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Failed Refugee Claimants: Negotiating Rights, Security and Citizenship

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FAILED REFUGEE CLAIMANTS: NEGOTIATING RIGHTS, SECURITY AND
CITIZENSHIP.

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Immigration and Settlement Studies

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ABSTRACT

Individuals and groups engage discursively in relationships and negotiations as they try to structure and influence the social space where they live. This engagement further constructs the social space through the use of concepts, objects and subject positions. This study examines the representation and construction of failed refugee claimants by the Canadian newsprint media. Through the use of the moral panic as envisioned by Stephen Cohen and others, the study employs critical discourse analysis to reveal complex struggles in the Canadian refugee system through the discursive activity of the government, nonprofit agencies and social networks. The study concludes that a moral panic has occurred in the Canadian refugee system and has resulted in the enactment of a new Canadian refugee system through the passing of the *Balanced Refugee Reform Act* (Bill C-11), *Protecting Canada's Immigration Act* (Bill C-31) and the *Faster Removal of Foreign Criminals Act* (Bill C-43).

Key words:

Discourse analysis; Refugee claimants; Government of Canada; Newspapers; Citizenship; Human Rights.

List of Acronyms

AVRR	Voluntary Return and Reintegration
Bill C-11	Balanced Refugee Reform Act
Bill C-31	Protecting Canada's Immigration System Act
Bill C-43	Faster Removal of Foreign Criminals
Bill C-55	Safe Third Country agreement
BoC	Basis of Claim
BRRA	Balanced Refugee Reform Act
CBC	Canadian Broadcasting Corporation
CBSA	Canadian Border Services Agency
CCR	Canadian Council for Refugees
CIC	Citizenship and Immigration Canada
CNCR	Canadian National Committee on Refugees
DCO	Designated Country of Origin
DFN	Designated Foreign National
H&C	Humanitarian and compassionate consideration
IRB	Immigration and Refugee Board
IRPA	Immigration and Refugee Protection Act
MUC	Manifestly unfounded claim
POE	Port of Entry
RAD	Refugee Appeal Division
RPD	Refugee Protection Division
TDSB	Toronto District School Board

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Chapter 1. Introduction

Change must not be thought of as a property of organization. Rather, organization must be understood as an emergent property of change. Change is ontologically prior to organization - it is the condition of possibility for organization. ... we argue that change is the reweaving of actors' webs of beliefs and habits of action as a result of new experiences obtained through interactions. ... Organization is an attempt to order the intrinsic flux of human action, to channel it towards certain ends, to give it a particular shape, through generalizing and institutionalizing particular meanings and rules. At the same time, organization is a pattern that is constituted, shaped, emerging from change.

Tsoukas & Chia, 2002, p. 567

For the last ten years, the Canadian refugee system has gone through many changes and a complete metamorphosis in the last two years. The issues with failed refugee claimants acted as a catalyst to these changes as they contribute to the illegal residency in Canada (Miklavcic, 2011:496). Failed refugee claimants are often accused of abusing Canada's generous immigration system and receiving taxpayer funded health and social benefits as well as clogging the application process.

This study will focus on failed refugee claimants in Canada as their status oscillates between illegality and deportation despite all their efforts to regularize their status (Golding et al. 2007; Barsky 2000; Cre`peau et al. 2007; Rousseau et al. 2002). Although failed refugee claimants live and work thereby contributing to the economy (De Genova, 2002; Bacon, 2009; Lipman, 2006), they are often barred from rights granted to those with permanent residence or citizenship (Barrero, 2008; Lipman, 2006; Berinstein et al., 2006). This segregation creates, in essence, an apartheid class of migrants without the rights bestowed upon citizens (Richmond, 1994; Sharma, 2006). Although failed refugee claimants are protected theoretically by the human rights framework and the Canadian

Charter of Rights and Freedoms, they often fall outside of any protection hence leaving them vulnerable.

The refugee determination process within the Canadian immigration system produces failed refugee claimants. This study takes the Canadian refugee system as an organizational field where the production of failed refugee claimants takes place through a discursive activity. This discursive activity at the level of an organizational institutional field is also affected by other discourses in the larger society that surround it. The main objective of this study is to explore the relationship between discursive activity at the sphere of an institutional field and the discourses that surround that field. The study makes use of news print media articles as a unit of analysis to explore the discursive activity on failed refugee claimants that are generated by the Canadian refugee system and the larger societal discourses surrounding it.

In chapter two, the study deals with a review of the pertinent literature regarding failed refugee claimants in Canada by using materials from both peer reviewed articles and grey literature. Chapter three deals with the study design with an overview of discourse analysis and the limitation of the study. This leads to the fourth chapter that categorizes the newsprint into five narratives. Chapter five then fuses findings and theoretical framework in relation to the Canadian refugee system demonstrating how wide-ranging societal discourses on rights, security and citizenship affect the Canadian refugee determination system as an institutional field. The study concludes that a moral panic indeed has occurred based on the newsprint media and under the interpretation of Stephen Cohen's moral panic.

Chapter 2: Literature Review

A scoping literature review on failed refugee claimants.

The literature on failed refugee claimants is treated together with undocumented migrants, a category that in it is understudied in Canada. The number of undocumented immigrants is unknown in Canada. For instance, reports estimate that there are between 20,000 and 500,000 undocumented persons living in Canada (Goldring et al, 2007 ; Papademetriou , 2005), but this figure is different depending on the source (Through the Back Door , 2006:7-21). According to the Royal Canadian Mounted Police, their numbers are increasing. Of this total, approximately 50% are believed to be residing in Toronto (Magalhaes et al, 2010). For instance, between 1997 and 2007, over 60% of the approximately 250, 000 refugee claims adjudicated in Canada were rejected and many remained in Canada without status (Simich, 2007). Although a majority of failed refugee claimants work and contribute to the growth of the Canadian economy and society, their non-status situation leaves them and their families with precarious access to security, social services and rights (Omidvar, 2003). See figure 1 for the numbers of failed refugee claimants in the last ten years. The paucity of the information on undocumented and failed refugee claimants demonstrates their marginalization.

Given the scarcity of literature on failed refugee claimants *per se*, a scoping literature review of peer-reviewed literature as well as grey-literature that appropriates failed refugee claimants for the past ten years (2003 – 2013) was conducted. The study employs the work of Arksey and O'Malley's (2005: 19-32) methodological framework for conducting scoping studies. In referring to Arksey and O'Malley's (2005:1-4, 32), Rumrill et al (2010) states that

there are generally two different purposes of scoping reviews. The first purpose focuses on examining the range and nature of a particular research area, or determining, by a review of the material on a topic, if a full systematic review is needed. This purpose is exploratory in nature. The second purpose is more similar to the systematic reviews discussed earlier in that it endeavors to disseminate research findings or to identify gaps in the existing research literature (401).

This study adopts the second purpose of scoping review that of identifying the gaps in the existing research literature. A review of both primary and secondary studies from peer-reviewed and grey-literature vital to the Canadian context published between 2003 and 2013 were conducted. The study adopts the understanding of grey literature as "That which is produced on all levels of government, academics, business and industry in print and electronic formats, but which is not controlled by commercial publishers" (Fourth International Conference, 2013).

The start date of 2003 was chosen to reflect major events following 9/11 and the Immigration and Refugee Protection Act passed in 2002, which replaced the Immigration Act of 1976. Since this time, Canada's immigration policies have changed dramatically especially in the last two years (Wright, 2003: 5-15).

For the peer-reviewed literature, a mix of qualitative research studies (Bernhard, 2007; Rousseau, 2008; Simich, 2007; Soave, 2006; Khandor, 2004; Berinstein, 2006; Committee for Accessible AIDS Treatment, 2008; Paradis, 2008), discussion papers (Wright, 2003; Oxman-Martinez, 2005; Coulford, 2006), and roundtable, literature reviews (Access Alliance, 2006; Committee for Accessible AIDS Treatment, 2006), information guides (Community Social Planning Council of Toronto, 2007, Parkdale

Community Legal Services, 2005; Rights of Non-Status Women Network, 2006; Community Legal Education Ontario, 2006), comparative studies (Paradis, 2008), and discussion reports were incorporated (Lowry, 2003:66-72) as well as materials dealing with sectorial issues (Committee for Accessible AIDS Treatment, 2008).

From the literature review, three major themes were prominent, namely impact to health and mental wellbeing, working conditions and access to education. The first theme was that of the impact to health and mental wellbeing. According to Khanlou (2003), mental health is a state of wellbeing that is brought about by the exchanges between the individual and the surrounding environment. Hence environment is a big determinant of health as well as mental wellbeing. Other determinants of health include the social and economic conditions, communities and jurisdictions (Ornstein, 2002). Studies show that immigrants are often healthier than their Canadian born counterparts when they first arrive but their health deteriorates the longer they live in the country (Alati et al., 2003; Ali, 2002. p.6). While these social determinants of health apply to everyone, there are additional determinants for failed refugee claimants due to their status (or non-status). These additional determinants include social and economic integration barriers, access barriers to relevant social and health services due to “illegal” status and lack of social networks and fear of exposure to authorities. Meadows, Thurston, & Melton (2001) even argue that the migration and settlement process itself is a significant social determinant of health. Accordingly, Health Canada (2005, p.3) states that it is “the degree of control people have over life circumstances, especially stressful situations, and their discretion to act ”which is key to health and wellness”.

Failed refugee claimants have no access to healthcare system as they have no OHIP card. However, they can have access to community health clinics only if the clinics have space to accommodate them (Pashang, 2008) or if they have money (which is scarce for them), they can pay in a Hospital (Coulford, 2006; Rousseau, 2008; Oxman-Martinez, 2005). Fear of exposure and experience of vulnerability to immigration authorities and the police is a deterrent and creates conditions for failed refugee claimants to develop trauma. According to Briere & Scott (2006), the sense of being persecuted, vulnerable and in danger is sure characteristics of trauma. The uncertainty of not knowing what is to come was pointed out as one of the stressors to the individual's mental health. For example, non-status Algerians identified their experience as “degrading” and “unlivable” (Lowry, 2003:66). Failed refugee claimants were in constant fear of deportation as well as fear of isolation and lack of support outside the known circle of friends (Bernhard, 2007:101-114, Simich et al, 2007:369—373).

When it comes to health, women and children are the most affected. The most vulnerable are pregnant women who have noticeable high numbers of ectopic pregnancies as well as exposure to domestic violence and contracting sexually transmitted infections. (Simich, 2007; Bernhard, 2007; Coulford, 2006, Rousseau, 2008). Non-status children, as well as Canadian-born children to non-status parents are affected when it comes to specialized health services. Although Canadian-born children have the right to access health, it is problematic for them to access OHIP registration due to their parents non-status as it often involves production of Identity Cards (Bernhard, 2007; Coulford, 2006).

Health service providers are also directly impacted by the needs and experiences of failed refugee claimants and non-status immigrants. Failed refugee claimants do not necessarily trust them in their provision of services, as they fear that they will be exposed to the immigration authorities. The resources are meager and concentrated on only a few health service agencies. Besides, the non-provision of health to failed refugee claimants and non-status immigrants is a problematic issue to health providers as it is contrary to fundamental health professional value of providing care for everyone, yet some institutional policies may not allow that (Rousseau, 2008).

The second theme deriving from the literature review is that of working conditions. A number of reports and lobbying has been done in support of the undocumented workers. For instance, in 2005, the City of Toronto produced two documents in that respect. The first report is the Policy and Finance Committee Report 4 – Support for the Efforts of Undocumented Workers Committee. The report acknowledges the consequential contribution to Canada's economic development made by undocumented workers as well as their arduous working circumstances (City Council of Toronto, 2005a). The second report was that of Administration Committee Report 6 – Council Resolution on Support for undocumented Workers. The City Council of Toronto reaffirmed its support of undocumented workers and, called for the Federal Minister of Citizenship and Immigration to consider regularizing their legal status and implored opposition parties to advocate with the Minister for a long-term solution (City of Toronto, 2005b). Also in 2011, Toronto Public Health and Access Alliance Multicultural Health and Community Services released The Global City: Newcomer Health in Toronto report. It stated that undocumented newcomers face unique and serious health issues and many

barriers in accessing care. Signs of trauma, chronic stress and depression are often persistent. The Board of Health requested the Medical Officer of Health to undertake further research related to the health of undocumented residents, focusing on appropriate intervention that may be helpful to this community (Toronto Public Health and Access Alliance Multicultural Health and Community Services, 2011).

Mostly, failed refugee claimants and non-status immigrants work “under the table” in manufacturing, hospitality, farmlands, and construction industries as well as the house helps or care givers (Santos, 2005; Chase, S., & Curry, B., 2008). They work and pay their taxes and sustain the very industries that Canadians rely on but in which they prefer not to work. Despite their contribution to the Canadian society, they are relegated to the most dangerous and isolated sphere of existence in the society or to what Carasco (2007, p. 135) refers to as “legally marginal, physically deportable and psychologically vulnerable” state. Their underground, low-waged labor is necessitated by lack of legal rights to obtain a work permit and Social Insurance Number (Parkdale Community Legal Services, 2005; Khandor, 2004). As such, these workers are exposed to exploitation and horrid working conditions with no labor representation (Soave, 2006; Khandor, 2004; Rights of Non-Status Women Network, 2006). If there are accidents at the work place, the workers are unable to seek medical attention in hospitals for lack of monetary resource or fear of being reported for deportation if they did seek the services in the hospitals (Berinstaein, 2006).

Although the non-status workers are not excluded from the Employment Standards Act, the Human Rights code and the Workplace Safety and Insurance Act or the Occupational Health and Safety Act, many fear seeking redress for fear of exposure

and eventual deportation (Committee for Accessible AIDS Treatment, 2006; Community Social Planning Council of Toronto, 2007). Failed refugee claimants then have very limited ability to deal with employment related issues and leaves them vulnerable to exploitation. The fear of deportation makes them very vulnerable to exploitation, as they are unlikely to report human rights abuse to the police. Surprisingly, through the use of false SIN numbers, many of these non-status workers actually create jobs, pay taxes (Soave, 2006), and insurance premiums yet they have no access to the same services (Santos, 2005).

The third theme is that of the inability to access programs and services available for legal residents. Top on the list is education, especially for minors who were born in Canada or came with their parents when they were very small and had no way of regularizing their “illegality” (Education Rights Task Force). The issue of the youth and minors being turned away from public school has been quite an emotional one (Babbage, 2008). The Community Social Planning Council of Toronto (2007) indicates that some children were denied enrolment on the basis of the immigration status, one of who was denied by four different schools at the Toronto District School Board (TDSB).

Immigration status also came up during enrolment of students where documentation requirements to provide proof of status such as passports, visas, refugee papers or an application pending an immigration decision was asked of the parents (The Community Social Planning Council of Toronto, 2007). Lack of information regarding the right to education was identified as an issue for both the immigrants and staff. For instance, access to public education to all children under 18 in Ontario is both a right and a requirement under provincial law. The Ontario Education Act, Section 21(1), 33(1), 44,

46, and 49(1) explicitly states that no child shall be denied admission to schools on the basis of immigration status either of the student or the parent (*Education Act*, R.S.O., 1990, E.2.).

Fear is also identified as a barrier in accessing schools for the children. Some parents are hesitant to enroll their children in schools for fear that the school will report them to the immigrations officials. At the same time, parents are reported to fear that they will be reported to immigration officials if they did not enroll their children (The Community Social Planning Council of Toronto, 2007). Even when the children were enrolled, they could not participate on field trips because schools require students possess OHIP coverage to take part in the field trips. Getting OHIP, as we noted earlier is a challenge to failed refugee claimants who are parents even if their children were born in Canada (The Community Social Planning Council of Toronto, 2007). Unfortunately, the right to education is only extended to the minors and there is nothing for post secondary schools.

As a conclusion to this chapter, there is a multifaceted nature of the experiences of failed refuge claimants and non-status immigrants. Also intersectionality of gender, social support, race, culture, economic status, coping strategies, education, employment and health are shown to compound the complexities of non-status experiences for survival in Canada (Oxman-Martinez, 2004). Hence, a life lived in non-status capacity is very stressful and plagued with anxiety and other disorders and has its toll on the individual and can lead to substance abuse (Bernhard, 2007). The literature also shows that due to fear of exposure, many will defer or delay accessing the services (Keung, 2006, p. A04). This deferral affects women most and has been associated with low birth

rates and other pre/post natal issues (Messias, 1996). Children are greatly affected especially when specialized medical attention (Henderson, 2005) is needed and the lack of how many children live under these circumstances is disheartening. There is no doubt that the population of failed refugee claimants and other non-status persons is increasing and their numbers are not known which poses a challenge to assess and advocate for their needs. There is also a paucity of studies targeting the failed refugee claimants even when it is known that they are an important niche in the Canadian population.

Theoretical Framework

The study will examine the newsprint media by the use of the critical communication theory as envisioned by Scott Bonn (2010) where he attempts to integrate several theories to explain the concept of moral panic. Bonn is inspired by the work of Cohen (1972) and others (Goode and Ben-Yehuda, 1994; Rothe & Muzzatti, 2004; Welch, 2000) who acknowledged the contribution of social constructivism, social anxiety (risk society theory), critical theory and cultural studies in developing the concept of moral panic. The contributions of these various theoretical traditions make up the critical communication theory. For a more development of the risk society theory, see Bradmore Ashley and Bauder Harald (2011).

Bonn defines critical communication theory as “an interdisciplinary and integrated theoretical approach to explain the elite-engineered model of moral panic” (2010, p. 18). But what exactly is moral panic? The main objective of the moral panic is to reveal how the concern of social problem is created that at times has no connection with the reality and how it shifts the social or legal focus. Key players for Cohen on moral panic are the media, the public, law enforcement, politician and legislators and the

action groups (Cohen 1972, p. 9). For Cohen, moral panic alludes to the responses of the mass media, the public, and the agents of social control. As Cohen puts it:

A condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylized and stereotypical fashion by the mass media; the moral barricades are manned by editors, bishops, politicians and other right-thinking people; socially accredited experts pronounce their diagnoses and solutions; ways of coping are evolved or ... resorted to; the condition then disappears, submerges or deteriorates and becomes more visible.

Sometimes the subject of the panic is quite novel and at other times it is something which has been in existence long enough, but suddenly appears in the limelight. Sometimes the panic passes over and is forgotten, except in folklore and collective memory; at other times it has more serious and long lasting repercussions and might produce such changes as those in legal and social policy or even in the way society conceives itself (1972, p. 9).

The media is critical especially in the early stage of societal reaction where “deviants” are constructed with coded images. Here, three processes are involved on the media level. The first thing that the media does is to distort who said or did what. Second is predicting unpleasant consequences for non-action and the third is symbolization of the words Mod or Roker as being signifiers of threat. Scapegoats in the form of Mods and Rockers are installed as folk devils by the media. This whole process is not a conspiracy by the media but the normal practice of news making where the focus of the media is on

the people and events disrupting the social order. To prime for panic, “inferential structures” (where news reports frame stories as violent or potentially violent) is then utilized by the media to interpret such events with implicit characterization of what the behavior is like, who perpetrates it and why it happens (Cohen 1972, p. 31-38, in Goode & Ben-Yehuda 1994, p. 24; Halloran, 1970; Lanf & Lang, 1955).

The second key player is the individuals and groups who campaign to have the uncouth behavior to be eradicated - the main focus here is their tactics and motivation in the eradication of uncouth behavior. The third player is the law enforcement as they have institutional power. In a moral panic they are “sensitized” to “evidence” of prevalent uncouth behavior. Concern is dispersed from the local communities to the national level. Stern control measures (what Cohen calls “innovation”) are then promoted which is employed in the name of the fourth key player, the public opinion. The complex interplay between these four key players define the problem and its remedies (Cohen, 1973, p. 17). Moral panic usually results in changes in the law or its enforcement which Cohen suggests are measures that are more ritualistic than effective and that panics in society happens to fulfill the function of regurgitating moral values.

The concept of the moral panic fits well with the discursive nature of the various actors discussed in this study who claim various concepts, objects and subject positions. Actors in the dynamics of moral panic in the Canadian refugee system include the media, the public, law enforcement (CBSA and the courts), politicians and legislators (For example Jason Kenney, the minister of Citizenship and Immigration), action groups (like No One is Illegal, religious institutions etc.). The consequences of the moral panic in the Canadian refugee system are changes where there is totally a new refugee system.

Communication theory referred to above by Bonn (2010) contributes to the concept of moral panic in that it stipulates how the media does agenda setting by telling people what to think about and the attributes of actors or issues (McCombs and Shaw, 1972; Wanta, G., & Lee, 2004, p. 365). According to the communication theory, media frames and primes issues or actors by presenting certain elements of an issue while ignoring or disguising other elements to produce subjective fear, anger or outrage (Tuchman 1978; Lowery and DeFleur, 1995). The other contribution of the communication theory is the role of political rhetoric where politicians participate in the agenda setting process in public discourse through the media for mass distribution by use of symbolic political language and figure of speech (Beckett, 1994; Hawdon, 2001; Edelman, 1988). As Koch (1988, 209-210) puts it, “political elites attempt to mobilize public opinion to their advantage by framing the issue in terms that prime their considerations that will move public opinion in the direction they desire”.

Critical social theory critiques the society and culture by demystifying the political system that distorts and gives false consciousness (Habermas, 1975). It contributes to the concept of moral panic by uncovering how the media and those in authority create a dominant ideology in society (Kellner, 1990). Social constructivism also informs the concept of the moral panic in that it lays emphasis on the vitality of culture and context in societal activities and constructing episteme based on this understanding (Derry, 1999; McMahon, 1997). Social constructivism then has three assumptions: that knowledge is a human product, that knowledge is socially and culturally constructed by the group and its social environment, and finally that learning is a social activity (Berger & Lukemann, 1966). When applied to the concept of moral

panic, social problems can be seen as not existing objectively out there but constructed by human mind and socially constructed (Berger & Lukemann, 1966). Hence, a moral panic situation does not exist in itself but it is a socially felt concern constructed by the society. By extension, certain groups in society will be defined and demonized by those in power and authority in society as folk devils to create an evil identity in the public consciousness with the conception of evil itself being a social construction (Bromley, Shupe & Ventimiglia, 1979).

Additionally, critical communication theory demystifies organizational and societal discourses on institutional fields. According to Griffin (1997), “The naïve notion that communication is merely the transmission of information perpetuates managerialism, discursive closure, and the corporate colonizations of everyday life. Language is the principle medium through which social reality is produced. (p. 495). This production of social reality happens in institutional fields that produce and are produced by larger societal level discourse. DiMaggio and Powell (1983:148) define an institutional field as constituting “a recognized area of institutional life” where “participants interact with one another more frequently and fatefully than with actors outside the field” (Scott, 2001: 56). Such fields form around issues (Hoffman, 1999) and are grounds for struggle and conflict (Brint & Karabel, 1991; Wooten & Hoffman, 2008). Fields are structured relational spaces of positions (Bourdieu, 1993) with actors taking possession in the field (Maguire, Hardy, & Lawrence, 2004). The process of structuration brings forth the institutional fields where rules and social action are produced and reproduced (Giddens, 1984). As DiMaggio and Powell (1983) puts it:

'The process of institutional definition, or "structuration", consists of four parts: an increase in the extent of interaction among organizations in the field; the emergence of sharply defined interorganizational structures of domination and patterns of coalition; an increase in the information load with which organizations in a field must contend; and the development of a mutual awareness among participants in asset of organizations that they are involved in, in a common enterprise (p. 148).'

According to Mazza & Pedersen (2004), the institutional field is comprised of positions, rules and understandings. When a field is changed, actors within it will assume “a different ‘point of view’ about it and a different access to resources in the field” (Battilana, 2006, p. 656) that in turn become the “cultural expectations, shared cognitions and beliefs” (Zilber, 2008, p. 153) that are premised on “shared conceptions that constitute the nature of social reality and the frames through which meaning is made” (Scott, 2001, p. 57). It is through discursive struggles and structuration that some members are advantaged at the expense of others and sets forth the systemic power relations (Warren et al. 1974; Hardy and Phillips, 1998; Clegg, 1989).

As can be premised from institutional fields and discourse, structuration bears the institutional practices that are taken for granted by the individuals within that institutional field. However, other institutional fields in the broader society also influence the social interactions of actors in one institutional field. Actors in one institutional field borrow strategically from others hence modifying, producing and diffuse field-specific discourse. Text and talk on this level is executed through a variety of mass media like television,

movies radio, Internet and the newspapers where discourses are linked to other discourses subsequently and synchronically. As Fairclough and Wodak (1997, p. 277) states:

Discourse is not produced without context and cannot be understood without taking context into consideration ... Discourses are always connected to other discourses that were produced earlier, as well as those which are produced synchronically and subsequently. In this respect, we include intertextuality as well as sociocultural knowledge within our concept of context.

These context just like discourse are socially constructed and “They are interpreted or constructed and strategically and continually made relevant by and for participants” (van Dijk, 1997b, p. 16). This level of discourse constrains and or facilitates production of discourse in a particular field where actors try to sanction their strategic intentions.

Chapter 3. Study Design

The main objective of this study is to explore the relationship between discourse on the Canadian refugee system as a sphere of an institutional field and the larger societal discourses that surround it. The study uses news of failed refugee claimants in the news print media as the subject of the study from 2003 to 2013. Failed refugee claimants were chosen as subject of this study for several reasons. First, their temporary status as refugees changes drastically once in Canada from being secure to less secure statuses, including illegality and deportation despite all their efforts to regularize their status (Golding et al. 2007; Barsky 2000; Cre`peau et al. 2007; Rousseau et al. 2002). Second, failed refugee claimants are an enduring phenomena in the Canadian refugee system. Third, failed refugee claimants have been at the center of news media where at times they have been accused of abusing Canada's generous immigration system and for receiving taxpayer's funded health and social benefits as well as clogging application process, hence this is relevant in helping us understand our contemporary politics. Fourth, coverage of the news on failed refugee claimants has led to the legislative reforms of the Canadian refugee system thereby placing media discourse in a material context and in a concrete political action. The start date of 2003 was chosen to reflect major events and legislation following 9/11 namely; the Immigration and Refugee Protection Act passed in 2002, which replaced the Immigration Act of 1976 and the institution of the Safe Third Country Agreement in 2002.

Methodology

This study utilizes critical discourse analysis as its methodology. Critical discourse analysis is the lone most convincing line of research on the study of media

discourse. Teun van Dijk (1991), Norman Fairclough (1995) and Ruth Wodak (2001),) are the most prominent proponents in media analysis. Discourse is here defined as a structure of texts that brings an object into being (Parker1992), hence social phenomena is at the very core of social construction (Berger & Luckmann 1966). Discourse is seen as a type of social practice that constructs social phenomena as well as 'situations, objects of knowledge, and the social identities of and relations between people and groups of people' (Fairclough & Wodak 1997, p. 258). In other words, every discursive event is dialectically bound to society in so far as it both institutes and is instituted by social reality, that is, discursive – material link (Fairclough, 1992; van Dijk 1997a).

There are myriads of methods in discourse analysis (Fairclough, 1992; Keenoy et al., 1997, p. 148-149; van Dijk 1997a,b) that range from semiotics to deconstructionism. What unites all the methods in discourse analysis is that they are interpretive and see texts as constructive. This study adopts “critical discourse analysis” especially the aspects of social reality that are obscured by a seemingly natural and ordinary use of language. Critical discourse analysis focuses on the power relations and the taken for granted the daily social practices. (Fairclough, 1995, p. 54). As Fairclough and Wodak puts it:

Discursive practices may have major ideological effects: that is, they can help produce and reproduce unequal power relations between (for instance) social classes, women and men, and ethnic/cultural majorities and minorities through the ways in which they represent things and position people. Both the ideological loading of particular ways of using language and the relations of power which underlie the more often unclear to

people. CDA aims to make more visible these opaque aspects of discourse'.(1997, p. 258).

Van Dijk (2008) agrees with Fairclough & Wodak (1997) when he sees the core of critical discourse analysis as being the methodical analysis of various levels of text and talk. That said, how various institutional fields or actors manage the discursive activities on 'failed refugee claimants' rights, security and citizenship in their favor is therefore the concern of this study. The study attempts to scrutinize 'dialogical struggle (or struggles) as reflected in the privileging of a particular discourse and the marginalization of others' (Keenoy et al., 1997, p. 150; Mumby & Stohl, 1991). The study utilizes the work of Fairclough (Parker, 1992; Fairclough, 1992; Fairclough & Wodak, 1997; Taylor, 1985, p. 36) and concentrates on how the social space that actors utilize is structured by means of objects, concepts, and subject positions where organizations are seen "not simply as social collectives where shared meaning is produced, but rather as sites of struggle where different groups compete to shape the social reality of organizations in ways that serve their own interests" (Mumby & Clair, 1997, p.182).

Discourse produces concepts – categories, associations, ideas and theories through which we see and relate to one another and the world at large. These concepts and ideas are culturally conditioned and are more or less contested (Harre,1979). Fairclough & Wodak (1997, p. 258) see concepts as 'objects of knowledge' or what Taylor (1985, p. 36) calls 'intersubjective meanings' that are conditioned by the continuum of text production where these meaning of texts changes through time depending on the source, space and the social reality at the moment. The concept of a "failed refugee claimants", for example, is not officially and fully developed in Canadian immigration literature, but

continues to be negotiated and changed as other texts like “rejected refugee claimants”, “refused refugee claimants”, “illegal refugee claimants” are created and added to the discourse. This discursive activity transforms and changes the social relations around it.

It is important to note that some concepts will remain in the abstract and will only be attached to expressive order. However, once concepts are attached to a corporeal being, they produce an object. This makes the discursive activity to be more meaningful in the social realm where object no longer remain abstract but real. This does not mean that some objects pre-exist as objects in their own and the discursive activity uncovers them. Rather, it means that some concepts will be associated with some particular corporeality that is physically and ontologically situated apart from our experience of them. (Laclau & Mouffe, 1987). For instance, the concept of a “failed refugee claimant” exists mentally in us but a “failed refugee claimant” who appears before a Canadian Boarder Services Agency officer is corporeal and made practical and given meaning by the concept of a “failed refugee claimant”. Hence the distinction between concepts and objects mirrors that of Rorty (1991) where various typologies of objects are distinguished. Rorty (1991) distinguishes between objects that only exist mentally (here referred to as concepts in this study) and objects that have a corporeal referent (here referred to as objects in this study). Hence the concept of a “failed refugee claimant” will elicit a different reaction to that person’s rights and measures will be put to limit access or deport the individual.

Subject positions can be seen as the “stand point” or the lens through which individuals take to interpret the world and are constructed in a discourse (Fairclough 1992, p. 64; Parker 1992, p. 6-8). When persons engage in a discourse, they do so not as

“fully formed subjects” (Gergen, 1991; Rorty, 1991) but they take up one of a limited number of available standpoints or subject positions. In other words, statements being exchanged by individuals in a discursive form the subject positions of the participants (Foucault, 1972). In the same way, those who receive and interpret a particular text will be produced (Althusser, 1971; Ochs, 1997). Condor & Antaki (1997, p. 338) note that :

...[language – emphasis mine] simply posted from one speaker to another but are somehow packed together jointly. For Mead, it was a matter of collusion between the speaker and the audience; and for Bakhtin, a matter of infiltration into one speaker's utterances of the interests and perspectives of the other. In both cases, the utterance- and the "cognition" from whence it came was meaningless without an appreciation of its joint, or multiple authorship.

Failed refugee claimants are produced in our discourse. Apart from the production of failed refugee claimants, other objects are produced like lawyers and politicians, networks and nonprofit organizations etc. with different subject positions and different rights to speak (Laclau & Mouffe, 1987; Parker, 1992). The voices of the above actors will be louder or no voice at all in the discursive space depending on what position they hold (Potter & Wetherell, 1987).

Data and sampling method

The data for this study concentrates on articles in the print media regarding the failed refugee claimants. The study does not include articles dealing with other “non-status immigrants who legally entered Canada and stay after their legal status expires”

(Miklavcic, 2011, p. 496) although some of the articles referenced them. The newspaper articles were chosen from the three dailies not only for their idiomatic positions but also due to their geographic location and their large circulation. The *National Post* has a wide circulation with an economic subject position and caters for the corporate elite and the “right-wing” (Greenberg, 2000). The *Toronto Star* is seen as left-leaning subject position with a dedicated immigration/diversity reporter and has the highest circulation in Canada with a diverse readership (Greenberg, 2000). *The Globe and Mail* is regarded as the “newspaper of record” and is Canada’s second-largest circulation and second-largest daily newspaper after the *Toronto Star* (Filmore, 2013). All the newspapers are based in Toronto. Ontario and specifically the Greater Toronto Area is one of the largest recipient of immigrants and by the same token, it has the largest numbers of refugee claimants as well as failed refugee claimants. These newspapers provide a combination of perspectives. The study also explored Citizenship and Immigration Canada backgrounders and news releases for the same period so as to engage with the changes that were instituted. To understand those changes better, the study made use of the Library of Parliament to get a better understanding of the bills that were introduced.

To locate the newspaper articles, searches on Lexis/Nexis search engine were employed to identify articles from the three newsprint media. A customized search for each query was administered. For example, when searching the Lexis/Nexis search engine, such terms as “undocumented” were included. However, the key words leading the search were: “failed refugee claimants”, “refused refugee claimants”, and “rejected refugee claimants. Newspaper articles that did not address the Canadian context or only dealt with documented migrants (permanent residents) were excluded from this review.

At times if the abstract or title was not clear on its relevance to the material in question, the whole article was reviewed to determine if it could be included in the analysis. Also left out of the sample were articles that were more of a personal opinion in nature such as letters to the editor. The exclusion from the sample was based “on the basis that [they] are not bound by the conventional journalistic standards of objectivity, fairness and balance” (Hier & Greenberg, 2002, p. 495). For instance, a search of “failed refugee claimants” from 2002 -2013 produced 54 articles on *The Globe and Mail*, 35 articles on *The National Post* and 68 articles on *The Toronto Star*. A second search for article was conducted to ensure that no articles were left out. The terms “refused refugee claimants” yielded 28 articles on *The Globe and Mail*, 26 articles on *The National Post* and 38 articles on *The Toronto Star* – these articles included 6 more articles that had been missed by the initial search. A third search was also initiated with the words “rejected refugee claimants” and 35 articles were produced for *The Globe and Mail*, 30 articles on *The National Post* and 43 articles on *The Toronto Star*. That initial search produced 357 articles. After excluding those not concerned with the topic and the letters to the editor, the total final sample for editorial articles was 46 articles. A breakdown of this final sample is as follows: on the search terms “failed refugee claimants” 12 articles came from *Globe and Mail*; 6 from *National Post*, and 8 from *Toronto Star* while the terms “refused refugee claimants” had 2 on *Globe and Mail*, 4 on *National Post* and 2 on *Toronto star*. Finally, the terms “rejected refugee claimants” had 6 from *Globe and mail*, 4 from *National Post* and 2 from *Toronto Star*. The shortest article had a word count of 97 words and the longest 2103. The average word count for these articles was 592 words.

Data analysis

The study first examined the headlines of all the newspapers. Further, the main body of the news articles was examined to further understand the articles and focused on three things: care was taken to note if the failed refugee claimants were speaking for themselves or if someone spoke on their behalf and how they were being positioned. The articles were printed and coded manually according to themes that were ordered into an excel spreadsheet. Only editorial articles were included in the final analysis were considered for analysis. Grennberg, (2000) views the editorials as presenting the official voice of the newspaper and that they are placed at the front section of the paper where they blend, unlike the “hard” news, the social facts, values, truth, knowledge – they essentially represent “public opinion”. Closer to the editorial and carrying almost the same weight are the Op-ed articles. A person who is not an employee of the newspaper writes op-ed articles and they are placed on the opposite page of the editorial where they give an individual opinion from a respected and knowledgeable personality in society like a lawyer or a doctor. The Op-ed articles will be not be part of the analysis of this study as this is a project greater than the scope and space of this study.

Theoretical framework

This study will utilize the five core components of society in the concept of moral panic, namely “the press, the public, agents of social control, law makers and politicians, and action groups” (Cohen, 1972, p. 31-38, in Goode & Ben-Yehuda 1994, p. 24). For instance, Cohen reported that the press over reported, over weighted and stereotyped the Clacton disturbances coverage using phrases such as “riot”, “orgy of destruction”. (Cohen, 1972, p. 34-38, in Goode & Ben-Yehuda 1994, p. 24-26). In the same way,

representations of failed refugee claimants as “bogus” “illegal” et cetera are abound in the press. The public on the other hand must show that it is concerned so that the media can actually base the severity of the issue at hand. But if the public does not show any concern with a certain issues being covered by the media, then there is no moral panic (Cohen, 1972, p. 65-70; Goode & Ben-Yehuda 1994, p. 26). In addition to the media and the general public, law enforcement or agents of social control must be sensitized and must seem to be doing something to diffuse the threat and remedy the situation often by escalating the situation so that they can justify overzealous and punitive measure that they might use as well as expansion of their powers (Cohen, 1972, .p. 88-91). Closely connected to the law enforcers are the politicians and members of the parliament who “[take] considerable interest in disturbances in their constituencies” (Cohen, 1972, p. 133) who seize the opportunity to propose possible measures and build allies with other groups that are against the perceived threat. (Cohen, 1972, p. 138). Action groups or social movements develop as a direct response to the moral panic where appeals and campaigns start developing as a means of coping (Cohen, 1972, p. 119). The leaders who launch these groups are seen as “moral entrepreneurs” often believing that current remedial measures are inadequate (Becker, 1963, pp. 147ff) and have a vested interest in the problem.

In addition, the study utilizes the concept of the global city. To show how rights and citizenship are negotiated in the city, the study explores conceptualizations of citizenship as not merely a legal status, but also a “relationship” or “negotiated practice”. Hence citizenship is first and foremost a dynamic, active and continually negotiated complexity of relationships (Stasiulis & Bakan, 2003, p. 117). Especially helpful in this

regard is the work of Engin Isin (2002, 2005) who sees citizenship as defined, negotiated and contested:

The city is neither a background to these struggles against which groups wage, nor is it a foreground for which groups struggle for hegemony. Rather, the city is the battleground through which groups define their identity, stake their claims, wage their battles, and articulate citizenship rights, obligations, and principles.

The city as an object of thought and experience emerges out of these practices and has neither the unity nor the cohesion that has been attributed to it. (Isin, 2002, p. 283–84)

This kind of conception of the city by Isin can refer to the territorial nation-state as the dominant perception in our modern times as a juridical mass where citizenship rights are awarded just as the global city nodal point from the twentieth century to the present where the idea of globalization is envisioned (Sassen, 2001; Soysal, 1994), where spatialized identities (the state, the citizen, the cosmopolitan, failed refugee claimant, refugee and so on) are constructed. Indeed, the city has become a strategic site for a myriads of activities – political, cultural and economic etc. (Isin, 2000; Allen et al., 1999; Bridge & Watson, 2000). As Isin reiterates, “the object of analysis or the question should never be ‘what is the city?’ But rather, ‘under what conditions is the city being defined?’ What forces and groups are staking their claims through its definition?” (Isin, 2005, p. 377). The role of discourse analysis in this context then is not only on what concepts are being negotiated (like failed refugee claimants) but also on who is negotiating (subject position), constructing or contesting these objects and subject positions. The concept of a failed refugee claimant exists in our minds. But the failed

refugee claimant who is “captured” by the Canadian Boarder Service Agency Officer is corporeal, made tangible and sensible by the concept of a failed refugee claimant [and in a totally unlike manner, than for example, a person who has overstayed their visa] (Rorty, 1991, p. 106; 2011, p. 496).

Limitations of the Study

The study identifies a few gaps where research is needed to improve the understanding of the discursive activity in a particular field and its relationship to the larger discourse in society. As discourse analysis affords the provision of a methodological approach of understanding institutionalization and change in institutional fields, further research is needed to ascertain the role of discourse in the process of institutionalization. In this sense, the focus of discourse analysis will be on how the tactics of protagonists affect institutionalization instead of focusing on the production and dissemination of texts and how these texts create concepts and objects (Powell & DiMaggio, 1991).

While it is clear that particular subject positions are advantaged by the availability of concepts that they can use in their institutional field, a thriving application of the relationship between these concepts is not clear. For instance, a whale-watching industry developed in the Canadian west coast due to changes in understanding of killer whales in Society (Lawrence & Philip, 2004). If failed refugee claimants can be taken as an institutional field (that is apart from the societal movements or networks), it is possible that there can be change that allows them to have mobility from being a less powerful actor to having both practical and academic availability of concepts that they can utilize. How exactly these changes will occur and what leads to success is not, however, well

understood and research might be useful at exploring these processes.

There is also a need for research to establish how activity in an institutional field affects the larger societal level discourses. In our treatment of the failed refugee claimants, there was notice of “inversion” instances where the concept of a failed refugee claimant was utilized to represent the Roma discourse in Europe and the Mexican government fight against the drug cartels. This makes it clear that the failed refugee claimant’s discourse takes place amid other discourses and it is possible that this can lead to the production and utilization of concepts akin to the failed refugee claimants.

Chapter 4. Findings

Articles in the newspapers reflect the literature review especially on the issues of access to services like health and having to work underground due to their lack of status. One thing of note that was not captured in the literature review is that coverage on failed refugee claimants was used as subjects of “inversion” where the articles used failed refugee claimants to remark on other issues. For instance, there was a comment on the deep-rooted discrimination and social exclusion of the Roma people in Europe (Hungary) where Europe does not make them refugees. To this effect, the *Globe and Mail* states, “There is no doubt that many of the 10 million Roma who live in Europe are subject to deep-rooted discrimination, and social exclusion” (*Globe and Mail*, October, 2012: A14). Diversion is also used when issues of the Mexican government fighting a good fight with drug cartels are brought to the fore. “Protecting citizens is the essence of sovereignty, and so Canada should be leery of declaring Mexico incapable of looking after its people. (*Globe and Mail*, October 2008: A20).

The rest of this chapter is divided into five narratives that were extracted from the data. Each of the 46 articles represented one or more of the following objects: the failed refugee claimants, the government, the immigration system, the non-profit or social networks and the public.

The first narrative is that of the “broken” Canadian refugee system. This was a running theme throughout the newsprint articles both explicitly and implicitly. There was more notable coverage on how the Canadian refugee system is broken or not working and that it needs to change. Some editorial headlines to this effect are glaring:

Reforming a broken system (*Globe and Mail*, April, 2010: A16).

Rethinking our refugee system (*Toronto Star*, September, 2009: A16).

Why our refugee system stays broken (*National Post*, August, 2009: A16).

Getting our own house in order (*Globe and Mail*, July, 2009: A14).

Reforming our refugee system (*Toronto Star*, December, 2006: A26)

Ottawa can rescue its refugee system (*Toronto Star*, April, 2005: A20).

A step toward immigration reform (*National Post*, November, 2004:A21).

These headlines are vital in presenting a discursive point of departure on various subject positions to justify why there is need of having the Canadian refugee system changed or reformed. For example, newspaper articles use explicit strong language that portrays the much-needed reform as an epidemic or something that must happen very urgently. The use of “metaphors” like *crying* are quite important to interpret discourses. “Canada has a crying need for a revamped refugee-determination system” (*Globe and Mail*, April, 2010: A16). The other ‘metaphor’ used is *dysfunctional*, that evokes feelings of a system that is obsolete. “ All of the parties know the refugee system is dysfunctional. All of them know reform is essential. But none of them have been willing to do anything about the problem (*The National Post*, August, 2009: A16).

The Canadian Immigration system is also portrayed as inconsistent in the sense that specific groups and individuals are given a preferential treatment perhaps because of their race and country of origin.

A young Mexican woman, Grise, who sought refuge here because drug traffickers threatened her, was denied asylum and sent home. She was later found beaten, with a bullet in her forehead. ... And when Canada does grant asylum, it's not necessarily to the most obvious claimants. A South African man, Brandon Huntley, who is white,

was granted refugee status on the grounds that he justifiably feared racial persecution. South Africans mocked his claim, which now faces review. Cases such as these cast a cloud over Canada's system, with its Byzantine decision-making, backlogs and glacial deportation process (*Toronto Star*, October, 2009: A24).

This inconsistency, The *Toronto Star* notices, has been there for quote some time. “The Immigration and Refugee Board, which determines who can stay, has been cited for inconsistency” (*Toronto Star*, July, 2004: A16).

The immigration system is also portrayed as too slow, too lenient and flowed so much so that it allows refugee claimants who should not be in Canada and disqualifies those who should be admitted. In fact, Czech Prime Minister, Mirek Topolánek complained that that ‘...Canada's refugee system was too "soft," and Czech officials say no other nation is attending to so many claims from their country’ (*Globe and Mail*, July, 2009: A14). The refugee determination system is also seen as too slow – it can take many years to finalize a claim. Thousands of failed refugee claimants remain in Limbo for years as they wait for either a redress of their claim or for removal from Canada. In one case presented in the articles, a Mr. Harjit Singh was able to remain in Canada for 17 years before he was removed. As the *Globe and Mail* puts it:

It is ludicrous that the average period to hear a claim and send a failed claimant home is 4.5 years. It is a not very funny joke that one failed claimant, Harjit Singh of India, managed to stay 17 years after his claim was rejected, while his many appeals were heard. It is absurd that democratic countries such as the United States, Costa Rica and Hungary regularly make it among the top 10 source countries for refugee claimants

- even as refugees languish in United Nations-designated camps, unable to benefit from Canada's protection (*Globe and Mail*, April, 2010: A16).

Finally, the Canadian Immigration System is viewed as unable to deal with the large numbers of failed refugee claimants who have not been removed from Canada. The exact number of immigrants living in Canada while they are supposed to have left is not known. "There are an estimated 100,000 to 200,000 such people - the haziness of the estimate demonstrates just how sloppy we have been (*National Post*, November 2004: A21). The refugee system is accused of not showing any interest in deporting failed refugee claimants as well. "Furthermore, there is little effort by enforcement officials to find and deport rejected claimants. Four years ago, the auditor-general reported to Parliament that there were 36,000 outstanding warrants for the arrest of rejected claimants (*National Post*, September, 2007: A20).

The second narrative is that of failed refugee claimants. Failed refugee claimants are framed as 'bogus', that is, they present themselves as being in danger if they are deported to their countries of origin. In referring to refugee claimants, 'Immigration Minister Jason Kenney says Ottawa must do more to crack down on "bogus refugees" who are clogging up the system and costing taxpayers too much money' (*Toronto Star*, February, 2012: A16). That quotation also shows that the refugees are also being blamed for the shortcomings in the refugee system. Refugee claimants from certain countries are presumed to be bogus even without a benefit of the doubt. The Minister of Immigration treats refugee claimants from Czech Republic and Mexico with suspicion. "Kenney says claimants ... they are "gaming" the Canadian system..." (*Toronto Star*, July, 2009: A22). A former minister of Citizenship and Immigration, Judy Sgro even commented once that they are more an economic migrants than real refugees. "Many refugee claimants - there

were about 42,000 last year - are really just looking for a better life, Sgro said, and nobody can deny it. Such a person can stay here for years awaiting a decision, and even if refused, can just disappear into a big city (*National Post*, November 2004: A21). To demonstrate how refugee claimants are bogus and their claims unreal, the editorial of *The National Post* gives an example of a Mr. Laibar Singh who had several rejections but continued to stay and dodging deportations. Laibar Singh is presented as the epitome of what is wrong with the Canadian refugee determination system.

They investigated his [Laibar Singh] claim and found it to be baseless. His refugee application was denied. A judicial review of his case also found Mr. Singh's refugee claim to be spurious and he lost his subsequent bid to win an exemption on humanitarian grounds in 2004. Since that time, Mr. Singh has been dodging deportation. (*National Post*, August 2009: A10).

Failed refugee claimants are also criminalized and presented as a threat to the security and order in the society. A failed refugee claimant who had stayed for over seventeen years appealing his case if finally represented with “A serious criminal conviction in India in 1995 came to light, and in 2001 an immigration officer rejected Mr. Singh's H & C claim, a rejection he challenged because he had not been given an oral hearing (*Globe and Mail*, January 2005: A18). The Public Safety Minister, Vic Toews also joined in the fray of branding failed refugee claimants as criminals with convictions in Canada.

“Chasing down illegal immigrants who have been convicted of crimes in Canada - Toews' latest target - would make sense if he had a plan to stop inadmissible foreigners from defying Ottawa's deportation orders (*Toronto Star*, August 2011: A12). And yet again, to justify such and attack in a church compound, Toews uses security and

Canadians as paramount. "The protection of our country and of Canadians has to be the number one concern" - and that means not allowing anyone to use churches as a "back door" into the country. (*National Post*, July 2004: A11).

Other failed refugee claimants are presented as having criminal activities abroad and wanted by their countries for unspecified crimes. "In one notorious case, an accused Costa Rican embezzler, Jorge Martinez, landed in Canada with his wife and three children, filed a refugee claim, and wasn't deported until five years later - three years after Costa Rican officials requested his extradition (*Globe and Mail*, February 2004: A20). In one instance, the Quebec, police in Quebec stormed a church where a failed refugee claimant was being offered sanctuary for violating a bail condition. "Already this year, police were forced to enter a Quebec City church to arrest Mohamed Cherfi - a 35 year-old who had been ordered deported to Algeria for violating bail conditions" (*National Post*, July 2004: A11).

The number of failed refugee claimants in Canada is represented as unknown. "Furthermore, there is little effort by enforcement officials to find and deport rejected claimants. Four years ago, the auditor-general reported to Parliament that there were 36,000 outstanding warrants for the arrest of rejected claimants. Since then, that number has undoubtedly increased. (*National Post*, September 2007: A26). In several conflicting reports the underlining picture is that of a mass of failed refugee claimants. For instance, "There are an estimated 100,000 to 200,000 such people -- the haziness of the estimate demonstrates just how sloppy we have been (*National Post*, November 2004: A21).

An economic twist to the number of failed refugee claimants is also given to add to their magnitude and how it costs the taxpayers dollars to keep a failed refugee

claimant. “Last year, he suffered a debilitating aneurysm that left him hospitalized for five months and in a rehabilitation centre for another six months. The total cost to the Canadian health care system is estimated at close to \$500,000. On July 8, Mr. Singh, now paralyzed as a result of his aneurysm, was to be deported to India at a cost of nearly \$70,000 due to his medical condition (*National Post*, August, 2009: A10).

The third narrative is that of an irresponsible the government. The government is portrayed as harsh and not willing to take any responsibility for failed refugee claimants. The use of the term *draconian* to refer to government takes the view of harshness to another level, that of ill intention or flatly evil. “Under a set of draconian federal rules that came into effect on June 30, medical treatment is being denied to failed refugee claimants and those arriving from countries considered safe, unless their condition is deemed a public threat (*Toronto Star*, August 20123: A22). The irresponsibility of the government has gone to the level that it is now trying to bribe failed refugee claimants with money to go back to their countries of origin as well as “bribing” them to abandon their appeals to their rejected claims with “a carrot worth \$2000 in relocation support (paid through an agency in the homeland) to persuade failed claimants to take the hint”. This program is the Assisted Voluntary Return and Reintegration (AVRR) program which, according to Canada Border Services (CBSA), “is a Government of Canada pilot that provides support to unsuccessful refugee claimants in or around the Greater Toronto Area (GTA) who voluntarily leave Canada” (CBSA, 2013) that is being run in partnership with the International Organization for Migration (IOM).

The government is also presented as incompetent and corrupt, where government employees or individuals in the government have selective application in allowing people

to Canada as well as deporting others from Canada. For instant, The *Toronto Star* states “It is also an urgent plea to policy-makers to fix a refugee system tainted by too many self-serving political appointees, too many lazy lawyers and too many unethical immigration consultants (*Toronto Star*, December 2006: A26).

The government is also represented as being under pressure. It is being subject to a contradictory and unresolvable pressure regarding its responsibility to public and the refugees. A good example of this is the Bill C-11, *Balanced Refugee Reformed Act* that had received considerable criticism from the members of opposition and saw the Minister of immigration barge to the pressure. “The opposition parties joined forces to seek a more balanced bill and Kenney, to his credit, listened. He agreed to amend his bill and came up with a compromise called the Balanced Refugee Reform Act. It gave rejected claimants the right to appeal to a new tribunal with knowledgeable adjudicators. It also created a committee to advise the government on the list of "safe countries" that Kenney was proposing (*Toronto Star*, February, 2012: A16).

Bill C-11 was to be effective from June 29, 2012 but was amended by Bill C-31, *Protecting Canada’s Immigration System Act* that gained Royal Assent on June 29, 2012. The bill gave new “anti-smuggling” provisions and paid no regards to the safeguards listed above in Bill C-11. The provision that elicited a lot of debate among others was that the Minister was given power to deem asylum seekers as being from Designated Country of Origin (DCO) or to be Designated Foreign Nationals coming to Canada under “irregular activities”. For instance, the editorial on *Globe and Mail*, although generally supportive of the changes, faults the Immigration Minister, Jason Kenney, on the Designated Country of Origin:

However, Mr. Kenney's decision to eliminate a right of appeal for all refugees from a designated list of "safe countries" is problematic. Critics are concerned it could result in the persecution of genuine refugees. The new bill has also eliminated a committee of experts that was meant to advise the government on which countries should be on the safe-country list. This is unfortunate, and opens the process to political pressure (*Globe and Mail*, February 2012: A14).

The introduction of this omnibus bill was justified by the enduring presence of failed refugee claimants as well as arrivals of 'fraud' asylum seekers. The bill was tabled according to the Minister of Citizenship and Immigration, to offer quicker determination and 'curb abuse'.

That's why we proposed the measures in Bill C-31 to demonstrate to Canadians and the vast majority of immigrants who are law-abiding that we will not tolerate those who seek to abuse our generosity, including bogus asylum claimants, human smugglers and those who might represent a risk to Canadian security and safety (Citizenship and Immigration Canada, 2012b).

Another piece of legislation- Bill C-43, *Faster Removal of Foreign Criminals Act*, like its predecessor Bill C-31, was justified as aiming to curb abuse of the Canadian immigration system but most importantly, to protect the security and safety of Canadians. "... we are implementing policies that safeguard the integrity and security of our immigration system. I believe that the security and integrity of the immigration system go hand in hand with that system's ability to best serve our society and our economy. (Citizenship and Immigration Canada, 2012c). Bill C-43 had received considerable

criticism from the members of the opposition that saw Kenney, the Minister of Immigration barge to their pressure and give concessions. The bill received the royal assent on June 19, 2013. The bill gives the minister of Immigration more powers to even deny permanent residents the chance to appeal to the Immigration and Refugee Board if they are sentenced to imprisonment for six months or more, a change from two years previously. Apart from the broad category of security, a person could be denied humanitarian and compassion considerations on the grounds of human or international rights violations or organized criminality.

Endangered public was the fourth narrative. Although the public was represented less in the articles, it is portrayed as in need of protection and being opposed to failed refugee claimants. "Canadians are taking a stand against those who are in our country illegally, Toews said" (*Toronto Star*, August 2011: A12). The public is also presented as being abused by the failed refugee claimants. The abuse is identified as the Canadian goodwill " ... Mr. Singh, having lost his refugee application, would leave the country... he was again the beneficiary of Canadian goodwill which he once again abused (*National Post*, August, 2009: A2007: A10) as well as the due processes in refugee determination. "But when does the exercise of due-process rights become an abuse of the patience of Canadians? (*Globe and Mail*, January 2005: A18).

Finally, the narrative of the non-profit and social networks was identified in the data. For clarity, non-profit in this study refers to immigrants servicing agencies that are not government run like the Canadian Council for Refugees, religious institutions and social movements like No One is Illegal Toronto. Of note in the articles is a discursive exchange between the Minister of Immigration and the churches. The Churches have

been providing sanctuary to refugee cases that they felt were genuine and the government had disregarded them. “

Since 1993, roughly 250 people involved in 35 immigration and refugee cases have sought and received sanctuary from churches when their efforts to be granted landed status were rejected and when the churches believed that the government had given the claimants a raw deal (*Globe and Mail*, July 2004: A14).

The churches view the Canadian refugee system as inadequate and in need of change. As one article states, “The trouble is that the churches see Canada's refugee-determination system itself as the problem, since the government has not implemented a promised avenue of appeal. [The absence of that appeal has made it easier to reduce a huge backlog of claims] (*Globe and Mail*, July 2004: A14). Surprisingly, the churches seem to have the support of Canadians. “Yet Sgro raise the ire of many Canadians in July when she asked churches to cease the centuries-old tradition. Now in a bid to appease the churches, she is offering to review a limited number of sanctuary cases each year. It will be done under a special process that would give refugees facing deportation a second chance to stay in Canada” (*Toronto Star*, November 2004: A26).

The non-profits and the religious institutions are also presented as challenging the government when they believed the rights and interests of the refugees and failed refugee claimants were at stake. For instance, the non-profit had challenged Bill C-55, the Safe Third Country agreement between Canada and the United States, arguing that the United States tortures people. “The Canadian Council for Refugees, the Canadian Council of Churches, Amnesty International and John Doe (an anonymous claimant) argued before

the Federal Court that the United States could not be trusted to refrain from torturing people or sending them to torture” (*Globe and Mail*, January 2008: A15). Bill C-55 came into effect on 29 December 2004, which in effect closed the border to asylum seekers making a refugee claim at the US-Canadian land border. Citizenship and Immigration Canada (2012a) states that: “The Safe Third Country Agreement applies to refugee claimants who are seeking entry to Canada from the U.S. or vice versa at Canada-U.S. land border crossings. Under that Agreement, unless individuals qualify for an exception, refugee claimants must seek protection in whichever of the two countries they first have the opportunity to do so”. Although Bill C-55 allowed for the creation of a list of Safe Countries by the cabinet, that never saw the light of the day in part due to concerns that the United States was regularly returning people to Central American countries that Canada considered not safe and that some cabinet ministers in Canada did not consider the United States as a Safe country for everyone:

Given that the safe country concept had been so central to the bill and defended vigorously by the government, the fact that the system came into force without a safe country list may seem surprising. In reality it reflects the very serious political difficulty that the list presented to Cabinet, particularly with regard to the United States. To include that country on the list as safe without an exception for claimants from certain Central American countries would have been to fly in the face of common knowledge and experience (Young ,1989, p. 15).

To conclude this chapter, the use of newspaper articles helps to capture the image not only of failed refugee claimants, but also of other objects like the government, the public and the immigration system and helps to reveal the broader discourse as well as the

discursivity in the Canadian Refugee system that will be discussed in the following chapter on analysis.

Chapter 5. Analysis: A discursive struggle of the Canadian refugee system

One would expect that everyone would benefit from a protection of human rights in Canada because Canada is a state party to almost all of the of international human rights instruments. Canada is a signatory of several core international human rights listed by the United Nations High Commissioner for Human Rights like the 1951 Geneva Convention and the 1967 Protocol Relating to the Status of Refugees, which in essence defines who a refugee, is. By signing the Convention and the Protocol, an institutional field emerged that incorporates the establishment and enactment of policies and practices that safeguard the right of individuals and asylum seekers to be determined as refugee and support offered to them (Hardy, 1994). With the implementation of Bill C-55 (*The Refugee Reform Bill*) in 1989, individuals could be determined if they qualified for asylum. Since then, a lot has changed; from implementation of Bill C-11 (*Immigration and Refugee Protection Act*) in 2002 that essentially replaced the *Immigration Act of 1976* to Bill C-31 (*Protecting Canada's Immigration Act*) that came into force in June 2012. Please see figure 2 for the changes in Canada's refugee system.

This study presented the Canadian refugee system as an institutional field that is shaped by a number of actors who shape the concept of a failed refugee claimant. These actors are classified, for investigative purposes, into general subject positions, namely, the government, the refugee system, the public and the non-profit agencies and what the study would term as social movement networks (like No-one is illegal).

As it can be induced from the findings chapter, the Canadian refugee system is characterized by a massive discursive activity with a number of key actors or objects that produce different subject positions. In this chapter, the study fuses the themes from the

data and the theoretical framework with the concepts of human rights, which induces a failed refugee claimant who warrants protection and the concept of security (sovereignty), which suggest a big number of “fraudulent”, failed refugee claimants who pose a threat to security and sovereignty and therefore justifies the government’s intervention to protect the Canadians. The “justification” stand shows that the main actors or subject positions are not value free; they have vested interest in the discursive struggle. Hence the discursive struggle between rights and sovereignty has traditionally pitted the government against the non-profit and social networks. For a better understanding and comparison of the refugee determination process, please see figure 3 for the old refugee determination process and figure 4 for the new refugee determination process. This analysis is positioned against a backdrop of Stephen Cohen’s actors in the moral panic. According to Cohen (1972), there are five actors in the moral panic, namely the media, the public, agents of social control, law enforcement and lawmakers and politicians.

The media

Perhaps a question can be legitimately asked. What is the role of the media in the discourse on the failed refugee claimants in Canada? As the media transferred perspectives of various actors in the discourse, it seems that they were active in the agenda setting of failed refugee claimants as a problem in the Canadian refugee system if not nationwide as well as legitimizing the discourse of the dominant ideology. The media apart from setting the agenda of failed refugee claimants, it also exaggerated the statistics around how many of the failed refugee claimants that reside in Canada. Although the media might not have had the exact numbers, it would have been polite or courteous to refer to the official numbers as given by the Immigration and Refugee Board (IRB) on

their refugee status determinations (1989-2011 calendar year). For instant, from a simple calculation based on IRB statistics, there were 56088 failed refugee claimants adjudicated in Canada from 2003 -2011. See figure 1 for the numbers of failed refugee claimants in the last ten years. But the media chose to peddle uncertain numbers to distort the effects and seriousness of the failed refugee claimants. Further, the media used sensational headlines as demonstrated in the findings like “why our refugee system remains broken” and theatrical vocabularies (like crying need, dysfunctional etc.) and highlighted elements that are considered news. The media also functioned as a symbolic stance where key symbols like human person in the name of a failed refugee claimant is dehumanized hence losing his or her positive attributes or neutral connotation and becomes an object – simply put - bogus and illegal object.

The public

According to Stephen Cohen, the third actor is the media. Although in our study there were no articles covering the public reaction or views as such, the media kept bringing the idea of public taxpayer dollar now and then. Like the failed refugee claimants, the media or the politician never consulted the public to gather their views. The public is framed as being abused by failed refugee claimants and that it needs protection from the government.

Agents of social control and law enforcement

The third and fourth agents according to Cohen are the agents of social control (the police) and law enforcement (the court) who put forward new methods of control as society is faced with a clear and present danger, in our case, that of failed refugee

claimants. From the study's findings, failed refugee claimants were presented as illegal and bogus non-entities abusing the generosity of Canadians - generosity of Canadians was presented as the Canadian identity. We can resonate too with the Montreal church raid for one failed refugee claimant who had been given sanctuary in a church, and above all, the Safe Third Country Agreement with The United States that was agreed behind the backs of lawmakers ostensibly under pressure from the United States with the aftermath of 911 being used explicitly to legitimate these demands.

In a way, what we get from the findings is that the government has at stake the refugee determination process, which it justified by juxtaposing worthy refugees against 'economic migrants' with the "economic migrants" having to be unmasked by the Canadian refugee determination system that needs change to respond to the needs of the time. It is the responsibility of the government to develop and implemented a fair and responsible refugee determination system. For this responsibility to be sensible, and for the subject position of the government to be tolerated and supported by Canadians and the nonprofit sphere, a huge number of refugee claims must be bogus. If all the refugee claims being made in Canada were all of them genuine and deserving protection, then there would be no justification to Canadians on why their hard earned tax dollars should be spent on a refugee determination system that is not needed. Hence for the government, the failed refugee claimants must elicit 'a reaction dominated by the notion of state security and the control of immigration' (Rudge, 1989, p. 28-29). The government has to invoke security as an institutional field and view failed refugee claimants as bogus for it to participate in the societal discourse where it churns the discourse of the Canadian population in need of protection in a refugee determination system that is inadequate.

Lawmakers and politicians

There are a number of episodes in our findings when the law makers were very discursively engagement with the Canadian Immigration system as attested from the passing of laws in the forms of Bills C-55, the *Safe Third Country of Origin agreement with The United States*, Bill C-11, *Balanced Refugee Reformed Act*, *Bill C-11*, by Bill C-31, *Protecting Canada's Immigration System Act and the most recent* and Bill C-43, *Faster Removal of Foreign Criminals Act* that received Royal ascent on June 29 this year. The notion here is that, lawmakers and politicians have to be favorable in implementing a new legislation, which Cohen (1972) sees as symbolic. One thing of note is the political atmosphere at the passing of some of these bills. For instance, the passing of Bill C-11, the *Balanced Refugee Act* had a lot of input from the opposition members of parliament that the ruling conservative government had conceded to in favor of failed refugee claimants. That bill was amended immediately before its implementation after a general elections where the conservatives gained a ruling majority and muscled in Bill C-31 watering down all previous concession from Bill C-11 like the right of failed refugee claimants to a new tribunal with knowledgeable adjudicators as well as the creation of a committee to advise the government on the list of designated countries of origin (DCO).

Action groups - Non profits and social networks and movements

The other actor who Cohen refers to as “germinal social movements” (1972, p. 120), are the actors who in our study are represented by nonprofit agencies and social networks. These germinal social movements believe that existing remedies to the Canadian refugee system are inadequate. The nonprofit in our study can be divided into

two groups; the more organized agencies serving immigrants and refugees like the Canadian Council for Refugees (CCR) and a more network oriented mass directed social networks like No One is Illegal Toronto who can be seen as more of a “civil society”. From the findings, the nonprofits mentioned were the Canadian Council of refugees and the Canadian Council of Churches who were fighting on behalf of the failed refugee claimants and refugees in general.

The study recognizes the discursive activity between the government and the Minister of Citizenship and Immigration represented by Judy Sgro where she tried to garner support to have the churches recant their practice of offering sanctuary to failed refugee claimants and the subsequent raid at a church compound to arrest a failed refugee claimant who had not fulfilled his bail conditions. The sanctuary issue as presented in the findings chapter is a good example of the media setting the agenda and peddling the dominant discourse from the politicians, the intervention of law enforcement agencies in the name of the police and the courts, the folk devil incarnate in the failed refugee claimant who was being given protection and sanctuary by a non profit in the name of the church. Recall as well the challenge in court that had representation on the Safe Third Country agreement between Canada and The United States brought forth by the nonprofit. Some non-profit view failed refugee claimants as genuine, helpless, defenseless and in need of protection and worth advocating for. Prominent on this sphere, as presented by the study findings, are the churches that have constantly taken the stand and brought in some failed refugee claimants and provided them with sanctuary away from the long arm of the Canada Border Service agents who target them for deportation.

The non-profit agencies too do not do their work value free – they have their

interest in the refugee determination system. The non-profit agencies speak and advocate on behalf of failed refugee claimants and hence can be categorized as being interested in offering services. This subject position is reinforced by portraying (some) failed refugee claimants as needy and genuine clients who deserve professional services. Such a stand is well supported by the notion of democratic rights and solidarity (Rudge, 1989, p. 28-29).

The human rights discourse is used by the non-profit agencies as an institutional field where the strategy is to portray failed refugee claimants as victims of a broken refugee determination. This strategy or subject position for the non-profit agencies is untenable if large numbers of failed refugee claimants are bogus because such persons are neither deserving protection nor eligible for support and advocacy on their behalf.

The second tier of the nonprofit, the social networks are movements like No One is Illegal too have a stake with the failed refugee claimants. For them, they are interested with the service provision for all without distinction of status. The social movements and networks justify their stance by considering failed refugee claimants as fully functioning and 'equal members' of society with access to services as demonstrated in the literature review of this study. The social network who corresponds to Cohen's "entrepreneurs" were able to get access without fear support from the City Council of Toronto for non status immigrant (Toronto City Council, 2013) among other previous ones like Don't Ask Don't Tell in (No One is Illegal, 2013). Many of the No one Is Illegal members subscribe to the notion that failed refugee claimants and other unauthorized immigrants who demonstrate civic involvement, social deservedness, and national loyalty merit legal residency because an informal social contract binds them to their communities of residence (Schuck & Smith, 1985).

Failed refugee claimants - Folk devils

Failed refugee claimants are the ones against whom the moral panic is directed. In the ten-year span of time that this study has reviewed the newsprint media, a lot has been said and directed at them. The failed refugee claimants are stripped of their human value and personhood and demonized as the personification of evil and ills in the Canadian refugee system. In the media, they are framed with terms such as “illegal”, “bogus”, economic immigrants and even criminals and carriers of dangerous infectious diseases like HIV and Aids. We have seen from the findings how, for example, different ministers of Citizenship and Immigration used at different times terms like “bogus”, “economic immigrants” that are a threat to Canada and Canadians.

Chapter 6. Conclusion

This study has focused on the discursive activity that takes place when organizations strive to affect and effect the growth of institutional fields by attempting to situate and locate the connection between language and social context and facilitated 'more satisfactory bridging of the gap between texts and contexts' (Fairclough, 1995, p. 189). The study explored that discursive activity in the Canadian refugee system as an institutional field occurs not in a vacuum but in relation to a larger societal level discourse.

The study has shown that the government, in engaging in discursive activity utilized the concept of security to justify its actions by framing failed refugee claimants as bogus, an inadequate immigration system and a Canadian population that needs protection from bogus and criminalized failed refugee claimants. Consequently, non-profit agencies and social networks employed human rights as a societal resource in their discursive activity and portrayed government as incompetent on the one hand and the refugee determination system as inconsistent and inadequate on the other. The study also revealed a second level of nonprofit agencies in the discourse where the social networks employed the concept of solidarity as a strategy.

The study has also explored the main actors in the Canadian refugee system like the police and ministers in the Citizenship and Immigration and the Public Safety Ministry, the media and various nonprofit agencies and social networks and concludes that a level of discursive activity has occurred that mirrors a moral panic. Both ministries of Public Safety and Citizenship and Immigration informed the public of 'bogus' and 'illegal' failed refugee claimants that threaten national security. The study also demonstrates that dominant discourse from politicians and the media has not given failed

refugee claimants a legitimate voice. Instead, failed refugee claimants were presented as folk devils and became scapegoat for real and imagined inadequacies in the Canadian refugee system. Apart from the ministers of Public Safety and the Citizenship and Immigration, there were no other participants from the political realm save for a short discursive activity from the members of the opposition parties before the general election when the conservatives attained a majority government and hurriedly passed Bill C-31, *Protecting Canada's Immigration System Act* and the most recent Bill C-43, *Faster Removal of Foreign Criminals Act*.

The study affirms the significance of the theoretical framework of discourse analysis and moral panic in unraveling the discursive activity in the Canadian refugee system. Despite this affirmation, there are gaps where research will benefit our knowledge on the role of discourse and how individual actors affect the process of institutionalization as well as how activity in an institutional field affects major societal discourses.

Figure 1 – IRB Status determination 2002-2011

Figure 1 - IRB REFUGEE STATUS DETERMINATIONS (1989 - 2011 CALENDAR YEARS)

Source: Immigration and Refugee Board of Canada - Refugee Protection Division

YR = Year REF = Referred to IRB A = Accepted R = Rejected AB = Abandoned W = Withdrawn/Other P = pending F = Finalized

YR	REF	A	A (%)	REJECTED	ABANDONED	W/DRAWN	P	FINALIZED	TOP 10 SOURCE COUNTRY	REF	A	A (%)	R	AB	W	F
2002	39,413	15,459	46	11,509	3,128	3,308	51,610	33,404	Pakistan	3,873	1,270	54	823	137	123	2,353
									China	2,862	1,205	56	497	430	36	2,168
									Colombia	2,713	1,098	77	207	22	104	1,431
									Mexico	2,345	292	24	506	147	294	1,239
									Sri Lanka	1,796	1,964	77	474	50	58	2,546
									Costa Rica	1,662	27	4	233	202	149	611
									India	1,319	315	25	527	331	64	1,237
									Turkey	1,157	582	54	352	23	115	1,072
									Hungary	1,146	249	11	886	307	862	2,304
									Peru	1,069	153	31	262	25	51	491
									TOTAL	19,942	7,155	46	4,767	1,674	1,856	15,452
									Pakistan	4,275	1,605	40	1,758	374	236	3,973
									Mexico	2,564	600	27	958	277	387	2,222
									Colombia	2,152	1,993	81	307	48	107	2,455
									Costa Rica	1,848	37	2	1,394	478	204	2,113
									China	1,842	1,343	61	495	306	63	2,207
									Sri Lanka	1,300	1,716	73	535	73	31	2,355
									India	1,137	390	29	685	231	48	1,354
									Bangladesh	721	303	60	165	21	18	507
									Nigeria	659	398	47	322	74	48	842
									Guyana	649	11	17	439	65	42	657
									TOTAL	17,147	8,496	45	7,058	1,947	1,184	18,685

Source: IRB Refugee Status determination
Available at <http://www.cdp-hrc.uottawa.ca/projects/refugee-forum/projects/documents/REFUGEESTATUSCMPREHENSIVE1000.2011.pdf>

YR	REF	A	A (%)	REJECTED	ABANDONED	W/DRAWN	P	FINALIZED	TOP 10 SOURCE COUNTRY	REF	A	A (%)	R	AB	W	F
2004	25,770	15,948	40	19,056	2,823	2,432	26,240	40,259	Colombia	3,654	2,604	80	415	22	198	3,239
									Mexico	2,919	674	25	1,335	244	447	2,700
									China	1,988	1,254	52	666	405	77	2,402
									Sri Lanka	1,138	934	64	492	21	23	1,470
									India	1,081	332	27	628	234	54	1,248
									Pakistan	1,010	1,344	35	2,109	203	155	3,811
									Costa Rica	705	60	3	1,378	267	98	1,803
									Peru	598	386	42	452	53	38	929
									Nigeria	595	504	50	436	44	26	1,010
									Israel	446	134	23	362	33	59	588
									TOTAL	14,134	8,226	43	8,273	1,526	1,175	19,200
2005	20,742	12,090	44	11,823	1,646	1,682	20,314	27,241	Mexico	3,550	709	19	2,276	226	474	3,685
									China	1,818	838	48	675	191	41	1,745
									Colombia	1,474	2,602	79	553	27	94	3,276
									Sri Lanka	900	499	66	216	24	22	751
									India	850	283	25	605	196	47	1,131
									Pakistan	755	696	40	835	92	115	1,738
									Zimbabwe	686	100	78	23	2	4	129
									Nigeria	589	332	41	411	45	20	808
									Saint Vincent	418	103	37	153	18	3	277
									Haiti	378	111	59	68	4	6	189
									TOTAL	11,418	6,273	46	5,815	815	826	13,729
2006	22,931	9,296	47	8,132	972	1,501	23,315	19,901	Mexico	4,958	933	28	1,696	153	515	3,297
									China	1,644	763	49	591	134	54	1,542
									Colombia	1,373	1,084	77	239	24	63	1,410
									Sri Lanka	919	665	73	203	11	27	906
									Haiti	770	210	53	166	3	17	396
									India	768	236	35	262	151	33	682
									Nigeria	693	188	40	237	13	32	470
									Pakistan	657	443	46	455	18	47	963
									Zimbabwe	587	455	65	218	4	21	698
									Israel	508	45	18	148	11	46	250
									TOTAL	12,877	5,022	47	4,215	522	855	10,614

YR	REF	A	A (%)	REJECTED	ABANDONED	W/DRAWN	P	FINALIZED	TOP 10 SOURCE COUNTRY	REF	A	A (%)	R	AB	W	F
2007	27,993	5,936	43	5,429	738	1,804	37,257	13,907	Mexico	7,080	383	11	2,140	261	859	3,643
									Haiti	3,794	127	50	75	17	36	255
									Colombia	2,651	739	78	144	19	46	948
									China	1,477	731	65	324	39	39	1,133
									USA	886	9	4	112	15	74	210
									Sri Lanka	811	703	88	62	14	21	800
									Nigeria	762	132	44	125	10	33	300
									India	559	44	12	196	82	32	354
									Israel	388	32	17	101	8	49	190
									Saint Vincent	359	45	27	96	10	15	166
									TOTAL	18,767	2,945	37	3,375	475	1,204	7,999
2008	34,800	7,554	42	6,784	1,041	2,733	53,760	18,112	Mexico	8,069	606	11	3,368	353	1,327	5,654
									Haiti	4,936	311	41	351	18	75	755
									Colombia	3,132	1,217	79	198	15	110	1,540
									China	1,711	598	61	284	43	55	980
									Sri Lanka	1,008	988	94	27	18	23	1,056
									USA	969	6	2	205	16	97	324
									Czech Republic	859	84	43	5	11	95	195
									Nigeria	766	210	55	128	11	35	384
									El Salvador	587	95	52	71	4	14	184
									India	561	102	25	179	97	35	413
									TOTAL	22,598	4,217	37	4,816	586	1,866	11,485
2009	34,063	11,203	42	9,878	1,387	4,410	60,945	26,878	Mexico	9,322	515	8	3,397	422	1,769	6,103
									Hungary	2,426	3	1	5	55	208	271
									Colombia	2,310	2,443	76	662	29	94	3,228
									Czech Republic	2,210	93	10	76	32	728	929
									China	1,597	992	58	543	92	90	1,717
									Haiti	1,583	1,051	42	1,260	37	127	2,475
									Sri Lanka	827	986	91	60	12	29	1,087
									Nigeria	763	440	66	147	29	48	664
									Saint Vincent	651	129	40	145	26	23	323
									El Salvador	532	63	29	114	13	26	216
									TOTAL	22,221	6,715	39	6,409	747	3,142	17,013

Fig. 2. Summary of Changes to Canada's Refugee System

Source: CIC (2012) accessed on July 1, 2012 at

<http://www.cic.gc.ca/english/departement/media/backgrounders/2012/2012-06-29b.asp>

	CURRENT SYSTEM	Canada's New Refugee System
Estimated Total Processing Time	1,038 days	30 – 45 days – DCO refugee claimants 216 days – non-DCO refugee claimants
Eligibility Review	Eligibility determination within three working days.	No change.
Information-Gathering	28 days to submit Personal Information Form to the Immigration and Refugee Board (IRB).	Claims made at a port of entry (POE), a Basis of Claim form will be submitted directly to the IRB no later than 15 days following referral of the claim to the IRB. Inland claims, the Basis of Claim form will be submitted to Citizenship and Immigration Canada (CIC) or the Canada Border Services Agency (CBSA) during the eligibility interview.
Initial Hearing: Refugee Protection Division	Hearing by Governor in Council appointed decision makers with no time standards.	Hearing by public servant decision makers according to proposed time lines: <ul style="list-style-type: none"> • No later than 30 days after referral to the IRB for inland DCO claimants. • No later than 45 days for POE DCO claimants.

(RPD) of the IRB	Current processing time line is 19 months.	<ul style="list-style-type: none"> No later than 60 days for all non-DCO claimants.
Appeal: Refugee Appeal Division (RAD)	No appeal division.	<p>New Refugee Appeal Division created.</p> <p>DCO claimants, manifestly unfounded claims, claims with no credible basis, claimants who are subject to an exception to the Safe Third Country Agreement* and claims referred to the IRB before the coming into force of the new system (backlog)** will not have access to a RAD appeal and re-hearings of those claims ordered back to the IRB by the Federal Court on judicial review.</p> <p>No access to the RAD for those who arrive as part of a designated irregular arrival.</p> <p>In addition, there will be no access to the RAD to appeal a decision on an application to end a person's protected person status (i.e., cessation or vacation of protected person status) or for those with claims deemed rejected because of an order of surrender under the <i>Extradition Act</i> or for those determined to have abandoned/withdrawn their claim at the RPD.</p> <p>Proposed 15 working days to file and perfect an appeal to the RAD.</p> <p>Except in cases where a hearing is held, proposed time lines for a RAD decision is 90 days from when the appeal is perfected.</p>
Designated Countries of Origin (DCO)	No authority to designate countries of origin.	<p>Minister has authority to designate countries of origin for the purpose of expedited processing.</p> <p>Triggers for a review based on rejection rates, withdrawal and abandonment rates or a qualitative checklist for countries with few refugee claims.</p> <p>Quantitative triggers will be established by Ministerial Order. For the quantitative criteria, a high rejection rate which includes</p>

		<p>withdrawn and abandoned claims could trigger a review for designation. The actual thresholds will be set out in Ministerial Order. The government will be proposing a threshold of 75% rejection rate and 60% withdrawal/abandonment rate.</p> <p>Designations are not automatic. Countries that meet either the qualitative or quantitative triggers may be subject to review in consultation with other government departments.</p>
Pre-Removal Risk Assessment (PRRA)	<p>Foreign nationals can apply for a PRRA prior to removal.</p>	<p>For most claimants, no PRRA for one year following a final negative refugee claim decision by the IRB or a final negative PRRA decision.</p> <p>This change comes into immediate effect at Royal Assent of the <i>Protecting Canada's Immigration System Act</i>.</p> <p>The bar on accessing a PRRA will be extended to 36 months for individuals from a designated country of origin.</p> <p>In the event of a sudden change in country conditions that could lead people to being subject to personalized risk if returned to their home country, the Minister of Citizenship, Immigration and Multiculturalism may exempt individuals from the bars on accessing a PRRA.</p> <p>The criteria for an exemption will be established in regulations at a later date.</p> <p>Time lines accelerated for filing a PRRA application and evidence to the RPD within 15 working days, to be set out in regulations at a later date.</p>
Ministerial Interventions	<p>On behalf of Minister, CBSA intervenes before the RPD</p>	<p>More flexibility for ministers of CIC and Public Safety to intervene in proceedings before the RAD.</p>

	primarily for security or criminality reasons.	
Reopening Applications at the IRB	IRB has jurisdiction to reopen previously decided claims.	IRB will not be able to reopen previously decided claims or appeals once a final decision has been made at a higher level (i.e. RAD or Federal Court).
Removal Time Lines	<p>Lack of timely removals of failed refugee claimants.</p> <p>Currently takes on average 4.5 years from time a refugee claim is made and all recourses are exhausted and a failed refugee claimant is removed. In some extreme cases, this has taken up to 10 years.</p> <p>Currently, the Act requires removal “as soon as practicable.”</p> <p>Failed refugee claimants from all countries have access to</p>	<p>Removal as soon as possible.</p> <p>No automatic stay of removals for:</p> <ul style="list-style-type: none"> • Claimants from DCOs; • Claimants with manifestly unfounded claims and those found to have no credible basis; • Claimants who were subject to an exception to the Safe Third Country Agreement at a land border; and • Claimants who arrive as part of a designated irregular arrival. <p>Launch of the Assisted Voluntary Return and Reintegration Pilot program in the Greater Toronto Area on June 29, 2012, to increase the number of failed refugee claimants who willingly leave Canada in a timely manner.</p>

	an automatic stay of removal when seeking judicial review.	
Loss of Permanent Resident Status when protected person status ends (i.e., cessation)	Cessation does not result in loss of permanent resident status	<p>Provide that when, upon application by the Minister, the IRB finds a person has ceased to be a person in need of protection or a Convention refugee, the individual also loses their permanent resident status if they have it.</p> <p>An exception is provided when refugee protection ceases due to a change in country conditions. In this case, loss of permanent resident status is not automatic.</p>
Criminality	Persons convicted of a serious crime in Canada and sentenced to two years or more are denied access to the RPD	<p>Anyone convicted of a serious crime would be denied access to the RPD, but would be entitled to a PRRA regardless of the length of the sentence.</p> <p>If successful, these individuals could remain in Canada, but would not be given protected person status.</p>
Humanitarian and Compassionate consideration (H&C)	Changes to H&C under the <i>Balanced Refugee Reform Act</i> came into effect on June 29, 2010, when that bill received Royal Assent. The changes includes the	<p>Changes to the H&C provision under the <i>Balanced Refugee Reform Act</i> came into effect on June 29, 2010, when that bill received Royal Assent.</p> <p>Additional changes include no access to H&C for 12 months following a final negative IRB decision.</p> <p>Exceptions will be made to consider best interests of children directly affected or where there is risk to life caused by a health or medical condition for which no adequate care is available in the country of origin.</p>

	<p>following:</p> <p>a person cannot have two H&C applications pending at the same time;</p> <p>in examining H&C requests made in Canada, decision makers may not consider risks that are assessed within the refugee protection process, i.e., risk of persecution based on grounds set out in the Refugee Convention or risk of torture, or of cruel and unusual treatment or punishment;</p> <p>the new measures also confirm in legislation the existing policy that</p>	<p>No H&C application when the person has an ongoing refugee claim. Refugee claim may be withdrawn and an H&C application submitted if the IRB has not yet heard substantive evidence on the claim.</p> <p>These additional changes come into immediate effect at Royal Assent of the <i>Protecting Canada's Immigration System Act</i>.</p>
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	<p>an H&C application is not considered complete until the appropriate fees have been paid; and,</p> <p>the legislation separates out the public policy provision from the H&C provisions.</p>	
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Figure 3 – Old Canadian refugee determination process

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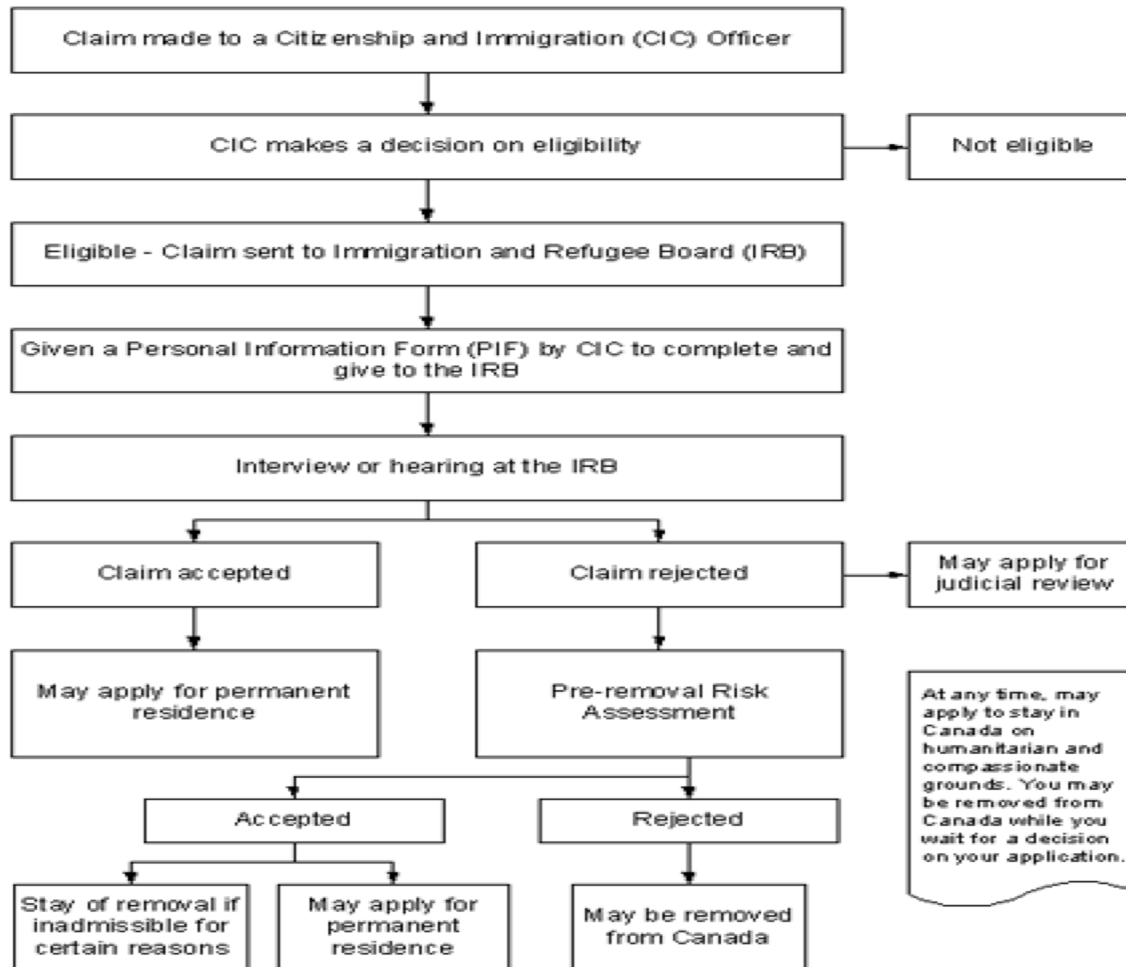


Figure 4 – New Canadian refugee determination process

Source: Canadian Council of refugees. (2012). *Canadian Refugee Claim Process (after Refugee Reform, 15 December 2012)*. Accessed on June 14, 2013 at <http://ccrweb.ca/files/chart-refugee-process.pdf>

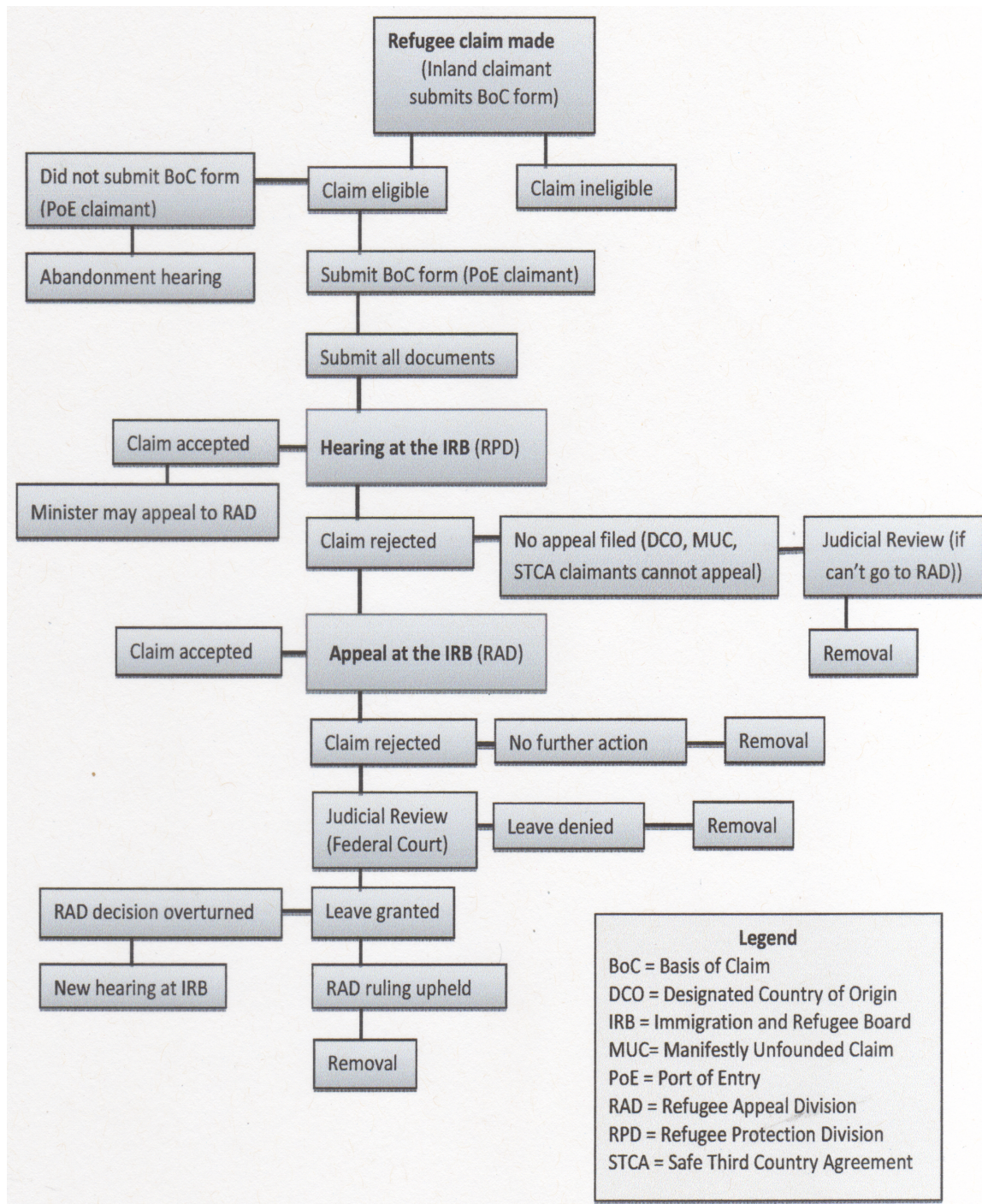
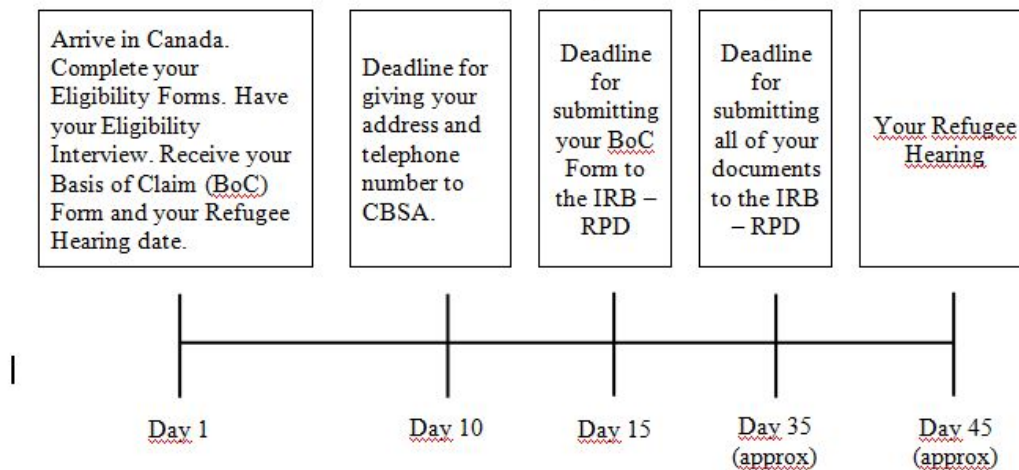


Figure 5 – Timeline – Claim made at point of entry (boarder, seaport or airport)

Source: FCJ Refugee Center. (2012). *Claiming Refugee Protection Under the New System: A Basic Overview*. Accessed on July 10, 2013 at <http://www.fcjrefugeecentre.org/canadas-refugee-process/summary-of-the-process/>

Timeline A (DCO)



Timeline A (non-DCO)

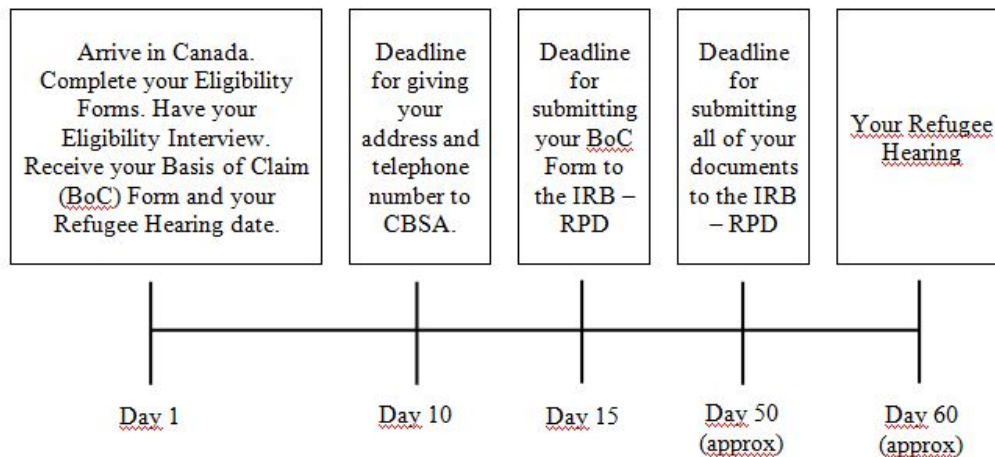
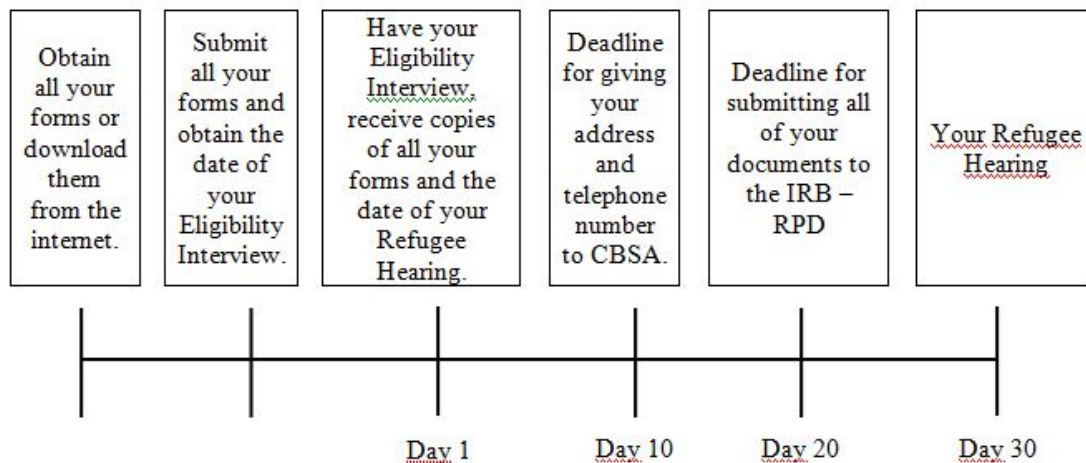


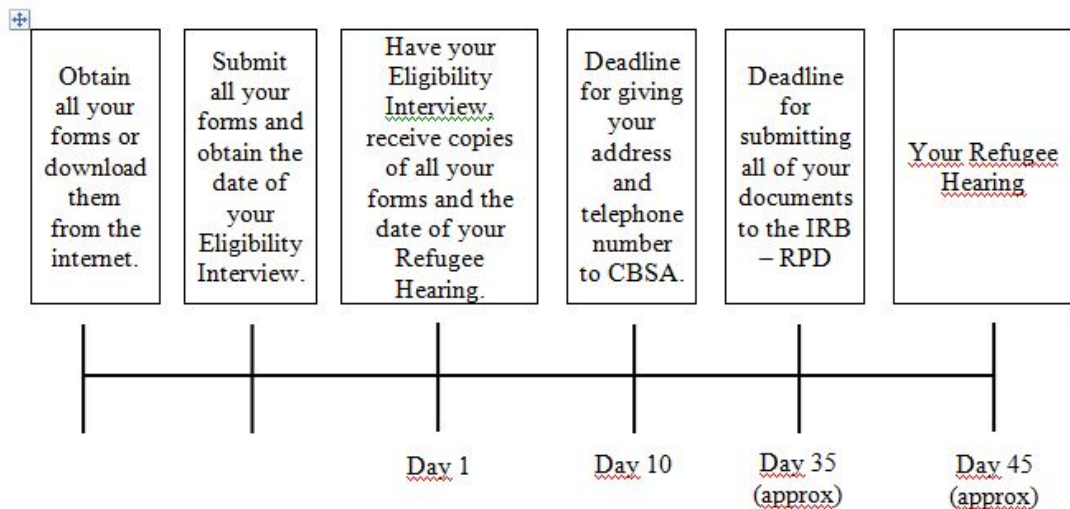
Figure 6 – Timeline - Claim made at immigration office inside Canada

Source: FCJ Refugee Center. (2012). *Claiming Refugee Protection Under the New System: A Basic Overview*. Accessed on July 10, 2013 at <http://www.fcjrefugeecentre.org/canadas-refugee-process/summary-of-the-process/>

Timeline B (DCO)



Timeline B (non-DCO)



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20.asp [http://www.cic.gc.ca/english/department/media/speeches/2012/2012-06-](http://www.cic.gc.ca/english/department/media/speeches/2012/2012-06-29.asp)
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