

## BEST PRACTICE MODELS

BEST PRACTICE MODELS for Prevention of Mental Disorders

### [3] Indicated Programs

- a) Biological factors
- b) Psychological factors
  - i Children in detention
  - ii Children of parents with mental illness
- c) Social factors

### [3 b i ] Children in detention/ Children of asylum-seekers

The serious deficiencies in the Australian management of asylum-seekers would be avoided by the more humane system adopted by Canada. Their system is published on their government website as below:

#### Claiming asylum in Canada – what happens?

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From: [Immigration, Refugees and Citizenship Canada](#)

#### Backgrounder

The *Immigration and Refugee Protection Act* requires that every person seeking to enter Canada must appear for an examination at a port of entry to determine whether that person has a right to enter Canada, or may become authorized to enter and remain in Canada.

The Canada Border Services Agency (CBSA) and the Royal Canadian Mounted Police (RCMP) play an instrumental role in protecting Canada's border, deterring and intercepting irregular entry to Canada and keeping Canadians safe. CBSA, the RCMP and its domestic and international partners work together to intercept individuals who enter Canada irregularly. The RCMP is responsible for border security in between ports of entry, while the CBSA is responsible for border security at ports of entry and inland.

#### Making an asylum claim in Canada

Individuals can make an asylum claim in Canada at a port of entry or at an inland CBSA or Immigration, Refugees and Citizenship Canada (IRCC) office. CBSA or IRCC officials will determine if an individual is [eligible to make a claim](#). Factors determining an individual's eligibility to make a refugee claim include whether the claimant has committed a serious crime, made a previous claim in Canada, or received protection in another country.

Asylum claimants are different from resettled refugees. Asylum seekers make a refugee claim in Canada at a Port of Entry or at an in-land office (CBSA or IRCC). These claims are governed in part by international treaties that Canada has promised to uphold. Resettled refugees, on the other hand, are screened abroad and undergo security and medical checks prior to being issued a visa to come to Canada. When they arrive in Canada, they are permanent residents. As asylum claimants and resettled refugees come to Canada through different immigration streams, those who are crossing the border irregularly and claiming asylum in Canada are not queue jumpers, and are not taking the place of refugees who are coming to Canada from abroad for resettlement.

All refugee claimants undergo health and security screening, including biographic and biometric checks as well as the initiation of security and criminality checks.

## **Irregular crossings into Canada**

Some individuals enter Canada irregularly between designated ports of entry. This can be dangerous and is a violation of the law. For legal and personal safety reasons, the Government of Canada continues to urge people to seek entry into Canada only at designated ports of entry.

People who are intercepted by the RCMP or local law enforcement after crossing the border irregularly are brought to the nearest CBSA port of entry or inland CBSA or IRCC office (whichever is closest), where an officer will conduct an immigration examination, including considering whether detention is warranted. At this point, individuals undergo health checks to address any immediate health needs, as well as security screenings to ensure that they do not pose a security threat to Canada and to determine whether they are eligible to make a refugee claim. These screenings include biographic and biometric checks (for example, fingerprinting). If required, a refugee claim will be started. Foreign nationals who are not intercepted by law enforcement often make their own way to the nearest IRCC or CBSA office and make a claim for refugee protection.

If the claim is determined to be eligible, it will be referred to the Refugee Protection Division of the Immigration and Refugee Board of Canada (IRB) for a hearing. In most cases, the foreign national will be released on terms and conditions while they await their hearing.

Individuals whose claim is found not to be eligible will be issued a removal order and released on conditions to report for a future removal proceeding. Foreign nationals who are required to leave Canada may be offered a Pre-Removal Risk Assessment (PRRA) by CBSA. Although CBSA starts the process, it is IRCC which conducts the PRRA prior to an individual's removal from Canada. A PRRA assesses the risk an individual would face if returned to their home country.

## **Waiting for a decision on a refugee claim**

All eligible refugee claimants receive a fair hearing at the IRB, an independent, quasi-judicial tribunal. Each case is decided on its merits, based on the evidence and arguments presented.

In making its decisions, the IRB considers whether the claimant meets the United Nations (UN) definition of a Convention refugee, which has been adopted into Canadian law, or is a person in need of protection. The UN defines Convention refugees as people who have a well-founded fear of persecution based on race, religion, political opinion, nationality, or membership in a particular social group. Under the *Immigration and Refugee Protection Act*, a person in need of protection is a person in Canada who would be subjected personally to a danger of torture, a risk to their life, or a risk of cruel and unusual treatment or punishment if they were returned to their home country.

Once an individual has been determined to be eligible to make a claim in Canada, as a refugee claimant they may have access to social assistance, education, health services, emergency housing and legal aid while a decision is pending on their claim. In addition, most individuals found to be eligible to make a refugee claim can apply for a work permit once they have undergone a medical examination. It does not matter if the claim was made at the border or at an inland office.

In general, IRB hearings take place in the province where the individual made their refugee claim. That province provides the services listed above to the refugee claimant. Should the claimant decide to move provinces while they are waiting to have their claim heard by the IRB (for example, they claim refugee status in Quebec then move to Ontario), they would need to inform the IRB, IRCC and the CBSA of this move, and provide their new address. In addition, the refugee claimant would need to inform the province they are leaving of the move and apply for services in their new province. Of the cases that are heard, a decision is generally finalized in approximately four months.

Except for health services, which are funded by the Government of Canada (Interim Federal Health Program), provision of all these supports is the responsibility of provinces and territories. Municipalities or non-profit organizations also provide some supports.

The Government of Canada also provides funding through the Canada Social Transfer, which is a federal block transfer to provinces and territories in support of post-secondary education, programs for children, social assistance and other social programs. This is provided on an equal per capita basis to the provinces in accordance with Statistic Canada's annual population estimates. The population estimates include persons who are claiming refugee status and the family members living with them. The Canada Social Transfer will provide \$14.586 billion in 2019-2020 to the provinces and territories.

Refugee claimants are not eligible for **federal settlement services** until they receive a positive refugee determination; however, they are eligible for some settlement services funded by provinces.

## Receiving a decision on a refugee claim

### Positive decision

Upon receiving a positive decision on their refugee claim, claimants receive protected person status with the full spectrum of federally funded settlement services becoming available to them. A positive Pre-Removal Risk Assessment decision also results in protected person status for the individual in most cases. This means that individuals can stay in Canada and apply to become a permanent resident in most cases. These support services include:

- needs assessment and referrals,
- information and orientation to help newcomers make informed settlement decisions,
- language assessment and training to help adult newcomers function in Canadian society and contribute to the economy,
- support for finding and retaining employment, including referrals to assess foreign credentials, and
- providing connections whereby newcomers can meet people and better integrate into their new communities.

### Negative decision

If a claim is rejected by the [Refugee Protection Division](#), individuals may be able to appeal the decision to the Refugee Appeal Division of the IRB. If individuals have no right to appeal to the Refugee Appeal Division, they can ask the Federal Court to review the decision.

Once all avenues of appeal have been exhausted, the conditional removal order that was issued at the time the refugee claim was initially made becomes enforceable in order to allow for removal of the individuals.

Failed refugee claimants who are under removal orders may not be eligible for social assistance, depending on the province. Please contact the provinces directly for more information.

The CBSA is mandated to remove all foreign nationals, regardless of citizenship, who are found to be inadmissible to Canada and who are subject to an enforceable removal order.

All individuals have the right to due process. However, once they have exhausted all legal avenues, we expect them to respect our immigration laws and leave Canada or be removed by the CBSA. Failure to appear for a removal interview or a scheduled removal date may lead to a Canada-wide arrest warrant and potential detention before removal by the CBSA.

### The Safe Third Country Agreement

The Safe Third Country Agreement, signed between Canada and the United States (U.S.) in 2004, requires that refugee claimants seek protection in the first safe country in which they arrive. The Agreement applies to those making an

asylum claim at a land border port of entry between Canada and the U.S. It does not apply to those who arrive from the U.S. by sea, between the ports of entry or an inland port such as an airport.

Since the 1980s, countries around the world have been using safe third country-type agreements as a way to address pressures on domestic asylum systems from the continued growth of global migration. Since the mid-1990s, the United Nations Refugee Agency has supported these types of agreements.

The Agreement between Canada and the U.S. is premised on the principle, accepted by the United Nations Refugee Agency, that individuals should seek asylum in the first country they arrive in. U.S. compliance with treaty obligations is overseen by an independent judiciary. The Safe Third Country Agreement remains an important tool for Canada and the U.S. to work together on the orderly handling of refugee claims made in our countries.

The *Immigration and Refugee Protection Act* requires the continual review of all countries designated as safe third countries to ensure that the conditions that led to the designation as a safe third country continue to be met. The asylum system in the U.S. continues to meet the international standards and therefore the U.S. continues to be a safe third country.

There are [four types of exceptions](#) to the Safe Third Country Agreement: refugee claimants who have a family member in Canada; unaccompanied minors under the age of 18; individuals holding a valid Canadian visa; and those who have been charged with or convicted of an offence that could subject them to the death penalty in the U.S. or in a third country. Also, the agreement does not apply to claimants who have entered Canada at a location that is not a port of entry.

[\[To go to Policies POL3b I close this file and go via Policies Index\]](#)

[\[To go to Project Evidence PE3b I close this file and go via Project Evidence Index\]](#)

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