

SLOW, SUBJECTIVE AND STRESSFUL: A GUIDE TO CANADA'S ASYLUM SYSTEM

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SUMMARY

Canadians often assume that seeking asylum in Canada is a quick and easy route to permanent residency and citizenship. Nothing could be further from the truth. With its emphasis on due process, the asylum claim system is a complex machine whose wheels turn slowly. It is managed by a number of bureaucracies which offer different pathways through the system based on the particulars of the claim. The current cumbersome set-up is not conducive to quick resolution of asylum claims, nor is it capable of responding efficiently to sudden, large influxes of claims over a short time.

Surges in the volume of claims are natural due to the volatile character of politics and economics, ethnic conflict, war and natural disasters in many countries around the globe. The denizens of those countries seek Canada as a place of refuge; yet, the bureaucracy has not developed methods to deal with the demand in a timely way.

Three agencies – the Immigration and Refugee Board, Immigration, Refugees and Citizenship Canada and the Canada Border Services Agency – oversee the process, each within its own silo of budget, staff, case management and duties. The duties of intake, triaging of claims, determining eligibility, decision-making, intervenor power and appeals are parcelled out among the three agencies. The Federal Court, the RCMP, CSIS, the provinces and territories, and numerous for-profit and non-profit consultants, lawyers and service providers may also be involved in the process.

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The choice of winding path through the bureaucratic maze can depend on whether the asylum claimant surrendered themselves at the border or is already living in Canada. In a complicated series of steps, claimants are triaged to weed out the ineligible through various criteria, while other applicants are shunted into streams based on the level of urgency in their cases. Forms must be filled out, evidence gathered in support of the claim and hearings attended. If this process results in a negative decision, a lengthy appeals process can be launched.

A backlogged claim system does no one any favours. It hampers the asylum process for people who genuinely need protection and attracts those with dubious claims who take advantage of it to stay in Canada and access Canadian services for long periods of time. A good processing system should be founded on the four Fs: it should be fast, fair, final and flexible. It should offer a quick resolution to those with genuine claims to refugee status and quick removal for those who do not qualify.

Any reforms to the processing system must not affect asylum seekers' right to due process. However, the government must find ways to simplify and hasten the processing of asylum claims. Ensuring proper staffing levels at the various agencies involved, even during lulls in asylum applications, would be one place to start.

This paper is the second in a series of papers on Canada’s asylum system. The first paper, *Ping-pong Asylum*, took us to the border and outlined the issues behind the recent influx of people crossing there. This paper focuses on what happens to those people, and other asylum seekers, once they are inside Canada. Future papers will cover what happens when a large volume of people enter the system at once, the fiscal pressures this puts on the system, and what Canada can do to create a more timely and cost-efficient process.

Canada’s asylum system is struggling to meet a set of conditions first outlined by Peter Showler (2009), former head of the Immigration and Refugee Board (IRB). At the time of Showler’s report, Canada faced a then-historic backlog of asylum claims – cases waiting to be processed (IRB 2010). Showler described how a significantly backlogged system hurt those individuals in need of protection, and attracted those with dubious claims, whose sole interest is in working and accessing Canadian services. Showler believed that a good asylum system was fast, fair and final. This meant a system that produced timely results, was based on principles of due process, and that resulted in quick removal of denied asylum seekers and quick protection for those determined to be truly in need.

This paper focuses on an individual’s journey through the system. It demonstrates the complexity asylum seekers and decision-makers alike face. It undermines the idea that seeking asylum is an easy path to living in Canada. It also educates policy-makers and the public on the reasons why Canada’s system is currently struggling to process sudden spikes in asylum seekers. This discussion will suggest that Canada should add “flexible” to Showler’s list of conditions for a good asylum system.

ASYLUM SEEKERS: WHO THEY ARE, HOW THEY GET HERE AND WHY THEY COME

Asylum seekers should not be confused with other types of refugees. They differ from resettled refugees brought from overseas by the Canadian government (Government of Canada 2017). Resettled refugees are selected while living abroad by the Canadian government. Their status as refugees is based on a credible fear of persecution, death or torture in their home countries (IRB 2018a). For example, the United Nations and other relief organizations referred many Syrian refugees to the Canadian government, and they arrived as permanent residents (Immigration, Refugees and Citizenship Canada (IRCC) 2017a).¹ By contrast, the arrival of asylum seekers is unplanned. They claim refugee status at Canadian airports, border crossings or at inland government offices (IRCC 2019). An asylum seeker’s claim of refugee status is determined after they arrive in Canada. Unlike resettled refugees, their status is not determined by foreign service officers, but through a quasi-

¹ Resettled refugees generally arrive as government-assisted or privately sponsored refugees. Government-assisted refugees are funded by the federal government and resettled by non-profit organizations. Privately sponsored refugees follow a similar, but slightly different pathway into Canada, although they are still vetted by the Canadian government. Private sponsors such as churches and other community groups meet their resettlement needs (Elgersma 2015).

judicial process developed through a series of Supreme Court rulings, legislation and international conventions (Vineberg 2018). Table 1 outlines the differences between the asylum claim and refugee resettlement processes.

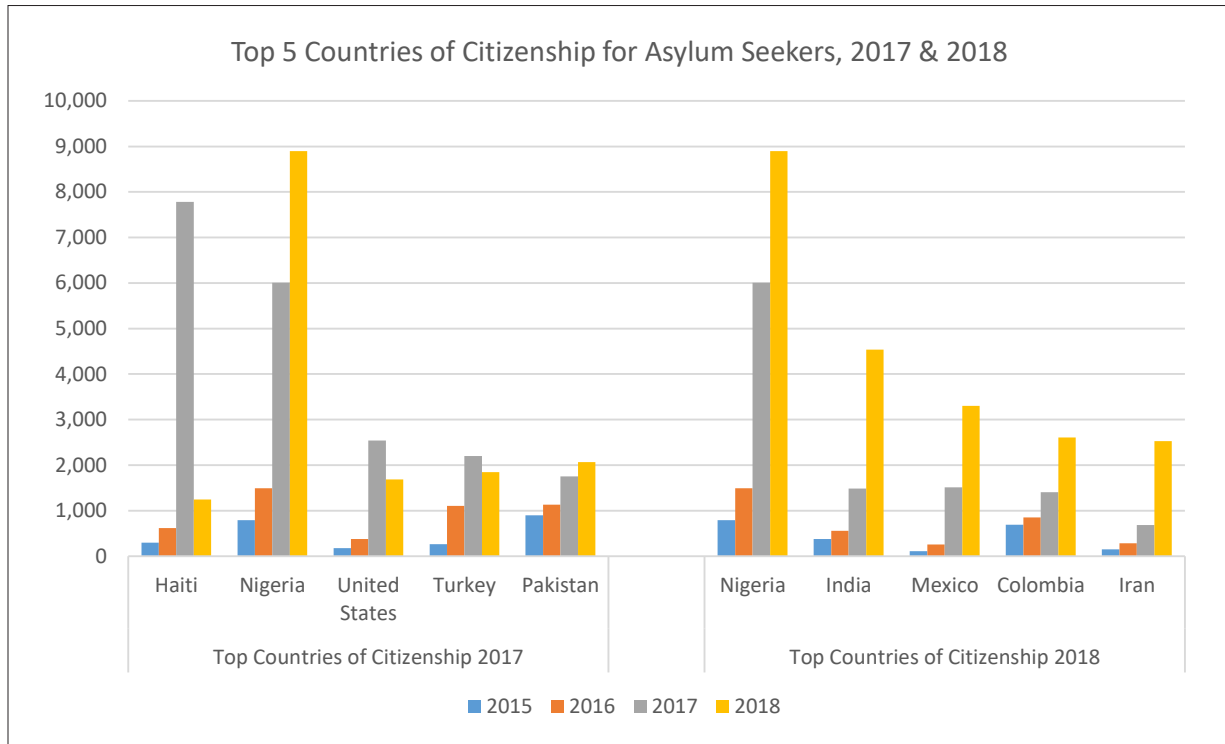
TABLE 1 DIFFERENCES BETWEEN ASYLUM CLAIM PROCESSING AND REFUGEE RESETTLEMENT

	Asylum Claims	Refugee Resettlement
Origins	Anywhere, though areas of the world experiencing unusually high poverty, turmoil or targeted persecution are likely sources.	Includes refugee camps, displaced persons with family in Canada and individual cases of people in need of protection.
Selection	Self-selected: asylum seekers choose to seek protection in Canada, rather than being offered protection by the Canadian government through a referral and screening process.	Pre-selected: chosen by the Canadian government through a referral and screening process.
Arrival	Spontaneous and unplanned. Asylum seekers may already be residing in Canada on a temporary visa, or arrive in Canada through various means.	Pre-planned according to annual government quotas and intake capacity of non-profits and private sponsors.
Legal Status	If eligible, asylum seekers are granted temporary legal status. Most may apply for a work permit pending a medical examination.	Granted permanent residency with a pathway to citizenship upon arriving.
Legitimacy of their claim	Decided at their claim hearing.	Pre-vetted before arriving in Canada.

The reasons why people seek asylum may be unique to an individual, or they might be common among, for example, a persecuted ethnic or political group. Kim Phuc, known as “Napalm Girl,” claimed asylum in Canada due to being used by the Vietnamese government for propaganda (The Kim Foundation n.d.). By contrast, many Venezuelans can demonstrate evidence of holding contrary political opinions to the current Venezuelan government (Camilleri and Hampson 2018).

Asylum seekers may flee to specific countries based on certain push/pull factors. These factors may include online social media signals from government officials, and immigration policies in neighbouring countries that signal either welcome or hostility toward newcomers. Wars, ceasefires, economic booms, recessions and regime changes all influence migration patterns. The sensitivity of migration patterns to specific events means that influxes of asylum seekers from a country may suddenly spike for a short period. Evidence of this is seen in Figure 1.

FIGURE 1 ASYLUM SEEKER CLAIMS BY TOP 5 COUNTRIES OF ORIGIN, 2017 & 2018



As shown in the figure, four of the top five countries of citizenship for asylum seekers arriving in Canada in 2017 had dropped out of that ranking within one year (IRCC 2018). The Haitian spike in 2017 is a good example of how external push factors can prompt sudden spikes from one country. In 2017, the U.S. announced it would not renew the temporary legal status of Haitians living in the U.S. since the 2010 earthquake in Haiti (U.S. Department of Homeland Security 2017). Canada’s proximity to the U.S. may have made Canada a natural destination, given this strong push factor.

Pull factors that draw asylum seekers to Canada may be more or less permanent characteristics. For example, Canada provides health care and social assistance to asylum seekers (Government of Canada 2017). Other pull factors may be more temporary. The perception of Canada as a country that accepts asylum seekers may be augmented or diminished by statements from elected officials and the quasi-judicial nature of claim processing, which affords asylum seekers due process.²

In another example, Citizenship and Immigration Canada (2012) – the predecessor to Immigration, Refugees and Citizenship Canada (IRCC) – limited asylum seekers’ access to health care, but full coverage was later restored pursuant to a Federal Court order (IRCC 2016a). Similarly, Canada recently sent government

² An example of a public statement often cited as drawing asylum seekers to Canada is Prime Minister Justin Trudeau’s (2017) #WelcomeToCanada tweet. By contrast, efforts to stymie a previous asylum-seeker influx included statements from then-Immigration minister Jason Kenney that asylum seekers with “bogus” claims would not be allowed to remain in Canada (Chase and Baluja 2012).

representatives abroad to dispel myths, stories, and to discourage specific communities from claiming asylum (Canadian Press 2017). Canada’s ability to limit domestic pull factors that draw asylum seekers may be overwhelmed by world events which push asylum seekers toward Canada.

SILOING ASYLUM: THE INVOLVED AGENCIES

This section outlines the agencies involved in the asylum claim process. Three agencies have direct roles in processing claims. These roles involve intake of new asylum seekers, security screenings, triaging and scheduling hearings, preparing the asylum claim file, rendering a decision and removing denied asylum seekers. There are also ancillary agencies which provide social and other services to claimants.

Canada’s asylum claim system is mostly decentralized, with agencies siloed from one another in terms of budgeting, staff, IT case management systems and duties. Table 2 provides some insight into how Canada’s asylum system is divided up among the primary agencies, followed by more detailed descriptions of these agencies and other organizations.

TABLE 2 DIVISION OF ASYLUM SYSTEM DUTIES AMONG PRIMARY AGENCIES

Process and Governance	Canada Border Services Agency	Immigration, Refugees and Citizenship Canada	The Immigration and Refugee Board
Governance	President reporting to the minister of Public Safety	Deputy minister of Immigration	Chairperson reporting to Parliament through the minister of Immigration
Asylum Seeker Intake	Inland offices and ports of entry	Inland offices and ad hoc support at ports of entry	Not involved
Case Triaging and Scheduling	Previously involved; recent changes put this solely in the hands of the IRB	Previously involved; recent changes put this solely in the hands of the IRB	Triages cases according to complexity
Case File Decisions and Appeals	May intervene in cases, but not decide them	May intervene in cases, but not decide them	Sole decision-makers; appeals may be subject to judicial review by the Federal Court
Non-appeal recourses	Not involved	Paper-based application processes*	Not involved
Removal from Canada	Both voluntary and enforced removals	Not involved	Not involved

* These processes include the pre-removal risk assessment (PRRA) and the humanitarian and compassionate grounds (HC) application, described below. Relevant for this section, the PRRA and the HC processes occur within the IRCC, outside the quasi-judicial and judicial appeals at the IRB and the Federal Court.

THE IMMIGRATION AND REFUGEE BOARD

The IRB decides the outcomes of immigration cases requiring a hearing (Yeates and Abou-Assaf 2018). It is headed by a chairperson, who reports to Parliament through the minister of Immigration.³ The IRB is an administrative tribunal, with court-like hearings to hear and address asylum claims. Two IRB divisions deal directly with asylum seekers:

1. Refugee Protection Division (RPD) – The RPD makes first-level decisions on asylum case files. It is not involved in refugee resettlement from overseas.
2. Refugee Appeals Division (RAD) – The RAD hears appeals of denied asylum claims. It may consider the merits of a claim and uphold the original decision, send it back for review or substitute its own decision (IRB 2017a).

Decision-makers were government appointees prior to 2012 (IRCC 2016b). Since that time, they have been public service employees. Decision-makers are supported by administrative support staff and country researchers who prepare country-of-origin reports for asylum claims.

IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA

The IRCC is the main administrative body overseeing immigration to Canada, and is directly under the supervision of the federal minister of Immigration. The IRCC handles economic immigration to Canada, family sponsorship and overseas refugee resettlement. It is the primary steward of the asylum system, even if distinct roles are also given to independent agencies (United Nations High Commissioner for Refugees 2018).

The IRCC oversees asylum-seeker intake, eligibility, forecasting and program integrity (IRCC 2019). It processes the initial paperwork for asylum seekers already present in Canada who make a claim at an inland IRCC office and triages them into different case streams. It reviews new intakes for issues of credibility and eligibility (Yeates and Abou-Assaf 2018). Credibility refers to issues of fraud, security and other concerns undermining an asylum seeker's claim. Eligibility refers to making sure that a narrow set of restrictions do not apply to individuals making asylum claims. For example, an asylum seeker with refugee status in another country is ineligible to make a claim in Canada (IRCC 2017b).

The IRCC and the Canada Border Services Agency (CBSA) have the mandate to investigate asylum claims and intervene in cases where there are legitimacy or security concerns regarding a particular claimant (IRB 2016). They may raise objections and present evidence against an asylum claim at the hearing, but ultimate decision-making authority remains with the IRB (2017b). This intervention does not override the IRB's decision. The IRCC does have some level of involvement in non-judicial recourses for failed claimants. These include the pre-removal risk

³ Though the IRB reports to Parliament through the minister of Immigration, it operates as an independent administrative tribunal (IRB 2019a).

assessment (PRRA), and humanitarian and compassionate grounds claims (H&C) (IRCC 2017c). These two recourses will be detailed later, but in brief the PRRA reviews the likelihood of asylum seekers facing danger were they to be removed (IRCC 2017d). H&C claims are highly complex cases ascertaining an asylum seeker's level of settlement in Canada, and when it is deemed in their best interests to stay here (IRCC 2017e).

CANADA BORDER SERVICES AGENCY

The CBSA (2019a) is headed by a president reporting to the federal minister of Public Safety. The CBSA manages border security, charges import duties and may process visa applications at the border. Some asylum seekers are already living in Canada at the time they make their claim, perhaps under a temporary study or work permit, or because they've crossed the border without being intercepted by the RCMP. These asylum seekers are processed at inland IRCC offices. If the RCMP intercepts an asylum seeker at the border, the CBSA processes that individual at the nearest port of entry.

The CBSA assess an asylum seeker's eligibility to make a claim, their identity and any security concerns pertaining to the claimant. It may detain asylum seekers while ascertaining their identity, or after determining that they pose a security risk (CBSA 2018). It may also intervene in asylum cases when a security issue is flagged (Yeates and Abou-Assaf 2018). The CBSA is in charge of removing asylum seekers who have had their applications denied, and will either facilitate the asylum seekers' voluntary departure or forcibly remove them from the country (CBSA 2019b).

OTHER ORGANIZATIONS

Other organizations with direct or indirect roles in the asylum claim process include the Federal Court, the RCMP, CSIS, the provinces and territories, and a range of for-profit and non-profit consultants, lawyers and service providers (Office of the Parliamentary Budget Officer 2018).

The Federal Court may grant leave to appeal asylum cases denied at the IRB (IRCC 2017f). While the RAD considers the merits of a claim, the Federal Court does not accept new evidence or testimony, and focuses only on whether an asylum claim decision was unfair, unreasonable or made in error. If leave is granted, the Federal Court reviews the case in depth. Unlike the RAD, the court may not reverse the original decision. It may only affirm it, or return the case to be reheard at the IRB (IRCC 2017c).

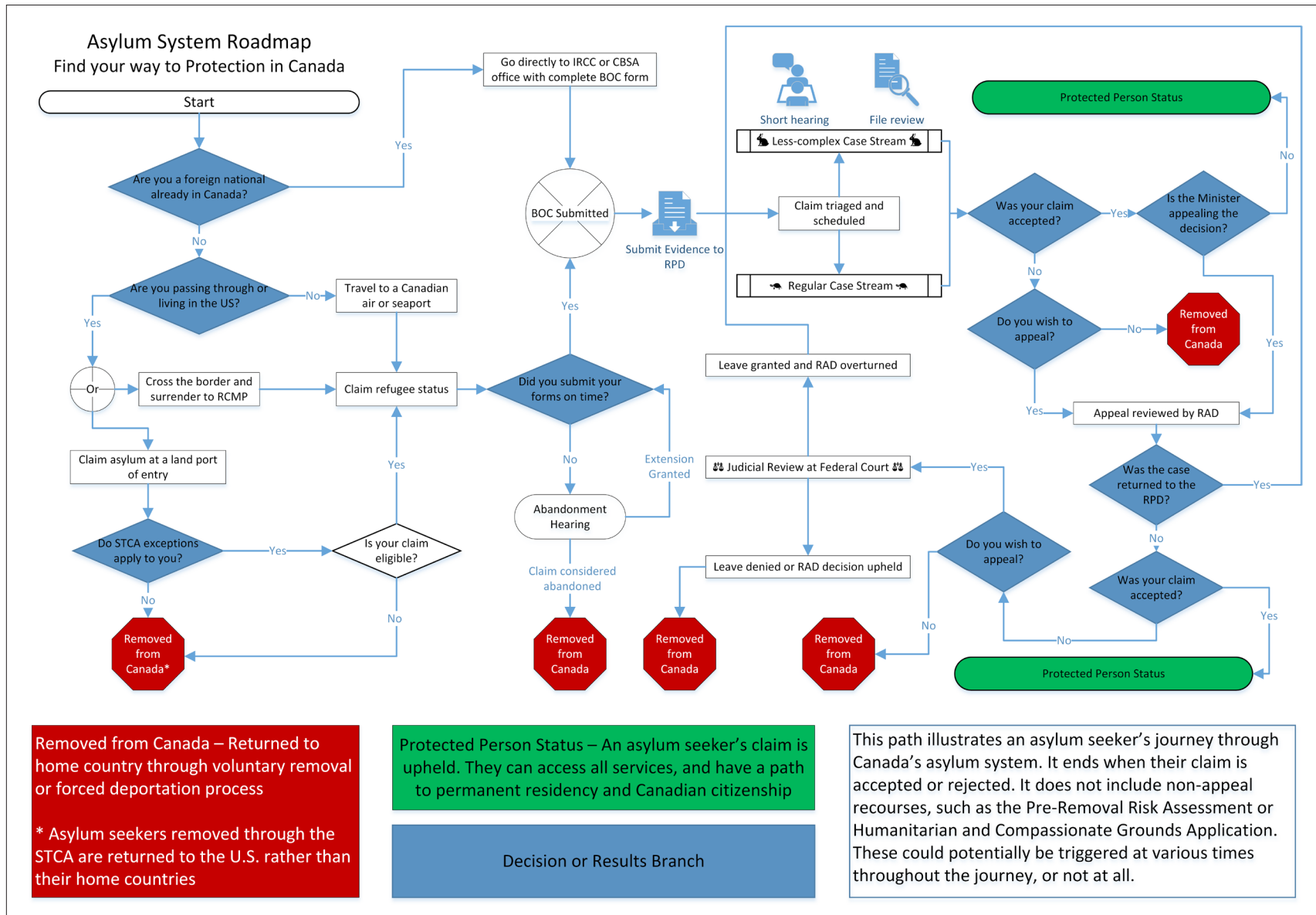
The RCMP and CSIS help ensure the security of the asylum claim process. The RCMP intercepts asylum seekers crossing the border and brings them to a CBSA or IRCC office to process their claim intake. CSIS helps screen asylum seekers for security issues (Yeates and Abou-Assaf 2018).

The federal government is solely responsible for processing asylum claims, but provinces may provide ancillary support in the form of provincially funded legal guidance services (Government of Canada 2017). In addition to government agencies and the court system, there is a range of private consulting services and law practices specializing in immigration and refugee files. They may help prepare an asylum seeker's claim file and legal counsel may represent them at hearings (Yeates and Abou-Assaf 2018). Non-profits may not provide federally funded settlement services to asylum seekers with a pending or denied claim, but may provide them with private or provincially funded services (Government of Canada 2017). Examples of these services, if available, may include one-on-one needs assessments, helping claimants prepare forms, mental health counselling, and other claim preparation and supportive services (Calgary Catholic Immigration Society 2018). Organizations such as the Canadian Red Cross (2019) and the Canadian Council for Refugees (2013) monitor the detention of asylum seekers or advocate on behalf of their rights.

CLAIMING ASYLUM: NAVIGATING PROTECTION

This section outlines from start to finish an asylum seeker's path to protection or removal from Canada, as shown in Figure 2. It is a complex process. An asylum seeker may retain a lawyer at any time and some provinces provide legal aid to asylum seekers with low incomes. Whether an asylum seeker can access a lawyer depends on their financial means and the availability of legal aid. An independent review suggests that a lawyer's help in preparing a refugee claim makes the process smoother for both asylum seekers and government officers assessing the case (Yeates and Abou-Assaf 2018).

FIGURE 2 THE ASYLUM SYSTEM ROADMAP



Removed from Canada – Returned to home country through voluntary removal or forced deportation process

* Asylum seekers removed through the STCA are returned to the U.S. rather than their home countries

Protected Person Status – An asylum seeker’s claim is upheld. They can access all services, and have a path to permanent residency and Canadian citizenship

Decision or Results Branch

This path illustrates an asylum seeker’s journey through Canada’s asylum system. It ends when their claim is accepted or rejected. It does not include non-appeal recourses, such as the Pre-Removal Risk Assessment or Humanitarian and Compassionate Grounds Application. These could potentially be triggered at various times throughout the journey, or not at all.

STEP ONE: MAKING A CLAIM AND ELIGIBILITY

When an asylum seeker arrives at a port of entry, a CBSA officer reviews their claim for eligibility (IRCC 2017b). Asylum seekers who claim asylum from within Canada skip down to step 2. Eligibility refers instead to a number of disqualifying criteria, which include:

- Having refugee status in another country already
- Having previously been granted protected status in Canada
- Having arrived at the port of entry from the United States
- Having a criminal background, having participated in human rights violations or being otherwise inadmissible on other security grounds
- Having already made a previous asylum claim that was not eligible based on the above criteria
- Having already made a previous asylum claim that received a negative decision from the IRB
- Having already withdrawn or abandoned a previous asylum claim

An eligible asylum seeker is given an application package to complete. The CBSA registers the asylum seeker, taking identifying information, including biometrics (IRB 2019b). They are then referred to the IRB for a hearing. The asylum seeker is given a Basis of Claim form (detailed below), due within 15 days of arriving at the border. Asylum seekers already residing in Canada are expected to come to an inland IRCC office with this form and the application package already filled out in order to be referred to the IRB. At this meeting, an IRCC officer reviews inland asylum seekers for eligibility. An asylum seeker who is found to be ineligible according to the above criteria receives a removal order and is released (pending a security check) on conditions to report for removal at a date determined by the CBSA.

The Safe Third Country Agreement: Why Some Asylum Seekers Cross the Border

The criterion making an asylum seeker arriving from the United States ineligible merits its own section. This disqualifying criterion is based on a bilateral agreement between Canada and the United States, called the Canada-U.S. Safe Third Country Agreement (Government of Canada 2016). This agreement states that an asylum seeker is to make their claim in the first of the two countries they arrive in. They are then disqualified from making their claim at the other country's land ports of entry, and will be returned to the first country if they attempt to do so. For example, if a Nigerian asylum seeker lands first in the United States, they are to make their asylum claim there. If they arrive at the Canadian border and make an asylum claim, they will be returned to the American side by CBSA officers to make their claim there. As the Safe Third Country Agreement only applies to ports of entry, asylum seekers may cross the border illegally in order to evade its restrictions.

Exceptions to the Safe Third Country Agreement include asylum seekers with family members living in Canada. These individuals may apply directly at the border, regardless of whether those family members are citizens, permanent residents, temporary visa holders or asylum seekers themselves (Office of the Parliamentary Budget Officer 2018). Unaccompanied minors – children without an adult parent or guardian – may also apply for asylum directly at the border, even if they do not have family members in Canada. These are not the only exceptions. For more information on the Safe Third Country Agreement and asylum seekers crossing the border, please refer to the first paper in this series, *Ping-pong Asylum: Renegotiating the Safe Third Country Agreement* (Falconer 2019).

STEP TWO: BASIS OF CLAIM FORM AND SUBMITTING EVIDENCE

On the Basis of Claim form an asylum seeker fills out details regarding their flight from their home country, their arrival in Canada and other steps along the way (IRB 2019c). An asylum seeker applying for protection from within Canada would begin their journey through Canada's asylum system by submitting this form to an IRCC or CBSA office. Included below are some of the topics covered:

1. Identifying information, including name, birth date, sex, gender identity, nationality or ethnicity (including racial or tribal identification), religion or denomination and languages spoken
2. Risk of harm:
 - a) History in home country of harm or persecution
 - b) Reasons to believe returning home might result in harm or persecution
3. Alternatives to seeking asylum:
 - a) Whether or not the asylum seeker sought law enforcement protection in their country, why or why not, and the reaction of state authorities to their plight
 - b) Whether or not the asylum seeker tried to move to another area of their home country
4. Flight timeline:
 - a) When the asylum seeker left
 - b) Why they did not leave sooner, or later
 - c) Other countries they fled to before arriving in Canada (if applicable)
5. Other details pertaining to their claim

6. Family information:⁴
 - a) Underage children accompanying the asylum seeker and threats to them specifically
 - b) Living and dead relatives, their citizenship and country of residence
7. Immigration history in Canada:
 - a) Previous attempts to claim protection in Canada
 - b) Non-humanitarian applications to live in Canada (example: tourist or student visas)
8. Contact address, legal counsel information (if any), declaration of truthfulness and an interpreter's declaration of truthfulness (if applicable)

Asylum seekers submit supporting documents with their Basis of Claim. This may include identity documents, reports about their home country and other evidence. An asylum seeker who fails to submit the Basis of Claim form is considered to have abandoned their asylum claim. Asylum seekers are given the chance at abandonment hearings to explain why they failed to provide the forms by the specified date, and may be granted an extension. Asylum seekers who have abandoned their claim cannot submit another claim, and are ordered to leave Canada.

Previously, IRCC and CBSA would triage and schedule first-level hearings for the IRB. The current practice is to leave the hearing date blank, and to let the IRB schedule the hearing (IRB 2018b). Recent reforms now grant the IRB the ability to place asylum seekers into different case streams, based on their cases' complexity. These include a regular hearing stream, used for complex cases requiring an oral hearing; a case-file review stream, in which an IRB decision-maker reviews relatively straightforward cases and a decision is rendered without a hearing; and a short-hearing stream, for mostly straightforward cases that need some clarification and in-person review with an IRB decision-maker. Case triaging is based on country of origin and the type of asylum claim from that country. Tables 3 and 4 provide a breakdown of the criteria used to triage cases.

⁴ Asylum seekers must include all relatives here if they want to sponsor them in the future, should their claim be successful.

TABLE 3 ELIGIBLE FOR CASE-FILE REVIEW STREAM

Country	Claim type(s)
Iran	Particular social group
	Gender/age
	Female gender norms
	Family violence (violence against women)
Libya	Criminality/corruption
	Extortion by militias in various Libyan cities
	Kidnapping or threat of kidnapping and fear of militias
Pakistan	Religion: Ahmadis, Christians, Shias
Saudi Arabia	Particular social group
	Gender/age
	Female
Saudi Arabia	Religion: Shia
Sudan	Political opinion
	Activism
	Opposing current government
	Opposing military conscription rate
Venezuela	Political opinion
	Activism and/or organization
	Anti-government
Turkey	Hizmet
Egypt	Coptic Christians
Afghanistan	All claims
Burundi	All claims
Syria	All claims
Eritrea	All claims
Iraq	All claims
Yemen	All claims

TABLE 4 SHORT-HEARING STREAM, ELIGIBLE FOR A TWO-HOUR INTERVIEW TO CLARIFY POINTS ON ASYLUM CLAIM FILE

Country	Claim type(s)
Iran	Sexual orientation
	Religion: apostasy or conversion to Christianity or Zoroastrianism
Bahamas	Sexual orientation
Barbados	Sexual orientation
Djibouti	Political opinion and activism
Russia	Sexual orientation
Rwanda	Sexual orientation
Venezuela	Sexual orientation
North Korea	Political opinion
	State policy issues
Nigeria	Criminality/corruption
Peru	Criminality/corruption
St. Vincent and St. Lucia	Criminality/corruption

STEP THREE: WAITING FOR A HEARING AND GATHERING EVIDENCE

Asylum seekers who pass the eligibility and security checks are granted temporary legal status within Canada, enabling them to apply for work permits and access limited services (Government of Canada 2017). Asylum-seeker health care in Canada is funded by the Interim Federal Health Plan, a federally funded private insurance scheme. Asylum seekers are not eligible for tax credits or benefits, such as the GST credit or Canada child benefit, but are eligible for provincially funded social assistance. Lu, Frenette and Schellenberg (2015) estimated that approximately 80 per cent of asylum seekers rely on social assistance to cover expenses. Other services downloaded onto provinces include K-12 education and emergency homeless shelter use.

Asylum seekers may gather additional evidence and witnesses while they await their hearing. Additional evidence or witness testimony must be submitted no later than 10 days before the hearing (IRB 2019d). The IRB is flexible in the types of evidence it chooses to accept, so long as the evidence is provided/translated in an official language. Some examples include the following:

- Identity documents: passports, driver’s licences, marriage certificates, transcripts, military ID cards or other forms of identification
- Relevant evidence: news clippings, sworn statements, photos, textual threats, recordings, journals, documents pertaining to the individual or their social group, police reports and other evidence to support claimant credibility; genuine fear of persecution, and lack of state protection or internal flight options
- Witnesses: asylum seekers may bring witnesses to their hearings

As mentioned previously, less complex IRB cases are streamed according to country and case type. When the case is nearly ready, claimants are given 15 days' notice to submit any additional evidence (IRB 2019e). After 15 days have passed, or the asylum seeker's satisfaction is confirmed, the file is reviewed and a decision is rendered.

STEP FOUR: THE CLAIM HEARING AND DECISION

An IRB decision-maker will assess an asylum seeker's claim at the hearing, measuring it against the definition of a refugee as outlined by the federal *Immigration and Refugee Protection Act* (IRB 2018a). The criteria established in this act originate from the 1951 United Nations Refugee Convention (IRCC 2013). These criteria define a refugee as someone with a well-founded fear of persecution on the basis of race, religion, nationality, political opinion or membership in a particular social group (Government of Canada 2017). Foreign service officers use these same criteria to identify refugees for resettlement to Canada, and an IRB decision-maker will also use the criteria to decide whether an asylum seeker qualifies for protection in Canada.

As mentioned, less complex cases are now targeted for a two-hour hearing, or a decision based solely on a review of evidence in the case file (IRB 2019f). Standard hearings are expected to take half a day, and children under 12 are not required to be at the hearing (IRB 2019d). Hearings may take place by videoconference. Outside counsel is allowed, exhibits are numbered, the asylum seeker and witnesses testify, and the IRB asks follow-up questions. If there is a ministerial intervention, either to review program integrity or because there is a concern, the minister's counsel may also comment. Finally, the IRB member will make a decision, either at the hearing or by mail. The decision will include comments on why a claim was accepted or rejected.

Step 4a: A Positive Decision

If the decision-maker deems the asylum seeker's claim credible, the asylum seeker is given protected-person status (IRB 2017c). This does not automatically grant them permanent residency, but allows the asylum seeker to apply for it at the IRCC. Protected persons may attend post-secondary institutions and access provincial health care. The IRCC, CBSA or the minister's office may appeal the positive decision to the RAD or seek judicial review at the Federal Court (IRB 2019g). If these appeals are denied, the asylum seeker's protected status is upheld. Protected persons who become permanent residents have access to all the services, rights and benefits other permanent residents have, including a path to citizenship (IRB 2017c).

Step 4b: Negative decisions

A rejected asylum seeker has the following options:

1. Leave Canada voluntarily
2. Appeal to the RAD within 15 days
3. Apply for judicial review at the Federal Court

The RAD may choose to uphold the RPD's decision, send it for retrial or substitute a positive decision (Yeates and Abou-Assaf 2018). If the RAD substitutes a positive decision, the asylum seeker becomes a protected person.

Asylum seekers may apply for a judicial review of a negative decision at the Federal Court (IRCC 2017f). The court may deny leave for a review, or uphold the IRB's negative decision upon reviewing the case, both of which lead to an asylum seeker's removal (FCJ Refugee Centre n.d.). If leave is granted, and upon review the court finds that the negative decision was unfair or made in error, the case is sent back to the IRB for another hearing.

STEP FIVE: NON-APPEAL RECOURSES

Pre-Removal Risk Assessment

A denied asylum seeker has avenues of recourse available that fall outside the normal appeal process. If an asylum seeker receives a negative decision and an enforceable removal order, they may ask for a PRRA (IRCC 2017d). To be eligible for a PRRA, the asylum seeker must not have received a negative decision within the last 12 months, be subject to an extradition order, have refugee status in another country or be subject to the restrictions of the Safe Third Country Agreement (IRCC 2017d).⁵ The IRCC conducts the PRRA and considers whether the Canadian government risks returning the asylum seeker to a life-threatening situation. It assesses whether country conditions have changed during the course of their asylum claim process. If a PRRA finds a credible risk to the asylum seeker, the IRCC grants that asylum seeker protected-person status.

Asylum seekers originating from a list of designated safe countries are barred from applying for a PRRA unless 36 months have passed since their claim was rejected.⁶ Other asylum seekers may only apply for a PRRA after 12 months have passed since their original rejection. Asylum seekers with refugee status in another country or who are subject to extradition may not apply for a PRRA.

⁵ Some exceptions apply. If the humanitarian conditions in an asylum seeker's home country suddenly change for the worse, the Canadian government may allow them to apply for a PRRA immediately.

⁶ See previous footnote.

Humanitarian and Compassionate Grounds

The original decision and appeals process may take years. Denied asylum seekers may also apply for permanent residency on humanitarian and compassionate grounds (H&C) (IRCC 2017e). Like the PRRA, the H&C application is considered by the IRCC. H&C applications are based on how settled someone is in Canada, whether they have family ties here, the best interests of the children and non-asylum related risks of removing an applicant. Asylum seekers may only apply under H&C grounds after one year has passed since their denied claim, or five years if they entered Canada by crossing the border. Asylum seekers may have to wait five years if they were denied during the appeals or PRRA processes.

The longer a denied asylum seeker remains in Canada, the more likely they are to develop ties and grow roots in their communities (Showler 2009). These ties are considered in H&C applications. If successful, the applicant becomes a permanent resident, rather than receiving protected-person status.

Both the pre-removal risk assessment and the humanitarian and compassionate grounds application have very low rates of success. For example, a 2016 evaluation found that only two per cent of all PRRAs were accepted between 2007 and 2014 (IRCC 2016c).

STEP 6: REMOVAL FROM CANADA

Asylum seekers receive conditional removal orders upon filing their claims (CBSA 2019b). If they receive a positive decision at any point, the order will not be enforced and once they become a permanent resident, it is considered void. Removal orders become enforceable once an asylum seeker exhausts all resources or lets recourses expire without pursuing them. A Canada-wide arrest warrant may be issued for an asylum seeker who fails to appear for a scheduled removal date. There are three types of removal orders:

1. Departure Order – The asylum seeker must leave Canada within 30 days and notify the CBSA they are leaving at the border. If they leave voluntarily, they may return to Canada at some point in the future if they comply with entry requirements.
2. Exclusion Order – The asylum seeker cannot return to Canada for one year. If the asylum seeker misrepresented themselves, they may not return for five years.
3. Deportation Order – The asylum seeker is permanently barred from returning.

Asylum seekers with enforceable removal orders are no longer eligible for social assistance or other services (Government of Canada 2017). Should a denied asylum seeker voluntarily depart from Canada, they are unlikely to be escorted. The CBSA may detain some asylum seekers they consider to be flight risks, or risks to the public, and personally escort them to their home countries (Showler 2009).

CONCLUSION: SIMPLICITY VS. COMPLEXITY, TRADE-OFFS IN JUSTICE, SECURITY AND EFFICIENCY

Canada's asylum system is not an easy path to living in Canada or gaining citizenship. Asylum seekers or Canadian citizens who think asylum is a form of queue jumping or circumventing normal immigration pathways are mistaken. It is a complex web of agencies and steps. Part of this complexity necessarily results from the constitutionally guaranteed right of due process afforded to asylum seekers. It is also the result of evolving bureaucracies and case-management systems impacted by political agendas and sudden surges in asylum-seeker numbers. This complex system does not lend itself well to a quick resolution of an asylum seeker's case, and it does not respond efficiently to large numbers in a short time span.

Sudden spikes in asylum-seeker numbers are not new. Unpredictable events, such as war, economic collapse or natural disasters may push people out of their home countries. Such individuals, whether or not they have a well-founded fear of persecution in their home countries, may be drawn to Canada by various pull factors. These may include access to work, health care and social assistance in Canada while their claims are being processed. A lengthier processing time may draw claims from those without a well-founded fear of persecution. Processing these claims in a timelier manner may include various reforms that do not impact an asylum seeker's right to due process. Where possible, the government may look to simplifying the asylum claim processing, and ensuring staff vacancies at the IRB and other agencies are regularly filled, even during periods with few asylum claims. Subsequent papers will look at the impact current policies and recent surges have had on the system as a whole, and how Canada might address these surges and the lengthy claim processing time.

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