, embodied and relational aspects (McNay, 2016, p. 41). This three-part conceptualization of agency has several implications for this research. The first implication, referring to the conceptualization of agency as a situated phenomenon, is that the study of women's participation in preparing their claims is framed within the socio-cultural context in which it occurs. It also includes, in accordance with the feminist standpoint epistemology perspective, the notion that there is a subjective element in approaching this agency and that it must be understood in relation to social structures such as class, gender, and race. Finally, this

⁵⁷ This three-part conceptualization also allows to explore the concept further. For example, it helps to uncover the web of interpersonal relationships in which one is entangled and their role in shaping individuals understanding of their identity, their roles in society and ultimately their actions (McNay, 2000; 2016; Hill Collins & Bilge, 2016).

three-part lens on agency, by emphasizing its relational aspect, encouraged me to investigate refugee claimants' interactions with others throughout the process.

In addition to the concept of agency, I relied on feminist postcolonial perspectives, where agency holds significance, and on intersectionality to illuminate the broader context in which women's actions and choices are embedded, as well as their diversity. According to feminist and postcolonial literature, exploring this agency cannot be envisaged without considering the intersections between structures of domination and the historical and present contexts (Mohanty, 2003, p. 56; see also, for example, Anzaldúa, 1999). Postcolonial literature allows to understand these contexts as shaped historically and presently by racism and imperialism (Mohanty, 2003, p. 52). Intersectionality, as defined above, allows to explore the simultaneity and multiplicity of these structures of domination within specific societal contexts. From this perspective, an intersectional framework enabled me to better grasp the complexities of systems of power and their intersections, positioning women differently depending on the context (Bilge, 2010; Harper, 2012; Mohanty, 2003). In the three-part conceptualization of agency I presented above, I emphasized the specific significance of paying attention to the context in which agency is deployed (see Jacobs & Maryns, 2022; McNay, 2016). In this regard, postcolonial feminist literature sheds light on the process of othering and the role of Western representations of the others, illuminating instead the diversity of the experiences among postcolonial subjects. The importance of studying agency in this context has already been highlighted. Bill Ashcroft, Gareth Griffiths and Helen Tiffin, for example, underline the importance of agency in post-colonial theory "because it refers to the ability of post-colonial subjects to initiate action in engaging or resisting imperial power" (Ashcroft et al., 2007, p. 6). David Farrier, explicitly writing on postcolonial studies, migrations and agency highlighted the importance of studying agency to "bring the marginal migrant subject to the centre" (Farrier,

2011, p. 2). As indicated above, postcolonial feminist literature has also criticized not only the definitions and implementations of the concept of agency from Western perspectives alone but also the consequences of doing so (see, for example, Hemmings & Treacher Kabesh, 2013).

This chapter, therefore, argued for the three-part conceptualization of agency as a situated, embodied and relational phenomenon as a useful tool to analyze women's participation in preparing their claims. The chapter also argued that adopting feminist postcolonial perspectives and an intersectional approach to address this agency is necessary to understand the diverse forms it can take and the complexity of the system in which it is deployed. In the next chapter, I present the methodology I used to conduct this research, referring to the conceptual and theoretical framework. This framework informed data collection and analysis in several ways, such as influencing the choice of qualitative methods of data collection. As explained below, these methods are usually seen as appropriate to explore the diversity of women's experiences from their point of view and within a given context (see, for example, Kaga, 2021, p. 20; Mongeau, 2008, p. 96). These methods have also already been recognized as well-suited to intersectional analysis (see, for example, Greenwood, 2017, p. 27). How the conceptual and theoretical framework informed my approach to the stages of implementing thematic analysis is also developed further below. In the following chapter, I also address how my positionality, privileges and experiences shaped the conceptual and theoretical tools I use, how I put them together and present them in this thesis.

Chapter 3. Methodology

In this chapter, I present the methodology I used to conduct this exploratory research on women's participation in preparing their claims. First, I undertook this research from a feminist perspective. Feminist research is not a unified project, many feminists having different views on what feminism itself, women or gender are and how they should be conceptualized (Letherby, 2003, p. 4). Nevertheless, much feminist research shares features, such as a critical stance on women and gender issues and a political commitment to social change (Letherby, 2003, p. 4). In this perspective, feminist research can be largely defined as a research undertaken "with the political commitment to produce useful knowledge that will make a difference to women's lives through social and individual change" (Letherby, 2003, p. 4). As indicated in the literature review, feminist research has denounced the historical invisibility of women and gender issues (both in terms of the issues studied and the methodologies undertaken) in traditional research and the resulting misunderstandings of women's experiences (Letherby, 2003, p. 4).⁵⁸ Challenging this invisibility and illuminating the diversity of the experiences of women to develop a more complex understanding of their lives and struggles is one of the main objectives of many feminist research (Brooks, 2007, p. 54; Letherby, 2003, p. 4), and as such is also one of this thesis.

Exploratory studies can also be defined in different ways. Richard Swedberg identifies two main forms: the first refers to the tentative analysis of a topic that has not been studied before yet, and the second, with which this research aligns more closely, to the exploration of an already analyzed topic with the aim to produce new knowledge about it (Swedberg, 2020, p. 18). According to Caroline Lenette, exploratory research is well adapted to migration and

⁵⁸ For more information on feminist analyses of forced migration, see the brief overview of feminist analyses of forced migration offered in the literature review.

refugee studies as they create a space for developing a critical stance to established constructs existing in the field and for exploring the "distinct and multiple dimensions to issues linked to refugee experiences" (Lenette, 2011, p. 51). Researchers working on refugee women in a feminist perspective have already chosen this type of research to learn more about the complexity of women's experiences, while also advocating for further research of this nature (see, for example, Greenwood, 2017; Lenette, 2011).

To undertake this research, I used two qualitative methods of data collection: interviews and observations.⁵⁹ The objective of rendering visible the experiences of women, listening to their voices and better understanding their decisions influenced the choice of qualitative methods, particularly interviews, as the most appropriate in this project (Greenwood, 2017, p. 50; Kaga, 2021, p. 18). Qualitative approach, which deals with data that are not easily quantifiable, allows, in comparison to quantitative approach, to go deeper in the understanding of a specific situation in a given context and of participants' perspectives on it (Kaga, 2021, p. 20; Mongeau, 2008, p. 96). This is particularly the case of interviews, which have already been celebrated for rendering it possible to go deeper into the understanding of women's lived experiences and to shed light on their personal stories (Silva, 2015, p. 18). Qualitative approaches are also usually seen as well-suited to intersectional analysis⁶⁰ because they allow researchers "to deeply investigate lived experiences in a contextualized manner" (Greenwood, 2017, p. 27; see also Jordan-Zachery, 2007; McCall, 2005, Bowleg, 2008, 2012).⁶¹ Over two years, I conducted 23 semi-structured interviews. I conducted nine interviews with women who had been through the

⁵⁹ I explain the two qualitative methods of data collection and justify them in section three below.

⁶⁰ Greenwood underlined the difficulty of translating the principles of intersectionality into concrete research methods (Greenwood, 2017, p. 27; see also Bowleg, 2008, 2012). As explained by Bowleg, "the notion that social identities and social inequality based on ethnicity, sexual orientation, sex/gender (...) are interdependent and mutually constitutive (...), rather than independent and unidimensional poses a variety of thorny methodological challenges" (Bowleg, 2008, p. 312).

⁶¹ On how an intersectional and postcolonial framework influences the creation of interview questions see, for example, Bowleg (2008) and Silva (2015, p. 18).

refugee determination process and 14 with immigration lawyers. In addition to the interviews, I observed three meetings between refugee claimants and their lawyers. This chapter describes the recruitment strategy, the interviews and the observation processes, and the analytic approach.

1. Epistemology and Positionality

To meet the objective of rendering visible women's experiences, I decided to see the study through the lens of feminist standpoint epistemology. This perspective aims at illuminating women's lives long silenced and ignored by putting their experiences at the center (Brooks, 2007, p. 54).

1.1 The Feminist Standpoint Epistemology

The feminist critique of the positivist paradigm in research is one of the bases of the development of the feminist standpoint epistemology. This feminist critique has developed from the progressive realization that women's experiences were invisible in academic research and that most research findings were inconsistent with those experiences. The idea that there is an objective reality and that the use of specific methods could illuminate that reality has been particularly criticized (Brooks & Hesse-Biber, 2011, p. 4; Hill Collins, 2021, pp. 523–524). With this criticism, the focus of attention is the privileged location from which knowledge (and what *was perceived as* knowledge) was traditionally produced, i.e., “within an historical, material, and social set of patriarchal power relations” (Brooks & Hesse-Biber, 2011, p. 6). Sharlene Nagy Hesse-Biber, Patricia Leavy, and Michelle L. Yaiser explain that “positivist science assumes a subject-object split where the researcher is taken for granted as a knowing party” (Hesse-Biber et al., 2004, p. 12). By doing so, these authors explain, “a hierarchy

paralleling that of patriarchal culture is reproduced” (Hesse-Biber et al., 2004, p. 12).⁶² New models of knowledge building, the objective of which is to give more representation to women’s lives, emerged from this thinking. Feminist standpoint epistemology is one of these new models.⁶³

I mentioned above the criticism by feminist scholars against the invisibility of women, their diversity, and the specificities of their experiences in analyses of forced migration and refugees’ experiences. I also mentioned the consequences of not considering those experiences in creating potential barriers for refugee claimants whose experiences remain unknown. Based on these criticisms and to follow the objective of illuminating women’s experiences and challenging their invisibility, I decided to see the study through the lens of a feminist standpoint epistemology. Abigail Brooks defines feminist standpoint epistemology as “a unique philosophy of knowledge-building that challenges us to 1) see and understand the world through the eyes and experiences of oppressed women and 2) apply the vision and knowledge of oppressed women to social activism and social change” (Brooks, 2007, p. 54). As with much of the feminist literature, feminist standpoint epistemology explicitly pursues the goals of “[giving] voice to women’s lives that have been silenced and ignored, [uncovering] hidden knowledge contained within women’s experiences, and [bringing] about women-centered solidarity and social change” (Brooks, 2007, p. 54). From a feminist standpoint framework, the experiences of marginalized women thus become a source of knowledge (Bracke & de la Bellacasa, 2013; see also Harding, 1986; Hartsock, 1983; Hill Collins, 1991; hooks, 2000).

⁶² Hill Collins also explains how the demands of positivist research methods require Black women to objectify themselves, devalue their emotional lives, hide their motivations for developing knowledge about Black women, and confront those with greater social, economic, and professional power (Hill Collins, 2021, p. 524).

⁶³ This model recognizes that there are different standpoints in a society and that social life is experienced differently from each of those standpoints. More specifically, the idea of standpoint is based on the belief that “the oppressed have developed a dual perspective: their personal perspective developed through experience and their perspective of their oppressors, which they develop to survive” (Hesse-Biber & Yaiser, 2004, p. 15).

Those experiences are expected to be placed at the center of the research process; they form “the starting point from which to build knowledge” (Brooks, 2007, p. 55; see also Letherby, 2003, p. 43). From those daily lived experiences, feminist researchers “can work upward to critique the principles, practices, and influences of dominant institutions” (Vanner, 2015, p. 3; Harding, 2007).

Adopting such a standpoint influences the entire research project, from the formulation of research questions to the choice and execution of methodologies – these being formulated and thought of as rooted in women’s lives and everyday existence (Hesse-Biber & Yaiser, 2004, p. 15). Women’s experiences are at the center of the research questions of this project. The choice of the methodologies of interviewing women claimants and observing their meetings with lawyers were based on the objective of putting these experiences forward. As explained below, I also undertook interviews with lawyers. Conducting interviews with lawyers and/or service providers, in addition to interviewing women, has already been undertaken in similar research (see, for example, Greenwood, 2017; Hunt, 2005; Silva, 2015). In section four, I further explain the objectives behind these interviews with lawyers, such as the aim of providing additional context and complementing interviews with claimants (Greenwood, 2017, p. 67; Hunt, 2005, p. 3). Adopting a feminist standpoint epistemology also influences data evaluation and analysis (Letherby, 2003, p. 44 et s.). I explore these elements in more detail below.

There are also criticisms about the feminist standpoint epistemology perspective (Hesse-Biber & Yaiser, 2004; Letherby, 2003). One of them concerns the historic tendency of feminist theorists to focus solely on gender, on men’s dominance over women – with the risk of essentializing women's experiences (idea of a single “women’s experience”) (Hesse-Biber & Yaiser, 2004, p. 16; Harding, 2007). This has been criticized in the literature (see for example

(Harding, 2007; Hill Collins, 1993)): Hill Collins, for example, in her development of the Black feminist epistemology, highlighted the exclusion of Black women's experiences from what counts as knowledge due to the control of Western structures of knowledge validation by white men (Hill Collins, 2021, pp. 514–515). Women have different experiences with some having more power than others or sharing more interests with men than with other women. Indeed, it is now established in feminist literature that gender is only one system of power among others and does not function alone. For certain women it may not even be their primary point of inquietude (Letherby, 2003, p. 46). It is for these reasons that many feminists now account “for gender as an attribute that directly intersects with other social constructed categorizations that together comprise one’s standpoint” (Hesse-Biber & Yaiser, 2004, p. 16; (see also Letherby, 2003, p. 44). This is in an important aspect of this thesis that aims to focus not only on gender but also on how it intersects with other axes of social division in shaping human beings’ experiences, as explained below. Catherine Vanner also explained that postcolonial academic discourse can help counter the historic roots of feminist standpoint theory through their critique of Western knowledge assumptions (Vanner, 2015, p. 4).

Although there are criticisms about this perspective (see, for example, Letherby, 2003, pp. 46 et s.), its role in contributing to build knowledge on hidden aspects of women’s lives and experiences has been highlighted in the literature (Hesse-Biber & Yaiser, 2004, p. 15; Letherby, 2003, p. 48). Brooks also highlighted the acute importance to integrate a feminist standpoint framework in research to rectify historical misrepresentation and exclusion of women from dominant knowledge models (Brooks, 2007, p. 55). It is, in her perspective, “only by making women’s concrete, life experiences the primary source of our investigations [that we can] succeed in constructing knowledge that accurately reflects and represents women” (Brooks, 2007, p. 55). The idea is not to argue for one single position, or to consider that one position is

better than another, but rather “that starting from the thoughts of different people with different experiences from our own helps to increase our ability to understand the experiences of the powerful and less powerful” (Harding, 1993, as cited in Letherby, 2003, p. 49).

1.2 Positionality

To produce knowledge is thus political in the sense that the personal identity of the researcher is always part of the research (Letherby, 2003, p. 45). Therefore, reflecting on my privileged location and its influence on this research is essential. As knowledge is intrinsically shaped by the power relations characteristic of the context from which it is produced (Bracke & de la Bellacasa, 2013 (traduction libre)), I have to acknowledge my position as a white, European (Belgian), middle-class woman with multiple privileges and its consequences on my research. I write “from my own particular political, historical, and intellectual location” (Mohanty, 2003, p. 45) as a white PhD student, first trained in Law in Belgium and then in Feminist and Gender Studies in Canada.

Acknowledging my position, being reflexive and open about it, is crucial in a feminist project, as explained by Gayle Letherby, “as it allows others who read our work to understand the background to the claims that we are making” (Letherby, 2003, p. 5). It thus also needs to be emphasized that I am not a refugee, which brings some more limitations to the depth of this research. I am, however, not a Canadian citizen nor a permanent resident, but a foreign national (international student). The status of foreign national implies certain limitations⁶⁴ (Baglay & Jones, 2017, p. 87).

⁶⁴ As explained by Baglay and Jones, foreign nationals, contrary to permanent residents and citizens, “have no entitlement to be in Canada: they require special authorization for entry, study, or employment and must depart Canada upon expiry of such an authorization” (Baglay & Jones, 2017, p. 88). They add that the scope of foreign nationals' entitlements is much narrower than that of permanent residents and citizens and that these entitlements are “specifically linked to the purpose of their admission to Canada: for instance, visitors are usually not allowed to either work or study in Canada; international students have limitations on the types and hours of employment

In addition to my thesis and personal readings on the topic, I have been involved for several years in organizations welcoming refugee claimants and refugees in Belgium and Canada.⁶⁵ Over the past several years, I have also been engaged in several other projects aiming at standing alongside and supporting forced migrants at different levels such as when I interned in the Gender and Migration team of UN Women in New York or when I worked as a Research Fellow at the Refugee Hub (University of Ottawa). Such behavior from someone, as it is my case, coming from a “Western oppressor-class” group, reveals the privilege we have of “having more” (Straubhaar, 2015, p. 384). This privilege “often exhibits itself as a sense that we as Westerners have the unique power to uplift, edify and strengthen” (Straubhaar, 2015, p. 384), what Rolf Straubhaar refers to as the White Saviour complex. In the same vein, Cole refers to the idea behind this complex as Westerners becoming saviors or, at the very least, meeting their emotional needs (Cole, 2012). My interest in volunteering with newcomers and working on forced migration takes its source in this complex, the ideas behind it being universal in the Western world and its thinking (Straubhaar, 2015, p. 384).

Due to the privileges that come with my position, this research is likely to reproduce some of these criticisms.⁶⁶ Indeed, the risk is great for women in my position, despite good intentions and efforts, to be patronizing, threatening, and recolonizing among others (Vanner, 2015, p. 2). Even those who think they know them well can reproduce stereotypes (Hill Collins, 2021, p.

(e.g., only part-time during the academic year); and foreign workers cannot engage in post-secondary studies unless they obtain a study permit” (Baglay & Jones, 2017, p. 88).

⁶⁵ In Belgium, I was a volunteer at a Fedasil (the Federal agency for the reception of refugee claimants) reception center for two years (2012-2014). In this position, I helped organize activities for the children of the center. In Canada, I was a volunteer at the Ottawa Community Immigrant Services Organization (OCISO). In this position, I participated in social and recreational events and activities to meet with newcomers with the aim to help them integrate, practice their English/French, and become familiar with the local community and Ottawa culture. In Ottawa, I also met and helped newcomers in more informal ways.

⁶⁶ It is also important to note that this research “serves my purpose” rather than the one of the researched (Letherby, 2003, p. 6).

520). As Vanner explains, the risk of reproducing power inequalities is strong for Western researchers “who represent a physical and historical embodiment of colonialism and neocolonialism” (Vanner, 2015, p. 2). Recognizing my position and the possible consequences of it may be one step towards mitigating those consequences (Letherby, 2003, p. 9; Szörényi, 2006, p. 25).

Regarding my project, it is important to note that the textual, theoretical, methodological, and analytic tools I use, and how I put them together and present them in this thesis are shaped by my positionality, privileges, and experiences. As a Western subject trained in Belgium and Canada, I have been trained to pursue knowledge in a way that is “deeply embedded in the multiple layers of imperial and colonial practices” (Smith, 2021, p. 2) and to use the literature and the tools that emerged from these practices. The literature on forced migration I use in this thesis is not exempted from these criticisms, as it has been dominated by the Global North (Hampton et al., 2020). Similar remarks can be formulated regarding the theories and the methodological tools I use (which emerge from this literature). The concept of agency and its various conceptualizations, for example, have already been criticized, as explained further above, for privileging “Western definitions of agentic action” (Avishai, 2016, p. 265; see also Anzaldúa, 1999; Mohanty, 2003).

Another point I developed further in the methodology chapter is the difference in positionality between the refugees’ respondents and me. This difference implies a series of challenges and difficulties that must be considered (Clark-Kazak, 2017, p. 11). As Christina Clark-Kazak explains, one of these difficulties is the difference in rights and opportunities between refugee claimants and citizens of the host country. She emphasizes the existing risk for refugee claimants whose right to remain in the host country may be impacted by the research – hence

the importance of paying particular attention to ethical obligations. In this project, several refugee respondents already had Canadian citizenship. To some extent, I felt that not being a Canadian myself sometimes led the conversation during the interviews on topics that may not have been discussed with a Canadian interviewer as some respondents, learning that I was not from Canada, were asking me about my own journey to Canada and my experiences in this new country (about my first winter in Canada, for example).

Finally, my positionality also influenced data analysis, which I do through thematic analysis. Indeed, it is well-established that themes do not simply “emerge” or are “discovered” from the data by the researcher. On the contrary, the researcher plays an active role in identifying patterns and themes and selecting the ones to develop further and report on (Taylor & Ussher, 2001, cited in Braun & Clarke, 2006, p. 80). In this way, the themes I selected to develop from the data thus reflect my interests and perspectives, themselves shaped by the privileged context in which I was academically trained.

Placing my own (research) experience within the social context is, according to Letherby, “an antidote to feeling superior in research relationships and writings” (Letherby, 2003, p. 9), and it is in this perspective that I provided this information about myself. For several years, I have also worked on postcolonialism in Canada with an indigenous professor who helped me think about my positionality in different ways through our conversations by recommending readings from indigenous authors and inviting me to non-academic events.

2. Sampling and Recruitment of Participants

In the early stages of my PhD, I participated in a series of events, including conferences, workshops, and seminars, both inside and outside the University of Ottawa. These events

helped me become more familiar with the immigration context in the city and allowed me to meet various persons involved in the field, some of whom I contacted later. This led me to explore potential avenues to recruit participants (Greenwood, 2017, p. 60). I began the recruitment in September 2019 after the University of Ottawa Research Ethics Board approved the study.

2.1 Sampling and Recruitment of Refugee Claimants

When recruiting refugee women for interviews, I used three inclusion criteria: the participants (1) had to self-identify as women, (2) had to have their refugee claim determined and have obtained refugee status, and (3) had to be able to communicate in French or English.

Initially, the participants' refugee claims had to have been determined at least three years before data collection.⁶⁷ However, I later asked for a modification of the ethics certificate to remove this condition. In my first interviews with immigration lawyers, some mentioned that I could try to recruit participants who had their case determined less than three years ago because some claimants might agree to participate in the project and share their experience even if they do not fulfill this condition.

I created a poster to circulate to potential participants. I sent the posters with some introduction of the project to numerous people I thought could help me with recruitment, including workers in community centers, professors, colleagues and lawyers. Some of them agreed to share the information with potential participants. Four women claimants directly contacted me by email after receiving information about my project from someone who received the poster. For three

⁶⁷ This was considered in light of the potential risks that participating in such a project may involve for participants. More information on potential risks is available in section 5 of this chapter.

women, it was one of these persons who connected them to me after explaining the project and receiving their positive response regarding potential participation. I also recruited two participants with the help of another student at the University of Ottawa. I met this student during a class, and after discussing my research project with her, she mentioned having two friends who might agree to be interviewed.

2.2 Sampling and Recruitment of Lawyers

When recruiting immigration lawyers for interviews, I used two inclusion criteria. The person (1) must be an immigration lawyer and (2) must work in Ottawa. I contacted most of the potential participants through their publicly available email. My email included a poster sharing the project's specific information and details about their potential participation.⁶⁸ One lawyer, who declined to participate, shared my project's information with the local Bar Association.

Six lawyer participants directly contacted me by email after receiving information about my project. I met one lawyer participant through my personal network and another one during a guest lecture at the University of Ottawa. I also employed snowballing recruitment strategies by inviting early participants to share information about the project with their personal contacts (Silva, 2015, p. 20). This allowed me to recruit six additional lawyers.

3. Description of the Samples

I interviewed nine women who had been through the refugee determination process. Seven of them met the modified inclusion criteria. Two participants consented to participate but provided information during the interview that indicated they did not meet the second criterion. The first participant explained during her interview that she had her refugee claim refused. Instead, she

⁶⁸ French and English versions of the poster were available.

had successfully obtained permanent residence on humanitarian and compassionate grounds. The other participant mentioned during the interview that she was still waiting for a decision regarding her refugee claim. Although these women did not fit neatly into my criteria for participant recruitment, the data from these interviews were nevertheless pertinent and useful to this study because these women went through all (or almost all, in the second case) of the refugee determination process. I discussed this situation with the Research Ethics Board, which agreed that I should retain these interviews and therefore expanded my research criteria to include women who were former refugee claimants writ large.

The sample includes a certain diversity in terms of participants' region of origin. The women came from Africa (5 participants), the Middle East (2), North America (1), and Asia (1) (see Table 1 below). All claimed refugee status between 2011 and 2019, except one who claimed refugee status in 1996. The sample also has a degree of diversity regarding the civil status and number of children of each woman at the time of the process. Three participants were single during the refugee determination process and six were married. Among those six, two came to Canada without their partner. Only one of the participants did not have children at the time of the process. Two of the participants were pregnant: one woman (Jennifer) was expecting her first child while another woman (Valentine) was pregnant and already had two children.

Table 1. Demographic Summary of Women Participants

	Name⁶⁹	Country	Year of claiming refugee status	Civil status	Children (at the time of the process)	Representation
1	Sybille	Nigeria	2017	Single	1	Lawyer (certificate)
2	Véronique	Pakistan	2016 (arrival as a student in 2009)	Single	0	Lawyer
3	Emily	Iraq	2012	Married (came with partner)	1	Lawyer 1; Lawyer 2 ⁷⁰ (certificate)
4	Julie	Rwanda	1996	Single	2	Lawyer (certificate)
5	Marielle	Lebanon	2011	Married (came with partner)	3	Lawyer 1; Lawyer 2; Immigration consultant
6	Jennifer	Haiti	Not mentioned (possibly 2019)	Married (came without partner)	Pregnant	Lawyer (certificate)
7	Valentine	Djibouti	2018	Single	2 and pregnant	Lawyer 1; Lawyer 2 (certificate)
8	Nathalie	Nigeria	2019	Married (came without partner)	2	Lawyer 1; Lawyer 2; Lawyer 3 (certificate)
9	Pauline	Kenya	2016	Married (came with partner)	2	Lawyer (certificate)

I conducted 14 interviews with immigration lawyers (twelve women and two men)⁷¹ in Ottawa.⁷² The participants worked in a private practice (7) or a legal clinic (6). One lawyer worked at Legal Aid Ontario. Eight lawyers explained that they primarily or solely practice in immigration and refugee law, while the others stated that they practice in additional areas, such

⁶⁹ Aliases for anonymity.

⁷⁰ This refers to a change of lawyer: “Lawyer 1” refers to the first lawyer with whom the claimant worked; “Lawyer 2” indicates that the claimant changed lawyer. Two claimants, Marielle and Nathalie, changed lawyers twice.

⁷¹ While attempts have been made to recruit more men, the reasons for this disproportion are unclear (fewer male immigration lawyers in Ottawa? Less availability or fewer chances to participate in academic research?).

⁷² Although I initially had thought to conduct interviews with immigration consultants and/or immigration providers who are not lawyers, I did not continue with this idea. I decided instead to focus on immigration lawyers’ experiences and views specifically. Future researchers may be interested in exploring the experiences and views of immigration consultants further and/or comparing them with those of immigration lawyers.

as criminal and housing law and civil litigation. Their years of experience range from 1.5 to 30 years (see Table 2 below).

Table 2. Demographic Summary of Immigration Lawyers

	Name⁷³	Sex	Workplace	Years of experience
1	Christine	F	Legal Clinic	0-5
2	Anne	F	Legal Clinic	25-30
3	Chanelle	F	Legal Aid Ontario	5-10
4	Geneviève	F	Private Practice	10-15
5	Henry	M	Private Practice	10-15
6	Marie	F	Legal Clinic	10-15
7	Noémie	F	Private Practice	5-10
8	Jessica	F	Legal Clinic	15-20
9	Corinne	F	Private Practice	25-30
10	Catherine	F	Private Practice	5-10
11	John	M	Private Practice	0-5
12	Justine	F	Legal Clinic	0-5
13	Sarah	F	Legal Clinic	0-5
14	Elisa	F	Private Practice	5-10

While there are discussions on how large a sample should be in exploratory studies, it is recognized that the sample size for research with qualitative objectives may be relatively small, as the objective is not to report on a population but to gather relevant information to better understand a phenomenon (Mongeau, 2008, p. 93). As forced migration research contexts are particularly sensitive, the number of participants in the project also reflects a balance between the difficulty of recruiting participants in these contexts, the possible risks to them, and the research's needs.

⁷³ Aliases for anonymity.

4. Data Collection Methods: Semi-Structured Interviews and Observations in a Forced Migration Research Context

In this section, I explain the two qualitative methods of data collection I used: individual semi-structured interviews with women claimants and lawyers, and observations of meetings between claimants and lawyers.

4.1 Individual Semi-Structured Interviews

I conducted individual semi-structured interviews with women claimants and lawyers. In this type of interview, certain questions are planned, but the participants can still talk about other aspects of the subject under study in the order that they prefer (Mongeau, 2008, p. 96). This method allowed for the exploration of this project's themes and questions while also providing some space in case interviewees brought up unexpected elements (Mongeau, 2008, p. 97). Interview guides, with questions formulated based on the research questions and the theoretical framework, were used to conduct the interviews.⁷⁴ The use of semi-structured interviews allowed for the possibility of delving deeper into participants' lived experiences and of highlighting personal stories (Silva, 2015, p. 18). As such, these interviews allow for insight into the perceptions and the experiences of participants as well as their understanding of their challenges and needs (Tastsoglou et al., 2014, p. 70).

The interviews with women focused on their experiences of preparing their claims, their relationships, and their work with their lawyers. I did not ask questions about the experiences that led them to flee their country of origin (Clark-Kazak, 2017; Liempt & Bilger, 2012).

⁷⁴ I created two separate interview guides: the first with questions for the claimants and the second with questions for the lawyers (see, for example, Silva, 2015, p. 21). The questionnaires were predominantly open-ended questions, allowing me to capture a large variety of experiences and, thanks to the semi-structured interview format, to flexibly add further questions during the interview if needed (Dahinden & Efionayi-Mader, 2009, p. 4).

However, some claimants specifically mentioned their circumstances and described the experiences that led them to flee their country of origin as part of their testimony without me asking any questions about them.

Although the project aims to provide a better understanding of the experiences of women refugee claimants and the role of gender in preparing their claim, I conducted the interviews with individuals who were no longer claimants, as explained above, because their refugee claims had already been determined. Indeed, people in the midst of navigating the process may be reluctant to participate in such a project for many reasons, including a lack of confidence in academic researchers (Dahinden & Efionayi-Mader, 2009). Moreover, relations of power and privileges between the participants and the researcher are particularly acute when the participants are still in the refugee determination process (Clark-Kazak, 2017, p. 11). Therefore, this project follows other studies based on the retrospective experiences of persons who have been through the asylum process (see, for example, Rider, 2013).

The initial plan was to interview claimants in person in an office at the University's Faculty of Social Sciences (or any other place as requested). This was the case for the first two interviews which took place in person in January and February 2020. The third interview happened in February (before the first COVID-19-related public health measures) but was conducted on the phone at the participant's request because her child was sick. With the rise of COVID-19 in March 2020 and the implementation of public health measures to limit the virus's transmission, meeting participants in person was no longer an option. With the participants' consent, I conducted all the other interviews over the phone or online to avoid direct contact. Although the consent form noted that interviews could last up to 3 hours, no interview lasted that long;

instead, they varied in length, ranging from about 1 to 2 hours, for an average of 65 minutes. I recorded all the interviews with the claimants. I also took detailed field notes.

In addition to the semi-structured interviews I conducted with women claimants, I also conducted interviews with immigration lawyers. This practice of conducting interviews with lawyers or service providers, in addition to interviews with claimants, has already been undertaken in similar studies (see, for example, Greenwood, 2017; Hunt, 2005; Silva, 2015). Conducting interviews with this additional group of participants follows several objectives, such as supplementing and helping contextualize the interviews with the claimants (Greenwood, 2017, p. 67). According to Hunt, adding such interviews helps provide an informed background on the topics studied and on related issues, which complements the statements made by claimants (Hunt, 2005, p. 3). In my case, one of my supervisors also expressed the concern; at the beginning of the data collection process, that it would be difficult for me to successfully recruit claimants without deep connections in the community. At that time, it was indicated to me that conducting interviews with lawyers would be a more realistic approach.

In the interviews with lawyers, I asked them about their experiences working with refugee claimants during the refugee determination process, allowing for the collection of data on how they help claimants navigate the asylum system, the steps they take, the barriers they encounter, and how they overcome those barriers. Most of these interviews were done in person, but I conducted one interview through Skype and two over the phone at the request of the participants. For the interviews conducted in person, I met the lawyer at their office or an office at the Faculty of Social Sciences. The interviews varied in length, from about 1 to 2 hours. I recorded all the interviews. I also took detailed field notes to ensure that each interview's most

important points were written down, which would be helpful later for analyzing the data (Silva, 2015, p. 22). I completed my data collection in January 2021.

4.2 Observations

In addition to the interviews, I observed three meetings between claimants and lawyers. These observations took place in the lawyers' offices and involved systematic and assiduous note-taking on my part regarding my observations, reactions and analyses of the situations observed (Mongeau, 2008, p. 98). Observations allow for the collection of very specific information on individuals' social behaviors, activities and reasoning that may be otherwise difficult to obtain (Briones, 2009, p. 10; Gauthier, 2008). Jonathan Miaz also explains that observations make it possible to account for configurations of actors, relationships, and interactions by having access to the practices of the actors observed (Miaz, 2017, p. 52). According to Jacobs and Maryns, the research site of a lawyer-client interaction is still rarely accessed (Jacobs & Maryns, 2022, p. 549).

After talking about the project and gaining the consent of the participants at the beginning of the observation (as described below), I did not intervene anymore and focused on observing the discussions while taking detailed field notes (Laperrière, 2009; Mongeau, 2008). Contrary to the interviews, the observations were not recorded. The first and second observations took place in the office of the same lawyer. The first meeting I observed involved a claimant from Nigeria whose claim was based on sexual orientation. The claimant had previously worked with another lawyer but had recently changed because she was not adequately represented in her opinion. During the meeting, they discussed the retainer agreement and the claimant's narrative, including issues arising from the first lawyer and how to address them. The second meeting I observed was with a woman also from Nigeria whose claim had already been refused and who

was in the process of appealing the decision. During this meeting, they mostly talked about gathering additional evidence. The third meeting I observed took place in the office of another lawyer. Five persons attended the meeting: the lawyer, the claimant, an interpreter, a law student and I. The claimant's brother also joined the meeting later. In this case, the person had a temporary resident visa that had expired and they now risked being removed from the country. During the meeting, the lawyer discussed the available options for the claimant, mainly making a refugee claim or applying for permanent residence on humanitarian and compassionate grounds. The lawyer presented the pros and cons of each option.

The rise of COVID-19 in March 2020 and the beginning of the implementation of public health measures to limit the virus's transmission severely limited my ability to undertake observations. Thus, during the pandemic, I did not ask to attend lawyer-client meetings.

4.3 Triangulation

As indicated above, the semi-structured interviews and observations I conducted allowed me to delve into the experiences and perspectives of women claimants and lawyers in a manner that quantitative methods may not have allowed (Kaga, 2021, p. 44). Interviewing two different population groups and conducting observations allowed me to triangulate the information collected (Kaga, 2021, p. 24; Roy, 2009, p. 218; Silva, 2015, p. 18). Triangulation enriches the understanding of the phenomenon under study by allowing for the comparison of collected data (Roy, 2009, p. 218). The information collected from the interviews with the two groups was compared and tested with each other. First, the statements made by lawyers were compared with each other: I evaluated the information gained by comparing the views of lawyers with those of other lawyers and gradually identifying the common views and dissenting opinions among them. Second, as data was gradually collected, I compared this information with the

statements provided by women claimants, which I also crosschecked among them (comparing information provided by different women claimants). Finally, I corroborated the data against the observations I conducted (see, for example, Kaga, 2021, pp. 44-45).

5. Ethics

Forced migration research requires addressing specific ethical challenges due to the precarious legal status of many people in situations of forced migration and the situations of dependence they may find themselves in (Clark-Kazak, 2017). Clark-Kazak highlights key ethical principles for research in such contexts. The first is related to voluntary and informed consent, the second to confidentiality and privacy, and the third to minimizing harm and maximizing research benefits (Clark-Kazak, 2017). I will discuss these three in the sections below.

This study received approval from the University of Ottawa Research Ethics Board (Ethics File Number: S-05-19-2758). The certificate of ethics approval can be found below. As indicated above, I asked for a modification of the ethics certificate on 16 November 2019. The Ethics Board approved this modification on 16 December 2019. The certificate initially expired on 4 July 2020. It was then renewed for one additional year.

5.1 Consent

A series of issues must be taken into consideration for potential respondents in a research project to be able to consent voluntarily and formally, including providing information about the type of data that will be collected and how these will be used, ensuring potential respondents understand their right to refuse to participate at any stage of the process, and clarifying that they will probably not benefit from the research (Clark-Kazak, 2017, p. 12; Liempt & Bilger, 2012, p. 456).

All participants received a consent form before their interview to allow them time to read it, and I talked with them, at the beginning of each interview, about the consent form and consent in general.⁷⁵ Silva explains that this step helps ensure “the study participants’ comprehension of the study’s objectives and that their participation was completely voluntary” (Silva, 2015, p. 21). Once I received oral consent from the participant, I began the interview (Silva, 2015, p. 21).

I created different consent forms for claimants and lawyers. In the claimants’ consent forms, I included information about the project, the length of the interview, that the interview would be recorded, and that they could stop the recording at any moment. I also mentioned that they had the opportunity to stop the interview or refuse to reply to any question they were uncomfortable answering. I included information about the questions I may ask about their experiences and opinions of the different steps of the refugee determination process and their interactions with lawyers in preparing their claim. The consent forms for immigration lawyers regarding the interviews contained information similar to the form for refugee claimants. Differences mainly concerned the type of questions I might ask, which in the case of lawyers, would be about their experiences helping refugee claimants during the different steps of the refugee determination process and their interactions with them as they prepare their claim.

In order to collect consent for observations from participants, I also created two sets of consent forms: one for the lawyers and one for the refugee claimants. These consent forms were similar

⁷⁵ Consent forms were available in French and English. All of the consent forms were submitted as part of the ethics request to the Research Ethics Board of the University of Ottawa.

to those created for the interviews.⁷⁶ The procedure I followed to collect consent was similar in the first two observations I undertook. I arrived at the lawyer's office and spoke to the lawyer alone about the procedure to follow and the consent forms. The lawyer read the two types of consent forms and then asked me to wait outside in her colleague's office so that she could talk to the client alone. After some time, the lawyer called me back and invited me to come again to her office to join them. I could then explain the project to the claimant and give information about consent. Unfortunately, regarding the third observation, although the lawyer introduced me to the claimant and gave some information on my project, the meeting started directly without me being able to give more details about consent. I then submitted an Unanticipated Issues or Adverse Events Report to the Research Ethics Board which decided that I could not use the notes I took during this observation for the thesis.

5.2 Confidentiality and Privacy

All consent forms contained information about confidentiality and privacy. I indicated that I would be the only person with access to the recordings⁷⁷ and the transcriptions and that all the collected data would be anonymized. I emphasized that the participant could decide at any moment to withdraw from the project, with no negative consequences. I also indicated that if they decided to do so, all data collected about them would be destroyed. All the data will be destroyed at the end of the period of conservation, which is ten years after the beginning of the data collection.

⁷⁶ The main difference concerns the information given about the form of participation expected: an observation of the discussions between the lawyer and the refugee claimant about the asylum process. In this form, I indicated that participation would consist of accepting that I would observe their meetings.

⁷⁷ Contrary to the consent gained for the interviews, I specified that the observations would not be recorded. I would take notes, and I would be the only one with access to the notes.

5.3 Risks

Respondents should be aware of the risks of participating in a research project, whether at financial, community/social, or other levels (Clark-Kazak, 2017, pp. 12–13; see also Liempt & Bilger, 2012).⁷⁸ In the consent forms for claimants, I explained that discussion about certain experiences might be difficult and could lead to psychological and emotional discomfort, including anxiety, loss of confidence, and regret in disclosing personal information.⁷⁹

During the interviews, I often asked the claimants if they felt comfortable continuing the interview. I mentioned several times that they did not have to answer the question if they were uncomfortable, following the key principle highlighted by Clark-Kazak to always “privilege the rights and well-being of participants over the objectives of the research” (see "Guiding Principles" in Clark-Kazak, 2017, p. 12). I tried to be as mindful and sensitive as possible by respecting the participants' personal experiences and views (Silva, 2015, p. 23). I strove as much as possible to have a well-informed, empathetic, and flexible attitude and to never judge (Liempt & Bilger, 2012). However, I recognized my own limits and referred, in the consent form, to a list of resources in case participants wanted to discuss certain difficulties that emerged during the interview (Clark-Kazak, 2017; Silva, 2015, p. 18).⁸⁰

⁷⁸ Despite these risks, Liempt and Bilger indicate that interviewees may have many reasons for participating in research and that they “are able to set limits on what information they provide” (Liempt & Bilger, 2012, p. 458). With this in mind, these authors also underline the risks of being overprotective and focusing on the potential risks of participating in research, as the participant may interpret this as a lack of respect for their dignity (Liempt & Bilger, 2012, p. 458).

⁷⁹ In the case of the observations, I further noted the difficulty some might face in talking about their experiences in the presence of an additional person. As indicated in the project overview sent to the University of Ottawa Research Ethics Board, lawyers and clients usually have several meetings so that clients have multiple opportunities to discuss their cases with the lawyer.

⁸⁰ To “recognize our own limits and make appropriate referrals when research respondents demonstrate needs and/or request information” (Clark-Kazak, 2017, p. 12) is also a key principle for research with people in situations of forced migration according to Clark-Kazak.

In the consent forms for lawyers, I mentioned the risk that someone else would realize they had participated in this research, as findings could potentially be argumentative. To mitigate this risk, I explained that interviews were conducted in various locations, including associations, NGOs, and law offices.

Finally, I also mentioned some benefits. While I mentioned that participants would likely not personally benefit from the project, I remarked that their participation would help deepen the understanding of refugee claimants' experiences and the structures of the refugee determination process in Canada. I explained that this type of research could help inform evidence-based decision-making and improve policy and programming for people in situations of forced migration (Clark-Kazak, 2017; Danermark, 2002). I also stated the hope that the project would help combat stereotypes and negative representations of refugee claimants.

5. Data Management and Data Analysis: Thematic Analysis

Data analysis for this study is based on the principles of thematic analysis, a qualitative method that allows the progressive identification of trends and themes in the data (Braun & Clarke, 2006, p. 82). Jennifer Fereday and Eimear Muir-Cochrane define it as “a form of pattern recognition within the data, where emerging themes become the categories of analysis” (Fereday & Muir-Cochrane, 2006, p. 82). This analytic method has already been used in projects similar to mine (see, for example, Silva, 2015). Brandi Lawless and Yea-Wen Chen emphasized the utility of such method to analyze qualitative research interviews from critical standpoints (Lawless & Chen, 2019, p. 93).

Thematic analysis involves different stages of implementation, aiming at “identifying, analysing and reporting patterns (themes) within data” (Braun & Clarke, 2006, p. 79). These

steps were taken up by Virginia Braun and Victoria Clarke, who developed a step-by-step guide that helped me put this method into practice. With my conceptual and theoretical framework in mind, I undertook those steps with the objective of weaving feminist standpoint epistemology, postcolonial feminist ideas, intersectionality, and the concept of agency into data analysis. Before going through each of these steps more specifically, which I will do below, it is important to note that data analysis is an ongoing and iterative process. It involves continuous re-reading and re-analysis of the data, along with a constant back-and-forth movement between the steps described below.

As Braun and Clarke explained, data analysis begins when the researcher starts to detect potentially interesting patterns or themes (Braun & Clarke, 2006, p. 86). Data analysis may begin during data collection, as was the case in this research (Braun & Clarke, 2006, p. 86; see also Kaga, 2021; Silva, 2015). I started analyzing the interviews with lawyers, as they were the first interviews I undertook, followed by the interviews with the claimants and the observations. As I began with analyzing the interviews with lawyers, I first started to confront the information from each of them, noting similarities and/or contradictions in their testimonies, as explained above. I then compared the information from lawyers with that of the women participants, as well as among the women participants themselves. I also confronted this information with my observation notes (Kaga, 2021, p. 45). The analysis of all the data was then progressively refined through the various analysis rounds. All the interview transcriptions and the observation notes were transferred into NVivo, which I used to help me with coding.⁸¹ In contrast, field notes were used as a supplement to the analysis of the interviews and observations and were not transferred into NVivo.

⁸¹ Nvivo allows the researcher “to zoom out to link the fine-grained, line-by-line analysis with macro-level observations” (Jacobs & Maryns, 2022, p. 550).

The first step was familiarising myself with the data, which I did quite early as I collected the data and transcribed all the interviews except one myself. Each interview recorded was transcribed in a Word document and re-read, before being transferred into NVivo. Thematic analysis nevertheless requires immersing yourself within the data by “‘repeated reading’ of the data and reading the data in an *active way* – searching for meanings, patterns and so on” (Braun & Clarke, 2006, p. 87; see also Fereday & Muir-Cochrane, 2006), which I did by progressively taking notes about potential codes and themes during each step of the analysis. As indicated above, thematic analysis is based on an iterative method of codification and identification of themes: the identification of patterns and themes is therefore done throughout all of the stages of the analysis process (Silva, 2015, p. 24).

Generating initial codes was the second step of the process. Here, Braun and Clarke differentiate between “codes”, which they define as “groups to organize your ideas” and “themes”, which they define as “units of analysis” (Braun & Clarke, 2006, p. 88). Themes develop after first thinking about potential codes. First, I tried to detect recurrent subjects of the entire data set,⁸² developing many groups of ideas/codes, sometimes far away from my research questions (for example, Legal Aid Ontario cuts). I did so by carefully reading the interview transcriptions and observation notes line by line, highlighting each potentially interesting element one by one. I developed these subjects into codes organized in a tree-like structure, i.e., with several codes divided into subcodes. This helped me to obtain a better understanding of the overall picture. In an attempt to be more precise in the analysis, I then tried to focus on the subjects that were more related to my specific research questions (Braun & Clarke, 2006, p. 83). After submitting a table with preliminary ideas and a draft codification tree to my supervisors in July 2020, they suggested that I conduct a descriptive analysis of the data. I did

⁸² Data set refers to “all the data from the corpus that are being used for a particular analysis” (Braun & Clarke, 2006, p. 79).

this by creating a document that included all the codes I had so far, along with descriptions of what emerged from the data for each code.

I used a mixture of inductive and theoretical thematic analysis to identify codes. Inductive analysis refers to a bottom-up analysis: a “process of coding data without trying to fit it into a pre-existing coding frame, or the researcher’s analytic preconceptions” (Braun & Clarke, 2006, p. 83). This is only to some extent since researchers always have theoretical and epistemological commitments (Braun & Clarke, 2006, p. 83). On the other hand, the theoretical/deductive analysis refers to a top-down analysis: a process that tends “to be driven by the researcher’s theoretical or analytic interest in the area” (Braun & Clarke, 2006, p. 84). In the context of this theoretical/deductive analysis, I progressively identified new codes based on the concept of agency, postcolonial feminism, and intersectionality, which form the theoretical framework of the thesis.

In the next step, I refocused on the search and analysis of themes as units of analysis rather than codes; this entailed ranking the different codes into potential themes to see how different codes may combine to form an overarching theme (Braun & Clarke, 2006, p. 89). To do so, I created several documents in which I reviewed each code and related excerpts from the transcriptions in order to group them under themes at a more abstract level of analysis. I used a colour code to help me through this step. From a deductive analysis perspective, I also explored how themes could be rethought and re-arranged with regard to the conceptual and theoretical framework.

The last steps concerned reviewing the themes (phase 4) and defining and naming them (phase 5). More precisely, as part of phase 4, I reviewed not only all the coded data extracts for each theme (level 1 of reviewing) but also the entire data set (level 2 of reviewing). This step allowed

me to have a better idea of the level of importance and elaboration of each theme, allowing me to set certain ones aside. It also provided a clearer vision of the connections between certain themes. As part of phase 5, I continued defining and further refining the themes, i.e., “identifying the ‘essence’ of what each theme is about (as well as the themes overall), and determining what aspect of the data each theme captures” (Braun & Clarke, 2006, p. 91).

When undertaking the different steps of the thematic analysis process, I worked hard at listening to women’s voices, which is the main objective of feminist standpoint epistemology. From this perspective, I aimed to place the voices of the women claimants at the center of analysis: “Only through speaking with women themselves and by valuing their stories can understanding be gained about their lived experiences” (Greenwood, 2017, p. 28). In the results chapters, this translates to putting forward the testimonies of the women respondents by placing them as a starting point of the research. In this perspective, sample narratives from their interviews are used for illustrative purposes in explaining the data. These narratives echo the points most often made by other participants according to my analysis: Valentine's story, for example, which I use as a sample narrative in the first section of Chapter 4, illustrates aspects that were not only mentioned by her but that have also been mentioned by other participants. Including a sample narrative at the beginning of each subsection pursues the objective of amplifying the voices of women themselves (Greenwood, 2017, p. 107). Heather L. Greenwood, who used a similar structure in her thesis, highlighted how reproducing the testimony of participants before exploring key themes is a way of respecting participants’ voices regarding their own experiences (Greenwood, 2017, p. 107; see also Canadian Council for Refugees, 2012).

Postcolonial feminist ideas and intersectionality then helped me to explore in the data, the various forces influencing each respondent’s experiences. Postcolonial feminists ideas

prompted me to always keep in mind the socio-historical context, in particular the role of colonialism and/or the use of colonial strategies/“colonial modes of representations”, such as homogenizing and victimizing representations (Taha, 2017, p. 114). With this in mind, I pay particular attention, during data analysis, to gender, race, ethnicity, and class oppression. As mentioned above, these are not the only axes of social division that are relevant for this thesis, which is why I also consider their interactions with other axes such as religion/religious practice, nationality/citizenship, marital status, country of residence, language, generation, and age (see for example Bilge & Denis, 2010; Clark-Kazak, 2012, 2016; Saunders et al., 2016). The data have largely been interpreted using these perspectives. Regarding agency, I went through the different steps of the thematic analysis and the development of codes and themes, while keeping closely in mind McNay’s definition of agency, which I reproduced above as the “ability of individuals to have some kind of transforming effect or impact on the world” (McNay, 2016). McNay’s three-part conceptualization of agency helped me to uncover specific aspects of women’s experiences by deconstructing agency in more nuanced ways. First, the situated aspect of agency allowed me to pay particular attention to the socio-cultural context of this “ability of individuals”, especially to certain ideas and stereotypes – particularly regarding the basis of claim, and later, the preparation and presentation of the case – due to the specific ideas that circulate about who is a refugee and how they are expected to act. Agency as a situated phenomenon – associated with feminist postcolonial ideas – also highlights the highly political and repressive character of the international and Canadian migration systems, whose objective is to control who is authorized to stay in the country, often in violent ways. The embodied aspect of the phenomenon also helped in this regard to more specifically deconstruct agency in relation to internalized norms of social control, which also became a unit of analysis. The relational aspect of agency encouraged me to investigate refugee claimants’

interactions with others throughout the process by identifying themes in data that illustrate how structural hierarchies of power and interpersonal relationships shape women's experiences.

Finally, the researcher's role in using thematic analysis should be emphasized, especially that the researcher does not simply discover themes. On the contrary, the researcher plays an active role in "identifying patterns/themes, selecting which are of interest, and reporting them to the readers" (Taylor & Ussher, 2001, as cited in Braun & Clarke, 2006, p. 80). As explained by Braun and Clarke, it is important "to acknowledge our own theoretical positions and values in relation to qualitative research [and to not] subscribe to a naïve realist view of qualitative research, where the researcher can simply 'give voice' (see Fine, 2002), to their participants" (Fine, 2002, as cited in Braun & Clarke, 2006, p. 80). Indeed, "even a 'giving voice' approach involves carving out unacknowledged pieces of narrative evidence that we select, edit, and deploy to border our arguments" (Fine, 2002, as cited in Braun & Clarke, 2006, p. 80).

6. Research Limitations

This research has several limitations that need to be taken into consideration when looking at the results and the research's conclusions. Certain limitations are related to sampling. The women I interviewed had to meet the criteria of having had their refugee claim determined and having obtained refugee status. They also needed to be able to communicate in French or English. These criteria limited the recruitment and the extent of the information I could collect (Greenwood, 2017, p. 266; Silva, 2015, p. 60). This is particularly true regarding the language criteria, as only participants capable of expressing themselves in French or English were considered for participation in the research. As French is my first language and I am proficient in English, I could conduct the interviews myself – and this was also part of my decision to use these specific language inclusion criteria – without the need for an interpreter. In the literature,

comparable language criteria have already been used to conduct similar research (see, for example, Greenwood, 2017; Silva, 2015). The limitations entailed by these criteria have also already been highlighted, such as by Greenwood, who specifically emphasized the risk that using these inclusion criteria may exclude less privileged women who are not able to communicate in these two dominant Western languages. Having an interpreter in the room is, however, also criticized in the literature, as this may create additional obstacles for women to participate and entail potential privacy issues (Greenwood, 2017, p. 266). As this is an important limitation in my research, I recognize the importance of undertaking further research in other languages as well. These reflections on language also point to other forms of privilege – likely related to the participants’ strong knowledge of English or French (or both) – among those who participated in the research, such as their past professional experiences; several women, for example, were lawyers in their country of origin.

Moreover, the number of interviews is not representative of the diversity of women claimants (Kaga, 2021, pp. 45-46). There is great diversity among women and further research on their experiences during the refugee determination process must be encouraged (Greenwood, 2017, p. 266). One specific aspect to highlight in this regard is the importance of the participants’ marital status and whether they have applied for asylum together. Indeed, being married, traveling with a partner, and claiming asylum together may present challenges – or, conversely, make it easier for certain women – compared to women traveling alone and claiming asylum without their partner. In the research, only three women I interviewed were married and applied for asylum with their partner, which limits the data on this specific aspect of their experience. Further research could explore the impact of marital status and claiming asylum together, compared to women who are single and traveling alone. Some of these aspects are explored below, such as the issue of domestic violence between partners claiming asylum together, or the greater mental burden and supportive roles that single women or women traveling alone

may face. In the results chapters, I also show how claiming asylum with children may complicate the process for certain women. Additionally, since the three participants who applied for asylum with their partner were in heterosexual relationships, further research may also be interested in looking at the experiences of non-heterosexual couples applying for asylum together, highlighting the specific obstacles they may face compared to heterosexual couples. As mentioned above, the objective of qualitative research is to gather relevant information to better understand a phenomenon, not to report on a population (Mongeau, 2008, p. 93). The objective was not to be representative, but to better understand women's participation in the preparation of their claims. In this perspective, the information collected from the interviews and observations I conducted contribute to the increase of knowledge on the experiences of women during the refugee determination process. The results, however, are not generalizable and cannot be considered as reflective of broader trends (Greenwood, 2017, pp. 266- 267).

Other limitations are related to the data collection methods. Although interviews are an effective method of data collection, there are still limitations, such as the “calculation attitude” (“attitude de calcul”) of the researcher trying to obtain specific results (Savoie-Zajc, 2009, p. 357). In a forced migration research context, a series of specific difficulties emerge in undertaking interviews due to the important power imbalances between the researcher (me, a white PhD student with multiple privileges) and the refugee respondents (Liempt & Bilger, 2012, p. 453).⁸³ The burden on refugee claimants to reproduce a positive image of themselves

⁸³ Clark-Kazak mentions the difference, in terms of rights and opportunities, that exists between refugee claimants and citizens of the host country (in my case, not a Canadian citizen but an international student from Belgium) (see also Liempt & Bilger, 2012), the existing risk for refugee claimants of whom the right to remain in the host country may be impacted by the research, and the question of power imbalances that exist in many cases as refugee claimants often “depend on sponsors, service providers and/or the government for survival and/or legal status” (Clark-Kazak, 2017, p. 11). Another specificity mentioned by the author concerns the activities of certain groups who are believed to be terrorists; research in this context potentially risks conflict with anti-terrorist legislation. Fourth, the author highlights the fact that it is expected for refugee claimants to tell their stories many times throughout the refugee determination process and that “researchers’ questions may add to the burden of recalling painful experiences of conflict, violence, violations, and abuse” (Clark-Kazak, 2017, p. 11). The last element concerns the lack of sharing the findings with the participants in an accessible way.

and their community during the interviews due to feeling unwanted or stigmatized in their country of residence, for example, is mentioned by Janine Dahinden and Denise Efionayi-Mader (Dahinden & Efionayi-Mader, 2009, p. 113).⁸⁴ The experience of being constantly questioned during their journey by a variety of different persons, including the authorities, lawyers, medical specialists, and journalists, is also highlighted in the literature (Liempt & Bilger, 2012, p. 459). Such questioning often happens when the interviewer's objective is to find inconsistencies and test the claimant's stories from a Western legal perspective, with serious consequences if they do not provide the requested information or provide it the "wrong" way (Liempt & Bilger, 2012, p. 459). For all those reasons, respondents "may feel biased and suspicious when approached by a researcher and may try to fit their story to their expectations in order to minimize possible damage done to them" (Liempt & Bilger, 2012, p. 459; see also Dahinden & Efionayi-Mader, 2009, p. 5).⁸⁵

Michèle Ollivier and Manon Tremblay, although not focusing on forced migration research contexts, list a series of possible solutions to mitigate power imbalances in research, such as accepting being criticized by the participants ("perméabilité mutuelle à la critique"), encouraging co-interpretation ("assurer aux participantes à la recherche que leurs interprétations seront présentées dans les publications découlant de la recherche"), for the researcher to be responsible for what she hears and sees, and to be ready to intervene (Newkirk, 1996, as cited in Ollivier & Tremblay, 2000, p. 107).⁸⁶ Although Ollivier and Tremblay (Ollivier & Tremblay, 2000, p. 109) highlight the difficulties of executing these suggestions in academia, I tried to implement them all by being open to criticisms from the participants,

⁸⁴ Dahinden & Efionayi-Mader discussed different strategies to overcome these difficulties (Dahinden & Efionayi-Mader, 2009, pp. 114 et s.).

⁸⁵ Murray similarly mentions how participants may assume the interviewer "to be in a similar position of authority and power to that of an IRB adjudicator" (Murray, 2014, p. 28).

⁸⁶ The difficulties of implementing these suggestions in academia, particularly for young researchers, is highlighted by Ollivier and Tremblay (Ollivier & Tremblay, 2000, p. 109).

encouraging them to express their views, acting responsibly and always staying ready to intervene. Other suggestions include never considering consent as acquired (instead, it is constantly renegotiated), and being realistic, i.e., maintaining realistic expectations of the participants (Kirsch, 1999, as cited in Ollivier & Tremblay, 2000, p. 110), which I tried to do as much as possible. According to these authors, the researcher thus needs to accept a number of contingencies at the outset of her research, such as sometimes being the source of discomfort, confusion, and even emotional pain for some participants, as well as forgetting the participants once the research is over (Kirsch, 1999, as cited in Ollivier & Tremblay, 2000, p. 111).

As with every data collection method, observation also has several limitations (Laperrière, 2009, p. 333). According to Anne Laperrière, the most frequently mentioned limit of observations in the literature is ethnocentrism and the researcher's subjectivity. Christophe Broqua also underlines the dependency between the observations and the characteristics of the researcher (Broqua, 2020, p. 410). This criticism refers to the risk of a researcher influencing the choice of situations to observe, her perception of these situations, and consequently, her analyses (Laperrière, 2009, p. 333). Laperrière lists several strategies to address these problems. First, the author mentions that the researcher should collect topologic data, which Laperrière refers to as the history of the situation being studied, its formal and informal structure, and the ideological orientations or debates that mark it, which is what I did in the literature review chapter.⁸⁷ Second, Laperrière also mentions that the researcher must clearly indicate the sources of empirical and analytical data (i.e., what the researcher bases her analyses on), which I also did by indicating all of my sources. Laperrière also identifies the selectivity of perceptions as another limit of observation, which the researcher can address by developing an "egalitarian

⁸⁷ As indicated by the author: "Ces données peuvent être obtenues par le biais d'entrevues avec des personnes clés ou par une recherche documentaire préalablement au terrain ou, encore, directement avec ses interlocuteurs en début de terrain" (Laperrière, 2009, p. 334).

attitude" and "give the same human and scientific interest" to all actors in the situation under study (Friedrichs & Ludtke, 1980, p. 25, as cited in Laperrière, 2009, p. 334). It is also important for the researcher to undertake exact and concrete descriptions of the actors' characteristics and the sequence of events before developing any interpretation. I systematically and diligently took notes of my observations, including the actors' characteristics and the sequence of events (Mongeau, 2008, p. 98).

7. Conclusion

In this chapter, I addressed the methodological choices I made to conduct this research. I first discussed my decision to undertake this research from a feminist perspective and the suitability of exploratory research in migration and refugee studies (see, for example, Greenwood, 2017; Lenette, 2011). I then explored more specifically my choice of viewing this research through the lens of feminist standpoint epistemology to address criticism by feminist scholars against the invisibility of women, and to follow the objective of giving more representation to women's lives, as well as its influences on the research project. Adopting a feminist standpoint epistemology lens influenced all steps of the research project, including the choice and execution of methodologies, as well as data evaluation and analysis, as I explained above. In this part of the chapter, I also acknowledged and reflected on my own privileged location as a white, Belgian, middle-class woman with multiple privileges and its influence on this research.

Following this part on epistemology and positionality, the chapter provided more detailed descriptions of the sampling and recruitment strategies used with refugee claimants and lawyers, and as well as detailed descriptions of the samples. I then explained the two qualitative methods of data collection I used – i.e., individual semi-structured interviews and observations of meetings between claimants and lawyers – and how I put them into practice. A part of the

chapter was also dedicated to issues such as voluntary and informed consent, confidentiality, privacy, and the objectives of minimizing harm and maximizing research benefits (Clark-Kazak, 2017). In this chapter, I also explained how I practically applied the principles of thematic analysis – by intertwining the concept of agency and the intersectional and postcolonial theoretical framework into this analysis – to progressively identify trends and themes in the data (Braun & Clarke, 2006, p. 82).

The methodology chapter allowed me to present the methodology I used to conduct the research and the justification behind my choices. I also highlighted some of the limits of the research due to these methodological choices. Some of these limitations are related to the sampling and the inclusion criteria I used, as well as the limited number of interviews I conducted. As explained above, there are also limitations related to the data collection methods, including power imbalances between myself, as the researcher with multiple privileges, and the refugee interviewees, as well as issues of ethnocentrism and subjectivity. I outlined a series of strategies above to address these limitations.

The following chapters present the results and the analysis of the interviews in more detail. In Chapter 4, I explore the issue of legal representation by focusing on two aspects of it: the search and the selection of a lawyer, and the challenges that can arise in working with legal counsel.

Chapter 4: From Choosing a Lawyer to Working with Them: Navigating the Legal Representation “Crisis”

As mentioned in Chapter 1, three overall research questions guide my research: (1) How do women participate in preparing their claims; (2) What facilitates or limits women’s participation in the preparation of their claims; and (3) How do intersecting axes of social

division influence their participation? In this chapter, I focus on legal representation. Specifically, I focus on the participants' experiences related to (1) the search for and the selection of a lawyer and (2) collaboration with this lawyer and the potential difficulties that may arise from it.

1. Searching for and Selecting a Lawyer⁸⁸

1.1 Valentine's Story

Valentine is a French-speaking refugee claimant from Djibouti who came to Canada with two children. She was pregnant while going through the refugee determination process. When I asked her how and when she met her lawyer, Valentine explained that she first went to a YMCA, where she was told that she had to seek legal aid. One of the first aspects Valentine mentioned is the time limit of 15 days in which those who apply for asylum at a Port of Entry have to submit their Basis of Claim Form (BOC):

(...) so, when I went to the YMCA, I tried to contact people. I said: «I am looking for a lawyer ok ». They told me: « Ok, we will try to find a lawyer ». First, they told me «First, you are going to do legal aid». My God, this too, it was top chrono. They told me I had 15 days, but it was... I had already lost, in fact, a few days... and there was, voilà, with the travel, the... I was there in Quebec, 2 days here, 2 days, my God.⁸⁹ (Valentine, R; my translation)

⁸⁸ As most of the experiences of all the participants derive from working with lawyers, this chapter focuses on this aspect. I will often use the word “lawyers” and will mainly discuss issues related to working with lawyers, either privately paid lawyers or lawyers who accept legal aid certificates. There are, however, other options for refugee claimants, as explained in Chapter 1. Working with representatives who are not lawyers can create specific problems, which will not be discussed here.

⁸⁹ *(...) alors, lorsque je suis allée au YMCA, j'ai essayé de contacter des gens. J'ai dit : « Je cherche un avocat ok ». Ils m'ont dit : « Ok, on va essayer de chercher un avocat ». D'abord, ils m'ont dit : « d'abord, tu vas faire l'aide juridique ». Mon dieu, ça aussi, c'était top chrono. On m'avait dit que j'ai 15 jours, mais c'était... j'ai déjà perdu, en fait, quelques jours...et il y avait, voilà, avec le déplacement, le... j'étais là-bas à Québec, 2 jours ici, 2 jours, mon dieu. (Valentine, R)*

She explained that she turned to other newcomers, who recommended her a lawyer (lawyer 1). She mentioned that these newcomers did not know any other lawyers. She then mentioned that she heard about a second lawyer (lawyer 2), but no one knew his address. This lawyer's office (lawyer 2) was closer to the YMCA. She, however, repeated that she did not know his address. Valentine mentioned that she lost time and thus decided to contact the first lawyer that was recommended to her (lawyer 1) because she had her number:

And we found a lawyer, and some people, in fact, advised me to go to this lawyer ...because, yes, they didn't know any other lawyers. (...). They had another lawyer but they didn't know his address and I didn't have the time to wait. (...) I lost some time, so I went for it., the one there was the number, and also I was told that this one, the lawyer I have now, he is closer to the YMCA and you can even walk to take the bus (...) but we didn't have the address.⁹⁰ (Valentine, R; my translation)

Valentine explained that she struggled to obtain legal aid once she chose the lawyer she decided to work with. In her testimony, she emphasized that her low level of English and the accent of the lawyer's secretary were obstacles that prevent her from understanding the steps to undertake. She again explained:

He told me: « So, you will that, that, that, legal aid ». There was just his secretary who had picked up, (...). I went to see her, so, (...) she was speaking in English, me, I am not

⁹⁰ *Et on a trouvé un avocat, et des gens, en fait, m'ont conseillé d'aller cet avocat là ... parce que, oui, ils savaient pas d'autres avocats. (...). Ils avaient un autre avocat mais ils ne savaient pas l'adresse et j'ai pas eu le temps d'attendre. (...) j'ai perdu du temps, alors je me suis lancée, celui qu'il y avait le numéro, et de plus on me disait que celui-là, l'avocat maintenant que j'ai, il est plus près du YMCA et tu peux même marcher prendre le bus (...) mais on avait pas l'adresse. (Valentine, R)*

*that good in English and then, it was, she had an accent really... really hard, that I couldn't understand what she was saying.*⁹¹ (Valentine, R; my translation)

Valentine explained that it took her two days to seek legal aid. As she did not know what legal aid was, where to go, or how to contact them, Valentine explained that she “lost” several days:

*She told me to go to legal aid, it took me really, I lost two more days to look for legal aid. What is this? Where will I go? What will I do? How will I contact them? I took, it took me one day to contact legal aid, one entire day (...). I couldn't understand. (...) I lost how many days like that?*⁹² (Valentine, R; my translation)

In addition, Valentine mentioned that no one was helping her. She then talked about her children more specifically, explaining that there was no one to care for them. Valentine also explained that she felt tired, stressed, and demoralized. All this was hard for her when, on top of it all, she was four months pregnant:

*And there is no one to help me, people, they tell me to do that, that, that, that (...) in addition, I have my children. There is no one to look after my children (...) there were so many things missing (...) I am really tired (...) too stressed, frustrated, tired (...) I was really demoralized inside (...) it was too hard, too, too, really, a mother who is four months pregnant....*⁹³ (Valentine, R; my translation)

⁹¹ Il me dit : « alors, tu vas ça, ça, ça, l'aide juridique ». Il y avait juste son secrétaire qui avait décroché (...). Je vais la voir, alors, (...) elle parlait en anglais, moi, je ne suis pas si forte en anglais et puis, c'était, elle avait un accent vraiment... vraiment dur, que j'arrivais pas à comprendre ce qu'elle disait. (Valentine, R)

⁹² Elle m'a dit de passer à l'aide juridique, ça m'a pris vraiment, j'ai perdu deux jours encore pour chercher l'aide juridique. C'est quoi ça ? Où je vais aller ? Qu'est-ce que je vais faire ? Comment je vais les contacter ? J'ai pris, ça m'a pris un jour pour contacter l'aide juridique, toute une journée (...). J'arrivais pas à comprendre. (...) J'ai perdu combien de jours comme ça ? (Valentine, R)

⁹³ Et il y a personne qui m'aide, les gens, ils me disent de faire ça, ça, ça, ça (...) en plus, j'ai mes enfants. Il y a personne qui va me garder mes enfants (...) il y avait tellement de trucs qui manquaient (...) je suis vraiment

1.2 “They are looking for a French speaking lawyer who is a woman”: Women’s Agency in Searching for and Selecting a Lawyer

In the following sections, I explore how women claimants seek and select a lawyer, collect information about lawyers, and orient their search based on specific criteria. All participants mentioned the importance of referrals when discussing the search for and the selection of a lawyer. As we have just seen, Valentine turned to other newcomers at the YMCA to gather information about lawyers. Other examples include Marielle, a claimant from Lebanon, and Pauline, a claimant from Kenya, who found their lawyers through friends and acquaintances.

Marielle and Pauline mentioned the good feedback they had received about their lawyer. Regarding their first lawyer, Marielle mentioned that her husband’s friend said “*so many nice things*” (my translation from “*tellement de bien*”) and that “*a lot of people got status because of him*” (“*beaucoup de personnes ils ont eu le statut à cause de lui*”). Regarding their second lawyer, Marielle said he was well-known in their ethnic community. Pauline explained that the person who recommended her lawyer knew her for being successful in helping women claiming asylum:

So, this lawyer is the one who directly refers us to... contact X, cause she said she had worked with her before on issues of immigration. I think she knew her from successfully helping many women to seek for refugee status. (Pauline, R)

fatiguée (...) trop stressée, frustrée, fatiguée (...) j’étais vraiment démoralisée à l’intérieur, (...) c’était trop dur, trop, trop, vraiment une maman qui est enceinte de quatre mois.... (Valentine, R)

Claimants may ask about lawyers or hear rumors in their entourage. They then may take time to collect information about the lawyers referred to them in this way. Pauline, for instance, explained that she and her husband consulted the website of the lawyer that was recommended to them. On the website, she got the lawyer's number and then contacted her. Other claimants also mentioned the action of searching for information about lawyers on the Internet. Sybille, another claimant, gave the example of one of her friends who collected information about her lawyer by searching on the Internet:

She met the lawyer, which was my lawyer, on google. She was googling for lawyers and then she read reviews, and she found that particular name. She read [the] reviews, she was stunned by [them]. She sent an email and she was taken by my lawyer. (Sybille, R)

The analysis of the interviews indicates that some participants have a clear idea of the characteristics they would like their lawyers to have. These characteristics orient their searches. Four claimants mentioned specific criteria they were looking for in a lawyer and/or that they would have preferred their lawyer to have. The two characteristics most mentioned concern the sex and the language of the lawyer.

Among those four claimants, Véronique and Julie mentioned their desire to have a woman as their lawyer. Véronique explained that she specifically wanted a woman as her lawyer because that made it easier to share her experiences:

I also remember initially I was being referred to someone (...) ... a guy, I believe. It was also my preference that I wanted to have a woman as my lawyer, that was my preference. That made it easier to share my experiences (...) these contacts of social dynamics

always play a role in how we chat with people and I don't think it would have been as easy for me to share some experiences with like a male lawyer. (Véronique, R)

Julie, a claimant from Rwanda, expressed the same preference, although she explained she could not find any woman lawyer.⁹⁴ According to her, women are more sensitive and more understanding:

I didn't mind working with a male lawyer... I would have preferred a woman, but I didn't find one (...), it seems to me, let's say, that in such cases, women are more sensitive, women are more understanding.⁹⁵ (Julie, R; my translation)

The other important criterion looked for is the language spoken by the lawyer, as a language gap may be an obstacle to understanding the different steps of the process. Anticipating difficulties related to language, certain participants mentioned right at the beginning that they were looking for a lawyer speaking a specific language. For instance, Jennifer, a claimant from Haiti, indicated that she wanted a French-speaking lawyer. Lawyers also confirmed that certain claimants had this desire. Elisa explained how questions of sex and language are sometimes combined, with some refugee claimants looking for a lawyer that matches their sex and language criteria:

⁹⁴ Refugee claimants do not always have the opportunity to make the choice they want due to several elements related to the context, such as the limited timeframe they have to submit the BOC (as was the case with Valentine). This can have consequences, which I explore in more detail in Chapter 5.

⁹⁵ *Ça ne me dérangeait pas de travailler avec un avocat homme... j'aurais bien préféré une femme mais j'avais pas trouvé (...), il me semble, mettons, comme, dans des cas pareils, les femmes sont plus sensibles, les femmes sont plus compréhensives. (Julie, R)*

Also, I speak French so sometimes they are looking for a French speaking lawyer and sometimes they are looking for a French speaking lawyer who is a woman so I get a lot of calls that way. (Elisa, L)

Elisa's testimony reveals how axes of social division may intersect in creating specific needs and/or requests. As intersectional research shows, claimants' experiences are shaped by these axes of social division and how they work together. Here, the interviews highlighted how sex and language combine for some claimants in shaping their choice of the lawyer they would like to contact. These needs and requests differ from one claimant to another and vary depending on personal experiences and contexts (the search for Spanish-speaking lawyers, for instance, was also mentioned). Having these criteria in mind when looking for a lawyer also reveals the awareness of some claimants of the stages and difficulties ahead.

Characteristics that refugee claimants would like their lawyer to have, other than sex and language proficiency, have also been mentioned. Valentine, for instance, whose testimony is quoted above, pointed to the proximity of one of the lawyers' offices as a positive feature to add to the recommendations she had (she, however, could not initially choose this lawyer due to lack of time and her inability to find his exact address).

1.3 Barriers in Seeking and Selecting a Lawyer

Various factors may complicate women's search for a lawyer. This research has found that these barriers are the limited timeframe claimants have to submit the BOC, the lack of information about lawyers, and the need to care for children. I listed these factors in the table below and indicated the number of participants (lawyers and/or claimants) who mentioned each. In the last column, I indicated elements that exacerbate the difficulties created by these factors,

e.g., the difficulties related to the limited timeframe may be exacerbated by the need for some to travel from Québec to Ontario and/or difficulties in securing legal aid.

Table 3. Factors Complicating Women's Search for a Lawyer

Difficulties	Number of participants who mentioned the difficulties		Elements that might exacerbate the difficulties ⁹⁶
	Lawyers	Claimants	
Timeframe	1	2	- Travelling from Québec to Ontario - Language - Difficulties in securing legal aid
Lack of information about lawyers	2	2	
Need for childcare	1		

1.3.1 Timeframe as a Difficulty in Searching for and Selecting a Lawyer

Refugee claimants have a limited timeframe to submit the BOC, a document detailing their reason for flight, among others. While there are different deadlines depending on the type of refugee claimant the person is, in general, this timeframe varies depending on whether a person claims asylum at a Port of Entry or inland at an IRCC office. For those who apply at a Port of Entry, the BOC must be submitted within 15 days. Seven women applied for asylum at a Port of Entry. Thus, they had to submit the BOC within 15 days.⁹⁷ Two of them specifically mentioned the 15-day timeframe as a difficulty in searching for and selecting a lawyer. One of them is Valentine, whose testimony is quoted above. At the beginning of the excerpt, Valentine mentioned the 15-day deadline and the fact that she “lost a few days” as she had to travel from Québec to Ontario. She explained that the short timeframe impacted her choice of the lawyer

⁹⁶ The list is not exhaustive, as other elements may further complicate the experiences of refugee claimants. I only listed the main elements that may complicate the claimants' experiences that I detected from my analysis of the interviews.

⁹⁷ The two other women applied for asylum at an IRCC office.

to contact. Finally, she explained how difficult it was to secure a legal aid certificate, again making her “lose days”.

The other participant who mentioned the timeframe issue is Sybille, a woman from Nigeria who traveled with her son. Sybille also struggled to secure a lawyer. She, however, succeeded in submitting the required documentation on time:

So, when I go to Canada, when I go to Ottawa, I had... there is this document they give me it's... I have to have a lawyer representative within 15 days and if it's passed 15 days then I will be in trouble. So, I didn't have a lawyer, I didn't have anything, I was worried. Then, my sister said oh, she has this brilliant lawyer who helped her in the past. And, then, we contacted my lawyer, but then my lawyer wasn't around, she was on holiday. So, we like talked on the phone, like emails and, then it was almost getting to 15 days, we did our first interview on the phone (...) we were running out of time.
(Sybille, R)

The pressure of time led to mistakes in her documentation that had consequences later in the process. This point will be explored later (Chapter 5). While Valentine and Sybille secured a lawyer, and submitted their documentation on time, this may only be true of some refugee claimants. Certain factors can make it easier to find a lawyer, as shown by Sybille's testimony that she could count on her sister for a recommendation. Other factors, such as language misunderstandings and/or the need to arrange legal aid, can make this step even more difficult.

1.3.2 Lack of Information About Lawyers

Among the 23 participants in the thesis, four of them – two claimants and two lawyers – mentioned struggles with finding information about lawyers as an issue. Valentine explains that she turned to other newcomers to gather information about lawyers. However, they did not know more about lawyers than she did. Her testimony highlights how the short timeframe and lack of information about lawyers may combine: she lacked information about available lawyers and did not have time to wait. These two elements constrained her choice. Marielle also explained how the lack of information about lawyers and how to contact them constrained her choice of lawyer. She explained that although their first lawyer was not good in the opinion of she and her husband, *“it was the only choice for us”*. Moreover, when I asked why he was their only choice, she answered that she and her husband did not know anyone in Canada and did not know how to search. Marielle also mentioned that they already paid him, implying they had no money to pay someone else.

Two lawyers also mentioned the issue of the lack of information about lawyers or, more generally, the issue of the lack of information about legal representation and refugee claimants’ rights in this regard. Claimants do not always realize that they can approach a lawyer. Sarah, a lawyer working in a legal clinic, mentioned the lack of knowledge of certain refugee claimants regarding their freedom in choosing one lawyer over another. This can have consequences later in their application processes. Sarah gave the example of claimants meeting a lawyer at the YMCA and thinking they had to continue with him or her:

I have heard too many stories of people going into YMCA and they actually thought that the lawyer that they met there was the one they had to take and, you know, (...), in cases where women didn’t tell stories of sexual violence because the lawyer was a man and

culturally they didn't feel comfortable sharing that with a male lawyer but they never raised this as an issue because they thought that was the only sort of free lawyer available. (Sarah, L)

This excerpt illustrates how a lack of knowledge about claimants' rights and possibilities regarding legal representation may intersect with issues of gender. Consequently, certain women may not disclose important information about their stories, which may have consequences later if that hidden information is important for their case.

1.3.3 The Challenge of Childcare

Valentine mentioned her concern about her children and about not knowing anyone who could care for them. She also said the process of finding a lawyer, arranging legal aid, and filling out the BOC within the requested timeframe was too hard for a mother who was four-months pregnant.⁹⁸

The difficulties related to caring for children are more likely to concern women due to traditional gendered roles, according to which care work is primarily assigned to women. Valentine is the only participant to have mentioned this issue in regards to her search for a lawyer. Two claimants and eight lawyers, however, noted the traditional allocation to women of tasks that fall under the care of others (care work) regarding other facets of the process.⁹⁹

⁹⁸ A story similar to Valentine's was discussed by Channele, a lawyer, namely, the case of a woman who struggled to find a lawyer when she moved from Québec to Ontario. At that time, she had no resources, had a child, was pregnant, was alone, and did not speak either French or English very well.

⁹⁹ In Chapter 5, I discuss the "challenge of childcare" (Marie, L) concerning preparing the BOC more specifically.

2. Working With the Counsel: Managing Potential Difficulties and Disagreements

With the Counsel

2.1 The Many Problems of Low-Quality and Abusive Counsel

Most participants discussed the many problems that may arise from low-quality and abusive counsel. Four claimants indicated that they had been confronted with low-quality and abusive counsel. Among the lawyers, eight talked about difficulties related to having a counsel that is “*not very good*” (Corinne, L).

2.1.1 “We ended with a very bad lawyer”: Identifying a lawyer as low-quality or abusive and the consequences of working with such a lawyer

2.1.1.1 Emily’s Story (part 1)

Emily is a refugee claimant from Iraq, where she was a lawyer. During her interview, she talked at length about her and her husband’s difficulties with their first lawyer, whom she described as “*a very bad lawyer*”. In her testimony, Emily explained how she and her husband came to understand that their representation was of low-quality and that their lawyer was abusive.

Emily explained that they lived in a shelter at the time. They met a social worker at the shelter, who told them to apply for legal aid. Emily then explained that they “*ended with a very bad lawyer*”. One of the first points Emily made regarding the quality of the representation she and her husband received is the mistakes their lawyer made in their documentation. For example, she noticed differences between her Personal Information Form (PIF; now replaced by the BOC) and her husband’s PIF:

(...) so we noticed that he made a few mistakes on our PIF: my husband’s PIF was different than my PIF. Even something as simple as like wedding dates like we got

married on the same day obviously but he put it different dates in like, in my PIF than in my husband's PIF. So, we were actually shocked that he made so many mistakes, we tried to correct a few mistakes and then we decided to switch lawyers. (Emily, R)

Emily then highlighted other issues they had with the lawyer: she mentioned, among other things, that he did not spend enough time with them, “*his information was not accurate*”, and that he would not give any information about the future of their application:

(...) there was not enough time spent with us and we did not actually meet the lawyer, you know, more than maybe a couple of hours in total, even the narrative was taken by his assistant, (...) and whenever we went there he did not make us feel like it's a professional environment his information was not accurate (...) and he would not call us back, (...) so that made us pretty uncomfortable. (Emily, R)

In addition to mentioning that these issues made her and her husband feel uncomfortable, Emily also mentioned later feeling that she was taken advantage of by their first lawyer because they are newcomers:

The only thing I experienced in, you know, was being taken advantage of by the first lawyer because they took us for granted “oh they are newcomers”, that's how we felt at least, “we can just lie to them and scare them so they wouldn't have to raise their voices” and that's the only part where I felt we were being taken advantage of. (Emily, R)

2.1.1.2 Claimants' Experiences With Low-Quality and Abusive Counsel and Consequences

Among all the difficulties claimants may face with low-quality and abusive counsel, I focus here on the four most often mentioned by the participants: the presence of mistakes in the documentation to be submitted, the absence and inaccessibility of the counsel, the counsel giving inaccurate or no information at all about the process, and the feeling of “being taken advantage of” or being scared.

The first aspect Emily mentioned that made her understand their lawyer was providing her and her husband with low-quality representation is the mistakes he made in their PIFs. Marielle, another claimant, gave a similar story. After receiving a negative decision on her claim, she realized there were mistakes in the documentation submitted by her lawyer. The lawyers' discussions converged with those of the claimants, as three lawyers mentioned this specific issue. The issue was also central in one of my three observations.¹⁰⁰ Here are some of the declarations the refugee claimant made during this meeting:

My previous lawyer, he didn't want to do anything. I had to do my own narrative and he didn't make any arrangements (...) I told him to write X [name of a political party] but he wrote Y [other political party].

Sarah, a lawyer, referred to situations where lawyers do not collect sufficient information about the story of the persons in front of them. She explained that she is sometimes confronted with cases where an earlier lawyer did not question the clients about some significant events in their lives that may warrant inclusion in the claim. She explained that this may weaken the claim.

¹⁰⁰ During this observation, the claimant complained about her current lawyer and his mistakes in her documentation. More information about the observations is available in Chapter 3.

She referred to a situation where the lawyer did not question the claimants enough about their experiences, leaving certain relevant aspects of the claim unexplored. This risk may affect women more than men, especially women who apply for asylum with their husbands, as their specific experiences may be relegated to second place with respect to their husbands’:

We get cases where, you know, we will get somebody in who has filled a refugee claim and the person didn’t even ask them about other potential grounds, other like significant events which then becomes really hard to raise in an appeal because they had legal representation and it’s so problematic (...) I can give you an example where a couple came in, they fired their lawyer who they had a legal aid certificate for and after I interviewed them I actually found specific grounds for persecution for the wife that the other lawyer hadn’t even like uncovered. And they were significant, like there were stronger than his (...). (Sarah, L)

In addition to potential problems specifically related to the BOC, participants also discussed potential issues that may arise regarding evidentiary documents, such as cases where the wrong evidentiary documents were submitted. This issue arose in the case of Marielle who indicated that her file was missing evidentiary documents, which she had been unaware of.

The inaccessibility of the lawyer is another issue.¹⁰¹ Marielle, for example, emphasized the absence of her lawyer, who was, according to her, either sick or traveling. She explained that he never took the time for “the papers” and “only had time for money” (“il a le temps seulement pour l’argent”). It was the inaccessibility of her first lawyer combined with the fact that she changed location that made Nathalie, another claimant, decide to change lawyers:

¹⁰¹ Four claimants mentioned this issue. They all decided to change lawyers.

I told you that I stayed in Montreal for three months. When I left Montreal and I moved to Ottawa, so, I realized that accessing this particular lawyer was pretty very difficult for me, because every time you call the office, his personal assistant that picks up and the assistant keeps telling you that the lawyer is not available, the lawyer is busy, the lawyer is this, the lawyer is that, you know, like what was going on? Even back home in Nigeria accessing the lawyer is not this hard so I made up my mind that I have changed my location so I need to change my lawyer. (Marielle, R)

In addition to making mistakes in the forms and being inaccessible, some lawyers also give inaccurate information. Emily's first lawyer, for example, misinformed she and her husband by telling them that they could not change their lawyer and that if they tried to do so, this would have negative consequences for their claim. Marielle recounted a similar problem, namely, that her lawyer told her she could not work in Canada. She, however, realized later that other refugee claimants around her had applied for working permits. She said her lawyer did not inform her well about her rights and that his information was not up to date.

Not receiving any information about the evolution of their claim was also mentioned as an issue by Emily and Marielle. Emily, for instance, explained that she and her husband's lawyer did not call them back after they filled in their application, and that made them uncomfortable.¹⁰² She talked about the feeling that she had of being taken advantage of by the lawyer. In her testimony, she explained that one reason she and her husband were being taken advantage is their status as newcomers. The aspect of "being taken advantage of" by the lawyer was also mentioned by Marielle:

¹⁰² Marielle mentioned she had no idea of the file that was sent on her behalf.

*(...) when he sees someone applying for asylum, he knew there are problems, (...) he takes advantage of that, I took advantage, yes.*¹⁰³ (Marielle, R; my translation)

Although she did not use the exact words of “being taken advantage of”, Valentine, another claimant, mentioned several times that she was scared of her first lawyer. She mentioned that she did not know what to expect from him. She also mentioned she did not know whether he would send her back and what would happen to her, which made her sometimes regret her decision to come to Canada:

*(...) I was scared, it was as if I had been through a, really... I was really, really, really scared! So I say... I was scared of my lawyer, so I don't know, what will he say to me? Is he going to have me expelled? He will say, “Allez, go back, you will do that”. (...) Sometimes, I regretted it, I said why did I come from the United States? (...) in fact, the thing that made me feel uncomfortable was not... it was the lawyer who sometimes made me feel uncomfortable, because I was scared.*¹⁰⁴ (Valentine, R; my translation)

Finally, Chanelle, a lawyer, explained that she received a case where the claimant explained that her lawyer had harassed her sexually. Chanelle drew attention to the power relation that exists between the refugee claimant and the lawyer:

¹⁰³ (...) quand il voit quelqu'un qui va faire une demande d'asile, il savait qu'il y a des problèmes, (...) il prend avantage de ça, il prenait avantage, oui. (Marielle, R)

¹⁰⁴ (...) j'avais peur, c'était comme si j'avais passé une, vraiment... j'avais vraiment, vraiment, vraiment peur ! Alors je dis... J'avais peur de mon avocat, alors je sais pas, qu'est-ce qu'il va me dire ? Il va me faire renvoyer ? Il va me dire 'allez, retourne, tu vas faire ça'. (...) Des fois, j'ai regretté, j'ai dit pourquoi je suis venue des Etats-Unis ? (...) en fait, le truc qui me mettait mal à l'aise, c'était pas... c'était l'avocat qui me mettait des fois mal à l'aise, parce que j'avais peur. (Valentine, R)

I inherited the file from someone who told me, the lawyer made sexual advances towards her, so it happens. It's not like, in all fields, there is a power relationship, there is a woman who is vulnerable, someone who says, I have been raped repeatedly, I was beaten, then, it is a frail woman who struggles asserting herself, it is the perfect prey. It's horrible to say that (...) If a doctor can do it with more vulnerable people, a lawyer can certainly do it with a refugee claimant, or ask them to be paid in kind.¹⁰⁵ (Chanelle, L; my translation)

All the encounters with low-quality and abusive representation mentioned above illustrate, in my opinion, the different ways the unequal distribution of power between lawyers and claimants mentioned by Chanelle takes shape in practice. This power relationship thus manifests itself in different forms, going from a disinterest regarding the case (for instance, mistakes regarding the BOC, or lawyers' absence and inaccessibility) to threats from the lawyers (threats concerning the case and/or physical threats (sexual harassment)). How refugee claimants navigate this asymmetrical power relation and the decisions some take to end their working relationship with a low-quality and abusive lawyer are explored below.

Finally, discussions focused on the possible consequences of being inadequately represented. To illustrate this, Catherine, a lawyer, referred to the story of one of her clients. This client was a woman with two kids who was a victim of domestic violence, the main basis of her claim, according to Catherine. She also feared being targeted for not wearing the hijab and “*not being a good Muslim*”. Catherine explained that there had already been two hearings by the time she

¹⁰⁵ *J'ai hérité du dossier de quelqu'un qui me disait, l'avocat lui a fait des avances sexuelles, donc ça arrive. C'est pas comme, dans tous les milieux, il y a une relation de pouvoir, il y a une femme qui est vulnérable, quelqu'un qui dit oui, j'ai été violée à répétition, j'ai été battue, puis là, c'est une femme toute frêle, qui a de la misère à s'affirmer, c'est la proie parfait. C'est horrible de dire ça (...) Si un médecin peut le faire avec des personnes plus vulnérables, un avocat peut certainement le faire à une demandeuse d'asile, ou qu'il demande de payer en faveur. (Chanelle, L)*

got involved. A third hearing was planned with some delay because the first lawyer did not adequately prepare the client's evidence and because the client was not prepared. For all these reasons, Catherine explained, the board member was skeptical about the client's credibility:

[We] did the best we could to sort of present new evidences, present a new BOC Form, get her prepared for the hearing. But it did not go well at all. I think because the board member had already made up his mind at that point so, what ended up happening is that they accepted her two children but refused her. (Catherine, L)

In addition, Catherine mentioned the consequences on the length of the process and her client's mental health. She believes that if the lawyer had been involved from the outset, the situation of the client would have been very different:

To me, it was a pretty open and shut case (...) I think if her lawyer had been involved from the start, it would have gone really differently. So, I just feel for her that she ended up in this situation due to no fault on her own. (...) it's now been years of her just stuck in the system and it impacted her trauma, it made it worse. (...) she has just been stuck in this process, that's really having an emotional impact on her. (Catherine, L)

Corinne, another lawyer, mentioned that she might sometimes refuse to take clients with legal aid who first worked with a lawyer who “*is not very good*” because of the “*mess*” that lawyer had created, the time it would take to fix it, and the fact that she may not get paid for it. Her testimony highlights how having a low income and being badly represented may create difficulties for certain refugee claimants, as certain lawyers may be reluctant to work with them.

2.1.2 Managing the Problem of a Low-Quality and Abusive Lawyer

2.1.2.1 Emily's Story (part 2)

During her interview, Emily talked about the series of actions she and her husband undertook to manage the problem of abusive representation they were experiencing with their lawyer. One of the first elements Emily mentioned is that she and her husband did not know they could change lawyers. She explained how they learned about this possibility thanks to a colleague from where they were volunteering. Emily explained how she disclosed her negative experience with her lawyer to her colleague. She explained that learning about the possibility of changing lawyers had merely been a coincidence:

We were volunteering at a charity organization assisting refugees and newcomers and a lady who works there, she is Canadian, (...) I was just disclosing my concerns about the lawyer and how we feel that he is incompetent and how we try to get a hold of him and then we can't, and then she asked me like: 'if you are not happy with the lawyer, why don't you change it?' and I said 'I don't think we can and then she said 'oh yeah, I think you can'. (...) so, it was merely a coincidence: if I hadn't spoken that day about how concerned I am with the lawyer then we would have been stuck and we would have been misrepresented. (Emily, R)

Emily emphasized the importance of knowing about the possibility of changing lawyers. According to her, this possibility should have been communicated to her and her husband, as well as to many others:

I think that right should have been communicated to us and to many other refugees because if you know that your life depends on this person, your life is in the hands of this person, I think he also owns the right to know that if you don't like this person or if you feel that they are incompetent or not being professional enough, you have the right to change or to get a better person. (Emily, R)

The issue in their case was about the lawyer's competency. Emily, however, explained that for other refugees, the issue with the lawyer may be a "gender issue" or related to culture if the lawyer and the claimant are from the same culture. She did not give more details about those two potential issues.

Emily then explained that, after having the information from their colleague that she and her husband may have the opportunity to change their lawyer, they went online to collect more information about this possibility:

... and you know we are, we are average people but we are not ignorant to know, you know, whom to believe so when the other lawyer told us that we do have the legal right to change lawyers, we went online and we checked the laws and the proceedings, and we discovered that we do have the right to change lawyers if we made a case, you know, about it. (Emily, R)

Finally, Emily explained that they had been threatened by their first lawyer, who told her and her husband that they would be in trouble and would eventually receive a negative answer on their claim if they decided to change lawyers:

We were contacted by the other lawyer and we were told that, we can't do that, and it's not legal, and that would put us in trouble, and that would only cause like discrepancies with the system. And they would... so, we were... (...) he told us that it would cause so many issues (...) and then, the decision-maker would look at us, and think that there is something wrong about, he said, he would give us a negative decision, you know, he tried to intimidate us to convince us to stay. (Emily, R)

She, however, highlighted that she and her husband have not been “naïve” in this regard. She added that they had, compared to others, the privilege of being in the legal system themselves, implying that they may understand better than others how this system works:

they were trying to intimidate us not to change lawyers, not to raise our voices, but we are not naïve, but maybe people would fall into that trap, especially if there is a lack of information or they are new to the country and they don't know... We are in the legal system, so I would say, we have that advantage, but many other people don't know that, you know, they do have that I... you know, they believe whatever that lawyer was telling them so that would make them an easy prey. I think they would be taken advantages of. (Emily, R)

2.1.2.2 From Sharing Concerns to Making a Complaint

The interviews revealed that women claimants' agency may manifest through a series of actions to manage potential difficulties with a low-quality and abusive lawyer. In the paragraphs below, I explore three forms that this agency may take that emerged from my analysis of the interviews: (1) sharing concerns and asking for a second opinion, (2) deciding to change lawyers, and (3) making a complaint.

In addition to Emily, three lawyers mentioned the action undertaken by some claimants of sharing their concerns about their lawyers with third parties. These three lawyers mentioned examples of refugee claimants coming to them to request a second opinion when they had concerns about their representation.¹⁰⁶ Noémie, for instance, told me about the case of a refugee claimant who turned to her for a second opinion after realizing “*something was not right with her narrative*”:

Just today I had a woman in here, ok, she had a lawyer. She came to see me and she wanted a second opinion (...) she had a feeling, a gut feeling that something was not right with her narrative. She said: “please, look at my narrative, I don’t think that my lawyer did a good job” (...) I said: “well, do you have a copy of it?” Then I read it and I am like “hurg this is terrible!”. But she already knew that something was wrong.
(Noémie, L)

After realizing “*something was wrong*” and sharing their concerns, claimants may decide to change lawyers. This was the case for four women I interviewed who decided to change lawyers after some time.¹⁰⁷ Among these four women, Emily and Valentine changed their lawyers once. Nathalie and Marielle changed twice. All of them explained the decision to change lawyers as being motivated by reasons related to the quality of representation.

Although these four women eventually were able to follow through on their decision to change lawyers, Emily highlighted the issue of the lack of knowledge about “*the right to change*

¹⁰⁶ I also observed this action of requesting a second opinion during one of the observations: the claimant already had a lawyer but did not feel comfortable with him and was looking for assistance.

¹⁰⁷ Their testimonies were corroborated by four lawyers who also talked about such actions.

lawyers”. While she and her husband eventually got the information through their colleague, it is important to note that access to this knowledge may be more or less difficult for certain persons, depending on the context. Emily, for instance, described herself and her husband as having certain privileges compared to others due to their specific position. As lawyers in their country of origin, they are used to work with the legal system. According to her, the fact that they “*are in the legal system*” thus gave them an advantage. These elements, in combination with others (speaking English, for instance), shaped their experience and possibilities for exercising agency in this context, as Emily explained.

The image of refugee claimants being “preys” given by Emily again highlights the power differential between lawyers and refugee claimants. This power differential is exacerbated due to the lack of knowledge of certain claimants about their rights, including the possibility of changing lawyers. Restricted financial resources may also exacerbate difficulties faced by certain refugee claimants. As mentioned in section 1 of this chapter, Marielle, who did not qualify for legal aid, explained that one of the reasons she and her husband could not change their lawyer was because they already paid him.

Finally, the last manifestation of agency I detected is related to two participants who mentioned filing a complaint against a representative for low-quality representation. One of them is Marielle, who said she filed a complaint against her former representative:

Q: and how did it go, was it that you had... With the first lawyer, it didn't go well and then your husband spoke to his boss who suggested he contact a new lawyer?

A: I made a complaint about the first lawyer.

Q: Ah yes, you made a complaint?

A: Yes, I made a complaint because it was not easy for me, it was not easy to comment... If you didn't know where to say it, but as to fill in the papers, we, all alone, I need to correct, it need to do it, me, all the work, why, am I paying for you as a lawyer? You don't represent me, if I did this on my own...?¹⁰⁸ (Marielle, R; my translation)

The other participant who mentioned this subject is Catherine, a lawyer, who explained that she made a complaint against the former lawyer of one of her clients due to his abusive behaviour.

2.2 Clients Jointly Represented, Conflict of Interest, and Consequences

This section examines how claimants are sometimes jointly represented (i.e., when the lawyer is asked to act for more than one client). In these situations, the lawyer and the clients sign a joint retainer agreement.¹⁰⁹ Accepting a joint retainer means, among others things, that “no information received in connection with the matter from one can be treated as confidential from the others, and if a conflict develops that cannot be resolved, [the lawyer] cannot continue to act for both or all of the joint clients and (...) may have to withdraw completely” (Law Society of Ontario, 2023). Thus, if a conflict develops that cannot be resolved, the lawyer may have to withdraw completely and both the refugee claimants may have to find new lawyers to work with separately.

¹⁰⁸ *Q : Et comment ça s'est passé, c'est que vous aviez... Avec le premier avocat, ça s'est mal passé puis votre mari a parlé à son boss qui lui a proposé de contacter un nouvel avocat ?*

A : J'ai fait une plainte à propos du premier avocat

Q : Ah oui, vous avez fait une plainte ?

A : Oui, j'ai fait une plainte puisque c'était pas facile pour moi, c'était pas facile de commenter... Si tu savais pas où il faut qu'on le dit, mais comme pour remplir les papiers, nous, tout seuls, il faut que je corrige, il faut que je fasse moi, tout le travail, pourquoi, je paye pour toi comme un avocat ? Tu ne me représentes pas, si j'ai fait ça tout seul... ? (Marielle, R)

¹⁰⁹ A retainer agreement documents the terms of the lawyer's engagement with a client. More information from the Law Society of Ontario on retainer agreements is available on: <https://lso.ca/lawyers/practice-supports-and-resources/topics/the-lawyer-client-relationship/retainer-or-non-engagement/retainer-agreement-or-engagement-letter>.

This issue of a conflict of interest developing between jointly represented clients was not mentioned by any of the claimants. This may be explained by the fact that most of them arrived alone. All but two lawyers, however, discussed the issue, which demonstrates its prevalence, but also lawyers' awareness of its existence. These lawyers mostly mentioned cases of conflicts of interest arising due to circumstances of intimate partner violence, i.e., cases where there is a conflict of interest between clients because of violence between them.¹¹⁰ Lawyers may play a role in detecting such situations between partners which they can then advise in the best possible way. In many aspects, lawyers have a privileged position to detect such situations due to the time they spend with claimants to prepare their claims. Intimate partner violence issues are of specific importance for some lawyers. Christine, for example, declared her awareness of such issues and explained that she is currently trying to develop her practice to detect these issues earlier and avoid conflicts of interest.

Lawyers emphasized the difficulties that may result from a conflict of interest, particularly the difficulties related to the resulting need for the refugee claimants to find two new lawyers to work with. These participants highlighted the combination of several axes of social division, such as language and financial limitations, and how they may interact to render the situation more difficult for certain claimants to find these new lawyers. These lawyers also mentioned the specific situation of the Community Legal Services of Ottawa workers who, although the organization combines legal clinics in three different locations, cannot refer clients to one of the other two locations. Other particularities may exacerbate such difficulties, such as gender,¹¹¹ which may intersect with language (especially in the case of French speaking claimants in the specific context of Ottawa, where services in French are not always available), and financial

¹¹⁰ Some of these lawyers also mentioned conflicts of interest arising for reasons related to divorces and break-ups.

¹¹¹ Rehaag discussed possible intersections between gender and the ability to secure counsel (Rehaag, 2011b, p. 82).

limitations, rendering it even more difficult for certain persons to find a new lawyer after a conflict of interest.

The issue of intimate partner violence that may exist between jointly represented claimants also illustrates how several power relationships – here, the claimant-lawyer relationship and the relationship between intimate partners – may overlap. I mentioned above the asymmetrical power relationship between the lawyer and the claimant and the different forms such asymmetry can take in practice. A power asymmetry also exists between men and women intimate partners between whom there is violence, as the feminist literature has already revealed (see, for example, McPhail et al., 2007, p. 818). The case of jointly represented claimants between whom there is intimate partner violence is an illustration of how certain claimants may thus have to navigate several power relations and of the risk for these claimants that their vulnerabilities are exacerbated.

3. Conceptual and theoretical analysis of the results

From a feminist postcolonial perspective, the necessity – and difficulty – of finding and working with a lawyer to successfully navigate the refugee determination system can be understood as one of the consequences of the broader colonial context in which this system operates. Indeed, the asylum system, through which Canada determines who qualifies as a refugee is notably complex, and this complexity plays a role in Canada's selectivity regarding which claimants are allowed to remain in the country. The time limit of 15 days in which those who apply for asylum at a Port of entry have to submit their BOC is a concrete example of a contextual obstacle making it particularly difficult for certain claimants – those who lack network, need legal aid, do not speak French or English, have children and so on – to search for and select a lawyer

which may lead to mistakes that have consequences later.¹¹² In the same vein, the many problems arising from low-quality and abusive lawyers are another sign of the broader colonial context and of the unequal power relations it creates. These power relations are yet another source of the reproduction of the West and its subjects as dominant, and the "others" as weak, marginal – those who can be mistreated due to their status and taken advantage of, whether by ignoring their claims, failing to inform them properly about the process, or even threatening them. An attention to the socio-political different locations of women then shows how these difficulties and obstacles are further shaped by these complex locations. For example, the consequences of a low-quality lawyer failing to collect sufficient information about their claimants may be worsened for reasons related to gender and gender roles, culture, and marital status – as in the example mentioned above, where specific grounds for persecution remained uncovered due to the lawyers' fault, and all these elements combined to weaken the claim.

The agentic aspects of experiences mentioned above are situated in this context (Hodgson, 2022; McNay, 2016). The results showed, for example, that certain women may take time to inquire about the lawyers despite the limited official timeframe, which may restrict their ability to make an informed choice or simply find a lawyer they are comfortable with. Results also showed how intersecting axes of social division may create specific needs, such as in terms of the characteristics of the lawyer or in securing legal aid, which may be more or less difficult to meet in the short time frame depending on each socio-political location. An embodied, gendered analysis of the situation of certain women also reveals the role of naturalized gendered expectations of care in restricting women as they are usually seen as the one responsible of children. Finally, a series of women's agentic behaviors are visible specifically in the relational context of their relationship with their lawyers. As this relationship is marked by an unequal

¹¹² The lack of information about lawyers, legal representation and related refugee claimants' rights may be another example. The results also showed how both, the short timeframe and lack of information about lawyers may combine in certain cases, further restricting their choice of their lawyer.

distribution of power, McNay's conceptualization of agency as a relational phenomenon, further helps to analyze the actions directed to representation – such as changing lawyers – put forward in the results as emerging from not only of the client-lawyer relationship but also the structural hierarchies of power subtending this relation and giving more power to some over others. The results show that this analysis may not be limited to lawyers having more power than claimants, but also involves gendered and cultural structural hierarchies of power, which may distribute power and influence the relationship and the actions women take within it in complex ways. This specific conceptualization of agency also showed that the relational context is not limited to the lawyer-claimant relationship, but that multiple overlapping power relations may also be at play.

4. Conclusion

Legal representation is an essential aspect of claimants' experiences in going through the refugee determination process. Lawyers play an important role in helping prepare claims and are generally recognized as a key component of a successful asylum claim (Baglay & Jones, 2017; Rehaag, 2011b; Smith et al., 2021). This research shows that claimants may face various obstacles in searching, selecting, and working with lawyers. It also reveals the various decisions and actions directed to legal representation that claimants take, illuminating the different ways agency is deployed.

The interviews reveal that claimants take time to collect information about potential lawyers. They rely on referrals and good feedback but also look for information on lawyers by themselves. Some emphasized the criteria (mainly sex and language) they were looking for in their future lawyers and explained that they oriented their search for counsel in terms of these criteria. This may reveal the awareness of the stages and difficulties ahead of some claimants

who exert agency in taking early action to try to address them. Among those difficulties, the most often mentioned are the limited timeframe, the lack of knowledge about lawyers and how to contact them, and the childcare challenge. The analysis reveals that a low level of resources may worsen the consequences of inadequate information about lawyers, as exemplified by the case of Marielle. After choosing a lawyer without sufficient information and being dissatisfied with his work, Marielle suggested that they had no money to pay someone else because they had already paid the initial one. Sarah's testimony also showed that lack of information about legal representation may have specific consequences for women who have found their lawyer through the YMCA, feel uncomfortable discussing their experiences with him because he is a man, but are unaware that they could change lawyers.

Participants then discussed the many problems that may arise from low-quality and abusive counsel. In this regard, the presence of mistakes in the documents to be submitted, the absence and the inaccessibility of the lawyer, the fact that the lawyer gives inaccurate or no information at all about the process, and the feeling of "being taken advantage of" and being scared of the lawyer are the experiences most often mentioned by the participants. The analysis reveals that gender might play a role in the presence of mistakes in the documents to be submitted as women-specific experiences may take second place relative to their husbands' experiences, leading to mistakes or oversights. The consequences of having a "newcomer" status were also mentioned: Emily, for instance, gave her and her husband's status as newcomers as one of the reasons that explain why they were taken advantage of by their first lawyer. All these experiences of low-quality and abusive representation illustrate how the unequal power distribution between lawyers and claimants takes shape in practice.

In this context, claimants exert agency in different ways in overcoming the challenges they face: the decision to change lawyers, for example, was discussed by four women and four lawyers. By making this decision, women seek to transform their situation. As indicated above, the four women who choose to change lawyers explained they did so because of their dissatisfaction with the quality of their work. Decision-making regarding a possible change of lawyer is not always practicable, however, which illuminates the importance of the context in which this possibility emerges. Several reasons may render the applicability of the decision of changing lawyers difficult, including the lack of knowledge about this possibility. Lack of knowledge about certain aspects of the process has been underlined at different moments in this chapter (such as lack of knowledge about lawyers and how to contact them and the right to change lawyers) as exacerbating difficulties for refugee claimants. Eight women¹¹³ said they did not have any knowledge of the process before applying. Marielle, for instance, explained how she would not have applied for refugee status if she had had more information about the other immigration options:

*The refugee claim, that, it was a big mistake for me and for our mutual friends to do something you didn't know anything about. Even though we had a lot of choices, we speak other languages, we have studied well, I can do another program to be an immigrant but not the refugee claim (...) as there are many, many immigration, programs to be an emigrant other than perhaps taking the risk, the refugee claim.*¹¹⁴
(Marielle, R; my translation)

¹¹³ Contrary to the other women participants who explained that they did not know the process before applying, Pauline explained that she had an idea of the process because of where she worked at the time (Canadian High Commission). It is because she knew about the possibility “to land in Canada and then make a claim upon arrival” that she decided to “make a move” (Pauline, R). She, however, mentioned that she did not know much about the details of the process.

¹¹⁴ *La demande d'asile ça c'était une grande faute pour moi et pour nos communs amis de faire une chose que tu savais rien. Malgré on avait beaucoup de choix, on parle des autres langues, on a bien étudié, je peux faire un autre programme pour être une immigrante mais pas la demande d'asile (...) comme il y a beaucoup, beaucoup*

The issue of conflict of interest developing between jointly represented clients also emerged from the interviews. The analysis reveals that language and financial limitations may make it more difficult for certain claimants to find new lawyers in case they are compelled to do so by a conflict of interest. The analysis of such issues also documents the complexity of the position of some women at the intersection of several overlapping asymmetrical power relations.

d'immigration, de programmes pour être émigrante autre que de prendre peut-être le risque, la demande de réfugié. (Marielle, R)

Chapter 5. Providing the Basis for the Claim: Participants' Challenges and Decisions in Terms of Providing Details About who They are and why They are Seeking Protection in Canada

This chapter focuses on the participants' experiences filling in the Basis of Claim Form (BOC), in which they must present their claim by providing details about themselves and why they ask for refugee protection in Canada. The BOC is an important document as the Refugee Protection Division (RPD) will review this alongside other evidence to determine if the person meets the refugee definition.

1. Difficulties in Filling in the BOC

In the BOC, refugee claimants must explain in detail the experiences that led them to flee their country. Articulating these experiences can be difficult for certain claimants for various reasons, some of which are explored below. As indicated in section 2.2.1 of Chapter 1, in the literature review, assumptions related to late or non-disclosure and mistakes in the BOC may have severe consequences for refugee claimants as they may lead to their claim being considered not credible, and them being denied protection (see, for example, Singer, 2014, pp. 109 et s.)

In this section, I present findings concerning difficulties that may arise when filling in the BOC. I first refer to my interview with Sybille, which compiles several of these difficulties. Following this narrative, I discuss the main difficulties I identified based on my data analysis. I list these difficulties in the table below, and I indicated the number of participants (lawyers and claimants) who mentioned each difficulty. In the last column, I indicate elements that exacerbate the difficulties created by these factors (e.g., the difficulties of talking about private

and personal experiences may be exacerbated by gender and culture). In the following paragraphs, I further explore all the factors in the table.

Table 3. Factors Complicating the Completion of the BOC

Difficulties	Number of participants who mentioned the difficulties		Elements that might exacerbate the difficulties ¹¹⁵
	Lawyers	Claimants	
The presence of other persons: the lawyer, the partner, children and family members, and support persons	12	5	- The difficulties related to the presence of others may be exacerbated by gender, ethnicity, culture and the country of origin, age, and the extent of the claimant's network
Private, personal experiences that are difficult to talk about (including sexual violence)	10	4	- Gender (women are more likely to be victims of sexual violence) - Culture (cultural stigma and taboos; what is "taught" and considered acceptable to talk about in the community of origin)
Trauma, mental health issues	6	1	- Gender (women are more likely to be victims of sexual violence) - Culture (taboos on mental health issues)
Deadlines	4	1	- Gender

1.1 Sybille's Story

Sybille was a refugee claimant from Nigeria who traveled to Canada with her son.¹¹⁶ Sybille struggled to find a lawyer to help her fill in the BOC. This difficulty, associated with the fact that the BOC must be submitted within 15 days, made her worried:

¹¹⁵ The list is not exhaustive, as other elements may further complicate the experiences of refugee claimants. I listed here only the main elements that may complicate the person's experience I detected from my analysis of the interviews.

¹¹⁶ Parts of her testimony already used in Chapter 4 (to illustrate the issue of the timeframe concerning searching and selecting a lawyer, for example) are repeated here to illustrate other aspects of her experience.

So, when I go to Canada, when I go to hum Ottawa, I had... (...) I have to have a lawyer representative within 15 days and if it's passed 15 days then I will be in trouble. So, I didn't have a lawyer, I didn't have anything I was worried. (Sybille, R)

Her sister told her about a lawyer who helped her in the past, and they contacted this lawyer. The lawyer was abroad on holiday at the time, but she still agreed to take the case. Because of the 15-day deadline and the lawyer's holiday schedule, they had to talk on the phone and by email to complete the BOC. Sybille mentioned how difficult this was because she was caring for her son and could talk to the lawyer only when her son was napping or after he went to bed:

We were running out of time. We had to file my Basis of Claim Form. Everything about me, everything that happened, has to be on that form, has to be submitted to the immigrations (...). We gave most of our interview on the phone. It has to be when my son, X, is napping or he is come to bed for the evening. So it was... a lot. (Sybille, R)

Despite the difficulties, they completed and submitted the BOC on time. Sybille explained that the limited time available to complete the form led to mistakes in her documentation, which had consequences later in the process. Indeed, the board member noticed discrepancies in her claim at the hearing based on what was written in her BOC. To answer the concerns of the decision-maker, Sybille mentioned the 15-day deadline and the communication by phone with her lawyer as reasons for the discrepancies. She also mentioned her recent arrival in Canada and the stress and tiredness she was feeling at the time of filling in the BOC as potentially explaining the mistakes:

The day of the hearing, the board member just asked me “hum we had some discrepancies about what you, your Basis of Claim Form, why did that happen?” And I told the truth, that most of the interview we did, because my 15 days was running short, most of the interview we did was on the phone. I just got in to Canada. I had, I have been through a lot of stress, like my brain wasn’t... I was tired, I said, so that’s why I miss whatever it is I said. (Sybille, R)

Regarding the content of her story and her relationship with her lawyer, Sybille expressed the initial challenge she faced in discussing the circumstances that led them to flee her country. Sybille abstained from providing details or categorizing these experiences but explained that, from where she is from, it is considered hard to discuss such matters with others:

... It was hard for me to talk to her initially like to open up to her, the reasons I am here, everything that happened because, from where I am from, it is something we see as hard to tell people. (Sybille, R)

Other reasons may have led to the non-disclosure of her experiences. For example, when I asked Sybille if she would have felt comfortable with her lawyer if he was a man, she answered no. She added that she would also not have felt comfortable with an “African lawyer”. She said that with an “African lawyer”, “*she would have felt judged*”:

Q: And would you have felt as comfortable with a lawyer who is a man?

A: Oh no, no, pfff... no.

Q: This is another issue for some persons

A: Oh no. I wouldn't have, I wouldn't have felt comfortable, no. Even especially, don't get me wrong, an African lawyer, I wouldn't have felt comfortable because I would have felt judged. (Sybille, R)

1.2 Revealing Personal Experiences in Front of Others

Completing the BOC may pose challenges for many women claimants as it often requires them to communicate private and personal experiences that may be uncomfortable to address. This is particularly the case for experiences of sexual violence. This research found that the presence of others can exacerbate the difficulties of talking about such experiences. Among the 23 participants, 17 – five claimants and 12 lawyers – mentioned the difficulty one might face in filling in the BOC for reasons related to the presence of others, particularly the lawyer, the partner, children and family members, and the support persons.

1.2.1 Disclosing Past Experiences to the Lawyer

Ten lawyers and five claimants discussed the difficulties related to disclosing past experiences due to lawyer-related reasons. Two claimants said they would not feel comfortable with a male representative. Véronique, for example, indicated that she would not have wanted a male lawyer and would only consider one “*if there was no option*” (Véronique, R). This unease is often associated with the requirement for claimants to share personal experiences and explain their reasons for seeking protection in Canada. Veronique thus explained that she does not think “*it would have been as easy for [her] to share some experiences with a male lawyer*”. Similarly, four lawyers noted situations where women claimants were uncomfortable with male lawyers. In these three excerpts, claimants only felt comfortable sharing after changing their legal representation:

I had this a lot too: another lawyer, they did their case, he was a man, they didn't feel comfortable telling him, they changed lawyers. (Corinne, L)

I find that I have a lot of female clients who have told me so much more that I think they would tell a male lawyer or clients who have come to me after starting with a male lawyer and switch. And, sometimes, we even had to amend their story because they left things out because they were not comfortable sharing them with a man and then they shared it with me. (Marie, L)

Some of the cases I have worked on, the person has started with a male lawyer and hum, sometimes it's because of the competence of the lawyer, and sometimes it's just the woman, and the culture she comes from, she is just not comfortable disclosing things to them. (Catherine, L)

In this last excerpt, the lawyer suggested that the discomfort of some claimants may be linked to the lawyer's competence or to the claimant herself and the culture from which she comes. That the claimant's culture may discourage them from talking about their past experiences of violence was explicitly discussed by three lawyers. Marie, one of these three lawyers, highlighted how women might experience stigma and taboos depending on the culture, making it more difficult to talk about certain experiences. Without using the word "culture", Noémie, a lawyer, and Sybille, a claimant, talked about what is "taught" and what is acceptable to talk about in one's community of origin. Sybille explained how difficult it was for her to talk to her lawyer due to norms concerning what is acceptable to talk about or not where she is from. Sybille did not give details about these experiences and did not explain to what type of experience she was referring to: she only indicated that it was difficult for her to talk about

these because, from where she is from, it is considered hard to talk about this type of experience to other persons:

She... It was hard for me to talk to her initially, like to open up to her, the reasons I am here, everything that happened, because from where I am from, it is something we see as hard to tell people. (Sybille, R)

These elements may influence some claimants' ability to disclose their experiences to a male lawyer, which may become an insurmountable challenge for some people. In this context, men face "*a dilemma (...) in accepting these cases*" as "*they can be the greatest lawyer in Canada, but there may still be a problem* (i.e., women not disclosing their experiences to them because they are men)".

However, this discomfort is not felt by all. Six claimants mentioned that their lawyer was a man, and this was not a problem for them. One of these women, however, explained that although she was comfortable with their lawyer being a man, she would have felt more comfortable with a woman lawyer if there was something in her story "*related to anything sexual or gender-related*" (Emily, R). Difficulties associated with disclosing experiences of sexual violence have been highlighted by participants,¹¹⁷ as has the prevalence of these experiences among women claimants compared to men. Geneviève, a lawyer, for instance, indicated that "*it is very rare (...) to have a client who hasn't been raped, who is female*".

¹¹⁷ Sexual violence is not the only type of experience mentioned as particularly difficult to discuss. Indeed, it is also the case with sexual orientation claims, which may be particularly difficult to develop depending on the culture of the claimant.

Emily explained that she would feel more comfortable talking to a woman lawyer because she believes a woman would understand her and her experiences better than a man would:

I would feel more comfortable to talk to a female lawyer because she would understand where I am coming from, you know, she can feel what I feel, at least that's how I feel. I am not saying that male lawyers wouldn't, I am just saying that hum I feel like the female would understand the situation better than a man would. (Emily, R)

Julie and Véronique, two other claimants, gave similar reasons for feeling more at ease with a woman lawyer. Julie thus explained that “*women are more sensitive*” and Véronique that women understand “*the knowledge of marginality (...), gender dynamics, gender balance*”:

The lawyer was nice to me but at the beginning (...) like a gap, it seems to me, let's say, that in such cases, women are more sensitive, women are more understanding.¹¹⁸ (Julie, R; my translation)

P: (...) I was happy that, you know, I had a woman who was my lawyer and felt comfortable sharing everything with her which means for a clearer, stronger case, and then, she is able to apply that herself to the case right? Because she understands those... that knowledge better, right?

C: that knowledge, you mean...?

P: hum the knowledge of marginality or, you know, ostracization and you know gender dynamics, gender balance and how it plays and how it works. (Véronique, R)

¹¹⁸ *L'avocat a été gentil avec moi mais au début (...) comme un écart, il me semble hum mettons, hum, comme dans des cas pareils, les femmes sont plus sensibles, les femmes sont plus compréhensives. (Julie, R)*

These women believe that women lawyers can better understand other women's experiences and that this can potentially help to work with them. Lawyers also express that women may be better positioned to listen and/or that "being a woman" would automatically make other people more comfortable sharing and talking. Noémie, a lawyer, explained that because "*she is a woman*", women claimants "*are better able to talk to [her] about sexual violence*". Chanelle, another lawyer, explained that women are used to talking to each other, talking about their emotions, and listening to others crying: this is part of the gendered roles women learn. Men, on the other hand, are less accustomed to these tasks, making it potentially more difficult for them to listen to particular stories or to handle a claimant's distress:

*(...) we, among women, we talk to each other a lot, we manage, we talk about our emotions, we are used to listening to someone cry, we are used to just being a passive support. It's like, it's something we do, we are socialized. But, I imagine, male lawyers, of my god, it must be hell! (...) oh, then, for a client who has a lawyer who doesn't know what to do with all his distress and who suddenly has to be listening, comforting... Listen, some people will say that it is not our job, but I mean, it is part of the job if you want to do your job well, in my opinion hum.*¹¹⁹ (Chanelle, L; my translation)

This research has found that this idea is widespread. However, it has already faced criticisms for making assumptions about a person's suitability to receive certain types of testimony based solely on gender (see, for example, Baillot et al., 2012). Elements making one person's experiences incomprehensible to another go beyond the question of gender to encompass a

¹¹⁹ (...) nous, entre femmes on se parle beaucoup, on gère, on parle de nos émotions, on a l'habitude d'écouter quelqu'un qui pleure, on a l'habitude juste d'être un support passif. Comme, c'est quelque chose qu'on fait, on est socialisées. Mais, j'imagine, les avocats hommes, oh my god, ça doit être l'enfer ! (...) oh, puis, pour un client qui a un avocat qui sait pas quoi faire de toute sa détresse puis qui doit soudainement être en train d'écouter, de reconforter de... Ecoute il y a certaines personnes qui vont dire ce n'est pas notre travail mais je veux dire, ça fait partie du travail si tu veux bien faire ton travail à mon avis hum. (Chanelle, L)

multitude of axes of oppression, including race and class oppression. This is particularly important in the asylum process, in which racial and classist axes of power play a crucial role in understanding refugee claimants' experiences and re-production of their dominant representations.

One claimant and three lawyers talked about the ethnic community, country, or region of the world from which the lawyer and the claimant originate, as potentially influencing a person's ease in disclosing her experiences to her lawyer. Depending on the specific circumstances, these influences may manifest differently, as the lawyer's (perceived) background may encourage or discourage claimants from disclosing their experience. Jessica, a lawyer, thus gave the example of a woman claimant who had been refused refugee status and explained that she had never disclosed her experiences previously because her first lawyer (and the interpreter) had the same nationality as her. Sybille, the refugee whose testimony is reproduced above and who is from Nigeria, also explained that she would not have felt comfortable with "*an African lawyer*" because she "*would have felt judged*". Her testimony illustrates how gender, ethnicity, and nationality may provide an intersection of reasons that lead to non-disclosure. Her feeling may be related to another part of her testimony in which she explained that "*from where she is from*", it is hard to talk about the specific experience that led her to flee her country. Social class, income level, and access to education can also play a role. Pauline, a claimant, explained, for example, that "*because (they) had exposure in terms of (...) going to college and living in the capital city*", certain gendered issues were no longer relevant to them, and both she and her husband were thus comfortable talking to their lawyer.

For others, the inverse may be true. Two lawyers mentioned some refugee claimants may not feel comfortable disclosing to “*a Canadian woman (...) asking them all kind of personal questions*” (Marie, L), or more generally, to someone “*who doesn’t look like them*” (Anne, L).

1.2.2 Filling in the BOC With your Partner

This research has investigated the difficulties women claimants in a heterosexual relationship may face concerning their male partner when filling in the BOC. These difficulties mainly concern discussing past experiences in front of a partner.¹²⁰ This topic was primarily mentioned by lawyer respondents, which might be explained by the fact that most women I met arrived in Canada alone: only three of them went through the asylum process with their husbands. Another explanation is that they may not have wanted to tell me about a personal and private experience that may be difficult to discuss with a researcher.

First, this research has found that gender roles and related representations may create difficulties in filling in the BOC with a male partner. Gender roles refer to roles and behaviors considered to be those men and women are expected to exhibit in a given society at a given time. Three lawyers discussed the behavior of some male partners dominating the discussions with the lawyer, leaving less opportunity for their wives to talk about their experiences and be involved in the construction of the claim. As explained by Chanelle, a lawyer, men might sometimes feel more confident or more “*used to being in a position of power*” which may explain this dominating stance in their discussions with the lawyer. Two lawyers specifically mentioned the potential impact of culture in this context. The status, roles, and responsibilities of women and men are shaped by gender, which is itself a social construction that varies from culture to culture. The specifics of these statuses, roles, and responsibilities are closely related

¹²⁰ Not all women share these experiences. Some women may instead find support from their partners.

to distinct contexts and vary across time and space. Depending on the cultural context, gender roles can be more or less pronounced and may refer to different behaviors. The extent to which the male partner dominates the discussions with the lawyer may thus depend on the culture of the claimants:

I... think sometimes, if it's a couple, depending on the culture, the woman may feel that the man is sort of in charge of the case and that it's not up to her to say as much or be as actively involved. (Marie, L)

I mean, so, when you have a husband and a wife, you have to deal with maybe some cultural stuff like the man must do all the talking (...) you can sense that that's their kind of dynamic. (Corinne, L)

It may also happen that the male partner does not know yet about his partner's lived experiences, which can happen for many reasons if these experiences are perceived as shameful, for example, or dangerous to discuss. Three lawyers expressly referred to these situations and the reluctance that women may have to mention their experiences in front of their husbands. Among those lawyers, Marie gave the example of a woman who had experienced sexual violence, which her husband was unaware of. Marie explained that the claimant told her about this violence only when she was alone. Since she was representing the partners together, she explained that she had to convince the wife to tell her husband about the sexual violence:

So, I had one case, for example, where the wife has been gang raped and her husband didn't know. And I found that when I spoke with her individually. And, that's a really difficult situation because when you are working with a couple, you have to explain to

them in the beginning that since they are joint clients, nothing can be kept from the (other). (...) so after that client disclosed the gang rape to me, I had to really work with her to get to a point where she was comfortable, with support, to tell her husband. Because we couldn't go forward using that in a case without him knowing about it hum and that was you know a really difficult situation for everybody because she didn't know how he was going to respond. (Marie, L)

In this case, the claimant was reluctant to disclose her experience and may not have done it in another context, as the lawyer explained that she had to “*really work with her*” for her to be able to tell her husband. In the context of the asylum process, women's experiences of violence can play a central role since they can emphasize the image of women as victims, a technique that can have good results. More information on this case or similar cases would be interesting, to see to what extent the consequences of disclosure (Marie mentioned that the claimant “*didn't know how [her husband] was going to respond*”) can be weighed up against the procedural advantages it may bring.

In certain cases, there may also be violence between partners claiming asylum together, leaving women in particularly vulnerable positions. Talking about this violence to the lawyer may be dangerous for women, as Corinne's testimony suggests. Corinne, a lawyer, explained that she sometimes creates opportunities to interview the partners she represents separately. For instance, she may suggest that the children need a break, and one of the parents should take them downstairs. This approach allows her to talk to the wife alone without making the husband suspicious. She emphasized the importance of not putting “*the woman in a position where after she leaves, she has to explain to the husband why the lawyer wanted to talk to her*”. She explained she does not want the woman “*to be in a situation later*”. Women victims of intimate

partner violence may find themselves in particularly complicated situations in which they can neither talk about the violence in front of their husbands nor when they are alone with the lawyer.

1.2.3 Children and Family Members

Three lawyers talked about the reluctance parents or children may have to discuss past experiences in front of each other. In the excerpt below, Elisa, a lawyer, discussed a situation where a mother and her children were claiming asylum together and where there was domestic abuse in the family. She explained that the mother would sometimes ask to speak with her alone, without her children, because she did not want them to hear “*how bad it was*”:

I had, hum, a family, like it was a mother with her two kids, and hum that there was domestic abuse, but the father was not part of the file. And (...) there were times where the woman would ask me to speak alone without her children, that she didn't want them to hear how bad... They knew that she had been sexually abused but she didn't want them to hear how bad it was. So, I spoke with her privately (...). (Elisa, L)

Elisa then talked about this woman's daughter, whom her father had also abused. First, the daughter did not reveal the abuse. Because of that, Elisa explained that the main story was initially based on her mother's and brother's stories but not hers. It is only later that the daughter disclosed her experience to the lawyer by contacting her separately:

(...) and, then, her daughter had also been abused by the father, which is the same person, the husband. (...), the daughter didn't tell at the beginning when, the first time they came, that she has been abused by the father. So, the main story was about the

mother and the son because the father, the husband, was violent towards the son and then like hum months later, the daughter contacted me separately and said that she had been severely abused by her father as well, and that she, either she hadn't told them yet, or she had just told them, like her brother and her mom, and that she wanted me to know. (Elisa, L)

In the above excerpt, the delayed disclosure by the daughter may be attributed to the combined influence of gender and age, making it potentially more difficult for a young girl to disclose her experience to the lawyer. Elisa's testimony illustrates how gender and age may have made it more difficult for the daughter to disclose her experiences of abuse compared to her mother, an adult, and her brother, a boy.

In addition to the challenges women and children face when discussing past experiences in front of each other, this research has found further difficulties women encounter when preparing the BOC, this time in relation to gender roles and their related women-assigned tasks of listening to and caring for others. One lawyer, for example, explained that she sometimes asks claimants to begin drafting their narratives at home. However, starting this process at home can be challenging for some women who must balance their responsibilities as mothers with the tasks they must complete to apply for asylum. According to this lawyer, these challenges are more prevalent among women than men:

Often, women come, they have children. So, one difficulty in particular, it also applies to men, but less often I think, is that women have to juggle their responsibilities as mothers with the tasks they have to complete in order to apply for asylum (...) So, when I ask them, for example, to collect documents, of hum start preparing a draft of a story,

*sometimes, I ask them to do that, (...) so, at home, to start writing their story, if it is possible, hum sometimes, it is difficult for them because they have 'All these other stuff to deal with'(...).*¹²¹ (Christine, L; my translation)

This lawyer highlighted not only "*the mental burden of taking care of a family unit*", but also the position of support to others, even people outside of their family, that women often occupy:

*It is that they are scattered, as in all the things they have to do, just the mental burden of taking care of a family unit, (...). And to support the people in their lives, their children, their families back home, they are always in a position to support, to have to support people.*¹²² (Christine, L; my translation)

She also highlighted that single women or women traveling alone are mainly concerned by the difficulties of this mental burden and their supportive role toward others. This lawyer's testimony points to a broader issue, which concerns not only the BOC but all stages of the process in general: the additional responsibilities that come with caring for children, which particularly concerns women, and the implications this may have when working with the lawyer on their claim. Two claimants explicitly raised this concern. Nathalie, explained that, as a mother, "*you are always at the forefront caring for everybody*". In the excerpt below, she described how, during meetings with her lawyer, she was sometimes thinking about care tasks:

¹²¹ *Souvent, les femmes viennent, elles ont des enfants. Donc, une difficulté en particulier, ça s'applique aussi aux hommes mais moins souvent je pense, c'est que les femmes doivent jongler leurs responsabilités de mère avec les tâches qu'elles doivent compléter pour faire une demande d'asile (...) Donc, quand je leur demande, par exemple, de recueillir des documents, de hum commencer à préparer un brouillon d'un récit, des fois, je demande de faire ça, (...) donc à la maison, de commencer à écrire leur histoire, si c'est possible, hum des fois, c'est difficile pour elles, parce qu'elles ont 'All these other stuff to deal with'(...). (Christine, L)*

¹²² *C'est qu'elles sont éparpillées, comme dans toutes les choses qu'elles doivent faire, juste la charge mentale de prendre soin d'une unité familiale, (...). Et de soutenir des gens dans leur vie, leurs enfants, leur famille au pays, elles sont toujours comme en position de soutenir, d'avoir à soutenir les gens. (Christine, L)*

As a mother, the kind of duties nature itself has placed on you, as a mother, is a very stressful one, because you are always at the forefront caring for everybody. So, even at the lawyer, I am thinking: 'ok, I need to... once I am done with them, I need to do one or two things requested by the lawyer, to make sure that I get home to pick them up from school'. So, it's a lot stressful, it's very, very stressful. (Nathalie, R)

Three lawyers similarly mentioned that, due to the added responsibility of thinking about their children, certain women might have less opportunity to wholly concentrate on their interviews with the lawyer or on the preparation of their claim in general, as is visible in the two following excerpts:

I think, sometimes, women have more of the challenge of childcare as well. And just trying to coordinate to be able to come to these meetings and figure out what they are going to do with their young children or babies for them to be able to focus on their interviews with the lawyer. Sometimes, they have to bring their children with them, and that's an additional barrier, it's hard for them to completely focus. (Marie, L)

a lot of my clients who are women, a lot of them, also have children. So, I can see that being a challenge in that they, I guess, they have the added responsibility of thinking about their children in everything, and also, just also the physical and emotional work that goes into raising children maybe they have to turn their mind away from the asylum claim more often or... I can see that being a challenge. (Justine, L)

Several lawyers highlighted that these difficulties disproportionately affect women. Due to their attributed role of caring for others, women may be more at risk than men of being prevented

from preparing their application, including filling in the BOC. Christine noted that this is particularly true for single women or women traveling alone with children, as their isolation may exacerbate these difficulties. Traveling as sole-support parents is also likely to concern women more than men. For example, Geneviève mentioned that she had never encountered “*a single man applicant who had children with him*” (Geneviève, L). This is in line with the profile of the research participants, as only three of them went through the asylum process with their husbands, and only one arrived without having children or being pregnant.

The limited time (15 days) that individuals who claim asylum at a Port of Entry have to submit their BOC may further reinforce these difficulties. Sybille, whose testimony is reproduced above as the sample narrative, raised this concern. When explaining the difficulties she faced in finding a lawyer and how they “*were running out of time*”, she also mentioned the presence of her son and how she and her lawyer had to talk “*when [her] son X is napping or he is come to bed for the evening*” (Sybille, R). Her testimony illustrates the potential gendered consequences of short timescales. Indeed, having to look after children can add a layer of difficulty since one must take care of them while filling in the form within a limited timeframe.

1.2.4 Support Persons and Interpreters

Refugee claimants can be accompanied by friends, family members not claiming asylum, or other persons to support them during meetings with lawyers and while filling out the BOC. Four lawyers mentioned potential difficulties with support persons. Catherine explained that sometimes “*we need to get that person out of the room to have a real conversation*”, suggesting that certain support persons might prevent claimants from discussing some of their experiences with the lawyer. She emphasized that each case is different, and while some support persons may have a restrictive role, they can also help the applicant feel more at ease:

Sometimes, it becomes obvious that we need to get that person out of the room to have a real conversation hum, and then other times, having that person there, it makes them feel more comfortable. So, that's hum a sort of case by case but that can have an impact on what they are willing to talk about. (Catherine, L)

Three lawyers also mentioned the role of translators. Justine and Marie explained that claimants are often afraid to discuss their experiences when the interpreter is from the same community, as they fear that the interpreter may repeat their experiences with other community members:

A lot of times, people are really afraid to share information in front of interpreters because that interpreter comes from the same community and they are afraid the interpreter is going to breach confidentiality and talk about them in the community. (Marie, L)

Justine explained that in some cases it might be necessary to “try different interpreters”, highlighting the importance of doing so when there are concerns about sexual violence. She juxtaposed this subject with the language and the interpreter's community and suggested it is sometimes necessary to “try a female interpreter”. This may suggest that depending on their lived experiences, gender, and ethnicity can combine to influence one's comfort level in discussing experiences with a specific interpreter. Some women may feel less comfortable not only with a male interpreter but also with an interpreter from their own community:

If there is like a possibility of sexual violence, it would be a matter of asking, you know, you could try different interpreters. Maybe try a female interpreter, if it's a woman who

has experienced... They might be sort of nervous to tell someone who speaks their language and may be part of their community. (Justine, L)

This research shows that some women may have to navigate several relationships that can make them uncomfortable: those with the lawyer, their partner, their children, the interpreter, and others. These overlapping relationships, often structured by an unequal distribution of power, specific gender roles, and representations, have the potential to hinder women's participation in filling in the BOC.

1.3 Trauma and Mental Health Issues

Trauma and mental health issues affect how and whether specific experiences are disclosed, and were raised by six out of 14 lawyers. Four specifically mentioned the difficulties refugee claimants might face when recalling and articulating their memories due to trauma and mental health issues. One claimant, Emily, also raised this concern. She explained how difficult it was for her to talk about her story, saying, "*not because of the lawyer herself*", but because "*it's a lot of information and it's a lot of chaos*". Emily further explained that recalling their experiences was difficult for her and her husband as "*you have to relive the situation*", which was stressful for them:

So, when it comes out, it doesn't, you know, it's not always easy because you have to relive the situation and it would usually leave us in distress for 2 to 3 days after we talked to our lawyer. So, hum, it wasn't easy. And, then, we often experience things where we talked about the incidence and, then, we go home, and, then, we experience it again. And, then, like, you know, one day after we just remember something, and, then,

we are like “Oh, we forgot this”. But it happened, like, you know, few months ago, but we completely forgot it, and we forgot to mention.... (Emily, R)

Emily and her husband did not always remember certain parts of their story directly, but only later. She explained that she believes she forgot parts of her experiences as a way of coping:

I think it's a way of coping that, you know, your brain blocks some unpleasant information as a protection method, I don't know. (Emily, R)

In the context of the asylum process, claimants are expected to tell their stories in an articulate and chronological way, in line with prevailing Western norms and expectations. However, Emily's testimony illustrates the challenges of remembering certain aspects of past experiences and retelling them in an articulated and chronological way.

The limited time (15 days) within which individuals who claim asylum at a Port of Entry have to submit their BOC may further reinforce these difficulties. Catherine's testimony illustrates the difficulties that may arise for someone who has experienced severe trauma and is asked to disclose and discuss these experiences within a short period:

(...) you often are working against the clock. And you have to submit that document that's critical for the refugee claim and what everything is based on. And, you know, if you only have 5 days to get to know someone who has experienced severe trauma it may not be enough. (Catherine, L)

Catherine then explained that filling in the BOC in a rush could have consequences in the future if “*new information comes out*”. She highlighted that refugee claimants might later be assisted by a counselor or a psychologist,¹²³ which could help them in dealing with their traumatic experiences, something that they were unable to do before due to the short time deadline:

So, I have had cases where we submit the Basis of Claim in a bit of a rush and, then, later on, in the hearing preparation, new information comes out or maybe they have been working with a counselor, a psychologist. In the meantime, new information comes out through that (...) sometimes, when it's really clear from the beginning that someone is suffering from some pretty extreme trauma, then, I am going to be referring them to a psychologist or a counsellor, hum, but, you know, usually we have to submit the documents before they have had a chance to work with that person. (Catherine, L)

According to Geneviève, a lawyer, women “*tend to be more vulnerable and have more difficulty in preparing their narratives as a result of the trauma that they have experienced*” (Geneviève, L). She believes that, since women are more likely to experience sexual violence than men, “*the level of suffering they have had is usually higher than that of men*”. While men can also be victims of sexual violence, Geneviève explained that, in her experience, in the case of women, the “*abuse is not just once incident*”, but occurs “*over a series of time*”. From this perspective, women may have different traumatic experiences, which could suggest that they have more difficulty constructing their own stories than men. However, this observation cannot be generalized and needs further study, considering other axes of oppression beyond gender, including race and class oppression. In addition, each person, regardless of any axis of social

¹²³ Time limits for meeting a counselor or a psychologist may be long: One woman refugee mentioned that her lawyer had arranged an appointment with a psychologist for her, but the hearing had come before the appointment date. She had not yet met with a psychologist when I met her for an interview.

division and type of experience they have had, may react differently, and what may be challenging for one person may not be the same for another. Jessica, another lawyer, explained that the intensity or forms of violence do not necessarily determine how the claimant will discuss it or how much support they will need:

*Each person has, you know, hum this client, for example, who was raped, it was by a man, one night. I have clients who have suffered multiple rapes by many more people, who talk to you in a very calm way and so don't necessarily, she needed a lot of guidance even for her to accept that I write... Whereas there are others, you can't compare, each person has particular needs.*¹²⁴ (Jessica, L; my translation)

Jessica also mentioned the “*cultural aspect of mental health*” in her testimony. According to her, mental health issues remain taboo in many cultures and are not much talked about. For this reason, claimants may not easily get the help they need. Receiving help from a counselor or a psychologist may, however, potentially help them reveal more information when filling in the BOC and thus avoid delays in disclosure.

2. Filling in the BOC: Women' Experiences, Decisions, and Choices

In this section, I present findings concerning the agency of women claimants in completing the BOC. I first refer to my interview with Julie. Following this narrative, I discuss the primary manifestations of agency I identified through my data analysis.

¹²⁴ *Chaque personne a, vous savez, euh cette cliente, par exemple, qui a été violée, c'était par un homme, une nuit. J'ai des clientes qui ont subi des viols multiples par beaucoup plus de personnes, qui te parlent d'une façon très calme et donc qui n'ont pas nécessairement, elle avait besoin de beaucoup d'encadrement même pour qu'elle accepte que j'écrive... Tandis qu'il y en a d'autres, on ne peut pas comparer, chaque personne à des besoins particuliers.* (Jessica, L)

2.1 Julie's Story

Julie was a refugee claimant from Rwanda who came to Canada with her two children. She explained that everything had generally gone well with her lawyer. Julie mentioned that they never disagreed. However, she explained that he sometimes made mistakes in transcribing what she told him (“(...) *when, for example, he was wrong in what I told him*”¹²⁵ (Julie, R; my translation)). In such instances, she told him he was mistaken in his understanding of her story:

Q: So, were there times when you didn't agree?

*A: Hum, no, it never happened that I said so. Of course, yes, of course, when, for example, he was wrong in what I told him: ‘But no, it is not like this, it is like this, like this...’.*¹²⁶ (Julie, R; my translation)

Julie elaborated on her experience with her lawyer, explaining that he is not a national of Rwanda and “*doesn't know the story very well*”. She said that some parts of his understanding of her story were thus “improper” (my translation of “*déplacé*”). This comes from the fact that the lawyer lacked awareness of the country and of Julie's story: it is not *his* country nor *his* story. However, working with the lawyer to rectify those issues went well. Julie explained that she worked closely with her lawyer by telling him the aspects of his understanding of her story that needed correction:

Q: Ok, were there any mistakes or...? (...)

A: No, it is not that he made mistakes, but it is that he himself is not from that country.

He doesn't really know the story very well. He is there to help me, yes, but he could

¹²⁵ (...) *quand, par exemple, il s'est trompé dans ce que je lui ai dit. (Julie, R)*

¹²⁶ *Q : Puis, est-ce qu'il y avait des moments où vous n'étiez pas d'accord ?*

A : Hum, non, il ne m'est jamais arrivé de dire ça. Bien sûr, oui, bien sûr, quand par exemple, il s'est trompé dans ce que je lui ai dit : ‘Mais non, c'est pas comme ça, c'est comme ça, comme ça...’. (Julie, R)

not... There were things that he said that I found were improper. I told him, 'No, it is not like that, I have never said anything like that. It was not like that...' ¹²⁷ (Julie, R; my translation)

Julie did not detail the parts of her story that her lawyer misunderstood. Other claimants, however, gave examples of their lawyers' mistakes in transcribing what they told them. Emily, for instance, explained that their lawyer put different wedding dates for her and her husband in their narrative. As explained in section 2.1, Chapter 4, Emily tried to correct a few mistakes and then decided to change lawyers. Another example was during one of the observations, in which the claimant explained that her lawyer made mistakes in writing the names of the political parties she mentioned when recounting her story. In her testimony, Julie explained that she was lucky to have found a lawyer who was defending her:

(...) my lawyer was good. Me, I was lucky. I found a lawyer who understood, who understood my story and who, who... defended my case. He defended my case in... with a... the logic of what was happening back home. (...) And also in relation to what I told him. Never, never, did he want to... he corrupted my story or told what I hadn't say. ¹²⁸ (Julie, R; my translation)

¹²⁷ Q : Ok, est-ce qu'il avait des fautes ou ... ? (...)

A : Non, c'est pas qu'il avait fait des fautes, mais c'est que lui-même n'est pas ressortissant de ce pays-là. Il connaît pas vraiment très bien l'histoire. Il est là pour m'aider, oui, mais il pouvait pas... Il y a des choses qu'il disait que je trouvais c'était déplacé. Je lui disais : 'Non, c'est pas comme ça, je n'ai jamais rien dit de tel. C'était pas comme ça'.... (Julie, R)

¹²⁸ (...) mon avocat était bien. Moi, j'ai été chanceuse. Je suis tombée sur un avocat qui comprenait, qui comprenait bien mon histoire et qui ben qui... défendait mon cas. Il défendait mon cas dans... avec une... la logique de ce qu'il se passait au pays. (...) Et aussi par rapport à ce que je lui avais dit. Jamais, jamais, il a voulu... il a corrompu mon histoire ou il y a raconté ce que je n'avais pas dit. (Julie, R)

2.2 Women's Agency in Filling in the BOC

Claimants, in their interviews, revealed they exert varying degrees of agency in filling out the BOC. The excerpt from Julie's testimony, for example, illustrates her ability to impact the transcription of her story in the BOC with her lawyer: she corrected him when he was mistaken in his understanding of her story ("*c'était pas comme ça*") and re-explained certain parts of her story to him when this was necessary ("*c'était comme ça*"). This testimony goes against a certain image of the lawyer as being the only/main one knowing what to write and how to write it in the form, instead supporting the idea that the actual knower of the story is the refugee claimant herself.¹²⁹

Women's agency in filling in the BOC can take other forms. In the following sections, I explore three forms that emerged from my analysis of the interviews: 1) the refusal to insert specific experiences in the BOC, 2) the "choice" of not disclosing certain experiences, and 3) the story's arrangement to fit into (perceived) expectations.

2.2.1 Refusing, After Disclosing, to Insert Specific Experiences in the BOC

I find him sometimes the first time someone share a piece of sexual violence, they say: 'I don't want to talk about this in the hearing' like they sometimes sort of immediately regretting, but they only want to share with me (...) I often find it's almost like internally reaction like "here is my soul, now I want it back and you can't use it". (Sarah, L)

¹²⁹ In their conclusion, Jacobs and Maryns write that "The epistemic balance, (...) is not always in favour of the lawyer; the fact that the client knows more about their life story puts them in a more agentive interactional position" (Jacobs & Maryns, 2022, p. 564).

Six lawyers talked about some refugee claimants' reluctance, after disclosing their experiences, to add these to their BOC. Five of them explained that, in such a situation, they try to explain to their clients why it is essential to include this specific information in the BOC. Some said they had successfully convinced their clients to add the information (*"I have never had anyone whom (...) I couldn't convince to put it on"*)¹³⁰ (Jessica, L; my translation)); *"I have been lucky so far that I have been able to get them around to see why it's important to keep it in there"* (Marie, L)). However, three lawyers recounted cases where clients disagreed with including specific disclosed elements in their stories. Noémie, a lawyer, gave an example wherein her client did not want to include information that she had a sexual relationship with a woman in the BOC because she did not want to upset her husband. Noémie explained that this choice was not good for her claimant as *"the claim as it stood was not strong"*. Noémie explained that she then wrote written instructions indicating that she advised her client to include this information in the BOC but that the client specifically instructed her not to do so. The written instructions, signed by the claimant, were as follows:

(...) 'I, so and so, hum inform my lawyer today of this new development' (...) 'in such and such a date, I had a relationship with a woman. My lawyer advised me how important it is to include this information. Contrary to her advice, I instructed her not to include this information. I understand the consequences of not doing so and I wish to pursue anyway.' (Noémie, L)

The literature has identified the potential role of some immigration representatives in choosing what to include in the BOC and how it was disclosed (see, for example, Jacobs & Maryns, 2022; Oxford, 2014; Spijkerboer, 2016). In Noémie's example, she explained to the claimant

¹³⁰ *J'ai jamais eu quelqu'un que (...) je n'ai pas réussi à convaincre de le mettre.* (Jessica, L)

the benefits of disclosing her relationship with a woman, which would have strengthened her claim. Despite receiving advice from her lawyer to divulge this detail, the claimant refused. This demonstrates the agency claimants exhibit in controlling what ends up on disclosure documents before decision-makers. Unearthing the motivations for non-disclosure may help explain a choice. For example, Noémie mentioned that the reason the claimant refused to include her relationship with a woman in the BOC was that she did not want to upset her husband, which could reveal a possible effect of gender or gender roles and/or power dynamics within a heterosexual couple on her decision.

2.2.2 (Non-)Disclosure, a Choice?

The presence of others, the nature of the past experiences to recount, trauma, and mental health issues may make it difficult for refugee claimants to disclose and/or talk about their experiences when writing the BOC. Despite these barriers, what appears in a BOC may depend on a person's specific experiences, eliciting different reactions from different individuals (*"We cannot compare, each person has particular needs"*¹³¹ (Jessica, L; my translation)). Thus, certain persons may decide to talk about their experiences of violence to the lawyer relatively easily, while it may take much more time for others to disclose such information. Some may never disclose their experiences (although it is difficult to establish this as the experiences remain untold).

Part of the literature has analyzed the non-disclosure of certain experiences by refugee claimants as a manifestation of their power over what they do or do not disclose (see, for example, Baillot et al., 2012; Johnson, 2011; McFadyen, 2019). Among this literature, Baillot et al. explain some refugee claimants' choices regarding disclosure due to their "personal

¹³¹ *On ne peut pas comparer, chaque personne a des besoins particuliers. (Jessica, L)*

agency” (Baillot et al., 2012, p. 287). In this perspective, they estimate that full or partial silence may “reflect a survival strategy consciously chosen” (Baillot et al., 2012, p. 287). It is with this literature in mind that I analyze the testimonies of the four lawyers who grappled with a client’s refusal to disclose certain experiences. All four lawyers speculated that they encountered clients who did not disclose everything to them. For example, Corinne said that although she is “*sure that women make that choice [of not disclosing]*”, she does not know about it “*because they don’t tell me*” (Corinne, L). Two other lawyers, Jessica and Sarah, referred to cases where they suspected their client had lived difficult experiences but they never talked about it. Jessica mentioned a case where she suspected the wife of being a victim of domestic violence, but though she mentioned the possibility of claiming asylum based on domestic violence to her client, the woman never talked to her about it:

*(...) One day, at a meeting, she arrived with a black eye. And so, me and the interpreter, because I saw them separately, it was easy, we spent a long time explaining to them that in Canada, you can get protection if you are in a situation of domestic violence, and so on. I told her about, I asked her, in fact, at one point where she had had her black eye, and if it was her husband, and then, I explained everything to her, and she said no, no, everything was fine.*¹³² (Jessica, L; my translation)

In this case, Jessica suspected that domestic violence occurred between partners who were claiming asylum together. These situations are particularly complicated as women may be reluctant to discuss their experiences while submitting a claim together. Moreover, it is

¹³² (...) un jour, à une rencontre, elle est arrivée avec un œil au beurre noir. Et donc, moi et l’interprète, parce que comme je les voyais séparément, c’était facile, on a passé longtemps à leur expliquer qu’au Canada, on pouvait obtenir la protection si on est dans une situation de violence conjugale, et patati et patata. Je lui ai parlé des, je lui ai demandé, en fait, à un moment où elle avait eu son œil au beurre noir, et si c’était son conjoint, et puis, je lui ai tout expliqué, et elle m’a dit non, non, tout était bon. (Jessica, L)

established in the literature that claimants do not always know that their experience of intimate partner violence may be relevant to their claim (Dauvergne et al., 2006, p. 55). Here, Jessica said she explained to the claimant separately, without the presence of her partner, that intimate partner violence could be a ground for asylum in Canada but the claimant did not reveal anything even after this prompt.

2.2.3 “Say you are bisexual”¹³³: Lying About Their Experiences and Arranging the Story to fit Into (Perceived) Expectations

Five lawyers identified situations where they believe their clients lied and/or changed their story based on what they think would work better for their case to be accepted. Two mentioned the role of the client’s respective ethnic community in this context whereby clients were advised by members of their community that a specific story would work better or that it would be good to add a specific detail to their story. For example, Chanelle referred to one claimant who received advice from their community to state that “they are bisexual”. According to her, this advice currently circulates within the Nigerian community:

*So, it is like the person comes, they have been told in the community: ‘oh, say you are bisexual.’ In the Nigerian community, right now, it is running. ‘Say you are bisexual.’ (...) so it happens, clients lie but I understand they are trying to save their lives.¹³⁴
(Chanelle, L; my translation)*

¹³³ My translation.

¹³⁴ *Donc, c’est comme que la personne vienne, qu’elle se soit fait dire dans la communauté : ‘oh, dis que tu es bisexuel’. Dans la communauté nigériane, en ce moment, ça court. ‘Dis que tu es bisexuel’ (...) donc ça arrive, les clients mentent mais je comprends ils sont en train d’essayer de sauver leur vie. (Chanelle, L)*

Chanelle explained that, although some are lying, “*they are trying to save their lives*”; it is in this perspective of “saving their life” that some claimants may arrange their story to fit into perceived expectations. As with the non-disclosure of certain experiences, lying and/or arranging the story may demonstrate the agency exerted by claimants as a survival strategy.

3. Conceptual and theoretical analysis of the results

Filling in the BOC operates in a highly political context where the room to maneuver of claimants is limited. Postcolonial feminist analyses, when used as a lens to examine this specific step of the process, precisely show how broad colonial lines shape expectations towards claimants who cannot simply present their claims and provide details about who they are and their reasons to come to Canada freely, but must try, as much as possible, to fit into a specific narrative. These broader colonial lines are concretely visible in the different assumptions towards claimants mentioned in the results, such as the expectation to disclose specific experiences on time and avoid discrepancies in both telling and transcribing them in the official form. Which experiences have to be put forward, and how, is however deeply codified in a Western perspective, the objective of which, as mentioned above, is to select specific claimants and reproduce specific representations of the West. The time limit of 15 days to submit their BOC is another concrete example created by this dismissive political context, as it is difficult for claimants to understand and concretely apply these expectations when reporting on their experiences and identities in this time limit. This is especially true for claimants suffering from trauma and mental health issues.

The results showed that women may face a series of obstacles in filling out the BOC, but also, thanks to the intersectional analysis, that these obstacles vary significantly depending on women’s different social locations. This chapter particularly illustrated how these locations may shape the difficulties women face in their social interactions when filling out official forms,

especially with their lawyer, partner, and other family members. While discussing private and personal experiences in adverse context may be difficult for everyone, the intersectional analysis revealed, for example, how Western political expectations around disclosure and related difficulties are complicated by gender, race, ethnicity, culture and the country of origin, age and so on, as well as by their specific interactions in each woman's real life: the different social aspects of who they are lead women to be completely different from one another – something that this is particularly evident when analyzing their comfortability and what deters them from talking with the lawyer or in front of their partner, and how race, ethnicity, and class oppression influence claimants' opportunities in this regard. In this context, intersectionality helps to reveal how women concretely exert agency; results showed, for example, how non-disclosure may be the consequence of an intersection of oppressive systems related to gender, ethnicity, nationality, class, income level, and education, influencing women's opportunities to mention certain parts of their stories or claims.

In McNay's perspective, agency, although a universal capacity is restricted by social norms and discourses of power; the complicated translation step under study in this chapter is particularly illustrative of this (Hodgson, 2022; McNay, 2016). Yet, when situated in this complicated step, it becomes possible to see women's struggles, which, due to the colonial political context in which they take place, often involve balancing the need to protect themselves – by refusing to insert specific experiences in the BOC or by not disclosing certain details, for example – and meeting Western expectations, which they may do by arranging their official story. The embodied characteristic of agency also helped in highlighting how agency may happen in relation to specific power structural lines that sometimes may work invisibly, for example, though taught cultural behaviours about what is acceptable to discuss in public across different cultures – and how this may shape women's choice to disclose or not. The embodied aspect of women's experiences also helped in examining the gendered roles assigned to women of caring

for others, especially their children, and how this may affect their opportunities in preparing their claims, as they must balance expectations of the asylum process, their work with the lawyer, and their responsibilities at home. Finally, McNay's conceptualization of agency as a relational phenomenon helped highlight the relational context in which women's agency takes form in practice in relation to the BOC, as well as some specific ways it is constituted through an intersubjective matrix of social interactions and the power lines that shape them. The analysis also showed how different aspects of agency may work together, as seen in the example of Noemie – a claimant who refused to include the information that she had a sexual relationship with a woman, which, according to her lawyer, would have strengthened her case in the asylum process (situated) – and the heterosexual relationship she was involved in, she feared her husband would have been upset (relational).

4. Conclusion

The filling in of the BOC is a difficult step for many women claimants as they must transcribe their claim in an official form, which often involves disclosing private and personal experiences that may be difficult to discuss. This research found that the difficulties of talking about such experiences can be exacerbated by the presence of the lawyer. While a lawyer is often necessary, the presence of a male lawyer can create discomfort for some women, as some female claimants may be less likely to divulge sensitive information to a male lawyer. This research also suggests that these difficulties are partly linked to preconceived ideas about the intrinsic qualities of men and women, without regard for other factors such as race or class.

In addition to the lawyer, the presence of family members, partners, children and/or support persons may create additional difficulties for women. The analysis reveals that gender roles play a particular part in this context insofar as they can, depending on the culture, make men

more accustomed to being in positions of power and assign certain tasks of listening to and caring for others specifically to women. This, however, needs to be put into perspective with other systems of power and their interactions with gender: it may be easier for adult women, for example, to disclose their experiences than for young girls. In the same way, gender and ethnicity can combine to influence one's comfort level in discussing experiences with a specific interpreter.

In this context, which can be more or less complex depending on each woman, the interviews revealed that women claimants' agency in filling in the BOC is varied and may take different forms: women use their knowledge and experiences to advance their claims in different ways. Although this agency is likely to take other forms that would be interesting to research further, this chapter highlighted women's participation in filling in the BOC in three specific ways: 1) the refusal to insert specific experiences in the BOC, 2) the "choice" of not disclosing certain experiences, and 3) the story's arrangement to fit into (perceived) expectations.

Chapter 6. The Particularities of Preparing for and Presenting the Case at the Hearing: Challenges and Decisions Before and After Entering the Hearing Room

This chapter focuses on the participants' experiences preparing for and presenting their cases during their hearings. The first part describes the challenges claimants face in collecting evidence and their involvement in this step of the process. I then explore the procedural accommodations that may be provided for individuals identified as vulnerable persons, and more particularly the accommodation of providing a panel and interpreter of a particular gender. The third section focuses on the difficulties in preparing to testify and attending a hearing. After exploring the main challenges mentioned by the participants, I discuss women's involvement in these two steps. In a final section, I present the elements most often mentioned by the participants as explaining the success or failure of the decision made by the decision-maker.

1. Collecting Evidence

Claimants need to collect evidence to support their claim. Collecting this evidence can be difficult for certain claimants for various reasons. In this section, I present findings concerning difficulties that may arise when collecting evidence, and women's experiences in this regard. I first refer to my interview with Véronique, in which she identifies several of these difficulties. Following this narrative, I discuss the main challenges in collecting evidence identified based on my data analysis. In the last part of this section, I present findings concerning the involvement of women claimants in collecting evidence.

1.1 Véronique's Story

Véronique is a refugee claimant from Pakistan who came to Canada as an undergraduate student. She decided later to apply for refugee status. Véronique told me she conducted extensive research on her own and compiled evidence on the infrastructures in Pakistan in order “*to demonstrate a case for why it was not possible and safe for [her] to go back*”. She also described collecting other types of evidence, such as regarding her relationship with her father and the threats that she was facing in her country.

Véronique was making a claim based on her gender identity. She explained how having a Master's degree in Women and Gender Studies helped her in this regard as it is her “*area of expertise*”:

(...) because I have a Master in Women and Gender studies, that's my area of expertise. And diversity and inclusion is something I am... I learned through that experience and on top of that I have studied extensively about it. So, I have very strong knowledge based on that so that I was able to apply to my application as well (...) (Véronique, R)

Véronique also highlighted the difference between the evidence she had to collect as a straight woman and the specific evidence that lesbian, gay, and bisexual refugee claimants must collect. She explained that the process is very different for LGB claimants as they “*have to prove they have same-sex partners (...) that's how they were back home, that's how they are right now*”. LGB refugee claimants must also be “*very visible and out about their sexuality*”. Véronique also characterized “*the concept of gay*” as being “*very boxed in a Western manner*”. She then explained how different it was for her as the proof of her gender identity was “*very straightforward*” as she is straight:

(...) I am a transwoman who is straight. I am not, you know, I am not gay bisexual or queer and I don't identify that way. For me, the proof was very straightforward right? It was like, these are my medical documents, I got medical certificates, so like a letter from my endocrinologist, my doctor, my healthcare provider, my counselor, the person who helped me to start on those hormones medication, like the support... and from all those people, I got those letters of support, these documents. Literally, my older photos were there so it was like a very, very clear straight forward... So, I think in that way the evidence was very clear and straightforward. (Véronique, R)

1.2 Difficulties in Collecting Evidence

Various difficulties may complicate the collection of evidence. This research found that the main difficulties are the difficulty of collecting documents on sexual orientation, not speaking English or French and the necessity of translating the documents collected, having a low level of education, and a tense situation in the country of origin. Other elements may then further complicate the collection of evidence, such as religion, low income level, or gender roles. Among the 23 participants, 19 – seven claimants and 12 lawyers – discussed issues surrounding the collection of evidence.

In the table below, I list these issues and indicate the number of participants (lawyers and/or claimants) who mentioned each of them. In the last column, I indicate elements that exacerbate the difficulties created by these factors, e.g., the difficulties related to not speaking English or French may be exacerbated by the claimant's income and literacy level. I further explore all the factors in the table in the following paragraphs.

Table 4. Factors Complicating the Collection of Evidence

Difficulties	Number of participants who mentioned the difficulties		Elements that might exacerbate the difficulties ¹³⁵
	Lawyers	Claimants	
Having to collect documents on sexual orientation	3	2	- Country/community of origin - Religion - Western narrative on what is a “real” or “authentic” sexual minority refugee
Language and translation of documents	4		- Low income level - Level of literacy
Level of education	3	1	- Gender roles
Collecting documents on the situation in the country of origin	1	1	

1.2.1 Collecting Documents on Sexual Orientation

Three lawyers and two claimants discussed the difficulties in collecting conclusive documentary evidence proving sexual orientation. Sybille, Véronique, and Geneviève mentioned the country and the community of origin as potentially creating difficulties for certain sexual minority refugee claimants in collecting the necessary documents proving their sexual orientation. Sybille, for example, explained that in her country of origin, it is not permitted to reveal your sexual orientation publicly (*“it’s not something that you could publicly do”* (Sybille, R)), rendering it difficult to collect documentary evidence of her sexual orientation from that country. Although it is permitted to reveal one’s sexual orientation publicly in Canada (although this can lead to discrimination and violence), certain persons may fear to do so as they fear the consequences this can have. Some may thus fear *“being out in the Canadian scene”* (Véronique, R) as they may fear being ostracized from their community in Canada if their sexual orientation is known: *“(…) they just don’t want to be ostracized, so, if they do partake*

¹³⁵ The list is not exhaustive, as other elements may further complicate the experiences of refugee claimants. I only list the main elements that may complicate the person’s experience I detected from my analysis of the interviews.

in their culture with their community here, they cannot be sometimes fully out you know” (Véronique, R). Some may also fear that, if they openly express their sexual orientation in Canada, this will become public in their country of origin (Geneviève, L). Religion may play a role in this context: Geneviève, for example, specifically mentioned the story of a refugee claimant she helped who, because of belonging “*to a religious organization that does not permit homosexuality*”, is unwilling to take any action in Canada that may reveal her orientation. Geneviève highlighted the tension between the need to collect evidence to prove sexual orientation and the reluctance some have to reveal their sexual orientation. She also mentioned the risk inherent in certain actions taken, such as joining LGBT+ support groups in Canada.

Another difficulty in collecting documentary evidence proving sexual orientation is the “*Western manner in which the concept of gay is boxed*” (Véronique, R). Véronique thus expressly referred to how, in the refugee determination process, “*what it means or what it looks like to be LGB*” is understood from a Western perspective, echoing well-established criticism in the literature of the problematic assumptions about LGBT identities in the refugee determination process (Berg & Millbank, 2009; Millbank, 2009; Murray, 2014; Rehaag, 2008a). Among this literature, David A. B. Murray, for example, wrote that the credibility of sexual minority claimants is often assessed through “a prism of assumptions about “real” gays or lesbians that reflect white, middle-class LGBT experiences and beliefs about their own and “other” cultures” (Murray, 2014, p. 26). Murray also highlighted how this narrative on what is a “real” or “authentic” sexual minority refugee has become an essential element in the Canadian national identity discourse.

1.2.2 Language and Translation Needs

Language and the translation of the documents are other factors that may complicate participation and the collection of evidence. Language, the level of literacy, and low-income may work together in rendering it more difficult for certain persons to collect the documents needed: four lawyers thus highlighted how difficult it can be for certain claimants to translate their documents because of the price of translation. The links between language, the level of literacy, and low income is also visible in the testimony of Geneviève who highlighted that if legal aid is available, it is not always sufficient, and if it is not, translating documents is not always possible:

P: (...) Having a client who can't read even in their own language is difficult (...) they give me documents and they don't even know what they are. Hum, having documents in another language is challenging because they all have to be translated into English and there is a limit as to how much legal aid would pay and if there is no... if there are no legal aid, they are often expensive and the client can't afford it. (Geneviève, L)

1.2.3 The Level of Education

Also related to this is the level of education mentioned by some¹³⁶ as potentially facilitating (if refugee claimants have a high level of education) or rendering it more difficult (if they do not) for certain refugee claimants to collect the documents needed. Véronique, for example, whose testimony is reproduced above and who made a claim based on her gender identity, explained how her Master's degree in Women and Gender studies helped her in building her claim:

¹³⁶ Three lawyers, including Geneviève, mentioned the level of education in relation to the collection of evidence.

(...) it was one of my biggest weapons, basically right? It was a huge difference for me. And like this is something [I was] able to apply during... and I often think about people who don't have access to that knowledge or that language to defend themselves. (Véronique, R)

1.2.4 A Tense Situation in the Country of Origin

A tense situation in the country of origin (war or difficulty in communicating with the country of origin) may also complicate the collection of evidence (Anne, L; Emily, R). Noémie, a lawyer, referred to the danger some may face in trying to get certain evidence.

1.3 Women's Agency in Collecting Evidence

In this section, I present findings concerning the agency of women claimants in collecting evidence. The interviews reveal that women claimants exhibit agency in collecting evidence in varying degrees and different manners. The testimony of Véronique, for example, illustrates the significant participation of certain claimants in this step of the process. As indicated above, she did extensive research and collected numerous documents to support her claim:

I did extensive research on my own and I had to compile evidence based on what the social (...) infrastructures are like in Pakistan to demonstrate a case for why it was not possible and safe for me to go back (...) on top of that, obviously, I took other evidences of how the relationship with my father was strained and how, obviously, threats and whatever at the time, what danger I was in, (....) so, we gathered that evidence, we gathered all those documents, phone messages, texts, whatever (...) (Véronique, R)

This participation can take other forms. For example, Sybille, another refugee claimant, explained how she joined LGBTQ+ support group meetings initially to collect evidence to support her claim. Refugee claimants might indeed collect different types of evidence to prove the veracity of their declared sexual orientations, including evidence of participation in activities linked with LGBTQ+ persons or organizations in Canada (Legal Aid Ontario, 2015, pp. 84-85).¹³⁷ Sybille thus explained she “*had to find a newcomers’ meeting*” and that joining these meetings was initially “*a means to prove to the immigration*” her sexual orientation. Sybille clearly knew what she needed to do (materially prove her sexual orientation) and how she could do it (join support groups) and acted accordingly.

Both Véronique et Sybille 's testimonies echo a perspective already developed in the literature, highlighting the “great deal of time and energy” spent by refugee claimants collecting information about what is expected to ensure they look credible and authentic (Murray, 2014, p. 27). Murray, for example, wrote that refugee claimants are “actively engaged with the system in which they had been placed and [exercise] agency in their efforts to meet or fit into [the] racialized, gendered and classed standards of evaluation (albeit to greater or lesser degrees of success depending on the individual claimant”) (Murray, 2014, p. 27).

Claimants may benefit from privileges (in terms of education or language, for example) which may facilitate them in collecting the needed evidence. Each person's experiences must be analyzed in the light of what makes it difficult for them to participate in evidence collection, and what privileges they enjoy. Whether or not people benefit from these privileges can be

¹³⁷ Murray, for example, explains that among the refugee claimant respondents to his research, many had been advised by their lawyers or other refugee claimants to volunteer with LGBTQ+ or other related community organizations (Murray, 2014, p. 25): “These organizations would be able to write letters confirming their volunteer membership, which could then be submitted to the IRB as part of the documentation package used as evidence to demonstrate their credibility as a participating and engaged member of the LGBT community” (Murray, 2014, p. 25).

related to gender, race, and class, among other characteristics: a high level of education or literacy, for example, can be more or less accessible depending on people's position within specific social and power systems.¹³⁸

2. Vulnerable Person Designation and Procedural Accommodations

According to the Chairperson's Guideline 8 (Immigration and Refugee Board of Canada, 2006), procedural accommodations may be provided for individuals identified as vulnerable persons by the IRB.¹³⁹ In the Guideline, vulnerable persons are defined as:

individuals whose ability to present their cases before the IRB is severely impaired. Such persons may include, but would not be limited to, the mentally ill, minors, the elderly, victims of torture, survivors of genocide and crimes against humanity, women who have suffered gender-related persecution, and individuals who have been victims of persecution based on sexual orientation and gender identity (Immigration and Refugee Board of Canada, 2006).

According to the Chairperson's Guideline 8, the IRB may accommodate a person's vulnerability by various means, including allowing a support person to participate in a hearing, varying the order of questioning, excluding non-parties from the hearing room and "providing

¹³⁸ The link between the level of education, the opportunity to collect relevant documentation, and specific gender roles has been highlighted in the literature, for example. Singer thus explains that, as women may have less access to education than men in certain countries, this can affect their possibilities of obtaining documentary evidence (Singer, 2014, p. 105).

¹³⁹ As indicated above, the Chairperson's Guideline 8: Procedures with Respect to Vulnerable Persons Appearing Before the IRB was replaced in October 2023. In this research, I refer to the former Chairperson's Guideline 8 as I conducted the research with this guideline. As indicated in the new Guideline, the revised text "removes the need to designate and consequently label an individual as a "vulnerable person"".

a panel and interpreter of a particular gender” (Immigration and Refugee Board of Canada, 2006).¹⁴⁰

Seven lawyers talked about their decisions to request that some of their claimants be designated vulnerable persons and to request procedural accommodations. “Varying the order of questioning”,¹⁴¹ “allowing a support person to participate in a hearing”, and “providing a panel of a particular gender” are the accommodations that were the most often mentioned by these participants. Certain participants also mentioned other procedural accommodations, as the Guideline also states that “*any procedural accommodations that may be reasonable in the circumstances*” may be considered.¹⁴² It was only lawyers who mentioned this topic; no claimants did. This might reflect a discrepancy in knowledge of and control over the procedure between lawyers (in a position of power and with good knowledge of the process) and women claimants. The fact that women did not mention this topic may also be linked to how I asked the questions to the two groups of interviewees and may reflect a bias on my part. Future researchers might be interested in exploring women’s views on requests concerning their designation as vulnerable persons and procedural accommodations requested in this context.

2.1 Providing a Panel and Interpreter of a Particular Gender

Six participants talked about the accommodation of *providing a panel and interpreter of a particular gender*. Although one participant (Geneviève, L.) indicated that some women may prefer a decision-maker who is a man, most participants talked about the preference that some

¹⁴⁰ In her article, Purkey highlighted the broad discretion characterizing the application of the Guideline and a lack of consistency in practice (Purkey, 2022, p. 7).

¹⁴¹ I mentioned in Chapter 1 Dauvergne et al.’s research in which the authors highlight the testimony of one key informant according to whom the reverse order of questioning has a gendered impact. This key informant questions the impact cross-examination by a non-neutral RPD member in the context of a hearing may have on someone who has experienced domestic violence, for instance (Dauvergne et al., 2006, p. 59).

¹⁴² Other accommodations mentioned by the participants include making a request for not talking about specific events (2x), for the questions to be asked in a more sensitive way, for having the hearing in person (not in a video conference), and for having the husband step out while his wife is testifying about sexual violence.

claimants (men or women) might have to have a decision-maker who is a woman. In addition, five participants linked this question to situations where the claimants had experienced gender-based violence.

Two lawyers explained that, although they requested the accommodation of providing a panel and interpreter of a particular gender in the past, they are not doing it anymore. Jessica explained that she no longer takes this risk anymore, as she has already met women decision-makers with little understanding of gender-based violence:

*I have asked in the past, but I have also seen women decision-makers who don't understand domestic violence and I am not taking the risk now. It is not because he is a man that he will be any better and it is not because she is a woman that she will be any better.*¹⁴³ (Jessica, L; my translation)

The reference to domestic violence may suggest that Jessica initially thought a woman would better understand another woman's experiences of domestic violence. She found, however, that this was not the case. Marie gave similar reasons for not requesting this accommodation anymore:

it used to be many years ago, that I thought that a good accommodation to have for women, was a female board member. And I have had cases with such unbelievably bad female board members that now I never ask for one specifically because I have had

¹⁴³ *J'ai demandé dans le passé, mais j'ai aussi vu des femmes commissaires qui comprennent rien à la violence conjugale et je prends pas le risque maintenant. C'est pas parce que c'est un homme qu'il va être mieux et c'est pas parce que c'est une femme qui va être, qu'elle va être mieux.* (Jessica, L)

some cases where I have had male board members who were much more sensitive than a female board member. (Marie, L)

In these testimonies, participants developed a view that the sex of a decision-maker has no bearing on his or her understanding of the experiences recounted, his or her attitude towards them, and/or his or her handling of the claim in general. They also reflect a certain presumption that women “understand” certain experiences better or are more sensitive than men, which has not been confirmed for these participants in practice. These testimonies are in line with the literature on this topic, which suggests that, contrary to what is sometimes believed, creating women-only environments is not necessarily positive for claimants: while such environments may help some, it does not necessarily favor women’s disclosure and does not mean that the decision-maker will better understand their experiences. As it is established in the literature, such beliefs are based on assumptions about the suitability of a person to receive and understand certain types of testimony based solely on their sex without considering the differences between people in terms of their individual skills, beliefs, or personal characteristics (Martin, 2005, as cited in Baillot et al., 2012, p. 279).

Interestingly, one lawyer also explains in her interview that certain male decision-makers are more uncomfortable asking about sexual or domestic violence, making it a better situation for the claimant, as the decision-maker may ask fewer questions about these specific experiences.¹⁴⁴

¹⁴⁴ In her research, Oxford also explored certain women decision-makers’ skepticism towards women applicants who have experienced gender-based violence (Oxford, 2005, pp. 33–35).

2.2 The Tendency of Requesting Procedural Accommodations More Often When the Client is a Woman

Three lawyers explained that they tend to request procedural accommodations more often when the claimant is a woman. This tendency concerns the specific accommodation of providing a panel or an interpreter of a particular gender: in her testimony, for example, Christine explains that she is not sure if she ever asked a claimant who is a man if he would prefer a decision-maker who is a man or a woman (*“je sais pas si j'ai déjà posé ces questions-là à un homme honnêtement, est ce que vous préférez un commissaire ou une commissaire ?”* (Christine, L)). A general tendency to request procedural accommodations – independently of the type of accommodation – more often when the client is a woman is also noticeable in other testimonies.

While the reasons behind this trend are not always clearly identified, the idea that there is something different about women claimants and/or that they are more affected during the refugee status determination process is noteworthy:

I think I have probably done more vulnerable person designation applications for women than for men hum and, you know, maybe it's something subconscious that I am talking to women differently or hum, you know, in a more gentle way (...). (Catherine, L)

I tend to ask for procedural accommodations more often for women simply because their testimony is often more affected by how they proceed. (Geneviève, L)

In her research, Anna Purkey linked the concepts of “vulnerability” and paternalism, and criticized the assumption that women are more vulnerable than men (Purkey, 2022, p. 2). The

research herein seems to confirm this perception bias on the part of lawyers that women are more “vulnerable”. In practice, while women may indeed be vulnerable in many ways, women’s profiles and experiences are more varied than certain stereotypes might lead us to believe, as Catherine’s testimony illustrates:

I can think of female claimants I have had who have been very strong people who, you know, I don’t think they needed a vulnerable person designation. I don’t think they needed the kind of extra support I am giving to some clients, so, I don’t think it’s universally true that hum all women I am kind of treating the same way. (Catherine, L)

3. Preparing to Testify and Presenting the Case at the Oral Hearing

This section discusses the participants’ experiences preparing to testify and presenting their cases during their hearings. Preparing to testify and attending a hearing can be difficult for certain claimants for various reasons. In this section, I present findings concerning the difficulties that may arise in this regard. I first refer to my interview with Emily, in which she describes her experience of preparing with her lawyer and during the hearing. Following this narrative, I discuss the main challenges identified in preparing to testify and attending the hearing based on my data analysis. In the final part of this section, I present findings regarding the involvement of women claimants in these steps of the process.

3.1 Emily’s Story

Emily, a refugee claimant, was a lawyer in Iraq. When I asked how she prepared for the hearing with the lawyer, she first explained that, after writing their narrative, their lawyer gave her and her husband a copy of the text for them to review. The lawyer then invited them for a mock hearing during which she pretended to be the decision-maker:

(...) after, hum, we wrote our narrative with the lawyer, she gave us a copy of that and she said like “take a look at it”. And then, hum, she invited us over to have hum like, to go through, hum, a mock interview. She pretended to be hum the judge or the person who’s gonna question us and she was like on the other side like she was cross-examining us. And we only met once for a couple of hours and that’s it. (Emily, R)

Emily explained that the preparation she received was very helpful because “*it made [her and her husband] more trustful about all the hearing process*”. She said they had no idea how a hearing was conducted (“*how will the room look like, who will be sitting where, who is on our side, who is on the other side...*”). The mock hearing helped them to imagine what the hearing might be like: “*I just feel that it took the edges off, like, we know how it’s gonna be*”.

When discussing her experience at the hearing, Emily explained that the decision-maker was a middle-aged man who “*didn’t sound like he was interrogating [them]*”. He looked like someone who “*needs to know more information, not someone who is trying to prove [them] wrong*”. She also mentioned that she was not scared and was at ease: “*I was trying to be honest as much as I could and remembering everything that happened and I wasn’t, you know, I wasn’t afraid of the meeting*”.

Emily found the decision-maker “*was neutral*” and she “*didn’t feel like he was on [her] side [or] against [her]*” but that “*he was just doing his job*”. However, she did add that the hearing was very stressful due to the vital importance of the decision: “*Like, basically, our life depended on that day and we were just, you know, we didn’t want anything to go wrong in any way possible.*” She goes on to explain their concerns about the decision-maker, their hope that he

will not be in a bad mood during the hearing, and the potential consequences for his decision, which “*will define the rest of [their] lives*”:

Like, we didn't want the, you know, the decision-maker to have a bad morning or you know not have his right kind of coffee for that day. Like, we didn't want him to be you know pissed at anything or upset with anyone because we felt like it would take it out on us and this is our future. This is, you know, this is our... his decision will define the rest of our lives. And, it's not just us it's, you know, our children as well. (...) So, yeah, that was very stressful like just to know that your life is in someone hands or your life depends on a decision, you would be stressed. (Emily, R)

As Emily and her husband had their hearing together, I then asked her how the decision-maker addressed the questions to them. She answered that the decision-maker was addressing the questions to whomever he wanted but that most of the questions were addressed to her husband because the case was based on his story. She also mentioned that an interpreter helped them during the hearing.

Emily also mentioned that their baby was in the room during the hearing and that a friend sat in the back and cared for the baby. Although they live in Ottawa, their hearing happened in Montreal. In 2014, Ottawa's IRB office closed, and hearings were transferred to Montreal. Refugee claimants were instructed to travel to Montreal for their hearings. In addition to Emily, three other women participants indicated they had their hearings in Montreal and thus had to travel there from Ottawa.

Various difficulties may complicate the preparation for and attendance at the hearing. In the following sections, I present findings concerning difficulties that may arise during these steps of the process. As the most mentioned difficulties differ between the preparation step before the hearing and the actual attendance at the hearing, I decided to approach the challenges related to the preparation and the hearing itself in two separate sections.

3.2 Difficulties in Preparing to Testify

This research found that the difficulties in preparing to testify are mainly related to learned attitudes and roles attributed to men and women, language, and low income. Other elements may then further complicate preparation, such as culture, age, sexual orientation, and race. In the table below, I list these issues and indicate the number of participants (lawyers or claimants) who mentioned each of them. I further explore all the factors in the table in the following paragraphs.

Table 5. Factors Complicating the Preparation for the Hearing

Difficulties	Number of participants who mentioned the difficulties		Elements that might exacerbate the difficulties
	Lawyers	Claimants	
Learned attitudes and roles attributed to men and women (self-confidence, childcare responsibilities and the education of decision-makers)	6	1	- Culture - Age, sexual orientation, and race (the value of being “ <i>direct in communication</i> ”) - Low income
Language	4		
Low income and access to legal aid certificates	1		

*3.2.1 Learned Attitudes and Roles Attributed to Men and Women:
Self-Confidence, Childcare Responsibilities, and the Education of
Decision-Makers*

Learned attitudes and roles attributed to men and women may complicate preparation for a hearing at various levels. In this section, I explore how these influence the advice claimants receive about how to answer questions from the decision-makers and about the behaviours to adopt at the hearing, the arrangements regarding who cares for the children during the hearing, and the “education” of decision-makers.

Almost all lawyers explained that, as part of their preparation for a hearing, they “practice” with their clients, i.e., ask them questions that are likely to be asked by the decision-maker, listen to their answers, and then make suggestions or give advice on this basis.¹⁴⁵ Lawyers explained how, based on the answers they received from their claimants, they would make suggestions and give them a series of different pieces of advice, including on the content of the testimony.¹⁴⁶ The advice was varied in this regard. Among other advice, lawyers told their clients to avoid talking too much and giving irrelevant information, explaining what is irrelevant compared to what is held up as “useful” in the context of asylum applications.¹⁴⁷ Learned attitudes and roles attributed to men and women may influence the preparation for the hearing in different ways

¹⁴⁵ Among those participants, seven explained that they would (or would ask someone to) play the role of the decision-maker to help the claimant practice (that is, they would hold a mock hearing). In this context, lawyers explained that they would ask the claimant questions they believe will likely be asked at the hearing based on the case. In addition to Emily, whose testimony is included above as a sample narrative, two other women who participated in the project explained that their lawyer (or someone in their office) played the role of the decision-maker in order to practice for the hearing. All three women indicated that this preparation was beneficial. That claimants’ perceptions of the hearing are affected by preparations has already been established (Canadian Council for Refugees, 2012, p. 14). In their research on the experience of refugee claimants at refugee hearings, the CCR explained that “generally, claimants who had practiced answering questions with their lawyer felt well-prepared” (Canadian Council for Refugees, 2012, p. 14).

¹⁴⁶ Seven lawyers discussed their suggestions and advice regarding the type of information to give to the decision-maker.

¹⁴⁷ Three lawyers explained how they would intervene while practicing with the claimant if the person talked too much or about irrelevant elements and how they would correct them.

here. According to Chanelle, for example, men may share more (irrelevant) information as they might be more confident or more used to be in a position of power:

*It is rarer to find a woman who starts talking too much when she has not been asked, than to find a man who starts talking more when he hasn't been asked. He will already be more confident in explaining his story, or, maybe it will be someone who, in the social norms, is used to speaking with authority...*¹⁴⁸ (Chanelle, L; my translation)

According to Chanelle, “learned attitudes” (“*c’est dans les attitudes apprises*”) explain these differences. She then explained that the preparation she must do with women and men claimants is somehow different because of these differences. She explained that men claimants sometimes give irrelevant information because they believe it is relevant, which is the opposite of women claimants who share details because they are nervous:

*(...) so with male clients, I have more to say: ‘ok, no, shhh, not relevant!’, ok, like ‘let’s focus’! Female clients too, but they, it’s like they will talk about all sorts of things nervously, whereas the man, it is just because he thinks that it is relevant, but no, it is not relevant!*¹⁴⁹ (Chanelle, L; my translation)

¹⁴⁸ *C’est plus rare de trouver une femme qui va se mettre à trop parler quand on ne lui a pas demandé, que de trouver un homme qui va se mettre à plus parler quand on lui a pas demandé, il va déjà être plus confiant à expliquer son histoire, ou, peut-être que ça va être quelqu’un qui, dans les normes sociales, qui a l’habitude de parler en autorité....* (Chanelle, L)

¹⁴⁹ *(...) donc avec les clients masculins j’ai plus à dire : ‘ok, non, shhh, pas pertinent !’, ok, comme ‘on se concentre’ ! Les clientes féminines aussi, mais elles, c’est comme, elles vont parler de toutes sortes d’affaires de façon nerveuse, tandis que l’homme, c’est juste parce qu’il pense que c’est pertinent, mais non c’est pas pertinent !* (Chanelle, L)

Because of that, Chanelle explained that she needs to give more guidance to male applicants in this regard, while it is more often the case that there is “*a self-confidence work to do*” with some women claimants:

*I find, that's it, male clients I have to support them more on that level, whereas female clients sometimes, it's more like 'I don't know what to say', or hum, (...) 'how am I going to explain it to her', 'no, you know the answer, you are capable!' I find that there is a kind of self-confidence work to do, of empowerment, that's really it, with female clients, that with men, I don't have to do.*¹⁵⁰ (Chanelle, L; my translation)

Corinne, another lawyer, similarly highlighted a difference in her opinion regarding self-confidence between men and women clients. According to her, men sometimes feel more self-assured, which is not always a good thing: “*(...) To go and feeling confident and sure hum that sometimes can be bad because then you panic when it doesn't go the way you expect or whatever*” (Corinne, L).

Regarding cultural and contextual aspects, Noémie, a lawyer, explained that hearings are “*a clash of cultures*” between a claimant who is “*speaking from the point of view of his culture, his thinking, his society*” and a decision-maker who, although “*shouldn't be applying just Canadian thinking or Canadian views*”, sometimes does. She thus explained that she encourages claimants to give additional information about their culture and the context within which they made their decisions:

¹⁵⁰ *Je trouve, c'est ça, les clients masculins j'ai plus à les encadrer à ce niveau-là tandis que les clientes féminines parfois, ça va être plus comme 'je sais pas quoi dire', ou hum, (...) 'comment je vais faire pour lui expliquer', 'non, tu connais la réponse, tu es capable !' Je trouve qu'il y a comme un travail de self confidence à faire, d'empowerment, c'est vraiment ça, avec les clientes féminines, qu'avec les hommes, j'ai pas à faire. (Chanelle, L)*

(...) I always say to my client ‘remember that the person that is listening to you has nothing to do with you, has no idea what it is like to be a Nigerian woman with four children who comes from a society that practices FGM, so you have to introduce that person to the context within which you make your decisions right, because that explains a lot about why you did or did not do something’. (Noémie, L)

Noémie referred to decision-makers’ reliance on assumptions (decision-makers “*applying just Canadian thinking or Canadian views*”). She explained how these assumptions and a lack of understanding of the cultural context may make it difficult for some to understand the claimants’ past actions:

(...) sometimes I find the biggest issue is, the context is missing, cause the board member is thinking ‘but I don’t understand why you would do that or that is not reasonable because you could have just gone here’! Wow! Is it that easy to travel in Nigeria for a woman with all these children? You know, how safe is it, you know, there is so many things that we take for granted. So, I always say to my clients when you are providing answers explain what it is like in Nigeria. (Noémie, L)

Lawyers also spoke about behaviours to adopt or “*ways to present themselves*” (Christine, L) at the hearing.¹⁵¹ Corinne, for example, explained that she encourages her clients to “*not just be polite*” while talking to the decision-maker but to answer them, to ask them to re-explain, and, overall, not to be afraid to “*speak up*”. Learned attitudes and roles attributed to men and

¹⁵¹ The act of crying/sobbing/“breaking down” at the hearing was mentioned by seven lawyers. Four of them emphasized the role it can play in influencing the perception of the decision-maker of the story. Anne mentioned that she already told clients that there is no need to try not to cry at the hearing, since, if they cry, “*it can put emphasis on the sincerity of your testimony*” (Anne, L; my translation). Catherine further explained that the claimant may appear more credible if crying/breaking down at the hearing if it is the behaviour that is expected from them based on the story they are telling.

women play a role in this context, as women may be less accustomed in some cases to being in a position of power and/or to speaking out for reasons related to these attitudes, roles and culture (see above). Chanelle used the image of a “*show*” (“*c’est son show*”) and explained how she would work with the client before the hearing so that she is able to talk convincingly, she is not ashamed, and she is strong and ready to defend her file:¹⁵²

*It’s her show, ok, you have to... she is the one who has to, who talks about her case. Me, I can’t speak for her, that is why I find that betting on my client, that she is head high, that she speaks with conviction, that she is convincing, then that she is not ashamed, that she is strong in front of the judge, that she can explain herself, defend her case.*¹⁵³
(Chanelle, L; my translation)

Véronique also explained that she “*defended herself*” at her hearing. She made the connection with her privileges, including the privileges of having had a university education and working in Canada. All this explains why her hearing happened so quickly, according to her:

(...) the judge asked me two or three questions that was it, that was it (...) when I talk about my experiences with marginality, I also have privileges right, I have privilege in the sense of I have a master degree, I have you know a university education, I was working at the time, I had like a job yeah, I was contributing to the economy so I had all these, you know... and I was able to speak and use language and defend myself hum

¹⁵² Chanelle further highlighted a case where one of her clients was “very much in control” and did not act as a “*ewe in distress*” (“*brebis en détresse*”; my translation) and how this serves her case eventually.

¹⁵³ *C’est son show, ok, il faut... c’est elle qui faut, qui parle de son dossier. Moi, je peux pas parler à sa place, c’est pour ça que je trouve que miser sur ma cliente, qu’elle soit comme la tête haute, qu’elle parle avec conviction, qu’elle soit convaincante, puis qu’elle ait pas honte, qu’elle soit forte devant le juge, qu’elle puisse expliquer elle-même, défendre son dossier.* (Chanelle, L)

in those ways so I think that made for a very strong case to make it happen very quickly.

(Véronique, R)

Learned attitudes and roles attributed to men and women may also influence responsibilities in arranging childcare in advance for the hearing, as mentioned by four lawyers. Two of them explained how finding someone to care for the children during the hearing might be more of an issue for women than for men:

*(...) it happens more often that women have to, are responsible for children. So, we also have to prepare, like, the supervision of the children during the hearing, because often, the children, they don't need to be there for the hearing (...). But, there has to be someone to look after the children. So, that, that's another thing you often need to talk about with women because they have children. In any case, I don't know if you understand what I mean, but it happens more often that women have children with them than men (...).*¹⁵⁴ *(Christine, L; my translation)*

Sybille, a claimant, explained how her sister did not go to school on the day of her hearing to take care of her child. She also highlighted the high number of single mothers with children. This accords with Dauvergne et al., who, based on data they received from the Refugee Protection Division, indicated that women are more likely than men to arrive as sole-support parents (Dauvergne et al., 2006, p. 55).

¹⁵⁴ (...) ça arrive plus souvent que les femmes doivent, ont la responsabilité des enfants. Donc, il faut aussi préparer comme les surveillances des enfants pendant l'audience, parce que souvent, les enfants, ils ont pas besoin d'être là pour l'audience (...) Mais, il faut qu'il y ait quelqu'un qui s'occupe des enfants. Donc, ça, c'est autre chose qu'il faut souvent aborder avec les femmes parce qu'elles ont des enfants. En tout cas, je sais pas si vous comprenez ce que je veux dire, mais ça arrive plus souvent que des femmes aient des enfants avec elles que des hommes (...) *(Christine, L)*

Three refugee claimants indicated their children were at the hearing. In the case of Pauline, her children only attended the beginning of the hearing before being asked to sit in another room. In the case of Emily, a friend of hers took her baby on her lap in the back of the room during the hearing. Jennifer indicated that her baby was with her in the hearing room. While none of them mentioned particular difficulties related to the presence of their children during their hearings, other research emphasized some of the difficulties that can arise due to the presence of children at a hearing (Canadian Council for Refugees, 2012, pp. 20–21). Lawyers also mentioned some of those difficulties, such as Jessica who mentioned the difficulty for certain parents to testify in front of their children at the hearing (she gave the example of a mother who experienced domestic violence and did not want to talk about it in front of her children).

Having children was also mentioned as potentially making the trip to Montreal for the hearing more difficult. Due to Ottawa's IRB office closure in 2014, hearings were transferred to Montreal and refugee claimants were instructed to travel to Montreal for their hearings. Christine, a lawyer, emphasized some of the difficulties of this journey, including difficulties associated with traveling with children:

*(...) if my client is here in Ottawa but the hearing is in Montreal, just the trip can have a detrimental effect on the client, just because she didn't sleep well, she is worried about missing her train... she had to take the bus at 5a.m., her baby didn't sleep, if we have to bring the children, the children are nervous, she is worried.*¹⁵⁵ (Christine, L; my translation)

¹⁵⁵ (...) si ma cliente est ici à Ottawa mais l'audience a lieu à Montréal, juste le voyage peut avoir un effet néfaste sur la cliente, juste parce qu'elle a mal dormi, elle est inquiète de manquer son train... fallait qu'elle prenne l'autobus à 5h du matin, son bébé a pas dormi, si il faut apporter les enfants, les enfants sont nerveux, elle est inquiète. (Christine, L)

Low income was also mentioned as a difficulty concerning the need to travel to Montreal for a hearing. Pauline, a claimant, emphasized how difficult this was because they had no resources to pay for the journey and stay in Montreal. This can be even more complicated when people must travel with children. Anne, one of the lawyers who work in a legal clinic, mentioned that the clinic did not have the money to pay for either the claimant's or the lawyer's travel to Montreal.

Finally, gender considerations also influence lawyers' preparation. Two lawyers mentioned that part of their preparation is directed at "educating" decision-makers on assumptions and gender issues. These two lawyers denounced the stereotypes and myths held by some decision-makers, echoing criticisms already well-established in the literature (see, for example, Aberman, 2014; McKinnon, 2016; Shuman & Bohmer, 2014). They then explained how they prepare for a hearing regarding these stereotypes and myths. Noémie, for example, explained that she includes articles on stereotypes as a "warning" to decision-makers in her submissions. She also mentioned talking in her submissions about "*applying lenses that are inappropriate*" and about the failure of some decision-makers to consider "*the dynamic of the very socioeconomic and racial and gender factors*". She here referred to the intersections between these axes of social division and their role in "*the options that somebody has and the actions that they take and they don't take*". By doing so, she tries to raise awareness among decision-makers about those issues. Marie, the other lawyer who talked about "educating decision-makers", further explained her opinion that "*there is a lot more explaining (...), we have to do in women's cases*". To illustrate this, Marie first referred to a case in which the decision-maker seemed to blame the claimant for the sexual violence she was a victim of. According to her, this is more likely to happen to women than men:

(...) you know, I feel like they are not normally saying to a man ‘oh well, it’s kind of your fault that you got tortured’ where with the women there is sometimes this idea that, well, you shouldn’t have been in that place, it’s kind of your fault that you got raped.
(Marie, L)

Marie also highlighted the many false ideas surrounding domestic violence cases, such as that, if it was that bad, the person would have left immediately or that if there was no report about the violence, the violence was not so terrible. This confirms the persistent circulation of gendered assumptions in evaluating a claim despite the well-established criticisms of those assumptions in the literature (Arbel, 2013; Cianciarulo & David, 2009; Shuman & Bohmer, 2014).

3.2.2 Language

When the claimant and the lawyer do not speak the same language, they may work with an interpreter. Four lawyers talked about the need for claimants to be prepared to testify with the help of an interpreter. Catherine and Jessica referred explicitly to those who *speak “some English or French”* and are sometimes tempted to just respond without waiting for the translation. In those cases, Catherine explained that they need to practice *“to learn to wait for the translator to translate and then, answer”*. Jessica explained that she usually tells claimants to take their time *“because, firstly, it means that [they] are going to wait until [they] understand the question properly and, secondly, [they] are going to be able to formulate [their] answer properly”*. Jessica also mentioned the possibility that the claimants who speak some English or French tell her directly if there are any problems with the interpretation at the hearing, which may be more challenging when the claimant and the lawyer do not speak these languages.

3.2.3 Low Income and Access to Legal Aid Certificates

Low income may complicate the preparation for the hearing in different ways. Practicing with claimants, i.e., asking them questions that are likely to be asked by the decision-maker, listening to their answers, and then making suggestions/giving advice on this basis, requires much time. Marie, a lawyer, highlighted the difficulty of dedicating time to this preparation when getting paid under a legal aid certificate. Referring to one specific case, she explained that because she was not working under a legal aid certificate, which only comprises a fixed number of paid hours, she “*had the luxury of taking extra time and making sure that (...) was really done in depth rather than worrying of only having a few hours that were covered*” (Marie, L).

Refugee claimants who meet the financial eligibility requirements and other conditions put in place by Legal Aid Ontario (LAO) can obtain certificates by which they get access to a lawyer, either a private lawyer, a community clinic, or a legal aid lawyer. By granting a certificate, LAO agrees to pay a lawyer for a certain number of hours to work with the refugee claimant on their claim.¹⁵⁶ It is established in the literature that this coverage, however, may sometimes be insufficient concerning the kind of assistance received and the category of claimants who have access to it (Baglay & Jones, 2017, p. 320). Regarding the kind of assistance received, the number of hours paid by LAO may be insufficient in some instances compared to the time required to prepare for the hearing. Regarding the category of claimants who have access to it, Smith et al. also mention the difficult situation of those who do not qualify financially for legal aid but who are still very poor: they may face difficulty in engaging counsel at their own expense (Smith et al., 2021, p. 26).

¹⁵⁶ More information on legal aid certificates is available on: <https://stepstojustice.ca/questions/criminal-law/how-do-i-apply-legal-aid-certificate/>.

3.3 Difficulties During the Hearing

The main difficulties during the hearing mentioned by the participants are emotions and the decision-makers' differences in terms of character, working style, and generosity. In the table below, I list these issues and indicate the number of participants (lawyers or claimants) who mentioned each of them. I further explore all the factors in the table in the following paragraphs.

Table 6. Factors Complicating the Hearing

Difficulties	Number of participants who mentioned the difficulties		Elements that might exacerbate the difficulties ¹⁵⁷
	Lawyers	Claimants	
Emotions: nervousness, anxiety, and stress	9	6	- Traumatic experiences
Decision-makers' differences in terms of character, working style, and generosity	11		

3.3.1 Emotions: Nervousness, Anxiety, and Stress

As highlighted by the Canadian Council for Refugees (CCR), the hearing is a very emotional process (Canadian Council for Refugees, 2012, p. 27). The most obvious emotions mentioned by claimants are nervousness, anxiety, and stress.¹⁵⁸ Emotions may emerge due to the difficulty of talking about certain lived experiences. Véronique, for example, emphasized how difficult it was for her to retell some very difficult moments of her life at the hearing. In her testimony, she explained that the experience of the hearing was very triggering for her: *“I was extremely triggered and just like emotionally shaken and really upset”* (Véronique, R). The importance of the decision that will be taken on that day also contributes to stress: claimants' lives depended on that day as the decision of the decision-maker *“will define the rest of [their] lives”* (Emily,

¹⁵⁷ The list is not exhaustive, as other elements may further complicate the experiences of refugee claimants. I only list the main elements that may complicate the person's experience I detected from my analysis of the interviews.

¹⁵⁸ This claim is not true for every claimant: Nathalie, for example, explained that she was not tense but relaxed during her hearing, in part thanks to the decision-maker's behavior.

R). This testimony echoes a perspective already developed in the literature highlighting the significant difference in power that marks the context of the hearing, with decision-makers having “enormous power to grant protection” where the consequences of their decision may be fatal for claimants (Aberman, 2014, p. 60).

Four women claimants referred to the influence that those emotions may have on the ability to testify, such as making people forget “*the proper words to say*” (Emily, R) and the information written in the BOC form (Marielle, R), being unable to speak, and crying. Due to stress, anxiety, and trauma, refugee claimants may disclose new information at the hearing (Anne, L; Corinne, L; Jessica, L; John, L).¹⁵⁹ These emotions may also influence refugee claimants’ demeanour at the hearing (Catherine, L; John, L; Noémie, L). Catherine, for example, referring to research on this topic to support her argument, explained that trauma can influence someone’s behaviour in that they may have no affect anymore¹⁶⁰ or, on the opposite case, sob uncontrollably.

The influence of emotions on testimony may have consequences. Indeed, it is well-established in the literature that decision-makers often introduce their projections and assumptions when assessing applicants’ credibility (see, for example, Shuman & Bohmer, 2014, p. 942). This observation echoed Catherine’s testimony. Catherine indeed referred to cases where her clients were not “*presenting the way that the board member expected*” and because of that decision-makers becoming skeptical about her claimants’ stories: (...) “*there [are] expectations that clients will act a certain way and if they don’t, it can cause problems*” (Catherine, L).

¹⁵⁹ Four lawyer participants mentioned situations where refugee claimants contradict themselves and/or get confused at the hearing. Two of them pointed out the importance of knowing the dates and the confusion that refugee claimants are sometimes experiencing in retelling their story regarding dates. Marielle, who claimed asylum with her husband, also explained in detail how dates were a problem at their hearing as her husband “did not memorize all the dates”.

¹⁶⁰ Sybille, a refugee claimant, mentioned that she suppressed certain feelings as she did not want to remember what hurt her. According to her, with time, “*people suppressed awful things*”. This makes it more and more difficult for them to talk about these experiences in the expected way (such as very precisely, coherently) the longer the delay before the hearing: according to Sybille, the main problem is the waiting before the hearing

3.3.2 The Decision-Makers

*The decision-makers are different, they apply the law differently, they interpret events differently, their personal backgrounds affect their judgement differently, so it is kind of luck.*¹⁶¹ (Christine, L; my translation)

Experiences with decision-makers vary greatly. Some claimants' testimonies are more favorable than others, such as Véronique's testimony in which she described her decision-maker as "very professional", "someone who herself has done her research beforehand", someone "kind and knowledgeable and understanding". Nathalie also had a positive experience with her decision-maker, whom she described as "very accommodating". She explained that, thanks to the behaviour of her decision-maker, "the atmosphere was not tense, (...), it was calm, it was warm (...) I was very relaxed and it went well", which shows the influence that decision-makers may have on the atmosphere of hearings. Some testimonies are neutral: Emily and Jennifer, for example, referred to the decision-maker as someone who was "just doing his job". Finally, some testimonies reflect more complicated interactions with the decision-makers. In her testimony, for example, Valentine explained that there was confusion from her decision-maker about a specific document that she supposedly should have provided. Valentine said several times that she did not have this document or understand what the decision-maker was discussing. Valentine explained that she had to repetitively say she was telling the truth while the decision-maker and her lawyer seemed to believe she was hiding the requested document:

¹⁶¹ *Les commissaires sont différents, appliquent le droit différemment, interprètent des événements différemment, leur bagage personnel affecte leur jugement de façon différente, donc c'est un peu la chance. (Christine, L).*

'Miss, we are filming you, you have to tell us everything you have', she said. I said 'Yes, I know you are filming, I have nothing, I only have this paper'. (...) They gave me another hearing. Afterwards, the lawyer, he closes all the cameras and he tells me: 'you must not hide anything from your lawyer, you must give him all the papers you have'. I said: 'I have nothing to hide. Do I look like I am playing now? (...) the papers, everything I had, I gave you...' (...) the judge, she said to me, (...) 'if you don't give the paper, we will find everything you are hiding'. I said 'Find it! I give you the green light, find out everything I am hiding, I have nothing to hide'.¹⁶² (Valentine, R; my translation)

As explained by eleven lawyers, there are differences between decision-makers in terms of their personalities, working styles, and understanding of the law. Five of these lawyers explained they had very good experiences with certain decision-makers. As for Véronique and Nathalie, some of them emphasized the nice, sympathetic, and sensitive character of some decision-makers they worked with.¹⁶³ On the opposite side, seven participants also talked about some unpleasant experiences that they had with “rude”, “insensitive”, and “awful” decision-makers. In her testimony, for example, Elisa referred to a recent case in which she was confronted with a decision-maker she characterized as “quite awful” for two reasons. The first reason is related to his reaction when he saw that the claimant came with her 3-year-old son at the hearing:

First thing that he did was, when the client came, she came with her son, her 3-year-old son, and it was a video conference hearing and the member saw the son in the video

¹⁶² *'Mademoiselle on est en train de vous filmer, tu dois dire tout ce que tu as', elle m'a dit. J'ai dit : 'oui, je sais que vous filmez, j'ai rien, j'ai seulement ce papier-là'. (...) Ils m'ont donné une autre audience. Après, l'avocat, il ferme toutes les caméras et il me dit 'il ne faut rien cacher à ton avocat, il faut lui donner tous les papiers que tu as'. J'ai dit : 'Je n'ai rien cacher. Est-ce que j'ai l'air de jouer maintenant ? (...) les papiers, tout ce que j'avais, je vous ai donné...' (...) la juge, elle me dit, (...) 'si tu ne donnes pas le papier, on va trouver tout ce que tu caches'. J'ai dit 'Trouvez ! Je vous donne le feu vert, trouvez tout ce que je cache, je n'ai rien à cacher'. (Valentine, R).*

¹⁶³ Three lawyers, however, emphasized that the fact that a decision-maker was friendly, polite, and respectful does not mean the decision will be favorable.

conference and kind of made a comment about how people don't usually bring their kids. And she said that she didn't have anyone to take care of her son and he was pretty rude about it. (Elisa, L)

I mentioned above the difficulties regarding arrangements for who would care for the children during the hearing. I also mention how finding someone to care for the children during the hearing might be more of an issue for women than men. In this case, the fact that the claimant could not find someone to care for her son had annoyed the decision-maker. This is not the case for all decision-makers: Jennifer, a claimant, mentioned that the decision-maker in her case was ready to accommodate the presence of children at the hearing and to take breaks if needed. This shows the differences between decision-makers in their approach to children.

The other reason Elisa characterized this decision-maker as awful is that he seemed insensitive to the claimant's emotions. Although the claimant was crying a lot, Elisa explained that the decision-maker *"kept saying that he couldn't hear her and that he wasn't gonna be able to keep repeating himself throughout the whole hearing"*. Elisa also explained that this hearing happened through video conference, making it worse for the claimant. The decision-maker's insensitivity towards the presence of children and the claimant's emotions, and the video conference setting all complicate the claimant's experience at the hearing.

Some participants referred to the decision-maker as being "good" or "bad" not because of their behaviour in a hearing context but because of their reputation regarding their understanding of certain types of persecution and/or the law. According to Jessica, for example, the "good" decision-makers are those who *"understand domestic violence"* or *"who understand why someone will not talk about sexual violence"*, and the "bad" decision-makers are those who do

not. Jessica explained that some decision-makers do not understand why women did not call the police, did not leave their partner, or did not talk about the violence they suffered to anyone:

*So, I have had decision-makers ask questions such as 'hum, excuse-me, he held you by the neck, he brutalized you with a bottle, and you didn't call the police, you didn't leave him, you didn't tell anyone, that is, you went back to stay with him?' but, but, this is 'battered woman syndrome'.*¹⁶⁴ (Jessica, L; translation)

Problems of misunderstanding regarding the nature of domestic violence and the cycles of leaving and returning to abusive relationships among officials have already been highlighted in the literature (Cianciarulo & David, 2009, pp. 342–433). As highlighted by Jessica, although “*we think everyone knows, not everyone knows*” (Jessica, L; my translation).

Four lawyers also discussed decision-makers’ differences regarding “generosity” in accepting or refusing refugee claimants. “(...) *that’s the system we are dealing with*”, Catherine explained, “*you may get the board member who accepts 2% of the cases, (...) you can get the one who accepts 90%*” (Catherine, L). These testimonies echo research on variations in grant rates between individual adjudicators (Cameron, 2018; Rehaag, 2008b).¹⁶⁵ Finally, Sarah, a lawyer, emphasized that she believes not enough is done to “*review problematic board members*”.

¹⁶⁴ *Donc j’ai des commissaires qui ont posé des questions telles que : ‘euh, excusez-moi, il vous a retenu par le cou, il vous a brutalisé avec une bouteille, et vous n’avez pas appelé la police, vous ne l’avez pas quitté, vous n’en avez parlé à personne, ça c’est, vous êtes retournée rester avec lui ? » mais, mais, ça c’est ‘battered woman syndrome’.* (Jessica, L)

¹⁶⁵ This topic is also discussed in this text from Rehaag: <https://refugeelab.ca/refugee-claim-data-2020/>.

3.4 Women's Agency in Preparing and Attending the Hearing

Women participants have varied experiences in preparing for and testifying at the hearing. While all of them had legal representation, the help they received in preparing for the hearing varied in time and depth from extensive, elaborate help to no help at all.¹⁶⁶ Being (adequately) prepared to testify at the hearing is crucial. What has been learned during the preparation can then be applied at the time of the hearing, and this is one way women claimants may manifest agency during the hearing by consciously making use of the lessons learned during preparation. Nathalie, for example, a claimant, explained how she made use of what she learned from her lawyer when they were preparing to testify at the hearing:

(...) what they told me, I found it helpful, and I made use of it, so, the board members speaking to me, and I do not understand the question, I asked for repeat and I think properly before I answer because I... because I have been told from the beginning that it is a recorded session, so, I think well before I answer, and if I don't understand, I asked and I... and that really helped me. (Nathalie, R)

Claimants' characteristics and life stories play an important role here: some claimants will thus find it easier to understand and apply the advice given. Véronique, for example, the refugee claimant from Pakistan who came to Canada as an undergraduate student, emphasized that she had the time to assimilate into Canadian culture before claiming asylum as she lived in the country for several years as a student. This, she believes, was an advantage for her as it allowed her not only to understand how she had to talk about her story and interact with the decision-maker but also how to act while talking about her story. In this case, agency is also deployed through the use of her personal experience of the Canadian culture and related expectations at

¹⁶⁶ This was the case for Marielle with her first lawyer. She explained that her and her husband did not receive any help in preparing for the hearing.

the hearing. Véronique compared this advantage she had with the situation of someone who is “just coming from a new culture” and explained how her previous life experience in Canada “made a huge difference”:

(...) at this point, I feel like I have assimilated pretty much in the Canadian culture and I would say that was another, quote unquote, advantage (...) someone who is claiming a refugee status like out of the blue or they are just coming from a new culture, a new context, unlike that person I have already been living in Canada for 5-6 years at that point, so that made a huge difference because I was able to cater to the Canadian narrative that is needed or I understood what, you know, what kind of dialogue is best applied to make a process happen. (Véronique, R)

Véronique gave concrete examples of how her experience in and knowledge of Canadian culture helped her testify at the hearing. She highlighted, for example, the difference between Canadian culture and the culture of her country of origin (Pakistan) in terms of the value of being “direct in communication”. Véronique explained that being direct is “not considered nice” in Pakistan, while it is “considered a very positive trait” in Canada, according to her. She also explained how age, sex, gender, sexual orientation, and race may reinforce expectations in this context. Thus, “if you are not like a cis-straight dude”, expectations about the behaviour to adopt in front of someone in a position of power are high:¹⁶⁷

¹⁶⁷ Véronique also explained that, in her opinion, the difficulties related to not being direct enough and other related problems mainly concern immigrant racialized women due to ethnic and cultural expectations they conform to. She also referred to the colonial context in which immigration processes have developed: “(...) obviously, the Canadian refugee immigration processes and policies or like IRCC and the IRB, their structure are very like colonialist anglo... you know, dominant context so, it’s not very culturally sensitive basically”.

if you are young or like if you are a woman, or if you, just, you know, in any case, if you are not like a cis-straight dude right? (...) like, being very direct is considered rude in my culture (...) especially when you are being direct to someone who is in such a high position of power, like if you are talking to, in a hearing, it's a judge who is in front of you, you may have... maybe if that person is older, maybe if he is a guy, he is white, you know, all those dynamics, they will play a role. (Véronique, R)

Thanks to her experience in Canada before claiming asylum, Véronique explained she “*has learned to become that way [direct in communication]*”: “*I have conditioned, I have changed myself to become that way.*” The literature has shown that decision-makers have expectations regarding the behaviour of refugee claimants and that these expectations can be influenced by their Western projections and assumptions (Aberman, 2014; Shuman & Bohmer, 2014). As Véronique already had some experiences of the Canadian culture before claiming asylum, she understood this aspect of Canadian culture better. She used this knowledge when testifying at her hearing.

4. The Decision

Many testimonies highlight that the decision made by the decision-maker resulted from a series of different elements that add up across the entire process. The elements most often mentioned by the participants as explaining the success or failure of the decision are: (1) the evidence collected (8 lawyers), (2) the fact that the client “testified well” (4 lawyers), and (3) the decision-maker (4 lawyers). Five lawyer participants also emphasized the importance of hearing preparation.¹⁶⁸ In the course of this thesis, I have shown how all these elements could in some cases be affected by gender and other axes of social division. Only one participant

¹⁶⁸ Elisa also emphasized the lawyer’s preparation before the hearing.

(Geneviève, L) mentioned potential legal obstacles specifically as reasons for the success or failure of a case.

5. Conceptual and theoretical analysis of the results

Postcolonial feminist ideas allows to connect the different steps of the asylum process studied in the results chapters as part of the same broader colonial context. Thus, as explained above, qualifying for protection in Canada requires not only of transcribing specific stories in specific dominant ways, but also to profer evidence reinforcing these stories and, at the hearing, to perform them in accepted ways in the eyes of the decision-maker; feminist postcolonial ideas show how all these steps converge to reproducing discourses of power in such an pervasive way that these discourses and their working process may sometimes become invisible, which ultimately the objective of the Western system, ie to make believe that the current system reflect actual representations of “Us” and “Them” and that it allows to actually determine who deserves to be a refugee. These representations however are not innocent and serve specific goals as the issue of proving ones sexual orientation illustrates. The analysis thus showed how specific Western imperialist ideas on what are LGBT identities, how they should look concretely like and be proved to gain asylum in Canada. The role of the narrative on what is a “real” or “authentic” sexual minority refugee in reproducing the binary of refugee-receiving/refugee-producing countries, the process of othering, and the building of Western countries’ national identities has already been highlighted in the literature (see, for example, Murray, 2014). Thus, according Murray, the delimited “LGBT” identity is used to promote a specific image of Canada as “a nation where sexual diversity is held aloft as a feature of a “civilized” society, opposed to “uncivilized” societies characterized by their rampant homophobia” (Murray, 2014, p. 26). One specific contribution of postcolonial feminist ideas, as explained above, is to have highlighted the role of gender in the process of othering, in particular with regard to the

construction of Third World women as a homogeneous ‘powerless’ victims group (Mohanty, 2003, p. 29). With an postcolonial feminist perspective, it may be suggested that this construction may explain certain lawyers’ views and practices such as when identifying of individuals as vulnerable person for them to be provided procedural accommodations. It may also impact the advice women receive from their lawyers about what type of information to provide to the decision-maker, depending on whether it is considered irrelevant or useful in light of Canadian asylum expectations. Decision makers’ reliance on imperialist, sexist, racist, class-based, and other assumptions is another concrete illustration of the broader colonial context and the specific goals it serves, as indicated above.

The results – analyzed in an intersectional perspective – revealed, as is the case when analyzing earlier steps of the process, the multiple impacts of sexist, racist, classist, language-based, and other systems of oppression on the difficulties and obstacles women may face in collecting evidence, preparing for, and attending the hearing. The way these steps are currently conceptualized and practiced thus reflects and reproduces sexual, racial, class-based, educational, and cultural forms of differentiation, which together participate to the exclusion of certain less privileged groups of women. The analysis concretely showed, for example, how educational and language-related disadvantages –themselves tied to broader systems of gendered, racial, and classist oppression that privilege some individuals over others – significantly hinder certain women from proving their claims in the expected manner, whether through to the documents they can collect or through their performances at the hearing.

An intersectional perspective then also helps to reveal how women exert agency and the concrete opportunities they may have depending on their privileges. This is exemplified in the collection of evidence and the presentation of the claim at the hearing where, although strong power discourses operate, women find specific ways to reinforce their claims. The situated

character of agency is particularly visible in the conscious efforts of certain women to apply, when testifying at the hearing, the advice they received and the Canadian cultural knowledge they acquire during preparing with their lawyer and in their personal life. This lens on agency – in combination with the intersectional lens – showed how privileges of education and socio-economic status make it easier for certain claimants to answer the decision-maker and to successfully meet Western expectations of storytelling and related performances. The situatedness of agency is also detectable, for LGBTQ+ claimants, in their collection of Western specific evidence of their declared sexual orientation. In this context, the relational aspect of agency also makes visible the relational dimensions of the hearing step, particularly in terms of interactions with the lawyers, who, if conscientious, will give advice to claimants, and the decision-makers, whose interactions with and perceptions of the claimants during the hearing will play a role in their final decisions. The interactions with lawyers in preparing for the hearing additionally demonstrate the embodied character of agency by showing the naturalized character of certain social structures and their impacts. On this topic, the analysis highlighted the role of gendered and racially learned attitudes, as well as attributed roles, in shaping how individuals prepare for the hearing (as women may sometimes be less accustomed to speaking out due to these learned attitudes) and manage care responsibilities.

6. Conclusion

The preparation for the hearing implies a series of steps, such as collecting evidence, requesting procedural accommodations, and preparing to testify at the hearing. All these steps may be complicated by a series of factors whose influence varies from person to person and according to the stage of preparation: the participants' comments show, for example, that the main difficulties in collecting evidence are not quite the same as those associated with preparing to testify. The analysis reveals, for example, that gender and gender roles play a specific role in

preparing to testify at the hearing regarding the advice claimants receive about how to answer questions from the decision-makers and about the behaviours to adopt at the hearing. They may also complicate the preparation in terms of determining who will have the responsibility of making decisions regarding childcare during the hearing. In terms of collecting evidence, it is sexual orientation and the difficulty of collecting documents proving it that participants have especially shed light on. Other factors that may complicate the preparation steps for the hearing include language, education, and income level. All these factors, which often act in combination, can facilitate or limit women's involvement in these preparatory steps and during the hearing. The testimony of Véronique, an educated woman living in Canada for several years before claiming asylum, for example, shows how gender, language abilities, education level, and past and current experiences helped her prepare and testify at the hearing.

Participants also shed light on persistent assumptions and preconceived ideas about women circulating at various levels, including among lawyers and decision-makers. Regarding lawyers, the research confirmed a perception bias on the part of lawyers that women are more “vulnerable”. This perception bias is visible in the tendency to request procedural accommodations more often when the claimant is a woman. The research also re-highlights the stereotypes and myths held by some decision-makers, particularly concerning socio-economic, racial, and gender dynamics, echoing criticisms already well-established in the literature (see, for example, Aberman, 2014; McKinnon, 2016; Shuman & Bohmer, 2014). This research also suggests the prevalence of preconceived ideas about the decision-makers’ understanding of certain experiences of violence or their sensibility based on stereotyped ideas about the intrinsic qualities of men and women, without regard for other factors such as race or class.

Women claimants exert agency in different ways and to different extents in the pre-hearing phase. In terms of collecting evidence, for example, the testimony of Véronique – who made the connection between her involvement and her privileges – illustrates the significant involvement of certain claimants in this step of the process as she explained how she did extensive research and collected numerous documents to support her claim. Then, some actively use the advice they receive to present their cases and defend themselves at their hearings. These testimonies illustrate the possibilities of women's agency in the proceedings. These possibilities greatly vary from one person to another depending on a series of factors and privileges mentioned above. They also unfold in a broader political environment, going beyond interpersonal relations and the individual experiences of each person: see, for example, the expectations and requirements from decision-makers regarding refugee claimants testifying at the hearing.

Chapter 7. Discussion

In this research, I asked three research questions: How do women participate in preparing their claims? What facilitates or limits women's participation in the preparation of a claim? How do intersecting axes of social division influence this participation? In the sections below, I first recapitulate and discuss the findings on the various forms of agency women may deploy in preparing their claims, as well as the main factors that may shape this agency. Then, I discuss the complexity of the power relational context that women navigate and how it may shape the deployment of agency by women. I also elaborate on the continuing prevalence of preconceived ideas about women claimants despite well-established criticisms in the literature. Finally, after highlighting the original contribution of this research, implications for research, policies, and practice are formulated.

1. Women's Agency in Preparing Their Claims

The findings showed that, contrary to dominant representations, women may exert agency in preparing their claims in various ways. Exploring how women participate and exhibit agency in preparing their claims was the first research question I asked.

The findings on legal representation showed some women had early, active roles in searching for and selecting a lawyer. They showed women asking for information and recommendations about lawyers from other newcomers, friends, and acquaintances, and collecting additional information about the lawyers referred to them. They also showed them orienting their searches for lawyers based on the characteristics they desired, in particular regarding sex and language, revealing some women's awareness of the difficulties they may face ahead. These findings show how certain women may not simply call each representative from a list one-by-one until one responds as indicated in the literature (Teklu, 2020, pp. 12-13, as cited in Smith et al., 2021,

p. 21). Further research on women's ways of finding and selecting a lawyer should be encouraged to better understand their experiences in this regard. Then, when faced with low-quality and abusive counsel, the findings revealed that claimants may decide to change lawyers, although it's not always feasible due to a lack of knowledge about their rights in terms of legal representation and restricted financial resources. I will develop these reasons further below. Other manifestations of agency that emerged from the interviews regarding managing difficulties with a low-quality and abusive lawyer included sharing concerns with third parties, asking for a second opinion and making a complaint.

The interviews also revealed a variety of ways women are involved in writing the basis of their claim. Consistent with Oxford's research highlighting the role of women in shaping their narrative of persecution (Oxford, 2014, p. 162), Julie's testimony illuminated some women's ability to impact the transcription of their experiences into a coherent and plausible account on official forms; she explained that she had to correct her lawyer when he misunderstood her story and re-explain to him the important parts. I highlighted above three specific ways agency is exhibited by women in filling out the BOC that emerged from my analysis: the refusal to insert specific experiences in the BOC, the "choice" of not disclosing certain experiences and the story's arrangements to fit (perceived) expectations. Lawyers recounted cases where claimants disagreed about including specific elements in their stories in official forms. Lawyers also explained grappling with a client's refusal to disclose certain experiences; a phenomenon that some literature has already analyzed as a manifestation of their power over what they do or do not disclose (see, for example, Baillot et al., 2012; Johnson, 2011; McFadyen, 2019). However, the reasons behind the non-disclosure may be difficult to establish. Overall, the findings showed that the choice of whether to reveal or not is characterized by a wide variety

of experiences. Some claimants may decide to talk about their experiences of violence relatively easily, while others may require more time to disclose.

The research also illuminated women's agency in collecting evidence. The thesis showed the importance of some women's agency in doing research and collecting the necessary documents to support their asylum claim. Consistent with other research on LGBTQ+ refugee claimants experiences (Murray, 2014, p. 27), the findings also showed the agency of some women in joining LGBTQ+ support group meetings to collect evidence to support their claim. At the hearing, the research also showed that women used the strategies advised by their lawyers during their preparation and their personal experience of Canadian culture for defending themselves.

These findings contribute to the literature on women's agency in the preparation of their claims (see, for example, Jacobs & Maryns, 2022; Oxford, 2008) by illuminating specific ways in which this agency may be deployed. This literature has underlined the importance of such research in challenging the traditional representations of women as only vulnerable and passive. In the section below, I discuss the findings on what may facilitate or limit this agency.

2. Gender Roles, Culture, Ethnicity, and Other Factors

The findings showed how forms of agency that claimants may deploy are shaped by many factors, including gender roles, culture, and ethnicity, but also their levels of privileges in terms of language, financial limitations, and education.

2.1 Gender Roles, Culture, and Ethnicity

The findings illuminated how the roles attributed to men and women in a given society at a given time may impact women's agency in preparing their claim. In writing the basis of their claim, for example, the research showed how some male partners, due to their attributed privileged social position, may be more accustomed to holding positions of power and feel more confident. This may then lead to them dominating the discussions with the lawyers, rendering it difficult for the women claiming asylum with them to share their experiences. Consistent with the literature on this topic (see, for example, Crawley, 2001; Oxford, 2008), I found that this phenomenon is closely related to the cultural backgrounds of the claimants, with the extent of men's dominating stance in discussions depending on their respective cultures. Attributed roles to men and women may also have other effects as exemplified by the testimony of Marielle who explained that she was not there when her husband met their lawyer for the first time. She described that the men from her country of origin typically "*need to control*" ("*it is him who controls the family*")¹⁶⁹ (Marielle, L; my translation)). Although she mentioned that her husband doesn't behave this way, this was the mentality of the friend who helped them find a lawyer. Further research on the effects of attributed roles on women's experiences in searching for a lawyer with their partner should be encouraged.

The research also showed how learned attitudes and roles attributed to men and women may influence their preparation for the hearing due to certain women's lack of self-confidence and unfamiliarity with being in a position of power. The findings underscored how these attitudes and roles – including an excessive assurance of certain men or the lack thereof of certain women – may shape the advice claimants receive from their lawyers on answering questions from decision-makers. The findings also highlighted the advice some lawyers give to women to share

¹⁶⁹ *C'est lui qui contrôle la famille* (Marielle, R).

specific information about their culture to the decision-makers when testifying to address decision-makers' reliance on assumptions and their lack of understanding of the claimants' cultural context. The role that assumptions might play in decision-makers' understanding of claimants' experiences is further discussed below.

In line with the existing literature (see, for example, Baillot et al., 2012; Crawley, 2001; Martin, 2004), the findings showed how gender and culture may intersect in discouraging some women from talking about their violent past experiences with their lawyer, including due to cultural stigma and taboos.¹⁷⁰ The findings illuminated the challenges for women on discussing such experiences in front of the partners, such as when these are perceived as shameful or when there is violence between partners claiming asylum together, making it particularly difficult for women to discuss this violence in front of their abuser. Findings also illuminated the prevalence of trauma and mental health issues that complicate the opportunities for disclosing specific experiences and to do so in an articulated way as expected by dominant Western norms. These issues have been persistently raised in the literature about the BOC and the opportunity to provide a credible narrative for the basis of a claim (Cleveland et al., 2012, 2018; Cohen, 2001; Herlihy & Turner, 2009; Singer, 2014; Webb et al., 2022). One lawyer expressed the idea that, because women are more likely to experience sexual violence, their level of suffering is likely to be higher than men's. This idea however, cannot be generalized and needs to be further studied regarding other axes of social division than only gender.

Issues related to the presence of children have also been highlighted throughout the analysis, suggesting that they may create challenges for women at each step of the process. The

¹⁷⁰ The findings also highlighted how other systems of power intersecting with gender may play a role here: the findings suggested, for example, that young girls may have more difficulties in disclosing their experiences than adult women.

interviews underscored that issues related to childcare are more likely to concern women due to their attributed role of caring for others, which is consistent with the literature (Veenstra, 2020). They also showed that single women or women traveling alone may be particularly affected by these difficulties. The interviews revealed a high number of single mothers with children, which is in accordance with Dauvergne et al.'s research who showed that traveling as sole-support parents is likely to concern women more than men (Dauvergne et al., 2006, p. 55). The findings showed that care work and its associated mental burden can at times hinder women's possibility to fully concentrate on the process and participate in the preparation of their claims. One lawyer explained, for example, that starting to collect documents or preparing a draft of their story may be particularly difficult for women with children due to their caring responsibilities. Similarly, that facilitating childcare during the hearing is more of an issue for women than for men was also mentioned. When children are present during the hearing, women participants, contrary to existing literature on this topic (Canadian Council for Refugees, 2012, pp. 20–21), did not mention any particular difficulties related to this. Lawyers, however, did, such as the difficulty for women to testify on sensitive issues in front their children at the hearing. The presence of children was also mentioned as an additional difficulty when travelling to Montreal for the hearing, with low-income mentioned as rendering this even more difficult.

2.2 Language, Financial Limitations, and Education

The research showed that other factors may exacerbate the obstacles noted above; the most frequently mentioned ones, in addition to gender roles, culture, and ethnicity, are language, financial limitations, and education. Consistent with the literature on accessing legal representation (see, for example, Baglay & Jones, 2017d), the findings showed that language and financial limitations exacerbate difficulties in finding a lawyer. They also showed that

language and financial limitations exacerbate difficulties in changing legal representation when necessary, as claimants may not have sufficient funds to retain alternative legal representation. The findings illuminated how privileges in language, finances, and education may shape claimants' access to the necessary information about lawyers, legal representation, and their rights in this regard.

Language, education, and income level have also been shown to complicate the collection of evidence and the hearing's preparation steps. The research revealed how difficult it can be for certain claimants, especially if they don't read, to translate their documents due to translation costs. This highlights the intersections between language, the level of literacy, and low-income status. Consistent with Singer's research (Singer, 2014), the findings also revealed the role of education in this regard; a low-level of education renders it more difficult for claimants to collect the evidence needed. Education and language were also mentioned by Veronique as privileges in explaining why she believed her hearing happened quickly. One lawyer also mentioned the privilege of certain claimants who, although requiring an interpreter because they are not fluent in English or French, understand some English or French and are able to speak up and explain if the translator is making any mistakes.

The research also illuminated the difficulty for lawyers to dedicate time to prepare for the hearing when they are paid with a legal aid certificate which provides for a fixed number of paid hours to work with the claimant; this is consistent with the existing literature on legal representation (Baglay & Jones, 2017; Smith et al., 2021). Low-income status was also mentioned as a difficulty concerning the need to travel to Montreal for the hearing. As indicated above, access to privileges such as higher education level and higher income, depends on many systems of power, including gender, race and class, and people's position within these systems.

3. Ambivalent Role of Lawyers and Intricate Web of Power Relationships

The research first shed light on the asymmetry of the lawyer-client relationship¹⁷¹ by illuminating the many problems of low-quality and abusive counsel, and the different ways this power differential may take shape in practice, such as through mistakes in the documentation to be submitted, giving inaccurate or no information about the process, and being inaccessible. These findings are consistent with Smith et al.'s research on legal aid and the quality of counsel which highlighted similar examples of low-quality and abusive representation (Smith et al., 2021). The analysis in this thesis reveals that gender might play a role in this context, such as regarding mistakes made in the documentation to be submitted, for example, as women-specific experiences sometimes remain hidden behind their husbands' experiences, leading to mistakes or oversights. The findings also revealed that a lack of knowledge about their rights and about certain specific aspects of the process or even how the whole process works exacerbates many claimants' challenges. In particular, the lack of knowledge about the right to change lawyers arose as an issue.

As is well-established in the literature (see, for example, Crawley, 2001; Jacobs & Maryns, 2022), the findings uncovered that the lawyer's presence, if he is a man, can also create discomfort for some women. However, the findings revealed that having a male lawyer is not a problem for certain women claimants, something that I had not pointed out in the literature review. The research also demonstrated the role that preconceived ideas about the intrinsic qualities of men and women as lawyers might play in this context, without consideration for other elements, including race or class, as developed further below. The findings also confirmed

¹⁷¹ As indicated above, Jacobs and Maryns have already underlined the constraints to which claimants are confronted when interacting with legal service providers due the power dynamics characterizing legal consultations (Jacobs & Maryns, 2022).

the existing literature (see, for example, Crawley, 2001; Jacobs & Maryns, 2022) on the possible negative effect of a (perceived) ethnic sameness between the lawyer and the claimant on a claimant's ease in disclosing her experiences.¹⁷² However, the findings also showed the inverse may be true, with cases where ethnic similarity between the lawyer and the claimant may reinforce the claimant's comfortableness. Overall, this research shows the ambivalent role of lawyers, who are essential, but also sometimes an unintentional obstacle.

The findings illuminated the intricate web of relationships shaping the deployment of agency, as the analysis explored the complex situations that women may encounter due to the multiple power dynamics they must navigate. I discussed above and in Chapter 4 the asymmetrical power relationship between the lawyer and the claimant and the different forms such asymmetry can take in practice. A power asymmetry may also exist between intimate partners due to, among others, learned attitudes and roles attributed to men and women. The relationships with their lawyer and family members may overlap in certain cases in creating specific difficulties for women. Past literature (see, for example, Crawley, 2001; Oxford, 2008) has shown, for example, how the presence of family members and representatives may render certain women reluctant to talk about the experiences. This research uncovered other consequences that overlapping power relationships can have in practice, such as in terms of legal representation in cases of conflicts of interest developing between jointly represented clients. Consistent with the literature (Aberman, 2014), the findings also illuminated the difference in power between claimants and decision-makers, as they are the ones who ultimately decide to grant protection, with possible disastrous consequences for claimants if they don't.

¹⁷² The findings reveal a similar situation as in regard to interpreters.

4. Preconceived Ideas, Stereotypes, and Assumptions

The research showed the prevalence of preconceived ideas about women claimants, as much for lawyers as for decision-makers. Lawyers' biased perception of women as more "vulnerable" was exemplified in their tendency to request procedural accommodations more often for female claimants. This confirms already existing criticisms in the literature of the assumption that women are more vulnerable than men (Purkey, 2022, p. 2). The analysis also confirmed the preconceived ideas and assumptions that some decision-makers have regarding women claimants, reiterating established criticisms in the literature (see, for example, Aberman, 2014; McKinnon, 2016; Shuman & Bohmer, 2014). In particular, the research reiterated the role that preconceived ideas might play in decision-makers' understanding of claimants' experiences of and reactions to violence. On this topic, participants referred to examples of decision-makers blaming the claimant for the sexual violence she was a victim of or adhering to stereotypical ideas on domestic violence cases, such as about the moment the claimant should have left the abuser. This confirms the persistence of those ideas, which have already been criticized in the literature (Arbel, 2013; Cianciarulo & David, 2009; Shuman & Bohmer, 2014). However, the findings also illuminated the great sensibility of certain decision-makers towards claimants, as well as a thorough understanding of the specificities of domestic violence and sexual violence cases. Consistent with other research on LGBTQ+ refugee claimants' experiences (Berg & Millbank, 2009; Millbank, 2009; Murray, 2014; Rehaag, 2008a), the findings revealed the persistence of stereotypes on gender identity and sexual orientation and the Western ideas influencing how these must be proved by claimants.

The findings also showed the role of such preconceived ideas on claimants' feelings and comfortableness with their lawyers, with several testimonies illuminating the prevalence of the idea that women lawyers would be better positioned to listen to and work with women claimants

than male lawyers. Although this idea has already been criticized in the literature for not taking into consideration differences between people in terms of their positioning within social and power systems, their individual skills, beliefs or personal characteristics (see, for example, Baillot et al., 2012), as indicated in Chapter 5, the findings showed the idea's continuing prevalence. The findings also revealed the role of such perceptions on some lawyers' request for the accommodation of providing a panel and an interpreter of a particular gender at the hearing. The idea that some claimants might prefer a decision-maker who is a woman is predominant in supporting such request, particularly if the claimant experienced gender-based violence, illuminating an existing presumption that women decision-makers would be better positioned to understand these experiences. However, in line with Baillot et al.'s writings on this topic, contradictory testimonies showed this not to be the case, with lawyers testifying that some women decision-makers have little understanding of gender-based violence.

5. Original Contribution of This Research

5.1 Specific Contributions

With the help of the three-part conceptualization of agency developed in the conceptual and theoretical framework, this research explored, by relying on intersectional and feminist postcolonial perspectives, the various forms of agency women may exert in preparing their claims. The findings illuminated a variety of forms this agency can take regarding the three specific issues under study here, i.e., legal representation, writing the basis of the claim, and preparing for the hearing.

In accordance with the existing literature (Baillot et al., 2012; Johnson, 2011; McFadyen, 2019; Oxford, 2014), the findings highlighted women's role in writing the basis of their claim and shaping their narrative of persecution. For example, the findings showed some women's ability

to shape the transcription of their personal stories on official forms through discussions with their lawyers, their ability to not disclose certain experiences or not include them in official forms, and the potential arrangements to their stories to fit perceived expectations. One contribution of this research lies in shedding light on the agency that women may deploy in relation to other, early aspects of the process, particularly in searching and selecting a lawyer. In this regard, the findings showed the different forms this agency can take, from asking for information and recommendations about lawyers to searching for lawyers based on characteristics they desired. While Teklu's research (Teklu, 2020, pp. 12-13, as cited in Smith et al., 2021, p. 21) reported that certain claimants mechanically called representatives from a list they received, the analysis in this thesis provides insight into a more nuanced understanding of certain women's experiences actively searching for and selecting the lawyer of their choice. My research also explored certain women's decision to change lawyers. As indicated above, four out of the nine women claimants who participated in this research decided to change lawyers at some point during their claim process. They all cited reasons related to the quality of representation as their motivation behind this decision, highlighting how changing lawyers can be a deliberate action for certain women to overcome low-quality representation. The research also illuminated other ways women can react to a low-quality and abusive lawyer such as asking for a second opinion and/or making a complaint.

Regarding other aspects of the process, it appears from this study that certain women actively contribute to collecting the necessary evidence to support their claim, although their role in this collection may be potentially limited by intersecting factors such as language, education, and income level. Finally, while existing research has extensively discussed the issue of credibility assessment in relation to claimants' behavior at the hearing (see, for example, Oxford, 2005, 2014; Shuman & Bohmer, 2004; Spijkerboer, 2016), one contribution of this study has been to

show different ways in which some women consciously adapt their behavior during the hearing, drawing on their preparation and lived experience in Canada.

Another contribution of this thesis lies in underscoring some factors that shape this agency, with a specific interest in understanding how these factors may intersect in influencing women's involvement in preparing their claims. Past research has illuminated how the roles attributed to men and women can negatively influence women's comfort in talking about their experiences when writing the basis for their claim, as well as the role of culture in this regard (see, for example, Crawley, 2001; Oxford, 2008). In accordance with this literature, the findings here highlighted the possible consequences of men being attributed with privileged social positions over certain women, affecting their ability to share their experiences. The findings also echoed the abundant existing literature on the difficulties women face in sharing their experiences and constructing a coherent narrative that aligns with Western expectations due to cultural stigma, taboos, trauma, and mental health issues (see, for example, Baillot et al., 2012; Cleveland et al., 2012, 2018; Cohen, 2001; Crawley, 2001; Herlihy & Turner, 2009; Martin, 2004). In light of this literature, the findings here showed that the roles attributed to men and women, as well as their culture and ethnicity may also shape agency in other aspects of the refugee determination process beyond the construction of the narrative. When it comes to seeking a lawyer, for example, the social position of control attributed to men in a given society may lead in their partners not participating in the search or meeting with potential lawyers. This was exemplified by Marielle's testimony which emphasized the need of men from her country of origin to be in control; she explained that she was not present when her husband met their lawyer for the first time. Later in her testimony, she also explained that they had issues with their lawyer, but that they had already paid him, suggesting that they may not have had enough money to hire someone else at the time. These elements show how specific gender roles in certain societies,

as well as financial limitations, may intersect and complicate the search for and retention of lawyers by women.

Consistent with Baglay and Jones' research (Baglay & Jones, 2017), the findings also showed how language may further exacerbate difficulties in this regard. Further research on these elements and their intersections should be encouraged, including on their role in shaping claimants' ability to access necessary information on legal representation. The research indeed illuminated how limitations in terms of language, finances, and education may hinder claimants' opportunities to find all the necessary information about legal representation, and that a lack of knowledge in this regard may exacerbate claimants' challenges.

Another example of how gender roles, culture, and ethnicity may shape agency concerns the preparation for the hearing and the advice claimants receive from their lawyers on answering questions from decision-makers. As explained above, the analysis showed learned attitudes and attributed roles may shape this advice depending on claimants' self-confidence level and their cultural context.

Past research has also illuminated how the roles attributed to men and women may create stronger expectations and heavier duties in terms of childcare for women, leading to specific obstacles for them in preparing their claim (Canadian Council for Refugees, 2012; Dauvergne et al., 2006; Veenstra, 2020). In accordance with this literature, the findings showed how tasks and worries related to childcare may sometimes impede women from fully engaging in the process of preparing their claim. The analysis underscored that this phenomenon may negatively affect several steps of the process for women, including starting to collect documents, drafting a narrative, and preparing the hearing. Further research could explore how

other factors, such as financial limitations, may intersect with these care-giver responsibilities in shaping women's engagement in preparing their claim.

Another important contribution of this research lies in its highlighting of the specific consequences that arise from women's overlapping relationships with the family members that they claim asylum with and their lawyers. As indicated above, authors (see, for example, Crawley, 2001; Oxford, 2008) have already emphasized how the power differential between women and certain family members may overlap with the dynamic characterizing the relationship between claimants and their lawyers, creating a reluctance for claimants to talk about their experiences in front of each other. This research showed that these overlapping relationships may entail additional consequences, particularly concerning legal representation in situations where conflicts of interest arise between jointly represented clients. On this topic, the analysis specifically emphasized the potential difficulties faced by jointly represented claimants between whom there is intimate partner violence, particularly concerning the necessity of finding two new lawyers to work with.

The last specific contribution of this thesis is shedding light on the continuing prevalence of a series of preconceived ideas, stereotypes, and assumptions not only about women claimants among lawyers and decision-makers, but also among claimants about lawyers and decision-makers. Although stereotypes and perceptions of women as vulnerable have been extensively criticized in the literature (see, for example, Aberman, 2014; McKinnon, 2016; Mohanty, 2003; Razack, 1998; Spijkerboer, 2016), the analysis showed their persistence among lawyers, evidenced by their tendency to request procedural accommodations more often when the claimant is a woman. The analysis also addresses the prevalence of stereotypes and perceptions among decision-makers, especially in relation to women's experiences of violence.

Importantly, the research also illuminated the nuanced behaviour and complex understanding of certain decision-makers regarding women's experiences. Finally, the research addressed stereotypes existing among claimants about lawyers and revealed the influence preconceived ideas about gender and ethnicity may have on their ease to work with a lawyer. The analysis provided a nuanced portrayal of claimants' feelings and comfortableness regarding gender and/or ethnic differences between themselves and their lawyers; while such differences may create discomfort for some, this may not be generalized.

5.2 Contributions to the wider research

The research answers a need, highlighted by feminist analyses of forced migration, to further document the lives and struggles of women claimants (Brooks, 2007; Dauvergne, 2021; Letherby, 2003), and how these lives and struggles contradict their representation as powerless victims (Aberman, 2014; Oxford, 2008, 2014; Spijkerboer, 2016).

By adopting a feminist postcolonial perspective, the research contributes to the broader literature by concretely demonstrating how the broader colonial context shapes women claimants' experiences and their consequences. The research thus showed the concrete obstacles this context translates into, such as the time limit of 15 days imposed on those who apply for asylum at a Port of entry to submit their BOC and the many problems arising from low-quality or abusive lawyers due to the unequal power structures this context perpetuates. These concrete obstacles also include lawyers' and decision-makers' reliance on imperialist, sexist, racist, class-based, and other assumptions in their interactions with claimants. The intersectional analysis then helped reveal how the obstacles women face vary significantly depending on their different social locations. This was particularly visible in the difficulties women face in their social interactions while filling out official forms, and in the disadvantages certain women encounter when collecting evidence and preparing for the hearing. These

challenges stem from broader systems of gendered, racial, classist, ethnic, educational and language-based oppression that privilege some women over others, and that significantly hinder certain women from proving their claims in the Western expected manner.

With this in mind, the research thus aimed to fill in gaps identified in the literature by exploring the active participation of women and how it translates into concrete practices and achievements, specifically with regard to what to write in the BOC, collecting evidence, accessing legal representation, managing low-quality and abusive representation, and preparing for the hearing. To do so, the research puts into practice and engages with McNay's specific conceptualization of agency within the field of forced migration and refugee studies, while also drawing on postcolonial feminism and intersectionality to better understand the context in which agency is exercised, the systems influencing its deployment and the ways in which this occurs, as mentioned above. In this context, postcolonial feminism and intersectionality are used as frameworks and tools to analyze agency. At the end of each results chapter, I showed more concretely the contributions of this specific conceptual and theoretical framework to the analysis.

Overall, the research confirms the importance of context, as demonstrated by the analysis of agency's situated aspect. The analysis showed this aspect to be not only predominant, but also complex and multifaceted – referring at the same time to the broader political context, as postcolonial feminists have shown, and to the specificities of each step of the process and each individual woman's situation. The research showed how agency emerges from these contexts in tension. The analysis also demonstrated that agency, as situated phenomenon, is not static but evolves in time and space as women navigate their arrival in Canada, form diverse relationships, and progressively acquire knowledge of the process and Canadian culture.

Finally, the analysis also showed how the different aspects of agency as situated, embodied and relational may work together. This can be concretely illustrated by the example of claimants who never disclose their experiences to their lawyers. In an example mentioned in chapter 5, I referred to the situation of certain claimants who never talked about their experiences, with a specific reference to situations of domestic violence. This example illustrates the situated aspect of agency, reflecting specific expectations placed on women to demonstrate that they have been victims of violence, particularly in domestic violence cases, and the difficulties they may face in doing so. In addition, this example highlights, in my opinion, how the embodied and relational aspects of agency further help analyse the situation by shedding light on gender roles and cultural expectations of women in their intimate relationship and their roles within society. It also shows how these expectations concretely influence their relationships with their partner and lawyers, as well as the power lines that structure these relationships.

6. Implications for Policies, Practice, and Research

6.1 Implications for Policies and Practice

From these findings, I have identified several implications and recommendations for policies and practice: continue raising awareness about the diverse challenges women face when claiming asylum together with their husbands and children, and adapt services accordingly; address gaps in women's knowledge about asylum proceedings and increase reporting structures for low-quality and abusive counsel; and continue efforts to make known and deconstruct preconceived ideas about women.

Continue raising awareness about the diverse challenges women face when claiming asylum together with their husbands and children, and adapt services accordingly

This research showed that women, depending on their cultural background, may face a series of diverse challenges when claiming asylum with their husbands and children, especially when less privileged in terms of language, finances, and education level. In order to better support these women, it is necessary for service providers to be aware of the diversity of these challenges and how they may differently affect women depending on the context. It is also necessary to explore ways to address these challenges, such as by adapting services when feasible. Some lawyers explained, for example, creating opportunities to interrogate the partners separately or without the children present. Some of these participants mentioned systematically meeting the partners separately, while others indicated doing so only when they feel it is necessary. One lawyer explained that they are currently developing strategies in this regard, suggesting that, for some lawyers, the practice of meeting partners separately may not yet be well-established. Such opportunities must be thought about and developed in advance as they may sometimes be difficult to be put into practice from a logistical point of view, for example, if the couple needs an interpreter (Christine, L). It may also not be feasible from the claimants' point of view, as they may not yet trust the lawyer (Christine, L).

Related to this is the need for service providers to be aware of their own positioning¹⁷³ and how it may affect women's comfort in working with them. This research showed how this comfort level may vary from one woman to another, sometimes in unexpected ways. For example, while ethnic sameness between the lawyer and the claimant has been previously identified in the literature as potentially negatively impacting women's trust in their lawyers (see, for example, Crawley, 2001; Jacobs & Maryns, 2022), the findings here highlighted that this is not always the case. In fact, such a similarity may sometimes reinforce trust. In the same vein, results have

¹⁷³ The literature has already highlighted the importance for legal service providers to be aware of their positionality and how it may affect their understanding of claimants' experiences and the quality of the services they provide (Ajele & McGill, 2020).

shown that women claimants are not necessarily uncomfortable with a male lawyer. If uncomfortable, however, the analysis revealed that women are not always aware of their right to change lawyers, which can have serious consequences, for example, if they do not disclose certain aspects of their experiences. The importance of addressing gaps in women's knowledge about these legal proceedings is further developed below.

Highlighted in this research was also how care giving and its associated mental burden may at times impede women from being fully concentrated on the process. This suggests that efforts should be increased to raise awareness of childcare issues among lawyers and decision-makers and to increase support for women in this regard.

Address gaps in women's knowledge about asylum proceedings and increase reporting structures for low-quality and abusive counsel

The interviews made it clear that a lack of knowledge about asylum proceedings is prevalent among claimants. Consistent with the literature (Oxford, 2016), the findings uncovered a lack of knowledge about the steps to claim asylum and the immigration system in general. More particularly, they also illuminated a lack of knowledge about the role of legal representation and claimants' rights regarding this representation. This lack of knowledge exacerbates the power differential between claimants and lawyers and needs to be addressed. Better, early knowledge about the process may help women in choosing sooner a more adequate lawyer in terms of gender and language and knowing about the opportunity to change lawyers if it becomes necessary. While Dauvergne et al. have previously recommended making "information on how the process works" accessible (Dauvergne et al., 2006), I reiterate this suggestion, adding that the information provided should encompass each step of the process,

with a specific emphasis on legal representation. Particular attention must be paid to ensuring that the information is accessible to claimants with limited proficiency in French or English and financial means, as well as low levels of education.

As low-quality and abusive counsel have emerged as key issues in this research, I also recall Smith et al.'s recommendation to increase oversight and reporting structures for such counsel (Smith et al., 2021). As indicated above, Smith et al. recommend, among others suggestions, that Law Societies, Legal Aid Plans and the IRB establish a standardized reporting structure for cases of problematic counsel (Smith et al., 2021). They also note that more flexible and streamlined options should be offered by Legal Aid Plans for changing counsel when complaints are justified (Smith et al., 2021). One lawyer also mentioned that there is insufficient effort made to “*review problematic board members*” (Sarah, L), suggesting that a similar recommendation may be directed towards decision makers as well.

Continue efforts to make known and deconstruct preconceived ideas about women

The analysis underscored the continuing prevalence of preconceived ideas about women claimants among lawyers and decision-makers, despite established criticisms of these prejudices in the literature (see, for example, Aberman, 2014; McKinnon, 2016; Shuman & Bohmer, 2014). Although certain lawyers and decision-makers are already well-aware of these ideas, the findings still illuminated the prevalence of three main types: the idea of women as more vulnerable than men, misconceptions about women's experiences of violence and their reactions to them, and stereotypes on gender identity and sexual orientation. While women are vulnerable in many ways, it is necessary to be aware that this vulnerability is not common to all women, but may take many forms and be more or less exacerbated depending on women's

social positioning and the context in which they claim asylum. This is exemplified by the experience of Emily and her husband who explained having been abused by their first lawyer. However, they worked as lawyers in their country of origin and were thus used to working with a legal system, which they recognize as giving them a potential advantage compared to other newcomers. Emily and her husband also spoke English which further shaped their experiences and possibilities for exercising agency. Veronique, who came to Canada as an undergraduate student and decided later to apply for refugee status, expressed similar ideas by emphasizing how her privileges, including having had a university education and work in Canada, shaped her experiences in claiming asylum.

Regarding women's experiences of violence and how they react to them, it is necessary to know that these may vary considerably depending on the claimant's type of experiences, culture and ethnicity, among other elements, and that the claimants' behavior may not be the one lawyers and decision-makers might expect. To improve lawyers' understanding of these experiences, Dauvergne et al. recommended including information about gender, as well as how, when and why it needs to be taken into consideration in the asylum process in continuing legal education programs (Dauvergne et al., 2006, p. 48). Such information should also include specific information about the continuing prevalence of preconceived ideas about women claimants and their possible consequences. This may also be done earlier, starting in university training. Regarding decision-makers, two lawyers explained how they adapt their hearing preparation by including extra information on the role of intersecting axes of social division or on sexual and domestic violence in explaining women's experiences. One lawyer also specifically mentioned including scientific articles on stereotypes in her submissions, suggesting that some individuals use and disseminate relevant literature to raise awareness.

6.2 Implications for Research

A series of limits to this research have been raised in the methodology chapter, some of which are related to the sampling criteria which necessarily limited the recruitment and the extent of data gathered (Greenwood, 2017, p. 266; Silva, 2015, p. 60). The number of interviews I undertook is limited and does not reflect the diverse experiences of women claimants, which are extremely varied and multifaceted. Further research on these experiences should be promoted. Future research may explore other forms of women's agency in preparing their claim as women's agency is likely to take other forms than the ones presented here. In this thesis, I only highlighted a few of the women's decisions and actions and in relation to only some specific steps of the process. Further research may thus look at women's agency in relation to other steps of the process, such those after being refused refugee protection. Some of women's decisions and actions, although mentioned in this research, would also benefit from further investigation, such as women's different experiences in finding and selecting a lawyer. Further research may also investigate the motivations behind certain women's non-disclosure.

While the research highlighted a series of factors shaping women's agency in preparing their claim, further investigation of these should be encouraged. Future research may first expand on certain factors mentioned in this research that need further investigation, such as effects of gendered roles on women's experiences in searching for a lawyer with their partner. Then, research may also be interested in expanding on the list of factors I proposed and their related difficulties. Indeed, this list is not exhaustive, and future research could build on this work to develop a more complex analysis of the issues under study. Research on how gender, race, and class may intersect with other axes of social division, such as disability, sexual orientation, and gender identity (which has progressively gained much interest in the literature), must be encouraged. The list of factors I suggested in this research reflects the main elements I detected

from my interviews, the analysis of which is influenced by my positionality, methodological choices and the conceptual and theoretical framework.

Other issues that could be further researched include how the axes of social division shape the lawyer-claimant relationship and the potential consequences of this dynamic on building a claim, as well as the solidarities between lawyers and claimants in preparing claims.

7. Conclusion

In this chapter, I reviewed and discussed the findings presented in the three results chapters. First, in light of the first research question of the thesis, I examined the findings that show the various forms of agency women may deploy in preparing their claims. Considering the second research question, the following section of this chapter discussed the findings related to the potential factors facilitating or limiting women's agency, focusing primarily on gender roles, culture, and ethnicity, as well as claimants' levels of privilege in terms of language, financial limitations, and education. The third section of this chapter was concerned with the ambivalent role of lawyers and the asymmetric character of the claimant-lawyer relationship. In this section, I discussed the various challenges that may arise with a low-quality and abusive counsel, such as mistakes in the documentation to be submitted, as well as the role that gender might play in this context. I also discussed the potential role of the lawyer's gender and ethnicity on the claimant's comfort level with them. The findings reveal a nuanced picture of the different ways axes of social division may shape claimants' and lawyers' feelings in this regard, sometimes in unexpected ways. The lack of knowledge about the right to change lawyers was also identified as an important issue. The power asymmetry that can exist between intimate partners and family members, and how it may overlap with other asymmetric relationships,

such as the claimant-lawyer relationship, is also discussed, along with potential consequences of these overlaps.

An important part of the discussion was dedicated to the continuing prevalence of preconceived ideas about women claimants among lawyers and decision-makers, renewing well-established criticisms in the literature (see, for example, Aberman, 2014; McKinnon, 2016; Shuman & Bohmer, 2014). I also discussed the role of such preconceived ideas on claimants' comfort with their lawyers and on some lawyers' requests for the accommodation of providing a panel and an interpreter of a particular gender at the hearing.

Finally, I underscored the original contribution of this research in shedding light on other forms of women's agency, providing insight into a more nuanced understanding of certain women's participation related to the three specific issues under study here: legal representation, writing the basis of the claim, and preparing for the hearing. Other original contributions include how factors may shape this agency in other aspects of the refugee determination process beyond the construction of the narrative, and the potential consequences of women's overlapping relationships with the family members with whom they claim asylum and their lawyers. In this last section of the thesis, the following implications for policies have been identified: continue raising awareness about the diverse challenges women face when claiming asylum together with their husbands and children, and adapt services accordingly; address gaps in women's knowledge about asylum proceedings and increase reporting structures for low-quality and abusive counsel; and continue efforts to make known and deconstruct preconceived ideas about women. I also identified a series of implications for research.

Conclusion

The thesis aimed to provide a better understanding of women refugee claimants' experiences in seeking asylum in Canada and the role of gender on their claim preparation by focusing on three specific issues: legal representation, the writing of the basis for the claim, and the preparation for and presentation of the case at the hearing. I aimed to explore the diversity of women's experiences in relation to these issues and to make these experiences visible. More particularly, I aimed to explore the agency of women claimants, looking at the obstacles they may face and their actions to overcome them. I also strove to address the different factors that may facilitate or limit this agency and how these factors may intersect. As indicated above, the number of persons claiming asylum in Canada has significantly increased over the past few years, with a little less than half of them being women (Government of Canada, 2022, 2023; Smith et al., 2021). Feminist analyses and advocacy (see, for example, Arbel et al., 2014; Baillot et al., 2012; Crawley, 2001, 2021; Dauvergne, 2021; Dauvergne et al., 2006; Edwards, 2010; Freedman, 2010; Spijkerboer, 2016) have illuminated the difficulties women face when seeking asylum and their persistence despite extensive research and efforts aimed at underscoring and addressing these difficulties. This analysis and advocacy have also greatly criticized the representations of women solely as vulnerable victims, emphasizing also their agency (see, for example, Carastathis et al., 2018; Harper, 2012; Jacobs & Maryns, 2022; Mohanty, 2003; Oxford, 2008; Razack, 1998; Spijkerboer, 2016; Stasiulis et al., 2020). This research drew inspiration from this literature and sought to contribute to it by relying on a three-part conceptualization of agency as a situated, embodied, and relational phenomenon (McNay, 2016, p. 41). Relying on feminist postcolonial perspectives and intersectionality further allowed me to illuminate the broader context of women's agency and its diverse forms. This conceptual and theoretical framework informed the entire research project.

Using qualitative methods of data collection, I conducted nine interviews with women who had been through the refugee determination process and 14 with immigration lawyers. I also observed three meetings between refugee claimants and their lawyers. During the thematic analysis process and the reporting of the results, I aimed to center the women claimants' voices in the analysis. In the three results chapters, this translated into using their testimonies as a starting point for explaining the data. The women's testimonies, complemented by those of the lawyers, have allowed for the further exploration of the claimants' experiences in relation to the three specific issues studied.

This study offered a detailed description of a collection of ways women exert agency in relation to these three issues. These various forms of agency complicate the representations of women claimants as simply and only vulnerable. Indeed, women may face vulnerability and restrictions in many ways as they go through the different steps of the asylum process. Despite this, they may take actions and make decisions in relation to each of these steps, which, when focusing only on their vulnerabilities, may remain unnoticed. One contribution of this research, for example, is that it reveals the women's agency in searching for and selecting a lawyer, which often occurs within a context where they may face numerous difficulties upon their recent arrival.

The research also underscored the women's many other decisions and choices, such as changing lawyers as a deliberate action to overcome low-quality representation or adapting their behavior during the hearing based on what they have learned from their lawyer or their personal knowledge of Canadian culture. Drawing on a conceptualization of agency as a situated phenomenon, the research also offered a description of different factors potentially facilitating or limiting this agency, specifically, gender roles, culture, and ethnicity but also language,

financial limitations, and education. The analysis, conducted using intersectionality, showed in several instances how many of these factors may intersect in shaping women's involvement in their claim's preparation. How gender roles, culture, financial limitations, and language may intersect to complicate the search for and retention of lawyers by women, for example, was highlighted. Another example concerns women's ability to access the necessary information on legal representation, which was shown to be hindered for women with fewer privileges in terms of language, finances, and education. Another contribution of this research, drawing here on the relational facet of agency, is on the different ways power relationships between partners claiming asylum together and between them and their lawyers may combine. In addition to echoing existing literature on claimants' reluctance to talk about their experiences in front of each of other (see, for example, Crawley, 2001; Oxford, 2008), this research uncovered other potential consequences of the overlapping of these relationships, specifically in cases of conflicts of interest arising when there is intimate partner violence between jointly represented clients.

Finally, the results reaffirmed the prevalence of preconceived ideas about women claimants, specifically on their vulnerability and on their experiences of and reactions to violence. As explained in the literature review, these representations had already been extensively studied and criticized in the literature (see, for example, Aberman, 2014; Arbel, 2013; Cianciarulo & David, 2009; McKinnon, 2016; Mohanty, 2003; Morokvasic, 2002; Razack, 1998; Shuman & Bohmer, 2014; Spijkerboer, 2016), which has underlined the various historical, political, and social power structures intersecting in their reproduction and the different goals they serve. While this research has illuminated the great sensibility and thorough understanding of women's experiences of certain lawyers and decision-makers, the research also showed the persistent weight of these preconceived ideas.

Overall, the research offered a nuanced description of certain challenges that women may face in preparing their claims and of their potential strategies to overcoming them. In doing so, this thesis aligned with and contributed to the dismantling of their representations as a uniform group of powerless victims. Recognizing gender as a central analytical category, the study examined its intersections with other axes of social division in shaping the experiences of women in terms of the obstacles they face but also in terms of their decisions and actions to advance their claims. The use of intersectionality and postcolonial feminist perspectives led specifically to looking at these intersections, but also to pay particular attention to the structures of domination and the historical and present contexts in which these are embedded. Nevertheless, the analysis shows that stereotypical representations and a certain misunderstanding of women's experiences still exist and play a role in determining who obtains refugee status and who does not. Further research on women claimants' experiences, in particular with regard to other, additional forms of agency in advancing their claims, should be encouraged in this regard to continue exploring their varieties and complexities. This may include further research on the three issues addressed in this research, but also on other aspects or stages of the process.

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Appendices

Appendix 1. Posters – Women

Université d'Ottawa | University of Ottawa

FORMER WOMEN ASYLUM SEEKERS INVITED TO PARTICIPATE IN A RESEARCH ON THE REFUGEE STATUS DETERMINATION PROCESS

We are currently looking for participants for a PhD research project on the experiences of women asylum seekers during the refugee status determination process. The project is partially financed by Trajetvi, a research group working on the trajectories of women in vulnerable contexts.

The project aims at learning more about the experiences of women during the refugee status determination process and their interactions with lawyers and/or immigration consultants during the process. Your experiences and knowledge are important and we would like to know more about it.

Your participation would consist of an interview of 1 to 3 hours, which will be recorded only for the purpose of this research. You can ask to stop the recording at any moment. You can also ask to stop the interview or refuse to answer any question that you are not comfortable answering. Questions will be related to your relations with lawyers/immigration consultants and how they helped you through the process.

The confidentiality of the data collected during the interview will be protected. The names of the participants and the organizations they are working for will be kept confidential, as well as the recordings, transcriptions and notes taken during the interviews. The recordings, transcriptions and notes will only be at the disposal of the researcher. One other person may help with the transcription of the interviews only. However, the recordings will be anonymized and a confidentiality agreement will be signed. No information about the identities of the participants will be disclosed in any oral or written communication.

To participate, you need to

- Be a woman;
- Be a former asylum seeker (to have received the refugee status);
- Speak French or English;

If you are interested in participating in this project, or if you would like to have more information on the subject, you can contact any of the following persons:

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RECHERCHE : FEMMES AYANT OBTENU LE STATUT DE REFUGIE POUR PARTICIPER A UNE ETUDE SUR LE PROCESSUS DE DETERMINATION DU STATUT DE REFUGIE

Nous sommes actuellement à la recherche de participantes pour un projet de recherche doctoral sur les expériences des femmes pendant le processus de détermination du statut de réfugié. Le projet est partiellement financé par Trajetvi, un groupe de recherches sur les trajectoires des femmes dans des contextes de vulnérabilité.

Le projet a pour objectif d'en apprendre davantage sur les expériences des demandeuses d'asile et leurs interactions avec des avocat-es et/ou des consultant-es en immigration pendant la préparation de leur demande.

Votre participation consisterait en une entrevue d'environ 1 à 3 heures, qui serait enregistrée pour les besoins du projet uniquement. Vous pouvez demander d'arrêter l'enregistrement à tout moment. Vous pouvez aussi demander d'arrêter l'entrevue ou refuser de répondre à toute question si vous ne vous sentez pas à l'aise de le faire. Les questions concerneront vos relations avec les avocat-e-s/consultant-es en immigration à travers le processus.

La confidentialité des données collectées pendant l'entrevue sera protégée. Les noms des participantes et des organisations pour lesquelles elles travaillent resteront confidentiels, ainsi que les enregistrements, les transcriptions et les notes éventuelles prises pendant les entrevues. Ces éléments seront à la disposition de la chercheuse uniquement. Une autre personne pourrait aider avec la transcription des entrevues seulement. Cependant, les enregistrements seront rendus anonymes et la personne devra signer une entente de confidentialité. Aucune information permettant d'identifier les participantes n'apparaîtra jamais dans aucun document qui pourrait être produit dans le cadre de ce projet.

Pour participer, vous devez :

- Être une femme ;
- Avoir obtenu le statut de réfugié ;
- Parler français ou anglais ;

Si vous êtes intéressée de participer à ce projet, ou si vous souhaitez avoir plus d'informations sur le sujet, vous pouvez communiquer avec les personnes suivantes :

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Appendix 2. Posters – Lawyers

LAWYERS, IMMIGRATION CONSULTANTS AND LEGAL COUNSELS INVITED TO PARTICIPATE IN A RESEARCH ON THE REFUGEE STATUS DETERMINATION PROCESS

We are currently looking for participants for a PhD research project on the experiences of women asylum seekers during the refugee status determination process. The project is partially financed by Trajetvi, a research group working on the trajectories of women in vulnerable contexts.

The project aims at learning more about the experiences of women during the refugee status determination process and their interactions with lawyers, immigration consultants and legal counsels during the preparation of their cases.

Your participation would consist of an interview of 1 to 3 hours, which will be recorded only for the purpose of this research. You can ask to stop the recording at any moment. You can also ask to stop the interview or refuse to answer any question that you are not comfortable answering. Questions will be related to your relations with asylum seekers during the refugee status determination process and the help/support given to them in the preparation of their cases.

The confidentiality of the data collected during the interview will be protected. The names of the participants and the organizations they are working for will be kept confidential, as well as the recordings, transcriptions and notes taken during the interviews. The recordings, transcriptions and notes will only be at the disposal of the researcher. No information about the identities of the participants will be disclosed in any oral or written communication.

To participate, you need to

- Be a lawyer, an immigration consultant or a legal counsel;
- Work in Ottawa;
- Speak French or English;

If you are interested in participating in this project, or if you would like to have more information on the subject, you can contact any of the following persons:

Charlotte Dahin, PhD student, Institute of Feminist and Gender studies, University of Ottawa

RECHERCHE : AVOCAT-E-S, CONSULTANT-E-S EN IMMIGRATION, CONSEILLER-E-S JURIDIQUES POUR PARTICIPER A UNE RECHERCHE SUR LE PROCESSUS DE DETERMINATION DU STATUT DE REFUGIE

Nous sommes actuellement à la recherche de participant-e-s pour un projet de recherche doctoral sur les expériences des femmes pendant le processus de détermination du statut de réfugié. Le projet est partiellement financé par Trajetvi, un groupe de recherches sur les trajectoires des femmes dans des contextes de vulnérabilité.

Le projet a pour objectif d'en apprendre davantage sur les expériences des demandeuses d'asile et leurs interactions avec des avocat-e-s, des consultants en immigration et des conseillers juridiques pendant la préparation de leur demande.

Votre participation consisterait en une entrevue d'environ 1 à 3 heures, qui serait enregistrée pour les besoins du projet uniquement. Vous pouvez demander d'arrêter l'enregistrement à tout moment. Vous pouvez aussi demander d'arrêter l'entrevue ou refuser de répondre à toute question si vous ne vous sentez pas à l'aise de le faire. Les questions concerneront vos relations avec les personnes qui demandent l'asile pendant le processus de détermination du statut de réfugié et l'aide/soutien donné par rapport à la préparation de la demande.

La confidentialité des données collectées pendant l'entrevue sera protégée. Les noms des participant-e-s et des organisations pour lesquelles ils et elles travaillent resteront confidentiels, ainsi que les enregistrements, les transcriptions et les notes éventuelles prises pendant les entrevues. Ces éléments seront à la disposition de la chercheuse uniquement. Aucune information permettant d'identifier les participant-e-s n'apparaîtra jamais dans aucun document qui pourrait être produit dans le cadre de ce projet.

Pour participer, vous devez :

- Être un-e avocat-e, un-e consultant-e en immigration ou conseiller/conseillère juridique ;
- Travailler à Ottawa ;
- Parler français ou anglais

Si vous êtes intéressé-e-s de participer à ce projet, ou si vous souhaitez avoir plus d'informations sur le sujet, vous pouvez communiquer avec les personnes suivantes :

Charlotte Dahin, doctorante, Institut d'études féministes et de genre, Université d'Ottawa

Appendix 3. Interview Guide – Women

Comment: As explained in Chapter 3 on methodology, I conducted individual semi-structured interviews. This means that certain questions were planned, as visible in the interview guides, but participants could still discuss other aspects of the subject as they wished. As explained above, this type of interview allows for the exploration of the project's themes and questions, while also providing space for interviewees to introduce unexpected elements (Mongeau, 2008, p. 97).

Questions to start:

- Could you please tell me about your current life in Canada?
 - o Where do you live? Do you work? Do you volunteer? Can you tell me about your daily activities? Do you have family here?...
- Can you tell me how you came to Canada?
 - o Where do you come from? Did you use to live in another country?

1. About the process:

- Did you have knowledge of the refugee status determination process in Canada before? If so, how did you acquire this knowledge?
- Was this knowledge different from how the actual process is? What was the most surprising part?
- Could you please describe the main steps of the process as you lived it? Among these steps, which one was the most important to you and why?

2. Preparation:

- Did someone help you to prepare your claim and how?
- Who helped you in the preparation of your claim (documents vs audience)?
 - o Can you please explain how this person helped you in the preparation of your claim (steps, etc.)?
 - o How many times did you see this person?
 - o How did this person help you to understand the process and what is “a refugee” in Canadian refugee law?
- Audience: Did this person help you to prepare for the audience? If so, how?

3. Relations:

- Did you disagree with your lawyer, immigration consultant, legal counsel at any moment?
- Was it difficult to talk to this person about your experiences and why? Did you avoid to talk about certain experiences and why?
- What is your opinion about the way this person helped you?
- What could this person (the lawyer, immigration consultant, legal counsel) have done to help you?

4. Opinion:

- What is your opinion about the Canadian migration system?

- Was the refugee determination process you have gone through so far satisfying or not? Please explain
- If you had an advice to give to a woman who is about to claim asylum in Canada, what would you say to help her preparing her claim?
- In your opinion, what are the principal challenges that women face when preparing an asylum claim?
- In your opinion, is the reality of the process different depending on whether the asylum seeker is a man or a woman?

Appendix 4. Interview Guide – Lawyers

Questions to start:

- Could you please tell me about the type of services that you give to women asylum seekers?
- For how long have you been working as an immigration lawyer/immigration consultant/legal counsel? Can you tell me more about your career path?

1. First contact:

- How is first contact usually made with asylum seekers (/women asylum seekers)?
 - o How do your refugee claimant clients find you?
 - o Have you ever refused to help someone and why?

2. The preparation:

- How do you usually work with women asylum seekers when preparing their case?
 - o What steps are taken to help prepare refugee claimants for their case?
 - o Do you have a routine/strategies? How many times do you meet?
- How do you describe the elements of the Canadian refugee law (definitions, ...) to your clients?
 - o Do they react to your explanations?
- Do you help asylum seekers to prepare for the hearing? If so, how?

3. Challenges:

- What are the main challenges that you face when helping women to prepare their case?
- Could you please tell me about a case where you helped a woman to prepare a claim and it was successful?
 - o Why was this case successful in your opinion?
- Could you please tell me about a case where you helped a woman to prepare a claim and it wasn't successful?
 - o Why was this case not successful in your opinion? What difficulties did you face?

4. Opinion et evolution:

- In your opinion, are there differences in the ways women and men have to prepare their claim in order to receive the refugee status? If so, what are these differences?
- Did your perceptions of women asylum seekers change over time and why?
- Consequently, did your way of working with women evolve over time? Why?

Appendix 5. Consent Form Interviews – Women

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Consent form – Interviews

You are invited to participate to a PhD research project on the experiences and resistances of women during the refugee status determination process in Ottawa. This research is conducted by Charlotte Dahin, PhD student at the University of Ottawa (Department of Feminist and Gender Studies), under the supervision of Pr Simon Lapierre (Department of Social Work) and Pr Jamie Liew (Faculty of Law). The project is partially financed by Trajetvi, a research group working on the trajectories of women in vulnerable contexts.

This project, titled “Agency? The experiences of women asylum seekers during the refugee status determination process” aims at learning more on the experiences of women during the refugee determination process and their interactions with lawyers, immigration providers or legal counsels during the process. It aims at emphasizing the importance of listening to their voices and underline the importance of the knowledge coming from their experiences.

Your participation will consist in an interview of 1 to 3 hours, which will be recorded for the purpose of this research only. You can ask to stop the recording at any moment. You can also ask to stop the interview or refuse to answer any question that you are not comfortable answering. Questions will be asked on your experiences of/opinion on the different steps of the refugee status determination process and how you interacted with lawyers, immigration providers or legal counsels in order to prepare your claim.

The researcher will be the only person with an access to the recordings and the transcriptions. One other person may help with the transcription of the interviews only. However, the recordings will be anonymized and a confidentiality agreement will be signed. In addition, you can decide at any moment to withdraw from the project, with no negative consequences. If you decide to withdraw from the project, all the data collected in relation to you will be destroyed.

The confidentiality of the data collected during the interview will be protected. Your name or any information that would allow your identification will not be disclosed in any oral or written communication. In addition, any information that you could give during the interview about another person will be replaced and anonymized during the transcription of the interviews by using

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codes. In this way, it will not be possible to identify those persons and this information will never appear in any documents that could be produced for this project.

All the data collected, either with this consent form, during the interviews, any notes that the researcher could take and any other documents that you could share during the project will be securely stored in a locked briefcase either in the house or in the office of the researcher at the University of Ottawa. All electronic data will be protected by a general password for the computer and a specific password for each document. All the data will be destroyed at the end of the period of conservation, which is ten years after the beginning of the data collection.

Your participation to this research will help to deepen the understanding of the experiences of asylum seekers and of the structures of the refugee status determination process in Canada. This type of research can help to inform evidence-based decision-making and to contribute to improve policy and programming for people in situations of forced migration (Canadian Council for Refugees, 2017; Danermark et al., 2002). The researcher hopes that the project will also help to combat stereotypes and negatives representations of asylum seekers. However, it is likely that you will not personally benefit from the project.

Your participation also entails risks. It may be difficult for participants to talk about certain of their experiences. They may be faced with psychological/emotional discomfort, such as anxiety, loss of confidence and regret for disclosing personal information. You can ask to stop the recording at any moment. You can also ask to stop the interview or refuse to answer any question that you are not comfortable answering. If needed, please find attached a list of resources.

For any question in relation to the project, you can communicate with Charlotte Dahin, by sending an email to

For any information about the ethical aspects of the project, you can address to Office of Research Ethics and Integrity, Tabaret Hall, 550 Cumberland St, Room 154, Ottawa, ON, Canada K1N 6N5, 613-562-5387 or ethics@uottawa.ca.

This form must be signed in two copies, one of which is for you.

I accept to participate to the project

Signature of the participant and date:

Signature of the researcher and date:

Appendix 6. Consent Form Interviews – Lawyers

Université d'Ottawa | University of Ottawa

Consent form – Interviews

You are invited to participate to a PhD research project on the experiences and resistances of women during the refugee status determination process in Ottawa. This research is conducted by Charlotte Dahin, PhD student at the University of Ottawa (Department of Feminist and Gender Studies), under the supervision of Pr Simon Lapierre (Department of Social Work) and Pr Jamie Liew (Faculty of Law). The project is partially financed by Trajetvi, a research group working on the trajectories of women in vulnerable contexts.

This project, titled “Agency? The experiences of women asylum seekers during the refugee status determination process” aims at learning more on the experiences of women during the refugee determination process and their interactions with lawyers, immigration providers or legal counsels during the process. It aims at emphasizing the importance of listening to their voices and underline the importance of the knowledge coming from their experiences.

Your participation will consist in an interview of 1 to 3 hours, which will be recorded for the purpose of this research only. You can ask to stop the recording at any moment. You can also ask to stop the interview or refuse to answer any question that you are not comfortable answering. Questions will be asked on your experiences in helping asylum seekers during the different steps of the refugee status determination process and how you interacted with them in order to prepare their claim.

The researcher will be the only person with an access to the recordings and the transcriptions. One other person may help with the transcription of the interviews only. However, the recordings will be anonymized and a confidentiality agreement will be signed. In addition, you can decide at any moment to withdraw from the project, with no negative consequences. If you decide to withdraw from the project, all the data collected in relation to you will be destroyed.

The confidentiality of the data collected during the interview will be protected. Your name or any information that would allow your identification will not be disclosed in any oral or written communication. In addition, any information that you could give during the interview about another person will be replaced and anonymized during the transcription of the interviews by using codes. In this way, it will not be possible to identify those persons

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and this information will never appear in any documents that could be produced for this project.

All the data collected, either with this consent form, during the interviews, any notes that the researcher could take and any other documents that you could share during the project will be securely stored in a locked briefcase either in the house or in the office of the researcher at the University of Ottawa. All electronic data will be protected by a general password for the computer and a specific password for each document. All the data will be destroyed at the end of the period of conservation, which is ten years after the beginning of the data collection.

Your participation to this research will help to deepen the understanding of the experiences of asylum seekers and of the structures of the refugee status determination process in Canada. This type of research can help to inform evidence-based decision-making and to contribute to improve policy and programming for people in situations of forced migration (Canadian Council for Refugees, 2017; Danermark et al., 2002). The researcher hopes that the project will also help to combat stereotypes and negatives representations of asylum seekers. However, it is likely that you will not personally benefit from the project.

To avoid anyone realizing that you have participated to this research (as findings may potentially be argumentative), interviews will be realized in different associations, NGOs or Law offices.

For any question in relation to the project, you can communicate with Charlotte Dahin, by sending an email to

For any information about the ethical aspects of the project, you can address to Office of Research Ethics and Integrity, Tabaret Hall, 550 Cumberland St, Room 154, Ottawa, ON, Canada K1N 6N5, 613-562-5387 or ethics@uottawa.ca.

This form must be signed in two copies, one of which is for you.

I accept to participate to the project

Signature of the participant and date:

Signature of the researcher and date:

Appendix 7. Consent Form Observations – Women

Université d'Ottawa | University of Ottawa

Consent form – Observations (asylum seekers)

You are invited to participate to a PhD research project on the experiences and resistances of women during the refugee status determination process in Ottawa. This research is conducted by Charlotte Dahin, PhD student at the University of Ottawa (Department of Feminist and Gender Studies), under the supervision of Pr Simon Lapierre (Department of Social Work) and Pr Jamie Liew (Faculty of Law). The project is partially financed by Trajetvi, a research group working on the trajectories of women in vulnerable contexts.

This project, titled “Agency ? The experiences of women asylum seekers during the refugee determination process” aims at learning more on the experiences of women during the refugee determination process and their interactions with lawyers, immigration consultants or legal counsels during the process. It aims at emphasizing the importance of listening to their voices and underline the importance of the knowledge coming from their experiences.

Your participation will consist in accepting that the researcher observes meetings that you will have with a lawyer, an immigration consultant or a legal counsel. You can ask the researcher to leave at any moment. The researcher does not have any link with the lawyer/immigration consultant/legal counsel. If you decide to stop the research, there will be no consequence on the relation that you have with this person and/or the service that you receive.

Although observations will not be recorded, the researcher will take notes. The researcher will be the only person with an access to the notes. In addition, you can decide at any moment to withdraw from the project, with no negative consequences. If you decide to withdraw from the project, all the data collected in relation to you will be destroyed. During the meeting, the researcher will observe how lawyers, immigration consultants or legal counsels present the refugee status determination process and how you interact with them. Your discussion on the 2002 Immigration and Refugee Protection Act and its application, as well as the advices that the lawyers, immigration consultants or legal counsels give you will be observed more particularly.

The confidentiality of the data collected during the interview will be protected. Your name or any information that would allow your identification will not be disclosed in any oral or written communication. In addition, any information that you could give during the observation about another person will be replaced and anonymized by using codes. In this way, it will not be possible to identify those persons and this information will never appear in any documents that could be produced for this project.

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All the data collected, either with this consent form, during the observation, any notes that the researcher could take and any other documents that you could share during the project will be securely stored in a locked briefcase either in the house or in the office of the researcher at the University of Ottawa. All electronic data will be protected by a general password for the computer and a specific password for each document. All the data will be destroyed at the end of the period of conservation, which is ten years after the beginning of the data collection.

Your participation to this research will help to deepen the understanding of the experiences of asylum seekers and of the structures of the refugee status determination process in Canada. This type of research can help to inform evidence-based decision-making and to contribute to improve policy and programming for people in situations of forced migration (Canadian Council for Refugees, 2017; Danermark et al., 2002). The researcher hopes that the project will also help to combat stereotypes and negatives representations of asylum seekers. However, it is likely that you will not personally benefit from the project.

Your participation also entails risks. It may be difficult for participants to talk about certain of their experiences in presence of an additional person. They may be faced with discomfort, such as anxiety, loss of confidence and regret for disclosing personal information. You can ask the researcher to leave at any moment. If needed, please find attached a list of resources.

For any question in relation to the project, you can communicate with Charlotte Dahin, by sending an email to

For any information about the ethical aspects of the project, you can address to Office of Research Ethics and Integrity, Tabaret Hall, 550 Cumberland St, Room 154, Ottawa, ON, Canada K1N 6N5, 613-562-5387 or ethics@uottawa.ca.

This form must be signed in two copies, one of which is for you.

I accept to participate to the project

Signature of the participant and date

Signature of the researcher and date:

Appendix 8. Consent Form Observations – Lawyers

Université d'Ottawa | University of Ottawa

Consent form – Observations (Lawyers)

You are invited to participate to a PhD research project on the experiences and resistances of women during the refugee status determination process in Ottawa. This research is conducted by Charlotte Dahin, PhD student at the University of Ottawa (Department of Feminist and Gender Studies), under the supervision of Pr Simon Lapierre (Department of Social Work) and Pr Jamie Liew (Faculty of Law). The project is partially financed by Trajetvi, a research group working on the trajectories of women in vulnerable contexts.

This project, titled “Agency ? The experiences of women asylum seekers during the refugee determination process” aims at learning more on the experiences of women during the refugee determination process and their interactions with lawyers, immigration providers or legal counsels during the process. It aims at emphasizing the importance of listening to their voices and underline the importance of the knowledge coming from their experiences.

Your participation will consist in accepting that the researcher observe meetings that you will have with asylum seeker. You can ask the researcher to leave at any moment. Although observations will not be recorded, the researcher will take notes. The researcher will be the only person with an access to the notes. In addition, you can decide at any moment to withdraw from the project, with no negative consequences. If you decide to withdraw from the project, all the data collected in relation to you will be destroyed. During the meeting, the researcher will observe the discussions that you have with the asylum seeker about the refugee status determination process is discussed and your interactions with them. Your discussion on the 2002 Immigration and Refugee Protection Act and its application, as well as the advices that you may give you will be observed more particularly.

The confidentiality of the data collected during the interview will be protected. Your name or any information that would allow your identification will not be disclosed in any oral or written communication. In addition, any information that you could give during the observation about another person will be replaced and anonymized by using codes. In this way, it will not be possible to identify those persons and this information will never appear in any documents that could be produced for this project.

All the data collected, either with this consent form, during the observation, any notes that the researcher could take and any other documents that you could share during the project will be securely stored in a locked briefcase either in the house or in the office of the researcher at the University of Ottawa. All electronic data will be protected by a general password for the computer and a specific password for each document. All the data will be

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destroyed at the end of the period of conservation, which is ten years after the beginning of the data collection.

Your participation to this research will help to deepen the understanding of the experiences of asylum seekers and of the structures of the refugee status determination process in Canada. This type of research can help to inform evidence-based decision-making and to contribute to improve policy and programming for people in situations of forced migration (Canadian Council for Refugees, 2017; Danermark et al., 2002). The researcher hopes that the project will also help to combat stereotypes and negatives representations of asylum seekers. However, it is likely that you will not personally benefit from the project.

To avoid anyone realizing that someone has participated to this research (as findings may potentially be argumentative), observations will be realized in different associations, NGOs or Law offices.

For any question in relation to the project, you can communicate with Charlotte Dahin, by sending an email to

For any information about the ethical aspects of the project, you can address to Office of Research Ethics and Integrity, Tabaret Hall, 550 Cumberland St, Room 154, Ottawa, ON, Canada K1N 6N5, 613-562-5387 or ethics@uottawa.ca.

This form must be signed in two copies, one of which is for you.

I accept to participate to the project

Signature of the participant and date

Signature of the researcher and date:

Appendix 9. Certificate of Ethics Approval

05/07/2019

Université d'Ottawa

Bureau d'éthique et d'intégrité de la recherche

University of Ottawa

Office of Research Ethics and Integrity

CERTIFICAT D'APPROBATION ÉTHIQUE | CERTIFICATE OF ETHICS APPROVAL

Numéro du dossier / Ethics File Number

S-05-19-2758

Titre du projet / Project Title

Agency? The experiences of women asylum seekers during the refugee status determination process

Type de projet / Project Type

Thèse de doctorat / Doctoral thesis

Statut du projet / Project Status

Approuvé / Approved

Date d'approbation (jj/mm/aaaa) / Approval Date (dd/mm/yyyy)

05/07/2019

Date d'expiration (jj/mm/aaaa) / Expiry Date (dd/mm/yyyy)

04/07/2020

Équipe de recherche / Research Team

**Chercheur /
Researcher**

Affiliation

Role

Charlotte DAHIN

Institut d'études des femmes / Institute of Women's Studies

Chercheur Principal / Principal Investigator

Simon LAPIERRE

École de service social / School of Social Work

Superviseur / Supervisor

Jamie LIEW

Faculté de droit - Section de common law / Faculty of Law - Common Law Section

Co-superviseur / Co-supervisor

Conditions spéciales ou commentaires / Special conditions or comments

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Office of Research Ethics and Integrity

Le Comité d'éthique de la recherche (CÉR) de l'Université d'Ottawa, opérant conformément à l'*Énoncé de politique des Trois conseils* (2014) et toutes autres lois et tous règlements applicables, a examiné et approuvé la demande d'éthique du projet de recherche ci-nommé.

L'approbation est valide pour la durée indiquée plus haut et est sujette aux conditions énumérées dans la section intitulée "Conditions Spéciales ou Commentaires". Le formulaire « Renouvellement ou Fermeture de Projet » doit être complété quatre semaines avant la date d'échéance indiquée ci-haut afin de demander un renouvellement de cette approbation éthique ou afin de fermer le dossier.

Toutes modifications apportées au projet doivent être approuvées par le CÉR avant leur mise en place, sauf si le participant doit être retiré en raison d'un danger immédiat ou s'il s'agit d'un changement ayant trait à des éléments administratifs ou logistiques du projet. Les chercheurs doivent aviser le CÉR dans les plus brefs délais de tout changement pouvant augmenter le niveau de risque aux participants ou pouvant affecter considérablement le déroulement du projet, rapporter tout événement imprévu ou indésirable et soumettre toute nouvelle information pouvant nuire à la conduite du projet ou à la sécurité des participants.

The University of Ottawa Research Ethics Board, which operates in accordance with the *Tri-Council Policy Statement* (2014) and other applicable laws and regulations, has examined and approved the ethics application for the above-named research project.

Ethics approval is valid for the period indicated above and is subject to the conditions listed in the section entitled "Special Conditions or Comments". The "Renewal/Project Closure" form must be completed four weeks before the above-referenced expiry date to request a renewal of this ethics approval or closure of the file.

Any changes made to the project must be approved by the REB before being implemented, except when necessary to remove participants from immediate endangerment or when the modification(s) only pertain to administrative or logistical components of the project. Investigators must also promptly alert the REB of any changes that increase the risk to participant(s), any changes that considerably affect the conduct of the project, all unanticipated and harmful events that occur, and new information that may negatively affect the conduct of the project or the safety of the participant(s).

Riana MARCOTTE

Responsable d'éthique en recherche / Protocol Officer

Pour/For **Barbara GRAVES** Président(e) du/ Chair of the **Comité d'éthique de la recherche en sciences sociales et humanités / Social Sciences and Humanities Research Ethics Board**

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