
Expanding Refugee Ineligibility: Canada's Response to Secondary Refugee Movements

IDIL ATAK

Department of Criminology and Faculty of Law, Ryerson University, Toronto, Canada
idil.atak@ryerson.ca

ZAINAB ABU ALROB

Policy Studies, Ryerson University, Toronto, Canada

CLAIRE ELLIS

Policy Studies, Ryerson University, Toronto, Canada

MS received June 2020; revised MS received September 2020

In 2019, Canada introduced legislative changes that made asylum seekers ineligible for protection if they have made a previous refugee claim in a country that Canada shares an information-sharing agreement with. Such agreements are currently in place with the US, Australia, the UK, and New Zealand. This article offers a critical assessment of the new ineligibility ground, arguing that the policy is designed to deter secondary refugee movements, particularly those across the Canada–US border which have considerably intensified since 2017. Based on the ‘first safe country’ rule, the new ineligibility ground enables Canada to exclude some asylum seekers from refugee protection without offering any alternative effective protection in Canada. This article demonstrates that the policy is inconsistent with Canada’s obligations under international refugee law.

Keywords: secondary movements, refugee ineligibility, Canada, access to protection

Introduction

Since 2017, Canada has experienced an unprecedented increase in secondary refugee movements (The phenomenon, also called onward movements, refers to ‘refugees, whether they have been formally identified as such or not, who move in an irregular manner from countries in which they have already found protection, in order to seek asylum or permanent resettlement elsewhere’ (UN HIGH COMMISSIONER FOR REFUGEES (UNHCR) 2020) from the US. More than 59 000 individuals irregularly crossed the Canada–US border to claim asylum in Canada. The reasons for such movements are necessarily complex, including family and community ties in the country of destination (Baglay 2019: 237). However, the anti-immigrant rhetoric and changes in the US’s asylum policies

have played a significant role. The US Administration has created a hostile environment for refugees and precarious migrants through a series of Executive Orders. (The Executive Order of 6 March 2017 which suspended for 90 days the entry of refugees and migrants from Iran, Libya, Somalia, Sudan, Syria, and Yemen into the US is a case in point. Another example is the Executive Order No. 13768 to pull grants from local governments that fail to comply with federal immigration enforcement laws (2017).) The new Administration also pledged to terminate the Temporary Protected Status program. Some families who sought asylum in Canada reported that for them, the US was no longer safe (Shenoy 2018).

Like other asylum seekers, those who irregularly cross the border into Canada are allowed to make a refugee claim. These claims are referred to the Immigration and Refugee Board of Canada (IRB) after Immigration, Refugees, and Citizenship Canada (IRCC) or the Canada Border Services Agency (CBSA) determine their eligibility (Immigration and Refugee Board of Canada (IRB) 2020). Under the *Immigration and Refugee Protection Act* (IRPA), a refugee claim is deemed to be ineligible on several grounds, including if the claimant has been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country (IRPA para. 101(1.d)).

In June 2019, the *Budget Implementation Act* (Bill C-97) added a new ineligibility ground to the IRPA. According to this omnibus Bill, which was adopted hastily in the lead-up to the 2019 federal election, a person is ineligible to make a refugee claim in Canada if they have previously requested asylum in a country with which Canada has an information-sharing agreement or arrangement. The person is only entitled to a hearing with a Pre-Removal Risk Assessment officer to evaluate the risk they would face if removed from Canada (IRPA s. 113.01). The existence of a refugee claim in another country is confirmed through information sharing with the immigration divisions in partner countries. Importantly, the ineligibility ground applies regardless of whether a decision was ever made on a previous claim.

Canada has information-sharing agreements or arrangements with the US, Australia, New Zealand, and the UK. A 2009 *Data-Sharing Protocol* allows these countries to conduct ‘immigration checks’ through biometric data exchanges (Canada Border Services Agency (CBSA) 2019a). The protocol emerged out of the Five Country Conference, a cooperation platform on national security affairs founded after the Second World War among Canada, the US, Australia, New Zealand, and the UK—also known as the ‘Five Eyes’. Immigration and border controls have become a priority of this inter-governmental forum (Government of Canada 2017).

Canada has concluded bilateral information-sharing agreements with each of its Five Eyes partners. Unsurprisingly, the US—with which Canada shares the world’s longest international border—has been a privileged partner. The 2001 *Canada–US Smart Border Declaration* and its Action Plan aimed to develop increased security screening and information exchange in relation to asylum seekers (paras 4 and 5). In addition, the two countries signed the *Canada–US*

Safe Third Country Agreement (STCA) in 2002 under which refugee protection claims must be made by asylum seekers in the *first* safe country—the US or Canada—they pass through (IRPAs. 101(1)(e)). In Canada, the STCA only applies to refugee claimants who seek to enter the country from the US at an official border crossing point, therefore permitting those who instead manage to arrive on Canadian soil, albeit irregularly, to stay and make an asylum claim (IRPRs. 159.1 to s. 159.7). Arguably, this ‘loophole’ has created an incentive for asylum seekers to irregularly cross the border (Arbel and Brenner 2013).

This article critically assesses Canada’s new refugee ineligibility ground in Bill C-97. We argue that the policy has been designed as a border control mechanism to deter the secondary refugee movements across the Canada–US border. In lieu of the complex and controversial process of renegotiating the STCA, the government chose to rely on information-sharing agreements with its Five Eyes partners to exclude from refugee protection those individuals with a previous claim in one of these countries. The government justified this unilateral move on the ground of the presumed ‘safety’ of the Five Eyes for asylum seekers. Thus, the new eligibility provision has been rationalized on the basis of the ‘first country of asylum’ notion according to which individuals who have the opportunity to claim protection in a ‘safe country’, with a robust refugee protection system, should do so in the first country they arrive at rather than seek protection elsewhere (UN High Commissioner for Refugees (UNHCR) 1991). Under international refugee law, the ‘first country of asylum’ notion would be compatible with the *Convention relating to the Status of Refugees* (Refugee Convention) only if it ensures that refugees have access to fair and effective protection and enjoy the rights set by the said Convention and in line with international human rights standards (UN High Commissioner for Refugees (UNHCR) 1996; Hathaway 2007). As we show in this article, Canada fails to comply with these requirements, making questionable the legality of the new eligibility provision.

The research findings presented here are based on secondary sources, in particular, parliamentary debates leading up to the adoption of Bill C-97, official statements and statistics from government databases, government and external stakeholder reports, scholarly publications, and grey literature from civil society groups and human rights organizations. We also analysed information received in response to Access to Information requests we filed with government organizations and agencies like the Canada Border Services Agency (CBSA), Immigration Refugees and Citizenship Canada (IRCC), and the Immigration and Refugee Board of Canada (IRB). First, we examine the North American geopolitical context leading up to the adoption of Bill C-97 as well as the policy objectives. We suggest that several factors converged to create a sense of crisis at the US–Canada border and contributed to the introduction of the new refugee ineligibility ground. The main policy drive has been the will to reduce the number of asylum seekers who have been using the so-called ‘loophole’ in the Canada–US Safe Third Country Agreement to cross into Canada. In the second part, the policy justifications for the new eligibility provision are explored together with their consistency with Canada’s obligations under international refugee law. Drawing on the

safeguards applicable to the controversial ‘first safe country’ notion, we discuss the accuracy of the assumption that Canada’s Five Eyes partner countries would be ‘safe’ for asylum seekers. We then question the government’s suggestion that those who made a prior refugee claim in one of these countries before coming to Canada do not seek international protection but rather improved economic conditions. Finally, we examine whether individuals who are impacted by the new eligibility provision would still have access to an effective remedy in Canada.

Geopolitical Context and Policy Objectives: ‘Crisis’ at the Border

The ineligibility ground in Bill C-97 was introduced at a historical moment where secondary refugee movements across the Canada–US border had intensified. Over 29 000 asylum seekers entered Canada at non-official border entry points between February 2017 and March 2018 alone ([Immigration and Refugee Board of Canada \(IRB\) 2020](#)). Although asylum seekers intercepted from January 2017 to February 2019 represented just over one-third of all asylum claims in Canada over this period ([Falconer 2019: 2](#)), several factors converged to create a sense of crisis at the US–Canada border.

The Liberal government of Justin Trudeau was concerned about the effectivity of the STCA which has become a subject of ongoing talks with US officials since irregular arrivals began to increase ([Baglay 2019; Falconer 2019](#)). Refugee advocates called for the termination or suspension of the STCA, arguing that the agreement endangers the lives of those seeking protection by forcing them to arrive through unauthorized points of entry, often during extreme weather conditions ([Canadian Council for Refugees \(CCR\) 2017](#)).

The federal government’s management of irregular border crossings has been questioned in public opinion. These movements have been perceived by the public as abuse of Canada’s refugee system. Polling data from 2018 indicated that more than half of the respondents considered Canada too generous toward asylum seekers who cross into Canada irregularly ([Angus Reid Institute 2018](#)). A poll in 2019 found that 45 per cent of respondents believed that most migrants are not actual refugees but rather economic migrants ([Ipsos 2019](#)). Forty per cent of respondents also said that Canada ‘must close its borders to refugees entirely’ and ‘can’t accept any at this time’ ([Ipsos 2019](#), see also [Labman and Liew 2019: 191](#)).

Increases in the number of asylum claims exacerbated the already overstretched administrative capacity of the Immigration and Refugee Board and contributed to a record level backlog of 75 000 cases in 2019 ([Immigration and Refugee Board of Canada \(IRB\) 2019](#)). The average wait time for first asylum hearings before the IRB reached 2 years instead of the statutory two month-timeline ([Office of the Auditor General 2019](#)).

New asylum arrivals put the capacity of reception and settlement services under strain, particularly shelters and housing assistance in Montreal and Toronto, the two main destination cities for the majority of asylum seekers ([Wright 2019](#)). As a result, tensions heightened between the Federal and provincial governments. In

2018, the newly elected Ontario Premier Doug Ford blamed the Federal government for encouraging people to cross into Canada illegally and putting a strain on local and provincial resources (CBC 2018). In a similar vein, Quebec Premier François Legault demanded that Ottawa cover the added costs of health, education, housing, and other services provided to recent asylum arrivals (Banerjee 2018). Similar calls for funding were made by the mayors of Toronto and Montreal to maintain services for the increasing number of asylum claimants settling in these cities (Pinkerton 2020).

The government faced growing criticism from the opposition in Parliament for its border response. Take for instance, MP and member of the Conservative Party Michelle Rempel who blamed the government for allowing ‘people to illegally enter the country and claim asylum’ and causing a huge backlog at the IRB because of their ‘incompetence’ and ‘mismanagement’ of the asylum system (Open Parliament (Rempel) 2019).

The new refugee ineligibility ground has been a response to the criticism levelled at the federal government about its border mismanagement. By deterring secondary refugee movements, the government sought to tackle the criticism and to reassure the public of control over its borders.

Deterring Secondary Refugee Movements

The need to prevent abuse and thus, preserve the integrity of Canada’s asylum system has been presented as the overarching policy rationale for the new ground of ineligibility. A new objective was added to the IRPA to underline the importance of ‘[maintaining], through the establishment of fair and efficient procedures, the integrity of the Canadian immigration system’ (IRPA, s. 3. (f.□1)). The mantra of ‘integrity’ has been systematically used by successive governments in the past to justify restrictive policies (Atak *et al.* 2018: 7) that aim to control the administrative burden and financial costs associated with processing allegedly baseless claims. This time again the legislative change was meant to serve similar purposes. This was abundantly made clear by Minister of Border Security and Organized Crime Reduction Bill Blair, when he introduced the new ineligibility ground in Parliament:

We are . . . putting in place measures to discourage irregular migration by those who try to make multiple claims in different countries. . . Just like other existing ineligibilities, these individuals will be barred from accessing the Immigration and Refugee Board. . . This proposed measure will also help lessen the caseload at the IRB (Open Parliament (Blair) 2019)

Several policymakers and civil servants referred to the need to better manage the border and the refugee system (The Canadian Press 2019). For instance, according to Nick Whalen, a Liberal MP and a member of the Citizenship and Immigration Committee, Bill C-97 would allow the government to tackle ‘any potential future influxes’ of irregular arrivals (Standing Committee on *Citizenship and Immigration* (Nick Whalen) 2018). Whalen further held that the ‘tools and

procedures which limit the eligibility of a group of asylum claimants (e.g. those who have had the opportunity to apply for protection in another country) are a common measure used by governments to manage migration and maintain the efficiency of their asylum systems' (Standing Committee on *Citizenship and Immigration* (Whalen) 2018). Similarly, a Senior Director of Refugee Affairs at IRCC emphasized that 'the new measure is meant as a deterrent. We hope it will encourage people to follow through with the process that was initiated in the country where they claimed asylum and comply with the resulting decision' (Open Parliament (Baril) 2019).

The new eligibility provision is meant to supplement various border measures deployed to tackle irregular crossings. A case in point is the establishment, in August 2017, of an Ad Hoc Intergovernmental Task Force on Irregular Migration to coordinate the government's response to 'the influx of asylum seekers between ports of entry' (Government of Canada 2017). In addition, a new Ministry of Border Security and Organized Crime Reduction was created in 2018, under Public Safety Canada, to lead the efforts against these secondary asylum movements (Prime Minister of Canada 2018). As stated, it was the minister of Border Security—and not the minister in charge of refugee affairs (IRCC)—who introduced the new refugee ineligibility ground in Parliament. This is indicative of the government's treatment of asylum seekers as a border security issue. Measures to deal with secondary movements also included a heavier investment in border security along with cooperation with international partners (Government of Canada, Budget Plan 2019: 184).

Tackling the STCA 'Loophole'

The new refugee eligibility provision explicitly draws on international cooperation with countries Canada has information-sharing agreements with. However, the government's main preoccupation was to control the irregular arrival of asylum seekers particularly from the US. An empirical study conducted by Damian Smith (2019) found that the government considered the new provision as a pre-emptive measure 'in case of US policies that might spur more migration, particularly in the lead-up to the 2020 US presidential election' (para. 33).

The responses to the access to information requests we filed with CBSA, IRCC, and the IRB confirm this finding. We asked for statistics on individuals who made a refugee claim in the US, the UK, Australia, or New Zealand prior to claiming refugee status in Canada. The IRB responded that they do not collect such data. Similarly, the CBSA was unable to generate the information requested since it is 'not collected in a reportable field' (ATI records released by CBSA as ATI #2020–03722/VHAME, with the authors). Only IRCC seem to collate limited data in relation to our request. Accordingly, there were 596 'regular and irregular asylum claims with a previous US asylum interview' from 1 January 2019 to 20 June 2019 (ATI records released by IRCC as ATI #2020–03722/VHAME, with the authors). IRCC confirmed however that no data are available for the remaining Five Eyes

countries (the UK, Australia, or New Zealand) and the time frame (1 January 2014 to 31 December 2019) as per our request.

The unavailability of (reliable) data on asylum seekers with a previous claim in one of the Five Eyes countries, may point to a lack of interest or concern by the authorities regarding this information. Relatedly, it also indicates that the legislative change was not informed by any empirical study. One exception is the US, as shown by the IRCC data above. Of note, the IRB has collected the statistics on irregular border crossers (with a previous claim in the US or not) from the US since 2017. Therefore, these figures were known to authorities.

The new eligibility provision appears to be a strategic move by Canada to reduce the number of asylum seekers using the so-called ‘loophole’ in the Canada–US Safe Third Country Agreement. It is expected to achieve this goal in two ways: (i) It eliminates the possibility of claiming refugee status in Canada for those who already made a similar claim in the US; (ii) Unlike the STCA, the new eligibility provision does not include any exceptions or exemptions. Indeed, under the STCA, asylum seekers who have family members in Canada are allowed to claim refugee status in Canada. So are unaccompanied minors and those with valid documents (visa or work permit) or those who qualify for public interest exceptions (STCA art. 4.2). Under the new eligibility provision, asylum seekers are now barred from applying for protection in Canada even when they meet the criteria in any one of these exceptions.

Although bilateral discussions between Canadian and US senior officials on plans to amend the STCA have occurred since 2017, there have been no official announcements on changes to the treaty as of September 2020. As mentioned, secondary refugee movements from the US polarize public opinion and the opposition in Parliament, making the negotiations more complex. The COVID-19 pandemic may have further stalled the process, since the US–Canada border has been closed to all non-essential travel since March 2020. The two countries have reached a temporary agreement which allows Canada to send back to the US individuals entering Canada from the US to make an asylum claim. The agreement applies between official ports of entry along the land border and at air and marine ports of entry ([Government of Canada 2020b](#)). In addition, a legal challenge has been launched by civil society organizations, asking the Federal Court to suspend the STCA on the ground that the US is not a safe country for refugees ([Canadian Council for Refugees \(CCR\) 2017](#)). On 22 July 2020, the Federal Court of Canada determined that the STCA is unconstitutional. Noting that those returned to the US by Canadian officials are detained as a penalty, and without regard to their circumstances, moral blameworthiness, or their actions. The Federal Court concluded that detention and the ensuing hardship and risks, including denial of access to a fair refugee process infringe upon asylum seekers’ right to liberty and security protected in the *Canadian Charter of Rights and Freedoms* (Canadian Council for Refugees 2020 FC 770, paras. 135 and 146). The Government of Canada appealed the Federal Court decision in August 2020. These developments continue to cloud the future of STCA, which remains in effect, with uncertainty. In this context, the new eligibility provision will allow

the government to exclude from refugee protection some of the claimants coming across the US, without amending the STCA. For instance, when the draft Act was discussed in Parliament, an IRCC senior civil servant affirmed that ‘according to [their] numbers, if the measure had been in place in 2017 and 2018’—when asylum arrivals from the US had significantly increased—‘between 3200 and 3400 people could have been affected’ as ‘approximately 75 per cent of them crossed the border irregularly’ ([Open Parliament \(Baril\) 2019](#)). Thus the new ineligibility ground in Bill C-97 serves as a proxy in lieu of a revised STCA. As discussed below, it permits the government to enjoy a wider and more discretionary process than the STCA, to control secondary asylum movements.

Policy Justifications: A Critical Analysis

The new refugee ineligibility ground is rationalized on the basis of three premises: (i) that the countries Canada has information-sharing agreements with are ‘safe’ for asylum seekers, i.e., they have a fair and robust refugee status determination system that ensures access to international protection; (ii) those who made a prior refugee claim in one of these countries before coming to Canada do not seek international protection, but rather improved economic conditions; (iii) those individuals who are impacted by the new policy would still have access to an effective remedy in Canada, therefore they would be protected against the risk of *refoulement*, i.e., the deportation of individuals to places where they may face persecution or a substantial risk of torture or similar abuse (Article 33(1) of the Refugee Convention; IRPA s. 115). In this section, we critically analyse these assumptions to assess the legality of the new refugee ineligibility ground in Bill C-97.

First Country of Asylum

The underlying assumption of the new eligibility provision is the notion of ‘first country of asylum’. This has been made clear by government representatives during parliamentary debates and public statements. Minister of Border Security and Organized Crime Reduction Bill Blair, for example, stated that the new ground was added ‘for those individuals who have made a claim previously in a second country, a safe country, who would not therefore be eligible under these [new] rules for referral to IRB’ ([Open Parliament \(Blair\) 2019](#)). Another example is a statement by Paul MacKinnon, Assistant Deputy Director, Department of Citizenship and Immigration, who confirmed that the change is ‘a move to recognize that you should make your claim for asylum in the first safe country you enter’ ([Open Parliament \(MacKinnon\) 2019](#)).

Over the past decades, states have widely used the first country of asylum notion, a legal tool to handle refugee claims and ensure responsibility-sharing among states (UN High Commissioner for Refugees ([UNHCR](#)) 1996; [Hathaway 2012](#): 183). A typical example is the European Union’s Dublin Regulation ([Council Regulation \(EC\) No 343/2003](#)) whereby asylum seekers must have their

application for refugee status processed by the Member State that is responsible for their entry into the European common territory.

The legality of the notion has been hotly debated (Hailbronner 1993; Legomsky 2003; van Selm 2001; Costello 2005, 2016). Proponents argued that responsibility for protection is determined based on the earlier presence of a refugee in the transit country concerned. Article 31(1) of the Refugee Convention has been invoked in support of this argument as it exempts refugees from penalization for irregular entry provided they come directly from a territory where they have a well-founded fear of persecution. This assertion has been contested. Take for instance Moreno-Lax who posits that the travel route is irrelevant to the definition of a refugee in Article 1A (2) of the Refugee Convention or to the specific object of Article 31(1) (2015: 689). This debate speaks to the ambiguity surrounding definitions of secondary refugee movements, well exemplified during deliberations to draft the now-defunct multilateral initiative of UNHCR, *Convention Plus*, in 2005. During negotiations, participating parties could not come to a consensus on the meaning of irregular secondary movements. At the crux of the debate was whether migration to an additional country, as a result of an inability to access protection in the first country of arrival, should be considered secondary migration or rather part of the initial or 'primary' migration trajectory (Zieck 2009: 407). This lack of consensus has resulted in a legal and procedural gap that leaves discretion up to receiving states on how to react to asylum seekers who do not arrive directly from countries of persecution.

As noted by Foster (2007), since the Refugee Convention and the 1967 Protocol do not explicitly require states to recognize refugees, the legality of first safe country policies is ambiguous. The Refugee Convention does not explicitly authorize nor prohibit reliance on such policies to determine refugee eligibility. It has generally been agreed that they are compatible with the Refugee Convention provided they ensure that refugees have access to a fair and effective protection and enjoy the rights set by the said Convention and in line with international human rights standards (UN High Commissioner for Refugees (UNHCR) 1996; Hathaway 2007). As explained by Gil-Bazo:

If the premise in the analysis of international cooperation among States is that individuals (who meet the criteria) have a right to be granted asylum (and not merely the right to seek it), the discussion then shift from the notion of 'effective protection' in another safe country to the way in which States may cooperate to establish a system among themselves that allows one of them effectively to discharge all international obligations on behalf of all States bound by such system (2015: 45).

An immediate problem with Canada's new eligibility provision is the absence of any legal mechanism or requirement which can be subject to review to determine responsibility for protection among Canada and its Five Eyes partners. The new eligibility provision does not establish any responsibility-sharing regime for processing asylum claims. Canadian authorities are not directed to consider whether effective protection is accessible in the first country of asylum or elsewhere. The

relevant regulatory provisions suggest that Canada is committed to its obligations towards refugees in its cooperation with the Five Eyes states. For instance, one of the purposes of the *Annex regarding the Sharing of Information on Asylum and Refugee Status Claims to the Statement of Mutual Understanding on Information Sharing* is to ‘enhance the participants’ abilities to assist those who qualify for protection from persecution or from torture’ (IRPR s 315.29(b)). It is not clear however whether and how this commitment has been met. Participant countries annually review and monitor that activities carried out under these data arrangements to ensure they consistently abide by their terms (Government of Canada 2015). However, the focus of these measures are privacy safeguards which work to ensure data and claimant information is not breached nor is it retained in a circumstance where should have been destroyed (Government of Canada 2015). Canada lacks a mechanism for evaluating whether these countries—with the exception of the US—have comparable asylum determination systems to Canada, or whether their national policies are in line with international refugee law. The information-sharing agreements do not provide for any monitoring of protection and deportation practices or adherence to international refugee law within the Five Eyes countries. Further, there is no monitoring mechanism in Canada for the implementation of the new ineligibility ground. The Canadian government has the prerogative to conclude an information-sharing agreement with any country, thereby making ineligible anyone who had made a refugee claim in that country, without Parliament’s review (Canadian Association of Refugee Lawyers (CARL) 2019: 4). Thus information-sharing agreements offer considerable flexibility to the government. By contrast, the government’s discretion is more constrained when it comes to designating a country as ‘safe’ for refugees. Under IRPA s. 102, the Governor in Council considers if a country has signed, respects and implements the Refugee Convention and relevant international instruments, holds a good human rights records, and shares responsibility with Canada regarding refugee protection. Designations must continuously assess policy changes that may weaken the evidence for the criteria outlined by the IRPA (Amnesty International Canada and Canadian Council for Refugees 2017). The new eligibility provision does not outline any criteria for the designation of international partners as ‘safe’ nor does it require these designations to continuously be monitored and re-evaluated.

The new eligibility provision differs from the STCA or the Dublin Regulation in that there is no provision in the IRPA or the *Immigration and Refugee Protection Regulations* (IRPR) under which those who are deemed ineligible would be removed to the country where they made a prior claim. Instead, asylum seekers are subject to the usual deportation processes under the IRPR. In most cases, they are returned to their country of nationality (i.e. the country of feared persecution).

Such an exclusionary policy is an alarming distortion of the first country of asylum notion and sets a dangerous example as it allows Canada to deny a person access to refugee protection on the ground of a presumed protection in the first country of asylum, namely its Five Eyes partners.

Effective Protection of Asylum Seekers in Canada's Five Eyes Partners?

As suggested by UNHCR, ‘internationally agreed arrangements . . . which incorporate the ‘safe-country’ notion should provide for clearly defined and harmonized criteria against which to measure whether countries should be considered safe’ (UN High Commissioner for Refugees (UNHCR) 1991: para. 17). A state is notably encouraged to ensure that the first country of asylum offers a similar standard of protection to asylum seekers, with certain key elements of procedural and substantive asylum law to be harmonized across states concerned. Asylum seekers should in particular have access ‘to standards of treatment commensurate with the Refugee Convention, its 1967 Protocol and international human rights standards’ in the first country of asylum. These standards go beyond the observance of the principle of *non-refoulement* and encompass ‘the requirement for the third state to provide asylum seekers access to means of subsistence sufficient to maintain an adequate standard of living and to undertake steps to enable the progressive achievement of self-reliance’ (UN High Commissioner for Refugees (UNHCR) 2018: para. 9).

In what follows, we question Canada’s justification of the new eligibility ground, i.e., the presumed ‘safety’ of the US, the UK, Australia, and New Zealand for asylum seekers. We argue that the new ground is based on erroneous assumptions.

Research shows significant differences between Canada and its Five Eyes partners in relation to refugee status determination and human rights available to asylum seekers. The interpretation of the refugee definition in Canada and the US varies greatly. So do procedural rights available (Canadian Council for Refugees (CCR) 2018). To illustrate, Canada has long acknowledged domestic violence as a form of gender-based persecution, whereas the US displays an inconsistent record in this respect (Korducki 2019; CBA 2019). The detention of minors is another telling example. Canada has taken significant steps to reduce the number of children held in immigration detention and implement a national Alternatives to Detention program in line with the best interest of the child principle (Browne 2019). A National Directive for the Detention or Housing of Minors strives to put an end to the detention or housing of minors as well as family separation, except in limited circumstances (Canada Border Services Agency (CBSA) 2019b). In the US, where the world’s largest immigration detention system operates, immigrant children are detained for long periods of time and in overcrowded facilities (Global Detention Project 2015). In the past few years, minors’ separation from their parents at the U.S.–Mexico border as well as their appalling treatment by immigration authorities have attracted fierce criticism (Roth et al. 2020).

Similar to the US, the UK and Australia have also been overtly fostering a ‘hostile environment’ against asylum seekers. Whereas in Canada asylum seekers are allowed to work and access the basic health care services, in the UK, they face restrictions such as a ban from working. Socioeconomic ‘destitution’ through restrictive labour policy is argued to be a deliberate instrument to deter future

asylum arrivals (Webber 2019: 81). Another example is the UK government's restrictive family reunification rules for refugees that result in long-term separation of families (Mulvey 2010). In addition, research shows flawed credibility assessments within the UK's refugee system. A recent report draws attention to the unlawful evidential burden on asylum applicants and to the consistent failure of the Home Office to improve procedures (Refugee Council 2019). Deficiencies in the system have, according to researchers, led to the continued detention of vulnerable asylum seekers, like torture survivors (Shaw 2016). The government was recently urged to address several issues faced by detained asylum seekers, including violence and abuse in immigration detention facilities (Joint Committee on Human Rights 2019). The same is true for Australia. This country's policy to create offshore processing and detention centers in Nauru and Manus Island (Papua New Guinea) with respect to all asylum seekers arriving by boat and without a valid visa is a telling illustration of how a democratic State may be 'unsafe' for some groups of asylum seekers. Asylum seekers in Australia are subjected to arbitrary detention with no right to judicial review of detention (Saul 2012: 35). The devastating effects of detention on the mental and physical well-being of children have been well-documented (Dechent et al. 2019). Australia has been widely criticized for its punitive deterrence policies that have amounted to human rights violation (Australian Human Rights Commission 2017). In New Zealand also asylum seekers who arrive en masse have been put in indefinite detention in correctional facilities. In 2019, advocates expressed concerns over the negative psychological and physical impacts of the policy (Amnesty International 2019: 47).

Therefore, there is extensive evidence contradicting the assumption that Canada's Five Eyes partners are 'safe' for all asylum seekers. Hostile laws and practices would make it harder in practice for some groups of asylum seekers to have a fair hearing and thus obtain refugee status. They may also explain why some choose to leave the first country of asylum for Canada.

Protection Need for Asylum Seekers with a Prior Refugee Claim

Equally questionable is the second premise of the new provision—i.e., those who made a prior refugee claim in one of these countries before making a similar claim in Canada are not genuine refugees. There may be several reasons why many asylum seekers would not see a future for themselves and their families in the first country of asylum. UNHCR emphasized that 'wider factors' push refugees to move onward, such as lack of comprehensive solutions and barriers in accessing asylum procedures in host countries (UN High Commissioner for Refugees (UNHCR) 2015: para. 4). Policies around the entry, exit, or transit, deportation, visas, and detention in a first safe country of asylum also play a role in determining refugee movements which often are a 'process driven by its own motivations, decision-making, planning, and aspirations' (UN High Commissioner for Refugees (UNHCR) n.d: 210; Crawley and Skleparis 2018: 56).

The Canadian government's portrayal of asylum seekers involved in onward movements as 'irregular migrants' has no basis in international law. Refugees are under no obligation to apply for asylum in particular states at any specific stage of their flight from danger. In fact, international refugee law does not address mobility for refugees. The Refugee Convention does not, for instance, determine where a refugee's mobility must end, and refugees are under no obligation to apply for asylum in any particular state. The new eligibility provisions' underlying assumption that these individuals are 'bogus refugees' is erroneous. According to IRB statistics (2020), nearly 50 per cent of the refugee claimants who irregularly crossed the US border since January 2017 have been granted refugee status in Canada. Although the figures available do not differentiate those with a prior claim in the US from the rest, the high acceptance rate points to the genuine protection needs of this population.

Effective Protection of Asylum Seekers in Canada

According to international law, asylum should not be refused solely on the grounds that it could have been sought elsewhere (UN High Commissioner for Refugees (UNHCR) 1991: para. 12). The fact that the asylum seeker, through prior transit, may have been under the jurisdiction of another country does not absolve the state in which he or she is present from its own obligations (Moreno-Lax 2015; Gil-Bazo 2015). State responsibility under the Refugee Convention is engaged whenever that state is presented with a refugee claim by a person either at its borders or within its territory or jurisdiction (UN High Commissioner for Refugees (UNHCR) 1996: 2; *John Doe et al v. Canada* 2011: para. 94). Hence the very presence of a refugee triggers these obligations, particularly, in relation to the principle of *non-refoulement* and the right to an effective remedy.

Canada, under whose jurisdiction asylum seekers find themselves, has a duty to comply with its international obligations and grant them access to an effective remedy before a court or tribunal (UN High Commissioner for Refugees (UNHCR) 2003: para. 15). Asylum seekers must be provided with an opportunity of challenging and rebutting any presumption that they could have found protection in the first country of asylum (UN High Commissioner for Refugees (UNHCR) 1999: 2; UN High Commissioner for Refugees (UNHCR) 2001: 10). They also must have the right to remain in Canada while awaiting the outcome of an appeal.

Under the new eligibility provision, Canada fails to fulfill these obligations. A person who previously sought asylum in one of the Five Eyes countries is barred from making a refugee claim in Canada. Their case is not heard by the Immigration and Refugee Board, regardless of whether a decision was ever made on the previous claim. The government argued that the changes do not deny asylum seekers international protection since their cases are triaged to the Pre-Removal Risk Assessment (PRRA) which involves an evaluation of the risk a foreigner would face if removed from Canada. They are thus entitled to a hearing with a PRRA officer (IRPA s. 113.01).

As pointed out by several civil society organizations, the PRRA is not an appropriate substitute for IRB hearings ([Canadian Bar Association \(CBA\) 2019](#); [Canadian Council for Refugees \(CCR\) 2019](#)). This remedy does not offer access to fair and efficient protection and can hardly be compared with the IRB's refugee status determination process. While the IRB is an independent tribunal responsible for making well-reasoned legal decisions on refugee matters, a PRRA is an administrative remedy of last resort for foreigners who are under a deportation order. A PRRA is not meant to assess the refugee claim but the risk of a removal. Under PRRA, individuals are denied the opportunity of challenging and rebutting any presumption that they could have found protection in the first country of asylum. Other fundamental differences between these remedies concern both the substantive and procedural rights available to claimants. The PRRA falls within the competence of the Executive and is conducted by civil servants employed by IRCC who, unlike the IRB decision-makers, are not independent adjudicators. They are far from having the same level of expertise and training in refugee law and jurisprudence as an IRB decision-maker. The standards of a PRRA hearing are inferior to IRB hearings. For instance, the claimant can call witnesses only if a PRRA officer thinks it is necessary to resolve a determinative issue of fact. By contrast, before the Refugee Protection Division of the IRB the claimant can, as a matter of principle, call witnesses. This right can be limited only in light of the relevance and the probative value of the proposed testimony (IRB Rules, s. 44(5)).

To cite another example, before the IRB, unaccompanied minors and other vulnerable persons can benefit from a designated representative to protect their interests. In conducting hearings, PRRA officers are reminded that vulnerable persons such as people with mental health conditions, minors, the elderly, and victims of torture 'require special consideration to ensure they are identified and that appropriate procedural accommodations are made for them' (IRCC Operational Instructions and Guidelines 2020). These accommodations, which are not enforceable, include a recess, an adjournment, or an opportunity to provide further submissions post-hearing, but not the designation of a representative for vulnerable persons. Refugee rights advocates have suggested that under the new eligibility provision, vulnerable persons would be deprived of that right ([Amnesty International 2019b](#)).

In addition, most asylum seekers whose claims are refused by the Refugee Protection Division of the IRB have the right to appeal to the IRB's Refugee Appeal Division. Under the new regime, asylum seekers who already claimed refugee status in a Five Eyes country are denied this right. It should be noted that in 2015 the Federal Court struck down the IRPA provision that denied claimants from the so-called 'designated countries of origin' (safe countries of origin) the right to appeal a negative decision before the IRB's Refugee Appeal Division. The Court found the policy discriminatory for claimants from the DCOs saying that it deprived them of substantive equality vis-a-vis those from non-DCO countries and expressly imposed a disadvantage on the basis of national origin alone (Y.Z. 2015 FC 892).

A negative PRRA decision can be submitted to the Federal Court of Canada for judicial review. However, this remedy has several flaws. A leave or a permission of the Federal Court should be obtained first. In their application for leave to appeal to the Federal Court, individuals are required to raise a ‘fairly arguable case’ or a ‘serious question to be determined’. If the leave for judicial review is granted, the applicant should prove that the first instance decision-maker made an error in law or of the jurisdiction (*Federal Courts Act*, s. 18.1(4)). Judicial review at the Federal Court does not involve a full reconsideration of the case on the merits.

What’s more, asylum seekers can be deported from Canada while they challenge a final refusal decision in the Federal Court. There is no automatic protection against deportation. Instead, applicants are required to request a deferral of removal and a stay at the Federal Court. By contrast, an appeal to the Refugee Appeal Division of the IRB does result in an automatic stay of removal (IRPA, s 49(2)(c)). Unsurprisingly in the past, the United Nations human rights treaty bodies consistently found that the PRRA is not an effective remedy (*A.B. v Canada*, 2016: para. 7.4; *NS v Canada*, 2016: para. 8.2.).

The new eligibility provision restricts asylum seeker access to an IRB hearing, creating a direct link between asylum seekers who have made claims in a Five Eyes country and PRRA processing. As we have argued, the PRRA is not a comparable alternate to IRB hearings, demonstrating how the new eligibility provision penalizes asylum seekers who previously made a claim in a Five Eyes partner state and creates a tiered asylum system.

Conclusion

Canada’s new refugee ineligibility ground has been adopted to stem secondary refugee movements particularly from the US. By reducing the number of individuals using the Canada–US STCA ‘loophole’, the government expected to address mounting criticism of its border management.

From the government’s point of view, there are many benefits to adopting the new eligibility provision instead of renegotiating the STCA, which has proven to be a polarizing and lengthy process. Reliance on information-sharing agreements to exclude those with previous refugee claims allows Canada to optimize control over access to its refugee system. Although built on the safe ‘first country of asylum’ notion, the new eligibility provision has not been accompanied with appropriate safeguards applicable to safe country designations under international refugee law. Canadian authorities have the discretion to designate any country as ‘safe’ for refugees without the legal constraints attached to such designations. They are not directed to consider whether effective protection is accessible in the first country of asylum or elsewhere. The implementation of the new refugee ground is not subjected to any monitoring or assessment mechanism.

In this article, we challenged the premises of the new eligibility provision, including the blanket approach to the safety of Canada’s Five Eyes partner countries and the existence in Canada of effective protection for individuals concerned. The Act has serious implications for asylum seekers who find themselves restricted

from accessing international protection and an alternative effective remedy. This puts them at an increased risk of being returned to persecution. The latest change to Canada's asylum system is discriminatory and exacerbates the vulnerability of asylum seekers who travel through irregular migration routes. It is inconsistent with Canada's obligations under international refugee law.

Further research on the implementation and outcomes of the new refugee ineligibility ground is needed to better understand how it is implemented on the ground. Border closures in response to COVID-19 have halted crossings into Canada from the US in March 2020 (Russell 2020), with the government opening the border in April only to those able to enter Canada through an exception from the STCA at official points of entry. Data from the CBSA show that the number of asylum claimants processed by the CBSA and IRCC remains reduced from pre-pandemic monthly averages by 70 per cent (Government of Canada 2020a). As such the full repercussions of this shifting border terrain yet to be seen. Both however, set a concerning shift for restricting secondary movements and access to refugee protection.

Acknowledgements

The authors thank the two anonymous reviewers for their thoughtful comments.

AGREEMENT BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR THE SHARING OF VISA AND IMMIGRATION INFORMATION. Treaty E105426. <https://www.treaty-accord.gc.ca/text-texte.aspx?id=105246> (accessed 8 June 2020).

AMNESTY INTERNATIONAL (2019) 'Submission to the House of Commons Standing Committee on Citizenship and Immigration: Clause 306 of Bill C-97, The Budget Implementation Act, 2019'. <<https://www.ourcommons.ca/Content/Committee/421/CIMM/Brief/BR10478967/br-external/AmnestyInternationalCanada-e.pdf>> (accessed 8 June 2020).

AMNESTY INTERNATIONAL CANADA AND CANADIAN COUNCIL FOR REFUGEES (2017) 'Contesting the designation of the U.S. as a Safe Third Country'. <https://ccrweb.ca/sites/ccrweb.ca/files/stca-submission-2017.pdf> (accessed 8 June 2020).

ANGUS REID INSTITUTE (2018) 'Two-Thirds Call Irregular Border Crossings A "Crisis," More Trust Scheer To Handle Issue Than Trudeau'. <http://angusreid.org/safe-third-country-asylum-seekers/> (accessed 8 June 2020).

ARBEL, E. and BRENNER, A. (2013) 'Bordering on Failure: Canada-U.S. Border Policy and the Politics of Refugee Exclusion'. *Harvard Immigration and Refugee Law Clinical Program & Harvard Law School* 1–116.

ATAK, I., HUDSON, G. and NAKACHE, D. (2018) 'The Securitization of Canada's Refugee System: Reviewing the Unintended Policy Consequences'. *Refugee Survey Quarterly* 37(1): 1–24.

AUSTRALIAN HUMAN RIGHTS COMMISSION (2017) 'Asylum Seekers, Refugees and Human Rights'. Snapshot Report, 1–76. https://humanrights.gov.au/sites/default/files/document/publication/AHRC_Snapshot%20report_2nd%20edition_2017_WEB.pdf (accessed 8 June 2020).

BAGLAY, S. (2019) 'Liberal Government's Discourse on the 2017-2018 Canada-US Cross Border Arrivals'. *International Journal of Migration and Border Studies* 5(3): 232–264.

BANERJEE, S. (2018) *As Immigration Debate Heats up, Quebec's Roaxham Road Still Ground Zero*. Toronto: The Canadian Press.

- BROWNE, R.** (2019) 'How Canada Reduced the Number of Children in Immigration Detention'. Global News. <https://globalnews.ca/news/5430731/canada-migrant-children-immigration-detention/> (accessed 8 June 2020).
- BUDGET IMPLEMENTATION ACT (Bill C-97), c. 29, Division 16.** Entered into force on June 6, 2019.
- CANADIAN ASSOCIATION OF REFUGEE LAWYERS (CARL)** (2019) 'Alarming Clawback of Human Rights of Refugees in Budget Implementation Act'. <http://www.carl-acaadr.ca/articles/176> (accessed 8 June 2020).
- CANADA BORDER SERVICES AGENCY (CBSA)** (2019a) 'Privacy Impact Assessments. Biometrics Expansion Program'. <https://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/pia-efvp/atip-airp/bep-peb-eng.html?wbdisable=true> (accessed 8 June 2020).
- CANADA BORDER SERVICES AGENCY (CBSA)** (2019b) 'National Directive for the Detention or Housing of Minors'. <https://www.cbsa-asfc.gc.ca/security-securite/detent/nddhm-dndhm-eng.html> (accessed 8 June 2020).
- CANADIAN BAR ASSOCIATION (CBA)** (2019) 'Bill C-97, Part 4 Division 16—Changes to Canada's Refugee Determination System: Submitted to the Chair of the Standing Committee on Citizenship and Immigration'. <http://www.cba.org/CMSPages/GetFile.aspx?guid=508400ad-4770-4ffc-ab76-b0c66d41396e> (accessed 8 June 2020).
- CBC** (2018) 'Ontario, Ottawa at Odds over Refugee Housing Cost'. <https://www.cbc.ca/news/canada/toronto/ontario-ottawa-refugee-ford-trudeau-1.4736182> (accessed 8 June 2020).
- CANADIAN COUNCIL FOR REFUGEES V. CANADA** (Immigration, Refugees and Citizenship 2020 FC 770).
- CANADIAN COUNCIL FOR REFUGEES (CCR)** (2019) 'Anti-Refugee Provisions in Bill C-97 (Budget Bill) Submission to the Standing Committee on Citizenship and Immigration'. <https://ccrweb.ca/sites/ccrweb.ca/files/bill-c-97-submission-final.pdf> (accessed 8 June 2020).
- CANADIAN COUNCIL FOR REFUGEES (CCR)** (2018) 'Why the US is Not Safe for Refugees: Challenging the Safe Third Country Agreement'. Backgrounder. <https://ccrweb.ca/en/why-US-not-safe-challenging-STCA> (accessed 8 June 2020).
- CANADIAN COUNCIL FOR REFUGEES (CCR)** (2017) 'Legal Challenge of Safe Third Country Agreement Launched'. <https://ccrweb.ca/en/media/legal-challenge-safe-third-country> (accessed 8 June 2020).
- THE CANADIAN PRESS** (2019) 'Budget Bill Would Tighten Loophole That Encourages Irregular Border-Crossings'. <https://www.ctvnews.ca/politics/budget-bill-would-tighten-loophole-that-encourages-irregular-border-crossing-1.4371682> (accessed 8 June 2020).
- Convention Relating to the Status of Refugees**, 189 U.N.T.S. 150, Entered into force 22 April 1954.
- COSTELLO, C.** (2016) 'Safe Country? Says Who?'. *International Journal of Refugee Law* (28)(4): 601–622.
- COSTELLO, C.** (2005) 'The Asylum Procedures Directive and the Proliferation of Safe Country Practices: Deterrence, Deflection and the Dismantling of International Protection?'. *European Journal of Migration and Law* 7(1): 35–69.
- COUNCIL REGULATION (EC) NO 343/2003 OF 18 FEBRUARY 2003** (2003). Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in One of the Member States by a Third-Country National'. OJ L 50, 25.2.2003, 1–10.
- CRAWLEY, H. and SKLEPARIS, D.** (2018) 'Refugees, Migrants, Neither, Both: Categorical Fetishism and the Politics of Bounding in Europe's "Migration Crisis"'. *Journal of Ethnic and Migration Studies* 44(1): 48–64.
- DAMIAN SMITH, C.** (2019) 'Changing U.S. policy and Safe-Third Country "Loophole" Drive Irregular Migration to Canada'. Migration Policy Institute <https://www.migrationpolicy.org/article/us-policy-safe-third-country-loophole-driveirregular-migration-canada> (accessed 8 June 2020).

- DECHENT, S., TANIA, S. and MAPULANGA-HULSTON, J.** (2019) 'Asylum Seeker Children in Nauru: Australia's International Human Rights Obligations and Operational Realities'. *International Journal of Refugee Law* 31(1): 83–131.
- FALCONER, R.** (2019) 'Ping-Pong Asylum: Renegotiating the Safe Third Country Agreement'. *The School of Public Policy Publications* 12(13): 1–15.
- FEDERAL COURTS ACT, RSC** (1985), c F-7.
- FOSTER, M.** (2007) 'Protection Elsewhere: The Legal Implications of Requiring Refugees to Seek Protection in Another State'. *Michigan Journal of International Law* 28(2): 223–286.
- GIL-BAZO, M.-T.** (2015) 'The Safe Third Country Concept in International Agreements on Refugee Protection. Assessing State Practice'. *Netherlands Quarterly of Human Rights* 33(1): 42–77.
- GLOBAL DETENTION PROJECT** (2020) 'United States. Immigration Detention'. <https://www.globaldetentionproject.org/countries/americas/united-states> (accessed 8 June 2020).
- GOVERNMENT OF CANADA** (2020a) 'Asylum Claims by Year – 2020' <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/asylum-claims/asylum-claims-2020.html> (accessed 22 September 2020).
- GOVERNMENT OF CANADA** (2020b) 'Coronavirus Disease (COVID-19): Refugees, Asylum Claimants, Sponsors and PRRA Applicants'. <https://www.canada.ca/en/immigration-refugees-citizenship/services/coronavirus-covid19/refugees.html>.
- GOVERNMENT OF CANADA** (2015) 'Implementing Arrangement between the Department of Citizenship and Immigration of Canada and the Canada Border Services Agency, on the One Side, and the Department of State and the Department of Homeland Security of the United States of America, on the Other Side, concerning Biometric Visa and Immigration Information Sharing". <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/implementing-arrangement-canada-united-states-america-biometric-information-sharing.html> (accessed 25 September 2020)
- GOVERNMENT OF CANADA** (2019) 'Investing in the Middle Class: Budget 2019'. <https://www.budget.gc.ca/2019/docs/plan/budget-2019-en.pdf> (accessed 8 June 2020).
- GOVERNMENT OF CANADA** (2017) *Five Country Ministerial Joint Communiqué*. Ottawa.
- GOVERNMENT OF CANADA** (2017) 'Ad Hoc Intergovernmental Task Force on Irregular Migration Met Today in Ottawa'. https://www.canada.ca/en/immigration-refugees-citizenship/news/2017/09/ad_hoc_intergovernmentaltaskforceonirregularmigrationmettodayino.html (accessed 8 June 2020).
- GOVERNMENT OF CANADA CANADA-U.S. SAFE THIRD COUNTRY AGREEMENT** (2016) 'Agreements'. <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/safe-third-country-agreement.html#toc0> (accessed 8 June 2020).
- HAILBRONNER, K.** (1993) 'The Concept of 'Safe Third Country' and Expedient Asylum Procedures'. *International Journal of Refugee Law* 5(1): 31–65.
- HATHAWAY, J. C.** (2012) 'Refugees and Asylum'. In Opeskin, B., Perruchoud, R., and Redpath-Cross, J. (eds), *Foundations of International Migration Law*. Cambridge: Cambridge University Press, pp. 177–204
- HATHAWAY, J. C.** (2007) 'The Michigan Guidelines on Protection Elsewhere'. *Michigan Journal of International Law* 28(2): 207–222.
- IMMIGRATION AND REFUGEE BOARD OF CANADA (IRB)** (2020) 'Irregular Border Crosser Statistics'. <https://irb-cisr.gc.ca/en/statistics/Pages/Irregular-border-crosser-statistics.aspx> (accessed 8 June 2020).
- IMMIGRATION AND REFUGEE BOARD OF CANADA (IRB)** (2019) '2019–20 Departmental Plan - Immigration and Refugee Board of Canada'. <https://irb-cisr.gc.ca/en/reports-publications/planning-performance/Pages/departmental-plan-report-1920.aspx> (accessed 8 June 2020).

- IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA (IRCC)** (2020) 'Asylum Claims by Year – Canada'. <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/asylum-claims.html> (accessed 8 June 2020).
- IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA (IRCC)** (2020) 'Operational Instructions and Guidelines. Pre-removal Risk Assessments. Oral Hearings'. <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/refugee-protection/removal-risk-assessment.html> (accessed 23 September 2020).
- IMMIGRATION AND REFUGEE PROTECTION ACT (S.C. (2001) c. 27).**
- IPSOS** (2019) 'Canadians Becoming More Nervous About Immigration'. <https://www.ipsos.com/en-ca/news-polls/canadians-nervous-about-impact-of-immigration-on-canada> (accessed 8 June 2020).
- JOHN DOE ET AL V. CANADA** (2011) Report N. 78/11 – Case 12.586, Inter-American Commission on Human Rights (21 July 2011).
- KORDUCKI, K. M.** (2019) *How Gender Based Violence Factors into Canada-US Refugee Policy*. OpenCanada. <https://www.opencanada.org/features/how-gender-based-violence-factors-canada-us-refugee-policy/> (accessed 8 June 2020).
- LABMAN, S. and LIEW, J. C. Y.** (2019) 'Law and Moral Licensing: The Making of Illegality and Illegitimacy along the Border'. *International Journal of Migration and Border Studies* 5(3): 188–211.
- LEGOMSKY, S. H.** (2003) 'Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries: The Meaning of Effective Protection'. *International Journal of Refugee Law* 15(4): 567–677.
- MORENO-LAX, V.** (2015) 'The Legality of the "Safe Third Country" Notion Contested: Insights from the Law of the Treaties'. In Goodwin-Gill, G.S. and Weckel, P. (eds), *Migration and Refugee Protection in the 21st Century, Legal Aspects, the Hague Academy of International Law Centre for Research*. Martinus Nijhoff, 665–721.
- MULVEY, G.** (2010) 'When Policy Creates Politics: The Problematic of Immigration and the Consequences for Refugee Integration in the UK'. *Journal of Refugee Studies* 23(4): 437–462.
- OPEN PARLIAMENT** (2019) 'Citizenship and Immigration Committee: Evidence of meeting #158'. <https://openparliament.ca/committees/immigration/42-1/158/> (accessed 8 June 2020).
- OFFICE OF THE AUDITOR GENERAL** (2019) 'Report 2: Processing of Asylum Claims. 2019 Spring Reports of the Auditor General of Canada'. http://www.oagbvg.gc.ca/internet/English/parl_oag_201905_02_e_43339.html (accessed 8 June 2020).
- PINKERTON, C.** (2020) 'The City of Toronto Needs the Federal Government to Provide It \$77 Million—Not Only For 2020, But on an Ongoing Annual Basis—If It Wants, Documents Show'. *iPolitics*. <https://ipolitics.ca/2020/03/02/toronto-needs-77-million-from-feds-annually-to-cover-refugee-costs-mayors-briefing-notes-show/> (accessed 8 June 2020).
- PRIME MINISTER OF CANADA** (2018) 'Minister of Border Security and Organized Crime Reduction Mandate Letter'. <https://pm.gc.ca/en/mandate-letters/archived-minister-border-security-and-organized-crime-reduction-mandate-letter> (accessed 8 June 2020).
- PUBLIC SAFETY CANADA** (2020) 'Smart Border Declaration and Action Plan'. <https://web.archive.org/web/20130412191938/http://www.publicsafety.gc.ca/prg/le/bs/sbdap-eng.aspx> (accessed 8 June 2020).
- REFUGEE COUNCIL** (2019) 'Lessons Not Learned: The Failures of Asylum Decision-Making in the UK'. http://www.refugeecouncil.org.uk/wp-content/uploads/2019/09/Lessons_Not_Learned_FINAL_Sept19.pdf (accessed 8 June 2020).
- ROTH, B. J., GRACE, B. L. and SEAY, K. D.** (2020) 'Federal Immigration Policies and the Erosion of Immigrant Children's Rights, Mechanisms of Deterrence'. *American Journal of Public Health* 110(1): 84–88.
- RUSSELL, A.** (2020) *Coronavirus: Trudeau Says Irregular Migrants Will Be Turned Away at Canada-US Border*. Toronto: Global News.
- SAUL, B.** (2012) 'Dark Justice: Australia's Indefinite Detention of Refugees on Security Grounds under International Human Rights Law'. *Melbourne Journal of International Law* 13: 1–31.

- SHAW, S.** (2016) 'The Review into the Welfare in Detention of Vulnerable People'. A report to the Home Office. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf (accessed 8 June 2020).
- SHENOY, R.** (2018) 'Refugees Asking for Asylum in Canada Argue the US is No Longer Safe'. Public Radio International. <https://www.pri.org/stories/2018-09-07/refugees-askingasylumcanada-argue-us-no-longer-safe> (accessed 8 June 2020).
- UN COMMITTEE AGAINST TORTURE** (2016) *NS v Canada*, Communication No 582/2014 (1 December 2016).
- UN HUMAN RIGHTS COMMITTEE** (2016) *AB v Canada*, Communication No 2387/2014 (15 July 2016).
- UN HIGH COMMISSIONER FOR REFUGEES (UNHCR)** (2020) 'Exceptions to the Safe Third Country Agreement with Canada'. <https://www.unhcr.org/en-us/5952a3c54.pdf> (accessed 8 June 2020).
- UN HIGH COMMISSIONER FOR REFUGEES (UNHCR)** (2018) 'Legal Considerations Regarding Access to Protection and a Connection Between the Refugee and the Third Country in the Context of Return or Transfer to Safe Third Countries'. <https://www.refworld.org/docid/5acb33ad4.html> (accessed 8 June 2020).
- UN HIGH COMMISSIONER FOR REFUGEES (UNHCR)** (2015) 'Onward Movement of Asylum-Seekers and Refugees: Discussion Paper Prepared for the Expert Roundtable on Onward Movement'. <https://www.unhcr.org/562f81c39.pdf> (accessed 8 June 2020).
- UN HIGH COMMISSIONER FOR REFUGEES (UNHCR)** (2001) 'Global Consultations on International Protection: Asylum Processes (Fair and Efficient Asylum Procedures)', EC/GC/01/12.
- UN HIGH COMMISSIONER FOR REFUGEES (UNHCR)** (1996) 'Considerations on the "Safe Third Country" Concept'. <https://www.refworld.org/docid/3ae6b3268.html> (accessed 8 June 2020).
- UN HIGH COMMISSIONER FOR REFUGEES (UNHCR)** (1991) 'Background Note on the Safe Country Concept and Refugee Status'. <https://digitallibrary.un.org/record/124774?ln=en> (accessed 8 June 2020).
- VAN SELM, J.** (2001) 'Access to Procedures: 'Safe Third Countries', 'Safe Countries of Origin' and 'Time Limits''. Background Paper for the Third Track Discussions, Global Consultations on International Protection (UNHCR).
- Y.Z. AND THE CANADIAN ASSOCIATION OF REFUGEE LAWYERS V.** The Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness (2015) FC 892.
- ZIECK, M.** (2009) 'Doomed to Fail from the Outset? Unhcr's Convention plus Initiative Revisited'. *International Journal of Refugee Law* 21(3): 387–420.