



Canadian Council for Refugees

**Welcome to Canada:
The Experience of Refugee Claimants at Port-of-Entry Interviews**

November 2010

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A. Executive Summary

In 2010 the Canadian Council for Refugees and Sojourn House conducted research on the experience of refugee claimants at their port of entry interview. This initial interview is conducted by immigration officials, usually immediately after the arrival in Canada of the claimant, and is used to determine whether the claim is eligible.

The objective of the research was to document strengths and weaknesses of current policies and practices, and to identify areas for improvement and advocacy needs.

45 claimants were interviewed for the project about their experiences at the port of entry. Just over half had arrived at Fort Erie, while others arrived at Windsor, Toronto, Lacolle, Quebec City, Montreal and Vancouver, and two made inland claims. No attempt was made to achieve a representative sample of claimants. 37 practitioners were also interviewed.

The Port of Entry Experience

Claimants commented on their physical and mental state at the port of entry interview. Some were exhausted or suffering from health problems. Many were very nervous. They described how the words and actions of the officers either heightened their fear or helped them to relax.

In many cases, the interpreter played an important role, from the perspective of the claimant. While some spoke highly of the interpreter, others spoke of communication difficulties or of distrusting the interpreter. Some claimants said that officers resisted their request for an interpreter because they had some command of one of Canada's official languages.

Claimants reported that they were intimidated by the physical appearance of the officer of the Canada Border Services Agency (CBSA), especially the firearm, the uniform and the bulletproof vest. Some were reminded of painful experiences with military or police in their home countries. Handcuffing and detention caused additional distress.

Nervousness, intimidation and misinformation leads to some claimants having difficulty answering even simple questions. Disclosure of sensitive information is particularly problematic: practitioners drew attention to the barriers faced by gay and lesbian claimants, and survivors of gender violence and torture.

As their first experience of Canada, the port of entry interview makes a strong impression on claimants. In the opinion of some practitioners, it has important long-term consequences for the person's settlement process.

Specific Concerns

The following specific concerns were identified through the research:

- *Interpretation:* Nine claimants identified interpretation as a problem. The two primary concerns were inadequate quality of interpretation and the needs of semi-fluent English and French speakers. Issues of trust resulting from the interpreter's presence also arose.

- *Port-of-entry notes:* Five claimants reported errors or omissions in the notes from their port-of-entry interviews. Errors can lead to a negative finding of credibility by the Immigration and Refugee Board. The research suggested that in recent years, officers are focusing more on matters within their competence and asking fewer questions about the merits of the claim, consistent with guidelines. Nevertheless, some officers continue to make inappropriate comments about the well-foundedness of claims.
- *Consistency and training:* There are inconsistencies in the behaviour of individual officers. While many are courteous and humane, there are reports of abusive behaviour by others. Because interviews are not taped, allegations of abuse cannot be meaningfully investigated. On the other hand, humane physical environments and sensitive behaviour by officers help put claimants at ease and promote good communication.
- *Safe Third Country Agreement:* The research pointed to inconsistencies in evaluating family relationships and, in some cases, inflexibility leading to the rejection of claimants who in fact have family members in Canada, and should therefore benefit from the exception to the safe third country rule.
- *Exclusion cases:* Under the *Immigration and Refugee Protection Act*, a person subject to a removal order is excluded from claiming refugee status. One of the persons interviewed did not make a refugee claim on arrival out of ignorance that he could do so. He was not asked whether he feared return to his country before a removal order was issued. The current guidelines do not adequately protect against the issuance of removal orders against persons who may in fact be refugees.
- *The culture of enforcement:* The research suggests that CBSA struggles with the diverse responsibilities within its mandate, namely the enforcement mandate and the duty to protect refugees. Some claimants reported that officers appeared not to believe them or even accused them of lying. In the most extreme cases, claimants seeking refugee protection felt that they were being treated like criminals. The difficulty of distinguishing between enforcement and refugee protection at the organizational level may provide some explanation for inconsistencies in conduct between officers.

Recommendations

Based on the research findings, a series of recommendations was developed, covering the following:

- Increased refugee-specific training, including NGO participation;
- Promotion of observers at interviews;
- New policy on minors;
- Specialized officers and units where possible;
- Removal of firearms during interviews;
- Gender-sensitive interviews;
- Audiotape of interviews;
- Review of policies and practices on interpreters;
- Reviewed guidelines for removal orders and re-opening decisions;
- Narrow scope of port of entry questioning;
- Amendment to CBSA Code of Conduct;
- Complaint mechanism;
- Review of how safe third country exceptions are implemented;
- High-level message on refugee protection;
- For NGOs: attend more interviews and follow up on more complaints.

B. Introduction

Refugees arriving in Canada to seek asylum from persecution must go through an initial meeting with immigration officials. This interview, which occurs right at the port of entry, has important legal consequences, as it determines whether the person will be found eligible to have their refugee claim heard. The interview may also be important on a psychological plane, since claimants arriving in a state of fear and uncertainty are likely to be strongly influenced by the impression made by this first encounter with Canadian authorities.

Despite the importance of the port of entry interview in the process, and in particular the high stakes of the outcome, it is difficult to gather more than anecdotal information about experiences. In most cases there is no lawyer or NGO representative present at the interview. Refugee claimants whose experience has been negative rarely consent to make formal complaints because of their precarious immigration status, and understandable fears that a complaint might compromise their attempts to obtain a secure status.

The Canadian Council for Refugees (CCR) therefore decided in early 2010 to conduct research on refugee claimants' experiences at port-of-entry (POE) interviews. For this project the CCR joined with Sojourn House in Toronto.

As a member agency of the CCR for over 20 years, Sojourn House has been working on the frontlines with refugee claimants. The agency provides emergency shelter, settlement services and transitional supportive housing to newly arrived refugees and those who have had the refugee experience. Throughout the years Sojourn House has experienced many incidents where the POE interview has had direct negative impacts on refugees, ranging from retraumatization to negative decisions. This has long been a concern to the agency.

The objective of the research conducted by CCR and Sojourn House was to document strengths and weaknesses, and to identify areas for improvement and advocacy needs.

Before undertaking the research, the CCR and its members heard reports suggesting that claimants' experiences at ports of entry were quite varied.

According to anecdotal reports from claimants, and from NGOs in the few interviews in which they were present, many interviews are conducted professionally and sensitively, with officers making an effort to put anxious claimants at ease.

Some interviews, however, raised concerns. In particular, there were concerns that, on occasion, claimants at ports of entry might be:

- unfairly denied the opportunity to make a refugee claim,
- disadvantaged in their refugee claim as a result of the conduct of the interview,

- treated in ways that are less than fully professional (and potentially traumatized as a result).

It was intended that the research would shed light on the perspective of refugee claimants as they arrive at the border, including what information (or misinformation) they might have about the process in Canada and their rights and obligations, what fears and anxieties they might have and what their physical, psychological and emotional state might be as they claim asylum from persecution.

It was also expected that the research might uncover useful information on communication barriers and misunderstandings, how claimants perceive the interpreters and the officers, why they might be slow to disclose some information (especially gay and lesbian claimants, and victims of torture or abuse) and how they might respond to elements related to law enforcement, such as armed officers, handcuffing and detention.

C. Research and Methodology

The research was conducted in the summer of 2010, through a series of interviews.

a. Claimants interviewed

In total, 40 interviews were conducted with refugee claimants about their POE experiences, involving 45 refugee claimants (5 claimants were interviewed along with their spouses or family members). 29 interviews took place within Canada, while 11 were in the United States following rejection at the Canadian border.

Most claimants (27) arrived at the Fort Erie port of entry. Other claimants arrived at Windsor, Toronto, Lacolle, Quebec City, Montreal and Vancouver. Two claimants made inland claims at the CIC office in Etobicoke.

In terms of region of origin, 20 claimants came from the Americas, 18 from Africa and 7 from Asia.

Of the 45 total individuals, 27 are male and 18 female. 15 claimants arrived at the border with one or more child.

Most refugee claimants (38 out of 45) had their port-of-entry interview between July 2009 and July 2010. The project targeted claimants who had arrived in that timeframe in order to ensure that findings are relevant to current practices. Exceptions however were made for cases where the port-of-entry notes were influential at the Immigration and Refugee Board hearing, because a one-year limit would exclude such cases (since hearings generally occur at least a year after the POE interview).

Most interviews (26) were selected by approaching refugee-serving organizations and asking them to identify recently arrived clients who would be willing to be interviewed. Many of these

claimants had positive experiences at the border. Some interviews (10) were referred by practitioners because of particularly troubling experiences at the POE. The remaining 4 interviews were the result of claimants volunteering to share their experiences of concern.

All refugee claimants interviewed were assured of complete anonymity, including country of origin and any other identifying information. Their participation was conditional on this assurance.

b. Practitioners interviewed

In addition to claimants, 37 practitioners were interviewed.

They included refugee lawyers, paralegals, settlement counsellors, shelter directors, interpreters, academics and other professionals working in the area of refugee settlement and protection.

Practitioners were interviewed from Halifax, Montreal, Toronto, Windsor, Fort Erie, Winnipeg, Calgary and Vancouver, as well as Detroit, Buffalo and Burlington in the United States.

Practitioner interviews were used to complement the first-hand testimonies of refugee claimants by contributing important context to the research. Practitioners were asked to be specific with their observations. This research report omits general assertions and observations not grounded in particular examples, or not shared by numerous independent interviewees.

c. Interviews

Interviewing was semi-structured, meaning interviews followed a common questionnaire, but claimants and practitioners were encouraged to elaborate as they saw fit. The questionnaire was developed in consultation with CCR members. Questions were intentionally open-ended in order to avoid prejudicing claimants with existing points of view. The purpose was to obtain as far as possible a comprehensive and unbiased account of port-of-entry experiences.

d. Significance of results

This research was designed to draw out accounts of the experiences of refugee claimants at the border. No attempt was made to achieve a representative sample of claimants, and it would therefore be inappropriate to attempt to draw any statistical conclusions based on the distribution of answers.

Individual incidents that are mentioned in the report are not alleged to be representative of all or most experiences.

Cumulatively, the perspectives of 45 claimants and 37 practitioners offer credible and up-to-date insights into the conduct of port-of-entry interviews and can be used to identify areas where training and/or policy change might be warranted.

D. The port-of-entry interview

When refugee claimants arrive at Canadian land, airport and marine ports of entry, they are interviewed by an officer of the Canada Border Services Agency (CBSA). The officer is tasked with deciding whether refugee claimants are eligible, and if so, referring them to the Immigration and Refugee Board for a hearing on their refugee claim.

Reasons for ineligibility include existing refugee status in Canada or elsewhere, prior rejection by the Immigration and Refugee Board, previous declarations of ineligibility, and criminal inadmissibility meeting specific criteria. Refugee claimants are also ineligible if they arrive at the Canada-United States land border, unless they meet an exception to the Safe Third Country Agreement – most commonly, because they have a family member in Canada.¹

Refugee claimants may also apply for refugee protection from within Canada, in which case they are interviewed by an officer of Citizenship and Immigration Canada (CIC), rather than CBSA. Although this research emphasizes experiences at port-of-entry interviews, there are many common issues.² In particular, the long-term implications of the officer's notes are relevant for both.

E. The Port of Entry Experience

What is the port-of-entry interview like from the perspective of a refugee claimant? This section, based on the accounts of refugees themselves, asks the reader to step inside the shoes of refugee claimants arriving at the Canadian border.

Language barriers, perceptions of the interpreter, fear or mistrust of figures of authority, lack of awareness about the process, misinformation, memory difficulties, fatigue from a long journey, reluctance to disclose sensitive issues, fear of deportation – these are some of the many issues animating the port-of-entry interview.

1. Physical and mental state

Some claimants arrive at the border in a weak physical state, notably as a result of a long journey. One African claimant explained that he had been travelling for the two weeks before he arrived at the border and that he felt exhausted and sleep-deprived.

Sometimes the interview process itself is long and presumably exhausting. One woman reported arriving at 7am and being interviewed on three occasions, with the process ending at 4pm.

Another woman, travelling with 4 children, said that she arrived in the evening and spent over 24 hours in the port of entry process. A woman from the Middle East similarly described being

¹ Immigration and Refugee Protection Act, s. 101(1).

² The research included some claimants who were interviewed at inland offices.

interviewed by three officers over 14 hours, with no food offered. She also was accompanied by 4 children.

Sometimes claimants have physical or mental ailments. One woman, travelling with an infant child, reported that at the time of the interview she was sick and off anti-depressants. During the first interviews, she was allowed breaks, but in the final interview, despite repeated requests, she was refused a break.

While some claimants have been prepared for the interview before arrival, others have no idea about the process. One older African woman arrived at the border with no understanding of what to expect, and thinking that the relative of a friend would be able to provide help. She described herself as overwhelmed by the process.

Many claimants reported feeling intimidated and stressed by the port of entry interview. One young man from South Asia, for example, described the setting at the border as very different from any office in his home country, increasing his anxiety. He observed further than even to write down his name on a form in the US or Canada made him nervous at first.

The significance of the fear of deportation cannot be understated. A young West African woman was terrified when her officer repeatedly said she could be sent home:

“After I told him my story, and he knew I was running away from something I fear – why are you scaring me to send me back to where I just ran from? That’s like stepping on fire, and you find a way out, then they say they’re going to send you back. You know you’ve just left the worst pain of your life.”

Many of the claimants interviewed reported a good experience with the POE official that helped them overcome the stress and fear. For example, one South American woman praised the treatment she received, saying of the officer: “she said, I’m here, not to say no, don’t come – just to see if there’s a possibility to study your case.”

Another South American refugee claimant, who worked with displaced people in his home country before fleeing to Canada, explained his experience in this way:

“There is an interview and there is an interrogation – where you are guilty of something. In my country, this mistake is often made, and victims are treated as criminals. I was concerned about receiving this same treatment, but it was not so. I received a very nice surprise.”

A man from Southern Africa who arrived at an airport in Canada described his treatment as “first class”. He said he was very stressed: “I was shaking... When you meet them, you start cooling down.”

Other claimants reported behaviour that intensified their fear, such as expressions of disbelief, anger or threats.

A young West African man tried to explain why he was not forthcoming about his reasons for entering Canada:

“The nature of the immigration officers – they don’t smile. Their language is intimidating. It creates fear in you to expose things to them. In my case, if I tell them my situation, they can deny me entering the country.”

A young Central American woman explained:

“You are influenced by the atmosphere, because you are nervous, because they look at you like you’re a liar. The interpreter says, say the most important things. But for me, everything is important. [...] You are nervous. You don’t know if they really want to help you or not. That office is too cold – honestly, it’s a little bit scary.”

A South American man reported a generally positive experience, except for one incident. He was asked if he had any identity documents other than his passport, and when he took out his wallet, the officer ripped it away from him. “I got really scared after this. This is the only complaint. Everything else worked okay.”

One Central American man felt insulted by the interviewing officer. He described him as very aggressive. The officer allegedly called the claimant a “disgrace to Latino people” and said he was stupid for doing what he did. The claimant also overheard the officer saying to the interpreter, “this is bullshit.” He felt the interpreter was uneasy with the officer.

A very young West African woman reported that an officer threatened her with deportation:

“He told me that if anything is false, they can send me back. Trying to scare me. But I wasn’t scared. I know everything I told them is true... When he said they can send me back I got scared... I guess he saw that I got scared after he said that. After that he just told me, okay go.”

A man from the Middle East was uncomfortable about an officer’s technique of repeating questions:

“Since most refugees enter with a lot of anxiety and stress, I felt that the officer was trying to use that against me, to complicate things even further to raise my stress and anxiety even further so that I would make a mistake.”

2. The language divide

The experience of claimants at the border cannot be adequately understood without considering the role of language. For many refugee claimants, communication in English or French is not possible. In such cases, everything the refugee claimant understands, and the border services officer records, is defined by the interpreter’s translation from one language to another.

Interpreters may be present in-person or by telephone. Their role is to interpret impartially and independently, in order to ensure the fairness of the interview.

Of claimants interviewed, some spoke very highly of their interpreter. They appreciated the ability to express themselves in their native language.

Other cases were more problematic. Dialect, accents and cultural differences among regions and countries pose inevitable challenges. For some claimants, the impartiality and independence of the interpreter were not clear – especially where the interpreter’s ethnic background or appearance influenced the client’s perceptions.

The following example illustrates several of these concerns. When an unaccompanied minor from the Middle East was interviewed, he understood very little of what the interpreter, a woman from a different part of his country, was saying. The boy explained, “I just kept nodding at most of the questions I didn’t get because I was nervous and did not want to irritate the interpreter more than she already was. I actually got intimidated by her.”

The boy’s designated representative explained the situation further:

“I asked him, why did you say yes if this wasn’t the correct answer? He said, ‘I speak the pure Northern dialect of my language. I don’t understand anything she is saying. I cannot argue with her. She is an old woman.’”

Claimants sometimes did not know that they should report difficulties with interpretation. One East African claimant reported that the interpreter did not speak exactly the same version of the language as she did, and that there were some errors of interpretation. When asked by the researcher whether she had told the officer about the interpreter’s mistakes, the claimant said, “No. It’s my fault. Must I tell her, the officer, that yes he speaks Tigrinya but some words are not right?” She said that she was not asked by the officer whether the interpreter was okay: “No, we just walked in, told the names and started talking.”

For claimants who speak English or French as a second language and whose vocabulary is limited, answering the detailed questions of an officer can be difficult. One East African claimant began using an interpreter, but was able to answer many questions in English. “If I had any problems,” she said, “the interpreter would help.”

Another claimant, from South America, also requested an interpreter despite speaking conversational English, but the officer “was upset, because though I speak English, I requested an interpreter.” In a more extreme case, a South American claimant said that after asking for an interpreter, the officer responded, “Why do you need a translator? Why do you want to waste our time and money? You speak good, so you speak to me.”

When interpretation mistakes are made, the implications may be far-reaching. Mistakes may lead to removal orders, incorrect port-of-entry notes, and other scenarios discussed later in this report. In one Middle Eastern claimant’s interview, for example, the date of birth and other crucial

events were translated incorrectly using the calendar of a neighbouring country, the home country of the interpreter.

3. Fear of uniformed officers

Interviewing officers are generally fully uniformed. Many wear a bulletproof vest and, depending on the port of entry, a firearm that is visible during the interview.³

Of claimants interviewed, several described their impressions of the officer's uniform. For some, the physical appearance of the officer influenced their state of mind when answering questions. Some claimants praised the kindness and sensitivity of their officer, but were nonetheless afraid because of his or her physical appearance.

A young East African woman explained:

“I was terrified by the fact that they were wearing military clothes. It brings back memories of what happened.”

An East African man in his twenties reported:

“The officer who interviewed me had everything on him – all the gadgets, the baton, the gun. All the officers in the room had a gun. To be honest, it's really intimidating. The officer was so nice, so lovely. I remember his name, because he was so kind to me. But he was physically big, well armed, with a bulletproof vest.”

“I would rather be searched than face an officer with a gun. If I am not a threat, you shouldn't face me that way. For me, if the officer has a gun, then he sees me as a threat. The impression of having a gun is very important. Guns are not very comfortable things. They don't make you talk.”

“An officer fully geared up in uniform would make anyone who has experienced persecution very afraid.”

A similar position was articulated by a forty-something Southern African man:

“Uniformed personnel usually frighten people. Especially if you're from countries which are not very stable – if uniformed officers come to your house, you know there's a problem. I wish civilian persons could meet with you first, tell you to calm down. Why? Because sometimes people go through many lies to justify their case, to make it sound credible enough. You don't know what is next, what is going to happen to you.”

³ The CBSA began arming border services officers in 2006. See *Fact Sheet: The Canada Border Services Agency's Arming Initiative*, May 2010, <http://www.cbsa-asfc.gc.ca/media/facts-faits/063-eng.html>.

In the eyes of newly arrived asylum seekers, an armed and uniformed border officer may not be distinguishable from the military or the police. “For a newcomer, an officer is an officer,” said one claimant. “I learned that border officers are different after I arrived and asked questions.”

When claimants are detained, they may become even more afraid and confused. A settlement counsellor in Toronto, whose observations were shared by other practitioners, explained that when claimants are detained for the purpose of confirming their identity, they may not understand the reason for their detention:

“Because they are in a detention centre, they think they will be deported, and they panic. The entire process becomes skewed because of this – they start making claims I wouldn’t advise them to make.”

A number of claimants interviewed were marked by their experience of being handcuffed. Some remembered that the officer had attempted to reduce the distress: one officer asked permission to put on handcuffs, another told the claimant that he would be handcuffed, but not to take this badly. However, the latter claimant went on to say that “it was during the transport that I felt inferior, like a criminal. I felt like this as soon as the agent finished her work with me.” For claimants who experienced handcuffing back home, explained the program director at a refugee shelter, “it is a replay of what happened.”

This research suggests that claimants routinely experience fear during their interview. The physical appearance of the officer, sometimes including a visible firearm, tends to exacerbate the claimant’s fear. Additional distress results from handcuffing and detention.

4. Uncovering the truth

Refugee claimants reported a number of difficulties in disclosing relevant aspects of their experiences, often related to the fears noted above.

In some cases, fear of deportation actually prevents claimants from telling the truth. When you are afraid, explained a young East African claimant, “you feel the need to convince this particular officer. You start to make up huge stories which will work against you later on, which you will need to correct.”

Occasionally, there are refugee claimants who, for various reasons, do not voice their intention to claim refugee status. Because of misinformation from smugglers or others, fear of armed officers or simply a frantic desire to enter Canada, refugees may insist they are entering as a visitor and end up being issued a removal order, rather than referred for a refugee hearing.

As one educated, politically engaged refugee claimant from West Africa said, “I didn’t know how to go about making a refugee claim. I thought that I should enter the country first and then make a claim.”

A young woman from East Africa described how associations evoked by immigration officers prevented her from speaking as she wished:

“In a way, they’re doing their job. But it scares me. Even though I’ve seen police officers, it brings back memories of what happened. When you see these officers, you see what happened back home. You see yourself back home again. Right there, instead of being confident, you are scared. Instead of answering what you want to answer, you can’t think about it.”

A young man from the same region of the world gave a similar explanation:

“I am speaking for people who are legitimate. I had a bad experience with officers. When an officer says, I’m going to talk to my supervisor, I think, I’m in deep trouble. I’m going to start making things up. Not because I’m not legitimate, but because I had a bad experience with officers... In my country, the police will beat you before even asking your name.”

Practitioners provided some background to the barriers to disclosure. For refugee claimants who are tired, afraid and misinformed, any mention of deportation, without adequate sensitization, can be terrifying. As a result of this fear, said a Toronto settlement counsellor, “the refugee’s frame of mind automatically becomes distorted.” Instead of answering questions confidently and comfortably, fear clouds the judgment and confuses the mind.

An interpreter with over 20 years of experience gave the following account of the problem:

“Many refugee claimants grow up in oppressive systems of politics and government. In order to survive, you have to find ways to save yourself. You cannot be open in what you think or what you do, because if you are, you may get into trouble. The elders in these kinds of societies advise, ‘Just do what you need to do, say what you need to say.’ You preserve yourself by not telling the truth and keeping quiet.”

“Those who make it here are those who are not able to keep their mouths shut, who want to be active. These people have already experienced the damages of being open about what they think. Generally, they are not already familiar with western democracy. They do not plan which country to go to – they decide to leave the country, and once outside, they get bits and pieces of information based on people’s experiences. Eventually they meet the smuggler, who gives them the formula. The smuggler tells them what to say, what not to say. Information from the smuggler is the only thing they know about making a refugee claim in a western country.”

“They come to Canada with the experience of living under dictatorial rulers and regimes, dealing with smugglers and all the misinformation they have accumulated in their minds. They are extremely scared because they are traveling

illegally. Some of them have already been caught. They are nervous, tired, agitated. Most of them think they will be sent back. Unfortunately some of the officers tell them, ‘If you don’t tell the truth, you will be sent back.’ Throughout the interviews, they are not told what will happen to them. The only thing they are thinking is, tell the officer whatever they want to hear, whatever we were told to say. And make sure we can stay.”

“This is the mentality of a refugee claimant who arrives here and answers questions.”

5. Revealing sensitive issues

“They looked like members of the military and I didn’t trust them enough to divulge personal information,” said a young Central American claimant who was excluded from making a refugee claim, though that was his intention.

Fear influences the claimant’s ability to answer questions accurately and in their best interest. This is especially troubling for vulnerable claimants who are reluctant to disclose their most sensitive issues to strangers, particularly armed strangers in police-style uniforms.

Several practitioners explained that for gay and lesbian claimants who fled police persecution, opening up to an officer requires untold emotional courage. For survivors of state-sanctioned gender violence such as rape or domestic abuse, the same can be said. For survivors of torture, the very sight of an armed officer may trigger powerful memories of past abuse, making clear-minded and truthful replies exceptionally difficult.

These issues were not directly surfaced in the claimant interviews conducted.

However, practitioners were able to give their perspectives on the question.

Speaking about the unique challenges faced by gay and lesbian claimants, a Vancouver counsellor and doctoral candidate in clinical psychology explained:

“Often it’s police officers who harassed the individual. Many countries maintain criminal sanctions for homosexuality, and though they are not enforced, they are used to extort money. These people are most reluctant to speak openly with uniformed officers.”

“Many claimants have experienced physical or sexual assault. Of the men that I interviewed for my research, two thirds had been sexually assaulted. For half of them, the police officer was the perpetrator – situations where they’re taken into custody to pay a bribe, and are sexually assaulted while in custody.”

“They’ve come from countries where being secretive and quiet about their sexuality has been necessary to keep them alive. To then make a public statement to an official, to make a refugee claim because ‘I am gay,’ or ‘I am a lesbian,’ is very difficult.”

The presence of an interpreter can add to the barriers to disclosure. Since sexual orientation is very “generation-specific and class-specific,” finding an interpreter who is both linguistically competent and sensitive to sexual orientation issues is not always easy. Gay and lesbian claimants “pick up on the interpreter’s own discomfort when talking about sexuality,” continued the counsellor.

An interpreter interviewed for this project explained:

“In some languages, there are no words for sexual orientation issues. Only derogatory words exist. If the interpreter does not know the culture, or is not on top of the issues, he keeps insulting the person.”

6. Lasting first impressions

It is worth remembering that for many refugee claimants, the border services officer is their first impression of Canada, their first encounter with Canadian culture, government and society. Some refugee claimants will eventually leave, but many later become Canadian citizens.

These first impressions vary dramatically.

After receiving harsh treatment while in transit in Europe, a Southern African claimant arrived at the Toronto airport:

“In Canada, I was expecting anything worse. But really, the people that I met were wonderful. I can call myself lucky. They assisted me in every aspect – they didn’t confront me with anything, they didn’t harass me, they just gave me the opposite of what I was expecting. Basically, my treatment was superb.”

Several claimants traveling as a family reported excellent treatment of their children throughout the process, particularly in the waiting area at the Fort Erie port of entry:

“The children could play on the computers. They had books for little kids. They have a playroom with toys and a kitchen with food – juice, bread, things for sandwiches, coffee.”

These positive experiences may be contrasted with individuals who feel unwelcome at the hands of border officers.

The claimant interviews were not geared to uncovering whether the initial treatment by the border officer has a significant long-term impact on claimants. However, practitioners interviewed warned of the enduring consequences of negative experiences at the port of entry, in terms of trust in authority and ease of settlement.

One settlement counsellor gave this account of the effects of harsh treatment, particularly where the claimant is detained:

“Some claimants begin to resent the Canadian system. This behaviour towards authority endures long afterwards – you behave like this towards me, so I’ll do the same. The pattern I see is that those who had a bad experience at the beginning, somehow their settlement process is much more difficult. They go through their settlement process with that mistrust, with that trauma.”

The relationship between port-of-entry experiences and future settlement was perceived to be extremely significant in a case described by a Toronto refugee lawyer. A Central American family arrived shortly after the murder of two close relatives. They were in due course granted refugee status. But their port-of-entry experience stayed with them:

“They were treated so badly at the port of entry, it took my breath away. They were basically told, you’re a liar, go home. The lady was 70 years old, had just lost her son. And they’re telling her, you just came here to get a better life.”

“You would think that the port-of-entry interview would be the least of their worries; it wasn’t. It really shook their sense of place in Canada. When the Board member said, positive decision, welcome to Canada, they didn’t buy it. They saw the ugly side first – the piss off, go back where you came from.”

F. Specific Concerns

1. Interpretation

Procedures for interpretation are stipulated in the operational manual for protected persons: “CIC or the CBSA will provide an interpreter to enable the person to understand and communicate fully.” Furthermore, “[t]he officer should be satisfied that the interpretation is continuous, precise, impartial, competent and simultaneous.”⁴

These instructions recognize the tremendous importance of high quality interpretation. Of claimants interviewed, many expressed satisfaction with the quality of interpretation provided. Claimants were grateful for the ability to express themselves in their own language.

Nevertheless, nine claimants identified interpretation as a problem. The two primary concerns were inadequate quality of interpretation and the needs of semi-fluent English and French speakers. Issues of trust resulting from the interpreter’s presence also arose.

Quality of interpretation: Where the interpreter’s dialect or accent is different from the claimant’s, certain words or phrases may be incomprehensible. This problem often arises when

⁴ Citizenship and Immigration Canada, Protected Persons Manual, PP 1 (Processing Claims for Refugee Protection in Canada), section 8.1. See also Enforcement Manual, ENF 4 (Port of Entry Examinations), section 8.5 (Use of interpreters).

the interpreter speaks the same language as the claimant, but comes from another country or region. For five claimants interviewed, the interpreter's dialect was difficult to understand. Some of these claimants asserted that the language of interpretation was clearly not the interpreter's native language.

A refugee counsellor and former interpreter explained the issue:

“There is an assumption that, if the interpreter says they speak this language, they can speak it regardless of the country they come from. Even if they speak the same language, the interpreter may not capture the cultural nuances, cannot understand certain terms. There is a lot of misinformation.”

Due to practical considerations, interpretation is sometimes done over the telephone. Although this research did not permit an assessment of the impacts of this practice, several practitioners spoke with concern of the particular dynamics of phone interpretation and the heightened importance of safeguarding against mistakes. Without all-important visual cues and eye contact, the risk of miscommunication is said to be increased.

Semi-fluent English/French speakers: Some refugee claimants who speak conversational English or French nonetheless require an interpreter at port-of-entry interviews. Technical questions about, for example, the reasons for fleeing home and details of past employment, require a degree of fluency that many conversational speakers lack. There are also important legal consequences to the POE interview and it is therefore inappropriate for claimants to be conducting the interview in a language in which they are not fully fluent. The operational manual recognizes this:

“The Ontario Court of Appeal also noted that a person may be able to communicate in a language for general purposes but not have sufficient comprehension or fluency to face proceedings with important consequences without the assistance of an interpreter.”⁵

In three cases, claimants who requested an interpreter despite speaking conversational English or French described inappropriate responses by the officer. One claimant's request was refused. For the other two, the officer appeared to become angry as a result of the request. Such responses discourage claimants who are not fully fluent in English or French from seeking the interpretation necessary for a fair interview.

Issues of trust: The impartiality of the interpreter, stipulated in the Protected Persons Manual,⁶ is essential to procedural fairness. If the interpreter is not perceived by the claimant as impartial, confidence in the integrity of the interview and the reliability of the decision is lost, since the claimant may not feel comfortable answering questions openly and honestly.

⁵ PP 1, section 16.2, citing *R. v. Petrovic* (1984), 47 O.R. (2d) 97.

⁶ *Ibid.*, section 8.1.

Where the interpreter comes from the same country or region as the claimant, the politics of ethnicity or religion may be paramount in the claimant's mind. Some claimants made reference to the ethnicity or nationality of their interpreter. Several practitioners elaborated on this issue.

Since many refugee claimants come from minority groups, whether ethnic, religious, political or otherwise, they sometimes suspect interpreters from majority groups of not being sympathetic, even though the fear is often misplaced. Claims based on sexual orientation, discussed above, are but one example of scenarios where the interpreter's presence may intimidate the claimant and prevent them from speaking openly.

Considerations: Errors in interpretation at port-of-entry interviews can have important consequences for claimants. Faulty interpretation risks forming the basis of removal orders preventing a refugee from making a claim, or refusals under the Safe Third Country Agreement, both discussed in subsequent sections. Moreover, errors in the officer's notes due to inadequate interpretation may undermine the refugee claim when heard by the Immigration and Refugee Board. Port-of-entry notes are the subject of the next section.

CBSA policy recognizes that fair port-of-entry interviews require high quality interpretation. The operational manuals note that the Federal Court will "strike down any decision based on evidence obtained through an interpreter whose competency is in doubt."⁷ However, this research revealed particular cases where poor quality interpretation went unchecked, even where the negative consequences for the claimant were significant. In practice, it is very difficult to prove interpreter incompetence.

2. Port-of-entry notes

This research was in part motivated by long-standing concerns about port-of-entry notes – the notes taken by border services officers during interviews. When substantive questions are asked about the merits of the refugee claim, and the answers are recorded in the POE notes, the Immigration and Refugee Board may make use these notes in assessing the refugee claim. This creates the possibility of negative credibility findings being drawn if there are inconsistencies between the notes and the claimants' allegations at the refugee hearing. If the notes are inaccurate or incomplete, the claimant may be unfairly disadvantaged. The same concern applies to inland examinations conducted by Citizenship and Immigration Canada.

The research suggests that port-of-entry notes need to be viewed with caution, particularly on matters relating to the basis of the refugee claim.

Port-of-entry notes are potentially unreliable in two ways. First, the written records of the officer may misrepresent what the claimant actually said – either because of interpretation problems, or because of selective note-taking or mistakes. Second, the circumstances of the port-of-entry interview, in which claimants lack counsel and are often misinformed and afraid, and may have been told to be brief, make it unfair to rely on the answers to substantive questions about the basis of the claim.

⁷ ENF 4, section 8.5.

Risk of misrepresentation: The experience of a Middle Eastern claimant illustrates the issue of errors in the notes. The claimant's POE interview was conducted using a telephone interpreter who spoke the claimant's language but not his dialect. The interview proceeded despite communication difficulties: "I had a lot of difficulty understanding him. I was really trying hard. Even the officer at the desk got a bit agitated about his slow responses."

The claimant was referred to the Immigration and Refugee Board for a hearing. There, glaring mistakes in the port-of-entry notes came to light. The months of key events, including his date of birth and the dates he was imprisoned by his home government, had been translated using the interpreter's native calendar, instead of the claimant's. Regrettably, the Board member relied on inconsistencies resulting from the incorrectly translated dates to find the claimant not credible.

The Federal Court has repeatedly questioned the reliability of port-of-entry notes as evidence in substantive decisions, and affirmed the importance of considering explanations for any inconsistencies. In one case, the Court held that it was unreasonable not to consider explanations for inconsistencies between the POE notes and the Personal Information Form, namely, "fear upon arrival, incompetent counsel and memory problems."⁸

Five claimants who viewed their port-of-entry notes days or weeks later said the notes did not include everything they said at the interview. In some cases, questions they remember being asked were not included in the notes.

Several experienced refugee lawyers remarked that newly arrived refugee claimants reading their POE notes frequently object to certain things they are reported to have said, and to the absence in the notes of certain things they claim they did say. This research suggests that, at least in some cases, port-of-entry notes are not exact records of the interview. Treating the notes as verbatim transcript risks mischaracterizing the reality of what the notes represent.⁹

A number of claimants reported that they were told to be brief, since they will have a full hearing later. However, this may not necessarily be specified in the port-of-entry notes.

This raises the concern that claimants may be told to be brief at the port of entry, but then be challenged by the Immigration and Refugee Board about why they did not mention certain things at the port of entry.

⁸ *Okoli v. Canada* 2009 FC 332, at paras. 11 and 28. In *Mojica Romo v. Canada* 2006 FC 543, at para. 10, the Federal Court acknowledged the problematic reliance by some Board members on the POE notes: "The applicants are correct in contending that the Federal Court has pointed out some of the pitfalls for tribunals using port of entry notes and PIFs, going overboard to identify contradictions and omissions in order to find a lack of credibility, when that was not always the case."

⁹ This issue came up in a Federal Court case in which the content of the POE notes was at issue. The officer wrote in the POE notes that the claimant was a member of two Burundian organizations, when in fact the claimant had only attended meetings. The officer also included dates of membership, but these dates were allegedly derived from background information provided by the claimant. The Immigration and Refugee Board rejected the claim based on inconsistencies with the POE notes. The Federal Court overturned the decision. *Kubwayo v. Canada* 2008 FC 880.

The fact that port of entry interviews are not audio-recorded means that the Immigration and Refugee Board has no way of verifying what in fact was said at the interview.

Scope of the POE interview: The CCR has long recommended that the port-of-entry interview be brief and limited to issues to be determined by the POE officer, namely issues of eligibility and admissibility.

This is in line with the instructions in the Protected Persons Manual regarding the types of questions to be asked:

“The officer should not ask the claimant to elaborate on the basis of the claim unless the information relates to admissibility and eligibility. It is not the officer’s responsibility to determine the credibility of the claim for refugee protection.”¹⁰

The manual is clear about the purpose of the interview and the limitations of this purpose:

“The purpose of this portion of the examination is to determine if a claim is eligible to be referred to the Refugee Protection Division. However, the purpose is not to delve deeply into the basis for the refugee claim.”

This research shows a promising development along this line in recent years. Practitioners interviewed generally credit CIC, and to a lesser degree CBSA, with having shortened their front-end interviews and reduced the extent of questions about the merits of the claim. These improvements are largely attributable to the welcome implementation in December 2008 of a revised and shortened form.¹¹

Nevertheless, some officers continue to take extensive notes beyond the mandate of the interview. Some officers also appear to believe that they have a role to play in evaluating the well-foundedness of the refugee claim, although the matter is clearly beyond their competence and training. The POE notes for one recent claimant family, arriving at Pearson airport, include the following comment from the officer, after finding the claimants eligible:

“I will, however, be seeking the Minister’s intervention in your case as it is my opinion that your claim for protection lacks any basis. First of all, you failed to avail yourself of your country’s protection by not reporting Mr. [X] to the [X] police. Second, you failed to report the above mentioned assault in March of this year to the [X] authorities [...] I want to make sure that whoever has to decide on your application for protection is aware that if you felt persecuted in [X] and [X], you could have gone to live in any of the other twenty five countries in Europe. To grant you refugee status without you showing proof that you have a well-founded fear of persecution in all of the twenty seven countries of the European Union, would be a gross abuse of our refugee protection system.”

¹⁰ PP 1, section 8.7.

¹¹ Citizenship and Immigration Canada, Claim for Refugee Protection in Canada, IMM 5611, available online: <http://www.cic.gc.ca/english/pdf/kits/forms/IMM5611E.pdf>.

The fact that officers are forming their own opinions of the merits of a claim, and labelling some claims as potentially “abusing” the system, must raise concerns about whether such opinions might influence the drafting of POE notes, including in ways more subtle and less easy to detect than in the extract above.

3. Consistency and training

Many claimants and practitioners interviewed for this research described positive experiences they had with CBSA and CIC. Some claimants reported that professional and sensitive officers eased their initial fears and anxieties. The positive experience of several claimants at the Fort Erie port of entry, which includes a reception centre with snacks, a playroom and computers, among other amenities, deserves special mention. More generally, the use of designated units at some ports of entry in which officers are specially trained in refugee issues appears to promote positive treatment.

Consistency between officers: This research also revealed some important inconsistencies with respect to the behaviour of different border officers. Some of the claimants interviewed perceived differences in how officers behaved. For example, one woman from Central Africa was seen by a series of officers. She described the earlier officers as behaving well, but the last one she found abusive. She said that he threatened her with jail, with return to the US and with taking away her baby. She also said that he threw papers down in front of him.

Another claimant, a Central American who considered the officer’s behaviour abusive during his POE interview, reported that when he spoke to fellow detainees he found that others had similar experiences of abuse with this particular officer.

Practitioners, who have opportunities to hear reports of, or witness first hand, officers at POE interviews over a period of time, confirmed the perception that certain officers are less fair than others. Some reported that they believed that treatment at the interview, and in some cases even the outcome of the interview, depend to a large extent on which officer is conducting the interview.

The coordinator of one refugee shelter, who regularly accompanies claimants to inland interviews, alleged that he can predict the treatment his client will receive based on the name of the officer. Some officers are considered fair and humane, others less so.

He described the experiences of two African claimants of very similar profiles who were interviewed within one week of each other. Both were unaccompanied minors with little in the way of identity documents. For the first claimant, the interview was brief. For the second claimant, an initial two-hour interview was followed by a second interview lasting several hours, after which the claimant was detained.

An American paralegal described her experience regularly accompanying claimants to the border:

“The officers are better than they used to be, but it depends on the guy or the gal. There are certain ones I can count on to be decent. And there are certain ones I can count on to be a jerk. When you arrive, you’re looking around – is it the good one, or the bad one? I know that not all the officers are unfair. But there are several who are not compassionate or courteous.”

Considerations: Based on interviews with practitioners, it would appear that the implementation of designated refugee processing units has improved fairness for claimants at certain ports of entry. For instance, improvements in general trends have been observed by numerous practitioners working with refugee claimants who arrive at the Toronto airport. By improving the refugee-specific training of border officers, these practitioners contend, the likelihood of inconsistent and potentially abusive conduct is reduced.

Positive developments were also associated with the creation of generally humane and welcoming environments at ports of entry. As discussed above, fear and anxiety prevent some refugee claimants from candidly answering questions. Physical environments that reduce rather than aggravate fear and anxiety therefore help to avoid negative experiences and unfair outcomes.

The reception centre at the Fort Erie port of entry, a collaborative initiative with non-governmental stakeholders, was frequently described favourably by refugee claimants.

Nevertheless, the widespread perception of inconsistent conduct among officers emerged from this research. While claimants with positive experiences described the sensitive conduct of their officers, insensitive officer conduct was a frequent complaint.

Abusive behaviour by officers would clearly be a violation of CBSA’s Code of Conduct, which proclaims:

“We show the utmost appreciation for the dignity, diversity and worth of all people. We do this by listening to others to understand their positions and by behaving in a just, courteous and reasonable manner. We respect the privacy of Canadians and strongly uphold the *Canadian Charter of Rights and Freedoms*.”¹²

Because interviews are not taped, it is difficult, if not impossible, for there to be meaningful follow up if allegations of abuse are made.¹³

¹² <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/acc-resp/code-eng.html>

¹³ The CCR encountered this problem when it asked CBSA to investigate a case involving allegations that an officer made improper threats. CBSA responded that a review of the file “failed to substantiate” the allegation. Given that an officer who made improper threats is unlikely to record the fact in the file, this is a most unsatisfactory response.

Humane physical environments help by putting claimants at ease. More importantly, sensitive and understanding officers themselves create an environment conducive to open and honest communication.

One Southern African claimant, who was extremely nervous before arriving, recalled his relief at encountering thoughtful and understanding border officers: “I wanted to find the officers’ names to thank them, because I heard bad stories from others who arrived.”

4. Safe Third Country Agreement

The Safe Third Country Agreement bars most refugee claims at the Canada-United States land border. The rationale given is that both countries have adequate refugee protection systems, and therefore refugee claimants should seek protection in the first country they arrive in. Various exceptions exist to the general rule, notably where individuals have family members in the country they seek to enter.¹⁴

For many claimants at the US Canada border, the safe third country rule means that they must satisfy a border services officer that they have a family member in Canada.

This can represent a significant challenge, as shown by the research.

One Southeast Asian claimant was seeking to join her nephew in Canada. To assess the validity of their family relationship, the officer asked the woman to write down the names of all her brothers and sisters, of which there were eleven. He then asked for the names of their spouses, and the professions of each sibling and sibling-in-law. This was followed by the number of children each couple had, and the names of all the children. In sum, the woman named over seventy family members and many of their professions.

The border services officer then phoned the woman’s nephew in Canada and quizzed him on the family tree just constructed by his aunt. Fortunately for the claimant, her extended family was tight-knit. Both the claimant and her nephew were able to answer detailed questions without too much difficulty. Although this claimant had a particularly large family, the procedure is apparently typical.

For various reasons, some cases are not so smooth. Some refugees flee their homes as young children and are separated from their families for many years. They may be seeking to join an aunt or an uncle they have never met. In these cases, detailed questioning bears little fruit – genuine family members may not have the kind of knowledge of each other that is necessary for this type of test.

¹⁴ There are also exceptions of unaccompanied minors, document holders and persons facing the death penalty. See Canada–U.S. Safe Third Country Agreement, <http://www.cic.gc.ca/english/department/laws-policy/menu-safethird.asp>. Previous to June 2009, nationals of countries to which Canada had imposed a temporary suspension of removals (‘moratorium countries’) were also exempted from the safe third country rule.

Meanwhile, there are some cases where obtaining documents is nearly impossible, and oral testimony is all the claimants have. There are several possible explanations. Refugees often flee quickly in response to unexpected events, and do not bring their documents with them. It can be very difficult to obtain official documents in countries with unstable or corrupt governments. In some countries from which refugees flee, there is no effective government. As one practitioner attests, obtaining identity documents in South Sudan, for example, “is like trying to get milk out of wood. There is no infrastructure.”

When the Safe Third Country Agreement was being implemented, the government assured stakeholders that they would take a liberal approach to assessing evidence of family relationship.¹⁵ This is recognized in the Protected Persons Manual:

“Credible testimony may be sufficient to satisfy a decision-maker in the absence of documentary evidence or computer records. It may be appropriate in these circumstances to request that the applicant and the relative provide sworn statements attesting to their family relationship.”¹⁶

The testimony of claimants and practitioners suggests inconsistencies in evaluating family relationship and, in some cases, inflexibility leading to the rejection of claimants who in fact have family members in Canada.

One claimant, a young East African mother, went through a particularly tortuous process. She was denied entry three times before finally joining her brother in Canada two-and-a-half years later. On her first visit to the border, the claimant did not mention her brother because she believed only citizens could be anchor relatives, and her brother is a non-citizen. After two refusals, the claimant, living with her small child without status in the United States, obtained DNA samples for herself and her brother, affidavits from family members, and family photographs. She was again swiftly rejected.

Canadian lawyers got wind of her case and filed for judicial review. The Federal Court of Canada ordered new DNA tests of the claimant, her brother in Canada, and her mother overseas. The results came through and she was allowed to enter. But because she was previously found ineligible to make a refugee claim, she is now limited to applying for a Pre-Removal Risk Assessment, a process with far lesser protections than a refugee claim.

Practitioners who work with refugee claimants on both sides of the Canada-US border described what they perceive as a lack of uniform procedure in assessing family relationships. While in some cases the officer appears to accept the credibility of family relationships, in others, the officer demands extensive identification and original documents, yet still rejects the claim. In some cases, a phone call to the relative in Canada has constituted sufficient evidence. Yet in

¹⁵ At a meeting in Niagara Falls on 16 December 2004, just before implementation, Canadian officials stated very clearly that they intended to apply the exceptions generously and would not insist on documents to prove family relationship or age of minors.

¹⁶ PP 1, Appendix C.

cases where the relative does not pick up the phone or is not immediately available, claimants have been rapidly turned away.

Several practitioners expressed concerns about the procedures followed in redeterminations of negative eligibility decisions – for example, where claimants have been turned away because of insufficient evidence, and later return with the necessary documents and contact information. There is some confusion about the standard of evidence demanded, the extent to which officers give the benefit of the doubt, and the time allowed to establish proof and contact relatives before being rejected.

As a result of perceived inconsistencies, some practitioners have developed the opinion that officer discretion is used unfairly to the detriment of certain profiles of refugee claimants. This research found no direct evidence of this. However, experienced practitioners observed that claimants from certain countries appear, at times, to encounter stricter standards of evidence than others. For example, some officers appear to be unfairly sceptical about documents from certain countries, without being adequately sensitive to the challenges of obtaining documents from these same countries.

The guidelines state, “Although the burden of proof is on the claimant, officers should make reasonable efforts to confirm family relationships.”¹⁷ Based on a combination of claimant experiences and practitioner observations, this research suggests that unreasonable and inconsistent assessments of family relationships have in some cases undermined the fair application of the family member exception.

5. Exclusion cases

Under Section 99(3) of the *Immigration and Refugee Protection Act*, a person subject to a removal order is excluded from claiming refugee status. There are unfortunate situations where people seeking refugee protection do not initially state their intention to claim refugee status, and are issued a removal order. Though they may apply for a Pre-Removal Risk Assessment, there is no stay of removal pending such applications.

The CCR has for many years been concerned about refugees being prevented from making a claim because of a removal order. This research shows some important improvements. Notably, practitioners working closely with the Toronto airport POE report that exclusion cases have been far fewer in recent months.

However, according to practitioners, problematic cases continue to be encountered in Montreal, Halifax and Vancouver, and remain a possibility at all ports of entry.

Why might someone seeking refugee protection fail to make their intention known? Communication errors may result in misunderstandings about the purpose of the visit. Smugglers or others may have misinformed the claimant, causing them to insist they are the person in their false documents and hope to claim refugee status inland. Fear of the

¹⁷ PP 1, section 18.10.

consequences of declaring their fear of persecution may prevent the claimant from openly expressing their story.

The example of a West African claimant is illuminating. The claimant arrived on a false passport, which was discovered as false by the border services officer. “I said I was coming to attend my friend’s wedding,” he explained. “In reality, the purpose was to get into the country and make a refugee claim. I was nervous, really nervous.”

Numerous officers asked him questions about the country on his false passport. The claimant, who was educated and politically engaged in his home country, asked repeatedly to speak with a United Nations representative. He was charged for entering on a false passport¹⁸ and a removal order was issued against him. The claimant said:

“If there was any question about fear, about why I left home, I may have had the courage to make a claim. But I was intimidated by the questions they were asking. I didn’t know how to go about making a refugee claim. I thought I had to come inside the country and see a lawyer, then make a claim. I was detained back home and a lawyer got me out. I trust lawyers.”

The following day, a fourth officer was more sympathetic than the previous three, and the claimant told his story:

“I communicated with her. She asked me what the problem is. I told her I was a political activist back home, and I am running away because of persecution. I exposed the government through my writings. I told her there was a warrant out for my arrest. The officer was very sympathetic, but she said she had been sent to arrest me. They arrested me, and put handcuffs on me.”

This claimant was unusually well-educated, knowledgeable about human rights and fluent in English. Many claimants are not. CBSA recognizes these issues in its Enforcement Manual and provides guidance for avoiding unjust outcomes:

“The Minister’s delegate should satisfy himself that removal would not be contrary to the spirit of Canada’s obligations before issuing an order, even when the subject does not explicitly request access to the refugee determination process. It must also be recognized that some people who may have a legitimate need of Canada’s protection are unaware of the provision for claiming refugee status.”¹⁹

Nevertheless, there may be gaps in the guidelines. They call upon the officer to ask how long the individual intends to stay in Canada: “If the persons indicate that their intention is or was to remain temporarily, the Minister’s delegate should proceed with the removal order.”²⁰ In the case above, the claimant specifically insisted that his visit was temporary, thinking this would

¹⁸ IRPA, section 122(1)(b).

¹⁹ Citizenship and Immigration Canada, Enforcement Manual, ENF 6 (Review of Reports under A44(1)), section 8.

²⁰ *Ibid.*

enable him to seek refugee protection inland. Despite his considerable education, he was not aware of the right to claim refugee status upon arrival in Canada. The guidelines called for no further steps to be taken.

Although the manual offers some safeguards for claimants misinformed about refugee determination, problematic removal orders continue to take place. Practitioners in Halifax, Montreal and Vancouver who have encountered exclusion cases in the past believe that wrongful removal orders continue to be a very real possibility in each city. They have little way of knowing the extent of exclusion cases, because detention monitoring is insufficient to capture all cases prior to deportation.

6. The culture of enforcement

The Canada Border Services Agency is a relatively new agency, created in 2003 out of the enforcement branch of Citizenship and Immigration Canada and the customs branch of the former Canada Customs and Revenue Agency. Its mandate involves both immigration and customs activities. Within the area of immigration, CBSA is tasked with carrying out the enforcement provisions of the *Immigration and Refugee Protection Act*. In doing so, it must also implement the refugee protection provisions of that Act.

At the time of the creation of CBSA, the CCR expressed concerns about an enforcement agency being responsible for port of entry interviews for refugee claimants. In a letter to then Prime Minister Paul Martin, the CCR wrote in February 2004:

“We are also concerned at the possibility, currently being discussed within the government, that the initial interview and eligibility decision for refugee claimants might be transferred to the Border Agency. We believe that it would be highly inappropriate to hand responsibility for receiving refugee claims over to an enforcement agency. Such a move would send the message that the government intends to treat refugee claimants as a threat to safety rather than as people seeking safety in Canada. Having refugee claimants received by enforcement agents is also liable to lead to a less sensitive approach. Yet refugee claimants, many of whom have suffered torture or other traumatizing experiences, need to be treated with particular compassion and understanding.”

CBSA nevertheless assumed the responsibility for eligibility determinations at border points and has committed to balance the various demands placed upon it.

“We are united in our resolve to carry out our diverse mandate and enforce the laws of Canada with impartiality and fairness.” – CBSA Charter

This research shows that in some important respects, CBSA struggles with the diverse responsibilities within its mandate. Specifically, it suggests that the enforcement aspects of the mandate may compromise the duty to protect refugees.

For instance, some claimants testified that officers did not believe them or even accused them of lying. In one extreme case, a Central American claimant, after leaving the interview room, claimed he overheard the officer describe his case as “bullshit” to the interpreter. One refugee lawyer was told by a border services officer that in over ten years of work, the officer “had yet to see a legitimate refugee claim.”

Several claimants perceived that officers were interrogating them with the aim of confusing their answers. One very young West African claimant who had recently left her country unexpectedly and in desperation explained: “[the officer] didn’t let me speak for long. It was question after question. The moment he was asking question after question, I knew he wanted to scare me.”

This interrogatory approach appears to reflect enforcement attitudes that are inappropriate for refugee protection. Possible consequences include the re-traumatization of vulnerable refugee claimants. “Coming from the stance of ‘I don’t believe you,’” explained a counsellor, “is re-traumatizing when talking about sexual or physical assault.” Accusing someone of lying about their most sensitive issues risks undermining the trust and courage it often takes to speak openly.

Many practitioners expressed their belief that incidents of inappropriate officer conduct are symptomatic of a larger organizational culture, which is frequently referred to as the “culture of enforcement.”

The arming of border services officers, including those working with and interviewing refugee claimants, reinforced the view that enforcement approaches are prioritized at the expense of the implications for refugee protection.

The difficulty of distinguishing between enforcement and refugee protection at the organizational level may provide some explanation for the inconsistent conduct of different officers. For individual officers, approaching refugees with the mentality of enforcement may increase the likelihood of the negative experiences discussed in this report. Conversely, officers who are sensitized to refugee protection are more likely to avoid such outcomes.

In the most extreme cases, claimants seeking refugee protection felt that they were being treated like criminals. For some, this brought back difficult memories of persecution they experienced back home.

The enforcement mentality may also influence the interview in more subtle ways. It may encourage the officer to disbelieve the validity of a family relationship, even though obtaining original documents from the claimant’s country of origin would be nearly impossible. It may cause the officer to prematurely issue an exclusion order for someone who does not immediately claim refugee status, even though the individual was visibly distressed and had trouble communicating. It may mean allowing one’s bias to subtly influence the composition of the port-of-entry notes. Finally, it may mean handcuffing or detaining refugee claimants despite the existence of reasonable alternatives.

G. Conclusion

Welcoming refugees is part of Canada's humanitarian tradition. By receiving refugee claimants at the border, the Canada Border Services Agency performs the crucial first step in the process of refugee protection. The responsibilities of CBSA officers include carrying out Canada's fundamental obligations towards refugees.

Many officers carry out their responsibilities with sensitivity and expertise, as reflected in this research. Officers conducting the interviews are supported by the work of many other CBSA and CIC employees who ensure appropriate policies are in place and implemented. These efforts deserve congratulation – the Canada Border Services Agency protects refugees on behalf of all Canadians.

From this research, it also appears that there may be some refugees who do not receive adequate protection at the border. The Canadian Council for Refugees has therefore developed recommendations it considers to be sensible and realistic in light of CBSA's mandate. The recommendations are intended to strengthen the refugee protection function of CBSA and identify areas for improvement.

Results from this research highlight the significance of the role of the border officer in determining the experience of newly arrived refugee claimants. Officers may influence the psychological state of vulnerable claimants, relieve or aggravate claimant fears, decide whether certain claimants may have their claim heard in Canada and take notes that play a key role at the claimant's refugee hearing.

These responsibilities are serious. The role of the officer is complex, particularly as it combines enforcement and protection responsibilities. Yet the difficulty of the officer's role must not result in the inappropriate treatment of refugee claimants. In the words of a young East African claimant: "They can still do their job and be friendly. Not too friendly, but they can still do their job and make the environment welcoming."

Welcoming refugee claimants to Canada is the responsibility and the privilege of the officers of Canada Border Services Agency and Citizenship and Immigration Canada. The recommendations derived from this research aim to support CBSA and CIC in fulfilling their mandate of refugee protection.

H. Recommendations

To CBSA and, as appropriate, CIC

1. Provide to officers more specialized training relevant to claimant port-of-entry interviews, consistently across the country. Training should cover Canada's human rights obligations, refugee determination, considerations in the use of interpreters and the human situation of refugee claimants on arrival.
2. Make use of community and NGO expertise in the provision of this training.
3. Promote, through policy and practice, the presence of lawyers, NGO representatives and others providing support for the claimant. Such support should be understood to assist the efficient completion of the interview by providing reassurance to the claimant. Revise Operational Manual Enforcement 4 (Section 8.4 "Right to counsel at port of entry examinations") consistent with this recommendation, and consistent with PP1: Processing Claims for Refugee Protection in Canada.
4. Adopt a policy, and monitor its implementation, to ensure that separated children are always accompanied at interviews by a properly appointed designated representative.
5. Wherever possible, and at least in areas where numbers warrant, assign port of entry interviews to specialized officers. Such officers should have received in-depth training and conduct the interviews in dress and in a setting that will be as little intimidating as possible.
6. All officers conducting interviews should remove their guns and more generally modify their appearance to remove all suggestions that they are enforcement officers (e.g. remove bullet-proof vest).
7. Wherever possible, consideration should be given to the gender of the officer assigned to conduct an interview. In particular, female claimants should be interviewed by a female officer, where requested and possible.
8. All interviews should be audiotaped, in order to provide a record for use by POE officers in cases where re-determination is being considered, by the IRB if the POE notes are questioned and by those conducting investigations, in the case of a complaint.
9. Review policies and practices on the use of interpreters, including with respect to claimants with some English/French ability, sensitivity to gender and sexual orientation, training for interpreters, code of conduct for interpreters, complaints mechanisms and practices and procedures for telephone/skype interviews. Wherever possible provide interpreters in person. Monitor compliance with Operational Manual Enforcement 4 (Section 8.5 "Use of interpreters").
10. Review and strengthen Operational Manual Enforcement 6 (Section 8) to ensure that officers systematically ask all persons subject to removal if they fear persecution in home country before issuing a removal order. Monitor compliance with the guideline.

11. Review policies for re-opening decisions to issue a removal order where it subsequently becomes clear that the person fears persecution if removed.
12. Continue to instruct officers to focus questions at refugee claimant interviews on matters for their decision (eligibility and admissibility) and to refrain from asking questions about the basis of the refugee claim. Monitor compliance and, as necessary, reinforce for officers that it is inappropriate for them to express opinions about the well-foundedness of a claim.
13. Amend the CBSA Code of Conduct to make reference to international human rights obligations, and in particular Canada's obligations towards refugees.
14. Institute a complaint mechanism that is transparent, accessible and effective.
15. Conduct a review of interviews at the US-Canada border, in order to assess consistency in evaluation of safe third country exceptions, particularly on the basis of family membership.
16. Issue a strong message from the highest levels communicating the importance of protecting refugees, within the mandate of CBSA.

To NGOs and community organizations

17. Attend more refugee claimant port of entry interviews (in line with Operational Manual PP1, 16.12).
18. Follow up on incidents of concern by making a formal complaint to CBSA or CIC, and/or supporting claimants in making a complaint.

I. Acknowledgements

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J. Annex A: Claimants interviewed

#	M/F	Region	Age	Last 12 mos**	Children	Outcome***
1	F	S America	41-50	√	3	√
2	F	E Africa	21-30	√	-	√
3*	M&F	S America	41-50	2008	1	√
4	F	C America	31-40	2001	1+	√
5	M	S America	41-50	√	-	√
6	M	E Africa	21-30	√	-	√
7	M	C Africa	21-30	√	-	√
8*	M&F	SE Asia	51-60	√	-	√
9	M	S America	41-50	√	-	√
10*	F&M	S America	41-50	√	1	√
11	M	S America	31-40	√	2	√
12	M	S America	21-30	√	-	√
13	M	S America	31-40	√	2	√
14	F	E Africa	31-40	√	1	√
15	F	E Africa	31-40	√	-	Ineligible
16	M	Caribbean	31-40	√	-	Ineligible
17	M	S Asia	21-30	√	1+	Ineligible
18	M	C Asia	21-30	√	-	Ineligible
19	F	C Africa	51-60	√	-	Ineligible
20	M	C Africa	41-50	2009	-	Ineligible
21	F	C Africa	51-60	√	-	Ineligible
22	F	E Africa	21-30	√	-	Ineligible
23	F	E Africa	31-40	√	-	Ineligible
24	F	C Africa	31-40	√	1	Ineligible
25	F	Middle East	41-50	√	4	√
26	M	S Africa	41-50	√	-	√
27	M	C America	41-50	√	-	√
28	F	W Africa	18-20	√	-	√
29	M	Middle East	31-40	2007	-	√
30	M	S America	--	√	-	√
31*	F&M	S America	21-30	√	4	Ineligible
32	M	C Africa	31-40	√	-	√
33	M	C America	21-30	√	-	√
34	M	C America	21-30	√	-	√
35	M	W Africa	31-40	√	-	√
36	M	W Africa	31-40	√	-	√
37	M	C Africa	51-60	√	-	√
38	M	W Africa	21-30	2008	-	√
39	F	C America	21-30	2007	-	√
40	M	C Asia	UAM	?	Claimant	√

*The total number of claimants is 45. 5 claimants were interviewed along with their spouses or family members and therefore occupy only one row. Row 31 represents three people: husband, wife and first cousin (male).

**All claimants had their port-of-entry interviews between July 2009 and July 2010, unless otherwise specified.

***All claimants were eligible to enter and were referred to the Refugee Protection Division, unless otherwise specified.

K. Annex B: Practitioners interviewed

Staff from the following list of organizations were interviewed or collaborated in the research. Their remarks do not necessarily represent the views or policies of their organizations. Some organizations have been kept confidential at the request of the interviewee. Professions include refugee lawyers, paralegals, settlement counsellors, shelter directors, interpreters and academics.

- Action Réfugiés Montréal, Montréal
- Calgary Catholic Immigration Society, Calgary
- Canadian Centre for Victims of Torture, Toronto
- Casa El Norte, Fort Erie
- Committee to Aid Refugees, Montréal
- Diocese of London Office for Refugee Claimants, Windsor
- Downtown Legal Services, Toronto
- Edelman Legal Services, Vancouver
- FCJ Refugee Centre, Toronto
- Freedom House, Detroit
- Halifax Refugee Clinic, Halifax,
- Jackman and Associates, Toronto
- Matthew House, Toronto
- Midaynta, Toronto
- MOSAIC, Vancouver
- Pivot Legal, Vancouver
- Projet Refuge, Montréal
- Rainbow Refugee Committee, Vancouver
- Refugee Law Office, Toronto
- Roma Community Centre, Toronto
- Salsbury Community Society/Kinbrace, Vancouver
- Sojourn House, Toronto
- Vermont Immigration and Asylum Advocates, Burlington
- VIVE La Casa, Buffalo