



Building a Shared Agenda: Collaborating on Socio-Legal Research to Improve Refugee Status Decision-Making

**Osgoode Professional Development
1 Dundas Street West #2602, Toronto
May 17 (9:00am-4:15pm)**

This workshop will bring together practitioners, advocates, institutional actors, and empirically-minded scholars to discuss cutting-edge socio-legal research relating to refugee status determination. The workshop will focus on research engaging with quantitative methods (e.g. statistics, predictive algorithms, machine learning), as well as social-scientific research relating to credibility assessment. The main objective is for people doing practical work in the field to propose research questions relating to these topics and to provide early feedback on scholarly research attempting to answer some of these questions.

The workshop will be held on May 17, which follows the final day of the Canadian Association for Refugee and Forced Migration Studies Annual Conference. It will be held at the newly renovated Osgoode Professional Development in downtown Toronto.

Pre-Workshop Consultation

In November, workshop participants were invited to submit anonymous questions arising out of their practical experience with the Canadian refugee status determination system. These were questions that they would like to ask an academic researcher: a psychologist, sociologist, anthropologist, linguist, statistician, data scientist, etc. We were particularly interested in questions about how those involved in various aspects of the refugee determination process can engage with quantitative data, as well as questions related to evaluating a claimant's credibility in refugee determination hearings. Workshop participants then voted on the questions that they are most interested in having addressed. The top three questions in each category are as follows:

Quantitative Research:

- (1) I would like to understand the ethical and human rights implications of using new technologies such as AI, modelling, big data, and algorithms in the refugee status determination context.
- (2) I would like to understand how decision-making bias can be measured.
- (3) What impact do interpreters and translators have on patterns in outcomes in refugee claims? How frequently are there errors in interpretation and how often do those errors affect the Board's credibility assessments?

Research on Credibility:

- (1) I would like to better understand credibility assessments in general. Sometimes it seems like credibility comes down to hunches and cross-checking the record for small inconsistencies or contradictions. Is there some better way to do this?

- (2) I would like to know more about the cultural intelligence of IRB Members and their awareness of the claimants' social context. Is there research specifically in the Canadian refugee law context about this? What can IRB Members usefully get out of research in this area?
- (3) How does testifying via an interpreter affect how a decision-maker hears or responds to testimony, particularly in terms of credibility?

Draft Agenda (Subject to Change)

Registration and Breakfast: 8:30-9:00

Welcome: 9:00-9:10

Morning: Quantitative Research on RSD

Session 1: 9:10-10:30: Canada's Revised Refugee Determination System

Chair: Greg Kipling

Sean Rehaag: The morning will begin with a presentation by Sean Rehaag about his latest quantitative study of decision-making in Canada's refugee determination system. The study covers all cases decided in the first five years of Canada's revised refugee determination process. It follows cases all the way from first instance at the RPD, to the administrative appeal at the RAD, to Federal Court judicial review, and to subsequent Federal Court of Appeal and Supreme Court stages. It includes data not only on country of origin, but also other factors such as decision-maker, counsel, interpreter, type of claim, etc. Using this data, Professor Rehaag will attempt to answer some of the statistical questions identified in the pre-workshop consultation.

This presentation will be followed by commentary from:

Jaya Ramji-Nogales: Comparison to quantitative data on asylum decisions in the US

Pierre-André Thériault: Comparisons to quantitative data on Canadian resettlement decisions

Andrew Green: Comparisons to judicial decision-making in other areas of law

Following the presentations, workshop participants will breakout to discuss the following hypothetical:

Hypothetical 1: Imagine that you are a refugee adjudicator. Research reveals that you are far more likely than your colleagues to grant refugee protection in similar types of cases from similar countries (your grant rate is more than 30 percentage points higher than average, controlling for country of origin and case type). What, if anything, should you make of this information? Does anything change if instead of your grant rates being 30 percentage points higher than average, your grant rates are 30 percentage points lower than average?

Break: 10:30-10:40

Session 2: 10:40-11:40: Roundtable on the implications of artificial intelligence in the immigration/refugee sector

Chair: Jonathan Shapiro

Nasma Ahmed: Introducing artificial intelligence & human rights

Petra Molnar: Human rights considerations raised by artificial intelligence in the immigration/refugee context

Benjamin Alarie: The legal singularity & uses of artificial intelligence by counsel

Following the presentations, workshop participants will breakout to discuss the following hypothetical:

Hypothetical 2: Imagine that the government deploys machine learning algorithms to support decision-making by immigration officers at ports of entry. The technology uses microphones and video cameras to detect patterns in behavior during interviews at ports-of-entry that correlate with attempts at deception, providing a report available immediately to immigration officer with an estimate as to the likelihood of attempted deception. Suppose, further, that extensive testing demonstrates that, while the technology is far from perfect (with error rates of between 10 and 25 percent), officers using the technology who ask follow-up questions when prompted by the technology are substantially more reliable in detecting attempts at deception than officers who do not use the technology. In those hypothetical circumstances, should the reports be included as part of the record at refugee hearings (along with port-of-entry notes prepared by immigration officers)? Should similar technology be employed by adjudicators to help detect attempts at deception during refugee hearings?

Session 3: 11:40-12:00: Break Out Groups: Future Quantitative Research

Workshop participants will break out into groups based on broad themes related to quantitative research raised by questions identified through the pre-workshop consultation. Groups will discuss in more detail the research that participants think is needed in this area.

Group 1: Quantitative research & decision-making (Chair: Colin Grey)

Group 2: Quantitative research & counsel (Chair: Nye Thomas)

Group 3: Quantitative research & streaming / designated countries (Chair: Jona Zyfi)

Group 4: Quantitative research & vulnerable claimants / unaccompanied minors / designated representatives (Chair: Francisco Rico Martinez)

Group 5: Wildcard (Other issues not covered in groups 1-4) (Sharry Aiken)

Lunch: 12:00-12:45

Janet Dench, Rana Khan & Barb Jackman: Over lunch, selected Osgoode Hall law students will be available to discuss posters setting out findings from their research on refugee adjudication prepared for Hilary Evans Cameron's course, Fact-Finding in Refugee Law. A panel will award prizes recognizing the best research.

Afternoon: RSD & Credibility Assessment

Session 4: 12:45-2:15: Justifying Disbelief: Negative Credibility Judgments in RSD Decisions

Chair: Alain Bissonnette

Hilary Evans Cameron: The afternoon will begin with a presentation by Hilary Evans Cameron discussing the preliminary findings of her ongoing study of recent negative RPD decisions. This study analyzes the reasons given for several hundred unpublished RPD rejections with an eye to clarifying the role that credibility assessment plays in these negative decisions (e.g. what percentage of rejections include a negative credibility finding? In what percentage of these is this negative finding determinative?). The study then explores how Board members are using various categories of inference (e.g. about BOC omissions, a claimant's risk response, memory for dates, etc.) to justify negative credibility conclusions. Using these findings, Professor Evans Cameron will attempt to answer some of the questions identified in the pre-workshop consultation.

This presentation will be followed by commentary from:

Justice J F W Phillips: Comparisons to credibility assessment in the UK asylum context

Audrey Macklin: Perspectives of a former IRB Member

Helton Achaye: A view from behind the scenes: Hidden barriers to being believed

Break: 2:15-2:30

Session 5: 2:30-3:30: Roundtable on credibility assessment

Chair: Anthony Navaneelan

Vincent Denault: The science of real-time lie detection

Philipp Angermeyer: The impact of interpreters on courtroom credibility judgments

Sule Tomkinson: Ethnographic research into RPD decision-making

Session 6: 3:30-4:00: Break Out Groups: Future Research on Credibility Assessment

Workshop participants will break out into groups based on broad themes related to credibility assessments raised by questions identified through the pre-workshop consultation. Groups will explore in more detail the research that participants think is needed in this area, bringing back recommendations about research to the full group of workshop participants.

Group 1: Trauma/vulnerability (including the impact of Designated Representatives) (Chair: *Richard Wazana*)

Group 2: Cross-cultural competence (Chair: *Loly Rico*)

Group 3: Approaches to weighing evidence (Chair: *Andrew Brouwer*, TBC)

Group 4: Administrative decision-making tools (screening, expediting, the use of checklists, flowcharts, etc.) (Chair: *Imtenan Abdelrazik*)

Group 5: Wildcard (Other issues not covered in groups 1-4) (Chair: *Anne Woolger*)

Concluding remarks: 4:00-4:15

Post-Workshop Social: Duke of Richmond (20 Queen St W)

Context

Scholars are increasingly using quantitative empirical research methods to study refugee status decision-making. Research involving large datasets of refugee determinations – at various decision-making levels and in various countries – has revealed that outcomes may hinge on a variety of extra-legal factors, ranging from the identity of adjudicators, to the presence of experienced counsel, to demographic factors. While this research provides many important insights, institutional actors and practitioners continue to struggle with what should be done in response. At the same time, some institutions are starting to use advanced machine learning techniques to analyze large datasets of immigration and refugee decisions to develop predictive algorithms. While it is too early to know how such predictive algorithms will be deployed, many have raised concerns about this development's potential implications.

Moreover, it is an enduring irony that the Refugee Convention came into being just as the so-called 'Cognitive Revolution' was taking hold in the social sciences. This 'Revolution' has prompted researchers to look closely at human cognition: how we reason, how we make decisions, what and how we remember, how we communicate. Among the insights that this research has yielded in the decades since are some that directly challenge key assumptions that underlie the practice of credibility assessment in refugee hearings: our decisions about how to respond to danger are typically influenced by a host of non-rational factors; memories are neither complete nor stable; and the accuracy of deception detection in hearing room settings is little better than random chance and does not improve with on-the-job experience.

These are but a few examples of relevant areas of social scientific research that can be brought to bear on refugee status decision-making. The aim of this Workshop is to build further conversations among practitioners, institutional actors and scholars aimed at thinking about – and hopefully improving – refugee status decision-making in light of the best available research.

Workshop Organizers

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