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**Sexual Orientation and the Refugee Determination Process: Questioning
a Claimant About Their Membership in the Particular Social Group**

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TABLE OF CONTENTS

A. Introduction.....	3
B. General Principles and Points of Law.....	3
1. Sexuality and the Refugee Determination Process.	3
a. Personal Prejudices & Assumptions.	3
b. Stereotyping	4
c. The Diversity of Lesbian and Gay Lives.	4
d. The Commonalities of Lesbian and Gay Lives.	5
e. Difficulties Relating to Testifying About Sexual Orientation.	5
f. Intersection of Identity Markers.	6
2. Legal Issues.	7
a. Defining the Particular Social Group	7
b. Imputing Membership in a Particular Social Group.	8
c. Credible or Trustworthy Evidence.	9
d. Lack of Corroborating Evidence.	9
e. Implausibilities.....	10
f. <i>Refugee Sur Place</i>	11
g. Knowledge of Country Conditions.	11
C. Membership in the Particular Social Group: A Proposed Model of Questioning Claimant’s About Their Sexual Orientation.	12
1. Subjects of Inquiry.....	12
a. Personal & Family.	13
2. Lesbian and Gay Contacts and Activities in the Country of Origin & Canada. . . .	16
3. Discrimination, Repression & Persecution in the Country of Origin & Canada. . .	19

A. Introduction

For many years now, gay men and lesbians have been granted asylum in Canada on the ground that they face persecution as sexual minorities. In 1993, the Supreme Court of Canada, in *Canada (Attorney-General) v. Ward*,¹ concluded, in *obiter*, that sexual orientation can constitute the basis of a particular social group.² Ever since, a majority of gay and lesbian refugees have claimed that their fear of persecution is grounded on their membership in a particular social group, one constituted by individuals with the same sexual orientation as their own.³

Given that gay men and lesbians claim to be members of a particular social group, one of the elements to be satisfied in a refugee claim based on sexual orientation will be the claimant's membership in that particular social group. Assessing the veracity of the claimant's homosexuality is a very difficult, sensitive and complex task in the context of an administrative or quasi-judicial hearing. In particular, the very private and intimate nature of an individual's sexual orientation poses real challenges for decision-makers who are nonetheless required to engage with claimants about their personal lives and relationships.

Outlined in this document is a suggested approach to questioning a claimant about their sexual orientation. The purpose of this model is to provided decision-makers with a range of issues that they may explore with a claimant when it is determined that membership in a particular social group is an issue to be determined in the refugee claim.

Before presenting the suggested questioning model, contextual and legal issues will be outlined as they shape and constrain the ways in which decision makers should proceed with their examination of a claimant's membership in a gay or lesbian social group.

[...]

¹ [1993] 2 S.C.R. 689 [*Ward*].

² *Ibid.* at 739.

³ Sexual minority claimants have also founded their fear of persecution on political opinion, see for example *Re U.L.X.*, [1998] CRDD n° 83, on line : QL (CRDD), and membership in a particular social group based on gender, see *Re C.L.Q.*, [1996] CRDD n° 145, on line : QL (CRDD) .

C. Membership in the Particular Social Group: A Proposed Model of Questioning Claimant's About Their Sexual Orientation

Few lesbian and gay claimants are able to provide conclusive documentary or witness evidence to confirm their membership in the particular social group. Therefore, one element in particular will be most determinative in establishing whether the claimant is a member of the particular social group: the claimant's credibility.

The claimant's answers to inquiries regarding their sexual orientation will help members of the RPD in assessing the veracity of their claim. But it is important to remember that how people experience sexuality, and persecution, may differ markedly from one claimant to another, even if they are from the same country. Moreover, the basis upon which the agents of persecution believe that an individual is a gay man or lesbian may also be difficult to comprehend because of cultural differences. The subject matters and questions identified below should assist members of the RPD and RPOs in discussing with a claimant the issue of their sexual orientation **when the question of membership in the particular social group is an issue.**

It cannot be stressed enough, however, that there are no true answers to these questions. The questions suggest areas of inquiry that may elicit evidence from the claimant that will assist in determining credibility. It is not so much the accuracy of the actual answers that is important, as answers to these types of questions can differ from one individual to the next, but rather the fact that the evidence elicited through this questioning will assist in evaluating the consistency and plausibility of the testimony as well as the overall demeanor of the claimant.

1. Subjects of Inquiry

The suggested subjects of inquiry are grouped into three areas:

- a. **Personal & Family**
- b. **Lesbian and Gay Contacts in the Country of Origin and Canada**
- c. **Experience/Knowledge of Discrimination and Persecution**

a. Personal & Family

- ▶ One area that could be explored is the **individual's own experience of his or her sexual orientation.**

“However, he claimed that in China until 1995, he lived as a heterosexual male, suppressing his true sexual preference, in order to cope with societal prejudice. The panel found his explanation reasonable under the circumstances. He claimed that he knew he was homosexual from approximately age 12 to 13 years, although he did not act on his sexual preference until 1995.”⁴

“...although the Claimant asserts that he is a homosexual, he could not describe in except the most vague and general terms the effect this discovery about had on him . . . the panel finds the Claimant’s inability to articulate more than a feeling that he was “like everybody” in describing what he felt as he came to recognize himself as a homosexual, in particular given the context in which he lived which he says was grievously homophobic, to be strange and inconsistent with what one would expect. As a homosexual in Rumania he would clearly not be “like everybody” . . . ”⁵

“...more severe problems emerged for you after adolescence with the development of your sexuality and the sexuality of your peers and colleagues when you realized that you were not attracted to men, and later realized, that you were attracted to women. It was a problem for you because homosexuality was severely stigmatized in Russia and you saw it as something to be hidden from friends, family and colleagues.”⁶

- **At what point in their lives did they come to realize their homosexual or bisexual sexual orientation?**
- **How did they feel about themselves when they came to that realization?**
- **What kind of life did they believe they would have as a homosexual living in their country of origin?**
- **What were they told by their family, school and society in general about homosexuality?**
- **What did they personally believe about homosexuality at the time they came to realize that they were lesbian or gay?**

⁴ *Re U.F.S.* [1999] C.R.D.D. No. 81, on line: QL (CRDD).

⁵ *Re Z.N.B.* [2002] C.R.D.D. No. 10, on line: QL (CRDD).

⁶ *Re M.R.D.* [1998] C.R.D.D. No. 164, on line: QL (CRDD).

- **Past or current relationships:** The claimant could be questioned about current or past relationships, if they have been involved in a same-sex relationship. It must be remembered to be sensitive with regard to this kind of questioning since it involves personal information that the claimant may be reluctant to discuss in a quasi-judicial hearing. Claimants should not be questioned regarding their actual sexual practices but rather on more general aspects of their personal relationships. In some cases, claimants have asked their current partner to testify or submit an affidavit attesting to their relationship. It would be inappropriate however to expect a couple to be physically demonstrative at a hearing as a way to establish their sexual orientation. Finally, it is important to note that many gay men and particularly lesbians may have been married in the past, or may still be married.

“The claimant said she had a girlfriend in Canada, ..., who was present at the hearing as an observer. She said they have been together six months.”⁷

“He was asked toward the end of the hearing, about his relationship with XXXXX and what he felt about XXXXX in Belarus and it was at this point that the claimant did display some emotion. When he talked of XXXXX, he exhibited some emotional stress in the memory of this young man whom he loved dearly. He felt that they were well suited, and even during the process of the delivery of this decision, his emotions are running quite high and he is tearful.”⁸

“On the issue of credibility, a central question concerned the seeming contradiction between his professed homosexuality and his statements in the personal Information Form that he is married (although “separated”) and has a daughter. He gave a satisfactory explanation for this in terms of both his wife’s family history and generally the way homosexuality is hidden in Cuba.”⁹

“At one point, the claimant appeared reticent to provide details regarding his sexual activity that was discovered by the authorities and their subsequent insults to him . . . the claimant appeared to be embarrassed to provide details of the compromising situation in which he was found and the shameful insults that followed.”¹⁰

- **Are they currently in a relationship?**
- **Do they have a partner in their home country they hope one day to be reunited with?**
- **Have they been involved in relationships with someone of the same sex in the past?**
- **Have they socialized as a gay or lesbian couple in their country of origin or in Canada?**

⁷ *Re L.L.R.* [1999] C.R.D.D. No. 18, on line: QL (CRDD).

⁸ *Re G.J.M.* [2002] C.R.D.D. No. 71, on line: QL (CRDD).

⁹ *Re C.Y.T.* [1998] C.R.D.D. No. 186, on line: QL (CRDD).

¹⁰ *Re I.P.D.* [1997] C.R.D.D. No. 296, on line: QL (CRDD).

- ▶ **Family & Friends:** Some people may or may not disclose their sexual orientation to their family and friends. Such disclosures are often difficult and may have led to hostile and violent reactions by family members.

“...the claimant described his self-realisation as to this sexuality and his decision that he is homosexual and not heterosexual. He outlines in detail how it was discovered that he is gay, and what befell him both at school and at home. When his parents found out, his father beat him up, forced him to leave home, and the claimant had testified this morning that he and his father are not on speaking terms . . .”¹¹

“She told her sister about it who told her to see a therapist to see if she could change her orientation. Her father was stunned when she told him about her sexual preference. She said only her brother understood her feelings.”¹²

“The mother testified that her life in Canada was difficult because she had chosen to support the claimant in his gender transition to become a man. The female claimant [mother] described how she did not socialize or attend the mosque for fear of anyone discovering that her son was a transsexual and that she supported him. She testified that her other daughter Rola had nothing to do with them.”¹³

“The claimant realized at an early age that he was homosexual (gay). He was attracted to men since he was approximately 11 or 12 years old. He did not confide this fact to anyone at that time as he did not wish to subject himself to negative remarks. He also had difficulty admitting it to himself.”¹⁴

- **Have they told anyone in their family about their sexual orientation? How did those family members react?**
- **If they haven't told anyone in their family, what reasons have stopped them from doing so? How would their family react to a disclosure about homosexuality?**
- **If they were accepted as a refugee in Canada, do they think they would then be able to tell any family members about their homosexuality?**
- **Have they disclosed their sexual orientation to any friends in their country of origin? How did they react?**
- **Have they told any friends or family in Canada? If not, what reasons are stopping them from doing so? If yes, how have they reacted?**

2. Lesbian and Gay Contacts and Activities in the Country of Origin and Canada

¹¹ *Re G.J.M.* [2002] C.R.D.D. No. 71, on line: QL (CRDD).

¹² *Re L.L.R.* [1999] C.R.D.D. No. 18, on line: QL (CRDD).

¹³ *Re U.J.J.* [1999] C.R.D.D. No. 45, on line: QL (CRDD).

¹⁴ *Re L.U.M.* [1996] C.R.D.D. No. 193, on line: QL (CRDD).

This is a topic where information about lesbians and gay men in the country of origin is useful. If one knows about the social and political aspects of a lesbian and gay "community," one may be able to better assess how the credibility of a claimant. For instance, a gay man may know about the areas where men meet, like a park or the gay beach on the river. There are other social activities of lesbians and gay men that are more secretive, but may be known to the claimant if they were ever in contact with other lesbians and gay men

► **Contacts with other Lesbians and Gay**

Men: Once someone has come out to themselves, they may or may not seek out other lesbians and gay men.

*"The claimant . . . displayed no public manifestations of his homosexuality in Colombia. He did not frequent establishments catering to the gay community in Colombia nor was open expression of his sexual orientation a priority for him either in Colombia, Italy or Canada. He asserts that his sexual preference was not obvious to the public at large in Colombia . . . "*¹⁵

*"Once in the troupe, I heard about a bar where homosexuals congregated called "Pebbles" from other gays in the drama unit. I went there for the first time in September 1980 . . . I was very nervous and went alone."*¹⁶

*"I was very careful when I went to the Park because it was known that the police not only monitored the Park but also conducted raids during which anyone suspected of being gay was arrested."*¹⁷

*"In 1996, his companion introduced him to an underground gay club, a "pleasant" place where they could "share the same language and feeling."*¹⁸

- **Did they know any gay people in their country of origin? If they did not meet any other gay person, what are the reasons that could explain the difficulty in meeting other gay men and lesbians?**
- **If they know lesbian and gay men in their country of origin, how did they meet them? Do they primarily know gay men? Lesbians? Or both?**
- **What kind of lives did other lesbians and gay men lead? Did they have difficulties with their families or employers regarding their homosexuality?**
- **Where do gay men and lesbians go to socialize? How do they meet each other?**
- **Are all lesbians and gay men secretive about their lives or are some more open?**
- **Are there slang terms for homosexuals in their language? What words do lesbians and gay men use to refer to themselves?**

¹⁵ [1999] F.C.J. No. 1203 (QL), on line: QL (CRDD).

¹⁶ *Re O.P.K.* [1996] C.R.D.D. No. 88, on line: QL (CRDD).

¹⁷ *Re G.U.S.* [1996] C.R.D.D. No. 239, on line: QL (CRDD).

¹⁸ *Re U.F.S.* [1999] C.R.D.D. No. 81, on line: QL (CRDD).

- **Contacts or Knowledge about Lesbian and Gay Groups:** Some countries have fledgling lesbian and gay rights groups.

*“...he answered that he had never contacted a gay organization because he was going to school and was not interested and had no information. It is not believable that a gay person who found himself faced with the level of discrimination the Claimant asserts he faced would have no interest or no knowledge of developments with regard to gay rights in his country nor any interest or knowledge in the existence of gay organisation”*¹⁹

*“The claimant stated that he looked for help in regard to his homosexual problems. He was given an address but was unable to locate any agency or group.”*²⁰

*“The claimant was familiar and described in credible detail locations of places within Tallinn, the capital city of Estonia, where he lived, associated with homosexual activities.”*²¹

*“The claimant was a founder of a gay rights organisation that operated unofficially in Cuba.”*²²

- **Does the claimant know of any lesbian and gay groups in their country of origin?**
- **If not, do they think any exist now, or existed in the past?**
- **If they know of some organizations, what are their names and what kind of activities are they involved in?**
- **In what parts of the country do they operate? Is it easier to operate in certain regions of the country ?**
- **Do any gay groups do work in the area of HIV/AIDS? Do any lesbians groups work with other women's groups?**
- **Do they do any political work like lobbying governments to provide human rights protection to sexual minorities?**
- **Do gay women and gay men share the same social and political spaces?**
- **Do they know any members of these groups personally?**
- **Have they gone to any activities or meetings? If not, are there any specific reasons why they choose not to get involved in any activities? If yes, which activities have they attended?**

¹⁹ *Re Z.N.B.* [2002] C.R.D.D. No. 10, on line: QL (CRDD).

²⁰ *Re J. (F.H.)* [1993] C.R.D.D. No. 98, on line: QL (CRDD).

²¹ *Re U.E.T.* [2000] C.R.D.D. No. 66, on line: QL (CRDD).

²² *Re C.Y.T* [1998] C.R.D.D. No. 186, on line: QL (CRDD).

- **Contacts with Lesbians and Gay Men in Canada:** Many lesbians and gay men find it easier in Canada to meet other gay people or to get involved in social activities, to go to bars or access gay and lesbian culture (newspapers, magazines, books). Some claimants who have been in contact with a lesbian and gay group have obtained a letter of support/attestation from that organization.

“In regard to your sexual orientation, you have provided a letter from the local Gay Pride Week Organization. You have also provided photographs of your active participation in Gay Pride activities.”²³

“The panel is also satisfied that he is a homosexual. The claimant provided to the panel as evidence, a letter from the Asian Community Aids Services (ACAS), which provides services to Gay Men Education /Outreach Program, verifying that the claimant is an active member of this organisation. Another letter is from Asian Les-Bi-Gay Peer Support Services, verifying that the claimant is an active member fo this organisation.”²⁴

“The panel also accepts the claimant’s identity as a homosexual . . . In Canada, the claimant resides in a communal house with five other gay men. He learned of this accommodation after becoming acquainted with the owner of a gay bookstore in Toronto. The owner of the store was available to testify at the hearing; however, the panel deemed his testimony unnecessary in light of the other evidence provided.”²⁵

“In Toronto he belongs to a gay and lesbian swim club which enters into competitions. It is commonly recognized as a gay club . . .”²⁶

“When asked whether he was involved in any gay organizations in Calgary, Mr Andrei stated that he and the claimant were normal people and had their own circle of friends.”²⁷

- **Are they in touch with any gay men and lesbians in Canada?**
- **What do they know about the gay and lesbian communities here in Canada? Are they aware of any social or political activities that some gay men and lesbians are involved in here in Canada?**
- **Have they read any gay or lesbian magazines, books? If so, what have they read?**
- **Do they socialize with friends in any gay or lesbian social venues? Which bars, cafes, restaurants do they like to go out to?**
- **How different are the lives of lesbians and gay men in Canada as opposed to lesbians and gay men in their country?**

²³ *Re M.R.D.* [1998] C.R.D.D. No. 164, on line: QL (CRDD).

²⁴ *Re H.F.P.* [1999] C.R.D.D. No. 188, on line: QL (CRDD).

²⁵ *Re P.L.Z.* [2000] C.R.D.D. No. 97, on line: QL (CRDD).

²⁶ *Re L.U.M.* [1996] C.R.D.D. No. 193, on line: QL (CRDD).

²⁷ *Re M.B.H.* [2002] CRDD No. 299, on line: QL (CRDD).

3. Discrimination, Repression & Persecution in the Country of Origin and Canada

Again, this is an area where a panel member should be as informed as possible. For instance, if a lesbian from Russia says she fears that she will be forced into a psychiatric institution if she returns to Russia, there exists documentation to support her belief. The International Gay and Lesbian Human Rights Commission has documented cases where lesbians underwent forcible psychiatric treatment in Russia.²⁸ If a Hungarian gay man says he believes that law enforcement officials have his name on a list of homosexuals, there is reason to believe this is the case in Hungary.²⁹ A gay person from Colombia may express a fear of being victimized in ‘social cleansing’ campaigns conducted by police, military and paramilitary forces. This kind of allegation is supported by documentation from human rights groups.³⁰

- ▶ **The claimant’s subjective fears:** The claimant is likely to have some personal knowledge of the persecution she or he fears if they were to return to the country. This may be based on their own experience of persecution, or on their personal knowledge of the treatment of lesbians and gay men.

“Another reason I do not want to return to Algeria is because I am a homosexual; I want to be free to live as a homosexual. I was engaged in homosexual activities in Algeria but it was too dangerous and I could not live my life freely. If it was discovered that I am homosexual then I could be killed by people in society or by the police or military in Algeria.”³¹

“Respecting protection, we have considered whether the police would afford the claimant protection. Based on his own evidence of the killing of a homosexual person in 1997, we find that he would probably suffer the same fate with the exposure of his own alternative lifestyle. The claimant had asked onlookers whether police had intervened and he had been told that there was no intervention by the police.”³²

- **What does the claimant fear will happen to them if they return to their country of origin?**
- **What leads them to believe they will be persecuted?**
- **If their beliefs about persecution are based on personal experience, can they describe what happened to them?**

²⁸ Masha Gessen, *The Rights of Lesbians and Gay Men in the Russian Federation* (San Francisco: International Gay and Lesbian Human Rights Commission, 1994) pp. 17-18.

²⁹ Sandor Borsos, «Hungarian Gays Stand Up to Police» *The Advocate* (5 mai 1992) 44.

³⁰ Juan Pablo Ordoñez, *Ho Human Being is Disposable: Social Cleansing, Human Rights, and Sexual Orientation in Colombia* (Colombia Human Rights Committee, International Gay and Lesbian Human Rights Commission and Proyecto Dignidad por los Derechos Humanos en Colombia, 1995).

³¹ *Re P.L.Z. [2000]* C.R.D.D. No. 97, on line: QL (CRDD).

³² *Re A.M.A. [2000]* C.R.D.D. No. 103, on line: QL (CRDD).

- **Discrimination & Repression in the Country of Origin:** The claimant may have acquired knowledge about the treatment of lesbians and gay men in their country of origin through available documentation, their own experiences or through information gathered through friends and contacts.

“...the claimant contacted the Pink Triangle organization in Malaysia. He spoke with the chairman by telephone, asking him for documents regarding how homosexuals are treated in Malaysia. That person advised him that there were some documents; however, he did not provide them to the claimant as he was concerned about any possible effect on his organization.”³³

“Another of the claimant’s gay friends, XXXXX, described a police raid on a gay bar which resulted in 17 gay men and 20 lesbian women being detained. While in detention they were all “kicked, beaten and hit with guns and clubs . . . this treatment was meted out to the lesbians as well as the gay men.”³⁴

“A friend of mine from the park warned me several times of undercover police men in the Park, who lured gay men in order to charge them with criminal activity, and send them to prison. For most gay men, prison means death, because they are never released, or they “disappear” or are “accidentally” killed in prison.”³⁵

“The claimant described the situation of lesbians in Mexico as even more complex and difficult than that of homosexual men. In a macho society such as Mexico, it is very upsetting for men to think that a woman does not want to have a man and, in this situation, men want to teach lesbian woman “what they are missing” by forcing them to have sex.”³⁶

“The Tribunal’s assumption that the claimant ought to have known of the police raid on this bar ignores the evidence that he resided some 500 kilometres from Sofia and that his first gay encounter occurred only days prior to this police raid.”³⁷

- **What kind of barriers prevent lesbians and gay men in their country from being full and equal members of society?**
- **What kind of discrimination exists against lesbians and gay men?**
- **What are the official laws on homosexuality in their country?**
- **Who is responsible for acts of violence against lesbians and gay men? Who is responsible for discrimination against lesbians and gay men?**

³³ *Re L.U.M.* [1996] C.R.D.D. No. 193, on line: QL (CRDD).

³⁴ *Re C.L.Q.* [1996] C.R.D.D. No. 145, on line: QL (CRDD).

³⁵ *Re G.U.S.* [1996] C.R.D.D. No. 239, on line: QL (CRDD).

³⁶ *Re V.L.W.* [1996] C.R.D.D. No. 112, on line: QL (CRDD).

³⁷ *Voyvodov c. Canada (Minister of Immigration)* [1999] F.C.J. No. 1417 (QL).

- ▶ **Knowledge of the Canadian Situation:** The claimant may have acquired some knowledge of the status of lesbians and gay men in Canada, either through their contacts with the lesbian and gay community, or through their own experience or research.

“Since I moved to Toronto, I have enjoyed a freedom in movement and an acceptance that I can almost take for granted . . . Also being able to hold my partner’s hand not having to nervous or scared because nobody would look twice anyway. The experience of having 650,000 people on Toronto’s Gay Pride Day open and proud. Such an experience would be such a dream back in Singapore and would be impossible.”

“In Canada, he does not have to hide his homosexuality. He wants to be able to live in a certain type of relationship and be proud of it; he wants to be respected . . . The panel notes his genuine pride in displaying the medals he won during his participation in a gay and lesbian swim club in Toronto.”³⁸

“Since the claimant has come to Canada, he testified orally that he has become involved in the gay community to some extent. He met a man here with whom he now has a close relationship . . . A letter from the claimant’s partner indicates that they visit gay establishments in the gay section of Toronto. The claimant was asked what sort of social life the two of them have and de described where they go in the Church Street area.”³⁹

“...you have done extremely well here in Canada, You have discovered what it means to be free, in the sense of being whom you are. And as you explained in your own testimony, the experience of such freedom would have made it more difficult to go back to your former existence.”⁴⁰

- **Do they know what the legal status of lesbians and gay men in Canada?**
- **Are they aware of social and political problems faced by lesbians and gay men in this country?**
- **Have they encountered discrimination in Canada?**
- **Do they fear people finding out about their sexual orientation in Canada?**
- **If so, what do they fear would happen if people in Canada knew of their sexual orientation?**
- **Do they think it will be easier for them to be gay in Canada than in their home country?**
- **Do Canadians seem more accepting of homosexuality? On what do they base their answer?**

³⁸ *Re L.U.M.* [1996] C.R.D.D. No. 193, on line: QL (CRDD).

³⁹ *Re G.J.M.* [2002] C.R.D.D. No. 71, on line: QL (CRDD).

⁴⁰ *Re M.R.D.* [1998] C.R.D.D. No. 164, on line: QL (CRDD).

