Refuge
Canada's Journal on Refugees
Revue canadienne sur les réfugiés

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An Empirical Snapshot (2013–2021)

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Volume 40, numéro 1, 2024

URI : https://id.erudit.org/iderudit/1112253ar
DOI : https://doi.org/10.25071/1920-7336.41139

Aller au sommaire du numéro

Éditeur(s)

Centre for Refugee Studies, York University

ISSN

0229-5113 (imprimé)
1920-7336 (numérique)

Découvrir la revue

Citer cet article

Rehaag, S. (2024). Claim Types in Canada's Refugee Determination System: An Empirical Snapshot (2013–2021). *Refuge*, *40*(1), 1–29. https://doi.org/10.25071/1920-7336.41139

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Cet article présente un aperçu des aboutissements de différents types de demandes d'asile au Canada. Il critique les méthodologies de recherche juridique habituelles dans le domaine du droit des réfugiés en raison des biais dans les pratiques de publication. Pour remédier à ces biais, l'article emploie des méthodes de recherche quantitatives empiriques utilisant des données de tribunaux administratifs et des méthodes informatiques. Il donne un aperçu du nombre de demandes d'asile, des pays d'origine, des catégories de demandes et des résultats. L'article souligne ensuite les avantages de compléter la recherche juridique doctrinale par des méthodes de recherche quantitative empirique, décrit les obstacles à l'adoption de ces méthodes et proposedes conseils et des outils pour aider d'autres chercheurs à surmonter ces obstacles.

Refuge: Canada's Journal on Refugees / Refuge : revue canadienne sur les réfugiés
2024, Vol. 40, No. 1, 1–29
https://doi.org/10.25071/1920-7336.41139

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HISTORY Published 2024-06-17

ABSTRACT

This article overviews outcomes in different types of refugee claims in Canada. It critiques standard legal research methodologies in the refugee law field due to skews in publication practices. To address these skews, the article employs empirical quantitative research methods using administrative tribunal data and computational methods. It provides a snapshot of refugee claim numbers, countries of origin, claim categories, and outcomes. The article then underscores the benefits of supplementing doctrinal legal research with empirical quantitative research methods, outlines barriers to the adoption of such methods, and offers guidance and tools to assist other researchers in overcoming those barriers.

KEYWORDS

refugee law; Canada; empirical; quantitative; political opinion; gender; sexual orientation; religion; race; ethnicity

RÉSUMÉ

Cet article présente un aperçu des aboutissements de différents types de demandes d'asile au Canada. Il critique les méthodologies de recherche juridique habituelles dans le domaine du droit des réfugiés en raison des biais dans les pratiques de publication. Pour remédier à ces biais, l'article emploie des méthodes de recherche quantitatives empiriques utilisant des données de tribunaux administratifs et des méthodes informatiques. Il donne un aperçu du nombre de demandes d'asile, des pays d'origine, des catégories de demandes et des résultats. L'article souligne ensuite les avantages de compléter la recherche juridique doctrinale par des méthodes de recherche quantitative empirique, décrit les obstacles à l'adoption de ces méthodes et propose des conseils et des outils pour aider d'autres chercheurs à surmonter ces obstacles.

INTRODUCTION

This article presents an empirical overview of outcomes in different types of refugee claims made in Canada from 2013 to 2021. It is the first published article that attempts to offer such an overview. I begin by outlining the context for the project, including a discussion about some of the limits of standard doctrinal legal research methodologies using published cases in the refugee law field, focusing on how decision-making and publication practices risk skewing the results of research that focus solely on such methods. Next, the article describes in detail an alternative empirical quantitative research method that can helpfully supplement doctrinal legal research by drawing on data obtained from Canada's Immigration and Refugee Board (IRB) through access to information (ATI) requests and a data-sharing agreement, and then processing that data using computational methods. I move on to present a snapshot of refugee decision-making produced using these methods, first by offering a broad overview of the number of claims made and

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outcomes in those claims, then describing the categories of claims adjudicated, and then providing a detailed examination of each of the main categories. Finally, the article explores the benefits of research using these methods, examines some of the barriers that make using these methods difficult, and explains how this project can help other researchers contextualize doctrinal research in this field and potentially use similar empirical methods themselves.

CONTEXT: BEYOND PUBLISHED CASES

Much existing scholarship about Canada's refugee determination system relies on traditional legal research methods involving close readings of published cases. These cases are often selected because they are influential. For example, scholars may focus on appellate-level cases that clarify key legal principles and that bind hierarchically inferior courts and tribunals (Grey, 2016; LaViolette, 1997; Macklin, 2002). Similarly, scholars may focus on cases that are frequently cited in other decisions (Simeon, 2015) or cases that offer an occasion for a particularly instructive analysis (MacIntosh, 2005). Sometimes, scholars attempt to be more comprehensive by reviewing all published cases involving a particular type of claim. For example, a scholar may identify all published cases that mention gender-based violence to offer an account of how the refugee determination process deals with these sorts of claims (Arbel, 2013; MacIntosh, 2009; Millbank & Vogl, 2018).

These are, of course, not the only research methodologies used by scholars interested in different types of refugee claims. Some scholars use a variety of research methods, including interviews (Jacob & Oswin, 2022; Murray, 2015), ethnographic observations (Thomkinson, 2018), reviews of transcripts and case materials (Rousseau et al., 2002), and many others. However, it would be fair to say that research on published cases remains the dominant methodology used by legal scholars to study Canadian refugee adjudication.

While this methodology can offer valuable insights, it has significant limitations. One main limitation is that most refugee determinations are unpublished. Moreover, published refugee determinations are a skewed subset of the larger pool of decisions. The causes of this skew relate to how cases move through Canada's refugee determination system and to publication practices.

When a person makes a refugee claim in Canada, the claim is screened for eligibility for referral to the Refugee Protection Division (RPD) of the IRB (Immigration and Refugee Protection Act [IRPA], 2001).[1] Most claimants are eligible for referral, but some claimants are not (Government of Canada, 2023; IRPA, 2001, s. 101).[2] Some of the latter are entitled to a pre-removal risk assessment (PRRA) (IRPA, 2001, ss. 112–114), and others can be removed from Canada without any risk screening (s. 112(2)(b)). When claims go through PRRAs or where there is no process at all, no decision is published unless there is a subsequent judicial review. Publication of judicial reviews is discussed in more detail below, but it is worth highlighting that claimants found to be ineligible for referral to the RPD face systemic barriers that constrain their access to judicial review,

[1] Powers over immigration are technically a matter of shared jurisdiction between the federal and provincial levels of government (Constitution Act, 1867). However, due to the doctrine of paramountcy, federal legislation supersedes provincial legislation. Because the federal government has exhaustively legislated in refugee adjudication, in practice, the law relating to refugee adjudication falls exclusively within federal jurisdiction and is governed by the IRPA.

[2] Grounds for ineligibility for referral include having made a prior refugee claim in Canada or the United States; being recognized as a refugee in another country where the claimant can be returned; being subject to the **Canada–US Safe Third Country Agreement**; and being inadmissible on certain grounds related to security, criminality, or violation of international human rights.

including not being entitled to automatic stays of removal pending determination of their application for judicial review (Immigration and Refugee Protection Regulations, 2002, s. 231). As a result, although thousands of refugee claimants have been found ineligible for referral, there are no published first-instance decisions for claimants who are found ineligible for referral and comparatively few published judicial reviews of ineligibility determinations.[3] Not coincidentally, little published legal scholarship on this group of refugee claimants exists. (One exception is that ineligibility due to the **Canada–US Safe Third Country Agreement** is a topic that has received considerable scholarly attention, but most of that attention has focused on the policy level and on questions related to compliance with constitutional and international law; Atak et al., 2021.)

When claimants are found to be eligible for referral, their claims are decided at first instance by the RPD. In the past, hundreds of RPD decisions were published each year, though these represented less than 5% of RPD determinations.[4] More recently, the practice since 2020 has been to cease publishing RPD decisions entirely (e.g., the IRB published only 37 RPD decisions in 2020 and 25 RPD decisions in 2021; figures calculated using the methodology described in footnote 4).

Where the RPD denies a refugee claim, most claimants are entitled to appeal the denial to the Refugee Appeal Division (RAD) of the IRB (Grant & Rehaag, 2016; IRPR, 2002, s. 110) and all claimants can apply for judicial review in the Federal Courts (IRPA, 2001, ss. 72–75) The Federal Court is a first-instance-level court, and it has exclusive jurisdiction to hear judicial reviews from IRB decisions. It is also possible for the government to appeal or to seek judicial review of positive RPD decisions (IRPA, ss. 72,110), but this is rare. For example, from 2008 to 2016, out of 33,920 applications for judicial review of refugee determinations, only 231 (0.7%) involved applications from the government challenging positive decisions, whereas 33,689 (99.3%) involved applications from individuals challenging negative decisions (Rehaag, 2019, pp. 16–17). Similarly, from 2013 to 2014, out of 1,871 appeals to the RAD, 59 (3.2%) involved the government appealing positive RPD decisions, and 1,812 (96.8%) involved individuals appealing negative RPD decisions (Grant & Rehaag, 2016, p. 221).

Because most RPD decisions are not published and because the RPD is the end of the process for all but a handful of claimants who get positive RPD decisions, almost all published decisions involve appeals or judicial review of initial negative RPD decisions. Moreover, the small number that involve appeals or judicial reviews of positive decisions represent exceptional cases where the government chose to challenge a positive decision.

Even if one focuses only on RAD appeals of mostly negative RPD decisions, however, decision-making combined with publica-

[3] A search conducted on November 24, 2022, on the Canadian Legal Information Institute (CanLII) website for federal court decisions that include the terms **ineligible**, **refer**, and **refugee** located 149 published cases in the past three years. By contrast, a search conducted on the same date for federal court decisions that include the terms **Refugee Protection Division** or **Refugee Appeal Division** (terms that would be included in most decisions involving judicial review of IRB refugee determinations) found 1,590 cases during the same period.

[4] For example, the IRB published 828 RPD cases in 2012 (out of 24,747 refugee determinations on the merits) and 683 RPD cases in 2013 (out of 27,721 refugee determinations on the merits). The numbers of published RPD decisions were calculated by searching on November 24, 2022, on CanLII's IRB database for "RPD File" NOT "RAD File," filtered for the relevant years. The former term is included in the header of all RPD decisions, and the latter is included in the header for all RAD decisions. Statistics on the overall number of refugee determinations on the merits were calculated based on data from UNHCR and include only cases decided on the merits (i.e., excluding cases that are abandoned, withdrawn, or otherwise closed) (UNHCR, 2022).

tion practices further skew the data set of published decisions. At the time of writing, 11,977 RAD decisions made between 2013 to 2021 were published,[5] out of 46,427 RAD cases finalized during the same period (IRB, 2023). Also worth noting, the proportion of published RAD decisions has declined in recent years.[6] The RAD does not explain how it chooses which decisions to publish, but there is no reason to think that the decisions the RAD publishes are representative of the RAD caseload, which as we have seen is already heavily skewed towards initial RPD denials.

Decision-making and publication practices in Federal Court judicial reviews also further skew the subset of published cases. Unlike in most areas of law, refugee claimants do not have a right to full access to judicial review. Instead, they must first seek leave, or permission, from the Federal Court to hear their application (IRPA, 2001, s. 72; Rehaag, 2012). In theory, the test for leave is permissive: leave should be granted if there is a "fairly arguable case" (Bains v. Canada, 1990, cited in Kreishan v. Canada, 2019, para. 18). In practice, however, most applications do not clear this hurdle. This may in part be due to the deferential standard of review applied in many aspects of refugee law judicial review—that is, on many issues raised in refugee judicial reviews, the court does not ask itself whether the decision they are reviewing is correct but merely whether the decision is reasonable (Liew, 2020). Whatever the reason, leave is typically denied (e.g., in 2008–2016, of 33,920 applications for judicial review of refugee determinations, leave was granted in only 5,702 cases [16.8%]; Rehaag, 2019, p. 17). When that happens, no reasons are provided, so there are no written reasons to publish (Hajiyeva v. Canada, 2021, para. 55). When leave is granted and the case is determined on the merits, the Federal Court's practice is generally to provide reasons, though this is not a statutory requirement (Rehaag & Thériault, 2022, p. 202). Publication practices regarding reasons have shifted over time, and there have been periods where only decisions deemed to have precedential value were published (Federal Court, 2015; Rehaag & Thériault, 2022, p. 203). Since 2018, the Federal Court has published written reasons for all final decisions on the merits (Federal Court, 2018; Rehaag & Thériault, 2022, pp. 203–204). However, even during periods where all Federal Court decisions on the merits are published, the skew in terms of which cases come to the court (i.e., largely negative first-instance decisions, and a handful of exceptional positive first-instance decisions that the government decided to apply to review) is further amplified by the leave process, in that decisions are only published in circumstances where the court previously found a prima facie reasonably arguable case that the refugee determination was unreasonable.

Finally, it is in some circumstances possible to appeal Federal Court decisions to the Federal Court of Appeal and beyond to the Supreme Court of Canada. Where a case proceeds to the Federal Court of Appeal, and where the court issues written reasons, those will generally be published (Federal Court Rules, 1998, ss. 392–393). But access to the Federal Court of Appeal is highly

[5]This figure was calculated by searching CanLII's IRB database on December 27, 2022, restricted to decisions in 2013–2021, where decisions contain the terms **Refugee Appeal Division** and **RAD File**.

[6]Using the same methodology described in note 5, the numbers of RAD cases published each year are: 2013: 397; 2014: 1,338; 2015: 1,795; 2016: 1,420; 2017: 630; 2018: 1,028; 2019: 2,025; 2020: 2,577; and 2021: 767. The numbers of finalized RAD decisions are: 2013: 688; 2014: 1,935; 2015: 2,781; 2016: 2,967; 2017: 3,137; 2018: 4,412; 2019: 8,684; 2020: 9,555; and 2021: 12,268 (IRB, 2023). This means that whereas the proportion of published cases in 2013–2016 was near or in excess of 50%, the proportion of published cases in 2017–2021 was less than 25% (as of December 27, 2022, it was only 6% in 2021).

constrained. First, in cases where leave was denied by the Federal Court, there is no appeal (IRPA, 2001, s. 72(e)). Moreover, even where an application for judicial review proceeds to a full hearing on the merits at the Federal Court, appeals to the Federal Court of Appeal are only available if the Federal Court judge issuing the decision decides to certify a question for appeal (IRPA, 2001, s. 74(d)). The legal test for certification is whether there is "a serious question of general importance" (IRPA, 2001, s 74(d)) that "transcends the interests of the parties" (Zhang v. Canada, 2013, para. 9) and that would be "dispositive of an appeal" (Canada v. Zazai, 2004, para. 11). This test is rarely met (e.g., in 2021, whereas the Federal Court decided 8,440 immigration and refugee judicial reviews and 9,997 matters in all areas of law, there were only 148 appeals of Federal Court final judgements across all areas of law commenced in the Federal Court of Appeal the same year; Federal Court, 2022; Federal Court of Appeal, 2023). In the relatively small number of cases that do make it to the Federal Court of Appeal, it is possible to appeal to the Supreme Court of Canada (Supreme Court Act, 1985, ss. 37, 38.1, 40),[7] but the Supreme Court applies its own strict leave requirement (Supreme Court Act, 1985, s. 40),[8] and refugee law cases at that level are quite rare, though reasons are always published when they do occur.

Taken together, these decision-making and publication practices mean that standard legal research methods must be approached with caution in the refugee law context. Scholars who rely on published decisions should be aware that their research is based on a highly skewed data set. Whereas most refugee claims in Canada succeed at first instance (see Table 1a, below), almost all published decisions in this area involve negative first-instance decisions. Moreover, where the cases involve published Federal Court decisions, they not only almost always involve negative first-instance decisions but have also by definition cleared the hurdle of demonstrating that, on a deferential standard of review, there is a fairly arguable case that the decision was unreasonable.

This, of course, does not mean that research about published refugee law cases should not be undertaken. We can learn a lot from these cases. But care must be taken to keep the skewed nature of the data sets used for analysis front of mind. And we should attempt to use other methodologies that can help put insights drawn from research using skewed data sets of published cases into a broader context. It is to a discussion of one such methodology that we will now turn.

METHODOLOGY AND LIMITATIONS

As we have just seen, published refugee law decisions involve a skewed data set, mostly involving appeals and judicial review of negative first-instance refugee decisions. This means that standard doctrinal legal research methods cannot offer a reliable picture of how Canada's refugee determination system responds to different types of refugee claims.

To get around this problem, this article uses a methodology increasingly employed by socio-legal scholars working on immigration and refugee law issues in Canada: obtaining quantitative data from the IRB about all decisions, regardless of whether they are published (Dauvergne & Lindy, 2019;

[7] Absent exceptional circumstances, there is no direct appeal from the Federal Court to the Supreme Court of Canada. Cases can be appealed from the Federal Court of Appeal with leave from the Supreme Court or, exceptionally, on request of the Federal Court of Appeal.

[8] The Supreme Court has discretion to grant leave where the court is "of the opinion that any question involved therein is, by reason of its public importance or the importance of any issue of law or any issue of mixed law and fact involved in that question, one that ought to be decided by the Supreme Court or is, for any other reason, of such a nature or significance as to warrant decision by it" (Supreme Court Act, 1985, s. 40).

Kaushal & Dauvergne, 2011; Rehaag, 2008). Specifically, this article uses a combination of ATI requests and a data-sharing agreement with the IRB to amass a comprehensive data set about all first-instance refugee determinations decided in Canada.

The ATI request sought data on all principal applicant refugee determinations (i.e., one claim per family) from 2013 to 2021. The 2013–2021 period was selected because (a) Canada's refugee determination system was substantially revised at the end of 2012, and thus a 2013 start date captured all decisions under Canada's current refugee determination process; and (b) the 2021 end date reflected the last full year of data at the time of writing. For the purposes of this article, the key data points sought were (a) IRB file number, (b) date case referred, (c) date case decided, (d) outcome, (e) country of persecution, (f) claim category, and (g) claim type.

Due to privacy concerns, the IRB (2022) was only prepared to release the information pursuant to a data-sharing agreement.[9] That agreement reflects the IRB's small value suppression policy:

> When publishing statistics on [IRB] …, small value suppression is applied by the IRB to data values less than 20. … This risk mitigation strategy is applied to IRB statistical reports to protect the privacy of those who appear before the Board as refugee protection claimants. (IRB, 2021a, para. 2; Treasury Board of Canada Secretariat, 2020)

The data-sharing agreement terms include that any publication must adhere to the IRB's small value suppression policy and that the data will not be shared in a way that might reasonably be expected to identify any individual. The data-sharing agreement also requires advance copies of any publications to be provided to the IRB and that any changes the IRB requires to protect privacy will be made prior to dissemination (IRB, 2022). To comply with the data-sharing agreement, wherever the number of cases in a category or subcategory is reported in this article, we only report the number where it is larger than 20. Out of an abundance of caution, we also round all numbers of cases to the nearest 20.

The data provided under this agreement involve all principal applicant refugee determinations made from 2013 to 2021. All the data points noted above were provided. While most data points are straightforward, a few words should be said about claim categories and claim types. At an early stage in the refugee determination process, the IRB categorizes cases into specific claim categories and claim types. The former are 13 high-level categories, described in detail in the section titled "Empirical Snapshot: Claim Categories" below. The latter are much more granular subcategories, of which there are 438 in the data set. Cases may involve more than one claim category and/or claim type.

The data provided by the IRB were processed through a computer program written in Python in a Jupyter Notebooks environment and relying mainly on the Pandas, Numpy, and openpyxl open-source packages. Data were cleaned, and differently reported data sets were merged using IRB file numbers as unique identifiers. Ultimately, this led to a data set of 113,000 principal applicant

[9] Technically, data are released pursuant to an ATI request. Normally that request would be denied due to the IRB's view that the data contain "personal information" that should not be disclosed (Access to Information Act [ATIA], 1985, s. 19(1)). However, ATI legislation allows for the disclosure of data containing personal information where the head of a government institution exercises their discretion to disclose the information pursuant to exceptions under privacy legislation (Access to Information Act [ATIA], 1985, s.19(2)(c)). That exception allows for such disclosure where the information is requested for the purposes of statistical research and where the individual obtaining the information undertakes to avoid further disclosure of the information in a format that could reasonably identify individuals (Privacy Act, 1985, s. 8(j)). To facilitate similar research by other scholars, the full text of the data-sharing agreement is being made available online (IRB, 2022).

refugee determinations finalized in 2013–2021. Because many of these 113,000 claims involved multiple claim categories or claim types (e.g., a refugee claim may involve persecution on account of both sexual orientation and political activism), this produced 140,120 unique combinations of IRB numbers, claim categories, and claim types. In other words, 27,120 rows in the data set involved a second or subsequent claim category or claim type for a given IRB file number.

To facilitate similar research by other scholars, the code used for this project, along with additional data, is being made available online in the Code and Data Repository associated with this article.[10]

Before getting to the analysis of this data set, a few notes of caution are in order.

First, this article relies on data provided by the IRB. The author has at times discovered errors in data provided by the IRB (leading to requests for corrected data) and is not able to directly verify the accuracy of the data provided under the data-sharing agreement. That said, the data provided appear plausible and consistent with prior research (Rehaag, 2011, 2017, 2020).

Second, the data points involving claim categories and claim types at the heart of this article's analysis must be approached with particular caution. Substantial arbitrariness appears in how some claim categories and claim types are framed (e.g., some are very broad, others quite specific), and one might raise questions about whether specific claim types belong within particular claim categories (e.g., Should all claims relating to gender be understood as falling within the IRB's gender-based/domestic violence category? Should "transgender" claims fall within the IRB's sexual orientation category?). Moreover, even assuming the categories themselves make sense, placing particular claims within categories inevitably involves a certain amount of subjectivity. Cases are also categorized at an early stage in the refugee determination process for administrative purposes, and the data are not corrected if it is later discovered that information has changed or that the initial recorded data are incorrect (IRB, 2008, p. 2; Rehaag, 2011, p. 640; 2017, p. 273). Between questionable categories, possible errors in categorization, changes in claim types over the course of the refugee determination process, and some cases having multiple claim types recorded, one cannot be confident that outcomes in a given case necessarily reflect a given recorded claim type. In the author's experience with cases obtained through ATI requests, information about case categories and types in the IRB's database reasonably reflect the types of persecution addressed in the written reasons approximately 85% to 90% of the time.

These limitations mean we should be cautious in making inferences about claim categories and claim types based on small subsets of data. However, given the large size of the data set, and particularly the large number of decisions we report for each category, the overall patterns nonetheless give us a good overview of decision-making in Canada's refugee determination system—certainly better than standard doctrinal legal research methods allow.

Finally, a few notes on terminology. In this article, **recognition rate** refers to the proportion, expressed as a percentage, of positive decisions relative to the sum of positive and negative decisions, excluding withdrawn, abandoned, or otherwise resolved cases.

[10]The Code and Data Repository includes (a) the code used for this project; (b) more extensive versions of the tables used in this article, with the same rounding practices in place to protect privacy, but not truncated for the most common entries, which will allows users to see more granular data and to understand what data may be available for further research; (c) copies of the data-sharing agreement with the IRB and the ATI request used for this research; and (d) a link to a form that university-based researchers interested in collaborations using this data can fill out.

Table 1a

Refugee Claim Outcomes per Year (2013–2021)

Year	Abandoned withdrawn[a]	Negative[a]	Positive[a]	Number[a]	Recognition rate (%)
All	10,360	31,240	71,400	113,000	70
2013	380	1,300	2,220	3,920	63
2014	400	2,340	4,300	7,040	65
2015	400	2,260	4,880	7,540	68
2016	540	2,560	5,840	8,960	70
2017	800	3,520	8,020	12,360	69
2018	1,540	4,000	7,100	12,640	64
2019	2,100	5,600	13,280	20,980	70
2020	1,160	3,380	8,740	13,280	72
2021	3,020	6,280	17,000	26,320	73

Note. [a] Rounded to the nearest 20.

This is the standard reporting procedure used by UNHCR (2022, p. 42), and it is the preferred method of reporting refugee outcome statistics because it avoids potential distortions caused by withdrawn and abandoned claims. Also, for the remainder of the article, **refugee claim** refers to principal applicant refugee claims (there is typically one principal applicant per family). Because we are interested in refugee adjudication, we are using each decision as the unit of analysis, regardless of the number of individuals affected by the decision, which is why we focus on principal applicants. However, it should be recognized that this approach can introduce skews in data sets and, in particular, risks obscuring the experience of "dependent" applicants, a disproportionate number of whom are women and children.

EMPIRICAL SNAPSHOT: OVERVIEW

The data set described in this article covers 113,000 refugee claims finalized by the IRB's RPD from 2013 to 2021.

As Table 1a and Figure 1 demonstrate, from 2013 to 2021, the number of refugee claims finalized per year increased fairly steadily, from a low of 3,920 cases in 2013 to a high of 26,320 cases in 2021. The one exception is a dip in 2020 at the height of the initial disruption caused by the COVID-19 pandemic. These figures reflect the overall trend of growth in the number of refugee claims made in Canada during this period, particularly from 2017 to 2019, when many refugee claimants from several countries came to Canada via the US in the years following the election of President Donald Trump (Smith, 2023). Overall, the average number of cases finalized in 2013–2021 was 12,556 per year. Despite the increase in several recent years, the total number of refugee claims made in Canada in 2013–2021 was typical when put in a broader historical context. (According to UNHCR statistics [2022], from 2000 to 2012, the average number of applications for refugee protection in Canada was 29,429 cases per year, whereas the equivalent figure for 2013–2021 was 29,792 cases per year. These figures reflect all applicants, not just principal applicants, and cover first-instance applications only.)

Figures 2 and 3 show outcomes in refugee claims from 2013 to 2021. Recognition rates

Figure 1

Number of Refugee Claims Finalized (2013–2021)

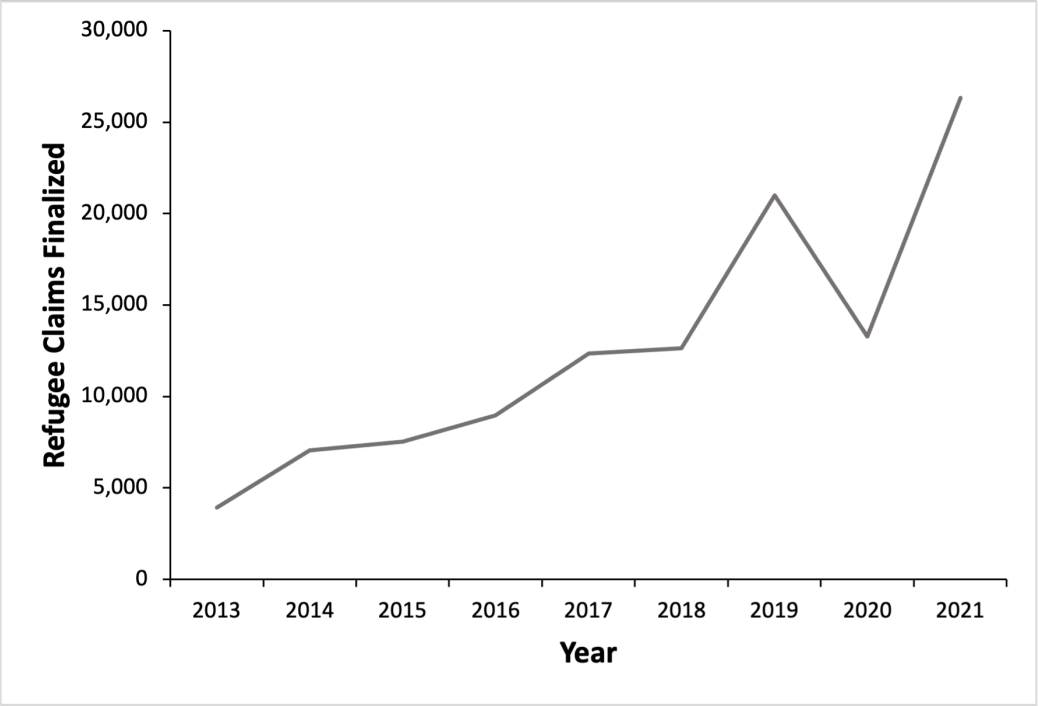
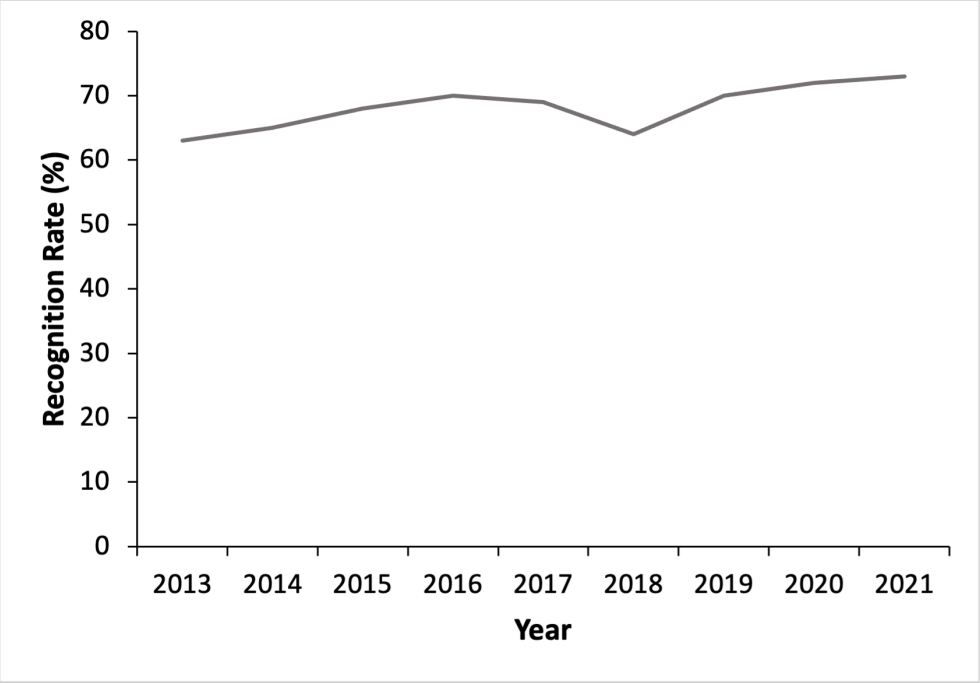


Figure 2

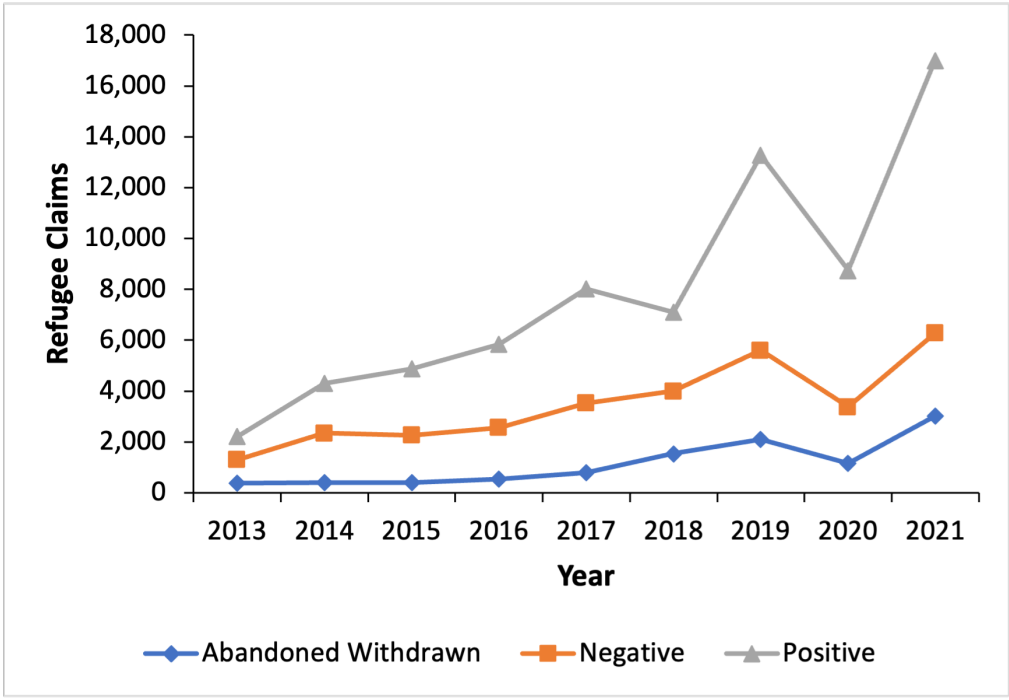
Refugee Claim Recognition Rates (%) (2013–2021)



fluctuated from year to year, but the overall trend was an increase in recognition rates. The lowest recognition rate was 63% in 2013, and the highest was 73% in 2021. The average recognition rate across this period was 70%—above historical averages

Figure 3

Refugee Claim Outcomes per Year (2013–2021)



for Canada. (According to UNHCR statistics [2022], the recognition rate in 2000–2012 was 51%.)

Table 1b lists the 10 most common countries of persecution for refugee claims finalized from 2013 to 2021. Claimants come from a wide variety of countries, with no single country representing more than 8% of claims finalized during this period. The top five countries of origin were Nigeria, Haiti, China, Iran, and Pakistan, which together account for 34,000 out of 113,000 claims finalized (30%). Recognition rates vary significantly across the top 10 countries of persecution, ranging from 96% (Syria) to 32% (Mexico). This is expected, given that country conditions and human rights records differ across countries. Nonetheless, even for countries with relatively low recognition rates in this list of the 10 most common countries of persecution, it bears emphasizing that thousands of claimants from these countries have been recognized as refugees.

EMPIRICAL SNAPSHOT: CLAIM CATEGORIES

Table 2 sets out statistics on claim categories. The IRB uses 13 claim categories in its database (and a residual blank category), which have been aggregated into 6 categories for the purposes of this article. This aggregation reflects categories in Canada's IRPA, which in turn partly reflect categories in the 1951 Refugee Convention (Convention Relating to the Status of Refugees, 1951). Under that legislation,

> a Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of [1a] race, [2] religion, [1b] nationality, [3] membership in a particular social group or [4] political opinion … is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries.
>
> (IRPA, 2001, s. 96)

Table 1b

Ten Most Common Countries of Persecution (2013–2021)

Country of persecution	Number[a]	Proportion (%)	Recognition rate (%)
All	113,000	100	70
Nigeria	9,100	8	50
Haiti	7,240	6	41
China	6,820	6	56
Iran	5,960	5	95
Pakistan	4,880	4	76
Mexico	4,740	4	36
Turkey	4,700	4	92
India	4,480	4	38
Colombia	3,180	3	69
Syria	2,600	2	96

Note. [a] Rounded to the nearest 20.

And,

> [5] A person in need of protection is a person in Canada whose removal to their country or countries of nationality … would subject them personally … to a danger … of torture … or to a risk to their life or to a risk of cruel and unusual treatment or punishment …. (s. 97)

The numbers added in square brackets to these provisions reflect the aggregated categories used in the IRB's database, with an additional category [6] for claims where no claim category information was available. Note that the category indicated as [5] above is described as "no nexus" in the aggregated categories. This reflects that the claim has no connection (or no nexus) to the Refugee Convention grounds, and thus the claim is being assessed under the subsidiary grounds provision for "persons in need of protection."

Claims involving political opinion were the most common category of claims, representing 34% of all refugee claims finalized during this period (Table 2). The recognition rate for these claims was above average: 78% for political opinion versus 70% overall. The next most common type of category involved people facing persecution on account of their membership in a particular social group, which represented 28% of all claims finalized. These claims were slightly more successful than average (72% vs. 70% overall). The third most common category of claim was those who have no nexus to a Convention ground and are thus seeking protection as persons in need of protection. These claims represented 23% of all claims finalized and had the lowest recognition rate of all claim categories by a substantial margin (48% vs. 70% overall). Religion-based claims (16% of all claims) and claims based on race/ethnicity/nationality (12% of all claims) were the least common claim categories, and both had above average recognition rates (78% and 79% respectively vs. 70% overall). Finally, for 4% of claims, no information about claim categories was provided—and these claims were slightly less likely than average to be successful (68% vs. 70% overall).

Figure 4 demonstrates the proportion of claims that fell into the various categories each year from 2013 to 2021. The pattern was fairly consistent during this period, with the main variation being whether political

Table 2

Claim Categories (2013–2021)

Category	Number[a]	Proportion (%)	Recognition rate (%)
All	113,000	100	70
Political opinion	38,740	34	78
Activity/occupation	20,120	18	80
Organization	11,460	10	76
Varied/other	4,820	4	73
Military service	2,340	2	90
State policy issues	1,800	2	53
Activism	140	0	95
Particular social group	31,280	28	72
Gender-based/domestic violence	14,300	13	70
Sexual orientation	12,760	11	77
Varied/other	5,660	5	65
No nexus	25,580	23	48
Criminality/corruption	22,420	20	48
Varied/other	3,660	3	48
Religion	18,580	16	78
Race/ethnicity/nationality	13,580	12	79
No category provided	4,480	4	68

Note. [a] Rounded to the nearest 20.

opinion or particular social group was the leading category.

The next sections will explore each category in more detail, focusing on different types of claims within these broad categories.

Political Opinion

As noted, claims categorized as involving political opinion were the most common category of claims in 2013–2021, representing 34% of all claims finalized.

Table 3a sets out the 20 most common subtypes of claims in this category. By far, the generic "anti-government" claim subtype was the most common, representing 30% of all claims in this category. It is apparent that the subtypes of claims are somewhat arbitrary because some claim types are generic (e.g., NGO worker, state employee, journalist, academic), whereas others are specific to particular countries (e.g., Hizmet, HDP, LTTE)—all of which could likely also be included in the "anti-government" generic category. Additionally, while political opinion–based refugee claims were more likely to succeed (78%) than the overall average (70%), significant variation existed in recognition rates across common subtypes of political opinion claims. For example, whereas claimants involved with the Hizmet (Gulen) Movement succeeded with their claims 97% of the time, and claimants engaged in "evasion" (military draft evasion, presumably) succeeded 92% of the time, claimants resisting land expropriation only succeeded 28% of the time. In addition to these subtypes was a residual subtype of "varied/other" with a large number of claims (12,520), representing 32% of political opinion claims, with a 74% recognition rate.

Figure 4

Refugee Claims by Category and Year Decided (2013–2021)

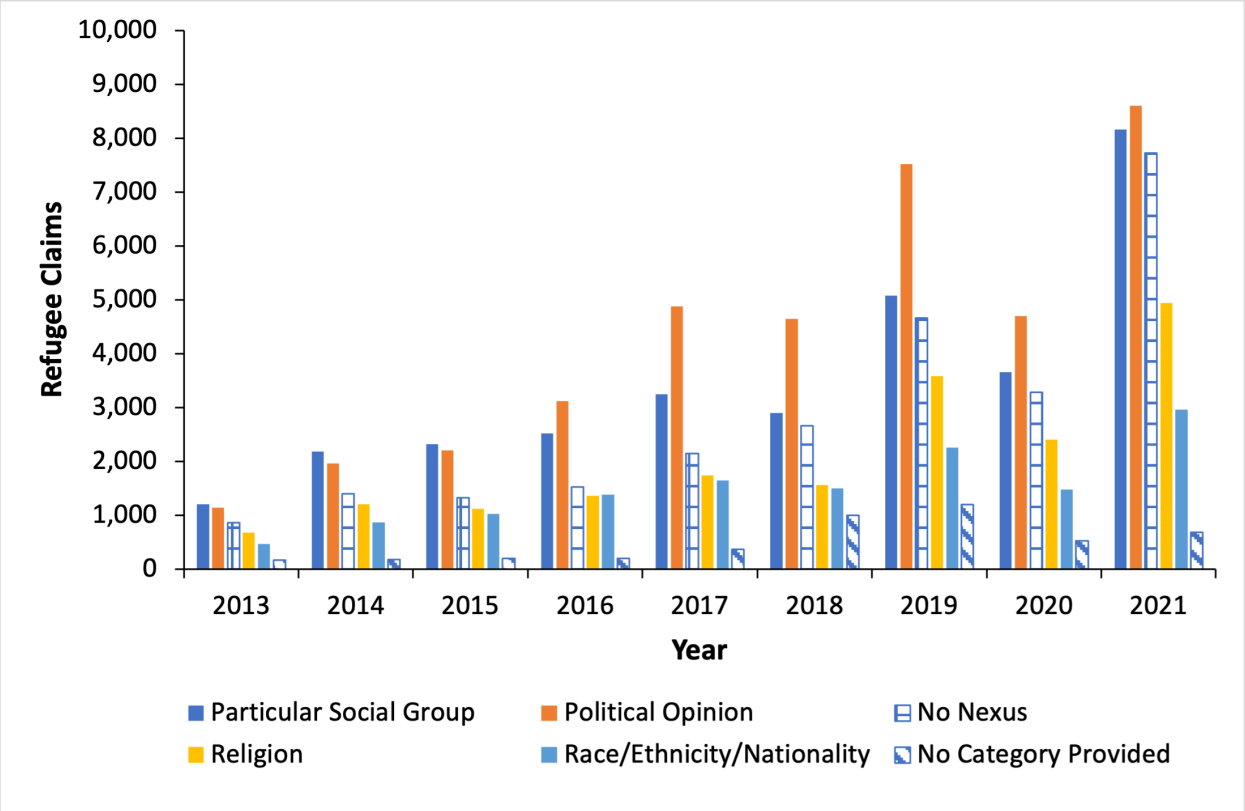


Table 3b sets out the 10 most common source countries for refugee claims involving political opinion, which together account for 50% of claims in this category. Turkey was the most common source country, followed by Haiti, Venezuela, Eritrea, and Burundi. Recognition rates varied substantially across these countries, from 95% for claimants from Afghanistan to 33% for claimants from India.

Particular Social Group

After political opinion, membership in a particular social group (PSG) was the most common claim category from 2013 to 2021, representing 28% of all claims during this period. The Supreme Court famously held that PSGs include

> (1) groups defined by an innate or unchangeable characteristic; (2) groups whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake the association; and (3) groups associated by a former voluntary status, unalterable due to its historical permanence.
>
> (Canada (AG) v. Ward, 1993, p. 692)

The court also noted that PSGs include those facing persecution on account of their gender and their sexual orientation (Canada [AG] v. Ward, 1993). Because these two types of claims represent the largest subcategories of PSGs, and because they have attracted a great deal of scholarly attention, we will examine each in turn.

In addition to these two subcategories, the IRB's database also includes a residual "varied/other" PSG subcategory. Because only a small proportion (5%) of cases fall within this subcategory, we will not examine them in detail. The most common subtypes of claims that fall within this subcategory are Falun Gong (2,500 claims, 51% recognition rate), Western dress/practices (640 claims,

Table 3a

Twenty Most Common Political Opinion Claim Types (2013–2021)

Claim type (political opinion)	Number[a]	Proportion (%)	Recognition rate (%)
All	38,740	100	78
Anti-government	11,740	30	82
NGO/community worker	1,740	4	80
Hizmet (Gulen) Movement	1,700	4	98
State employee/representative	1,180	3	86
Journalist	980	3	83
Evasion	760	2	92
Family Planning Policy (FPP)	760	2	55
Halklarin Demokratik Partisi (HDP)	720	2	95
Student activist/organizer	700	2	75
Academics/artists/intellectuals	660	2	86
Liberation Tigers of Tamil Eelam (LTTE)	600	2	85
Employee of foreign/international agent/entities	420	1	97
Desertion	420	1	90
Land expropriation	420	1	28
Taliban	380	1	90
Nepali Congress (NC)	300	1	75
Southern Cameroon National Council (SCNC)	280	1	82
Movement for Democratic Change (MDC)	240	1	71
Sikh militant—other	200	1	32
Trade/labour unionist	200	1	70

Note. [a] Rounded to the nearest 20.

97% recognition rate), statelessness/no status (40 claims, 90% recognition rate), and a residual subtype of varied/other (2,400, 70% recognition rate).

PSG: Gender-Based/Domestic Violence

Refugee claims involving gender-based/domestic violence were the most common subcategory of PSG claims in 2013–2021, representing 46% of PSG claims and 13% of claims overall. Gender-based/domestic violence claims succeeded 70% of the time, which is the same as the overall recognition rate during the same period—though in some years the recognition rate in these claims diverges from the overall average, including in 2021, when the recognition rate in gender-based/domestic violence claims was 83% compared to 73% overall.

Table 4a breaks down gender-based/domestic violence claims into the subtypes of claims identified in the IRB's database. The most common subtype involved domestic violence (38%), followed by a residual "female—other" subtype (20%), non-domestic sexual violence (17%), forced marriage (14%), and female genital mutilation (13%). Recognition rates varied across subtypes of claims, from 42% for sexual harassment and 47% for

Table 3b

Ten Most Common Countries of Persecution in Political Opinion Claims (2013–2021)

Country of persecution (political opinion)	Number[a]	Proportion (%)	Recognition rate (%)
All	38,740	100	78
Turkey	3,600	9	94
Haiti	2,460	6	42
Venezuela	1,960	5	89
Eritrea	1,800	5	92
Burundi	1,740	4	95
Afghanistan	1,680	4	95
Ethiopia	1,600	4	81
China	1,520	4	50
India	1,480	4	33
Congo, DRC	1,440	4	58

Note. [a] Rounded to the nearest 20.

Table 4a

Gender-Based/Domestic Violence Claim Types (2013–2021)

Claim type (gender-based/domestic violence)	Number[a]	Proportion (%)	Recognition rate (%)
All	14,300	100	70
Domestic violence	5,380	38	72
Female—other	2,900	20	78
Non-domestic sexual violence	2,380	17	73
Forced marriage	1,940	14	75
Female genital mutilation	1,840	13	47
Male—other	340	2	53
Honour crime	320	2	73
Child abuse	120	1	73
Widowhood rites	80	1	52
Female—honour killing	60	0	75
Forced prostitution	40	0	66
Sexual harassment	20	0	42

Note. [a] Rounded to the nearest 20.

female genital mutilation, to 78% for the residual female—other subtype, and 75% for both forced marriage and female—honour killing. It is worth noting that domestic violence, a subtype of claim that has prompted substantial interest both in research and in practice, has slightly higher-than-average recognition rates (72% vs. 70% overall).

Table 4b lists the main source countries for cases involving gender-based/domestic violence, with Nigeria (20%), Haiti (8%), and Iran (6%) being the most common source countries. There are also large differences in recognition rates across countries. For example, the recognition rates for claims from Nigeria (47%) and India (57%) were

Table 4b

Ten Most Common Countries of Persecution in Gender-Based/Domestic Violence (GB/DV) Claims (2013–2021)

Country of persecution (GB/DV)	Number[a]	Proportion (%)	Recognition rate (%)
All	14,300	100	70
Nigeria	2,860	20	47
Haiti	1,200	8	65
Iran	900	6	97
India	540	4	57
Mexico	440	3	63
Congo, DRC	360	3	64
Pakistan	340	2	78
Afghanistan	320	2	93
Uganda	260	2	80
Kenya	240	2	69

Note. [a] Rounded to the nearest 20.

much lower than rates for Iran (97%) and Afghanistan (93%). Also, despite the overall trend of slightly higher recognition rates in gender-based/domestic violence claims than in overall claims, the inverse is true for gender-based violence claims from Nigeria (47% for Nigerian gender-based/domestic violence claims, 50% for Nigerian claims overall).

PSG: Sexual Orientation

Claims categorized as involving sexual orientation were the second largest subcategory of PSG claims, representing 41% of PSG claims, and 11% of claims overall in 2013–2021. The recognition rate for sexual orientation claims (77%) is above the average for claims overall during the same period (70%).

Table 5a breaks down sexual orientation claims by subtype. As can be seen in the table, the most common subtypes were gay (45% of sexual orientation claims), bisexual (28%), and lesbian (21%). Recognition rates varied significantly across these categories, with higher recognition rates for lesbians (84%), followed by gay men (79%), and with substantially lower recognition rates for bisexuals (68%). The figures for transgender claimants are also striking—both in terms of the small number of claims (representing only 1% of sexual orientation claims) and the high recognition rate (97%). Note that all claims categorized as involving transgender claimants were in 2019–2021, suggesting that data collection practices at the IRB have shifted and that transgender claims were previously placed in other categories.

Table 5b sets out the 10 most common source countries for claims categorized as involving sexual orientation. Nigeria (27%) is the top source country by a substantial margin, followed by Uganda (5%), Jamaica (5%), and Cameroon (4%). Recognition rates in sexual orientation claims varied across countries, from 58% for Ghana and 57% for Nigeria to 94% for Turkey and 85% for both Uganda and Ukraine.

Breaking Nigerian sexual orientation claims down further, it is interesting to note that the large majority involve bisexuals (2,300 claims, 66% recognition rate) rather than gay men

Table 5a

Sexual Orientation Claim Types (2013–2021)

Claim type (sexual orientation)	Number[a]	Proportion (%)	Recognition rate (%)
All	12,760	100	77
Gay	5,800	45	79
Bisexual	3,620	28	68
Lesbian	2,720	21	84
Varied/other	600	5	73
Transgender	80	1	97
Imputed sexual orientation	60	0	74
Family of/related to LGBTQ person	60	0	73

Note. [a] Rounded to the nearest 20.

Table 5b

Ten Most Common Countries of Persecution in Sexual Orientation Claims (2013–2021)

Country of persecution (sexual orientation)	Number[a]	Proportion (%)	Recognition rate (%)
All	12,760	100	77
Nigeria	3,420	27	67
Uganda	680	5	85
Jamaica	580	5	75
Cameroon	500	4	78
Ghana	420	3	58
Turkey	420	3	94
Kenya	380	3	77
India	360	3	72
Ukraine	360	3	85
Pakistan	340	3	82

Note. [a] Rounded to the nearest 20.

(600 claims, 65% recognition rate) or lesbians (450 claims, 76% recognition rate).

No Nexus (Persons in Need of Protection)

The next most common category of claims finalized from 2013 to 2021 involved persons in need of protection, with no nexus to a Refugee Convention ground. These represent 23% of claims finalized during this period. The recognition rate for these claims (48%) was substantially lower than the overall average (70%).

Table 6a sets out the most common subtypes of these claims. The most common subtypes of claims involved individuals who feared criminality, including at the hands of organized criminals (22% of no-nexus claims), people with individual or family conflicts (18%), common criminals (15%), agents of the state (10%), and fundamentalist groups (8%). There were also many other subtypes of claims, ranging from unspecified generalized risks, to forced recruitment in gangs, guerilla groups or paramilitary organizations, to the unavailability of medical care for health

Table 6a

Twenty Most Common No-Nexus Claim Types (2013–2021)

Claim type (no nexus)	Number[a]	Proportion (%)	Recognition rate (%)
All	25,580	100	48
Witness/victim of organized crime	5,720	22	44
Personal vendetta/family feud	4,480	18	42
Witness/victim of common crime	3,760	15	35
Witness/victim of state agents	2,560	10	60
Witness/victim of radical fundamentalist group	1,960	8	64
Witness/victim of guerrilla/rebels	1,320	5	64
Fear is unspecified/unclear	1,200	5	45
Generalized risk	980	4	52
Land dispute	420	2	31
Witness/victim of paramilitary	400	2	73
Blood feud	160	1	51
Witness/victim of Hezbollah	160	1	56
Forced recruitment by gangs	160	1	58
Returnee/expatriate	140	1	58
Economic migrant	140	1	26
Witness/victim of Radical fundamentalist group—Al-Shabaab	140	1	54
Forced recruitment/collusion by guerrilla	120	1	63
Witness/victim of pro-Houthi groups	120	0	98
Health care/medical condition	100	0	78
Forced recruitment/collusion by paramilitary	80	0	76

Note. [a] Rounded to the nearest 20.

conditions. Recognition rates appeared to be particularly low for cases involving criminality by non-state actors (e.g., organized crime: 44%, common criminality: 35%, land disputes: 31%) and to be higher when cases involved paramilitary organizations (e.g., victims of paramilitary groups: 73%, forced paramilitary recruitment: 76%, victims of Houthi groups: 98%). In addition, there was a residual subtype of "varied/other," with 2,420 claims, representing 9% of non-nexus claims, with a 43% recognition rate.

Table 6b breaks down the main source countries for no-nexus claims. These include Haiti (15%), Mexico (13%), Colombia (9%), Nigeria (7%), and India (5%). Recognition rates for some countries for no-nexus claims were especially low, including India (23%) and Mexico (29%), and were much higher for others, including El Salvador (68%), Iraq (67%), and Colombia (66%).

Religion

The next most common category of refugee claims the 2013–2021 involved claims based on religion, representing 16% of claims overall during this period. The recognition rate for these claims (78%) was higher than the IRB average (70%).

Table 6b

Ten Most Common Countries of Persecution in No-Nexus Claims (2013–2021)

Country of persecution (no nexus)	Number[a]	Proportion (%)	Recognition rate (%)
All	25,580	100	48
Haiti	3,700	15	33
Mexico	3,220	13	29
Colombia	2,280	9	66
Nigeria	1,860	7	33
India	1,280	5	23
Pakistan	1,020	4	52
Somalia	800	3	61
El Salvador	800	3	68
Iraq	500	2	67
Honduras	480	2	60

Note. [a] Rounded to the nearest 20.

Table 7a describes the most common subtypes of religion-based refugee claims. As can be seen in the table, claims involving Christians were the most common subtype (representing 27% of religion-based claims), followed by claims relating to apostasy (11%) and Ahmadi claims (6%). It should be noted that the subtypes are somewhat arbitrary, with some generic categories (e.g., interfaith relationships), others grouping together many different religious communities (e.g., Christian, Muslim), and still others representing more specific communities (e.g., Pentecostal, Lahori Ahmadis). The dominant types of religious-based refugee claims, however, appear to involve various groupings of Christians, followed by various groupings of Muslims. Also worth noting, the subtype "apostasy" almost exclusively involves claimants from Iran (99%). In addition, there was a "varied/other" subtype with 3,400 claims, representing 18% of religion-based claims, with a 70% recognition rate.

Recognition rates vary across the different types of religion-based refugee claims, ranging from 24% for chieftaincy issues, 35% for traditional, and 48% for rituals/witchcraft/-traditional practices to 98% for Ahmadis and 97% for apostasy, Coptic Christians, and Bahai claimants.

Table 7b breaks down religion-based claims by the 10 most common countries of origin. Iran (22% of religion-based claims), Pakistan (11%), China (12%), Nigeria (7%), Iraq (6%), Syria (6%), and Egypt (5%) were major source countries for such claims. Recognition rates differ greatly across source countries in religion-based claims, ranging from 33% for Nigeria, 37% for India, and 62% for China, to 97% for Syria and Egypt and 95% for Iran.

Given the history of contemporary international refugee law as partly a response to the Holocaust, and given the ongoing prevalence of violent anti-Semitism, it is worth noting that the number of religion-based claims involving Jewish claimants was under the minimum reporting figures required under the data-sharing agreement with the IRB (i.e., under 20 claims). A further 20 claims were categorized as involving persecution against Jewish claimants under the race/ethnicity/nationality category (44% recognition rate).

Table 7a

Twenty Most Common Religious Claim Types (2013–2021)

Claim type (religion)	Number[a]	Proportion (%)	Recognition rate (%)
All	18,580	100	78
Christian	5,080	27	75
Apostasy	2,080	11	97
Ahmadi (unspecified)	1,100	6	98
Muslim—Sunni	960	5	93
Christian—Coptic	860	5	97
Shia Muslim	700	4	71
Muslim—Shia	680	4	68
Muslim	480	3	65
Christian—unregistered/underground church	400	2	71
Chieftaincy issues	320	2	24
Atheist/agnostic/non-practising	320	2	91
Pentecostal	280	2	88
Traditional	260	1	35
Alevi	260	1	81
Rituals/witchcraft/traditional practices	220	1	48
Interfaith marriage/relationship	200	1	60
Bahai	180	1	97
Hindu	180	1	75
Ahmadi (Lahori)	160	1	97
Buddhist	140	1	79

Note. [a] Rounded to the nearest 20.

Table 7b

Ten Most Common Countries of Persecution in Religious Claims (2013–2021)

Country of persecution (religion)	Number[a]	Proportion (%)	Recognition rate (%)
All	18,580	100	78
Iran	4,160	22	95
Pakistan	3,020	16	82
China	2,140	12	62
Nigeria	1,360	7	33
Iraq	1,180	6	89
Syria	1,100	6	97
Egypt	1,000	5	97
India	540	3	37
Eritrea	460	2	87
Turkey	360	2	82

Note. [a] Rounded to the nearest 20.

Table 8a

Twenty Most Common Race/Ethnicity/Nationality Claim Types (2013–2021)

Claim type (race/ethnicity/nationality)	Number[a]	Proportion (%)	Recognition rate (%)
All	13,580	100	79
Roma	2,520	19	73
Tutsi	1,080	8	97
Kurd	920	7	90
Alevi Kurd	820	6	91
Tamil-North/East/Central	760	6	86
Palestinian	460	3	80
Tibetan	400	3	81
Madhiban/Midgan/Gaboye	360	3	64
Oromo	340	3	84
Amhara	240	2	80
Mixed marriage/relationship	240	2	55
Hazaras	220	2	95
Jiberti	180	1	96
Asharaf/Ashraf	180	1	76
Sheekhaal/Sheikhal/Shikal	160	1	70
Caste issues	140	1	50
Muslim Ouighor	120	1	97
Tamil-Colombo	80	1	87
Bedun	80	1	84
Toubou (Gorane)	80	1	73

Note. [a] Rounded to the nearest 20.

Race/Ethnicity/Nationality

The least common category of refugee claim in 2013–2021 involved race/ethnicity/nationality, which accounted for 12% of all claims during this period. Recognition rates for these claims (79%) were above the overall average (70%).

Table 8a sets out the most common types of claims involving race/ethnicity/nationality. The largest group were Roma claimants (19%), followed by Tutsi (8%), Kurdish (7%), Alevi Kurdish (6%), and Tamil (6%) claimants. Recognition rates varied across groups, from 50% for claimants facing persecution related to caste and 55% for claimants involved in mixed relationships to 97% for Tutsi and Muslim Ouighor claimants. In addition to these subtypes, the largest subtype of race/ethnicity/nationality claimants was categorized as "varied/other," with 3,060 claims, representing 23% of claims within this category, with a 69% recognition rate.

Table 8b breaks down these claims by the 10 most common countries of origin, which include Turkey (12% of race/ethnicity/nationality claims), Somalia (10%), Hungary (8%), Burundi (8%), Sri Lanka (7%), and Ethiopia (6%). Recognition rates varied across countries of origin in this category, ranging from 69% for Romania and Somalia to 97% for Burundi and 91% for Turkey.

Table 8b

Ten Most Common Countries of Persecution in Race/Ethnicity/Nationality Claims (2013–2021)

Country of persecution (Race/ethnicity/nationality)	Number[a]	Proportion (%)	Recognition rate (%)
All	13,580	100	79
Turkey	1,580	12	91
Somalia	1,320	10	69
Hungary	1,100	8	72
Burundi	1,080	8	97
Sri Lanka	920	7	86
Ethiopia	820	6	82
China	600	4	84
Romania	460	3	69
Slovakia	400	3	81
Palestine	380	3	85

Note. [a] Rounded to the nearest 20.

DISCUSSION

Using data on all refugee claims decided between 2013 and 2021, this article has set out an empirical snapshot of who is making refugee claims in Canada, on what basis, and with what results. The main aim in doing so was to help supplement other research, especially research using standard doctrinal legal methods examining published case law—and to provide a roadmap for other scholars to use similar empirical methods to add further context to their research.

As the article has argued, because of a combination of how refugee decision-making works and when refugee decisions are published, data sets of published decisions are skewed in various ways. Most notably, published decisions usually involve cases where refugee status was denied at first instance. Moreover, in judicial reviews, published decisions mostly reflect cases where, by definition, there is a prima facie reasonable argument that the initial denial was flawed in some way. By contrast, as the findings of the study demonstrate, most refugee determinations from 2013 to 2021 (70%) resulted in claimants being granted refugee protection, and for almost all those cases, no one has argued that the decision was flawed. In other words, if we pay attention to published cases only, we have access to only a small proportion of decisions that are not reflective of most decision-making in Canada's refugee determination system.

Supplementing legal research on published cases with analysis of broader data has the potential to help improve research, legal decision-making, and policy in this field.

One important way that considering such data can be useful is by pointing researchers and policy-makers to types of claims that require further attention. The findings of this study, for example, show that almost a quarter (23%) of refugee claims made in Canada from 2013 to 2021 involved forms of harm not connected to classic Refugee Convention grounds, but instead to the subsidiary grounds of "persons in need of protection." The bulk of those (20% of claims overall) relate to people fleeing criminality and corruption, and recognition rates in

these claims are substantially below average (48% vs. 70% overall). These types of claims, however, have received much less attention from legal scholars than several other types of less common claims (e.g., sexual orientation, gender, religion). Also, contrasting some of these other areas, currently, no guidelines assist decision-makers with these claims. Hopefully, this study will help prompt further attention not just to this type of claim but to other groups of understudied claims that may not have thus far featured prominently in scholarship or policy-making.

Another way the data from this study could be useful is through further disaggregation to examine specific subsets of claimants. While this article focused on a high-level overview, the data are quite granular and include data points not used in the overview. Thus, for example, it might be interesting to disaggregate categories based on the principal applicant's gender, their age, number of dependents, office where the application was filed, presence or identity of counsel, the decision-maker's identity, and whether the minister intervened in opposition to the claim. By drilling into these data points and then supplementing the observed patterns with other methodologies, including examinations of published cases, legal scholars would be able to gain greater insight into refugee law decision-making than either this article's broad overview or standard doctrinal legal research methods could achieve on their own.

Another way the data in this study can be useful is by helping researchers avoid unwarranted inferences from research on skewed data sets. Imagine, for example, a researcher wants to know how Canada's refugee determination system responds to claimants who have experienced gender-based violence. If they examine only published decisions, their analysis will mostly be limited to circumstances where refugee claims were denied at first instance. Due to this limitation, the researcher is likely to find that, in a large proportion of the cases reviewed, the claimant was found not to be credible (because negative credibility inferences are a key factor in most denials of refugee protection; Cameron, 2018). Moreover, if the researcher focuses on Federal Court cases, they will be examining cases where the Federal Court has already found that there is a prima facie reasonably arguable case that the decision was unreasonable in some way. We might therefore expect a large proportion of the cases to involve problematic negative credibility assessments that are overturned by the Federal Court. Such an analysis can be quite useful. It might, for example, help the researcher identify common forms of flawed reasoning that result in negative credibility assessments for refugee claimants who have experienced gender-based violence, which could lead to productive recommendations for improved training, revised guidelines, and the like. But the researcher would not be able to make assertions about whether, in general, women refugee claimants who experienced gender-based violence are found to be credible. Nor would the researcher be able to speak about best (or flawed) practices in the most common scenarios, which, as this study has demonstrated, is where such claimants are believed and are granted protection (according to the findings of this study, 70% of claims involving gender-based violence from 2013 to 2021 were granted).[11]

[11] For example, in an examination of RPD and Federal Court decisions published on Lexis, researchers noted that only 3 out of 135 published RPD cases involving domestic violence were successful. They found that a high proportion (44%) of published Federal Court cases involving refugee judicial review relating to domestic violence overturned negative RPD decisions and offered critiques that flow from an examination of these cases (MacIntosh, 2011). Several other examples of research on similar themes situate critiques of published case law within

A similar point can be made about how data of the kind set out in this study can help avoid skews that impact jurisprudence. The bulk of published case law involves negative first-instance decisions where the issue in the case is about whether there is some problem in the denial of refugee protection. This feature of case law may be useful for subsequent Federal Court or RAD cases because future cases will likely need to work through similar questions about when to intervene in denials of refugee protection. In other words, it is likely helpful for the Federal Court and the RAD to consider what past cases have to say about whether a particular type of alleged error justifies overturning a negative refugee determination when they consider whether to overturn a negative determination on similar grounds. However, consider what this means for the RPD, where the issue is not whether to overturn a negative refugee determination but whether to grant refugee protection. The case law sends signals to RPD members about what mistakes should be avoided when denying a refugee claim lest these mistakes lead to a decision being overturned. But the case law provides little guidance about reasoning in positive decisions. Tools built on this jurisprudence are also problematic for similar reasons. IRB guidelines and policy documents generally rely on published case law. It is therefore not surprising that the guidelines mostly involve warning decision-makers about errors and missteps that could result in a decision being overturned, rather than setting out best practices in refugee adjudication (IRB, 2020, 2021b). The data and methods described in this study could help address this problem. Rather than focusing exclusively on published cases, drafters of guidelines might helpfully point to some of the statistics in this article. For example, guidelines to help decision-makers hearing cases relating to sexual orientation would benefit from being reminded that most such cases are determined to be well founded and that recognition rates in such cases are higher than average (77% recognition rate for sexual orientation cases in 2013–2021 compared to 70% overall). This reminder could help decision-makers who might feel anxieties about credibility or fraud in such cases to reflect critically on the source of their anxiety. Beyond the statistics, drafters of guidelines and other tools could draw helpfully on the methodology of this study. As an example, suppose the IRB wanted to prepare a policy instrument to help decision-makers hearing cases involving religious persecution. Instead of only reviewing published jurisprudence to identify problems in such cases, the IRB could use the methodology employed here to identify a random selection of cases involving persecution on account of religion and review those cases to identify good decision-making practices that can be shared with other decision-makers. Or suppose the IRB (or a third-party publisher) wanted to directly tackle the skewed jurisprudence by publishing positive decisions. The methods used in this study could help identify cases for publication that are more representative than current publication practices allow.[12]

The methods used in this study can also help address an especially worrisome problem caused by the skewed nature of published refugee law jurisprudence in Canada as we enter the era of computational law (Frankenreiter & Livermore, 2020; Hildebrandt, 2018; Sutherland, 2022). Governments

broader statistics about unpublished decision-making (Arbel, 2013; Bhuyan et al., 2016).

[12]The Refugee Law Laboratory, hosted at York University's Centre for Refugee Studies, is undertaking a variety of initiatives to help address the skew in published refugee decisions including by using this methodology. For example, we have established a Refugee Law Lab Reporter that only publishes positive first instance RPD decisions that we obtain through ATI requests—and we identify cases for publication using the methods and data described in this article (Refugee Law Laboratory, n.d.).

around the world are increasingly reaching to artificial intelligence to help inform—and sometimes automate—administrative law decision-making (Daly & Orct, 2022; Raso, 2020, 2021; Scassa, 2021), including in the immigration law field (Molnar, 2020; Molnar & Gill, 2022). While much potential exists in this technology (Alarie & Aidid, 2023; Cameron et al., 2022; McGill et al., 2017; McGill & Salyzyn, 2021), one of its key limitations is that algorithms built on biased data sets end up replicating bias (Blender et al., 2021). To see this problem at work, imagine the following scenario: a tech company has been hired to build a tool to assist refugee adjudicators in writing their reasons.[13] Assume the tool works by ingesting all published case law, identifying common legal issues that lead to refugee determinations being overturned, and providing decision-makers with recommended words, sentences, or even paragraphs as they draft their decisions—with the aim of speeding up the process of preparing reasons and encouraging decision-makers to provide reasons that are likely to be upheld. If the training data are disproportionately based on appeals and judicial review of negative first-instance refugee determinations, the predictive text the tool offers to adjudicators is likely to recommend various ways of denying protection in a manner that will survive appeals/judicial review. Moreover, because we know that negative credibility inferences are a key feature of most negative refugee determinations (Cameron, 2018), technology initially envisioned as a tool to assist refugee adjudicators in writing their reasons likely will largely become a tool to facilitate negative credibility inferences and to insulate those inferences from appeal or judicial review. The methods and findings of the present study can help to push back on this problem. If, for example, a system like the one just described produces recognition rates below those set out in this study for specific claim types, that could be used to investigate (or, if necessary, litigate) biases built into the tool's training data.

Given all the benefits of research using methods of this kind, why is this the first published article that attempts to set out a comprehensive empirical snapshot of types of adjudicated refugee claims and their outcomes? At least three barriers make this sort of research difficult.

The first barrier is the difficulty of getting access to the raw data. It is much easier to conduct research on already easily publicly available data—which is one reason why legal scholars generally rely on published decisions in their research. By contrast, if one wants to work with unpublished data about refugee adjudication, one needs to find a way to acquire that information. There are ways of obtaining unpublished data, including, for example, making ATI requests to the IRB (Access to Information Act [ATIA], 1985). However, due to the privacy concerns noted above, the IRB is now declining to release the type of granular data required for research of this kind unless researchers enter into a data-sharing agreement (IRB, 2021a, 2022; Treasury Board of Canada Secretariat, 2020). This raises challenges because, unlike ATI requests, which require institutions to release information and have timelines and access to appeals (ATIA, 1985), entering into a data-sharing agreement is entirely discretionary on the part of the IRB. Researchers may struggle to persuade the IRB to enter into such agreements, or even to respond to requests[14]—and the time needed to negoti-

[13] This is not a far-fetched possibility, as there are examples of the Canadian government attempting to deploy older technologies to similar ends (Government of Canada, 2022; Keung, 2021).

[14] Whereas government institutions are legally obliged to respond ATI requests, responding to requests from researchers to share data is entirely discretionary, which raises the inter-

ate access can be substantial. (Negotiating the data-sharing agreement took several months and required sign-off from the highest levels of IRB management. More than nine months passed between the initial request for the data and when the data were eventually provided.) This article aims to help address this challenge by reproducing the data-sharing agreement used for this research (IRB, 2022) and by describing the process used to access the data in detail, including providing links to the full text of requests.[15] The hope is that, armed with this information, researchers may be better able to negotiate access. Another strategy this project uses to address this challenge is to invite other scholars who could make use of this data in their research to consider collaborating with the author's Refugee Law Lab, because the data-sharing agreement allows for sharing of data internally.[16]

Second, even assuming researchers can access IRB data, working with these data is not straightforward. First, it is not obvious what data are available and what specific data should be requested. Without having direct internal access to the IRB's database, the main way for researchers to learn about what data are available and the best way to request that data is through years of trial and error in data requests. Second, even if one knows what data to request, understanding the data received—including both its potential and limitations—requires substantial domain expertise. In particular, to fully understand the data, one needs to have a solid understanding of the various procedural and substantive components of refugee law adjudication. Third, once one obtains and understands the raw data, computational methods need to be used to process the data because the data are provided in inconvenient formats that require transformations to be useful. Relatively few scholars combine sufficient and granular understanding of the data available in the internal database used by the IRB, the domain expertise necessary to understand the data through the lens of refugee law and process, and the ability to programmatically clean and analyze the data. To help address these challenges, this project has described the data available in detail, we are making the code used to process the data available, and we are providing more granular information similar to the data in the tables for this article so that other researchers can replicate the work or to take the research in new directions.[17] We also invite collaboration with other researchers via the author's Refugee Law Lab for scholars who may not have all the necessary expertise but who bring additional interdisciplinary skill sets or particular domain knowledge (see footnote 16).

A third barrier that helps to explain why this is the first article that attempts to offer a snapshot of types of refugee claims in Canada and their outcomes relates to disciplinary incentives (Chawinga & Zinn, 2019; Dorta-González et al., 2021; Fecher et al., 2015). There are many venues for publishing standard legal analysis of published cases. By contrast, fewer venues exist to publish research projects that are about building and describing data sets that can be used

esting question of why the IRB was prepared to enter into a data-sharing agreement for this project. This is likely due in part to many IRB staff members (including several senior managers) being interested in having the IRB benefit from outside research on their decision-making practices, in part because of long-standing connections between the author and IRB staff; in part because if the IRB had declined to share the data, it could receive negative media attention, given past media attention to similar research projects undertaken by the author; and in part because if the IRB had not shared the data, the author would likely have tried litigating access under the ATIA.

[15] The data-sharing agreement and ATI request used for this article are available in the Code and Data Repository associated with this article.

[16] A form to request collaboration using this data is available in the Code and Data Repository associated with this article.

[17] See the Code and Data Repository for the code used for this project and more extensive tables than the ones presented in this article.

by other scholars to supplement and better inform their research. Indeed, building data sets and describing to other researchers what data are available, how to obtain data, and why it can be useful are often treated as precursors for scholarly projects rather than valuable scholarly output in and of itself. As such, an article that, say, uses the sort of data described in this project to explore a particular type of decision-making is typically easier to publish than a description of the data set and the process for producing it. Happily, this is slowly changing, with increased recognition of data set building and sharing as a valuable research contribution (Social Sciences and Humanities Research Council of Canada, 2021). Hopefully the publication of this article will contribute to that change in the refugee law and refugee studies fields.

In the end, this article has argued that standard legal doctrinal research methods on published Canadian refugee decisions, which inevitably involve non-representative samples of refugee law adjudication, can benefit from being supplemented with data about unpublished decision-making. The article has described a process through which such data can be obtained and has offered an overview of some of the high-level patterns in the data, particularly in terms of what types of refugee claims are being made in Canada and their outcomes. It is the first published paper that attempts to do this. Hopefully other scholars will find some of the high-level statistics helpful in terms of contextualizing their research—and perhaps some scholars will be inspired to delve further into data-driven research on Canadian refugee law adjudication, whether by leveraging some of the methods described in detail here or by taking up the invitation to collaborate with the author's Refugee Law Lab on projects using this data set.

ACKNOWLEDGEMENTS

This article draws on research supported by the Social Sciences and Humanities Research Council and the Law Foundation of Ontario. The author is grateful for research assistance provided by Soliyana Yared. He also appreciates feedback provided on a draft presented at the Data-Driven Approaches to Asylum and Refugee Law workshop at Nordic Asylum Law and Data Lab at the University of Copenhagen's Faculty of Law (Copenhagen: September 2022). The author acknowledges the research is part of and financially supported by the Law Lab.

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