The Invisible Border Wall: Artificial Intelligence in Canadian Immigration Control



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Abstract

Artificial intelligence and machine learning promise to transform how government agencies do their work. Since at least 2014, the Canadian federal government has been implementing and testing AI- and ML-powered technologies in its immigration system. In this dissertation, I argue that as long as AI and ML technologies continue to be used in the current Canadian immigration system, which is flawed as it actively relies on non-entrée policies to fortify its 'invisible border wall', AI and ML technologies will not reduce or eliminate bias and discrimination that plague human decision-making. Rather, the use of AI and ML will increase the efficiency of producing discriminatory decisions in the immigration sphere by the Canadian government, especially if Canada continues to lack a robust regulatory framework to oversee the use of these technologies. To support my argument, I begin to develop and advance the concept of the 'invisible border wall'. This wall is built with a refugee and immigration system that masks abuse, exploitation, and exclusion of vulnerable groups of people like asylum seekers and stateless migrants, which stands in contrast to Canada's values of being a welcoming nation that seeks equal opportunities under the law.

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Acronyms

AI	Artificial Intelligence
CBP	Customs and Border Protection (U.S.)
CBSA	Canada Border Services Agency
CCIRC	Canadian Cyber Incident Response Centre
CIC	Citizenship and Immigration Canada
CSE	Communications Security Establishment (Canada)
CSIS	Canadian Security Intelligence Service
DCO	Designated Countries of Origin (Canada)
DFN	Designated Foreign National (Canada)
ICAP	In-Canada Asylum Program
IOM	International Organization for Migration
IRB	Immigration and Refugee Board (Canada)
IRCC	Immigration, Refugees and Citizenship Canada
IRPA	Immigration and Refugee Protection Act (Canada)
IRPR	Immigration and Refugee Protection Regulations (Canada)
MBS	Multiple Borders Strategy (2003) (U.S.–Canada)
ML	Machine Learning
RCMP	Royal Canadian Mounted Police
RHRP	Refugee and Humanitarian Resettlement Program (Canada)
SBA	Smart Border Accord (2001) (U.S.–Canada)
STCA	Safe Third Country Agreement (2004) (U.S.–Canada)
U.N.	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund

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Introduction

Artificial intelligence (AI) and machine learning (ML) promise to revolutionise how government agencies do their work (Ferguson, 2017). Recent developments in AI and ML have the potential to not only secure data but make greater use of it, improve the quality of decisions, and reduce the cost of some governance functions, thus promising to make governments more efficient, accountable, and effective (Ferguson, 2017). Despite the increasing use of AI and ML in government decision-making and growing attention in the public and academic spheres on the potential benefits of these technologies, there is insufficient information on how government agencies use and regulate AI systems beyond a few surface-level descriptions. In this dissertation, I address these gaps by focusing on the Canadian federal government's increasing reliance on AI and ML in the immigration sphere.

Several reasons motivate the choice of selecting Canada as the focus of this dissertation. First is the paradoxical juxtaposition of Canada's image as a country that welcomes refugees and humanitarian migrants and the policies it uses to limit how many of these individuals reach its territory. The 'generosity' of the Canadian government towards asylum seekers has been acknowledged on several occasions, first by the Nansen Medal, which was awarded to Canada in 1986 for its work with refugees as well as the praise it received from the United Nations (U.N.) for the number of Syrian refugees it welcomed between 2015–2019 (Basok and Simmons, 1993; Cecco, 2019). Second, despite these accomplishments, the Canadian refugee and immigration system contains a number of non-entrée policies which continue to generate significant critique from human rights groups (Lacroix, 2004). Canada's refugee and immigration policies are some of the most controversial and highly debated political and social issues (Lacroix, 2004). In light of the above, it is particularly important to investigate the ways in which Canadian immigration agencies are beginning to use AI and ML technologies like automated decision-making systems and risk-assessment technologies.

Most of these technologies are in their nascence and are experimental in nature, thus their impacts on human rights are not fully known. Considering that Canada does not have a robust governing structure that oversees the use of these technologies, there is a potential for AI and ML technologies to be used as another form of non-entrée policies.

The main argument of this dissertation is that as long as AI and ML technologies continue to be used in the current immigration system, which is fundamentally flawed as it actively relies on non-entrée policies to fortify its 'invisible border wall', AI and ML will not reduce or eliminate bias and discrimination that plague human decision-making. Rather, the use of AI and ML will simply increase the efficiency of producing discriminatory decisions in the immigration sphere by the Canadian government, especially if Canada continues to lack a robust regulatory framework to oversee the use of these technologies. While the first generation of non-entrée policies was written into law and was 'visible' and open to public scrutiny, the proprietary algorithms of AI and ML technologies that are increasingly being used to make decisions will make the Canadian border and immigration control even more invisible and can further reduce the government's accountability and transparency. There are two main reasons for this. First, using AI and ML in the immigration sphere can be ethically challenging not only because asylum and immigration-related evaluations are the most discretionary in Canada's immigration system, but also because these decisions have significant impacts on the lives of individuals seeking refuge in Canada. Applicants who are wrongfully denied asylum by AI and ML and are deported (but otherwise might have good grounds for seeking refuge) face family separation as well as fear of persecution, discrimination, extreme hardship, or safety concerns in their country of origin. Considering that the subjects of humanitarian and refugee applications are some of the most vulnerable individuals in the Canadian immigration system, their applications should be the last ones to be used in pilot AI and ML programs.

The second main issue with using AI and ML technologies is algorithmic bias. Depending on the way the algorithm is designed to sort data and make decisions, algorithmic bias can lead to unintended discrimination or negative feedback loops that reinforce and exacerbate existing inequalities and discriminatory practices (Ng, 2017). Algorithmic bias can arise not only from the developer of the technology or the data, but also from the technology itself developing biases, thus raising concerns about accountability, discrimination, and transparency. Further, at times it can be impossible for data scientists to explain how the AI and ML technology arrived at a particular decision. Unregulated use of AI and ML by the Canadian federal government will make immigration and refugee law a high-risk experiment that will further reduce the Canadian federal government's accountability towards refugees. Moreover, the use of AI and ML technologies in the immigration sphere has the potential to increase discrimination towards highly vulnerable populations, which will significantly undermine the Canadian image as a country that is welcoming of all refugees, asylum seekers, and humanitarian migrants.

I develop my argument in three chapters. Chapter 1 shows how Canada's immigration and refugee laws are in a symbiotic relationship with the country's national image. This relationship can help to explain why despite Canada's public image of being a country that is welcoming of all refugees, Canada has a strong 'invisible border wall' that is fortified with non-entrée policies. I begin to advance the concept of the 'invisible border wall' in chapters 1 and 3. I explain this first generation of non-entrée policies by focusing on two prominent legal agreements that are aimed at preventing 'undesirable' migrants, like asylum seekers and humanitarian migrants, from not only reaching Canada's border but also landing on its territory. Chapter 2 provides background information on some AI and ML technologies that are used in the immigration sphere. In this chapter, I argue that the current use of AI and ML technologies by government agencies and humanitarian organisations is unethical and should

be halted until clear and robust international and national governing and legal standards are established. Chapter 3 discusses the increasing role of AI and ML technologies in the construction and fortification of what I call the Canadian 'invisible border wall'. These technologies are aimed at externalising and expelling 'undesirable' migrants (such as humanitarian and non-economic migrants). This chapter also rounds out the discussion on the reasons why Canada's use of AI and ML in the immigration sphere is highly problematic and will not lead to an accountable and bias-free immigration system. I do this by using the theory discussed in chapter 1 to contend that even if AI and ML technologies were to be bias-free and made decisions that could be easily explained, the immigration governing system is fundamentally structured to make discriminatory decisions.

The Canadian federal government does not offer many primary sources on how it uses AI and the impacts the use of these technologies has on governance and on asylum seekers, refugees, and migrants. As a result, I draw on a variety of secondary sources including academic literature, media articles, and government and non-governmental reports. To analyse academic and government reports, I identified the findings most relevant to my analysis goals. My systematic search for literature began with the development of a well-defined research question. Following this, I generated a list of key concepts that the desired literature should address, such as AI, ML, (im)migration, and use of AI and ML technologies by governments. I analysed the sources by considering the authority of the author and publisher, and the date of publication. In order to provide a balanced argument, I rely on literature published by academics, technology companies, governments, and non-profit organisations that support and oppose the use of AI and ML technologies. Finally, I analysed Canada's immigration regulations and acts, such as the *Safe Third Country Agreement* (2004) to begin developing the concept of Canada's 'invisible border wall'.

Chapter 1: Canada's Image, Nationhood, and Immigration

The aim of this chapter is two-fold: first, to show how national image and immigration law constitute each other. Second, I discuss why Canada uses non-entrée policies despite remaining part of the refugee regime as well as how deterrence of 'undesirable' migrants is achieved while liability for their protection is generally avoided. Although Canada's first generation of non-entrée policies is derived from a number of legal documents such as *Immigration and Refugee Protection Act* (IRPA) and *Immigration and Refugee Protection Regulations* (IRPR), I focus on only two agreements by exploring the links between them: the *U.S.–Canada Smart Border Accord* (2001) (SBA) and the *Safe Third Country Agreement* (2004) (STCA). Despite these agreements being repeatedly shown to be vulnerable to legal challenges, they continue to be in force and receive considerable academic and media attention and are prime examples of non-entrée strategies like visa controls, safe third countries, and the shifting of borders.

1.1 Nation, Identity, and Migration

The international community has long been celebrating Canada for the fairness of its immigration laws and the generosity of its people towards humanitarian and non-economic migrants as well as for setting an example for other countries to raise their standards of refugee protection (Los Angeles Times, 1986; UNHCR, 2018). The narratives that cast Canada's immigration system as exceptionally welcoming coalesced around Canada's role in creating refugee-resettlement programs in the second half of the 20th century which continue into the present. In 2016, Canada admitted around 25,000 Syrian refugees, a prime example of the Canadian government's interest in demonstrating its commitment to refugee protection (Government of Canada, 2020). One of the most recent attempts by the Canadian federal government to promote its 'welcoming' immigration system is Prime Minister Justin Trudeau's social media message sent in 2017 in response to the U.S. President Donald

Trump's 'Muslim ban', in which Prime Minister Trudeau welcomed future refugees to Canada. The tweet stated: "To those fleeing persecution, terror & war, Canadians will welcome you, regardless of your faith. Diversity is our strength #WelcomeToCanada" (Smith, 2018). Some suggest that this tweet spiked the number of inquiries from potential refugees to Canadian embassies and even encouraged refugees to choose Canada as their new home (Smith, 2018). Related, the nearly 9,000-kilometre-long Canada-U.S. border, commonly referred to as the world's longest undefended border, shows Canada's attempts to present its border as open and unthreatening. This border is not marked by physical demarcations like barbed wire, walls, or fences that are meant to prevent border crossers. Instead, monuments of peace, flowerpots, and peace parks straddle the international boundary line that divides the two countries.

As a signatory to the *1951 Convention Relating to the Status of Refugees*, Canada assumes responsibility to extend certain rights and legal protections to asylum seekers who arrive on Canada's territory in search of refuge. Article 33 of the *1951 Refugee Convention* enshrines the principle of non-refoulement – returning refugees to a country where they may face a well-founded fear of persecution (UNHCR, 2011). Since then, Canada has reiterated its commitment to the protection of refugees and assurance of basic human rights without discrimination in a number of court decisions.[1] This commitment is echoed in the *Immigration and Refugee Protection Act* that proclaims Canada's commitment to "fair and efficient procedures that will maintain the integrity of the Canadian refugee protection system, while upholding Canada's respect for the human rights and fundamental freedoms of all human beings" (Immigration and Refugee Protection Act, 2001).

[1] Such as *Singh v. Canada 1985*; *Canada v. Ward 1993*; and *Ezokola v. Canada 2013.*

Of course, throughout Canada's history there were and continue to be gaps in this positive image and narrative that is directed toward Canadian citizens and the international community. Most notable is the refusal of the MS St. Louis in 1939 which sent hundreds of Jewish refugees back to Europe where over two hundred of these individuals were executed in the Holocaust (Blakemore, 2019). There are also examples of anti-immigrant strategies that policed movement beyond Canadian borders such as the inland Chinese restriction and anti-Black U.S. propaganda in the early 20th century (Maynard, 2017; Wong, 2007). Further, the 'welcome to Canada' social media message sent by Prime Minister Trudeau was followed up by the Canadian Immigration Minister Ahmed Hussen travelling to countries like Nigeria in 2018 in attempts to dissuade individuals from choosing Canada as their destination and country of refuge (Peritz and Zilio, 2018). Finally, despite the appearance of an open Canada-U.S. border, it is anything but undefended. Canada has been engaging in interdiction measures and non-entrée policies to block and deter asylum seekers and non-economic migrants from reaching its territory and seeking refuge. Non-entrée measures fortify the Canadian border and not only control and restrict migration and increase security, but also expand surveillance without building physical walls or drawing much public attention to this phenomenon. Interdiction and non-entrée policies are not a new phenomenon, and other states engage in them as well. However, Canada is labelled as "something of a pioneer in instruments of interdiction" (Macklin, 2005: 378-379). Clearly, migration and border control are especially important to Canada's nationalism and identity.

Legal agreements are essential to the construction of borders and their protection; without them the nation would have no end or limit and would therefore be assumed to be indistinguishable from other nations (Dauvergne, 2004). Law not only shapes and provides structures that limit the nation, but it is also implicated in the construction of a national identity. When law is needed to construct an identity, it is of course for some purpose that

both liberates and constrains the identity. Culic (2010) seems to agree with Dauvergne by stating that migration is an important part of the Canadian national character and Canada prides itself on being an 'immigrant nation'. Thus, the relationship between migration law and national identity is heightened in intensity in part because Canada has largely been 'built' through migration (Culic, 2010). Dauvergne (2004) adds that the relationship between law and nation is that of mutual determination. Neither determines the other, nor does national identity have a fixed quality. Rather, migration law serves as a site in which to search for images of the nation's identity and wherein the image of the nation can be reinvented, reconstructed, and reimagined (Macklin, 2005). This is to say that a state's national identity generally reflects the decisions that are derived from immigration laws, judicial reasoning, bureaucratic policy advice, and political talk (Dauvergne, 2004). Migration law marks the boundaries of the Canadian community which also creates exclusion. As such, to comprehend how a nation understands itself, one needs to pay attention to the ways in which migration laws are understood, interpreted, and manipulated (Macklin, 2005).

Law in general is very categorical in nature, which creates, defines, and channels identities into 'either-or' mechanisms of legal reasoning (Dauvergne, 2004). These categories are hierarchically related and have very structured boundaries. Further, legal reasoning is also shaped by the identities of those who participate in it and the power they have relative to others. Migration law dictates the community and the distinctions between its members and the outsiders as it is highly politicised and subjective and is manipulated by political and public debates. Therefore, the relationship and distinction between the insiders and those who do not belong is the "crux of the relationship between migration law and national identity" (Dauvergne, 2004: 11). Migration law is used to label and control the outsiders and is thus directed outwards at those who are beyond the borders of the nation. This process helps the nation to build an image of itself and of those who are part of it. Not only that, but

considering the image of the nation through legal discourses, one can identify the 'other' against which the national identity is created and those who are the most excluded and discriminated against by law (Macklin, 2005). One approach to better understand the national identity-migration law relationship is to also reflect on the importance of humanitarianism and the refugee regime to the identity-law relationship.

Humanitarianism and the refugee regime are important to Canada as they label the nation as generous and 'pro-refugee'. Since Canada is part of the liberal paradigm, its leaders use humanitarianism to justify who and how many individuals should be admitted into the country; this is something that liberal conceptions of justice cannot provide the answers to (Dauvergne, 2004). In fact, Dauvergne goes as far as to say that humanitarianism is "an impoverished stand-in for justice" (2004: 7). For the most part, humanitarian admission of refugees and asylum seekers does not serve the national need by admitting people who fill gaps in the country's economy (Dauvergne, 2004). Humanitarianism also does not serve the purpose of admitting people because they are like 'us' and fit into an ideological vision of the Canadian 'community' or 'family' (Dauvergne, 2004). Even though the number of refugees that Canada accepted in 2018 was less than 0.2 percent of the Canadian population, humanitarian migration receives a significantly greater amount of political attention than the admission of other types of migrants like student and economic migrants (Beuze, 2019). Further, the Canadian federal government voluntarily ratified the *1951 Refugee Convention* and continues to be part of the refugee regime, although it can withdraw by arguing that this system no longer serves its interests. The reasons why Canada dedicates attention to humanitarian admission and remains part of the refugee regime need further examination.

I agree with Gammeltoft-Hansen and Hathaway who suggest that there is political and symbolic value to being part of the global refugee regime and engaging in a process that "systematizes humanitarian benevolence" (2015: 4). Not only that, but it seems that refugee

law matters to wealthier states because it encourages the less developed states to provide critical support to the developed world's migration control. If countries like the U.S., Canada, and Australia were to withdraw from the refugee regime, there would be very little political basis upon which to argue that the countries where the majority of refugees come from must continue to bear their refugee obligations. Some scholars say that the more powerful and wealthier states, like the U.S., Australia, the U.K., and Canada, prefer to show that they are committed to refugee law but would like to avoid being governed by it as much as possible and their engagements in refugee law tend to be more symbolic than substantive (CCR, 2000; Culic, 2010; Gammeltoft-Hansen and Hathaway, 2015). My dissertation suggests that for Canada it is important to show other international actors that its government is committed to humanitarianism to avoid disrupting the international law regime and be seen as a state that cares as much about these matters as the countries that host large numbers of asylum seekers. Nonetheless, to ensure that refugees and 'undesirable' migrants do not reach state territory, Canada relies on the politics of non-entrée (Gammeltoft-Hansen and Hathaway, 2015).

Building on what Dauvergne (2004) and Gammeltoft-Hansen and Hathaway (2015) state, racism and discrimination are part of the Canadian immigration reality. Discrimination and racism are expressed at the personal level in the way individuals are sometimes treated. Racism and discrimination are also manifested at the systemic level through the functioning of government bodies and through refugee and immigration policies that have a differential impact on racialised groups. There are a number of Canadian refugee and immigration policies that perpetuate systemic racism and discrimination. For example, the Canadian immigration system forces refugees to provide satisfactory identity documents in order to be granted permanent residence, which significantly impacts individuals from countries like Afghanistan and Syria as they have weak government authorities that might not be capable of producing identification documents. Further, structural issues like the distribution of

Canadian visa posts around the world and the allocation of resources to these offices are biased against countries in the Global South (CCR, 2000). Policies that target certain groups, such as DNA tests as proof of relationships prior to approval for sponsorship are predominantly requested from applicants from countries in Africa, Asia, and the Caribbean (CCR, 2000). There are also a number of policies that combine gender and race to doubly disadvantage individuals. One example is ID requirements – women are less likely to have identity documents like driving licences and school certificates (CCR, 2000). A more blatant form of racism is found in policies that directly target certain racialised groups based on profiling, stereotyping and public annoyance. Examples of such policies are 'danger to the public' certificates, security and criminality checks, and detention decisions.

These structural and fundamental issues with the Canadian refugee and immigration system are manifested in part through non-entrée policies. It is not until these discriminatory policies are addressed that using AI and ML technologies can help to lower discrimination in Canada's immigration system. Policies of non-entrée afford governments greater control over migration while allowing them to assert their commitment to refugee law. Non-entrée policies like carrier sanctions, regional refugee processing and resettlement, safe third country agreements, and visa controls are introduced to prevent even those who have obvious reasons to claim asylum from reaching wealthier countries (Gammeltoft-Hansen and Hathaway, 2015). These and other non-entrée policies also help states to remain compliant with the duty of non-refoulement while insisting upon the importance of refugee protection knowing full well that they will be unlikely to be burdened by its principles. This strategy seems to work well as the developing regions that either 'produce' asylum seekers or are located near these countries were not only hosting 84% of the world's refugees at the end of 2018, but the developed states were not obliged to share the costs of protection (UNHCR, 2018). Once again, deterrence is achieved overseas, while liability is avoided within state

territory. The two agreements I describe below not only alter the Canada-U.S. border in a way that can bend and shift the border to keep irregular and 'undesirable' travellers out, but also shift the Canadian government responsibilities for protection of refugees onto other countries.

1.2 First Generation of Non-Entrée Policies

Since the events of September 11, 2001, Canada has increased its coordination efforts with the U.S. – the only country with which it shares a border. This resulted in the development of a shared approach to border control that departed from how these states policed their borders prior to 2001. These efforts culminated in a series of agreements and legal documents that contain a number of non-entrée policies; two of these agreements will be the focus of this section – the *Smart Border Accord* (2001) and the *Safe Third Country Agreement* (2004). States rely on non-entrée policies to limit the number of 'undesirable' individuals, such as humanitarian and non-economic migrants who do not immediately or directly contribute to the country's economy (Hathaway, 1992). Further, these policies externalise borders, scrutinise people on the move, implement visa regimes, practice containment, and adopt carrier sanctions.

The Smart Border Accord (2001) is a bilateral agreement between Canada and the U.S. In 30 points, the Accord addresses specific issues related to the border, visa policies, biometric information collection, extensive sharing of information on high-risk travellers, asylum claims, integrated border enforcement teams, and other information (U.S. Office of the Press Secretary, 2002). In two rounds of additions to the Accord, Canada and the U.S. further enhanced information sharing in relation to border security, border management, and asylum matters.[2] This Accord also contains the *Multiple Borders Strategy* (MBS) which is aimed at

[2] In February 2003 and in August 2003, the parties signed a Statement of Mutual Understanding and an Asylum Annex.

pushing the border out by prefiguring and reconceptualising the border (OAGC, 2003). The MBS enforcement strategy de-territorialises and reconceptualises the border not as a geo-political line but as a continuum of checkpoints. In other words, the function of the border is exported beyond the territorial limits of Canada and the border now becomes "any point at which the identity of the traveller can be verified" by stationing an increasing number of liaison officers in locations worldwide whose goal is to combat irregular migration (OAGC, 2003: 8). Canada is expanding its use of interdiction and interception methods at each of the external borderlines such as points of initial and final embarkation, countries of origin, and points of departure and arrival (OAGC, 2003). The purview of these officers is wide, encompassing a range of intelligence gathering and law enforcement-related activities, and their purpose is to intercept potential migrants before they reach Canada.

Now that the Canadian border, a 'smart border', is extended beyond Canadian soil, the limits of the state are also extended to any place around the world where one's identity and intent can be interrogated (OAGC, 2003). Limiting and even restricting access to the state and the legal protections it is obligated to give to asylum seekers begins before the individual departs, thus helping the Canadian state to verify and capture "travellers as far away from North America as possible" (OAGC, 2003: 8). In fact, re-defining the border in such a way allows the federal government to shift the burden of border control away from its territorial border "to the many, more effective, 'borders' that a traveller will pass through before reaching North America" (OAGC, 2003: 8). This impacts asylum seekers as they are either directly prevented from arriving in Canada or the routes by which they could have otherwise travelled to Canada are indirectly cut off. While the *SBA* and the *MBS* make it challenging for asylum seekers to arrive in Canada by air and water, the *Safe Third Country Agreement* (2004) makes it difficult for asylum seekers to enter Canada by land.

The *Safe Third Country Agreement* (2004) (*STCA*) is a bilateral agreement between Canada and the U.S. that regulates refugee claims across the Canada-U.S. border. The Agreement requires each country to recognise the other as safe and to return asylum claimants to the other country under certain circumstances (STCA, 2002). The *STCA* only applies at official land border points, thus, most refugee claimants who enter Canada from the U.S. between official border points do not file their claim under the *STCA* (Macklin, 2005). The Agreement allows for some exceptions that accord with the governing ideologies of the Canadian refugee regime – cases of family unification, child and minor applicants, and claimants facing the death penalty – but otherwise it applies to most refugee claimants who file claims at the land border. The Agreement explicitly acknowledges the international legal obligation of both countries to protect refugees who are on their territories and promote and protect human rights and fundamental freedoms such as those set out in the *1951 Refugee Convention* and the *United Nations Convention Against Torture*. It also ensures that claimants are not sent to any country other than Canada or the U.S. until their claim is heard. These protections aim to prevent chain refoulement, wherein an asylum claimant is sent around from one country to another until they are eventually returned to their country of origin to potentially face persecution or various forms of violence.

The reasons for adopting the *STCA* vary between Canada and the U.S. A report written by U.S. Customs and Border Protection (CBP), the Canada Border Services Agency (CBSA), and the Royal Canadian Mounted Police (RCMP) suggests that while the U.S. adopted the Agreement in order to enhance its border security and counter-terrorism measures, Canada's primary motivation was to reduce the number of refugee claimants who would be eligible to enter Canada through the U.S. (CBP et al., 2010). Due to Canada's geographic location, unless a claimant enters the country by air or water, their only other option is to enter the U.S. and then cross the border into Canada. The *STCA* primarily serves to stem refugee flows to

Canada and leave the decisions up to the U.S. system for processing claimants – a goal that is counterintuitive to the 'pro-refugee' position of the Canadian government for several reasons, as I explain in the following paragraphs.

Since the *STCA* applies only at official land ports of entry and does not apply to people who advance 'inland' claims between these ports, the Agreement encourages an increase in the number of unauthorised border crossings into Canada and creates incentives for human smuggling. The *STCA* sharply reduced the number of claims that Canada received from asylum claimants at the border; however, this drop did not last long. A 2010 Evaluation Study of the CBSA Detentions and Removals Program suggests the *STCA* increased numbers of unauthorised entries into Canada between ports of entry (CBSA, 2010). The *STCA* failed to meet its stated objective of making the border more secure and protecting the rights of asylum seekers.

Soon after the implementation of the *STCA*, it was subject to a constitutional challenge at the Federal Court of Canada. In 2007, the Federal Court made a decision that because the *STCA* violated two sections of the Canadian Charter of Rights and Freedoms, section 7 (life, liberty, and security of persons) and section 15 (equality) it had no force and effect; however, this decision was overturned on appeal in 2008, leaving the agreement active (Canadian Council for Refugees v Canada, 2007). Moreover, the Court decided that the U.S. was in material breach of its international refugee protection obligations, and thus, it was not a safe country for refugees. The U.S. has significantly more stringent measures that bar a higher number of asylum claimants from seeking refuge than does Canada. Those who do not qualify for asylum in the U.S. are detained and sent back to their country of origin where they may face persecution. As a result, the *STCA* risks refouling refugee claimants before they have their claims heard and allows Canada to indirectly deny refugee rights and protection to which they are entitled under international and domestic law (Macklin, 2005).

The following year, the Federal Court of Appeal reversed this decision, restoring the Agreement by finding that the Charter did not apply in this case (Canada v Canadian Council for Refugees, 2008). What is interesting about these two cases is the way each court envisioned the Canadian border and how this influenced their decision on the legitimacy of the Agreement (Arbel, 2013). The Federal Court decision conceived of the border as a moving barrier capable of shifting outside of Canada's formal territorial boundaries, thus bringing asylum claimants outside of Canada's territory and constitutional protection. The decision made by the Federal Court of Appeal envisioned the border as both shifting and static. In its treatment of the *STCA*, the Court of Appeal envisioned the border as one that can move outside of Canada's formal territory and extend state power outwards. While in its constitutional analysis, the Court envisioned the border as a static barrier that limits asylum claimants' access to state territory and protection. Perceiving the border in these opposing ways poses a great challenge to asylum claimants as they must claim their legal protection at the static border, however, this border also shifts in ways that limit asylum seekers' abilities to do so. This decision not only denies asylum seekers actionable rights, but also denies them an alternative to meaningful legal action under Canadian law.

The *SBA* and the *STCA* do not forbid asylum seekers from entering Canada clandestinely; however, Canada systematically closes its borders to asylum claimants. This encourages irregular entry and human smuggling into Canada (Arbel and Brenner, 2013). Both of these measures contribute to the "discursive disappearance of the refugee" – a process through which legal measures like the *SBA* and the *STCA* recast refugees as 'illegal' and irregular arrivals and criminal transgressors, rather than legitimate entrants in search of humanitarian protection (Macklin, 2005: 55). The Designated Foreign National regime (DFN) is another non-entrée measure that attempts to recast refugees and smuggled persons as criminals.

To address the increase in irregular migration, the Canadian federal government instituted the DFN in 2012. The DFN designates individuals as irregular arrivals whose identity cannot be verified or who are suspected of being smuggled into Canada. Essentially, the DFN regime is an anti-smuggling strategy which punishes irregular migration that is created by agreements like the *SBA* and the *STCA* and allows the Canadian federal government to punish foreign nationals for suspected (not concrete proof) violations of Canadian border laws (Public Safety Canada, 2012). Since the IRPA does not have clear legislative maximums on detention orders, designated persons may be detained for an indefinite period of time. These measures create a regime that legitimises the punishment, detention, and arrest of refugee claimants for being deemed irregular. Arbel (2013) contends that despite the fact that the DFN laws are classified as administrative, they enforce a punitive regime by arresting and holding designated persons in prisons and impose restrictions on the individuals for five years. Even if a designated person has been granted refugee status and has been 'regularised', their 'irregularity' follows them for five years. Essentially, Citizenship and Immigration Canada (CIC) blur the distinctions between smugglers, traffickers, asylum seekers, terrorists, individuals who committed crimes against humanity, and the smuggled. This classifies the designated individuals as criminals without distinguishing between those who are subjects and perpetrators of human smuggling, thus raising the public's hostility towards designated persons.

1.3 Conclusion

Canada has a valid interest and right to regulate its borders and ensure that refugee protection is offered only to those who need it. The Canadian federal government does not dedicate a lot of effort and resources to patrolling its borders for political, geographic, and foreign policy reasons. Canada greatly benefits from being surrounded by two oceans and a country that is at the forefront of all things surveillance, migration management, and border security. Not

many individuals attempt to enter Canada irregularly. As a result, Canada's government has been far more respectful of international laws that govern asylum processes and international migration than the U.S. This might be in part because Canada wants to maintain its national and international reputation as a welcoming country to those who need refuge. Nonetheless, Canada maintains policies that are aimed at preventing those whom it deems to be least capable of contributing economically and socially to the Canadian community. The legal documents discussed above and other Canadian non-entrée policies are used to build an 'invisible border wall' that prevents individuals that are deemed to be economically or culturally 'undesirable' for the state from reaching its territory.

The *SBA*, the *STCA,* the *MBS,* and the *DFN* can be seen to be part of Canada's attempt to circumvent its obligations to process asylum claims, either by pushing the border out or through burden sharing exportation of asylum claim processing to the U.S. These tactics take away asylum claimants' ability to appeal the refusal of their asylum claim. Through the *SBA,* the *MBS*, the *STCA*, and the *DFN* the Canadian federal government is steadily shutting its borders to asylum seekers and circumventing its refugee protection obligations under domestic and international laws. These legal documents block, deter, and deflect asylum seekers from making refugee claims in Canada in arbitrary and unprecedented ways while also failing to protect the Canada-U.S. border. Not only that, but these non-entrée policies reconstitute asylum seekers through discourses of irregularity and illegality, as well as the rights and duties these discourses prescribe. These discourses are then used to justify the expansion and fortification of Canada's 'invisible border wall' which is hidden from the public's view and yet is effective at achieving its goals, validate the expansion of Canada's immigration detention powers, and limit the scope of protection available to asylum seekers under Canadian law. It is important to keep the border wall invisible to protect Canada's international reputation as a country that is committed to the refugee regime.

The Canadian ‘invisible border wall’, reflected in laws and policies that govern who enters the country and becomes part of its community is a good way of achieving the above. Due to its invisibility and malleability, the ‘invisible border wall’ can be changed and manoeuvred in ways that allow the federal government to export border violence outside of Canada, both by its own agents and in collaboration with other enforcement regimes. Doing so preserves the image of Canada’s immigration system as one that is not only well managed, orderly, and fair, but also one in which every individual granted immigration or asylum status is a recipient of Canada’s benevolence. Despite the invisibility of the wall, it is pernicious and cunning. The veil that this ‘invisible border wall’ masks is exploitation and exclusion of vulnerable groups of people like asylum seekers and stateless migrants, which stands contrary to Canada’s values of being a welcoming nation that seeks equal opportunity and equality under the law.

The Canada-U.S. border is seeing an increase in border security measures such as the adoption of sophisticated AI and ML technologies as well as a significant border patrol presence to improve the coordination of efforts by the U.S. and Canada. The role of AI and ML goes beyond the Canadian immigration system simply processing applications. Canadian risk management efforts are being supported by the increased use of surveillance equipment, technologies used in surveillance and in the processes of authenticating identities of cross-border travellers, and the adoption of biometric technologies that are used in the identification process (Salter, 2007). Using these technologies to either decide which asylum seekers to admit and when can become another tool not only in the construction of the national identity but in the fortification of a discriminatory ‘invisible border wall’. While the first generation of non-entrée policies was written into law and were ‘visible’ and open to public scrutiny, the proprietary algorithms of AI and ML technologies that are increasingly being used to make decisions will make the Canadian border and immigration control even more invisible and

can further reduce the government's accountability and transparency. Overall, the use of AI and ML technologies does not produce an unbiased and accountable immigration system; rather these technologies speed up the process of discrimination, denial of human rights, and limit government accountability for immigration decision-making.

Chapter 2: AI and ML Technologies

Drawing on a growing body of academic articles, books, and government reports, this section serves as a background chapter on how government agencies use artificial intelligence (AI) and machine learning (ML) technologies. One of the main goals of AI and ML is to formalise knowledge and mechanise reasoning in all areas of human endeavour in order to make working with computers 'as easy as' working with people (Tecuci, 2012). Some of the main benefits of using AI and ML are increased efficiency by streamlining repetitive tasks, particularly those that demand the review of a large amount of information (Chui et al., 2018). In this chapter I argue that despite the few actual and many promised positive benefits, the current use of AI- and ML-powered technologies by government agencies and humanitarian organisations in relation to migration is unethical and should be halted until clear and robust international and national governing ethical and legal standards are established. I will begin with a discussion of what AI and ML are and how some government agencies around the world use these technologies. Following this, I will focus on some of the reasons why the current use of ML and AI in the field of immigration and border control is unethical. Due to space limitations, I will not go into detail about exactly how these technologies are developed, however, some brief examples will be given in chapter 3.

2.1 AI and ML Technologies

AI and ML algorithms draw on vast amounts of data to learn and make inferences about patterns and future behaviour, and their developers promise great potential not only in forecasting, managing, and controlling migratory flows but also in mass surveillance and automated decision-making (Beduschi, 2018; IOM, 2018; Rango, 2015). There are many unique and innovative ways of not only gathering large amounts of data with AI and ML technologies, but they can also generate new types of data and information. For example, the United Nations High Commissioner for Refugees (UNHCR) used Food and Agriculture

Organization's data to discover that the drop in the price of goats in one Ethiopian region and a spike in the price in another region could be used to track the migration of internally displaced people as they were buying new goats to replace the ones they sold before leaving (UNHCR Innovation Service, 2019). Similarly, Germany's and Denmark's immigration officials use asylum seekers' route, photos, messages, and social media updates stored on their cell phones to confirm whether they are in fact individuals in need of asylum (Meaker, 2018).

AI is especially beneficial for making predictions, sorting data, and finding patterns. AI is the programming and training of a computer using statistical models to do tasks typically reserved for human intelligence (Calo, 2017). Computer algorithms are powerful tools for automating many aspects of life, especially those that require step-by-step routines such as organising and digitising operational and administrative tasks making them more consistent and faster (Bansak et al., 2018). ML is an application of AI that uses data to automatically learn and improve from experience without being explicitly coded by a human programmer to perform certain tasks (Flach, 2012). The ever-increasing amount of data and computing power have reached a point where it has become very useful to develop ML technologies which can pick up patterns that humans may otherwise miss (UKGOS, 2016). Central to the interest around ML is the potential it offers for autonomous decision-making. Many algorithmic processes can be used to make decisions without human input and even learn continuously and make deductions without human assistance (Margetts and Dorobantu, 2019). One such example is U.S. Correctional Offender Management Profiling for Alternative Sanctions which uses AI algorithms to make decisions on the rate of recidivism of individuals based on decisions and data from previous cases (Margetts and Dorobantu, 2019).

The ways in which AI and ML technologies are used to make decisions or analyse large amounts of data have evolved since the 1950s when Alan Turing considered the potential of machines to think like humans (Beduschi, 2018). While no machine has passed the Turing Test yet – a test that measures a machine's ability to exhibit intelligent behaviour that is similar if not equivalent to that of a human – AI and ML continue to gain importance in academic, private, and public spheres. Modern use of AI and ML is built on several decades of governments' expert systems that rationalised and evaluated administrative behaviour in the 1960s and 1970s; investigated data-based performance management and oversight since the 1990s; and experimented with data mining throughout the 2000s (Engstrom et al., 2020).

2.2 Current Use of AI- and ML-powered Technologies

Current use of these technologies differs from prior technological innovations in three interrelated ways. First, modern automated decision-making machines can be non-intuitive, meaning that they perform according to rules that are complicated, interrelated, and multifaceted, thus defying practical inspection (Molnar and Muscati, 2018; Ng, 2017). The way modern automated decision-making systems arrive at decisions can at times be impossible to fully understand even for the data scientists who designed them, in part because these systems might use complex models with thousands of variables. Since AI and ML can yield results that are counterintuitive with flaws that might be difficult to detect, many argue that it can be challenging to hold governments accountable if they use results and decisions produced by AI and ML technologies (Garcia-Soriano and Bonchi, 2020; Murphy, 2017; Ng, 2017). Finally, the growing sophistication and power of AI and ML is leaving less room for human decision-making and discretion even at more senior levels (Meaker, 2018; Ng, 2017). The focus on the use of these technologies in recent years is unlikely to wither because of the very robust and rapid development of four self-reinforcing trends: the accessibility of inexpensive and enormous computational power; more sophisticated statistical and

probabilistic methods to analyse data; transformation of places into IT-friendly environments such as home automation and smart cities; and the availability of increasingly large amounts of data (Cath et al., 2018; Greenfield, 2020). Steady progress and cross-pollination in these areas have revived the importance, scalability, and feasibility of AI and ML governance.

2.3 AI and ML Governance

The intelligence alliance of the 'Five Eyes' comprising Australia, New Zealand, the U.S., the U.K., and Canada is currently at the forefront of implementing AI and ML in government decision-making and in the collection of mass surveillance data (Margetts and Dorobantu, 2019). The use of AI and ML technologies has significant implications for the fundamental rights of those subjected to them; thus, proper use of AI and ML by government agencies is critically important. If managed well, AI and ML tools can modernise public administration and bureaucracy resulting in more accurate, efficient, and equitable forms of state action. If these technologies are not managed properly, their use can result in poor decision-making, widen the public-private technology gap (the private sector innovates while governments lag behind in updating their technologies), increase the potential of arbitrary government action and decision-making, enable surveillance that could threaten privacy and civil liberties, further disempower marginalised groups, and increase the role that domestic and foreign technology companies play in government decision-making.

The use of AI and ML by government agencies can fit into five general categories: regulatory research, analysis, and monitoring; public services and engagement; internal management; enforcement purposes; and formal and informal agency adjudication of benefits or rights. First, government agencies rely on AI and ML for regulatory research, analysis, and monitoring which includes tasks that collect or analyse information that shapes agency policymaking. For example, the U.S. Consumer Financial Protection Bureau used natural language processing to process and analyse consumer complaints (Selvaraj and Darley,

2020). The second way that AI is used is for public services and engagement which includes tasks that support the direct provision of services and facilitate communication for regulatory or other purposes. Examples include the U.S. Postal Service AI-powered handwriting recognition tools, chatbots, and agency analysis of submitted rulemaking comments (Bloudoff-Indelicato, 2015). The third use of AI is for internal management which includes tasks that support agency management of resources, including employee management, procurement, and maintenance of technology systems. For example, Japan's Ministry of Defence recently confirmed that it will invest $237 million into the development of AI-based tools to counter cyberattacks on government agency systems (CISOMAG, 2020).

Fourth, governments use these technologies for enforcement purposes which are tasks that identify and prioritise targets of agency enforcement action (Beduschi, 2018). Customs and border protection and transportation security administration use facial recognition systems in many countries around the world. For example, the U.S. Customs and Border Protection, Immigration and Customs Enforcement, and the Department of Homeland Security are currently being sued by the American Civil Liberties Union for their failure to disclose details of their use of facial recognition technologies at airports (Vaas, 2020). The fifth use includes tasks that support formal and informal agency adjudication of benefits or rights, such as identity checks, border security and control, as well as analysis of immigration, visa, and asylum applications. Examples include the U.K. government's Harm Assessment Risk Tool, which is a machine learning system that analyses 34 categories of data to inform the selection of candidates for a rehabilitation program, while the U.S. uses ML to generate scores to indicate the likelihood of re-offending when determining prison sentences for convicted criminals (Burgess, 2018; O'brien and Kang, 2018). The fourth and fifth categories are the focus of the following discussion.

2.4 AI and ML Technologies and Migration Management

State governments, humanitarian organisations, as well as private stakeholders are involved in a "fragmented tapestry of global migration governance" which exists on a number of levels (Betts, 2011). On the first level, there is a thin layer of formal multilateralism that builds upon the interwar years framework in areas such as the refugee regime, International Labour Organization conventions, and norms that institute the use of passports. On the second level there are international arrangements that regulate issues that have implications for how states respond to human mobility, such as human rights law and humanitarian law, maritime law, and World Trade Organization laws, among others. On the third level are the new mechanisms of global migration governance that are more exclusive than inclusive, meaning that they involve a limited group of states and are based on closed membership. It is at this level that wealthy migrant-receiving countries are increasing their use of non-entrée policies to manage and control migration within and from 'refugee-producing' countries like Syria and Afghanistan.

The use of AI and ML not only includes the 'management' of migration and borders but also surveillance, decision-making on migration-related applications, and prediction of migration patterns. Some states use AI technologies to predict the next wave of migration by analysing data from Google Trends, Wi-Fi positioning, and data collected from social media (Connor, 2017). Governments collect large amounts of data and use AI and ML technologies to analyse it, find patterns, and make decisions based on patterns that the algorithms find. This data may be collected from social media activity or from telecommunications companies that collect information on call duration, Wi-Fi-positioning, among other information. This information is typically stripped of identifiers like names and addresses; however, it is possible to re-identify individuals (Na et al., 2018).

Analysing this data can help government agencies to better prepare for the influx of migrants and make more informed decisions on how to receive individuals by identifying inefficiencies in state-provided facilities. These gaps could include a lack of sufficient housing spaces, lack of staff to process asylum claims, or a lack of funding to support migrants as they settle in their receiving country. For example, Switzerland is testing an algorithm based on techniques like ML to predict the next 'migration crisis' and to improve refugee integration, while the revised Schengen Information System in the European Union is being geared to use DNA, facial recognition, and biometric data to assist with irregular migration (Bansak et al., 2018; Carammia and Dumont, 2018). Other examples include Germany's Asyl Online project which integrates all national databases containing migrant and refugee information (The Economist, 2017). Finally, in Malaysia, where migrants comprise 15% of the workforce, a Foreign Workers Centralised Management System was developed to link migrant workers' compliance, security, health, and welfare across both origin and destination countries (The Malaysian Reserve, 2019).

2.5 Limitations of AI and ML Technologies

Currently, many of the ways in which government and humanitarian agencies use these technologies are experimental and controversial. The 'Extreme Vetting Initiative' is one of many examples. The U.S. Immigration and Customs Enforcement (ICE) unveiled this program in 2017 (Harwell and Miroff, 2018). This program was meant to make the manual vetting process centralised and streamlined by using government agency and law enforcement databases and collecting data from public information found on social media websites. The goal was to automatically determine the probability that an applicant would be a positively contributing member to society and to national interests and predict whether the individual intends to commit criminal or terrorist acts after entering the country (Harwell and Miroff, 2018). The project was abandoned in 2018 in part due to the complications such as

how to define what a ‘positively contributing member of society’ is and how to accurately predict the probability of being a ‘good citizen’ based on data collected on social media websites and other publicly available online sources. Further, this initiative has the potential to affect free speech because potential migrants might be afraid of posting information about themselves on social media knowing that the U.S. government might gather this data.

Most AI and ML technologies are novel and their use by governments and humanitarian agencies is growing. Due to the novelty of these technologies, their use is not yet governed by a set of international and very few national legal standards. As a result, the use of technologies like digital IDs, biometrics, mass surveillance, blockchain, automated decision-making systems presents ethical concerns. There are efforts by the Canadian government to address this gap which I will discuss in chapter 3. One of the major concerns with these technologies is that they are in their nascence and are generally experimental in nature, thus many of their impacts are unknown. For example, in 2014, 7,000 students were deported from the U.K. because an algorithm wrongly accused them of cheating on a language test (Baynes, 2018). Attempting to make decisions using AI and ML raises serious concerns for the protection of human rights for vulnerable individuals like non-citizens, asylum seekers, and marginalised individuals. I will expand on this in chapter 3.

Security of data is a concern when using and storing ML and AI. Collecting data and storing it in a centralised database poses a risk as governments or private companies could request or gain access to the databases and repurpose them for law enforcement, surveillance, or national security screening (Idris, 2019). Data could also be sold for profit by hackers or used to publicly embarrass and undermine humanitarian and legitimate government efforts. For example, Edward Snowden revealed that U.S. and U.K. intelligence agencies targeted humanitarian organisations like UNICEF, UNDP, and Médecins du Monde for surveillance

(BBC, 2014). As such, there is a debate on not only who owns the data, but who is responsible for protecting it. This will also be further expanded upon in chapter 3.

Additionally, the degree of personal information that AI and ML technologies give humanitarian and government agencies puts asylum seekers and aid recipients at risk of an invasion of privacy, especially if these individuals are not fully aware of their rights. Making refugees, asylum seekers, and aid beneficiaries aware of the risks that digital identities and digital cash transfers bring may not be possible or may be challenging for several reasons. Even if these individuals are asked for consent, for many it might be a difficult choice to make – give up personal data and risk it being stolen and/or used for surveillance or refuse aid or refuge. In such situations, consent might no longer be freely given as there would be a strong incentive to agree to give away one's personal data. In many current uses of AI and ML government agencies do not ask for consent.

The social hierarchies produced by AI and ML are called the AI divide. Research shows that the increasing use of AI and ML technologies can further entrench these asymmetries in two ways (Chui et al., 2018; Norris, 2011). First, international organisations could promote the entrenchment of the asymmetries of the AI divide. Many international organisations such as the World Bank, UNHCR, and International Organization for Migration (IOM) depend on state funding. By assisting countries with capacity-building programmes and initiatives that are aimed at increasing the use of AI technologies, these organisations could prioritise the agendas of AI-capable states. Lavenex (2016) argues that the UNHCR and IOM are increasingly promoting the European Union's migration agenda via subcontracting and rule transmission while proclaiming that they work in the interest of all. Bradley adds that IOM functions as a service-provider that depends upon governments and acts as "a servant of its state masters" (2017: 99). This can be seen in "pertinent policy documents and the increasing formalisation of this nested relationship" (Lavenex, 2016).

Canada does not have robust national regulations for the use of AI and ML, nor is there a robust international document that governs the use of these technologies in the humanitarian sphere (Gammeltoft-Hansen and Hathaway, 2015). The lack of such policies allows for the use of AI and ML technologies to assist with the reinforcement of non-entrée practices which are forbidden by Article 33 of the *1951 Refugee Convention*. ML and AI could become political tools that are used to reinforce state practices that are aimed at curbing international migration and preventing certain individuals from reaching state territories. For example, the UNHCR began sharing records including fingerprints, iris scans, and facial biometrics of refugees it recommended for resettlement consideration in the U.S. with the country's Citizenship and Immigration Services (Burt, 2019). The UNHCR sent tens of thousands of profiles to U.S. federal agencies each year, including individuals who did not actually come to the U.S. (Burt, 2019). What the U.S. government does with the profiles of those who never make it to its territories is unclear. Further, the risk of breaches grows with the number of organisations and jurisdictions that ask for access to the data to provide humanitarian and government services. Considering this, the use of these technologies should be halted until they are no longer experimental in nature and robust governing standards are established on national and international levels.

2.6 Conclusion

The potential legal, operational, and reputational risks and ethical problems of holding vast amounts of data combined with the risks to aid beneficiaries are not yet fully known and in many cases outweigh the potential benefits. It is challenging to measure the long-term effects of converting individual human identity into a digital biometric representation and how this may perpetuate discrimination (Calo, 2017). Without a clear understanding of the impacts and which rights apply to this context, the use of ML and AI, and in particular, experimental applications of these technologies may be more likely to harm vulnerable people such as

asylum seekers and migrants and violate fundamental human rights. One of the ways to address these ethical concerns is for humanitarian and government agencies to engage beneficiaries by actively informing and asking for critical feedback on AI-related projects to mitigate issues of discrimination, bias, ethics, and accountability (Calo, 2017). Further, a legal framework that complies with international humanitarian and human rights law is necessary for ML and AI to reach their full potential in the fields of development, migration, and humanitarianism. Nonetheless, even if problem-free AI and ML technologies can be developed, they will continue to pose problems for accountable decision-making as there are fundamental issues with the global migration regime and the way governments control borders and the movement of people within and outside their territories. I will now focus on Canada's use of AI and ML technologies in migration governance.

Chapter 3: AI, ML, and Canadian Migration Governance

Since at least 2014, the Canadian federal government has been testing automated decision-making systems powered by artificial intelligence (AI) and machine learning (ML) to automate activities that are typically performed by immigration officials to support the evaluation of some migrant and visitor applications. The transition from test to use of AI and ML is on the way, including decisions on whether an applicant should be designated as a safety risk to Canada (University of Toronto, 2018). Some of the uses of AI and ML are encouraging. For example, the Canadian federal government launched two pilot projects in 2018 that use AI to process temporary resident visa applications from China and India (Wright, 2018). These programs will help to process an ever-growing number of routine cases more quickly. However, most of these technologies are in their nascence and are very experimental in nature. The use of these technologies has alarming implications for the fundamental human rights of those subjected to their use and there is a need to consider the implications of increased reliance of AI and ML by the Canadian government's immigration agencies.

In this chapter I argue that the lack of a legal framework to guide Canadian government agencies' use of AI and ML can have three interrelated implications: bias and data issues, the increasing role of private companies in immigration-related governance, and the implications for human rights. These issues can increase the 'fortification' of Canada's 'invisible border wall' and can act as additional non-entrée tactics that are used to exclude 'undesirable' migration. I begin this chapter by discussing and providing examples of how some Canadian immigration agencies use AI and ML. Following this, I will focus on the potential of AI and ML to perpetuate discrimination, increase the role that private domestic and foreign technology companies have in migration governance, and their impact on the Canadian government's accountability. By assuming that these technologies are unbiased and cannot

perpetuate discriminatory practices, AI and ML technologies risk reducing government's accountability for the decisions it makes on asylum and immigration applications. I will end with a brief discussion of the impacts this can have on human rights law and round off the conversation on how AI and ML will not reduce discrimination in the Canadian immigration system and further entrench its 'invisible border wall'.

3.1 Canada's Immigration System

Canada's immigration system is federally regulated by Immigration, Refugees, and Citizenship Canada (IRCC) and is governed by the *Immigration and Refugee Protection Regulations* (IRPR), the *Immigration and Refugee Protection Act* (IRPA), and internal operational documents of various affiliate branches (Government of Canada, 2019). Every initial immigration decision is made either by an administrative tribunal like the Immigration and Refugee Board (IRB), by individual immigration officers that work for IRCC, or by the Canadian Border Services Agency (CBSA) which is an enforcement arm of immigration. Canada has two types of international protection programs: The Refugee and Humanitarian Resettlement Program (RHRP) and the In-Canada Asylum Program (ICAP). The ICAP is for those who begin their asylum procedure in Canada at the border or when they are already in the country, while the RHRP is for individuals who were granted the status of a refugee and are hosted in Canada (Government of Canada, 2019).

The federal government has been testing and introducing algorithms into its immigration decision-making to help determine the completeness of the application; whether an applicant poses a risk or filed a fraudulent application; the likelihood or risk that the application is fraudulent; the probability that a marriage is genuine; or the probability that the child is biologically or legally that of the applicant (Molnar and Gill, 2018). The Canadian

government is also planning to use algorithms to screen for safety risks and application fraud (Molnar and Gill, 2018). What remains unclear is exactly how these automated systems are used, what criteria are used to define and assess 'fraud', 'risk', and 'misrepresentation'; what kind of data is fed into algorithms; and who has access to it and what other agencies or governments this information is shared with. Further, it is unclear what the government considers to be an acceptable error rate for these systems and what the grounds of appeal are if the technology rejects the application.

For example, section 109.1 of the IRPA determines which countries should be placed on the Designated Countries of Origin list (DCO), which contains a predictive algorithm to assess whether a country is 'safe' based on past grant rates of refugee status (IRPA, 2001). The overarching provision includes "countries that do not normally produce refugees and respect human rights and offer state protection" (Molnar and Gill, 2018). The DCO list has been widely criticised as discriminatory and based on an incomplete definition of safety as it does not take into consideration vulnerabilities and identities that might be associated with mixed migration and those which may make a country unsafe for certain groups of people, such as women fleeing domestic violence or members of the LGBTQ+ community. Throughout the deportation proceedings, the CBSA may collect data that could be shared with other departments and may prevent individuals from being able to enter Canada in the future (Molnar and Gill, 2018). The data may also be shared with the applicant's country of origin which could put them in danger if the individual is escaping persecution.

Having clear answers to these questions is important as they would allow the government to be held accountable for its decision-making. However, allowing AI and ML-based immigration decisions to be up for scrutiny and review can create an issue between government's transparency and accountability and protecting the data and algorithms that are used to make decisions. Making the algorithm public will allow for scrutiny but this can also

reduce immigration decisions to a predetermined step-by-step process that can be gamed by some applicants who may try to gain points either by pursuing a certain job or course of study. On the other hand, if the algorithms remain closed to scrutiny, many parts of the immigration system can become obscure, and it would be challenging to keep the government accountable and understand if the right decisions were made. Given the already limited safeguards and procedural justice protections in immigration and refugee decisions, the use of discriminatory and biased algorithms has profound ramifications on a person's safety, life, liberty, security, and mobility. Attempting to reduce human mobility into an algorithm is not easy and there are no external metrics for accuracy in regard to refugee status determination.

Canadian privacy laws and judicial authorisation required by the Criminal Code have been preventing the government from gathering big data and conducting expansive surveillance of its citizens, which has become increasingly common in the U.S. This recently changed as the Canadian Security Intelligence Service (CSIS) and the Communications Security Establishment (CSE) are currently facing substantial reform in light of Bill C-59 (*An Act respecting national security matters*), which proposes major changes to the *CSIS Act,* and which creates the *Communications Security Establishment Act*. The bill involves changes related to the collection, use, and disclosure of information about individuals. The bill introduces several much-needed reforms and a new review framework; however, it also further entrenches the controversial surveillance practices of both CSIS and CSE, including the mass and untargeted 'bulk collection' of electronic data. Despite serious concerns from the international human rights law community with regard to this practice, where the subjects of surveillance are non-Canadian persons outside of Canada, no meaningful safeguards to protect their right to privacy exist (UNHCR, 2014).

Canada's immigration and refugee laws are closely interconnected with its national security apparatus. Under the authority of the *CSIS Act*, Canada's intelligence agencies have

broad powers to enter into arrangements with foreign states and other entities for the purpose of conducting security assessments, to provide advice and information to any minister with regard to security matters or criminal activities, and to conduct investigations in support of government objectives under the *Citizenship Act* or the *Immigration and Refugee Protection Act*. For example, CSIS may provide information related to findings of inadmissibility into Canada on the basis of national security, or evidence in security certificate screenings. As a result, the nature of the data collected and analysed by CSIS and by CSE can influence certain immigration-related automated decision systems. I will now proceed to discuss how bias and data issues and the increasing role of private companies in migration governance can lead to governance challenges which will help me to develop my main argument.

3.2 Bias and Data Issues

Despite the international community praising Canada's immigration program, discriminatory decision-making and screening practices continue to plague Canada's immigration system and border control. The use of AI and ML technologies in the immigration sphere promises to significantly reduce or even eliminate conscious and subconscious forms of human bias which lead to discretionary outcomes. For example, Migranet, described as the world's first global immigration platform powered by AI, is designed to process immigration and refugee applications from start to finish (Pike, 2019a). The platform, set to launch in 2021 in Canada and then expand into countries like Australia and the U.S., will enable prospective migrants to pre-select their preferred country of immigration based on their education, skills, cultural affinities, as well as those of their families by scanning their professional credentials and background declaration (Pike, 2019b). Migranet promises to provide protection from fraud, malpractice and misrepresentation and potentially reduce the costs of traditional immigration services by up to 90% (Pike, 2019a). Delivering these promises can speed up government decision-making.

Despite these potential benefits, bias and data-related issues are of great concern to how Canada uses AI and ML in the immigration space, in part because the technology can compound already entrenched disadvantages and even develop new ways to discriminate. As discussed in chapter 2, algorithmic bias is when AI and ML technologies arrive at decisions that are discriminatory despite them being designed to be impartial. Automated decision-making systems are built by analysing thousands of past applications and their outcomes. This allows the technology to 'learn' by detecting patterns in the data in a way that is close to how immigration officers learn through experience of processing applications (Keung, 2017). Due to the semi-autonomous nature of algorithms, they can diverge from their intended purpose; this issue can pose significant challenges especially if this problem goes undetected. The obscure nature of immigration and refugee decision-making creates an environment that can be perfect for algorithmic discrimination. There are several sources of algorithmic bias, such as human bias, issues with the way data was collected, and bias autonomously generated by the algorithm.

For example, in 2017, the RCMP faced heavy criticism for engaging in religious and ethnic profiling of migrants near the unofficial border crossing between the U.S. and Quebec at Roxham Road (Peritz and Leblanc, 2017). This example shows the concerns about bias and data collection and storage, the extent to which the data is shared with other domestic agencies and foreign partners and governments, and oversight related to its use. Without any clear rationale and apparently on its own initiative, the RCMP collected questionnaires from over 5,000 asylum seekers featuring questions clearly coloured by Islamophobic stereotypes (Shepherd, 2017; see the questionnaire in Appendix a). The questionnaire sought information about social values, political beliefs, and religion – including questions related to the individual's perception of women who do not wear a hijab, their opinions on ISIS and the Taliban, as well as the number of times a day the individual prayed (Shepherd, 2017). The

questions targeted Muslim individuals crossing the border, as no questions were included about other religious practices or terrorist groups (Shepherd, 2017). The collected answers were entered into an RCMP database which could be shared with CBSA and "other security partners" (Shepherd, 2017). The RCMP claims that the questionnaire ceased to be used following an investigation by the Toronto Star, a Canadian daily newspaper in October 2017 and the 5,438 files have been redacted (Shepherd, 2017).

Another example of unethical data collection occurred in 2018, when it was reported that the CBSA used private third-party DNA services such as Ancestry.com to establish the nationality of individuals subject to potential deportation (Khandaker, 2018). This is deeply concerning for several reasons. First, one's DNA is not related to nationality and should bear no impact on one's application. The second concern is the coercive nature of privacy invasion – individuals who submitted their DNA samples to these companies might not have given consent nor knew that their data could be used by governments. Further, there is no certainty that the data and DNA given by individuals is accurate and is theirs. As such, collecting and basing immigration decisions on data collected by private companies is unethical and could lead to decisions based on inaccurate information. Even if the Canadian government is not currently using this method of data collection, DNA samples could yield new information in the future, and it could be used by governments in ways that cannot be anticipated today.

The examples in this section showed the risk of hiding politicised and discriminatory decisions behind a veneer of AI 'objectivity'. The above-mentioned challenges also present issues of making sense of copious amounts of data and the need for advanced analytical capacities to process and filter data. Another issue to be mindful of is the extent to which Canadian government agencies outsource technologies for surveillance and border control and buy technologies (and data) from private domestic and foreign companies. Where such

capacities exist, private companies typically own them, and this also presents issues around accountability, privacy, and data ownership.

3.3 Private Companies and Accountability

It has been well established that the private sector plays an important role during a migrant's journey from origin to their destination. The private sector, which includes cybersecurity companies, financial institutions, recruitment agencies, private education and training institutions, telecommunications services, transport providers, among others, plays a role in influencing migration patterns and either helps migrants generate data or collects it. Private actors have at least four roles in relation to migration: to provide goods and services to migrants and asylum seekers; to provide services to governments in support of migration governance and in some cases on behalf of the government; to provide employment to migrants; and to lobby to influence migration policies and legislation thus influencing migration governance. Despite the benefits that this sector brings to migrants, there is a serious risk that continues to exist around the role private companies are taking in migration governance through the use of AI and ML technologies. When using AI and ML technologies, it is vital to know who is responsible for each element of decision-making; who handles and has access to the data, the algorithms and the technology; and how the designers and implementers of the technology will be held accountable for the misuse of the data and wrongful decision-making.

The first area of concern is outsourcing the design of technologies and algorithms and the storage and processing of data to private domestic and foreign companies. For example, Palantir Technologies, a controversial U.S. software company partnered with the Canadian Department of National Defense to provide data analytics software for the Canadian Forces Special Operations Command and the Calgary Police Department to integrate their database (Braga, 2017; Hemmadi, 2019). This partnership is problematic as Palantir's chairman and

co-founder Peter Thiel is an adviser to the U.S. President Donald Trump. Further, Palantir recently set up an office in Canada and hired David MacNaughton, the former Canadian ambassador to the United States (2016–2019), as the head of the Canadian wing of Palantir, who may use his connections to the federal government in his current role. A United Arab Emirates-based private tech company that focuses on cybersecurity, DarkMatter, also set up an office in Toronto, Canada in 2016 (DarkMatter, 2016). DarkMatter is also a controversial company and is currently under investigation by the U.S. Federal Bureau of Investigation for engaging in crimes related to espionage, murder, and incarceration of foreign nationals (Mazzetti et al., 2019). The increasing number of collaborations between Canadian government immigration agencies and foreign technology companies can create opportunities not only for espionage but also increase the influence of foreign governments on the Canadian immigration system. The U.S. is particularly problematic due to the significantly more aggressive ways in which its government agencies use AI and ML to control borders and migration.

Yet another example of the Canadian government partnering with a private foreign company comes from a 2014 report by the Canadian Cyber Incident Response Centre (CCIRC) which revealed that an unnamed company that was housing a significant number of Canadians' personal data (for unknown reasons), experienced a cyberattack (Ling, 2015). The malware creators demanded an undisclosed sum of money for the information on 5,000 Canadian passport applicants in the process and threatened to encrypt the data forever if the demands were not met. The CCIRC indicated that recovering files was not likely to happen and paying the ransom would not guarantee the retrieval of the files. The report did not indicate what happened to the 5,000 passport applications nor why the IRCC, the department responsible for passport applications, gave this private foreign company access to this data.

I argue that domestic and foreign private companies should have no role in migration governance. Although this will be a costly and challenging endeavour, governments should develop their own AI and ML algorithms and technologies and not subcontract the development and maintenance of these technologies to the private sector. Technologies and algorithms created by private companies are often proprietary (closed-source software) and protected as trade secrets. This creates issues of ownership and ethical decision-making, which result in obstacles to harnessing the potential of big data for public policy. Since these tools are essentially black boxes, it is difficult to evaluate and correct for any potential biases they may perpetuate. Developing 'in-house' AI and ML programs and decision-making systems would reduce the number of non-governmental agencies that have access to the data and algorithms as well as the role that private companies have in migration governance. Further, this can increase government expertise in project and operation management, helping the government to ensure that the principles and standards of regulation of public service delivery are open for scrutiny leading to greater accountability for decision-making.

3.4 Human Rights and AI and ML

The issues of bias and the role of private companies have the potential to culminate in the making of the Canadian immigration and refugee system that is a high-risk experiment which can pose serious human rights risks. A lot of government work is discretionary in nature; attempting to make decisions using AI and ML raises serious concerns for the protection of human rights for vulnerable individuals like non-citizens, asylum seekers, and marginalised individuals who often have weak human rights protections and few resources that they can use to defend their rights. Decisions that are based on AI and ML might be either challenging to explain or can have undetected biases. As such, when considering the use of AI and ML technologies, it is important to consider the 'explainability' and transparency of the technology used – if the government cannot explain how the technology reached a particular

decision, there is a potential for transparency and accountability issues. This may place highly vulnerable individuals at risk of being subjected to unjust and unlawful processes in a way that threatens to violate Canada's domestic and international human rights obligations.

Further, the consequences of using AI and ML in the sphere of immigration and refugee law and policy are far-reaching and may aid in the expulsion and externalisation of asylum seekers and 'undesirable' migrants. A data breach can harm applicants by exploiting and exacerbating their vulnerabilities in crisis situations. AI and ML build on previous cases (precedents) to predict and generate new decisions which risks the perpetuation of discriminatory and flawed reasoning, especially if these technologies and their algorithms are not continuously scrutinised. It is gravely important that the Canadian government develops a framework for transparency and accountability to address bias in relation to the use of AI and ML not only because these technologies can perpetuate human bias but also, they can develop their own ways of discriminating. Finally, even if the issues with AI and ML technologies were addressed, there would still be fundamental problems with the Canadian immigration system. Using AI and ML technologies will not change the fundamental discriminatory immigration system that relies on non-entrée policies – it is only the tools and the speed with which decisions are made that are changing. This is deeply problematic and an issue of human rights that goes beyond the lack of privacy of data, accountability, and the increasing role of private companies.

3.5 AI and ML and the 'Invisible Border Wall'

The discussion presented in the previous three chapters converges in the main argument of this dissertation – introducing AI and ML into the decision-making on immigration and border control has the potential to supplement Canada's non-entrée policies and fortify its 'invisible border wall'. The overarching logic of this new generation of non-entrée strategies can be to insulate the federal government from liability, the legal responsibilities for refugee

protection and accountability for decision-making, while presenting its immigration system as one that is based on the use of AI and ML technologies that eliminate human bias. In reality, AI and ML-powered decision-making technologies are not as unbiased as is suggested; rather they simply speed up the processes of producing discriminatory decisions and in some cases develop new ways of discrimination which impacts migrants' human rights. The end result is that deterrence of unwanted migration is achieved while liability is generally avoided.

The main goal of this dissertation is to argue that using AI and ML technologies will not make Canada's immigration system unbiased and fairer. As argued in chapter 1, the Canadian federal government uses a number of non-entrée policies to fortify, what I call the 'invisible border wall', which is designed to control who enters and gains the privileges of being a member of the Canadian community by expelling unwanted migrants, externalising borders, scrutinising people on the move, implementing visa regimes, practising containment, and adopting safe third country agreements. This 'wall' must be invisible so as to protect Canada's image as a country that welcomes all humanitarian migrants and asylum seekers. As discussed in chapter 1, there are fundamental issues with Canada's immigration system as it continues to rely on non-entrée policies that are highly discriminatory in nature. Using AI and ML can modernise Canada's non-entrée policies by making them high-tech and more efficient at making discriminatory decisions, thus further fortifying Canada's 'invisible border wall'. Using automated decision-making systems can hide Canada's immigration system behind the veil of accountable, fair, and unbiased AI and ML technologies and algorithms. Paradoxically, migrants fleeing their country for fear of persecution are ultimately stripped of even more of their human rights when met with unethical AI and ML-based immigration enforcement practices.

As the Canadian government continues to seek new AI and ML technologies designed to surveil, make decisions on immigration-related applications, and manage movement and borders, migration has the potential to become even more unequal for some groups. Unfortunately, some prospective migrants never reach the step of risk analysis in the visa system or at the border. This is in part because governments that use AI and ML create hypothetical risk profiles based on unwanted behaviour such as crimes or visa overstays. These profiles might mask systemic discrimination against specific groups of people (Arbel, 2013). This tactic aligns with the re-drawing of the Canadian border through the *SBA, STCA, MBS,* and *DFN* as described in chapter 1. Being part of the 'Five Eyes' group, Canada shares applicant information such as visa rejections with the U.S., the U.K., Australia, and New Zealand (Greenfield, 2020). In addition, these countries share 'risky profiles' with contracted visa processors and consulates as guidance for the types of travellers that should be rejected or flagged prior to even obtaining a visa. Without even knowing it, the potential traveller's proximity to such profiles can keep them from accessing regular channels of migration. Sharing such information with other countries might be problematic considering the differences in how governments screen asylum applications and who they deem to be an unwanted and risky migrant.

The increasing and unregulated use of technologies like the sharing of large amounts of data that is collected with facial recognition software, mobile phones and social media use, separates those who can be mobile and those who are not. 'Information precarity' can affect potential migrants who do not have enough data on them to share in order to migrate and seek asylum. This is of great concern to those who do not have internationally accepted identification documents or lack financial records, disproportionately affecting the elderly, women, more rural, and less formally educated people in developing and poorer countries which are already disadvantaged by the global AI-divide. However, even those who have

internationally recognised identification and enough information about them can also face challenges as their data can match too closely to the algorithm-created risk profile. Risk analysis is predicated on perceived and anticipatory threat; if one government's algorithm assumes this, a negative decision may be shared with another government, especially as these programs become more integrated as is the case with the 'Five Eyes' allies.

Despite the increasing use of AI and related technologies in the immigration space at national and international levels, Canada lacks a dedicated network of stakeholders that are tasked with investigating the potential of new data sources for the analysis of migration-related activities. The regulations must be robust enough to limit data breaches, privacy issues, and ensure accountability, but there must also be ethical standards by which the use of these technologies is governed. In May 2019, the Minister of Innovation, Science and Economic Development announced the launch of the Advisory Council on Artificial Intelligence. While this is a start to developing Canada's robust approach to using AI and ML by immigration agencies, there is no Canadian third-party ethics oversight agency that supervises the use of automated decision systems by the Canadian government. This body must be impartial and at arm's-length and be allowed to oversee all aspects of the system as well as test and audit algorithms and source codes.

In addition to an oversight body, there must be a set of regulations that would govern the use of AI and ML technologies and how the Canadian government partners with private companies and humanitarian agencies. It is important to consider how the Canadian government works with humanitarian agencies not only because the humanitarian sector also lacks a robust set of ethical and legal standards by which to govern the use of AI and ML, but also because in 2019, the UNHCR launched its first global strategy on digital ID in partnership with IRCC (UNHCR, 2019). In 2020–2021, IRCC will test a digital service channel aimed at improving client communications and at increasing IRCC's ability to

digitally capture client data. This project intends to enhance the identification of risks and trends and lead to improved data integrity and efficiency. The lack of robust governing standards and an oversight body that is accountable to Canadians is especially problematic since the impacts of AI and ML on human rights are not fully known.

3.6 Conclusion

As the Canadian federal government continues to invest in the use of AI and ML technologies in the immigration sphere, there are many benefits to be gained from the use of these technologies. However, without proper oversight, AI and ML technologies can produce discriminatory and stereotypical decisions that perpetuate and create new biases based on appearance, religion, or travel patterns, leading to erroneous and misleading proxies for more relevant data, thus entrenching bias into a seemingly 'neutral' tool. The nuanced and complex nature of many refugee and immigration claims may be lost on these automated technological decision-makers, leading to serious breaches of internationally and domestically protected human rights, such as the right to privacy, the right to due process, and the right to be free from discrimination. Continuing to experiment with AI and ML on vulnerable groups of people without implementing a human rights-centred framework and an agency that will oversee the use of AI and ML impact assessments is a high-risk problem that can severely tarnish Canada's reputation as a refugee-welcoming country and strip migrants of even more of their human rights. Although Dauvergne (2004), Gammeltoft-Hansen and Hathaway (2015), and Macklin (2005) argue that maintaining the current Canadian immigration system greatly benefits the Canadian federal government as it allows it to control who can be excluded and who can be allowed to be part of its community, there is a need for change. There is a need to overhaul the Canadian immigration system in a way that will significantly reduce its reliance on non-entrée policies and its discriminatory practices.

Conclusion

In this dissertation I showed that increasing the use of AI and ML technologies has the potential to supplement Canadian federal government's non-entrée policies and to fortify its 'invisible border wall'. As long as AI and ML technologies continue to be used in the current Canadian immigration system, which is fundamentally flawed because it actively relies on non-entrée policies to fortify its 'invisible border wall', AI and ML technologies will not reduce or eliminate bias and discrimination that plague human decision-making. Rather, the use of AI and ML will simply increase the efficiency of producing discriminatory decisions in the immigration sphere by the Canadian government, especially if Canada continues to lack a robust regulatory framework to oversee the use of these technologies. To support my argument, I began to develop the concept of the 'invisible border wall'. This wall is built with a discriminatory refugee and immigration system and remains invisible as it masks abuse, exploitation, and exclusion of vulnerable groups of people like asylum seekers and stateless migrants, which stands contrary to Canada's values of being a welcoming nation that seeks equal opportunities and equality for all under the law. The *SBA*, the *STCA*, and the *MBS* appear to be legislation that is in accord with other international norms around refugee protection. Upon further examination, their function as non-arrival measures becomes clearer.

The overarching logic of implementing these technologies in immigration decision-making can arguably insulate Canada's federal government from being accountable for the decisions it makes by engaging seemingly 'neutral' AI and ML technologies that make decisions with 'scientific accuracy'. The use of AI and ML to process applications, to make decisions, and manage migration combined with the lack of national governing standards to oversee the use of AI and ML technologies has the potential to increase bias and discrimination towards highly vulnerable populations which can reduce the Canadian federal government's accountability and transparency for its decision-making. Immigration control

and especially processing immigration and asylum applications is not an objective process. The nuanced and complex nature of many refugee and immigration claims may be lost on these technologies leading to serious breaches of human rights in the form of bias, discrimination and privacy breaches, the increased role of private companies in governance, as well as issues of due process and procedural fairness.

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Appendix

Appendix a: Roxham Road RCMP Questionnaire.3

RCMP·GRC

NOM / NAME: _____

DDN / DOB: _____

CITOYENNETÉ / CITIZENSHIP: _____

ENTREVUE / INTERVIEW

Demandez aux gens s'ils ont fait eux-mêmes leur valise et que tout le contenu leur appartient? Au même titre pour les ordinateurs de poche. Vous pouvez leur dire que tout ce que vous trouverez pourrait servir de preuve contre eux.	Ask people if they have loaded their suitcases themselves and whether all of the contents belong to them? In the same way for handheld computers. You can tell them that anything you find could serve as proof against them.

1. D'où venez-vous? / Where do you come from?
2. Pourquoi ne vous êtes-vous pas présentés à un poste frontalier? / Why did you not come to a border crossing?
3. Depuis combien de temps demeurez-vous aux États-Unis? / How long have you been in the United States?
4. Qu'est-ce qui vous motive à quitter les États-Unis? What motivated you to leave the United States?
5. Que faisiez-vous aux États-Unis pendant tout ce temps? / What were you doing in the United States all this time?
6. À quel endroit demeuriez-vous? / Where did you stay?
7. Avec qui? Nom(s) et DDN(s) / With whom? Name(s) and DOB(s)?
8. De quoi viviez-vous? (ex. emploi, famille, gouvernement) / What were you living off of? (ex. work, family, government)
9. Qu'est-ce qui vous motive à venir au Canada? / What motivated you to come to Canada?
10. Avez-vous appliqué pour un statut d'immigration ou de réfugié aux États-Unis? / Have you applied for refugee status in the United States or to immigrate to the United States?
11. Quels sont les résultats de votre demande? / What were the results of your application?
12. Aviez-vous un emploi? Si oui, quel était votre métier? / Did you have an employment? If so, what was it?
13. Avec qui voyagez-vous? / Who did do you travel with?
14. Avez-vous de la famille au Canada? Nom(s) et DDN(s)? Où sont-ils? Que font-ils? / Do you have family in Canada? Names and DOBs? Where are they? What do they do?

Membre famille / Familly Member	DDN / DOB	Métier / Occupation	Ville / City

15. Comment est votre santé? / How is your health?

Membre / Member: _____

Reg. / Reg #: _____ Signature du détenu / Detainee's signature

Heure / Time: _____ Date: _____

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[3] Shepherd, 2017.

16. Qui vous a informé sur la façon de vous rendre au Canada? / Who informed you about how to get to Canada?

17. Que vous a-t'on dit? / What were you told?

18. Est-ce que l'on vous a chargé quelque chose? Si oui, combien. / Have you been charged with anything? If so, how much?

19. Avez-vous manipulé des armes à feu par le passé? / Have you handled firearms in the past?

20. Avez-vous servi dans l'armée? / Have you served in the army?

21. Avez-vous des affiliations à des groupes politiques? / Do you have affiliations with political groups?

22. Avez-vous déjà subventionné des organisations ou des groupes politiques? / Have you ever contributed to organizations or political groups?

23. Connaissez-vous quelqu'un affilié à un groupe politique ou extrémiste? / Do you know someone affiliated with a political or extremist group?

24. Quelle est votre opinion sur les attaques terroristes? / What is your opinion about terrorist attacks?

25. Quelle est votre opinion à propos du groupe État Islamique (EI, EII, ISIS, DAESH), des Talibans, etc. ?/ What is your opinion about the group Islamic State (EI, EII, ISIS, DAESH), the Talibans, etc. ?

26. Avez-vous déjà commis une infraction criminelle? / Have you ever committed a criminal offense?

27. Avez-vous déjà été arrêté? / Have you ever been arrested?

28. Êtes-vous recherchés par les autorités policières de votre ou d'un autre pays? / Are you being sought by the police or other government authorities from your or any other country?

29. Avez-vous des intentions criminelles durant votre séjour au Canada? / Do you have any criminal intentions while in Canada?

30. Avez-vous des intentions de protester au Canada au sujet des événements qui se produisent dans votre pays? / Do you have any intentions to protest in Canada about the events that are taking place in your country?

31. Le Canada est un pays très libéral qui croit à la liberté de la pratique religieuse et de l'égalité entre les hommes et les femmes. Quelle est votre opinion sur ce sujet? Comment vous sentiriez-vous si votre patron était une femme? Comment vous sentez-vous par rapport aux femmes qui ne portent pas le Hijab (couvre la tête), Dupatta (couvre la tête et les épaules), Chador (couvre la tête et le corps), Niqab (couvre la tête, la figure et le corps), Burka (couvre tout le corps, incluant les yeux)?

31. Canada is a very liberal country that believes in freedom of religious practice and equality between men and women. What is your opinion on this subject? How would you feel if your boss was a woman? How do you feel about women who do not wear the Hijab (covers the head), Dupatta (covers head and shoulders), Chador (covers head and body), Niqab (covers head, face and body), Burka (covers the entire body, including the eyes)?

Membre / Member:

Reg. / Reg #:

Heure / Time: Date:

Signature du détenu / Detainee's signature

32. Si une personne de votre entourage commet une infraction ou un acte réprimandable que feriez-vous? / If someone around you commits an offense or a reprimandable act what would you do?

33. Le dénonceriez-vous? / Would you denounce him or her?

34. Quelle est votre religion? / What is your religion?

35. Pratiquez-vous votre religion, si oui, à quelle fréquence? / Do you practice your religion, if so, how often?

36. Avez-vous utilisé un passeport d'une autre nationalité pour voyager? / Did you use a passport of another nationality to travel?

37. Avez-vous de la famille, des amis ou contacts aux États-Unis? / Do you have any family, friends or contacts in the USA?

Nom / Name	Sexe / Gender	Relation / Relationship	Ville / City

38. Qui vous a aidé pour voyager aux États-Unis et au Canada? / Who helped you to travel to the USA and Canada?

39. Combien d'argent avez-vous avec vous? Combien d'argent avez-vous de disponible tel que les cartes de crédit, compte bancaire, etc.? / How much money do you have with you? How much money do you have available such as credit cards, bank account, etc.?

40. Avez-vous des affiliations avec des groupes extrémistes? / Do you have affiliations with extremist groups?

Commentaires additionnels / Additional Comments :

Membre / Member:

Reg. / Reg #:

Heure / Time: Date:

Signature du détenu / Detainee's signature