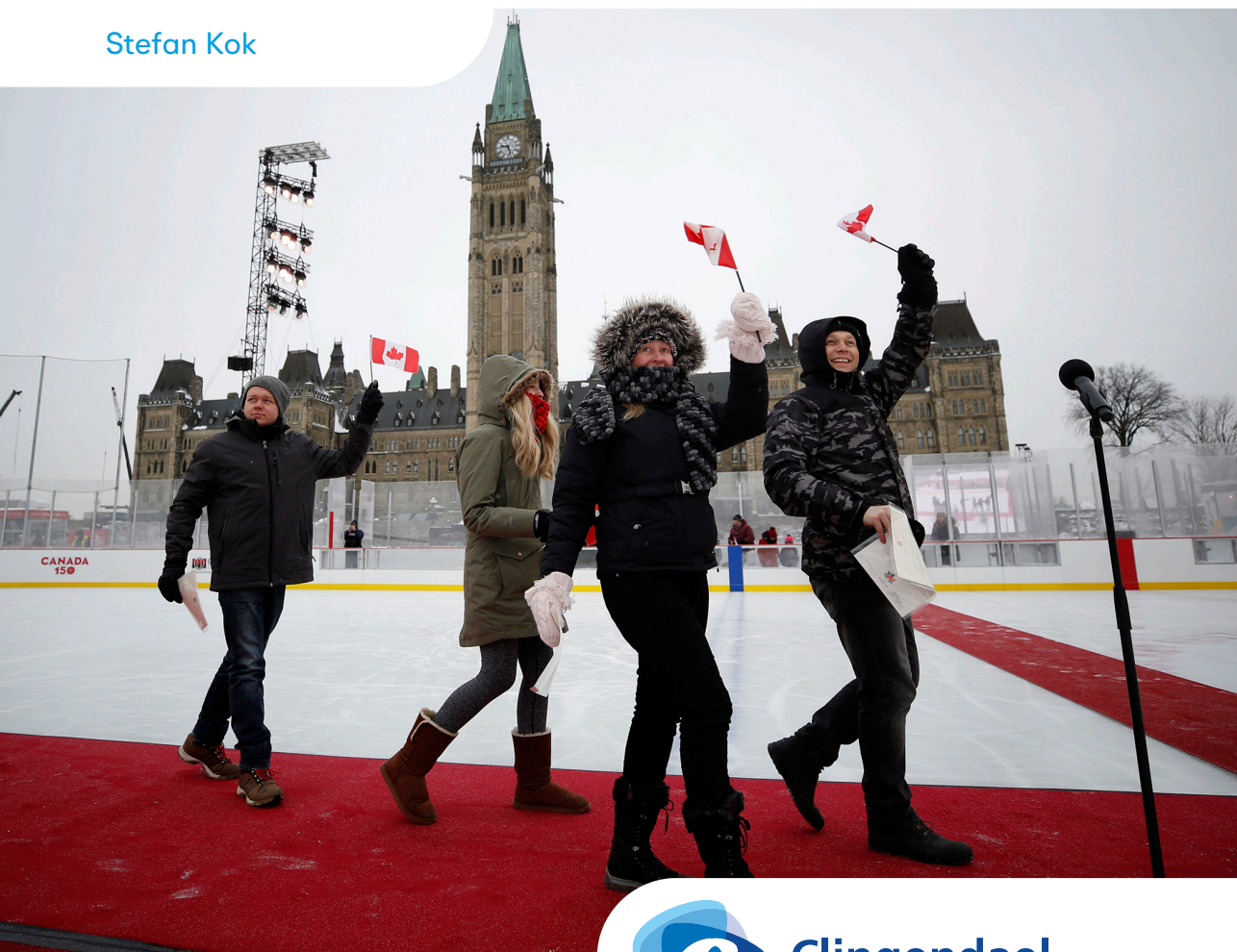


A 'safe haven' for refugees?

Canada's balancing act between promise and pressure

In Search of Control
Canada Country Report

Stefan Kok



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Cover photo: New Canadian citizens during a citizenship ceremony on the Canada 150 ice rink on Parliament Hill in Ottawa, Ontario, Canada, December 15, 2017. © Reuters

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About the Project

In December 2022, the Dutch government initiated a [working group](#) focussing on the 'fundamental reorientation of the current asylum policy and design of the asylum system.' Its aim is to further structure the asylum migration process, to prevent and/or limit irregular arrivals, and to strengthen public support for migration. One of the [assumptions](#) is that the externalisation of the asylum procedure could be a feasible policy option through effective procedural cooperation, with a country outside the EU, that 'passes the legal test'. In other words, if it would be operationalized in conformity with (international) legal standards and human rights obligations. In that context, the working group expressed the need for more insight on how governments with other legal frameworks than the Netherlands, as an EU Member State, deal with the issue of access to asylum, either territorial or extra-territorial, in order to provide thoughts or angles for evidence-based policy choices by the Dutch government, at national and/or European level.

The purpose of this comparative research project, led by the Clingendael Institute, was to collect existing knowledge about the asylum systems of Australia, Canada, Denmark, the Netherlands, and the United States, and to complement this with an analysis of national legislation, policy, and implementation practices, focussing on access to (extra-)territorial asylum. While there are overlaps, each of the asylum and refugee protection systems in the research project operates in very different geographical situations and political contexts.

Beyond the five country case studies, a separate synthesis report that is based on a comparative analysis of the respective legal frameworks and the asylum systems of those countries addresses directions for Dutch courses of action. The synthesis report and the country case studies can be accessed [here](#).

The main question to be answered in the national reports is: *Which instruments are applied or proposed by Australia, Canada, Denmark, the Netherlands and the United States concerning or affecting access to asylum procedures and humanitarian protection?*

Therefore, the country research focuses on several central elements of the national asylum systems, including their access to, and implementation of, interdiction practices, border and asylum procedures and other legal pathways. These were put in a broader public, political and legal context, taking into account the countries' national policy aims and objectives.

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Introduction

This report provides insight into the key features of Canada's asylum policy and practice regarding access to protection, extra-territorial and territorial asylum.

There is a vast amount of information on the Canadian immigration and refugee system both from official government sources and researchers. For example, through the Asile Project, two recent reports were written on the Canadian system.¹ New developments with respect to the US Canada Safe Third Country Agreement have already been given considerable in-depth analysis from Canadian and international scholars.² Given the short period for this research (July-November 2023) and the overall objective of the research project, this report will describe those features and practices in Canada which could provide further guidance and insights for the Dutch and EU context.

The report will first describe the main features of the Canadian system, which will be further detailed and referenced under the specific sections. The report will then include some statistics for a better understanding of the Canadian context. It will look at the societal and demographic context. It will focus next on border management, access to the in-land asylum procedures (territorial asylum), and pathways for regular entry through extra-territorial asylum. Lastly, it will provide more statistics and look at the outcomes of the system.

Canada is openly an immigration country. It also prides itself in a tradition of offering refugee protection and a national legal system based on the rule of law and non-discrimination.

With respect to access to the Canadian asylum system, there are a number of current and specific issues which will be described in more detail, as these are also relevant for the contexts of other countries: The application of the Canada

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- 1 Audrey Macklin and Joshua Blum, [Country Fiche Canada](#), Asile Project, January 2021; Roberto Cortinovis and Andrew Fallone, [Country Report Canada, An analysis of the Private Sponsorship of Refugees \(PSR\) program and the Economic Mobility Pathways Pilot \(EMPP\)](#), Asile Project, 2022.
 - 2 Sharry Aiken and Alex Neve, [Refugee "Responsibility Sharing" – Challenging the Status Quo](#), PKI Global Justice Journal, 2023.

US Safe Third Country Agreement; Canada's refugee resettlement system and complementary legal pathways; and Canada's system of target and level setting for immigrants and refugees.

The Canada – US Safe Third Country Agreement (STCA)

The Canada – US Safe Third Country Agreement (STCA) features prominently in academic, government and media debates in Canada, as well as jurisprudence in Canada. A recent increase in numbers of asylum seekers who spontaneously entered Canada via the United States between “points of entry”, was the main reason for an amendment to the Agreement in 2023. This amendment expanded the scope of the STCA. In a landmark judgment of 2023, the Supreme Court of Canada held that the STCA is not unconstitutional, but it did formulate essential safeguards and conditions for the implementation of the STCA. In this, Canada's courts seem to follow the European courts' jurisprudence on safe third countries.

Refugee resettlement and legal pathways

Refugee resettlement is a key component of Canada's refugee policies. The involvement of private sponsors is widely supported in Canada. Recently, Canada has also opened complementary legal pathways. There was a visa programme for Ukrainians till July 2023 and as of October 2023 there is a permanent resident pathway for Ukrainians.³ As part of the negotiated amendment to the Canada-US Safe Third Country Agreement, Canada introduced a humanitarian visa and permanent residence programme for its own region, which is in alignment with the *US Safe Mobility Initiative*.⁴

Target and Level setting

Canada has a system of target and level setting with respect to the 'immigration mix', including economic immigration, family immigration, refugee resettlement and in-land asylum. They follow consultations with stakeholders, labour market analyses and public surveys.

3 Immigration, Refugees and Citizenship Canada, "[Program Delivery Update: Ukraine special measures](#)," 14 June 2023; Immigration and Citizenship Canada, "[Permanent residence for Ukrainian nationals with family members in Canada](#)," 14 June 2023.

4 Immigration, Refugees and Citizenship Canada, "[Statement from Minister Miller on Canada's commitment to support migrants in the Americas](#)," October 10, 2023. See also the US country report in this research.

1 Setting the scene: general background and relevant developments

Demographic situation: immigrants and refugees

In 2022 Canada had a population of over 38,9 million people.⁵ A large number of Canada's population are immigrants. Statistics Canada (Statcan) reported that in 2022 23% of the current population had a Permanent Resident status. Compared to the total number of new immigrants who annually settle in Canada permanently, the number of refugees has been relatively low. Most immigrants arrive under the economic immigration classes. For example, in 2019 this was 58% of all 341,000 permanent residents that year.⁶

Although Canada's population density is low when measured by the total size of the country, most of the Canadian population live in urban areas. Statcan reported that in 2021 over 73% of the Canadian population lived in urban areas of 100,000 persons or more.⁷ In particular the largest metropolitan areas of Vancouver, Montreal and Toronto face pressures on housing, infrastructure, the environment and services. Yet, their central position in the national and regional economies make these areas also dependent on immigration and, as a result, they are main areas of settlement for immigrants, including refugees. Of the provinces, Ontario is the main area of settlement for refugees. According to Statcan, in 2016 two thirds of all protected persons (as permanent residents) who were admitted in that year, resided in Ontario in December 2016, as opposed to 40% of permanent residents of all immigration categories combined.

Of the metropolitan areas, Toronto is the main area of settlement for immigrants and refugees in Canada. In the Greater Toronto area there are 6,6 million people. In the wider area around Lake Ontario (the "Golden Horseshoe") live 9 million

5 Statistics Canada, "[Annual Demographic Estimates: Canada, Provinces and Territories, 2022](#)," 28 September 2022.

6 Government of Canada, [2020 Annual Report to Parliament on Immigration](#), 2020.

7 Statistics Canada, "[Canada's large urban centers continue to grow and spread](#)," 2 September 2022.

people. The Toronto area is situated near the Great Lakes area and includes a Green Belt Area consisting of protected farmland and natural conservation areas.⁸ Thus, policies for urban growth need to take many aspects into account.⁹ This can lead to political tensions between the federal and the regional governments.

Many Canadians are either first generation or second generation immigrants. To a large extent, Canada has been able to select its immigrants, based on education and skills, work experience and language. This has led to a diverse population, at least ethnically, but perhaps less so with respect to religion. According to Statistics Canada the religious make-up of Canada in 2019 was as follows: persons with a Christian religion 63.2%, persons with no religious or secular perspectives 26.3%, persons with other faiths included Muslim 3.7%, Hindu 1.7%, Sikh 1.4%, Buddhist 1.4%, Jewish 1%).¹⁰

Refugees are part of Canada's diversity. Although refugee protection is seen as a humanitarian obligation, the economic situation and integration of refugees is also monitored. Many refugees find access to the labour market, although this may vary per specific refugee group.¹¹

Embedding of refugee policies in law and politics

Canada is a federal state. Immigration is one of the areas where, under Canada's Constitution, jurisdiction is shared between the federal and provincial/territorial governments.¹² There are formal regular consultation and cooperation structures between the federal and provincial/territorial governments. Quebec has a somewhat special status compared to other provinces/territories.¹³ In the Canada-Quebec accord formal arrangements with respect to immigration are

8 See for example chapter 1 of [The 2023 Ontario Economic Outlook and Fiscal Review: Building a Strong Ontario Together](#), Government of Ontario.

9 See for example article 6 of [Ontario Places to Grow Act, 2005](#); Government of Ontario, [Size and location of urban growth centres in the Greater Golden Horseshoe: Addendum 1](#), 2021.

10 Statistics Canada, ["Religion in Canada,"](#) 28 October 2021.

11 Garnett Picot, Yan Zhang and Feng Hou, [Labour Market Outcomes among Refugees in Canada](#), Statistics Canada 11F0019M no,419, 11 March 2019.

12 Parliament of Canada, ["Parliamentary Institutions, The Canadian system of government."](#)

13 Government of Canada, ["Federal-Provincial/Territorial Agreements."](#)

laid down.¹⁴ The accord includes, with reference to the Refugee Convention, also provisions on refugee protection in S. 17-20.

While refugee resettlement is the main pillar of Canada's refugee policies, there is also significant spontaneous asylum migration, which is politically and practically more complicated. This involves many actors at various government levels (federal, provincial and municipal) and civil society.

The main legal framework for refugee protection is provided by the Immigration and Refugee Protection Act (IRPA)¹⁵ and the Immigration and Refugee Protection Regulations (IRPR).¹⁶ The rights granted to refugees and protected persons, whether admitted through the inland system or the resettlement system, are in principle the same. Refugees are all granted permanent residence status.

The majority of refugees in Canada arrive through resettlement.¹⁷ According to the 2021 census, over 218,000 refugees were admitted as permanent residents between 2016 to 2021. About 70% of these refugees were resettled, either after a referral from UNHCR or private sponsors. Statistics Canada reported that close to 61,000 refugees from Syria were resettled in this period. The other important countries of origin were Iraq (15,505), Eritrea (13,965), Afghanistan (9,490) and Pakistan (7,810). Statcan points to the fact that over the period between 1980 and 2021 the nationalities and places of birth of refugees reflect conflicts and international events.

The number of refugees who, between 2016 to 2021 obtained permanent residence after an in-Canada asylum claim and subsequent recognition was approximately 30% of all refugees in that period, close to 85,000 persons.¹⁸ In 2022, the main countries of origin whose claims were referred to the

14 Government of Canada, [*Canada-Québec Accord relating to Immigration and Temporary Admission of Aliens*](#), 5 February 1991.

15 Government of Canada Justice Laws, [*Immigration and Refugee Protection Act \(S.C.2001, c. 27\)*](#), 2001.

16 Government of Canada Justice Laws, [*Immigration and Refugee Protection Regulations \(SOR/2002-227\)*](#), 2002.

17 Statistics Canada, [*"Immigrants make up the largest share of the population in over 150 years and continue to shape Canada,"*](#) 26 October 2022.

18 Statistics Canada, [*"Immigrants make up the largest share of the population in over 150 years and continue to shape Canada,"*](#) 26 October 2022.

Immigration and Refugee Board were Haiti (9,353), Mexico (7,483), Turkey (5,611), Colombia (4,997) and Iran (4,431).¹⁹

Level and Target setting: economic immigration

An important policy tool that reflects Canada's attitudes toward immigration and refugee protection are the periodical, annual or multi-annual immigration levels for all types of immigration. To set these levels annual consultations are held with a wide range of stakeholders.²⁰ These consultations are also organized per province and take place in municipalities.²¹ The target and level setting is accompanied by extensive (longitudinal) research by Statistics Canada.²²

The 2023-2025 targets show that economic migration remains at the heart of Canada's immigration policies.²³ The overall targets are respectively 465,000 persons in 2023, 485,000 in 2024 and 500,000 in 2025. Of these, the economic immigration categories take up close to 60%. The 'Federal high skilled class' and the Provincial Nominee Programs make up the majority of the economic classes. Furthermore, family-related immigration amounts to close to 100,000 persons per year, including about 30% for parents and grandparents. Refugees, either through in-asylum or resettlement, make up close to 15% of the targets. On a population of close to 38 million people, the annual levels for immigration are high.

Political and sociocultural context

In the last decade, the main governing political parties are the Liberal Party and the Conservative Party. The Liberal Party under prime minister Trudeau has governed since 2015 and can be characterized as more open and left. The previous Conservative Harper Government (2008-2015) could be characterized as more closed and right with respect to migration and refugee protection. However, in both government periods immigration targets and numbers of immigrants were high. There appears to be a political consensus – as was also

19 Immigration and Refugee Board of Canada, "[Claims by country of alleged persecution 2022.](#)"

20 See also Advisory Council on Migration [Realism about numerical targets](#), 21 December, 2022.

21 See for example Immigration, Refugees and Citizenship Canada, [2022 consultations on immigration levels – final report](#), 2022.

22 See for example Statistics Canada, "[Immigrants and non-permanent residence statistics.](#)"

23 Immigration, refugees, Citizenship Canada, "[Notice supplementary immigration levels for the 2023-2025 Immigration Levels Plan.](#)" 1 November 2022.

noted by Picot in 2008²⁴ – of the importance of (economic) immigration for the Canadian national and regional economies.

Constants in Canada's approaches are thus an open attitude towards economic migration, but also a sizable number of resettled refugees, an asylum system that can be deemed robust.²⁵ At times, there is a more restrictive attitude towards spontaneous arrivals of asylum seekers. In the case of the Conservative Government between 2008 and 2015, this led to openly harsh policies, including amendments to the IRPA and IRPR, which aimed to deter asylum seekers from accessing Canada's asylum procedures. The Liberal government's policies with respect to spontaneous asylum seekers are more open, but they do reflect a management and control approach.

Restrictive policies which were adopted by the Harper government were, in part, abolished or not applied by the Trudeau government. The recent amendments of the Canada-US Safe Third Country Agreement show that also for the Liberals an increase in the number of asylum seekers has led to restrictive policies. However, the number of immigrants, including resettled refugees in absolute numbers and as a proportion of all immigrants, is considerably higher under the Liberals than under the Conservatives.

Attitudes under the Trudeau government (2015-current)

The language used by the Canadian Trudeau government with respect to immigration and refugee protection remains open, despite a growing number of asylum seekers in the period up to 2023 and pressures on urban areas. This is for example evidenced by the 2023-2024 report to Canadian Parliament:²⁶

Immigration levels will drive economic growth and resiliency, reunite families, and protect democratic and human rights – all key priorities as Canada moves forward to become more prosperous and remain a world leader in refugee resettlement.

24 Garnet Picot, [Immigrant Economic and Social Outcomes in Canada: Research and Data Development at Statistics Canada](#), Analytical Studies Branch Research Paper Series Statistics Canada, December 2008.

25 Macklin and Blum, [Country Fiche Canada](#), Asile Project, January 2021.

26 Immigration, Refugees and Citizenship Canada, [Departmental Plan 2023-2024](#).

However, the increased influx of asylum seekers at the border with the US, has figured highly on the political agenda. The perceived 'loophole' in the Canada-US Safe Third Country agreement (STCA), which did not apply to persons irregularly entering the country between regular entry points, was criticized by the opposition and led to political responses, aimed at reducing the asylum flows. After the 2023 amendment of the STCA this criticism has faded.

In 2023, Canada's immigration policies, in general, do not seem to be questioned by the main political parties or the public. The effectiveness of the asylum system is a point of issue. For example, the Conservative Party's 2023 platform asks the public to endorse a campaign to improve the immigration system, stating: *Conservatives believe in a well-functioning immigration system that promotes family reunification and allows new immigrants to achieve their dreams.*²⁷ In its 2021 platform, the Conservative party said it wants an immigration system that *...[o]ffers refuge to heroic human rights defenders and those fleeing persecution who would enrich our national life. The Conservative Party further held that the definition of refugee ... [d]oes not adequately designate internally displaced people, or those extremely vulnerable to ongoing persecution but who have not crossed a national border or fall outside the UNHCR definition.*

There does not, at this point, seem to be a strong populist party that would put asylum high on the political agenda. In 2023, the right-wing People's Party of Canada, which currently does not hold any seats in Canadian parliament, takes a strong stance against the current immigration levels.²⁸ It advocates a reduction of the immigration levels to 150,000 persons per year, with a focus on economic migration. Canada should, according to the People's Party of Canada accept fewer refugees and refugee protection should focus on 'persecuted groups who have nowhere to go in their countries'.

Harper governments (2008-2015)

The more recent positive language from the main political parties in Canada, is in rather stark contrast with the attitudes under the previous conservative Harper governments. Then, the aim of combating irregular migration led to restrictive legislation with respect to refugee claimants, but also negative messaging. For

27 See for example the Campaign of the Conservative Party, "[You deserve an immigration system that works.](#)"

28 People's Party of Canada (PPC), [Immigration: reducing overall levels and prioritizing skilled migrants](#), updated August 2023.

example, the Harper government had a critical and restrictive approach towards certain expressions of Islam and religious or cultural practices deemed 'barbaric'. It introduced specific legislation for this,²⁹ including measures against wearing the Niqab in public, which led to court cases.³⁰

Asylum was another contentious issue during the Harper governments. There was an active government campaign to discourage Roma from EU-countries to apply for asylum³¹ and a strong government response to the arrival of a boat with Tamil asylum seekers, the MV Sun Sea.³² This was flanked by more restrictive asylum measures, for example in the Balanced Refugee Reform Act (Bill C-31)³³ and Protecting Canada's Immigration System Act.³⁴ Many of the policies have not been successful or at least could not be implemented because of judicial scrutiny or practical considerations. This is true for "Designated Foreign Nationals", which allows for extremely restrictive practices regarding asylum seekers who as a group of two or more arrive irregularly through smugglers. The concept was used only once, but it remains in the IRPA.³⁵ Resettlement practices under the Harper government were also criticized by some observers for being slow and potentially discriminatory.³⁶

The strategic communication on asylum policies under the Harper government was somewhat reflected in actual practice. In 2014, for example, under the Harper government the overall immigration levels were determined to be – as a target – 261,000 persons.³⁷ About 10% of the levels of all immigrants were for

29 Government of Canada Justice Laws, [Zero Tolerance for Barbaric Cultural Practices Act](#), S.C. 2015, c. 29, 18 June 2015.

30 See for example Federal Court of Appeal, [Canada vs. Ishaq](#), 2015 FCA 194, 15 September 2015.

31 Sean Rehaag, Julianna Beaudoin, Julianna and Jennifer Dench, [No Refuge: Hungarian Romani Refugee Claimants in Canada](#), Osgoode Hall Law Journal 52, no.3, 1 January 2016.

32 Government of Canada, [Statement on arrests of alleged organizers of the MV Sun Sea](#), 15 May 2012.

33 Parliament of Canada, [An Act to amend the Immigration and Refugee Protection Act, The Balanced Refugee Reform Act, The Marine Transportation Act, and the Department of Citizenship and Immigration Act](#), Bill C-31, Assented to 28 June 2012.

34 Government of Canada Justice Laws, [Protection Canada's Immigration System Act](#), S.C. 2012, c. 17, 28 June 2012.

35 See Macklin and Blum, [Country Fiche Canada](#), Asile project, January 2021, online: .

36 For example Laura Lynch, [Canada considers prioritizing religious minorities in Syria refugee resettlement](#), CBC News, 12 December, 2014.

37 Immigration, Refugees and Citizenship Canada, [Supplementary Information to the 2014 immigration levels plan](#), 1 November 2013.

refugees and humanitarian grounds. In comparison, the targets for 2023-2025 under the Trudeau government show annually overall higher numbers, but also a higher proportion of refugees among all immigrant classes: close to 20% in 2023 and 16% in 2025.

Civil society and support for refugee protection in Canadian society

Civil society plays an important role in the shaping of Canada's refugee protection system. NGOs such as the Canadian Council for Refugees, Amnesty International and the Canadian Association of Refugee Lawyers (CARL) are active in strategic litigation, as is evidenced by *Canadian Council for Refugees v. Canada (Citizenship and Immigration)* of 23 June 2023, which was supported by many NGOs and lawyer's organizations. Canada's resettlement program through private sponsors is also evidence of a strong organization of civil society. Canada's consultations with respect to immigration targets and levels also shows confidence in the input from civil society and society at large.

Overall, the Canadian population which itself consists of many recent immigrants, seems to support Canada's policies to accept and encourage immigration, including resettled refugees. The platforms of the Conservative party with a focus on community based sponsorship, are also evidence of the role of civil society and support for refugee resettlement. There is a very active network of civil society and asylum lawyers who engage in strategic litigation and are involved in resettlement.

A continued focus on economic immigration

In Canadian policies, there remains a strong focus on economic immigration, based on analyses of the labour market. The relationship between refugee protection and economic potential is also highlighted in the new "Economic Mobility Pathways Pilot". This new instrument aims to combine economic migration with refugee resettlement.³⁸ It is part of the 2022 *Immigration Plan to grow the economy*³⁹, which consists of the following:

38 Immigration, Refugees and Citizenship Canada, "[Economic mobility pathways pilot.](#)"

39 Immigration, Refugees and Citizenship Canada, "[An immigration plan to grow the economy.](#)" 1 November 2022.

- a long-term focus on economic growth, with just over 60% of admissions in the economic class by 2025;
- using new features in the Express Entry system, such as the introduction of category-based Express Entry,⁴⁰ to welcome newcomers with the required skills and qualifications in sectors facing acute labour shortages such as, health care, manufacturing, building trades and STEM (Science, Technology, Engineering and Math);
- increases in regional programs to address targeted local labour market needs, through the Provincial Nominee Program, the Atlantic Immigration Program, and the Rural and Northern Immigration Pilot;
- reuniting more families faster;
- ensuring that at least 4.4% of new permanent residents outside Quebec are Francophone
- support for global crises by providing a safe haven to those facing persecution, including by expanding the Economic Mobility Pathways Pilot.

Based on immigration targets, Statistics Canada projects that Canada's population may grow to 47,7 million people in 2041.⁴¹ This projected growth is mainly due to immigration. It is projected that in 2041 34% of the population will be immigrants. Due to the ageing population and the lack of birth replacement Statcan considers that migration is an essential factor for rejuvenating the ageing workforce.⁴² According to Statcan, the areas of Vancouver, Montreal and Toronto will remain the main centres for immigrant settlement.

A regional component

One of the economic immigration instruments under the Canada-provincial/territorial agreements are so-called Provincial Nominee Programs (PNPs). These allow provinces to have their own criteria for immigration. Through the Provincial Nominee Programs and other regional streams, and in the case of Quebec under the Canada-Quebec accord, regional interests are reflected in

40 Immigration and Citizenship Canada, "[Express Entry rounds of invitations: Category-based selection.](#)"

41 Statistics Canada, "[Canada in 2041: A larger, more diverse population with greater differences between regions](#)," 8 September 2022.

42 Statistics Canada, "[Immigrants make up the largest share of the population in over 150 years and continue to shape Canada.](#)" 26 October 2022.

Canada's immigration policies. The regional component is also part of the new Economic Mobilities Pathway under the refugee resettlement program.⁴³

The Canada-provincial/territorial agreements can also take into account the role of metropolitan areas. In the Canada-Ontario agreement there is a Canada-Ontario-Toronto memorandum of understanding on immigration, which recognizes Toronto's national role in the area of newcomer settlement.⁴⁴

Although the immigrants using the PNP-pathway will, after a provincial nomination, be granted permanent resident status under the regular federal legislation (IRPA) and are free to settle anywhere in Canada, evaluations show that the immigrants tend to stay in the province/territory which originally issued the nomination.⁴⁵ However, the evaluations also showed that there was significant overlap with federal programs and that there can be issues of procedural efficiency.

Canada recently announced plans to improve Canada's immigration system and an overdue review of the IRPA, which came into force in 2002.⁴⁶ Despite the lack of a large-scale review, the act has undergone revisions to reflect the recent demand for immigration to Canada. For example, IRPA was amended in 2022 to grant the immigration minister the authority to issue [Invitations to Apply to Express Entry](#) candidates who have a human capital attribute that aligns with one of the six newly introduced categories: Healthcare, STEM professions, Trades, Transport, Agriculture and agri-food and French language proficiency.

43 Immigration, Refugees and Citizenship Canada, ["An immigration plan to grow the economy,"](#) 1 November 2022.

44 Immigration, Refugees and Citizenship Canada, [Canada-Ontario-Toronto, Memorandum of Understanding on Immigration](#), 29 September 2006.

45 Immigration, Refugees and Citizenship Canada, [Evaluation of the Provincial Nominee Program](#), Research and Evaluation Branch, November 2017.

46 Immigration, Refugees and Citizenship Canada, [An Immigration System for Canada's Future](#), October 2023.

2 International legal framework

Canada is a party to many international and regional human rights instruments. The governmental manuals refer to international agreements and protocols on refugee protection, women, children, torture, slavery and forced labour, economic, civil and political rights, humanitarian law and organized crime.⁴⁷

The relevant case law of the Supreme Court of Canada in asylum cases is based on the Canadian Charter of Rights and Freedoms (the Constitution Act, 1982). This is to be interpreted in light of Canada's obligations under international human rights law, in particular the 1951 Refugee Convention and the Convention against Torture. These conventions are also specifically mentioned in the IRPA, s. 2(1). In its judgements the Supreme Court also refers to international instruments to which Canada is not a party, including the European Convention on Human Rights.

Key provisions of the Charter of Rights and Freedoms are Section 7 and 12.

Section 7 of the Charter of Rights and Freedoms says that: *Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.*

Section 12 of the Charter says that: *Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.*

For example in *Suresh v. Canada*⁴⁸ the Supreme Court of Canada referred to a wide range of national, regional and international instruments and standards, also from other regions. However, as *Suresh* shows, the Supreme Court of Canada derives its own Charter interpretation from international standards and legal opinions. It did not conclude *a priori* that the prohibition of torture (and the

⁴⁷ See for example Immigration, refugees and citizenship Canada, "[Resettlement: Legal References.](#)"

⁴⁸ Supreme Court of Canada, [Suresh v. Canada](#) (Citizenship and Immigration), 2002 SCC 1.

principle of *non refoulement*) is absolute. This was criticized by, among others, the UN Committee against Torture.

In its 2012 report on Canada, the Committee against Torture⁴⁹ expressed its concern that Canadian law, including subsection 115(2) of the Immigration and Refugee Protection Act, continues to provide legislative exceptions to the principle of non-refoulement. In its 2018 report on Canada reiterated its concern in this respect.⁵⁰ Further concerns were with respect to the Canada – United States of America Safe Third Country Agreement and the mandatory detention for non-citizens designated irregular arrivals. However, the concept of designated irregular arrivals, has not been applied in practice under the current government and has not been litigated before the Canadian courts.

In the recent judgement *Canadian Council for Refugees v. Canada (Citizenship and Immigration)* of 23 June 2023,⁵¹ the Supreme Court reiterated the importance of the principle of non-refoulement.

[95] ... There is no question that a risk of *refoulement* – whether directly from Canada or indirectly after return to a third country – falls within the scope of the security of the person interest. This Court has noted that the *non-refoulement* principle is “the cornerstone of the international refugee protection regime” (*Németh v. Canada (Justice)*, 2010 SCC 56, [2010] 3 S.C.R. 281, at para. 18). By definition, *refoulement* exposes individuals to threats to their life or freedom (*Refugee Convention*, Article 33), torture (*Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, Can. T.S. 1987 No. 36, Article 3) or other serious human rights violations. It is because these potential consequences are so grave that this Court in *Singh* considered it “unthinkable” that *refoulement* would fall outside the scope of s. 7’s protections (p. 210).

The Supreme Court of Canada mentioned a great number of international instruments, but also UN General Assembly standards. It took a broad approach to *refoulement* and referred to other human rights standards, for example with

49 United Nations, [Report of the Committee against Torture, Forty-eighth session](#), 7 May – 1 June 2012.

50 United Nations CAT, [CAT/C/CAN/CO/7](#), par. 24 and 25, 21 December 2018.

51 Supreme Court of Canada, [Canadian Council for Refugees v. Canada](#) (Citizenship and Immigration), 2023 SCC 17.

respect to detention, and the interpretation of the 1951 Refugee Convention with respect to special social group. It did not, however, hold that the Canada-US Safe Third Country Agreements was unconstitutional. In this it also considered:

Further, as Canada cannot foresee all the actions that foreign authorities will take, it must be shown that Canadian authorities knew, or ought to have known, that the harms could arise as a result of Canada's actions. This foreseeability threshold can be established by a reasonable inference, drawn on a balance of probabilities.

This is, in principle, the same criterion as that used by the ECtHR in *MSS v. Belgium and Greece on the Dublin system*,⁵² where the ECtHR held:

358. In the light of the foregoing, the Court considers that at the time of the applicant's expulsion the Belgian authorities knew or ought to have known that he had no guarantee that his asylum application would be seriously examined by the Greek authorities. They also had the means of refusing to transfer him.

Some observers are critical, however, about the Supreme Court's reasoning, both with respect to the criterion whether there is a foreseeable risk and with respect to the "safety valves" in the Canadian system and the STCA, which may not be rigorous enough to prevent direct or indirect refoulement.⁵³

52 See also the Netherlands report.

53 See for example Jamie Liew and Cheryl Milne, [The Canada-US Safe Third Country Agreement: a Lifeline from the Supreme Court](#), PKI Global Justice Journal, 2023.

3 Border management in policy and practice

Canadian border management outside of Canada

Canada shares a land border with the US and is further surrounded by oceans. Nevertheless, the country has invested in practices outside of Canada to prevent asylum seekers from entering Canada. Canada uses “migration integrity specialists” at airports in other countries and works with other countries to prevent irregular migration.⁵⁴ Canadian visa policies tend to be restrictive for countries from which refugees are fleeing and for which the acceptance rates in asylum procedures are high.⁵⁵

Border procedures and practices in Canada

Border control is a responsibility of the Canadian Border Services Agency (CBSA). The Agency’s legal basis is the Canada Border Services Agency Act. CBSA is responsible for providing “integrated border services.”⁵⁶ CBSA operates at Points of Entry at airports, seaports and landports.⁵⁷ In practice, border control at land borders with the US relies on the shared responsibility of, and cooperation between, several federal agencies. These are the RCMP (Royal Canadian Mounted Police), the CBSA (Canadian Border Services Agency), but also IRCC (Immigration, Refugees, Citizenship Canada) and the IRB (Immigration and Refugee Board).

Whereas crossings between ports of entry are considered irregular, other entries, where asylum seekers report at the designated points of entry or IRCC offices are considered regular. The increase in the numbers of asylum seekers, that has been reported since 2017, consists of both irregular and regular entries.⁵⁸ A consequence of an application not lodged at a port of entry is that, according

54 Macklin and Blum, [Country Fiche Canada](#), Asile Project, January 2021.

55 Craig Damian Smith, [Visa Policies, Migration Controls and Mobility Aspirations: mixed migration as a response to global regimes of closure](#), Yale Journal of International Law Online, 47, no.1, 2022.

56 Government of Canada Justice Laws, [Canada Border Services Agency Act](#) [S.C. 2005, c. 38], 2005.

57 Canadian Border Services Agency, [“What we do.”](#)

58 Statistics Canada, [“Just the Fact: Asylum Claimants,”](#) 17 May 2019.

to s. 99 (3.1) IRPA, the applicant must provide the officer, within the time limits provided for in the regulations, with the documents and information – including in respect of the basis for the claim – required by the rules of the Board.

Between 2020 and 2022 many asylum claimants arrived 'irregularly' through Quebec.⁵⁹ This trend had already started in 2021.⁶⁰ The crossing of the border between the USA and Quebec, notably at the point of Roxham Road, Quebec was the subject of heated national debate and caught international attention.⁶¹ Reasons for irregular entry that were cited by asylum claimants were USA-policies and attitudes.⁶²

The amendment to the Canada – US Safe Third Country Agreement attempted to close the “loophole” at the Quebec border. Before the amendment, the STCA applied to persons entering Canada at designated entry points, but after the amendment it also applies to persons who enter in between points of entry and claim asylum within 14 days after entering Canada. If an asylum claim is submitted by an intercepted person who irregularly entered the country, the asylum seekers are turned over by the RCMP to other agencies, namely CBSA (Canadian Border Services Agency) or IRCC (Immigration, Refugees, Citizenship Canada).⁶³

Prior to the amendment to the STCA, there do not seem to have been detrimental consequences for asylum seekers because of an irregular entry between points of entry. The IRB statistics over 2017-2023 of irregular crossers show that eligibility rates have been relatively high and that detention measures were not imposed on a large scale or for a long period.⁶⁴ The first months of 2023 do not show a difference in this respect. Between April and June 2023, when the amended STCA was in effect, 8,131 claims were received by the IRB: 1,640 claims

59 Immigration and Citizenship Canada, [“Asylum Claims by year – 2022.”](#)

60 Immigration and Citizenship Canada, [“Asylum Claims by year – 2021.”](#)

61 Macklin and Blum, [Country Fiche Canada](#), Asile project, January 2021; see also for example Caroline Plante, [“Roxham Rd. Quebec conservatives call for common front against Ottawa,”](#) *Montreal Gazette*, 2 March 2023; Canadian Council for Refugees, [“Statement on Roxham Road Crossings,”](#) 9 March 2023.

62 Nadine Yousif, [“Why asylum seekers are choosing Canada in record numbers,”](#) *BBC News*, 20 March 2023.

63 See for example Immigration and Citizenship Canada, [“Asylum Claims by year – 2023.”](#)

64 Immigration and Refugee Board of Canada, [“Irregular Border Crosser Statistics.”](#)

were accepted and 434 were rejected, 25 cases were abandoned and 184 withdrawn. The other cases were still being processed at that time.

In light of the amendment to the STCA, Canada has, as of March 2023, an additional interest in intercepting persons who enter irregularly between entry points. However, it seems that migrants changed their routes quite quickly. In the first 8 months of 2023, the RCMP (Royal Canadian Mounted Police) intercepted over 14,000 asylum seekers, almost all in Quebec. Most interceptions occurred in January and March 2023.⁶⁵

The long term effects of the STCA amendment still need to become clear. One observer notes that the number of asylum seekers entering by air has recently significantly increased.⁶⁶ A comparison of statistics over 2022 and 2023 seems to confirm this. In 2022, over 17,000 asylum seekers entered via the airports, while over 46,000 arrived via land.⁶⁷ Until August 2023, close to 21,000 asylum seekers entered via air and 22,700 at land ports of entry.⁶⁸ The increase in asylum seekers arriving by air is especially noticeable in as of June 2023. The interceptions and registrations at land borders and inland offices have been extremely low.

Detention measures

Immigrants, including refugee claimants, may be detained, but there are procedural safeguards.⁶⁹ Detention can take place when there are reasonable grounds to believe the person is inadmissible to enter Canada and is:

- a danger to the public;
- unlikely to appear (flight risk) for immigration processes;
- unable to satisfy the officer of their identity (foreign nationals only);
- upon entry, to complete an immigration examination; or,
- has been designated as part of an irregular arrival by the Minister of Public Safety (16 years of age or older only).

65 Immigration and Citizenship Canada, "[Asylum Claims by year – 2023](#)"; see also Immigration and Citizenship Canada, "[Asylum Claims by year – 2022](#)."

66 Isabelle Steiner, "[Safe Third Country Agreement Expansion Causes Asylum Seekers to Explore New Routes](#)," Wilson Center, 14 September 2023.

67 Immigration and Citizenship Canada, "[Asylum Claims by year – 2022](#)."

68 Immigration and Citizenship Canada, "[Asylum Claims by year – 2023](#)."

69 Public Safety Canada, "[Detention of Foreign Nationals facing Removals](#)," 10 March 2021.

A CBSA officer's decision to detain a person under the IRPA is subject to a review by the Immigration and Refugee Board (IRB), which is considered an independent quasi-judicial tribunal. Detainees must appear before the IRB within the first 48 hours of being detained. At a detention review, the IRB may release the person or identify conditions for release or determine that detention should continue. If the IRB determines that detention should be continued, the individual must appear in the next seven days and every 30 days thereafter. The Immigration Division of the IRB always provides reasons for its decisions, its decisions, and its decisions are subject to judicial review with leave from the Federal Court. Canada is an outlier and has no maximum term for detention. An external audit in 2017/2018 of the detention system pointed to systemic flaws.⁷⁰ In response Canada made important improvements in 2019 such as alternatives to detention and a significant decrease in detentions over one year.⁷¹ The Chair of the IRB published guidelines on detention in August 2023, which detail procedures and safeguards.⁷² The number of immigration detention measures is relatively low, however.⁷³

70 Immigration and Refugee Board of Canada, [Report of the 2017/2018 External Audit \(Detention Review\)](#).

71 Immigration and Refugee Board of Canada, "Detention review by length of detention.," Government Canada, [Alternatives to Detention Program ENF 34](#), July 2018.

72 Immigration and Refugee Board of Canada, [Chairperson Guideline 2: Detention](#), September 2010.

73 Immigration and Refugee Board of Canada, [Persons subject to a Detention Review](#),"

4 Access and national asylum procedures

Outline Procedure

In Canada, asylum claims can be registered at a port of entry, at a Canada Border Services Agency (CBSA) inland office or an Immigration, Refugees and Citizenship Canada (IRCC) inland office. Claims are then referred to the Immigration and Refugee Board of Canada (IRB), which has a Refugee Protection Division for the first instance decision and a Refugee Appeal Division. During the asylum process, asylum seekers are considered non-permanent residents in Canada.

The grounds for protection through the Canadian asylum procedure are the Refugee Convention and grounds that are related to non-refoulement, also based on the Convention against Torture.

For inland applications the most important ground for ineligibility (inadmissibility) is the Canada US Safe Third Country Agreement.

Asylum seekers whose claims are not considered inadmissible will go through the first instance procedure with the Immigration and Refugee Board (IRB). Initially this is through the Refugee Protection Division, which will interview the claimant. In case of a negative decision there is an appeal with the Refugee Appeal Division. Members of the RAD are Government in Council appointed members.⁷⁴ On certain conditions, the court system provides further judicial appeal instances.

After the regular asylum procedure, there is a possibility under the pre-removal risk assessment (PRRA). The PRRA can only be requested after one year since the last negative decision and is not open to certain ineligible claimants.⁷⁵ During the one-year bar persons can be removed from Canada without further

74 Immigration and Refugee Board of Canada, “[Governor in Council Appointed Members.](#)”

75 Immigration, Refugees and Citizenship Canada, “[Processing pre-removal risk assessment \(PRRA\) applications: Intake.](#)”

review of their risk. If a new risk has arisen, the person may request a deferral of removal until the bar on filing a PRRA is expired. The PRRA is made in the form of written submissions and almost in all cases decided without a hearing.⁷⁶ However, The evaluation of the PRRA noted that the removal process, at least in the researched period, is slow and that in practice the one year bar has limited meaning.⁷⁷ Prior to the one year bar an exemption can be requested when new evidence is available. Also, countries of origin can be exempted because of changed circumstances.⁷⁸ There are concerns about the expertise and independence of its decision-makers in the PRRA.⁷⁹

The PRRA was, despite the concerns, evaluated positively by the authorities in 2016, although the evaluation did note that the PRRA often serves as an extra appeal instance and thus an extra step.⁸⁰

76 Immigration, Refugees and Citizenship Canada, "[Processing pre-removal risk assessment \(PRRA\) applications: Intake.](#)"

77 Immigration, Refugees and Citizenship Canada, [Evaluation of the Pre-Removal Risk Assessment Program](#), 22 April 2016.

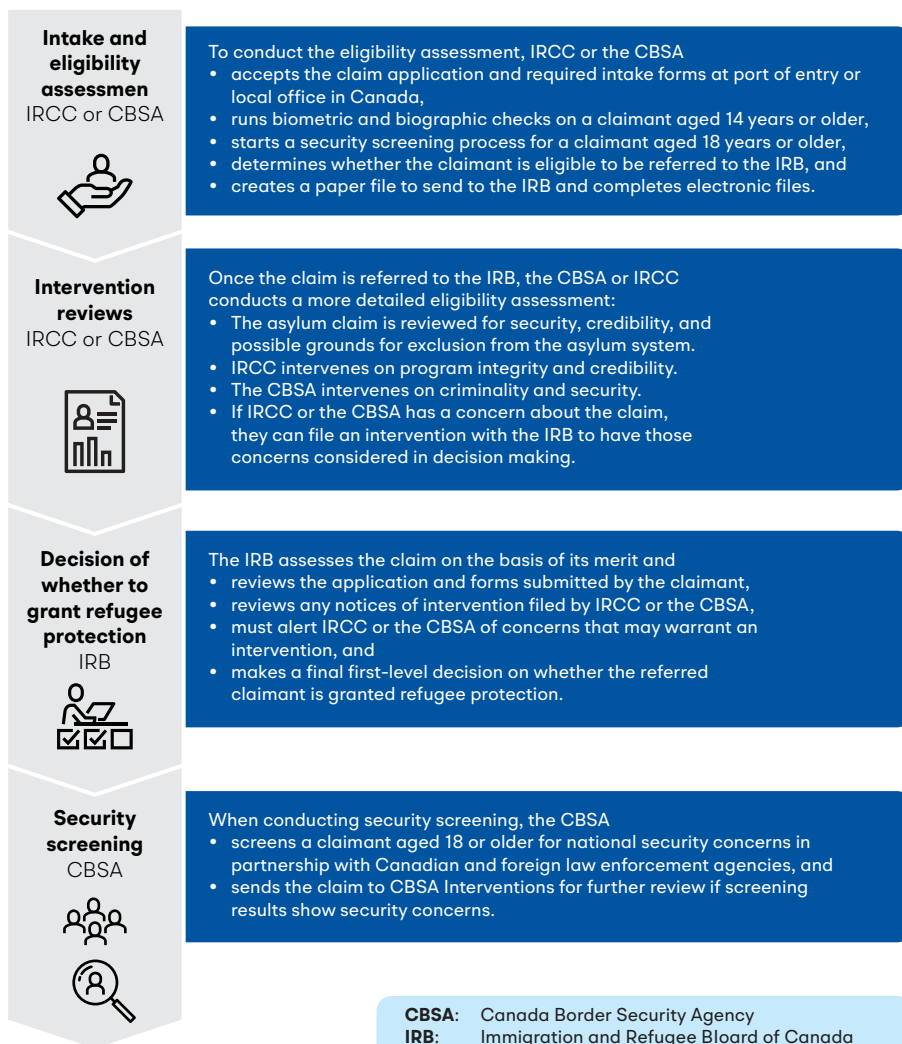
78 Immigration, Refugees and Citizenship Canada, "[Processing pre-removal risk assessment \(PRRA\) applications: Intake.](#)"

79 Macklin and Blum, [Country Fiche Canada](#), Asile project, January 2021.

80 Immigration, Refugees and Citizenship Canada, [Evaluation of the Pre-Removal Risk Assessment Program](#), 22 April 2016.

The Auditor-General of Canada gives the following chart:⁸¹

Processing of asylum claims



81 Office of the Auditor-General of Canada, [Report 2 – processing of asylum claims](#), 2019 spring reports.

Grounds for protection and protection status

The IRPA sets out the grounds for asylum. According to s. 107 (1) IRPA: the Refugee Protection Division shall accept a claim for refugee protection if it determines that the claimant is a Convention refugee or person in need of protection, and shall otherwise reject the claim. S. 97 (1) and (2) stipulate the criteria for a person in need of protection. This is either a designated group of persons (s. 97 (2) or, under s. 97 (1), a person whose removal would subject them:

- (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or
- (b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if
 - (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,
 - (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,
 - (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and
 - (iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

The Canadian system grants the same set of rights to a person in need of protection as to Convention refugees.⁸² The wording of the IRPA seems to suggest that it excludes the ground for protection for persons fleeing generalized violence. In Canadian caselaw, it is accepted that a personalized risk can exist when this is faced by many other individuals, however.⁸³

In Canada's resettlement policies and legislation it is clearly stated that protection is also open to a person *who is outside all of their countries of nationality or habitual residence and who has been, and continues to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries*. However for inland-claims the regulations, in s. 230 (1), only refer to the possibility of a stay of removal with respect to a country or a place if the circumstances in that country or place pose a generalized risk to the entire civilian population as a result of

82 See also Immigration and Refugee Board of Canada, [Persons in need of protection Chapter 14](#).

83 Immigration and Refugee Board of Canada, [Persons in need of protection Chapter 14](#).

- (a) an armed conflict within the country or place;
- (b) an environmental disaster resulting in a substantial temporary disruption of living conditions; or
- (c) any situation that is temporary and generalized.

Grounds for inadmissibility (ineligibility)

As mentioned earlier, the Canada-US Safe Third Country Agreement is the main ground for ineligibility. There are other grounds, which are set out in IRPA, in s. 101 (1).

Apart from the ground related to the Canada US Safe Third Country Agreement (s. 101 (1) (e) and public order/security grounds (s. 102 (2)), a notable ground is that of s. 101 (c1), which states that a claim is ineligible if *the claimant has, before making a claim for refugee protection in Canada, made a claim for refugee protection to a country other than Canada, and the fact of its having been made has been confirmed in accordance with an agreement or arrangement entered into by Canada and that country for the purpose of facilitating information sharing to assist in the administration and enforcement of their immigration and citizenship laws;*

The ineligibility ground of s. 101 (c1) IRPA must also be seen as a measure against spontaneous arrivals of asylum seekers via the US, before the STCA was renegotiated. Through this clause Canada attempted to restrict access to the procedure for asylum seekers in Canada, using the so-called Five Eyes agreement with Australia, New Zealand, the United Kingdom and the United States. This agreement is mainly related to security and information sharing between the five countries, but in 2019 the government also used it as a bar to asylum. Asylum seekers who have applied for asylum in one of 'Five Eyes Countries' are entitled only to a Pre-Removal Risk Assessment (PRRA). As mentioned earlier, there are concerns about the expertise and independence of its decision-makers of the PRRA. In the event of a negative decision, affected claimants face deportation prior to any form of review.⁸⁴

84 Macklin and Blum, [Country Fiche Canada](#), Asile project, January 2021.

The amended Canada – US Safe Third Country Agreement⁸⁵

The amended Canada – US Safe third country agreement came into effect on March 24, 2023. The Agreement itself was signed in 2002 and has been in force since 2004. It is based on the European Dublin system and was concluded after the 9/11 attacks. The STCA allows for the removal of asylum seekers by the receiving country to the country of last presence. As mentioned earlier, the STCA applied, in its 2002 text, only to refugee claimants who had presented themselves at points of entry. The amendment now stipulates that it also applies “between ports of entry”. As the burden of proof of entry is on the receiving state, this means that border control and interceptions at certain border crossings are important. Although the Supreme Court of Canada in its landmark judgment of June 2023 held that the STCA raises concerns, it did not consider the STCA to be unconstitutional.

The legal basis for ineligibility is s. 101(1) (e) IRPA. This ground for ineligibility now applies to asylum seekers who enter Canada:

- at Canada-U.S. land border crossings
- after crossing between ports of entry and making a claim for refugee protection less than 14 days after the day of entry into Canada
- by train, or
- at airports, only if the person seeking refugee protection in Canada has been refused refugee status in the US and is in transit through Canada after being deported from the US.

Unless one of the STCA-exemptions applies (which are similar to the EU Dublin regulation: unaccompanied minors, family members in Canada, or the possession of a Canadian visa) the consequence of the STCA in Canada is that the claimant is ‘ineligible’ and can be issued a removal order. This eligibility decision and removal order can, however, be challenged before the court system because of fundamental rights considerations.

85 [S. 159.1 IRRR](#) refers to this as follows: Agreement done at Washington, D.C. on December 5, 2002 between the Government of Canada and the Government of the United States of America for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries, including any modifications or additions made in accordance with its terms.

In the system of the IRPA, the application of the Canada US Safe Third Country Agreement, must comply with the general requirements regarding safe third countries. Factors for designating a third country as safe are, according to s. 102 (2) IRPA:

- (a) whether the country is a party to the Refugee Convention and to the Convention Against Torture;
- (b) its policies and practices with respect to claims under the Refugee Convention and with respect to obligations under the Convention Against Torture;
- (c) its human rights record; and
- (d) whether it is party to an agreement with the Government of Canada for the purpose of sharing responsibility with respect to claims for refugee protection.

The IRPA requires that there is a periodic review of the situation in the third country.

The STCA, in its original and amended form, has been long criticized and legally challenged by Canadian NGOs and lawyers' organizations. As mentioned above, the Supreme Court of Canada, held in *Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, 2023 SCC 17 of June 16, 2023, that the STCA itself is not contrary to principles of fundamental justice, as long as the "safety valves" are sufficient to ensure that claimants do not face risks of refoulement. Insofar the officers of the Canadian Border Services Agencies act unreasonably or unconstitutionally, then this would be subject to scrutiny. However, the Supreme Court, did acknowledge that there were serious shortcomings in the US asylum process and detention conditions. It further remitted questions with respect to gender-based persecution to the Federal Court, as this required more factual analysis.

Designation – human smuggling or other irregular arrival

The IRPA, in s. 20.1, still contains the 'Designation – human smuggling or other irregular arrival.' As mentioned above, the provision has not been used by the current government, and only once by the previous government. It is questionable whether the Canadian courts would allow its application under the Canadian constitution. The provision is as follows:

20.1 (1) The Minister may, by order, having regard to the public interest, designate as an irregular arrival the arrival in Canada of a group of persons if he or she

(a) is of the opinion that examinations of the persons in the group, particularly for the purpose of establishing identity or determining inadmissibility – and any investigations concerning persons in the group – cannot be conducted in a timely manner; or

(b) has reasonable grounds to suspect that, in relation to the arrival in Canada of the group, there has been, or will be, a contravention of subsection 117(1) for profit, or for the benefit of, at the direction of or in association with a criminal organization or terrorist group.

The consequences, as foreseen by the legislator, would be mandatory detention and no access to a permanent residence permit.

Deferral and suspension of removals

Canada has policy on Administrative deferral of removals (ADR). The ADR is a temporary measure to temporarily defer removals in situations of humanitarian crisis.⁸⁶ Canada also has policy on Temporary suspension of removals (TSR). The TSR program interrupts removals to a country or place when general conditions pose a risk to the entire civilian population (armed conflict or natural disaster).⁸⁷ The ADR is generally put in place within a short period of time to immediately respond to a change in country conditions.⁸⁸

First instance and Appeals

Asylum seekers whose claims are refused by the Refugee Protection Division may appeal to the Refugee Appeal Division of the IRB. Judicial review by the Federal Court is available by leave of the court.⁸⁹ However, there are exceptions to

86 An ADR is currently in place for certain regions in Somalia (Middle Shabelle, Afgoye, and Mogadishu), the Gaza Strip, Ukraine, Syria, Mali, the Central African Republic, South Sudan, Libya, Yemen, Burundi, Venezuela, Haiti, Iran and Sudan.

87 Canada currently has a TSR in place for Afghanistan, the Democratic Republic of Congo, and Iraq.

88 Canada Border Services Agency, “[Removal from Canada.](#)”

89 See for a more detailed analysis: Angus Grant and Sean Rehaag, [Unappealing: an assessment of of the limits on appeal rights in Canada's new refugee system](#), Osgood legal studies research paper series, 2015.

appeal rights, for example for claimants who transited to Canada via the United States under an exception to the Safe Third Country Agreement.⁹⁰

Processing challenges – backlogs

Under the IRPA refugee claimants are referred to the Immigration and Refugee Board for an interview on the basis of which a decision on the asylum claim is made. The timeline for an interview is 60 days after a referral. In a 2019 spring report – Pre-Covid -, the Auditor General of Canada, audited the asylum processing by the IRB.⁹¹ The audit concluded that the system was not able to deal with the growing number of claims. In particular timelines for the interviews could not be met. The report predicted that with numbers growing (in 2017 over 50,000 and in 2018 55,000 claims) the backlogs would increase. Because of delays in the IRB's processing of claims, the moment in which a decision on an application is made, can be considerably later than the year of application.

Between 2016 and 2020, the IRB saw an unprecedented intake of inland refugee claims, which caused considerable backlogs in the asylum system. When in 2012 the Immigration and Refugee Protection Act (IRPA) was amended in Bill C-31, there were also considerable backlogs.⁹² The Balanced Refugee Reform Act,⁹³ which came into force in 2012, was meant to address these. In March 2010, the backlog was 59,000 cases, with an average processing time of 19 months. In 2018 most of the 32,000 'legacy claims' had been processed, although some 500 cases were still pending.⁹⁴ However, under the amended IRPA, new backlogs developed. In 2023, under the new system the number of cases pending reached over 80,000 claims. Thus, the intended effects of the amendments to the IRPA in 2012, which aimed at speeding up the asylum procedure, were not met. The 2019

90 Sean Rehaag, "[2018 Refugee Claim Data and IRB Member Recognition Rates](#)," Canadian Council for Refugees, 19 June 2019. As to the substance of the claims, Rehaag's 2018 research indicates that there are considerable differences in approval of claims per adjudicator in comparable cases.

91 Office of the Auditor-General of Canada, [Report 2 – processing of asylum claims](#), 2019 spring reports.

92 Office of the Auditor-General of Canada, [Report 2 – processing of asylum claims](#), 2019 spring reports.

93 Government of Canada Justice Laws, [Balanced Refugee Reform Act \(S.C. 2010, c. 8\)](#), 29 June 2010.

94 Office of the Auditor-General of Canada, [Report 2 – processing of asylum claims](#), 2019 spring reports.

Auditor-General's report held that: "People seeking asylum in Canada wait about two years for decisions from a rigid system that can't adjust to volume spikes."⁹⁵

To cope with the numbers of asylum claims and the backlogs the IRB has doubled in size and received extra funding.⁹⁶ The backlogs were reduced by more than a third and a projected wait time for refugee claimants have decreased from 22 months to 13 months in March 2022.⁹⁷

Reception

In particular housing, services (education and healthcare) and newcomer programs, but also legal aid, are mostly a provincial/territorial and municipal competence.⁹⁸ There can be tensions between the respective governments, in particular with respect to finances. Recently such tensions also arose over irregular crossings. For example, the Auditor General of Ontario noted in a 2020 report:

However, the existing immigration agreement between the federal government and provincial governments does not include a provision for the federal government to compensate provincial ministries and municipalities for costs incurred in a situation like the surge in irregular border crossers that continued until the border was closed due to the COVID-19 pandemic.⁹⁹

It was pointed out that Quebec, facing similar pressures, had received compensation.

Both the City of Toronto and the Province of Ontario have called upon the Federal state to give more funding.¹⁰⁰ In July 2023, the Federal government announced

95 Office of the Auditor-General of Canada, [Report 2 – processing of asylum claims](#), 2019 spring reports.

96 Immigration, Refugees and Citizenship Canada, [IRCC Minister Transition Binder 2023: Overview – Immigration and Refugee Board of Canada](#).

97 Immigration, Refugees and Citizenship Canada, "[CIMM – The Immigration and Refugee Board \(IRB\) – Inventory and Wait Times](#)," 12 May 2022.

98 See for example, Office of the Auditor-General of Ontario, [Ontario's costs for services provided to irregular border crossers](#), table (Figure 1), July 2020.

99 See for example, Office of the Auditor-General of Ontario, [Ontario's costs for services provided to irregular border crossers](#), table (Figure 1), July 2020.

100 CBC news, "[Province, Toronto add funding for asylum seekers, but say feds need to do more](#)," 19 July 2023.

that it was providing funding to provinces and the city of Toronto for affordable housing for asylum seekers.¹⁰¹ It also referred to the need of a timely issuance of work permits for asylum seekers:

IRCC implemented a temporary public policy (TPP) on November 16, 2022, that provides asylum claimants with timely access to open work permits, allowing them to enter Canada's labour market sooner and provide for themselves while they await a decision on their asylum claim. From the launch of the public policy to May 31, 2023, IRCC has issued over 53,000 initial work permits for asylum claimants. Providing asylum claimants with access to a work permit earlier on in the process will allow them to access employment opportunities, reducing their dependence on provincial and territorial social assistance and other supports.

Under Canada's policies, persons who are under a removal order but cannot return for reasons beyond their control, can obtain a work permit.¹⁰²

After the Covid-pandemic the Canadian authorities continued to provide temporary housing through hotels.¹⁰³ This method of housing is also used by municipal authorities.¹⁰⁴ Churches and shelters are also housing asylum seekers.

Although asylum seekers are allowed to work with a work permit, the lack of housing and the cost of living in Canada's cities makes them vulnerable and at risk of homelessness.¹⁰⁵ This can also affect Ukrainians who were allowed to enter Canada under the CUAET.¹⁰⁶

101 Immigration, Refugees and Citizenship Canada, "[More federal housing support for asylum claimants](#)," 18 July 2020.

102 Immigration, Refugees and Citizenship Canada, "[You need a work permit](#)."

103 Immigration, Refugees and Citizenship Canada, "[CIMM-IRCC Hotels](#)," 18 November, 2022.

104 Dustin Cook, "[Toronto to Open Hotel Rooms for 150 asylum seekers amid shelter shortages](#)," *The Globe and Mail*, 19 July 2023.

105 See for example Ontario Council of Agencies serving immigrants (OCASI), "[Community groups calling for urgent action to address refugee housing crisis](#)," 28 June 2023.

106 Hannah Schmidt, "[Some Ukrainians refugees returning home due to K-W housing crisis: grassroots group](#)," CTV News, 25 March 2023.

5 Extraterritorial access to asylum

Resettlement and complementary pathways

Canada's resettlement policies are a main pillar of Canada's refugee protection system. The numbers of resettled refugees exceed the numbers of asylum seekers and, of course, the number of refugees who receive permanent immigration status after an in-land application. In Canada there are initiatives to promote community sponsorship globally for example through the Global Refugee Sponsorship Initiative.¹⁰⁷ Besides resettlement, Canada also offers complementary pathways for refugees through humanitarian visa programmes. These do not necessarily lead to permanent residence, although they can lead to this through other streams, including economic or family streams.

The resettlement policies have a special legal basis in the IRPA and IRPR. Section 99 (1) of the IRPA stipulates that "A claim for refugee protection may be made in or outside Canada." Section 99 (2) specifies that an application outside Canada can be made for a visa as a Convention refugee or a person in similar circumstances.

Canada's resettlement programme consists of a government prong through Government Assisted Refugees (GARs), a private sponsorship program and a blended program. Discussions in Canada focus on the proportion of GARs and privately sponsored refugees.¹⁰⁸

Targets and levels regarding asylum

Canada's setting of immigration levels and targets includes refugees both regarding the resettlement and the in-land applications schemes. The levels are set in consultation with regional governments, stakeholders and take

107 Global Refugee Sponsorship Initiative, "[Crating opportunities for communities to welcome refugees.](#)"

108 See for example the 2021 platform of the Conservative Party, [Canada's Recovery Plan](#), Summer 2021.

into account public surveys.¹⁰⁹ They are presented to parliament. While the resettlement levels are targets and quotas, the numbers of refugees following inland applications are not to be seen as asylum quotas. The levels and targets are a planning tool and the implementation may lead to other outcomes.¹¹⁰ According to government information, the targets are usually met:¹¹¹ The levels do not include temporary residence status.

For the period 2023-2025 the government has set the following targets for refugees, including both in-land claims and resettled refugees:¹¹²

Target for refugees

	2023	2024	2025
Protected persons in Canada and dependents abroad	25,000	27,000	29,000
Resettled refugees-government assisted	23,550	21,115	15,250
Resettled refugees – privately sponsored	27,505	27,750	28,250
Resettled refugees blended visa.	250	250	250
Total	76,305	76,115	72,750

In addition, the targets include humanitarian, compassionate and other grounds for status. The targets for 2023 are 15,985 persons in 2023, 13,750 in 2024 and 8,000 in 2025. The targets do not include Ukrainians under Canada’s CUAET visa program, as this visa does not necessarily lead to permanent residence.

Resettlement in the Canadian context – general process

Canada’s resettlement policies involve several actors, both governmental agencies and private sponsors. For the “matching process” the Resettlement Operations Centre in Ottawa (ROC-O) plays a central role.¹¹³ The ROC-O decides which city is the best match with each refugee’s needs, based on criteria such

109 Immigration, Refugees and Citizenship Canada, [2023 consultations on immigration levels – final report](#).

110 See for example: Canadian Immigrant, [“A closer look at Canada’s immigration level plan 2024-2026,”](#) 21 November 2023.

111 Immigration, Refugees and Citizenship Canada, [Departmental Plan 2023-2024](#), 2023.

112 Immigration, Refugees and Citizenship Canada, [“Notice supplementary immigration levels for the 2023-2025 Immigration Levels Plan,”](#) 1 November 2022.

113 Immigration, Refugees and Citizenship Canada, [“The matching process.”](#)

as: language(s); availability of family and networks friends; ethnic, cultural and religious communities in the area; medical needs; availability of settlement services. It has a number of other tasks, such as receiving applications and monitoring private sponsor organizations.¹¹⁴

Refugees can be referred for resettlement in various ways:

1. Sponsor-referred:
2. Blended Visa Office-Referred/Visa office-referred

The Resettlement Operations Centre in Ottawa (ROC-O) through which private sponsorship applications must be submitted administers an inventory of cases that have been selected after initial identification by the UNHCR.

The Government-Assisted Refugees (GAR-stream) mainly relies on UNHCR referrals. The private sponsorship program is open to Convention Refugees and persons fleeing war, who do not have another durable solution available to them. A new development is the Economic Mobility Pathways Pilot, which is a complementary pathways model to Canada's resettlement program.¹¹⁵ Refugees and persons otherwise in need of international protection can qualify for this pathway, which is based on qualifications and skills. In addition, there is a small programme for specific human rights defenders stream for 250 people each year, including their family members.¹¹⁶

Once a case has been referred to Canada, a Canadian visa officer will review the file. In most cases, they will interview the refugee, close to where they are located. Before acceptance for resettlement, someone must go through a medical exam, pass a criminal and security check, and give biometric information, which includes fingerprints and a digital photo.

Resettlement Canada – implementation

Under the Immigration and Refugee Protection Regulations (IRPR – s. 70 (2)) persons who may qualify as refugees for Canada's refugee and humanitarian

114 Immigration, Refugees and Citizenship Canada, "[The matching process.](#)"

115 Immigration, Refugees and Citizenship Canada, "[Updated public policy to support the Economic Mobility Pathways Pilot – Phase 2.](#)"

116 Immigration, Refugees and Citizenship Canada, "[Providing Protection to Human Rights defenders at risk.](#)"

resettlement program are grouped into 2 categories, or “classes”: Convention Refugees Abroad and Country of Asylum. The criteria for Country of Asylum are laid down in s. 145-146 of the IRPR. This class includes persons who are affected by civil war, armed conflict or a “massive violation of human rights.”

The Government-Assisted resettlement used to be the main pathway for resettlement. As of late the private sponsorship programme has grown.

Government-assisted resettlement (GAR)¹¹⁷

Through the Government-Assisted Refugees (GAR) programme, refugees receive support by non-governmental agencies that are funded by the government, so-called service provider organizations. The support will be for up to 1 year from the date the refugee arrives in Canada or until they are able to support themselves (whichever happens first).

Private sponsorship program refugees (PSR)¹¹⁸

The IRPR, in s. 138, contains definitions of sponsors, but also vulnerability and ‘urgent need of protection’.

The following groups may submit a private sponsorship:

- **Sponsorship Agreement Holders (SAHs):** These are organizations that have signed a formal sponsorship agreement with Immigration, Refugees and Citizenship Canada (IRCC). Most current SAHs are religious organizations, ethnocultural groups, or humanitarian organizations. SAHs, which may be local, regional or national, assume overall responsibility for the management of sponsorships under their agreement.
- **Constituent Groups (CGs):** A SAH can authorize CGs to sponsor under its agreement and provide support to the refugees.
- **Groups of Five (G5):** Five or more Canadian citizens or permanent residents, who are at least 18 years of age, live in the expected community of settlement and have collectively arranged for the sponsorship of a refugee living abroad. The group’s financial commitment must meet certain levels.

117 Immigration, Refugees and citizenship Canada, [“Government-assisted refugee program.”](#)

118 Immigration, Refugees and citizenship Canada, [“Private sponsorship program.”](#)

- **Community Sponsors (CSs):** Any organization, association or corporation can make an organizational commitment to sponsor. CSs must undergo financial and settlement plan assessments by ROC-O each time they wish to sponsor.

Sponsoring groups agree to provide the refugees with care, lodging, settlement assistance and support for the duration of the sponsorship period. Normally, this is 12 months starting from the refugee's arrival in Canada or until the refugee becomes self-sufficient, whichever comes first. In exceptional circumstances, the migration officer may determine that the refugee requires more time to become established in Canada and will ask the sponsoring group to extend the sponsorship period to a maximum of 36 months. The sponsoring group has the option of refusing the request for an extension of the sponsorship period. However, the sponsoring group risks having the case refused as a result.

The Economic Mobility Pathways Pilot

The Economic Mobility Pathways Pilots is a mix between refugee resettlement and economic immigration:¹¹⁹ Refugees who have a positive refugee status determination or otherwise have proof that they are a person of concern (and some other defined cases) can apply. They can apply under several streams, either the regional EMPP or the federal EMPP. The regional EMPP consists of 3 selected economic programs:

- [Atlantic Immigration Program](#)
- [Provincial Nominee Program](#)
- [Rural and Northern Immigration Program \(RNIP\)](#)

The federal EMPP has two streams. A "Job Offer" stream and a – more limited number – a stream of "No Job Offer" places. There are requirements with respect to work experience, education and language.

Analysis of Canada's resettlement schemes

The shift in focus from Government-assisted resettlement to private sponsorship has received attention in literature. A comparative study between Government Assisted Refugees (GARs) and privately sponsored refugees shows that for some groups, such as women without higher education, the Private Sponsorship

119 Immigration, Refugees and Citizenship Canada, "[Economic mobility pathways.](#)"

program integration works better, but this is not necessarily true for all groups of resettled refugees.¹²⁰

In a detailed analysis, Cortinovis and Fallone describe how the proportion of privately sponsored refugees is increasing.¹²¹ They mention some concerns regarding the private sponsoring and the Canadian system in general. These concerns are related to legal safeguards and potential biases in the system. These can be summarized as follows.

Canada's resettlement policies are discretionary and not rights based. There are, for example, no appeal mechanisms if a referred refugee is rejected. The authors further note that the "complementary pathways" (i.e. the private sponsoring program and the EMPP) may take economic potential rather than vulnerability as a central point of resettlement.¹²² This is clear for the EMPP, but also private sponsors may look at integration potential of refugees, as they are liable for costs the resettled refugee makes. Some private sponsors (SAH's) do, however, explicitly take vulnerability into account, although often no precise criteria are defined.

Other potential biases in the system are that private sponsors may refer refugees whom they know – for example through family relations – or may refer refugees from their specific background, for example a religious or country or origin background. For the government scheme, there is a potential bias because they operate on the basis of UNHCR referrals. UNHCR is not present in all regions. The government scheme does take vulnerability into account, which is especially true for the small JAS program (Joint Assistance Sponsorship), where the government and SAHs work together for vulnerable refugees. The growing proportion of private sponsoring could mean that vulnerability plays less of a role in Canada's resettlement policies.

120 Lisa Kaida, Feng Hou and Max Stick, [*The long term integration of resettled refugees in Canada, a comparison of Privately Sponsored Refugees and Government-Assisted Refugees*](#), Statistics Canada, 13 January 2020.

121 Roberto Cortinovis and Andrew Fallone, [*Country Report Canada, An analysis of the Private Sponsorship of Refugees \(PSR\) program and the Economic Mobility Pathways Pilot \(EMPP\)*](#), Asile Project, D.4.2. Interim Report, 2022.

122 Roberto Cortinovis and Andrew Fallone, [*Country Report Canada, An analysis of the Private Sponsorship of Refugees \(PSR\) program and the Economic Mobility Pathways Pilot \(EMPP\)*](#), Asile Project, D.4.2. Interim Report, 2022.

Despite such concerns, in the political discussion in Canada and through a wide support in Canadian society private sponsorship has gained traction. The Global Refugee Sponsorship Initiative¹²³ advocates private sponsorship on a global level. Canada's model of private sponsorship is included in the US and Australian programmes,¹²⁴ and also in Sweden and Denmark there are initiatives, supported by UNHCR.¹²⁵

CUAET – Canada Ukraine Authorization for Emergency Travel

Following the Russian invasion of Ukraine in 2022 Canada allowed Ukrainian nationals and their families to enter Canada and reside here as temporary visitors. The CUAET – Canada Ukraine Authorization for Emergency Travel – was announced on March 22, 2023.¹²⁶ Between March 17, 2022 and August 17, 2023, over 173,000 Ukrainians entered the country under the CUAET.¹²⁷ In August, out of 1,1 million applications, over 858,000 were approved under this scheme. The CUAET ended on July 15, 2023.¹²⁸ Persons accepted, can enter Canada until March 31, 2024.¹²⁹

Under CUAET Ukrainians and their family members:

- can apply for a free visitor visa and may be allowed to stay in Canada for 3 years, as opposed to the standard 6-month authorized stay for regular visitors
- have the option to apply, free of charge, for an open work permit with their visa application, enabling them to find work as quickly as possible
- will have their electronic visa application processed within 14 days of receipt of a complete application, for standard, non-complex cases.

123 Global Refugee Sponsorship Initiative, "[Creating Opportunities for communities to welcome for refugees.](#)"

124 See the US and Australia country report in this research.

125 UNHCR, "[Community Sponsorship programmes.](#)"

126 Immigration, Refugees and Citizenship, "[Canada launches pathway to reunite families and support Ukrainians.](#)" 15 July 2023.

127 Immigration, Refugees and Citizenship Canada, "[Canada-Ukraine Authorization for Emergency Travel.](#)"

128 Immigration, Refugees and Citizenship Canada, "[Immigration measures and support for Ukrainians and their families.](#)"

129 Immigration, Refugees and Citizenship Canada, "[Immigration measures and support for Ukrainians and their families.](#)"

For Ukrainians a number of exemptions apply under CUAET. They can leave and return at any time while their visa is valid and are, for example, eligible for primary and secondary education. The visitor visa can be a pathway to regular migration under Canada's immigration programs and streams.

The government has announced that the CUAET will be followed by a special program for Ukrainians under the CUAET to obtain permanent residence status.¹³⁰ According to government information starting October 23, 2023 the pathway will be open to Ukrainian nationals who have temporary resident status and have one or more family members in Canada. This includes grandparents, grandchildren, siblings of a Canadian citizen or permanent residents.

Humanitarian visas American Region

For Canada, part of the negotiated expansion of STCA was a programme to grant 15,000 'humanitarian visas' for nationals from the American region, in particular from Colombia, Haiti and Venezuela.¹³¹ Thus, Canada has followed the US programmes on humanitarian paroles. A further Canadian expansion to traditional resettlement includes its mixed protection/economic streams through the economic mobility pathways pilot.

130 Christian Paas-Lang, "[Canada to launch new permanent residency programs for Ukrainians fleeing war](#)," CBC News, 15 July 2023.

131 Prime Minister Trudeau, "[Working with the United States to grow our clean economies and create good, middle-class jobs on both sides of our border](#)," 24 March 2023; Immigration, Refugees and Citizenship Canada, "[Statement from Minister Miller on Canada's commitment to support migrants in the Americas](#)," 10 October 2023.

6 Return in the context of migration cooperation

Canada is active in seeking cooperation with third countries. This can take various forms, from a more protection focused cooperation to “asylum management” instruments.

The US – in relation to the STCA – is the only “safe third country” under Canada’s asylum legislation.

Other than this agreement, the operation and practice around cooperation with third countries seems less clear. The current initiatives do not specifically mention returns, but rather focus on general cooperation.¹³²

In its 2022 annual report, the government further refers to cooperation with third countries in the region of the Americas.¹³³ Canada has a bilateral collaboration with the US in the *Roadmap for a Renewed U.S.-Canada Partnership*, and works with the US and Mexico on migration and protection issues. It further worked with the US, Mexico and Central American countries to deter irregular migration and ensure regular pathways for protection and regular permanent and temporary migration.

Recent removal statistics are as follows:¹³⁴ In 2018-2019 the CBSA removed 9,698 individuals from Canada and in 2019-2020 it removed 11,536 individuals. According to the government information, these numbers represent the highest removal numbers in the last four years for the Agency. The Covid-pandemic has impacted removals. CBSA intends to increase the number of removals.¹³⁵

132 See for example International Labour Organization, [“The Government of Canada and ILO expand their partnership to strengthen institutional capacities in the governance of labour migration in Latin America,”](#) 16 August 2022.

133 Immigration, Refugees and Citizenship Canada, [2022 Annual Report to Parliament on immigration,](#) 2022.

134 Public Safety Canada, [“Detention of Foreign Nationals facing removals,”](#) 10 March 2021.

135 Canada Border Services Agency, [“Arrest, detentions and removals.”](#)

Persons who are inadmissible, can be detained. The duration is in itself not limited, but the statistics show that on average relatively few people are detained (around 300 or less per day) and the average time is usually relatively short (13 to 30 days).¹³⁶

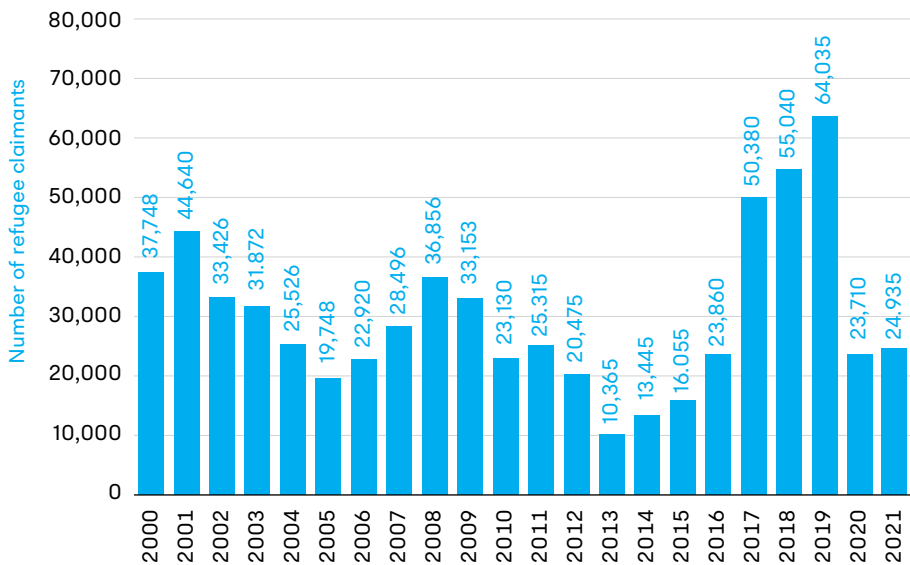
136 Canada Border Services Agency, [“Annual detention statistics: 2012 to 2023.”](#)

7 Statistics

In-Canada claims

While asylum through in-Canada claims is not the main pathway for asylum, recent statistics show an increase in numbers of asylum claims in Canada, which started prior to the Covid-pandemic.

Number of Refugee claimants



Source: [Statista](#)

In 2017 it was also reported that there was a high number and high proportion of asylum claimants who were children aged 0 to 14. Over 26% of 2017 asylum claimants were aged 0-14.¹³⁷

The period between 2019 and 2023, which includes the Covid-pandemic shows a more volatile pattern than before this period. The IRB-statistics of these years are not entirely clear, however, as these show the cases referred to the IRB, including

137 Statistics Canada, "[Asylum Claimants](#)," 17 May 2019.

after appeals, and therefore do not necessarily reflect the numbers from the year of claim. In 2019, IRB reported that 58,379 claims were referred to IRB. In 2020 this was 18,500 claims; in 2021 24,127; in 2022 this was 60,158; during the first three months 2023 this was 28,582.¹³⁸

In 2022, the main countries of origin whose claims were referred to the Immigration and Refugee Board were Haiti (9,353), Mexico (7,483), Turkey (5,611), Colombia (4,997) and Iran (4,431).¹³⁹

The countries of origin can also fluctuate, of course also depending on the security situation in those countries. Statistics Canada provided an overview of 2017. In 2017 the top 5 countries of citizenship for asylum claimants (asylum seekers) and the number of claimants from other countries were as follows:¹⁴⁰

Over the years, Canada's acceptance rates are relatively high as a proportion of the decisions. Recent statistics provided by the Canadian authorities are based on claims processed in a year and not yet of all claims lodged in a specific year. The asylum system faces significant backlogs.

Recent numbers do not show considerable differences in the acceptance rates although it should be mentioned that these numbers are based on the claims processed in a certain period, not on the time the claim was lodged.

On March 31, 2023 out of 28,582 referred claims in 2023, in 14,234 cases a decision was made by the Immigration and Refugee Board (IRB).¹⁴¹ In 10,196 cases the claim was accepted, 2,589 cases were rejected and 547 cases were abandoned. The total number of pending cases was 84,550.

In 2022 out of 60,158 referred claims, 45,444 decisions were made.¹⁴² In 28,272 cases the claim was accepted, 12,537 cases were rejected, 1,351 were abandoned, and 3,284 cases were withdrawn. The total number of cases was 70,223.

138 Immigration and Citizenship, "[Asylum claims by year – 2023.](#)"; Immigration and Citizenship Canada, "[Asylum claims by year – 2022.](#)"

139 Immigration and Refugee Board Canada, "[Claims by Country of Alleged Persecution – 2022.](#)"

140 Statistics Canada, "[Asylum Claimants.](#)" 17 May 2019.

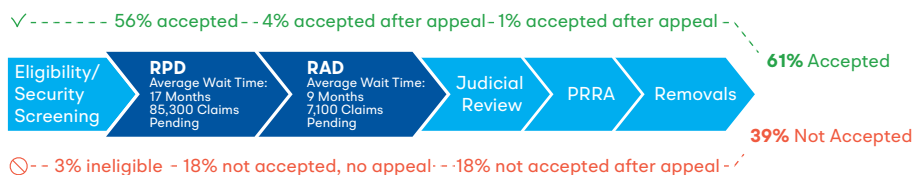
141 Immigration and Refugee Board of Canada, "[Claims by Country of Alleged Persecution – 2023.](#)"

142 Immigration and Refugee Board Canada, "[Claims by country of alleged persecution 2022.](#)"

The IRB gave the following statistics of the 'continuum' since 2018-19:¹⁴³

- Following decisions by RPD, 56% are approved
- An additional 5% of claimants are approved following recourse
- 4 to 5% after recourse to the RAD
 <1% after recourse to the Federal Court
- Ultimate acceptance rate is 61%

Acceptance rates



The Canadian return rates are fairly low, in comparison, with about 9,000 persons per year removed.¹⁴⁴ There is also a lot of uncertainty about undocumented immigrants. According to government sources this may vary between 20,000 to 500,000 persons.¹⁴⁵

¹⁴³ Immigration and Refugee Board Canada, “Backlog and wait times (Refugee claims and appeals).”

¹⁴⁴ Public Safety Canada, “Detention of Foreign Nationals Facing removals,” 10 March 2021.

¹⁴⁵ Immigration, Refugees and Citizenship Canada, “CIMM – Undocumented Populations,” 3 March 2022.

Conclusion

In general, Canada's laws and policies, are inspired by a spirit of openness, human rights and inclusivity towards refugees. This is evidenced by the preambles of the laws, such as the Immigration and Refugee Protection Act (IRPA) and political platforms of mainstream parties.

Canada has a long-standing tradition regarding resettlement of refugees and is also at the forefront of innovation and new initiatives, such as the Economic Mobility Pathways Pilot under the resettlement stream. The resettlement program exists complementary or parallel to an – equally sizable – inland asylum system. Both the resettlement of refugees and the inland asylum system are part of a system of planned/estimated immigration levels, based on annual levels and targets for economic, family, asylum and humanitarian immigration.

In their analysis of the Canadian system, Macklin and Blum point to Canada's resettlement policies, its 'robust' asylum system, and Canada's strong civil society and refugee lawyers' involvement, but they are critical about Canada's hidden border practices of extra-territorial preventing asylum seekers from entering Canada.¹⁴⁶ As recent developments show, there is also a feeling among politicians that asylum flows from the US to Canada need to be managed and restricted.

The lengthy land border between the two countries makes it virtually impossible to monitor that entirely. Canada's response to higher number of asylum seekers 'irregularly' entering via the United States was by negotiating an expansion of the scope of the Canada-US Safe Third Country in 2023. The underlying causes for the increased number of asylum seekers from the US – reports on restrictive policies and concerns about human rights violations in the US – were not addressed by this. These concerns were raised by NGOs and lawyers' organizations resulting in a landmark judgment of the Supreme Court of Canada in 2023. In general, however, the outcomes of Canada's refugee policies seem positive, in terms of societal support for, and integration and income levels of refugees.

146 Macklin and Blum, [Country Fiche Canada](#), Asile project, January 2021.

Annually, Canada sets immigration and asylum levels and targets, in consultation with stakeholders and based on research and expert analyses. These are submitted to parliament. They include economic immigration as well as refugee protection through resettlement and the inland asylum procedure. The numbers can vary but have been between 400,000 and 500,000 new immigrants per year. Refugees make up a proportion of 10-15% of all immigrants. According to government information, the targets are usually met. In the recent past, under the Harper government, there were concerns that for example resettlement targets were not met.

Despite levels and targets for spontaneous arrivals of asylum seekers there have been backlogs in the asylum process. There are considerable backlogs in the asylum system and refugees, before the Covid pandemic, had to wait about 2 years for a decision. This is a persistent problem. In 2012 the Immigration and Refugee Protection Act (IRPA) was amended in Bill C-31 also to deal with the considerable backlogs. In 2023, under the new system the number of cases pending reached over 80,000 claims. Thus, the intended effects of the amendments to the IRPA in 2012, which aimed at speeding up the asylum procedure, were not met. The Immigration and Refugee Board (IRB) has recently received more funding, however.

All in all, Canada has accepted a large number of refugees and persons in need of protection on its territory through its combined resettlement, inland asylum and humanitarian policies. Between 2016 and 2021 Canada allowed entry 216,000 refugees under its combined asylum systems. The targets for the period 2023-2025 combined are over 225,000 refugees.

Critics have pointed out that Canada also has a long history of trying to reduce the numbers of spontaneous asylum seekers through both extra-territorial border measures, including visa policies, and measures related to more restrictive asylum procedures. The effects of these extra-territorial measures are not clear.

The outcomes of the inland-asylum are, like those of most asylum systems, not easy to analyze. The Canadian asylum process is rather complicated. Not only does it provide for a first instance phase and a regular appeal system through the Refugee Appeal Division (RAD) of the Immigration and Refugee Board first, and next potential appeals in the court system, it also provides for a Pre-Removal Risk Assessment (PRRA) in cases (new) evidence is submitted that the person is a Convention Refugee or faces risks of refoulement.

For the PRRA, there is a one-year bar, i.e. it can only be applied for after one year since the last decision on the asylum application. Observers are sometimes critical about the standards and quality of the decision making at the PRRA level, as well as one-year bar between the rejection of an asylum application and the possibility to apply for a PRRA.

The 2010-2012 amendments to the IRPA that took place under the Conservative government of then Prime Minister Harper had a strong restrictive component. They were aimed at speeding up the asylum process but included limiting appeal possibilities and reducing rights for claimants. They were either quashed by the courts, revoked by the Liberal government under Prime Minister Trudeau or not applied. In this respect, policies deemed “anti-refugee” by critics, have not been successful in Canada.

Acceptance rates are reasonably high in the Canadian asylum system: over the years around 50% of the cases have a positive outcome, although recent statistics are measured as a proportion of decisions, and not as a proportion of all claims in a given year. Prior to the Covid-pandemic, the number of removals was at 10,000 people. The number of undocumented persons is estimated between 20,000 to 500,000 – showing that there is wide uncertainty about the numbers in this respect. The effects of the new amendment to the Safe Country Agreement, also after the Supreme Court Judgment of June 2023, are not yet clear.

The appreciation of the outcomes of the Canadian system is, of course, open for interpretation. On the one hand, Canada can afford to be more generous, as it is a large country that is further away from conflicts and cannot be easily accessed by sea. On the other hand, the inland asylum system does face pressures. Canada's metropolitan areas host, seemingly successfully, the majority of Canada's refugees. This is done by considerable support from civil society and society at large. The position of refugees, asylum seekers and other migrant groups is not easy, especially in urban areas where the costs of living are very high.

The outcomes of Canada's immigration and refugee policies are widely researched, including by longitudinal research by Statistics Canada and official audit reports, although more research is needed. This is for example true for resettled refugees. Research on the integration and labour market position of resettled refugees shows that they initially do less well than immigrants who were

selected on economic criteria, but that – depending on many factors – refugees catch up more quickly, albeit that it takes longer to achieve the same median levels of income of all immigrants. A comparative study between Government Assisted Refugees (GARs) and privately sponsored refugees shows that for some groups, such as women without higher education, the Private Sponsorship program integration works better, but this is not necessarily true for all groups of resettled refugees.

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