



Overview of the Canada's Asylum System*

The law relating to asylum seekers in Canada is regulated by the Immigration and Refugee Protection Act 2002 (*IRP Act*), catering for the increase in claims made by asylum seekers to Canada, and replacing the Immigration Act that had been in place since 1976.¹ Canada provides 2 ways of protecting refugees:

1. Resettlement program for refugees determined outside Canada through government or private sponsorship, and
2. Refugee claim process, through which refugees have their claims processed inside Canada.

Most of this overview deals with the latter process.

Refugee determination is handled by the Immigration and Refugee Board (IRB), the largest administrative tribunal in Canada. The IRB consists of:

- Refugee Protection Division – decides claims made for refugee protection within Canada;
- Immigration Division – conducts hearings for certain categories of people believed to be inadmissible to, or removable from, Canada, as well as review for those being detained in Canada;
- Immigration Appeal Division – appeals from the Immigration Division as well as appeals of refused sponsorship applications, appeals from certain removal orders, and appeals by permanent residents outside Canada; and
- Refugee Appeal Division – hearing appeals from the Refugee Protection Division, though this division is still yet to be implemented.

Canada is the only country to have ever been awarded the prestigious UN Nansen Medal, the highest honour bestowed for protection of refugees, and was also one of the first states to recognise gender-based persecution as a ground for establishing refugee status, particularly

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¹ Parliamentary Research Branch, "Canada's Refugee Protection System", www.parl.gc.ca/information/library/PRBpubs/bp185-e.htm

important for women fleeing prosecution when they do not come under the definition of refugee in the Refugee Convention. Canada has also been heralded as "... the most liberal with its immigration policy, including the refugee determination process...enshrining a humanitarian approach."² Further, the Canadian resettlement program for refugees is seen to be fair and successful for those seeking asylum. However, in the wake of increased terrorist attacks and the tightening of border security all around the world, and with pressure from neighbouring United States, so too has Canadian policy on asylum seekers tightened and the welcome mat has been pulled in to some degree.

1 What arrangements does Canada have with its neighbours to stop asylum seekers reaching the border? Do they engage in upstream disruption?

The Canadian government has a "Safe Third Country" agreement with the United States, which means that most asylum seekers that pass through the US on their way to Canada on land are ineligible to make a claim in Canada, and vice versa.³ The Agreement acknowledges the Parties' commitment to protection of refugees and obligations under human rights treaties, including the Convention Relating to the Status of Refugees, but also emphasises that states may "enhance international protection of refugees by promoting the orderly handling of asylum application by the responsible party and the principle of burden-sharing."

Pursuant to this agreement, asylum seekers passing through the US to Canada on land, are forced back into the US where they are detained. Article 4(2) of the Agreement states that the receiving country has the responsibility of determining refugee status claim of a person when the asylum seeker can establish that s/he: (a) has in the receiving country a family member that is at least 18 years old and has lawful status to be in that country; (b) has in the receiving country a family member that is at least 18 years old and has a refugee claim pending in that country; (c) is an unaccompanied minor; (d) arrived with a valid visa, issued by the receiving country.⁴ However, even when a person comes under Article 4(2) on the way to Canada, s/he may be detained indefinitely in the US, while waiting for an appointment with the Canadian authorities to determine refugee status. Refugee advocacy groups are staunchly opposed to this agreement, as it is seen as eroding refugees' rights, particularly as the United States has higher rates of detention for asylum seekers and less access to legal aid and social assistance.⁵ The Canadian Council of Refugees raises the concern that as the agreement applies only to land ports of entry, asylum seekers will attempt to enter Canada by other means, such as resorting to smugglers to enter illegally, thereby taking greater risks.⁶

2 What proactive steps outside its territory does Canada take to stop undocumented, unauthorised persons reaching the border?

Canada has posted immigration control officers at overseas airports in order to prevent people seeking asylum from boarding aircraft without visas or the relevant documentation, blocking

² Don McMaster, *Asylum Seekers: Australia's Response to Refugees*, (Melbourne University Press, 2002), p.125

³ There is a greater percentage of asylum seekers that travel from the US to Canada, than from Canada to the US, so more asylum seekers are turned away by Canadian authorities than from the US.

⁴ "Safe Third Country Agreement", CIC Canada, www.cic.gc.ca/english/policy/safe-third.html

⁵ Parliamentary Research Branch, "Refugee Determination System", www.parl.gc.ca/information/library/PRBpubs/bp185-e.htm

⁶ Canadian Council for Refugees, "State of Refugees", www.web.net/~ccr/ststae.html

many refugees fleeing persecution. Further, there are fines and/or charges for human trafficking and smuggling in the Immigration and Refugee Protection Act, covered in ss117-150, including fines and charges for transportation companies that bring undocumented people to Canada.⁷

3 What arrangements are there at the border to return immediately those who present manifestly unfounded claims to asylum?

The only people who arrive in Canada who are turned away immediately are those who come over from the United States pursuant to the Safe Third Country Agreement between the two countries. All other asylum seekers go through Canada's comprehensive refugee determination system, which will be discussed below.

4 Is there any appeal or review of this summary procedure?

The only thing for asylum seekers to do when turned around at the border between Canada and the United States is to make an appointment with immigration officers to return to Canada to pursue their claim. Until then, asylum seekers seeking to find refuge in Canada will often find themselves in detention in the US.⁸

5 What is the difference in treatment for asylum seekers arriving by land, by sea and by air?

Asylum seekers travel mainly through the United States to arrive in Canada, though some do arrive by plane. There are also asylum seekers who travel to Canada by boat, usually via Europe.⁹

By **land** through the United States, the asylum seekers are turned away due to the Safe Third Party Agreement with the United States (see Question 1).

By **air**, there are different conditions. Asylum seekers who make a claim for asylum from overseas, usually make their way by plane. These people will have already had their claim for asylum approved and they are determined to be refugees. Asylum seekers who arrive in Canada without a prior refugee determination, must go through the refugee screening process. In October 2002, Canada began a pilot project at Pearson International Airport in Toronto called Project Identity, detaining those who lack credibility, are evasive and uncooperative, or do not have identity papers. It is suggested that this project was started in an "attempt to please the US government."¹⁰

By **sea**, asylum seekers will go through the refugee determination process. At one stage in Canadian history, asylum seekers who arrived by boat were threatened with immediate expulsion from Canadian waters. In 1987 a group of Sikhs landed on Canadian land by boat, sparking an emergency session in Parliament to amend the Immigration Act 1976, introducing

⁷ To access these sections, follow the link to the *IRP Act*: www.cic.gc.ca/english/pdf/pub/C-11_4.pdf

⁸ Canadian Council for Refugees, "All is not well at the border", www.web.net/~ccr/borderrelease.htm

⁹ Don McMaster, *Asylum Seekers: Australia's Response to Refugees*, 122

¹⁰ Visalaw.com, www.visalaw.com/02dec1/8dec102.html

Bill C-84, the Refugee Deterrents and Detention Bill, which gave the government authority to turn back boatloads of refugees in Canadian waters and keep undocumented asylum seekers in detention indefinitely. The Bill was watered down in its final form to amend the Immigration Act, but was still a strong indication of the government's attitude towards certain groups of boat people seeking refuge in its territory.¹¹

6 How many unauthorised/undocumented arrivals are turned around at the border each year? Does the country have a comprehensive visa system?

Information on how many unauthorised/undocumented arrivals are turned around at the border is not available.

Undocumented arrivals - Canada does require travel documents, including visa, which aids the asylum seeker's case in the determination of the claim. Lack of such documents will go against the asylum seeker's credibility in the refugee determination process unless s/he can show good reason as to why s/he does not hold documents such as visas, identity cards etc: s106 *IRP Act*. Furthermore, as stated above, undocumented travellers who arrive by plane may be detained under Project Identity.

Visas – Canada exempts certain countries from having to obtain a visa to visit Canada. These countries include Australia, Brunei, Ireland, Mexico and the United States, amongst others.¹² There are, of course, many other countries from which people travel, where visas to enter Canada must be issued, such as Angola, Mauritius, Romania and Yemen.¹³

7 Once admitted to the territory, what is the procedure for checking health, security and identity? Is there detention? Is it judicially reviewable? How many are admitted each year?

On arrival, the asylum seeker is screened by an officer of the Citizen and Immigration Canada department. The claimant completes a questionnaire with issues relating to identity, travel documents, education, employment history, date of birth, family members, marital status, criminal record, route to Canada, previous refugee claims etc.¹⁴ Having regard to the questionnaire, the immigration officer determines whether or not the claimant is eligible to have the claim heard by the Refugee Protection Division, which grants or denies refugee status. The screening process must be completed within 3 days of the asylum seeker's arrival.¹⁵ If the initial claim is not completed within the 3 days specified in the *IRP Act*, the claim is deemed to have been referred to the Refugee Protection Division (RPD), where a decision is made on whether or not the claimant can gain refugee status.¹⁶ This means that claimants will not be waiting indefinitely for their claim to be referred to the Refugee Protection Division. Grounds of ineligibility include:¹⁷

¹¹ Don McMaster, op. cit., p.123

¹² See www.cic.gc.ca/english/visit/visas.html#exemptions.

¹³ See www.cic.gc.ca/english/visit/visas.html.

¹⁴ Asylumlaw.org, www.asylumlaw.org/legal_tools/index.cfm?category=59&countryID=35

¹⁵ *IRP Act*, s100(1)

¹⁶ *IRP Act*, s100(3)

¹⁷ *IRP Act*, s101(1)

- prior asylum claim in Canada;
- prior recognition as a refugee in another country to which the person can be returned;
- passage through a safe third country;
- determined to be inadmissible on ground or security, violating human or international rights, serious criminality or organised criminality.

If the immigration officer determines the asylum seeker to be a security risk, a violator of human rights, a serious criminal, or a person involved in organised crime, the case is referred to the Immigration Division for a hearing to determine whether or not the individual is admissible.¹⁸

Appeal - If the immigration officer determined that the claim is ineligible to be heard by the RPD for any of the reasons stated in (3) above, there are channels for appeal in the Federal Court for leave to apply for judicial review of the removal order and the decision of the immigration officer regarding eligibility. The applications are heard by a single judge, with no right to appeal from the decision on a leave application. If the applicant is successful in the leave application, then there is a hearing before the Trial Division of the Federal Court.¹⁹

Furthermore, some categories of people who have been determined by CIC immigration officers to be inadmissible to claim refugee status in Canada can be heard by the Immigration Division. Admissibility hearings at the Immigration Division take place solely at the request of CIC.

Once found eligible to be referred to the RPD, the asylum seeker has access to benefits such as: health, insurance, education, social assistance and legal assistance. Asylum seekers who are eligible to be referred also receive a package containing Refugee Claimant Canadian ID, form for medical exams, federal medical emergency coverage, and a Personal Information Form to fill in.²⁰ (See next question).

Security – public safety is a major consideration in the screening process of asylum seekers. If the immigration officer determines that the asylum seeker is a security threat, violator of human rights or has a record of criminality, then s/he can be deemed to be ineligible to be referred to the Refugee Protection Division.²¹ The asylum seeker can appeal such a decision at the Federal Court.

Identity – Under s106 *IRP Act*, the Refugee Protection Division is expected to take into account whether or not the asylum seeker possesses acceptable documentation establishing identity. If the asylum seeker cannot provide substantial documentation, then there needs to be a reasonable explanation for the lack of documentation, or evidence of the asylum seeker having taken reasonable steps to obtain the documentation.

Detention – Although there is detention in Canada, it is not mandatory, and is seen as a last resort, especially for children. The law allows for detention under 3 conditions:

- to establish a person's identity (especially in cases of undocumented persons)

¹⁸ US Committee for Refugees, www.refugees.org/world/countryrpt/amer_carib/2003/canada.cfm

¹⁹ Canadian Parliament, www.parl.gc.ca/information/library/PRBpubs/bp185-e.htm

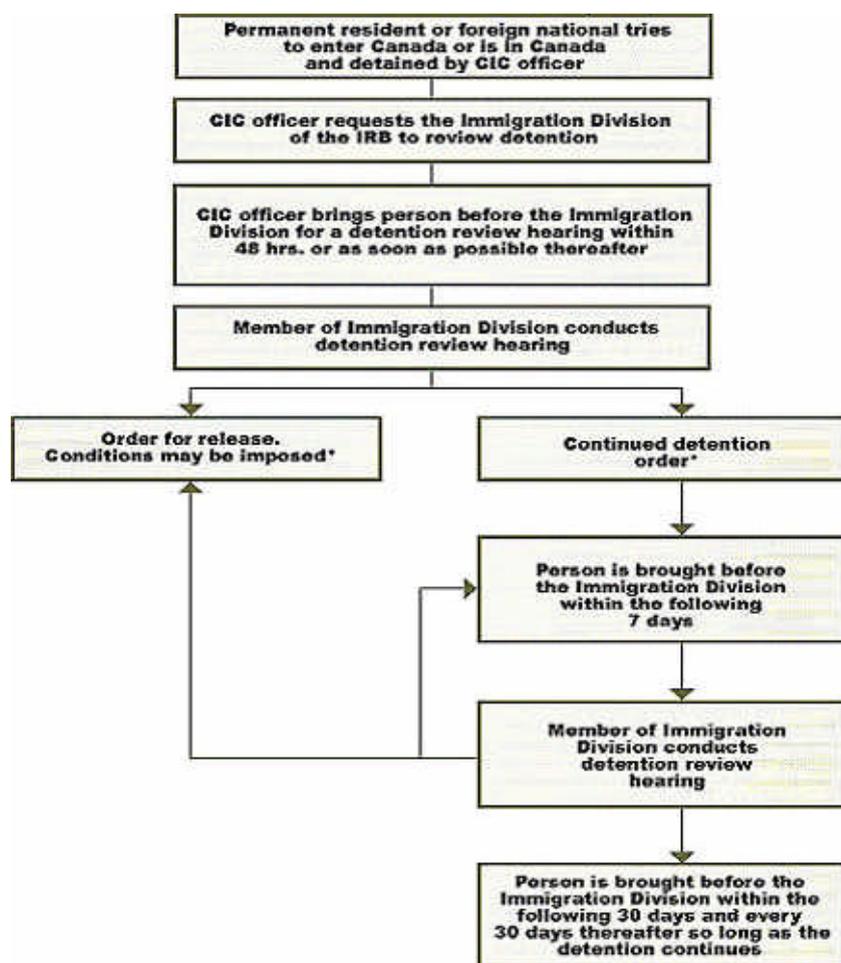
²⁰ Asylumlaw.org, www.asylumlaw.org/legal_tools/index.cfm?category=59&countryID=35

²¹ *IRP Act*, s100(2)(a)

- if there is a flight risk
- if there is a danger to the public.

Detention Review - In cases when asylum seekers are detained, a review is conducted within 48 hours. The member who conducts the hearing may release the person or order continued detention, if for example, the person is unlikely to appear for a hearing, is a danger to the public, or if the person’s identity has not been established. Moreover, there can be something that is likened to bail, where the release of a person from detention is subject to payment of case or a guarantee for compliance with conditions. If the member orders continued detention, the person is again brought before the Immigration Division within the following seven days for another hearing, and afterwards if the detention is continued, at least once each 30-day period. A detained person may request a review of detention at any time. The detained person or CIC may apply to the Federal Court of Canada for leave for judicial review of any decision on detention.²²

Detention Review Process²³



* The person concerned or Citizenship and Immigration (CIC) may ask the Federal Court of Canada for leave (permission) to apply for judicial review of any decision rendered at a detention review hearing.

²² Immigration and Refugee Board, www.irb-cisr.gc.ca/en/about/rules/idrules_e.htm

²³ Immigration and Refugee Board, www.irb-cisr.gc.ca/en/about/processes/ahp_e.htm

Asylum seekers admitted to territory and referred to IRB:²⁴

Year	Claims Made	Claims referred to IRB	Claims decided by IRB*
1997	24 289	22 584	19 138
1998	24 937	23 838	23 115
1999	30 124	29 396	22 332
2000	36 534	34 253	24 124
2001	44 500	44 038	22 887
2002	33 400	39 500**	26 300

* Claims not decided by IRB: decision is pending; cases abandoned, withdrawn or closed.

**This apparent anomaly is due to the addition of claims from the previous year that still had not been heard.

As can be seen by the above table, most of the claims that are made to CIC are referred to the IRB for a refugee determination.

8 Once health, security and identity are established, what is the procedure for processing an asylum claim? Detention? Residence provided? Social security? Right to work? Legal assistance?

Once a person is found eligible to make a refugee claim, a conditional removal order is placed on the claimant. The case is referred to the Refugee Protection Division, and if the asylum seeker is determined to be a refugee, then the conditional removal order is not brought into effect. If the refugee claim is rejected or declared abandoned, then the removal order becomes effective, and the extradition provisions of the Act are brought into effect (s105 *IRP Act*).

Personal Information Form

Upon being referred to the Refugee Protection Division by the immigration officer, the asylum seeker has 28 days to submit a Personal Information Form (PIF) which makes up the main part of the application to the RPD.²⁵ The PIF is much like the questionnaire the asylum seeker fills in for eligibility and gives personal details such as identity, route to Canada, education, employment, family members, criminality, and most importantly explains why the asylum seeker is seeking refuge. After lodging the PIF and the medical exams have been passed, the refugee claimant can apply for a work permit. If a refugee claimant does not file the PIF, the Board can declare the case abandoned which leads to the removal of the refugee claimant.

*The Hearing*²⁶

The claim goes to the RPD where a hearing takes place. In some cases the RPD may decide to accept the claim without a hearing if the claim is manifestly well-founded and does not

²⁴ Table collated from statistics given in the website:

www.refugees.org/world/countryrpt/amer_carib/2003/canada.cfm

²⁵ *Comparisons: Seeking Asylum*, www.survival-comparisons.org.au/can1.htm

²⁶ Parliamentary Research Branch, "Canada's Refugee Protection System", www.parl.gc.ca/information/library/PRBpubs/bp185-e.htm

require a full hearing. This is the expedited process before the Refugee Protection Officer (RPO). If the RPO recommends that the claim be accepted, it is sent to a member of the RPD for a final review. However, if the claim was not manifestly well-founded, then there is a full hearing.

The hearing is conducted by a single member of the RPD, unless the Chairperson is of the opinion that the panel should be composed of three members. The hearings are non-adversarial and usually heard in private, though can be open to the public unless there is a serious possibility of endangering the life, liberty or security of any person, or would produce a real and substantial risk of unfairness in the proceeding or the disclosure of matters relating to public security. The Minister has a right to intervene in the proceedings with notice to the claimant. Both Minister and claimant are entitled to have representation, and in Canada, legal aid is available for asylum seekers whose claims are yet to be determined. Also, a representative of the United Nations Commissioner for Refugees has a right to attend the hearing and may make written representations.

Either side can call witnesses at the hearing, including expert witnesses, though notice must be given to the Board and the Minister of any proposed witnesses and the substance of the testimony as well as the relationship the witnesses may have to the claimant.

The RPD determines whether or not the asylum seeker is a “protected person”. The asylum seeker is a protected person if s/he is a Convention refugee or a person in need of protection.²⁷

Convention Refugee

Section 96 *IRP Act* states that a **Convention refugee** is “a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular group or political opinion,

- (a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or
- (b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

Section 97 *IRP Act* provides asylum seekers with protection if they do not come under the definition of a Convention refugee. The Act confers protection on people if removal to their country of nationality of former habitual residence would “subject them personally

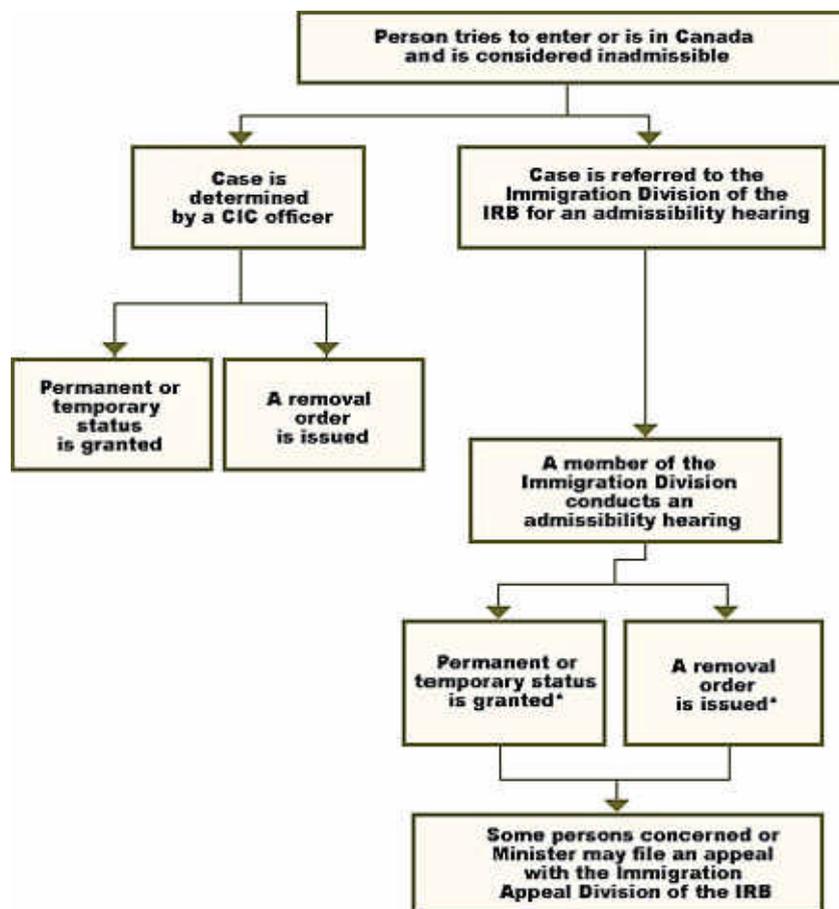
- (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or
- (b) to a risk to their life or to a risk of cruel and unusual treatment or punishment” in particular circumstances.

If the RPD finds that the claimant is a Convention refugee or a person in need of protection, then the claimant has refugee status and is a protected person. If the claim is rejected, the decision-maker must state whether or not the claim contained credible or trustworthy evidence on which a favourable decision could have been based. If the finding is negative, then the claimant does not receive an automatic stay of removal for the purposes of court

²⁷ *IRP Act*, s95

review. If, however, the decision-maker states that the claim did in fact contain credible and trustworthy evidence, then a stay on the removal order is granted, so that the claimant can apply for an appeal.

²⁸
Admissibility Hearing Process



* The person concerned or CIC may ask the Federal Court of Canada for leave (permission) to apply for judicial review of any decision of the Immigration Division.

Detention, Residence, Benefits

As discussed above, detention is only seen as a last resort, set aside for those whose identity cannot be determined, or there exists a security risk. Although residence is provided for those who are determined to be refugees by the RPD, those waiting for such a determination may find such a service harder to obtain. On the other hand, social security, work and legal assistance are provided.

Right to work: Claimants can apply for employment authorisation, but this is usually only granted in cases where the asylum seeker cannot subsist on public benefits.

²⁸ Immigration and Refugee Board, www.irb-cisr.gc.ca/en/about/processes/ahp_e.htm

Education: Minor children are automatically eligible to attend school. Adults need to apply to gain authorisation to attend school while they wait for a decision to be made on their claim for refugee protection.

Health: All claimants are availed of emergency and essential health services while they wait for their claims to be processed.²⁹

Legal: In some provinces in Canada, asylum seekers receive free legal representation, and legal aid is available throughout Canada.³⁰

9 Is there a distinction drawn between those arriving with a visa and those without?

To stay in Canada temporarily, a visa is required for people from certain countries.³¹ If an asylum seeker arrives from one of these countries without a visa, then s/he will have to go through the refugee determination system. The issue of documentation is covered in s106 of the *IRP Act*, and is a matter of credibility. The Board will take a more favourable view towards those refugee claimants who can produce documents such as visas, but if the claimant has a reasonable reason for not arriving without such documents, then this will not affect his/her credibility.

10 Is there a distinction drawn between those arriving directly from a country of persecution, and those engaged in secondary movement? If so, how is this distinction drawn? Who draws the distinction? Is the decision reviewable?

There does exist a distinction between an asylum seeker coming from a country of persecution and an asylum seeker coming through a country other than that which was the country of persecution. Section 101(1)(e) states that “A claim is ineligible to be referred to the Refugee Protection Division if the claimant came directly or indirectly to Canada from a country designated by the regulations, other than a country of their nationality or their former habitual residence.” The Act directs the Governor in Council to take into account 4 factors in prescribing the list of countries to which people may be returned without a refugee protection hearing:

- whether the country is a party to the Refugee Convention and the Convention Against Torture;
- the country’s policies and practices with respect to each of those Conventions;
- the country’s record with respect to human rights; and
- whether the country is a party to an agreement with Canada (such as the Safe Third Party Agreement with the United States).

If an asylum seeker is determined to be ineligible to be referred to the RPD by the immigration officer, then the appeal process to the Federal Court can begin. (See Question 7).

²⁹ CIC, “Rights to Employment, Education and Health Systems” www.cic.gc.ca/english/refugees/asylum-5.html

³⁰ World Refugee Survey 2003 Canada, www.refugees.org/world/countryrpt/amer_carib/2003/canada.cfm

³¹ For list of countries, see: www.cic.gc.ca/english/visit/visas.html

11 Does one have to be strictly a refugee to be able to remain, or are there other humanitarian classifications available? If so, who decides, what are the criteria and is the decision reviewable?

Once a person has been denied refugee status (either as a Convention refugee or person in need of protection) and is subject to a removal order, s/he may apply to the Minister for protection, known as “pre-removal risk assessment” (PRRA) in s112 *IRP Act*. A refugee claimant whose claim was rejected by RPD can make a protection application on the ground that there is new evidence, or evidence that it was not possible or reasonable to provide at the original hearing (s113 *IRP Act*).

In most cases the test for risk is quite broad. In order to determine if there is a risk to the claimant in returning to the country of origin, CIC has regard to the Refugee Convention, the Convention on Torture, and the risk to life or the risk of cruel and unusual treatment or punishment. Claimants who were determined to be ineligible for protection for reasons of security, criminality or violation of human rights can apply for a PRRA for a stay of removal, though such claimants cannot apply for permanent residency.³²

If the PRRA application is rejected, claimants can make one last attempt by applying to CIC to stay in Canada on humanitarian and compassionate grounds. It is only in very special circumstances that the Minister grants this request.³³

Furthermore, Canada must accede to the principle of non-refoulement (Article 33 Refugee Convention), in not returning an asylum seeker to any country where the asylum seeker faces persecution. This principle is embodied in s115 *IRP Act*, though there are exceptions when the Minister deems the asylum seeker to be a danger to the public or is inadmissible on the grounds of security, violating human rights or involved in organised criminality.

12 How many asylum and humanitarian claims are decided each year?

Refugee claims in Canada, from 1989 to 2001:³⁴

Year	Number of Claims	Number of Claims decided by IRB after a hearing	Withdrawn/Abandoned and Others	Positive Decisions by IRB (as % of all claims not abandoned or withdrawn)
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³² Canadian Parliament, www.parl.gc.ca/information/library/PRBpubs/bp185-e.htm

³³ Immigration and Refugee Board, www.irb-cisr.gc.ca/en/about/tribunals/rpd/claimant/index_e.htm

³⁴ Canadian Parliament, www.parl.gc.ca/information/library/PRBpubs/bp185-e.htm

1989	12,092	5,599	133	4,840 (86%)
1990	21,046	13,177	394	10,429 (79%)
1991	29,008	27,520	1,394	19,913 (72%)
1992	31,345	27,600	1,866	17,610 (64%)
1993	35,702	25,868	4,920	14,203 (55%)
1994	22,375	21,928	3,694	15,298 (70%)
1995	26,409	13,755	3,388	9,704 (71%)
1996	26,009	16,715	5,277	9,619 (58%)
1997	22,721	19,086	5,751	10,038 (53%)
1998	23,897	23,183	6,211	12,929 (56%)
1999	29,450	22,373	5,609	12,984 (58%)
2000	34,289	24,204	4,710	14,003 (58%)
2001	44,075	22,951	5,467	13,383 (58%)

13 Does the country take a quota of off-shore refugees each year as well as on-shore asylum seekers? If so, is there a nexus between the numbers?

Canada has a very advanced resettlement program for off-shore refugees called the Refugee and Humanitarian Resettlement Program. There are two separately funded programs: government-funded and private sponsorship of refugees. Private sponsorship may be from faith communities, ethnic associations, unions, or any other group of individuals that want to help refugees. Each year the government sets a target for government-assisted refugees. For 2002, the target was set at 7500. The government also sets an annual range for the number of privately sponsored refugees to be processed. In 2002 that target was set at 2900-4200.³⁵

Application

Asylum seekers must apply to the Canadian Mission in their country with either a referral from the United Nations High Commissioner for Refugees or an undertaking from a private sponsor. If the asylum seekers is from one of the following countries, there is no need for a referral or undertaking: DR Congo, Sudan, El Salvador, Guatemala, Sierra Leone, Colombia.³⁶

Classes of Refugees

Immigration officers in CIC select refugees based on 3 classes:

Convention Refugees Abroad Class

The Convention Refugee Abroad class includes people who are outside their country of citizenship or habitual residence. Refugees in this class have a well-founded fear of persecution for reasons of race, religion, political opinion, nationality or membership in a particular group. Individuals selected under this class are eligible for government assistance or may be privately sponsored

Country of Asylum Class

³⁵ Canadian Council for Refugees, www.web.net/~ccr/state.html

³⁶ Citizenship and Immigration, www.cic.gc.ca/english/refugees/resettle-5.html

The Country of Asylum class includes people who are outside their country of citizenship or habitual residence. Refugees in this class are seriously and personally affected by civil war, armed conflict or massive violations of human rights.

Individuals selected under this class must be privately sponsored or have adequate financial means to support themselves and their dependants.

Source Country Class

The Source Country class includes people who would meet the definition of a Convention Refugee but who are still in their country of citizenship or habitual residence. It also includes people who have been detained or imprisoned and are suffering serious deprivations of the right of freedom of expression; the right of dissent; or the right to engage in trade union activity.

Individuals selected under this class are eligible for government assistance or may be privately sponsored.

There is an agreement between the Canadian federal government with Quebec called the Canada-Quebec Accord, where Quebec has the responsibility for selecting refugees abroad who are destined for Quebec.³⁷

Women at Risk

Canada also has a program for women who are in need of protection called the Women at Risk Program, created in 1988. The women who are resettled in Canada through this program are often need urgent protection from family members, local authorities or neighbours. The women often have dependents, and are resettled with them in Canada. The Women at Risk program is a part of the overall Refugee and Humanitarian Resettlement Program.³⁸

Benefits

Once the refugees have been determined and accepted into the country, they have a great deal of assistance from the Canadian government. The refugees receive welfare, temporary accommodation and help in finding work and permanent accommodation, and even household items. The refugees gain the benefit of the Immigration Loans Program that enables them to pay for travel documents, transportation to Canada, and permanent residency fees.³⁹

Year	Government Assisted Refugees (Off-shore)*	Privately Sponsored Refugees (Off-shore)*	On-Shore Refugees**
1989	13 808	21 631	4 840
1990	12 563	19 307	10 429
1991	7 429	17 433	19 913
1992	6 126	8 960	17 610
1993	6 794	4 768	14 203
1994	7 585	2 822	15 298
1995	7 798	3 121	9 704
1996	7 846	3 073	9 619
1997	7 712	2 658	10 038

³⁷ Citizenship and Immigration, www.cic.gc.ca/english/refugees/resettle-2.html

³⁸ Citizenship and Immigration, www.cic.gc.ca/english/refugees/women-1.html

³⁹ Citizenship and Immigration, www.cic.gc.ca/english/refugees/resettle-3.html

1998	7 382	2 140	12 929
1999	7 445	2 332	12 984
2000	7 367	2 905	14 003
2001	8 693	3 570	13 383

* Source: Canadian Council for Refugees⁴⁰

** Source: Canada's Parliamentary Research Branch⁴¹

14 How long does an asylum claim take?

Although the initial CIC screening process must be done within 3 days, the rest of the determination process is much longer. There are no specific figures, but there is one report that says that an average refugee claim will take about 9 months.⁴² Of course, the time is dependent on the course the claim takes, whether there are appeals or if it is a smooth expedited claim.

15 How many levels of appeals are there?

Claimants who are found ineligible to be referred to RPD have the right to appeal to the Federal Court for judicial review. They must apply to the Federal Court for leave to appeal which is decided by a single judge, usually without personal appearance by the parties. There is no appeal from a decision on a leave application. Once leave to appeal is given, there is a hearing before the Trial Division of the Federal Court. In some circumstances there can be an appeal at the Federal Court of Appeal from the hearing at the Trial Division.⁴³ As mentioned above, some classes of asylum seekers can appeal to the Immigration Division.

Once a claimant has been referred to the RPD, and the decision has been negative, the appeal process is again through the Federal Court, identical to the procedure for appeal once found ineligible to be referred.

Although the *IRP Act* provides for another level of appeal for decisions made in RPD, it has not yet been implemented. Section 110(1) *IRP Act* states that an asylum seeker can appeal to the Refugee Appeal Division against a decision of the RPD on a question of law, fact or a mixture of both. However, the Canadian government implemented the Act in June 2002 without the appeal division. In April 2002, CIC stated that implementation of the appeal division was delayed due to "pressures on the system."⁴⁴ In May 2002 the Minister for Citizen and Immigration committed the government to implementing the division within a year, but over a year later, asylum seekers are still waiting.⁴⁵

⁴⁰ Canadian Council for Refugees, "State of Refugees in Canada" www.web.net/~ccr/state.html

⁴¹ Canada's Parliamentary Research Branch, "Canada's Refugee Determination System", www.parl.gc.ca/information/library/PRBpubs/bp185-e.htm

⁴² Mark Fernandes, "Cut the red tape, refugee council urges", temagami.carleton.ca/jmc/cnews/18022000/n1.htm

⁴³ Canadian Parliament, www.parl.gc.ca/information/library/PRBpubs/bp185-e.htm

⁴⁴ CIC Press Release, "Refugee Appeal Division Implementation Delayed", 29 April 2002

⁴⁵ Canadian Council for Refugees, "Flaws in the Refugee System", www.web.net/~ccr/flaws.html

16 In what circumstances could a person be held in detention while the claim is processed?

See Question 7 for full account of detention.

17 How many overstayers a year does the country have?

Figures on how many people who have been denied protection are still in Canada at any one time are not available. Canada does not keep exit controls, and the Canadian Council for Refugees suggests that many refused claimants may have left Canada on their own without CIC knowing.⁴⁶

18 Once an asylum seeker is rejected, are they taken into detention? If so, what are the conditions and is the decision appealable? If not, how do they arrange the removal of persons?

Removal of rejected asylum seekers: Once an asylum seeker is rejected by the IRB, s/he can apply for judicial review to the Federal Court within 15 days. If unsuccessful the asylum seeker can then apply for PRRA. As a last throw of the dice is the PRRA claim is unsuccessful, the asylum seeker can apply to CIC to stay in Canada on humanitarian and compassionate grounds. Failing all of the above steps, the removal order comes into effect. The asylum seeker has 30 days to leave Canada on their own. In some cases, CIC will remove asylum seekers (presumably this is done when there is an interest for CIC to do so. For example, if the asylum seekers has been deemed by CIC to be a threat to public safety or security).

The enforcement of the removal of failed asylum seekers is of issue in Canada. Some removal orders are not executed, some are delayed because of dangerous conditions in the country to which the asylum seeker would be returned, and sometimes it is just difficult to keep a track of people who are to be removed from the country.⁴⁷

Detention: Rejected asylum seekers are not detained unless they present 1) a flight risk, 2) lack of identity, or 3) threat to security, as is the case with all other asylum seekers waiting for their cases to be heard. Although Canada has had a very humanitarian approach to the protection of asylum seekers in the past, there are fears that the system is following the path of the United States and Australia, with greater use of the power of detention, mainly for proof of identity issues.⁴⁸ Furthermore, statistics show that on average more than half of the asylum seekers detained are in gaols rather than facilities for asylum seekers. The Canadian Council for Refugees released a report showing that on any one day in 2003, an average of 521 people were in immigration detention in Canada, and of these an average of 323 people were in provincial gaols, while 198 were in immigration holding centres.⁴⁹ Although there were very few children in detention, there were still some detained, most of them accompanied by an adult.⁵⁰

⁴⁶ Canadian Council for Refugees, www.web.net/~ccr/sept11qs.htm

⁴⁷ Canadian Parliament, www.parl.gc.ca/information/library/PRBpubs/bp185-e.htm

⁴⁸ Canadian Council for Refugees, www.web.net/~ccr/state.html

⁴⁹ Canadian Council for Refugees, "Detention Statistics 2003 year to date", www.web.net/~ccr/detentionstatscurrent.html

⁵⁰ Ibid.

19 What are the terms of a recognised asylum seeker (or humanitarian entrant) remaining in the country? Is there a time limit on the visa? Family reunion? Right to travel? Right to work? Social security assistance?

Permanent Residency status for successful claimants: If a person has been found to be a person who is in need of Canada's protection, s/he may make an application for permanent resident status within 6 months of the decision. Refugees who are resettled from overseas usually become permanent residents as soon as they arrive in Canada. If an asylum seeker who has been admitted to Canada as a refugee does not apply for permanent residency, s/he will continue to be a "protected person" with only limited rights, such as the right to work and study. Once they become permanent residents, they acquire other rights such as the right to family reunification.⁵¹ Most of the protected people in Canada apply for permanent residency, and in turn apply for Canadian citizenship after 3 years of permanent residency.⁵²

Family Reunion: Canada has a family reunion program for refugees who have become permanent residents who have family members in Canada who are not refugees and also for family members overseas. However, there is a limitation on who can be brought over as part of the family reunion scheme. While parents and grandparents can be sponsored, siblings are ineligible.⁵³

Assistance: As stated above, asylum seekers are given legal assistance, government funding, health and education, and once they are deemed to be "protected" they receive temporary accommodation and assistance in finding a job.

20 How stringent is the law for removal of non-citizens who have committed criminal offences and served their sentences? Is there any appeal from the decision to deport?

Canada engages in the deportation of non-citizens who have committed criminal offences, though this is dependent on the degree of criminality. Section 36 of the *IRP Act* outlines the acts that would bring into force inadmissibility to remain in Canada for a permanent resident or foreign national (ie a non-citizen). A person will be removed on grounds of serious criminality if under s36(1)(a) s/he has committed an offence in Canada that is punishable by a maximum term of at least 10 years, or an offence where a term of 6 months imprisonment has been imposed. Under s36(2) a person will be removed on grounds of criminality if s/he has committed an offence that is indictable in Canada. Both serious criminality and mere criminality also apply to similar offences committed outside Canada.

The Act also provides for discretionary decisions by the Minister in deeming a non-citizen to be rehabilitated, and therefore not inadmissible to remain in Canada (s36(3)).

Sections 44-47 *IRP Act* detail how a non-citizen is removed from the country in the event that they are deemed inadmissible for criminality. A report is made by an immigration officer and the Minister may report the case to the Immigration Division for a hearing or make a removal order directly. If it goes to the Immigration Division, there is a hearing, and the Division can

⁵¹ Canadian Council for Refugees, "State of Refugees", www.web.net/~ccr/state.html

⁵² Ibid.

⁵³ Ibid.

either order the removal of the non-citizen or order that the non-citizen has a right to stay in Canada.

Under ss63(2) and (3), there is a right to appeal the decision of the Immigration Division to the Immigration Appeal Division for permanent residents and protected persons. However, under s64(1) a permanent resident or non-citizen may not appeal to the Immigration Appeal Division if s/he has been found to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality.

21 How does the country ensure compliance with the Convention Against Torture, the ICCPR, and the Convention on the Rights of the Child before ordering forcible removal of a failed asylum seeker?

ICCPR and CAT

Canada's *IRP Act* embodies its obligations under the Convention Against Torture and ICCPR by offering protection for asylum seekers who face substantial danger of torture in their country of nationality (s97(1)(a)) or who risk cruel and unusual treatment or punishment (with some conditions), as given in s97(1)(b).

Canadian Charter of Rights and Freedoms

Furthermore, the Supreme Court of Canada ruled in 1985 that the Canadian Charter of Rights and Freedoms protected refugee claimants, giving them the same rights and protection afforded to Canadian citizens.

CROC

In 1996 the Immigration and Refugee Board in Canada produced a set of guidelines for child refugee claimants. The decision-makers must take into account when determining the child's refugee status, whether the decision is "in the best interests of the child" as given in CROC. There are important guidelines such as the need for priority in processing a child's claim and the necessity of having a competent representative for the child. Procedural fairness is also a big issue covered in the guidelines.⁵⁴

22 Is there any distinctive jurisprudence by the domestic courts or parliaments qualifying or restricting the terms of the Refugees Convention? Make particular reference to 'particular social group', persecution by non-state actors, and Convention reasons being the main cause of persecution or human rights abuse.

Gender Guidelines

Canada has introduced Guidelines for Women Refugee Claimants, an important and influential development in the concept of refugees. In the 1990s Canada became the first country in the world to issue guidelines recognising that women are persecuted because of their gender and that the definition of "refugee" should be interpreted to include this form of persecution. The Guidelines emphasise that "the circumstances which give rise to women's fear of persecution are often unique to women."⁵⁵

⁵⁴ Immigration and Refugee Board: www.irb-cisr.gc.ca/en/about/guidelines/child_e.htm

⁵⁵ Immigration and Refugee Board, www.irb-cisr.gc.ca/en/about/guidelines/women_e.htm

The case of *Canada (Attorney General) v. Ward* [1993] 2 SCR 689 gave the impetus for including women in the Refugee Convention's "social group" category for a well-founded fear of persecution. The Refugee Division in 1993 found that a woman who was a divorced mother living under the Sharia law had a well-founded fear of persecution by reason of her membership in a particular social group of "women." There are many more examples of cases that deal with women refugee claimants in the Guidelines.

Canadian Charter of Rights and Freedoms

The case of *Singh v. Canada (Minister of Employment and Immigration)* [1985] 1 SCR 177 was important in holding that the Canadian Charter of Rights and Freedoms applied to persons who were not Canadian citizens, so including refugee claimants.

Other cases

There are other cases of importance in Canadian refugee jurisprudence:

Pushpanathan v. Canada [1998] 1 SCR 982: permanent resident of Canada facing deportation for trafficking narcotics, and sentenced to 8 years prison. Deportation rested on the ground that the Refugee Convention is not applicable to persons who have "been guilty of acts contrary to the purposes and principles of the United Nations" (Article 1F(c)). The Supreme Court of Canada held that trafficking narcotics was not in contravention of Article 1F(c), and remitted the case back to the IRB for reconsideration. However, there was a new argument that was put forward at the IRB that Mr Pushpanathan's drug trafficking was to fund the terrorist group, Tamil Tigers. The Federal Court upheld the IRB's decision of Mr Pushpanathan's ineligibility.

Suresh v. Canada 2002 SCC 1: deportation orders against claimants who argued they would face torture if returned to their home countries. Mr Suresh was given orders for deportation because he was allegedly a member of and fundraiser for the terrorist group, Tamil Tigers. Although Canada accedes to the principle of non-refoulement, the *IRP Act* also provides that a person will be deported if there is a threat to the security of Canada.

23 How does the country apply the cessation clause once there is a change in the situation of the home country? Does the country insist on the refugees re-establishing their individual claim or does the country permit the refugee to remain pending proof of a substantial, durable solution in the home country?

A cessation or vacation of an asylum seeker's claim for refugee protection may occur under s108(1) *IRP Act* if:

- (a) the person has voluntarily re-availed themselves of the protection of their country of nationality;
- (b) the person has voluntarily re-acquired their nationality
- (c) the person has acquired a new nationality and enjoys the protection of the country of that new nationality;
- (d) the person has voluntarily become re-established in the country that the person left or remained outside of and in respect of which the person claimed refugee protection in Canada; or
- (e) the reasons for which the person sought refugee protection have ceased to exist.

There is an avenue of appeal to the Federal Court if the RPD decides to reject the asylum seeker's refugee claim for the above reasons.

Cessation can only be ordered if the reasons for the need for protection ceased to exist close in time to the grant of protection, since permanent residency cannot be taken away for those reasons alone.⁵⁶

24 Does the country countenance anything like the Pacific Solution?

No.

⁵⁶ Parliamentary Information and Research Service: www.parl.gc.ca/information/library/PRBpubs/bp185-e.htm