GAPS

Decentring the Study of Migrant Returns and Return Policies

Legal and Policy Infrastructures of Returns in Canada

Country Dossier (WP2)

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List of abbreviations

AVRR	Assisted Voluntary Return and Reintegration
CBSA	Canada Border Services Agency
CCLA	Canadian Civil Liberties Association
CPIC	Canadian Police Information Centre
GCMS	Global Case Management System
IOM	International Organization for Migration
IRCC	Immigration Refugees Citizenship Canada
IRPA	Immigration and Refugee Protection Act
IRPR	Immigration and Refugee Protection Regulations
NCMS	National Case Management System
PSEP	Public Safety and Emergency Preparedness
RCMP	Royal Canadian Mounted Police
SMU	Statement of Mutual Understanding
STCA	Safe Third Country Agreement
UNHCR	United Nations High Commissioner for Refugees
US	United States

Summary

This report examines the legal and institutional frameworks, operational infrastructure, and international cooperation involved in the removal of inadmissible foreign nationals and rejected refugee protection claimants from Canada. The analysis highlights that the Canadian return policy pursues two objectives: (1) facilitate the arrest, detention, and removal of foreign nationals, notably those who would pose a security risk; (2) safeguard the human rights of foreign nationals and refugee protection claimants. The first objective stems from the post-9/11 political context dominated by security concerns in which the contemporary Canadian return policy has been constructed. The second objective is epitomized by the need for the Immigration and Refugee Protection Act to be applied in a manner consistent with the Canadian Charter of Rights and Freedoms and the international human rights instruments to which Canada is signatory. However, the indefinite administrative detention of foreign nationals for noncriminal purposes, including in provincial jails, suggests tensions between the two objectives. The report also indicates that the Canadian return governance landscape consists of policy and operational responsibilities borne by the federal government and agencies, which are monitored by administrative tribunals and federal and provincial superior courts, and involve NGOs and international actors. The report outlines the gaps in the Canadian return policy that threaten the human rights of foreign nationals and refugee protection claimants, highlight the operational difficulties in tracking the status of removal orders, and reflect the lack of cooperation of some countries of origin. Finally, the report develops two policy suggestions to protect foreign nationals' human rights: (1) setting a maximum period of detention for noncriminal purposes in accordance with international human rights standards and (2) establishing an independent oversight body to monitor the arrests, detentions, and removals of foreign nationals by the Canada Border Services Agency.

Keywords: return, removal, deportation, governance of returns.

The GAPs Project

GAPs is a Horizon Europe project that aims to conduct a comprehensive multidisciplinary study on the drivers of return policies and the barriers and enablers of international cooperation on return migration. The overall aim of the project is to examine the disconnects and discrepancies between expectations of return policies and their actual outcomes by de-centring the dominant, one-sided understanding of "return policymaking." To this end, GAPs:

- examine the shortcomings of EU's return governance;
- analyse enablers and barriers to international cooperation, and
- explore the perspectives of migrants themselves to understand their knowledge, aspirations and experiences with return policies.

GAPs combines its decentring approach with three innovative concepts:

- a focus on return migration infrastructures, which allows the project to analyse governance fissures;
- an analysis of return migration diplomacy to understand how relations between EU Member States and with third countries hinder cooperation on return; and
- a trajectory approach that uses a socio-spatial and temporal lens to understand migrant agency.

GAPs is an interdisciplinary 3-year project (2023-2026), co-coordinated by Uppsala University and the Bonn International Centre for Conflict Studies with 17 partners in 12 countries on 4 continents. GAPs' fieldwork has been conducted in 12 countries: Sweden, Nigeria, Germany, Morocco, the Netherlands, Afghanistan, Poland, Georgia, Turkey, Tunisia, Greece and Iraq.

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1. The political context/framework

The Canadian political context for return policy has been marked by the creation of a common North American security perimeter with the United States (US) following the terrorist attacks of 11 September 2001. To deflect accusations that Canada represented a potential haven for terrorist groups and safeguard the flows of capital, goods, and people with the US, the Canadian immigration and refugee protection law and policies were integrated into a broader antiterrorist strategy and closely coordinated with those of the US (Aiken, 2002, pp. 3–4, 2007, p. 181). This policy change unfolded in four stages.

1) The Canadian Parliament agreed to the Immigration and Refugee Protection Act (IRPA) in November 2001 to facilitate the refusal of entry, arrest, detention, and removal of permanent residents, temporary migrants, and refugee protection claimants for security reasons. Compared to the previous Immigration Act, IRPA expands the scope of removals for security reasons and strengthens the officers' authority to arrest and detain, including without a warrant, those who pose a security risk (Crépeau & Nakache, 2006, pp. 21–22). Although IRPA is not a direct response to the terrorist attacks of 11 September 2011,[1] Canadian authorities used it to detain suspected international terrorists (Roach, 2012, pp. 524–525).
2) Canada and the US signed the Smart Border Action Plan in December 2001 (US Department of State, 2002). This 'package of post-9/11 measures' (Macklin, 2005, p. 370) aimed to monitor the security risks posed by visitors, refugee protection claimants, and migrants entering North America. Under the action plan, both countries created joint passengers analysis units and interoperable databases, adopted common biometric standards for travel documents, coordinated their visa requirements, and shared information on refugee protection claimants (Crépeau & Atak, 2015, pp. 98–99).
3) As part of the Smart Border Action Plan, Canada and the US signed the Safe Third Country Agreement (STCA) in December 2002[2] (Government of Canada & Government of the US, 2002). Similarly to the Dublin regulation of the European Union, the agreement required refugee protection claimants to lodge their claims in the first country of arrival (Macklin, 2005, p. 370). Thus, protection claimants attempting to cross the land border of Canada from the US through official points of entry must be returned to the US and vice versa, except in certain cases.[3]
4) The Department of Public Safety and Emergency Preparedness (PSEP) and the Canada Border Services Agency (CBSA) were created in December 2003 to implement IRPA, the Smart Border Action Plan, and the STCA (Parliament of Canada, 2005; Crépeau & Atak, 2015, p. 98). CBSA is also tasked with stopping irregular migration and screening and deporting visitors, migrants, and refugee protection claimants.

[1] The Parliament began discussing IRPA months before the attacks of 11 September 2001.
[2] Contrary to the US, Canada has not pursued safe third country agreements with other countries (Chishti & Gelatt, 2023).
[3] The STCA does not apply to refugee protection claimants who are citizens of Canada or the US; stateless claimants who habitually reside in Canada and the US; claimants that have at least one family member who has had a refugee status claim granted, has been granted lawful status, or whose claim is pending in the second country of arrival; unaccompanied minors and persons who regularly travelled to the second country of arrival; claimants arriving to Canadian airports, ports, or ferry landings (Government of Canada & Government of the US, 2002).

However, the coordination between the Canadian immigration and refugee protection law and policies with those of the US faced a significant stumbling block. The STCA only covered crossings through official entry points and ignored cases where refugee protection claimants entered Canada through unofficial entry points. This 'loophole' became 'problematic' starting in 2017 when many refugee protection claimants began to irregularly cross the Canadian border in search of a more favourable asylum system (Chishti & Gelatt, 2023). This trend reached its highest point in 2022 when 39,540 refugee protection claimants were 'intercepted' by the Royal Canadian Mounted Police (RCMP) (IRCC, 2022). These interceptions occurred notably at the Roxham Road crossing between New York and Quebec, which became a point of contention in Canadian domestic politics. Both the federal Conservative Party and the government of Quebec repeatedly demanded that the federal government shut Roxham Road to combat the 'massive influx of illegal immigrants' (The Canadian Press, 2022; Major, 2023). Against this backdrop, Canada and the US announced in March 2023 the adoption of an additional protocol to the STCA which extended the agreement to the entire Canada-US land border. Secretly negotiated in 2022, the additional protocol also applied the STCA to refugee protection claimants crossing the border without authorization who have been apprehended or have submitted a protection claim within 14 days of crossing (Raycraft, 2023). Although the modified STCA reduced the number of irregular crossings into Canada since April 2023 (IRCC, 2023), critics among human rights activists and immigration lawyers and scholars argued that it returned protection claimants to an unsafe country (Stevenson, 2023).

This criticism echoed long-standing concerns about the incompatibility between the US asylum system and the protections required by the 1951 Refugee Convention and the 1984 Convention Against Torture (Chishti & Gelatt, 2023). Questions about whether the US represented a safe country became more widespread since 2017 when the Trump administration adopted policies that facilitate the detention and deportation of asylum seekers (Alboim & Aiken, 2017). These policies prompted several refugee protection claimants and three civil society organizations (Canadian Council for Refugees, Amnesty International, and Canadian Council of Churches) to challenge the STCA in the Federal Court for contravening the Canadian Charter of Rights and Freedoms (hereafter the Charter). In July 2020, the Federal Court found that the STCA violated the rights of deported refugee protection claimants under the Charter and led to their automatic imprisonment by US authorities (BBC, 2020). Following an appeal filed by the federal government, the Federal Court of Appeal overturned this decision in April 2021 because the 'alleged constitutional defect' stemmed from how officials operated the STCA and not the agreement itself (Bronskill, 2021). Asked by the same three civil society organizations to make a decision, the Supreme Court of Canada settled the constitutionality of the STCA in June 2023. While acknowledging the risks refugees face under the agreement, the Supreme Court noted that IRPA provided 'safety valves' (e.g., temporary stay of removal orders, temporary resident permits, humanitarian and compassionate exemptions, public policy exemptions) that safeguarded the human rights of vulnerable refugee protection claimants and prevented their deportation to the US (Rana, 2023). However, the Supreme Court decision did not consider the additional protocol to the STCA announced in March 2023.

This overview of the political context reveals two objectives pursued by the Canadian return policy. The policy change which unfolded after the attacks of 11 September 2001 focused on the objective of facilitating the arrest, detention, and removal of foreign nationals, notably those that pose a security risk. However, the controversy surrounding STCA and the federal courts' rulings indicate that facilitating removal can undermine a second objective concerned

with safeguarding the human rights of foreign nationals and refugee protection claimants. In addition to the safety valves mentioned by the Supreme Court, the second objective is epitomized by Section 3 of IRPA. It stipulates that IRPA must be applied in a manner consistent with the Charter and the international human rights instruments to which Canada is signatory (Parliament of Canada, 2023a, s. 3(3)).

2. Statistical overview: Returns at the national level

According to CBSA, 10,180 foreign nationals have been removed from Canada in 2022-2023. Each year, the number of enforced removals is made public (see Table 1). This is also the case for the statistics on many aspects of the Canadian return policy (see Annex 1). However, CBSA does not publish data on its national removal inventory of enforceable removal orders. Some of these data were only made public after queries from the Auditor General of Canada, who was tasked with reporting on the efficiency of the CBSA (see Table 2). This lack of transparency could be due to the politically sensitive nature of these data. Since the Auditor General found that CBSA did not remove foreign nationals in 'a timely manner', the Toronto Sun (2020, 2023) newspaper has regularly criticized the agency for its inability to remove foreign nationals, particularly 'foreign criminals'. The president of CBSA indirectly justified this inability by the fact that removal processes 'are complex, and not linear' and involve 'recourse mechanisms' (CBSA, 2020c). In other words, the president pointed to the tension between the need to facilitate removal and safeguard the human rights of foreign nationals and refugee protection claimants according to with the Charter and international human rights instruments.

***Table 1*. Enforced Removal Orders by CBSA**

Fiscal year	Total Enforced Removals	Not Escorted Removals	Escorted Removals
2023-2022	10,180	N/A	N/A
2022-2021	7,453	N/A	N/A
2021-2020	11,229	N/A	N/A
2020-2019	11,527	10,588	939
2019-2018	9,695	8,792	903
2018-2017	8,211	7,169	1,042
2017-2016	7,995	6,987	1,008
2016-2015	8,688	7,838	850
2015-2014	11,932	10,793	1,139

Source: CBSA (2020c, 2021, 2022a, 2023a)

***Table 2*. Enforceable Removal Orders in CBSA inventory**

Fiscal year	Total	Working Inventory[4]	Wanted Inventory[5]
2023-2022	N/A	N/A	N/A
2022-2021	N/A	N/A	N/A

[4] Working inventory comprises cases of individuals waiting for travel documents, travel arrangements, or pre-removal risk assessment.
[5] Wanted inventory comprises cases of individuals subject to an arrest warrant.

2021-2020	N/A	N/A	N/A
2020-2019	N/A	N/A	N/A
2019-2018	50,000	15,300	34,700
2018-2017	50,800	16,800	34,000
2017-2016	47,600	14,400	33,200
2016-2015	N/A	N/A	N/A
2015-2014	N/A	N/A	N/A
2014-2013	N/A	N/A	N/A

Source: Auditor General of Canada (2020, p. 7)

3. National legal framework/infrastructure regarding return

The legal framework that regulates Canadian return policy is mainly composed of IRPA and its accompanying Immigration and Refugee Protection Regulations (IRPR) (see Annex 2 for an overview of the legal framework). Both texts determine the grounds and procedures under which permanent residents and foreign nationals (including those claiming refugee protection) can be removed.

3.1 Inadmissibility and removal orders

The removal of permanent residents and foreign nationals is regulated by the legal notion of inadmissibility, which is determined based on facts for which there are 'reasonable grounds to believe that they have occurred, are occurring, or may occur' (Parliament of Canada, 2023a, s. 33). According to the IPRA, a permanent resident or a foreign national is inadmissible on grounds of:

1) security for engaging in espionage, subversion, terrorism, and for being a danger to the security of Canada;
2) human or international rights violations for committing an act outside Canada that constitutes an offence under the Crimes Against Humanity and War Crimes Act or for being a senior official of a government that engages or has engaged in terrorism, systematic or gross human rights violations, genocide, war crime, or crime against humanity;
3) sanctions if a foreign national's entry or stay in Canada is restricted by a decision of an international organization of states or an association of states, of which Canada is a member, that imposes sanctions on a person, entity or foreign state, or by an order made under the Special Economic Measures Act or the Justice for Victims of Corrupt Foreign Officials Act;
4) serious criminality, criminality, and transborder criminality committed by a foreign national, and organized criminality;
5) health reasons if a foreign national's health condition is likely to be a danger to public health and might cause excessive demand on health or social services;
6) financial reasons if a foreign national cannot support themselves financially;
7) misrepresentation for withholding material facts to induce an error in the administration of IRPA;
8) cessation of refugee protection;
9) non-compliance with IRPA;
10) an inadmissible family member of a foreign national other than a protected person[6] (Parliament of Canada, 2023a, ss. 34-42).

When permanent residents or foreign nationals are found inadmissible within Canada, they can become the subject of three types of removal orders according to the severity of the facts they might have committed:

[6] In the case of foreign nationals who are temporary residents or have applied for temporary resident status, the family member must be inadmissible under grounds of security, human or international rights violations, or organized criminality (Parliament of Canada, 2023a, s. 42(2)).

1) departure order by which they are not required to obtain an authorization to return to Canada;
2) exclusion orders which require them to obtain a written authorization to return to Canada up to one year after the orders were enforced;
3) deportation orders which require them to obtain a written authorization to return to Canada at any time after the orders are enforced (Parliament of Canada, 2023b, ss. 223-226).

3.2 Procedures to determine inadmissibility and issue removal orders

IRPA organizes two distinct procedures to determine the inadmissibility of permanent residents and foreign nationals. The first procedure begins when an officer from the Immigration Refugees Citizenship Canada (IRCC) or CBSA prepares a report describing the relevant facts to substantiate their 'opinion' that a permanent resident or foreign national is inadmissible (Parliament of Canada, 2023a, s. 44(1)). The report on inadmissibility is then transmitted to the Minister of PSEP (hereafter the Minister), who shares responsibility for the administration of IRPA with the Minister of Immigration, Refugees, and Citizenship (hereafter the Minister of IRC) (Government of Canada, 2015b).[7] The Minister directly issues a removal order if the report is believed to be 'well-founded' and if it concerns foreign nationals who are inadmissible (Parliament of Canada, 2023b, s. 228(1)) on grounds of:

1) serious criminality for having been convicted in Canada of an offence punishable by a term of imprisonment of at least 10 years or of more than six months (Parliament of Canada, 2023a, s. 36(1)(a));
2) criminality for having been convicted in Canada of an offence punishable by way of indictment or of two offences not arising out of a single occurrence (Parliament of Canada, 2023a, s. 36(2)(a));
3) misrepresentation on a final determination to vacate a decision to allow their claim for refugee protection or application for protection (Parliament of Canada, 2023a, s. 40(1)(c));
4) cessation of refugee protection (Parliament of Canada, 2023a, s. 40.1(1));
5) failure to comply with IRPA (e.g., failure to enter Canada with a visa or other document, to leave Canada by the end of the period authorized for the stay, to obtain authorization to return to Canada after removal);
6) an inadmissible family member.

Moreover, the Minister directly issues a removal order if the report concerns permanent residents who have not been physically present in Canada for at least 730 days in a five-year period (Parliament of Canada, 2023a, s. 44(2)). Outside these cases, the Minister has to refer a well-founded report to the Immigration Division of the Immigration and Refugee Board of Canada, an independent administrative tribunal, for an admissibility hearing (Parliament of

[7] The Minister of PSEP or IRC can delegate their powers and functions to a Minister's delegate or designate persons or class of persons as officers to carry out any provision of IRPA (Parliament of Canada, 2023a, s. 6; CBSA, 2017, p. 14).

Canada, 2023a, s. 44(2)).[8] After the hearing, the Immigration Division decides whether to (1) authorize the permanent resident or foreign national to remain in Canada by granting permanent or temporary resident status or (2) issue a removal order against them (Parliament of Canada, 2023a, s. 45).

The second procedure to determine inadmissibility starts when the Minister and the Minister of IRC sign a 'security certificate'[9] stating that the permanent resident or foreign national is inadmissible on grounds of security, human or international rights violations, and serious criminality or organized criminality (Parliament of Canada, 2023a, s. 77). The certificate and all relevant evidence[10] are then referred to the Federal Court which has to hold a hearing to determine whether the certificate is 'reasonable' and can constitute an immediately enforceable removal order (Parliament of Canada, 2023a, ss. 78 and 80).

3.3 Appeal of removal orders

Once issued by the Immigration Division, the Minister, or following a decision of the Federal Court, removal orders must be enforced as soon as possible (Parliament of Canada, 2023a, s. 48). However, the Minister and the person who is the subject of a report on inadmissibility can contest the decision of the Immigration Division by appealing to the Immigration Appeal Division of the Immigration and Refugee Board (Parliament of Canada, 2023a, s. 63). If the Immigration Appeal Division does not dismiss the appeal, the original removal order is set aside, and a new decision is made. The decision can range from issuing a new removal order, referring the matter to the Minister or the Immigration Division for reconsideration, or 'staying', i.e. pausing, the original removal order (Parliament of Canada, 2023a, ss. 67-68). But the right of appeal does not extend to persons who have been found inadmissible on grounds of security, human or international rights violations and sanctions, serious criminality[11] or organized criminality, and misrepresentation (Parliament of Canada, 2023a, s. 64). Regarding removal orders resulting from a security certificate, the decision of the Federal Court on the reasonable character of the certificate can be appealed to the Federal

[8] Throughout the procedure to determine inadmissibility, permanent residents and foreign nationals who are the subject of a report on grounds of security and who are not detained must follow prescribed conditions (e.g., inform the CBSA of their address and employer, report regularly to the CBSA, produce to the CBSA the original of their passport and identity documents) (Parliament of Canada, 2023a, s. 44(4), 2023b, s. 250.1).

[9] Security certificates have been part of Canada's immigration and refugee law since 1978 and have been particularly issued against suspected international terrorists after the attacks of 11 September 2001. Although only 27 security certificates were issued since 1991, this legal tool has been surrounded by controversy. In 2007, the Supreme Court unanimously found security certificates to be unconstitutional for their secrecy. In 2014, changes introduced by the Government of Canada that allowed the person named in a certificate to know the case against them were found to be consistent with the Charter. For more information, see: CBC (2009), Bronskill (2013), Government of Canada (2018).

[10] While the person named in a security certificate must be 'reasonably informed' of the case brought against them, the Minister can classify any evidence that 'would be injurious to national security or endanger the safety of any person if disclosed' (Parliament of Canada, 2023a, s. 77(2)). The person can request that the judge appoints a special advocate from a list of persons who may act as such determined by the Minister of Justice (Parliament of Canada, 2023a, s. 83(1.2) and 85(1)). The special advocate's role is to protect the interests of the person named in the certificate when information or evidence is heard in their absence and the absence of their counsel (Parliament of Canada, 2023a, s. 85.1(1)).

[11] Persons found inadmissible on grounds of serious criminality have the right of appeal if they have been punished in Canada by a term of imprisonment of less than six months (Parliament of Canada, 2023a, s. 64(2)).

Court of Appeal. The appeal can be made by the person named in the certificate or the Minister, but only if 'the judge [of the Federal Court] certifies that a serious question of general importance is involved and states the question'[12] (Parliament of Canada, 2023a, s. 79).

3.4 Arrest and detention under suspicion of inadmissibility

In parallel to the procedure for determining inadmissibility, permanent residents or foreign nationals aged 18 years or older[13] can be arrested and administratively detained in four instances:

1) an officer can issue a warrant for the arrest and detention of a permanent resident or a foreign national if they have reasonable grounds to believe that the person is inadmissible and (a) is a danger to the public or (b) is unlikely to appear for examination,[14] for an admissibility hearing, or for removal from Canada (Parliament of Canada, 2023a, s. 55(1));
2) an officer can arrest and detain a foreign national (other than a protected person) without a warrant if they have reasonable grounds to believe that the person is inadmissible and (a) is a danger to the public or (b) is unlikely to appear for examination, for an admissibility hearing, or for removal from Canada, or (c) if the officer is not satisfied of the foreign national identity during any procedure under IRPA (Parliament of Canada, 2023a, s. 55(2));
3) an officer can detain a permanent resident or a foreign national on entry into Canada to complete examination or if they have reasonable grounds to suspect that the person is inadmissible on grounds of security, violating human or international rights, sanctions, serious criminality, criminality, transborder criminality, or organized criminality (Parliament of Canada, 2023a, s. 55(3));
4) the Minister and the Minister of IRC can issue a warrant for the arrest and detention of a person named in a security certificate if they have reasonable grounds to believe that the person (a) is a danger to national security or to the safety of any person (b) or is unlikely to appear at a proceeding or for removal (Parliament of Canada, 2023a, s. 81).

Within 48 hours of detention in CBSA immigration holding centres,[15] provincial jails, or other facilities (e.g., police stations, CBSA offices) (Harris, 2017), the Immigration Division must review the reasons for continued detention in the presence of the detainee and a hearings officer representing the Minister.[16] After this initial review and hearing, the Immigration Division is expected to conduct additional reviews at least once during the seven days following

[12] Regardless of whether a judge certifies that a serious question of general importance is involved, the Minister can appeal any decision that discloses 'information injurious to national security' or that would 'endanger the safety of any person' (Parliament of Canada, 2023b, s. 79.1).
[13] A minor child can be detained, but 'only as a measure of last resort' (Parliament of Canada, 2023a, s. 60. 2023b, s. 248.1 and 249).
[14] An officer may proceed with an examination if a permanent resident or a foreign national makes an application to the officer under IRPA (Parliament of Canada, 2023a, s. 15(1)).
[15] Located in Laval (Quebec), Toronto (Ontario), and Surrey (British Columbia), Immigration holding centres 'resemble medium security prisons' (Human Rights Watch & Amnesty International, 2021, p. 2). Between 2016 and 2022, the Government of Canada invested $138 million to retrofit immigration holding centres or to transfer them to new facilities (CBSA, 2022c).
[16] Officers can order the release of a permanent resident or a foreign national from detention before the first review by the Immigration Division if the reasons for detention no longer exist (Parliament of Canada, 2023a, s. 56(1)).

the initial review, then at least once during each subsequent 30-day period (Parliament of Canada, 2023a, s. 57(2)). The Immigration Division can order the release of a permanent resident or a foreign national unless it is satisfied that:

1) they are a danger to the public;
2) they are unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order;
3) the Minister is taking necessary steps to inquire into a reasonable suspicion that they are inadmissible on grounds of security, violating human or international rights, sanctions, serious criminality, criminality, transborder criminality or organized criminality;
4) the Minister believes that (a) the identity of the foreign national has not been established, (b) the foreign national has not reasonably cooperated with the Minister to establish their identity, (c) or the Minister is making reasonable efforts to establish their identity (Parliament of Canada, 2023a, s. 58(1)).

The Immigration Division can also impose conditions upon releasing a permanent resident or a foreign national, such as paying a deposit or posting a guarantee for compliance, until (1) the removal order is enforced or (2) the report on inadmissibility on grounds of security is withdrawn or (3) a final determination is made not to make a removal order against the person for inadmissibility on grounds of security (Parliament of Canada, 2023a, s. 44(5)).

Regarding persons named in a security certificate, a judge reviews their detention within 48 hours after the detention begins (Parliament of Canada, 2023a, s. 82(1)). Until it is determined whether the certificate is reasonable, detention is reviewed at least once in the six-month period following the conclusion of each preceding review (Parliament of Canada, 2023a, s. 82(2)). If the certificate is deemed reasonable and the detention continues, the person named in the certificate can apply to the Federal Court for another review if a period of six months has expired since the conclusion of the preceding review (Parliament of Canada, 2023a, s. 82(3)). At any point of the review, the Minister can order the release of the person named in the certificate to permit their departure from Canada (Parliament of Canada, 2023a, s. 82.4).

3.5 (In)eligibility of refugee protection claimants

A foreign national seeking refuge in Canada can make a claim for refugee protection within the country (Parliament of Canada, 2023a, s. 99(3)). IRPA organizes the procedure to decide whether the refugee protection claimant can benefit from the principle of non-refoulement as a Convention refugee or a person in need of protection. A Convention refugee is a person outside their country of nationality or former habitual residence because of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group, or political opinion (Parliament of Canada, 2023a, s. 96). IRPA emphasizes that a person referred to in section F of Article 1 of the United Nations Refugee Convention[17] is not a Convention refugee (Parliament of Canada, 2023a, s. 98). A person in need of protection is a person whose removal to their country of nationality or former habitual residence would

[17] Section F of Article 1 stipulates that the Convention shall not apply to any person who has committed (1) a crime against peace, a war crime, or a crime against humanity; (2) a serious nonpolitical crime outside the country of refuge before his admission to that country as a refugee; (3) acts contrary to the purposes and principles of the United Nations (United Nations, 1951).

subject them to a danger of torture, or a risk of cruel and unusual treatment or punishment, or death (Parliament of Canada, 2023a, s. 97).

To determine whether a person is a Convention refugee or a person in need of protection, a claim for refugee protection must be submitted to an IRCC or CBSA officer at or outside an official port of entry. The officer then has to assess whether the claim is eligible for referral to the Refugee Protection Division of the Immigration and Refugee Board (Parliament of Canada, 2023a, s. 100). The claim is deemed ineligible if:

1) a previous claim by the claimant was determined to be ineligible;
2) the claimant has made a claim to another country than Canada with which an agreement of information sharing is in effect;
3) the claimant has been recognized as a refugee by another country than Canada – in which case the claimant has to be returned to said country;
4) the claimant has been found inadmissible on grounds of security, violating human or international rights, serious criminality, or organized criminality (Parliament of Canada, 2023a, s. 101).

The claim is also ineligible if the claimant came directly or indirectly to Canada from a 'designated country', such as the US with which Canada signed the STCA, and made a claim less than 14 days after entry into Canada (Parliament of Canada, 2023a, s. 101(1)(e), 2023b, s. 159.4). To be designated, a country must comply with the Refugee Convention and the Convention Against Torture[18] (Parliament of Canada, 2023a, s. 102). It should also have an agreement with Canada to 'share responsibility' with respect to refugee protection claims. Although IRPA seems to suggest that multiple countries could be designated, the US is the sole country designated by IRPR (Parliament of Canada, 2023b, s. 159.3).

If the officer deems the claim eligible, the Refugee Protection Division has up to 60 days to hold a hearing attended by the claimant and to determine if they are a Convention refugee or a person in need of protection[19] (Parliament of Canada, 2023a, s. 107). The claim for refugee protection can be rejected by the Refugee Protection Division if:

1) the claimant is not a Convention refugee or a person in need of protection;
2) the claim has no credible basis or is clearly fraudulent (Parliament of Canada, 2023a, ss. 107(2) and 107.1);
3) the reasons why the claimant sought protection have ceased to exist or if the claimant has voluntarily reacquired their nationality, acquired a new nationality, or became reestablished in their country of nationality or former habitual residence (Parliament of Canada, 2023a, s. 108).

[18] The IRPA requires the continuing review of all countries designated as safe third countries by the Minister of IRC (Government of Canada, 2015a). This review has been criticized for its lack of transparency (Keung, 2024).

[19] A representative of the United Nations High Commissioner for Refugees (UNHCR) can observe the proceedings of the Immigration and Refugee Board that concern a protected person or a person who has made a claim for refugee protection or an application for protection (Parliament of Canada, 2023a, s. 166(e)).

3.6 Appeal and judicial review of rejected refugee protection claims

The Minister or the Minister of IRC can appeal to the Refugee Appeal Division of the Immigration and Refugee Board within 15 days of a decision (Parliament of Canada, 2023a, s. 110, 2023b, s. 159.91). Claimants can also file an appeal within 15 days of a decision, but the right to appeal does not extend to decisions regarding: (1) claims found not to have a credible basis or are manifestly unfounded; (2) claims made by foreign nationals who came to Canada from the US (Parliament of Canada, 2023a, s. 110(2)). Between 2013 and 2019, claimants were also barred from the right to appeal if the percentage of rejected, withdrawn, or abandoned claims made by their compatriots equalled or exceeded the rate determined by the Minister of IRC over a given period (Parliament of Canada, 2023a, s. 109.1). This provision aimed to discourage the 'misuse' of the asylum system and accelerate the processing of claims for foreign nationals from 42 countries and 12% of all refugee protection claimants from January 2013 to March 2019 (IRCC, 2019a). However, the Government of Canada 'suspended' the provision in May 2019 in part because the Federal Court ruled that it violated the Charter.

Barring these exceptions, the Refugee Appeal Division has 90 days to make a decision on the appeal without a hearing and based on the record of the Refugee Protection Division's proceedings and documentary evidence or written submissions from the Minister or the Minister of IRC and the claimant[20] (Parliament of Canada, 2023a, s. 110). The Refugee Appeal Division can confirm the decision of the Refugee Protection Division, issue its own decision, or refer the claim to the Refugee Protection Division for redetermination (Parliament of Canada, 2023a, s. 111). Within 15 days of a decision of the Refugee Appeal Division, the Minister, the Minister of IRC, or the rejected refugee protection claimant can make an application for leave to request a judicial review from the Federal Court (Parliament of Canada, 2023a, ss. 72-73, 2023b, s. 231). If the latter decides to grant leave, a hearing is held within 90 days to allow or dismiss the application for judicial review (Parliament of Canada, 2023a, s. 74). Regardless of whether the application is allowed or dismissed, the Federal Court can certify that a serious question of general importance is involved and state the question (Parliament of Canada, 2023a, s. 74(d)). In such cases, the applicant can make an appeal to the Federal Court of Appeal. If the latter dismisses the appeal, the applicant can apply for leave to appeal the decision of the Federal Court of Appeal to the Supreme Court. During the judicial review process, the removal order targeting a rejected claimant for refugee protection is stayed until:

1) the application for leave is refused;
2) the application for leave is granted, the application for judicial review is refused, and no question is certified for the Federal Court of Appeal;
3) if the Federal Court of Appeal decides to dismiss the appeal and the time limit in which an application to the Supreme Court for leave to appeal from that decision expires;
4) if the application for leave to the Supreme Court to appeal the decision is refused;
5) If the application for leave is granted and the Supreme Court dismisses the appeal (Parliament of Canada, 2023b, s. 231(1)).

[20] If the documentary evidence raises a serious issue about the credibility of the claimant that would justify allowing or rejecting the claim, the Refugee Appeal Division may hold a hearing.

3.7 Application for protection, temporary stay of removal orders, temporary resident permits, exemptions, and interim measures requests

A person subject to an enforceable removal order or named in a security certificate can apply for protection to the Minister of IRC (Parliament of Canada, 2023a, s. 112). If the application is allowed, the Minister of IRC can confer refugee protection on the applicant (Parliament of Canada, 2023a, s. 114). However, if the applicant is a person deemed inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, the Minister of IRC can only stay their removal order (Parliament of Canada, 2023a, ss. 114(1)(b) 112(3)).[21] To allow an application for protection, the Minister of IRC must conduct a pre-removal risk assessment to determine whether the applicant is a Convention refugee or a person in need of protection (Parliament of Canada, 2023a, s. 113). In the case of an applicant whose claim for refugee protection has been rejected, the Minister of IRC may consider new evidence that arose after the rejection or was not reasonably available at the time of the decision (Parliament of Canada, 2023a, s. 113(a)). Furthermore, if the applicant is a person whose refugee protection claim was deemed ineligible because they made a claim in another country with which Canada has an information-sharing arrangement, the Minister of IRC is obligated to hold a hearing to assess their application (Parliament of Canada, 2023a, s. 113.01). However, the right to apply for protection does not extend to a person:

1) who came (in)directly to Canada from the US, unless they qualify under an STCA exception (see footnote 3);
2) whose claim for refugee protection, appeal, or application for judicial review have been rejected, withdrawn, or abandoned less than 12 months (Parliament of Canada, 2023a, s. 112(2)).

IRPA and IRPR also contain three provisions or 'safety valves', which can temporarily or indefinitely stay the removal of inadmissible foreign nationals or rejected refugee protection claimants. First, the Minister can temporarily stay removal orders that will remove persons to a country experiencing a temporary and generalized risk to the entire civilian populations because of an armed conflict or an environmental disaster (e.g., Syria, Mali, South Sudan, Libya, Yemen, Haiti) (Parliament of Canada, 2023b, s. 233; CBSA, 2020c). Second, inadmissible foreign nationals and rejected refugee protection claimants can request temporary resident permits for protection reasons (Parliament of Canada, 2023a, s. 24). However, rejected refugee protection claimants cannot request a temporary resident permit until 12 months have passed since the decision of the Refuge Protection Division or Refugee Appeal Division and the dismissal of the application for leave or judicial review. Third, the Minister of IRC can decide to grant permanent resident status for humanitarian and compassionate reasons or public policy considerations to persons inadmissible on grounds of security, human or international rights violations, sanctions or organized criminality, or that do not meet the requirements of IRPA (Parliament of Canada, 2023a, ss. 25, 25.1 and 25.2). By their own initiative or following an application by a foreign national and if satisfied that this is not contrary to the national interest, the Minister can also decide that the inadmissibility of the foreign national on grounds of security, human or international rights violations

[21] The stay of the removal order can be cancelled by the Minister of IRC if they believe that the circumstances surrounding the stay have changed.

(specifically being a senior official in the service of a government engaged in such violations), and organized criminality do not constitute inadmissibility (Parliament of Canada, 2023a, s. 42.1(1)).

Finally, the Minister can examine 'interim measures requests' to refrain from removing foreign nationals (CBSA, 2017, p. 39). These requests can be issued by the bodies of four international human rights treaties to which Canada is signatory: the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention Against Torture; the International Covenant on Civil and Political Rights; the American Declaration of the Rights of Man. The requests stay the removal of the concerned foreign nationals until the Minister accepts or declines them 'after serious consideration' (CBSA, 2017, p. 39).

3.8 Enforcement of removal orders

The operational procedures, forms, and instructions for CBSA officers to enforce removal orders in accordance with IRPA and IRPR are determined by the operational bulletin numbered ENF 10 (CBSA, 2017).[22] Last updated in February 2017, the document assists officers in planning, organizing, and verifying the removal of foreign nationals.

3.8.1 Border services officers and inland enforcement officers

The operational bulletin distinguishes two types of officers responsible for enforcing removal orders (CBSA, 2017, p. 16). First, border services officers who immediately enforce removal orders issued at a port of entry. Such officers deal with cases where the removal order can be enforced immediately (e.g. when foreign nationals are denied entry into Canada or can be removed on the next available flight) (CBSA, 2017, p. 16). They are also charged with removing foreign nationals 'residing or sojourning' in the US or St. Pierre and Miquelon immediately and 'despite any appeal or leave applications for judicial review that they may have entered' (CBSA, 2017, p. 16). Second, inland enforcement officers who enforce removal orders issued by the Minister and the Immigration and Refugee Board that cannot be enforced immediately. Before enforcing a removal order, inland enforcement officers must first complete four tasks: calculate the applicable period for the removal order; assess the priority of the removal; determine the modality of enforcement; conduct pre-removal interviews.

3.8.2 Applicable period for removal, removal priority, and pre-removal interviews

Once a departure order is issued, a foreign national must leave Canada within 30 days to avoid becoming the subject of a deportation order (Parliament of Canada, 2023b, s. 224). However, the 30-day applicable period is suspended if the foreign national is detained or their removal order is temporarily stayed either by the Minister's decision or due to a pending appeal, judicial review, or application for protection. Therefore, the operational bulletin instructs CBSA officers on how to calculate the 30-day applicable period by considering only the days when the foreign national is not detained and when no stay is in place (CBSA, 2017, p. 21).

[22] CBSA officers also consult the instructions and removal statistics communicated through an internal website developed by the CBSA Enforcement and Intelligence Branch (CBSA, 2017, p. 15).

Officers are also expected to continue updating the detention status of the foreign national and the status of their removal order in the Global Case Management System (GCMS) and the National Case Management System (NCMS).[23]

However, CBSA officers should not seek to immediately enforce every removal order that exceeds the 30-day applicable period. They must give priority to the removal of foreign nationals that 'pose the greatest risk to the safety and security of Canadians' (CBSA, 2017, p. 22). The operational bulletin distinguishes three levels of priority: (1) foreign nationals inadmissible for security, human rights and international violations, serious criminality and criminality, and organized criminality; (2) refugee claimants that have been rejected after December 2012 and which must be processed according to the 'Last-in First-Out regime'; (3) refugee claimants rejected before December 2012 and all other inadmissible foreign nationals. Among the first level of priority, officers must also prioritize foreign nationals convicted of serious offences over those convicted of 'less serious offences'[24] (CBSA, 2017, p. 23).

After ranking the priority of removal, CBSA officers must then determine the modality of enforcing the removal order (CBSA, 2017, p. 40). A removal order can be enforced according to two modalities: (1) by the voluntary compliance of the foreign national subject to removal; (2) by the removal of the foreign national by the Minister (Parliament of Canada, 2023b, s. 237). The first modality requires the foreign national to appear before a CBSA officer to communicate their intention to obey the removal order and prove that they have the 'sufficient means to effect their departure' (Parliament of Canada, 2023b, s. 238(1)). The foreign national must also submit their choice of the country of destination to an officer who has to approve the choice unless the foreign national is a danger to the public, a fugitive from justice in Canada or another country, or seeking to evade or frustrate the cause of justice in Canada or another country (Parliament of Canada, 2023b, s. 238(2)). To assess the foreign national's ability to obey the removal order and whether they pose a danger to the public or seek to depart Canada to evade justice, CBSA officers must conduct 'background searches' in the databases of the Canadian Police Information Centre (CPIC), US National Crime Information Centre, GCMS, NCMS, and Interpol (CBSA, 2017, p. 42). The removal becomes enforced by the Minister if the foreign national is detained, refuses to voluntarily comply, or if the officer is not convinced by their:

[23] Owned by the IRCC, the GCMS is a database that stores notes generated by IRCC and CBSA officers. These notes contain information about foreign nationals such as their names, gender, date of birth, country of birth, address, education, criminality, and medical and travel history. Notes uploaded by CBSA officers specifically document their concerns about the foreign nationals' admissibility or eligibility, criminal records, security risks and their impressions and assessments regarding the foreign nationals' credibility, truthfulness and compliance with IRPA. These notes can also be used as evidence before the Immigration and Refugee Board and the Federal Court. The GCMS automatically updates the NCMS, which is a database owned and managed exclusively by CBSA. The NCMS is used by inland enforcement officers to store data about pre-removal interviews and pre-removal risk assessments, travel document status, decisions from the Refugee Protection Division and Refugee Appeal Division, etc. For more information, see: CBSA (2020b).

[24] The operational bulletin invites officers to conduct one of five tests to determine whether a foreign national has been convicted of serious offences. The first of these tests lists and defines five 'elements': weapons, violence against the person, sexual assault, narcotics, and acts against children. If the foreign national has committed an offence that involves one of these elements, the officer can rank their removal as a priority one case (CBSA, 2017, pp. 23–24). This standardized test does not list individual offences to avoid confusion that would result fromchanges to the Criminal Code or other federal statutes.

1) intention to voluntarily comply;
2) means to effect their departure;
3) choice of destination country (Parliament of Canada, 2023b, s. 239).

After determining the modality of removal, CBSA officers summon a foreign national whose removal order is enforceable to attend an initial pre-removal interview at a CBSA office.[25] The officers must perform a final review of the foreign national's file before the interview to 'assess the safety and security of all individuals who will be involved in the removal' (CBSA, 2017, p. 45). This risk evaluation, stored and updated in the GCMS/NCMS, should consider the foreign national's 'psychological, behavioural and criminal history' (CBSA, 2017, p. 45). During the interview, CBSA officers notify the foreign national that their removal order has become enforceable, communicate the modality of their removal, and the consequences of noncompliance[26] (CBSA, 2017, p. 45). Subsequent interviews can be conducted by CBSA officers to verify the continued compliance with the removal process (Dennler & Garneau, 2022, p. 10). Failure to attend the interviews or be located leads to the issuance of a warrant for arrest, which is uploaded by the CBSA Warrant Response Centre to the CPIC managed by the RCMP (CBSA, 2017, p. 22). Furthermore, CBSA officers can detain a foreign national after their interview if they 'have reasonable grounds to believe that the person will not appear for removal'[27] (Parliament of Canada, 2023a, s. 55(1); CBSA, 2017, p. 45). Despite the risk of detention, legal representatives of foreign nationals do not 'usually' attend pre-removal interviews and CBSA does not provide interpreters (Dennler & Garneau, 2022, p. 29).

3.8.3 Travel documents, escorts, notifications, and certificates of departure

Once a foreign national is notified of their removal after the initial pre-removal interview, CBSA officers have to complete five tasks to proceed with the physical removal. First, officers must obtain the foreign national's valid travel documents. This involves searching their GCMS/NCMS files to verify the existence of their original travel documents[28] (CBSA, 2017, p. 47). If absent or expired, officers are instructed to send a letter or a completed application form requesting new travel documents to consulates, high commissions, and embassies either in Ottawa or Washington, D.C.[29] (CBSA, 2017, p. 46). If officers do not obtain travel documents within 90 days, they refer the case to the CBSA Removal Operations Unit, whose liaison officers may seek other solutions, such as asking Global Affairs Canada to intervene (CBSA, 2017, p. 48). However, officers can decide to proceed with the removal of foreign nationals with expired passports to their country of origin after obtaining the agreement of any country of transit. Foreign nationals without any documentation can also be removed if removal does

[25] In Toronto, interviews are conducted at CBSA's Greater Toronto Area Region Enforcement and Intelligence Operations Division 'across the street from Toronto Pearson International Airport' (Dennler & Garneau, 2022, p. 10).
[26] If applicable, CBSA officers must also inform foreign nationals of their right to apply for protection (CBSA, 2017, p. 54).
[27] Despite the risk of detention, legal representatives of foreign nationals do not 'usually' attend pre-removal interviews (Dennler & Garneau, 2022, p. 11).
[28] CBSA officers can seize foreign nationals' travel documents during the pre-removal interview if they believe that the seizure is necessary to carry out their removal orders (CBSA, 2017, p. 46). They can also capture their fingerprints and photographs (CBSA, 2017, p. 70).
[29] In cases where removal involves travel through transit countries, officers must acquire the necessary visas before enforcing the removal order (CBSA, 2017, p. 49).

not involve travel through transit countries. Before proceeding with such removals, 'officers should be confident that the destination country is willing to accept the deportee without documents' (CBSA, 2017, p. 48). They should also complete a Canada Immigration Single Journey Document that would act as an informal travel document (CBSA, 2017, p. 49). However, the document does not guarantee entry to the destination country, especially in the case of the US and the United Kingdom, where the removal of undocumented foreign nationals 'should not be attempted' (CBSA, 2017, p. 49).

Second, CBSA officers must determine whether removal orders enforced by the Minister require escorts. This involves measuring the 'risk' and 'uncertainty' that the deportee may self-harm, resist removal, or threaten officers, the travelling public, and the personnel of transportation companies (CBSA, 2017, p. 76). Based on the pre-removal interview and GCMS/NCMS files, officers complete the Escort Risk Assessment/Escort Request Form to measure the likelihood of the risk (very likely, likely, unlikely) and its impact (major, moderate, or minor damage, injury, and emotional distress). The measurement of risk likelihood and impact is rated using a 'Risk Matrix' that prescribes escorts of 2 or 3 officers when risk is 'extreme' or 'high' (CBSA, 2017, p. 77). However, officers are not required to measure risk for the flight travel section of the removal, as airline carriers are responsible for arranging escorts if necessary[30] (CBSA, 2017, p. 78).

Third, officers must establish the travel itinerary for removal and serve a Notice of Requirement to Carry a Foreign National from Canada to the transportation companies responsible for removal (CBSA, 2017, pp. 49–50). The notice provides background details on the removal (e.g., copies of airline tickets, flight numbers and dates, and other carriers involved in the removal) to allow companies to accept liability. Officers must secure the agreement of airline carriers before proceeding with removal, especially when the foreign nationals to be removed do not have valid travel documents or any documentation. If an airline carrier requests that CBSA provides escort officers for the removal, officers are encouraged to explore alternative airline carriers or travel itineraries (CBSA, 2017, pp. 83–84).

Fourth, officers must notify the port of arrival in the country of destination and CBSA liaison officers at visa offices in the country of destination and countries of transit, respectively, two and seven days before removal[31] (CBSA, 2017, p. 57). These notifications include information about the foreign national's identity, date of removal, travel documents, type of removal order, attitude regarding removal, criminal or terrorist background, etc. The liaison officers should be notified to 'maintain good relations with local authorities in both transit and destination countries', to prevent 'difficult situations from developing and to ensure that any necessary assistance will be available' (CBSA, 2017, pp. 57–58). CBSA officers must also notify the RCMP's INTERPOL Operations in Ottawa when removing foreign nationals wanted by a foreign country or with 'serious' Canadian or foreign criminal records (CBSA, 2017, pp. 58–59).

[30] CBSA officers can only perform airline escorts in 'exceptional cases' (CBSA, 2017, p. 78). Officers escort the foreign national if the airline carrier insists in refusing to organize an escort, but expenses for the escort are charged to the carrier (CBSA, 2017, p. 87).

[31] In the absence of CBSA liaison officers, the notification should be addressed to the IRCC immigration program manager in the Canadian Embassy or High Commission of the country of destination and countries of transit (CBSA, 2017, p. 57).

Fifth, officers must issue a Certificate of Departure to foreign nationals under removal orders regardless of the modality of removal. The document details background information about foreign nationals and their accompanying family members (travel documents, criminality, etc.), the type of removal order that is being enforced, the code of the CBSA office responsible for the removal, and the date and itinerary of removal (CBSA, 2017, pp. 60–61). Once signed by the foreign national and a CBSA officer 'just prior' to physical removal, the certificate confirms the enforcement of the removal order (CBSA, 2017, p. 62). The officer who witnesses the removal at the airport or the land border has to update the GCMS/NCMS – and the CPIC in case of a deportation order – to confirm that the foreign national has been removed from Canada (CBSA, 2017, p. 62). If foreign nationals voluntarily leave Canada without appearing before CBSA officers at ports of entry or obtaining certificates of departure, their removal orders are considered unenforced[32] (CBSA, 2017, p. 62). Removal orders are also considered unenforced when foreign nationals with certificates of departure are prevented from entering their country of destination. In these situations, CBSA officers at points of entry conduct a new pre-removal interview to determine how to enforce the removal order (CBSA, 2017, p. 71). Following the interview, the officers can allow entry into Canada if they believe that the foreign national will make every effort to leave the country; impose conditions on the foreign national such as the payment of a deposit or the posting of a guarantee for compliance; or arrest and detain the foreign national if they are unlikely to depart Canada or represent a danger to the public (CBSA, 2017, pp. 71–72).

[32] Foreign nationals with unenforced removal orders will not be issued visas or travel authorizations to Canada should they apply (Parliament of Canada, 2023b, s. 25).

4. International Cooperation

The Canadian return policy involves the close cooperation of the US. Both countries established the parameters of their cooperation by signing the Smart Border Action Plan in December 2001. The action plan required a new arrangement for the systematic sharing of information related to refugee protection claimants. This aimed to 'identify potential security and criminality threats and expose "forum shoppers" who seek asylum in both [Canadian and US] systems' (US Department of State, 2002). The new arrangement took the form of a Statement of Mutual Understanding (SMU) on Information Sharing signed in February 2003 by the US Department of State, the US Immigration and Naturalization Service, and IRCC.[33] The SMU authorizes the exchange of information when 'there are reasonable grounds to suspect that the information would be relevant to the prevention, investigation, or punishment of conduct that would constitute a crime rendering a person inadmissible or removable' (Government of Canada, 2003a). Moreover, the SMU includes an annex on the information-sharing about asylum and refugee status claims signed by the US Department of Homeland Security and IRCC. To 'identify and prevent the abuse of the asylum and refugee status determination systems' of Canada and the US, the annex establishes the systematic sharing and comparison of information on the identity of refugee claimants in both countries, the processing of refugee claims, the decisions to deny refugee claims, and the history of claimants' previous refugee claims (Government of Canada, 2003b). The annex indicates that this information-sharing arrangement is consistent with the Canadian Privacy Act, which enables government institutions to compile or disclose personal information, including with foreign governments, to administer a law or to carry out a lawful investigation. The SMU information-sharing arrangement is crucial for the implementation of the STCA: it allows both countries to determine whether foreign nationals have submitted their claims for refugee protection in the first country of arrival (Government of Canada, 2002).The Beyond the Border Action plan adopted by the US and Canada in 2011 reaffirmed the need for the sharing of information regarding refugee protection claimants (Government of the US & Government of Canada, 2011, p. 9).

The cooperation between Canada and the US involved the United Nations High Commissioner for Refugees (UNHCR). A provision of the STCA required that a review of its implementation be conducted by the two countries with the participation of UNHCR one year after its entry into force (Government of Canada, 2002). The latter published a monitoring report in June 2006, which examined the STCA's implementation between December 2004 and December 2005 (UNHCR, 2006). The report found that the STCA has been implemented according to its terms and international refugee law, as it allowed individuals to lodge refugee claims at the ports of entry. However, UNHCR expressed its concern about Canada's 'direct back policy' by which foreign nationals are given a scheduled appointment with a Canadian officer to submit their refugee protection claim and removed back to the US to wait for their appointment (UNHCR, 2006, p. 6). As a result, foreign nationals risked detention in the US and removal to their countries of origin before having the eligibility of their claims determined in Canada.[34] In response to the UNHCR report, the government of Canada ended the direct back policy in August 2006.

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[33] In 2003, IRCC was titled Citizenship and Immigration Canada.

[34] UNHCR identified '6 cases in which a claimant was directed back to the US, detained, and removed without having had an opportunity to pursue a refugee claim in Canada' (UNHCR, 2006, p. 6).

Finally, the Canadian return policy involved the International Organization for Migration (IOM). Between 2012 and 2015, CBSA enrolled the IOM as 'an independent service partner' tasked with implementing a pilot Assisted Voluntary Return and Reintegration (AVRR) program (CBSA, 2015; IRCC, 2021). The pilot program consisted of in-kind reintegration assistance of up to $2,000 per person and was implemented in the Greater Toronto Area Region. With a budget of $31.9 million, it was aimed at alleviating pressure on CBSA by incentivizing the 'voluntary' return of rejected refugee protection claimants. However, the pilot program was discontinued because it 'did not result in an increase in the number of travel documents to facilitate removals and did not result in a sustained reintegration of removed foreign nationals over the long term'[35] (IRCC, 2021).

[35] The program resulted in 3,950 removals which fell short of the projected target of 6,955 (IRCC, 2021).

5. Institutional Framework and Operational Infrastructure

Our study of the Canadian return policy shows that the return governance landscape consists of policy and operational responsibilities borne by the federal government and agencies, which are monitored by administrative tribunals and federal and provincial superior courts, and involve NGOs and international actors. Table 3 below lists the main actors and their competencies.

***Table 3*. List of actors involved in migration return governance**

Actor	Area of competence
Federal Government and Agencies	
Auditor General of Canada	Conducts performance audits to assess how well the Canadian return policy is managed.
CBSA	Tasked with implementing IRPA; screens foreign nationals for inadmissibility; stops irregular migration and deports foreign nationals; owns the NCMS.
IRCC	Tasked with implementing IRPA; screens foreign nationals for inadmissibility and determines the eligibility of refugee protection applications; owns the GCMS; the Minister of IRC co-signs security certificates and reviews the human rights record of safe third countries.
Department of PSEP	PSEP has the policy lead for the enforcement of IRPA; the Minister of PSEP co-signs security certificates.
Global Affairs Canada	Supports CBSA's efforts to engage foreign governments regarding the return of their citizens.
House of Commons	1) Standing Committee on Public Accounts: reviews the reports of the Auditor General and monitors the implementations of their recommendations; 2) Standing Committee on Public Safety and National Security: reviews legislation on return proposed by the Government of Canada. 3) Standing Committee on Citizenship and Immigration: oversees IRCC and the Immigration and Refugee Board of Canada.
RCMP	Monitors irregular border crossings between official points of entry; transfers refugee protection claimants to CBSA or IRCC officers; owns the CPIC.
Administrative Tribunals and Courts	
Immigration and Refugee Board of Canada	1) Immigration Division: reviews the reports on inadmissibility referred by the Minister of PSEP, issues removal orders, and reviews the detention of permanent residents and foreign nationals under IRPA; 2) Immigration Appeal Division: examines appeals of removal orders and decisions of the Immigration Division;

	3) Refugee Protection Division: examines claims for refugee protection referred by IRCC or CBSA; 4) Refugee Appeal Division: reviews decisions of the Refugee Protection Division.
Federal Court	Examines the constitutionality of the legal framework on return; reviews decisions made under IRPA after following applications for leave to request a judicial review; reviews the reasonable character of security certificates; certifies questions for the Federal Court of Appeal.
Federal Court of Appeal	Examines questions certified by the Federal Court; examines the constitutionality of the legal framework on return; reviews decisions made under IRPA after following applications for leave to request a judicial review; reviews the reasonable character of security certificates.
Provincial Superior Courts	Review the detention of individuals under IRPA.
Supreme Court of Canada	Reviews the constitutionality of the legal framework on return and the decisions of the Federal Court of Appeal.
Non-Governmental Actors	
Amnesty International	Monitors conditions of detention and treatment of immigration detainees and engages in advocacy.
British Columbia Civil Liberties Association	Advocates for the creation of an independent civilian oversight of CBSA.
Canadian Civil Liberties Association	Advocates for the creation of an independent civilian oversight of CBSA.
Canadian Council for Refugees	Challenges the constitutionality of the legal framework on return in the courts; advocates for the creation of an independent civilian oversight of CBSA.
Canadian Council of Churches	Challenges the constitutionality of the legal framework on return in the courts.
Canadian Red Cross	Monitors the conditions of detention and treatment of immigration detainees; submits annual monitoring reports to the CBSA.
End Immigration Detention Network	Advocates for the end of the indefinite administrative detention of foreign nationals under IRPA.
Human Rights Watch	Monitors conditions of detention and treatment of immigration detainees and engages in advocacy.
International Actors	
Committee for the Elimination of Discrimination Against Women	Can submit interim measures requests to the Minister of PSEP; can make decisions in particular cases about whether or not there has been a violation of the obligations under the treaty.
Consulates, high commissions, and embassies in Ottawa and Washington, D.C.	Issue valid travel documents to foreign nationals subject to enforceable removal orders following the requests of CBSA officers.

Inter-American Commission on Human Rights	Can submit precautionary measures requests to the Minister of PSEP; can make decisions in particular cases about whether or not there has been a violation of the obligations under the treaty.
United Nations Committee Against Torture	Can submit interim measures requests to the Minister of PSEP; can make decisions in particular cases about whether or not there has been a violation of the obligations under the treaty.
IOM	Implemented an AVRR pilot program on behalf of CBSA.
UNHCR	Reviewed the implementation of STCA; UNHCR representatives can observe the proceedings of the Immigration and Refugee Board that concern a protected person or a person who has made a claim for refugee protection or an application for protection.
United Nations Human Rights Committee	Can submit interim measures requests to the Minister of PSEP; can make decisions in particular cases about whether or not there has been a violation of the obligations under the treaty.
US Department of Homeland Security	Shares information on asylum and refugee protection claims with IRCC.
US Department of State	Signed a Statement of Mutual Understanding on Information Sharing with IRCC.
US Immigration and Naturalization Service	Signed a Statement of Mutual Understanding on Information Sharing with IRCC.

6. Gaps

Policy practitioners, human rights organizations, and scholars concerned with the Canadian return policy have identified gaps in the legal and institutional frameworks, operational infrastructure, and international cooperation.

6.1 Gaps in the legal and institutional frameworks

The legal and institutional frameworks that regulate the removal of foreign nationals from Canada have been constructed in a context dominated by counterterrorism concerns. To arrest, detain, and remove foreign nationals that would pose a security risk, Canadian officials used IRPA and its 'lower standard of proof and wider liability rules' instead of the Anti-Terrorism Act and the Criminal Code (Roach, 2012, p. 525). Therefore, scholars have criticized IRPA for failing to protect foreign nationals from arbitrary interference from the State since:

> [...] neither the IRPA nor the corresponding immigration regulations actually define 'terrorism' although this notion is a ground for inadmissibility for foreigners. The absence of a definition leaves immigrants and refugees susceptible to arbitrary decision making and inadequate means for review or recourse. The IRPA employs a low standard of proof required to trigger inadmissibility, requiring 'reasonable grounds to believe', a threshold lower than the one required in international or domestic criminal law. In contrast, a conviction for a criminal offence related to terrorism will require proof beyond a reasonable doubt. (Crépeau & Atak, 2015, p. 102)

In other words, permanent residents, temporary migrants, refugee protection claimants and persons in need of protection can be found inadmissible or ineligible on grounds of security, issued security certificates, administratively detained, and removed 'without the application of the rigorous procedural safeguards of the criminal process or a criminal standard of proof' (Crépeau & Atak, 2015, p. 107).

The detention hearings held by the Immigration Division have long illustrated this lack of rigorous procedural safeguards. Hearings officers presented their case against detainees based on oral submissions alone and rarely 'present[ed] evidence in support of the factual allegations made in those submissions' (Anstis et al., 2017, p. 10). Additionally, hearings officers presented their case without being sworn as witnesses, undergoing cross-examination, or having first-hand knowledge of the alleged facts[36] (Anstis et al., 2017, p. 10). Therefore, the factual basis for detention under IRPA was 'presented in the form of unsworn hearsay' and in 'the absence of strict rules of evidence' (Anstis et al., 2017, p. 10). The hearings also lacked any 'substantive or procedural rule requiring the Minister to disclose in advance the information on which a Hearings Officer will rely in seeking continued detention' (Anstis et al., 2017, p. 11). And once the Immigration Division ordered the detention of a foreign national, the Minister was not bound to present 'any further evidence in favour of continued detention' at subsequent hearings (Anstis et al., 2017, p. 11). The 'burden of furnishing grounds for departing from prior decisions' is instead born by the detainee (Anstis et al., 2017, p. 11).

[36] Hearings officers 'rely on file notes and correspondence from other CBSA officers' (Anstis et al., 2017, p. 10).

These weak procedural safeguards explain that administrative detention before deportation can become 'unlimited' in Canada as denounced by the United Nations Human Rights Committee in 2015 (United Nations, 2015). This was notably illustrated by the case of Alvin Brown, a permanent resident born in Jamaica and stripped of his status after criminal convictions. He was detained in 2011 pending deportation only to be deported in 2016 after the Jamaican consulate issued his travel documents[37] (Harris, 2017). Indefinite administrative detention under IRPA violates international standards on immigration detention (Gerami & Wieland, 2020). The latter state that 'a maximum period of detention must be established by law and this may in no case be unlimited or of excessive length' (International Organization for Migration, 2011, p. 4). However, the Federal Court of Appeal examined the case of Alvin Brown and ruled in 2020 that indefinite administrative detention is constitutional (*Brown v. Canada (Citizenship and Immigration)*, 2020; Gerami & Wieland, 2020). But it also instructed the Immigration Division to condition continued detention of permanent residents and foreign nationals on the 'realistic' possibility of deportation[38] (*Brown v. Canada (Citizenship and Immigration)*, 2020, para. 95). This was meant to clarify how indefinite administrative detention should be interpreted to be constitutionally valid under the Charter (Gerami & Wieland, 2020). As a result, the Immigration and Refugee Board revised its guideline regarding detention in April 2021 to:

1) clarify that there must be a nexus to an immigration purpose for detention to continue;
2) reinforce that the Minister has the legal burden to establish that detention is lawfully justified and remains on the Minister throughout the detainee's period of detention;
3) reinforce that the Immigration Division must decide afresh whether continued detention is warranted at each detention review;
4) recognize that there is no obligation on the detainee to lead fresh evidence between detention reviews for the Immigration Division to reach a different result;
5) clarify that the Minister must disclose all relevant information in advance of the hearing and in a timely manner (Immigration and Refugee Board, 2021a, 2021b).

These promising developments would strengthen the procedural safeguards involved in the detention of permanent residents and foreign nationals under IRPA. However, immigration lawyers fear that the absence of a legal limit to the duration of immigration detention 'will continue to be harmful to detainees, particularly those who, like Alvin Brown, are held in maximum security prisons for many years' (Gerami & Wieland, 2020). Human Rights Watch and Amnesty International have documented the detention of permanent residents and foreign nationals for noncriminal purposes in facilities used for criminal law enforcement and under 'some of the most restrictive conditions of confinement in [Canada], including maximum-security jails and solitary confinement, with no set release date' (Human Rights Watch & Amnesty International, 2021, p. 1). These detentions that violate international

[37] The case of Kashif Ali offers another illustration of the indefinite administration detention of foreign nationals. Born in Ghana and with prior criminal convictions, he was held for 7 years from 2010 to 2017 in a maximum-security prison pending his deportation and the issuance of valid travel documents from his country. The Ontario Superior Court of Justice ruled that prior convictions do not warrant ongoing detention and ordered his release (McGillivray, 2017).

[38] The Federal Court of Appeal also instructed the government to use the 'tools' necessary to obtain cooperation from countries of origin – notably those who dispute the identity of detainees – such as escalating levels of diplomatic and political pressures, negotiating bilateral return agreements, or placing visa requirements on nationals of 'delinquent' countries (*Brown v. Canada (Citizenship and Immigration)*, 2020, para. 102).

human rights standards stem from the discretionary decisions of CBSA to detain permanent residents and foreign nationals under IRPA in provincial jails where they are treated as convicted criminals[39] (Anstis et al., 2017, pp. 12–13). These decisions were made despite multiple reports by the Canadian Red Cross expressing concern about the co-mingling of immigration detainees and convicted criminals[40] (Canadian Red Cross, 2018, p. 7). Therefore, human rights organizations, such as the End Immigration Detention Network, called for ending maximum-security imprisonment and the introduction of a 90-day limit for detention (McGillivray, 2017). Moreover, human rights organizations and scholars criticized CBSA for remaining the only major law enforcement agency in Canada whose decisions are not reviewed by an independent civilian body (Human Rights Watch & Amnesty International, 2021, p. 79; Human Rights Watch, 2022, p. 1; British Columbia Civil Liberties Association et al., 2014; Dennler & Garneau, 2022, p. 36). Although there are still no legal limit to the duration of immigration detention and no CBSA oversight, all provinces barring Newfoundland and Labrador have unilaterally ended or are ending the detention of immigration detainees in their jails (Kennedy, 2023; Bureau, 2024). In response, CBSA announced plans in December 2023 to upgrade its immigration holding centres in Laval, Toronto, and Surrey to 'accommodate high-risk detainees' (Bureau, 2023).

6.2 Gaps in the operational infrastructure

The operational infrastructure of return came under scrutiny from a 2020 report by the Auditor General of Canada to the Parliament. The report found that CBSA did not remove foreign nationals in 'a timely manner' and accumulated enforceable removal orders in its national removal inventory – 50,000 as of April 2019 (Auditor General of Canada, 2020, p. 3). The report identified three underlying operational gaps behind this failure.

1) Gaps in data sharing with the IRCC and the Federal Court that have reduced the ability of CBSA to track the status of removal orders[41] (Auditor General of Canada, 2020, pp. 9–10).
2) Case management deficiencies specific to CBSA (e.g., not assigning cases to officers, not prioritizing cases correctly, not taking action to obtain travel documents, not referring cases to the Removal Operations Unit) that 'resulted in significant periods of inactivity in thousands of cases in the agency's working inventory' including 'cases of foreign nationals whose whereabouts were unknown' (Auditor General of Canada, 2020, pp. 9–11). These deficiencies lead to inconsistencies in the enforcement of removal orders, as CBSA officers summon some foreign nationals for their pre-removal interviews 'within weeks of their last refusal', while others may not be contacted for years (Dennler &

[39] CBSA detained permanent residents and foreign nationals in provincial jails if they were deemed high-risk detainees; low-risk detainees were automatically detained in provincial jails if they were far from a holding centre or if the nearest holding centre had reached the capacity of 85% or above (Harris, 2017; Human Rights Watch & Amnesty International, 2021, p. 81).
[40] Since 2017, the Canadian Red Cross has visited immigration holding centres and provincial jails to monitor the conditions of detention and treatment of immigration detainees. The Canadian Red Cross submits annual monitoring reports to CBSA. These reports contain observations and recommendations to improve the conditions of detention to which CBSA responds by drafting a corresponding action plan to address the Canadian Red Cross' recommendations (CBSA, 2023b).
[41] The Auditor General found cases where CBSA 'was unaware that removal orders had been issued' (Auditor General of Canada, 2020, p. 9).

Garneau, 2022, p. 8). The gaps in data sharing and in case management may explain the limited public availability of consistent and comparable data about the removal of foreign nationals[42] (Dennler & Garneau, 2022, p. 38).

3) The discontinuation of the AVRR program piloted by CBSA with the support of IOM which diminished the incentives for voluntary returns (Auditor General of Canada, 2020, p. 8).

Based on the report, the Standing Committee on Public Accounts of the House of Commons recommended that CBSA change its removal strategy, create new performance measures aligned with removal priorities, establish new information technology requirements, and design a new approach to triaging and assigning cases (Government of Canada, 2021). In response, the Government of Canada launched the Information Technology System Interoperability initiative (IRCC, 2020). Set to be implemented by fiscal year 2022-2023, it allocated $37.3 million to the IRCC, CBSA, and Immigration and Refugee Board to improve data sharing, reduce processing times for claims, and mainstream the electronic submission of forms[43] (IRCC, 2020; Dennler & Garneau, 2022, p. 9). However, it is unclear how the initiative impacted the processing of removal orders. The Standing Committee on Public Accounts also called on CBSA to design another AVRR pilot program. The latter would offer financial incentives and social services to rejected refugee claimants from countries 'identified as uncooperative' (CBSA, 2022b, p. 1). The pilot program was expected to start in Fall 2021 and end two years later (IRCC, 2021), but the implementation of the program was 'stalled when the federal election was called in August 2021' (CBSA, 2022b, p. 1). CBSA posted in January 2022 a request for proposals from interested providers that would implement the pilot program (CBSA, 2022b, p. 1). However, there is no indication that the pilot program has started in 2022 or 2023.

6.3 Gaps in international cooperation

The indefinite administrative detention of foreign nationals and the inability of CBSA to enforce removal orders in a timely manner also result from the lack of travel documents. In fact, 'one of the primary factors that inhibits deportation is lack of a valid travel document' (Dennler & Garneau, 2022, p. 23). This issue reflects the lack of cooperation of some countries of origin that 'either refuse to issue travel documents for their citizens or take a significant amount of time to issue proper documentation' (CBSA, 2019b). To elicit their cooperation, the report of the Auditor General instructed CBSA to 'encourage foreign officials to provide travel documents' (Auditor General of Canada, 2020, p. 5). In 2021, CBSA and IRCC announced that they have developed country-specific Removals and Repatriation Engagement Plans to target the top 5 countries of an undisclosed inventory of uncooperative countries (Government of Canada, 2021, p. 4; CBSA, 2019b). These plans seek to use capacity-building and technical assistance activities as 'engagement tools' of 'priority foreign migration and border management organizations' (CBSA, 2019b). Nevertheless, the lack of negotiated bilateral

[42] There is a lack of public or consistent data on the national removal inventory of CBSA, the number of escorted removals, the number of individuals refused entry at the border, and the number of detained minors (see Annex 1).

[43] For instance, old cases of removal orders managed by CBSA 'tended to be on paper, while newer cases were often spread across both paper and the [digital] database' (Dennler & Garneau, 2022, p. 10).

return agreements with countries of origin distinguishes Canada from other destination countries in Europe.

7. Conclusions and Policy Suggestions

This report examined the legislative and institutional frameworks, operational infrastructure, and international cooperation involved in the removal of inadmissible foreign nationals and rejected refugee protection claimants from Canada. The report highlights that the Canadian return policy pursues two objectives: (1) facilitate the arrest, detention, and removal of foreign nationals, notably those who would pose a security risk; (2) safeguard the human rights of foreign nationals and refugee protection claimants. The first objective stems from the fact that the contemporary Canadian return policy has been constructed during a political context dominated by security concerns following the terrorist attacks of 11 September 2001. Scholars argue that IRPA expanded the ways of removing foreign nationals for security reasons and offered greater authority to officers to arrest and detain those who pose a security risk without providing basic procedural and substantive protections. The second objective is epitomized by the need for IRPA to be applied in a manner consistent with the Charter and the international human rights instruments to which Canada is signatory (Parliament of Canada, 2023a, s. 3(3)). However, the indefinite administrative detention of foreign nationals for noncriminal purposes, including in provincial jails, suggests tensions between the two objectives. Two recent policy developments sought to address these controversial aspects of the Canadian return policy: (1) the Immigration and Refugee Protection Board strengthened the procedural safeguards involved in the review of the continued detention of foreign nationals under IRPA and (2) most Canadian provinces ended, or are ending, the detention of foreign nationals for noncriminal purposes in provincial jails on behalf of CBSA. Although undoubtedly positive, these developments do not address the upholding of indefinite administrative detention by the Federal Court of Appeal and the lack of independent oversight of CBSA. Therefore, the report makes two policy suggestions to address these gaps.

1) Setting a maximum period of detention under IRPA in accordance with international human rights standards.

Indefinite administrative detention for noncriminal purposes contradicts international human rights standards and led the United Nations Human Rights Committee to denounce Canada. It also distinguishes Canada from other destination countries. For instance, a 2008 directive of the European Parliament instructed the member states of the European Union to set a limited period of detention for removal purposes that may not exceed six months (European Parliament, 2008, art. 15(5); Gerami & Wieland, 2020). Canada should follow suit and set a maximum period of detention under IRPA.

2) Establishing an independent oversight of CBSA to safeguard the human rights of foreign nationals.

Human rights organizations and scholars criticized some CBSA officers for mistreating immigration detainees and deliberately misinforming foreign nationals about their legal options (Human Rights Watch & Amnesty International, 2021, p. 2; Dennler & Garneau, 2022, p. 31). These practices reflect an agency that is primarily focused on enforcing removal orders in a timely manner, sometimes to the detriment of foreign nationals' human rights. An independent oversight would encourage the adoption of 'appropriate controls in terms of staffing, training, policies and procedures' (Dennler & Garneau, 2022, p. 20) that would ensure that CBSA respects human rights. After previous failures to establish independent oversight, the Minister introduced Bill C-20 in May 2022. It gives the Public Complaints and Review Commission, which is the RCMP watchdog, 'the additional responsibility of handling

public complaints about the [CBSA]' (Bronskill, 2022). The proposed bill is still moving through Parliament, but human rights organizations (e.g., Amnesty International, the Canadian Civil Liberties Association (CCLA), and the Canadian Council for Refugees) expressed their concern about the government's 'lack of consultation or engagement with key society stakeholders' (CCLA, 2023). These organizations also criticized the proposed bill for putting the commission under the authority of the Minister and for tying its budget to the Department of PSEP. Moreover, the proposed bill prevents third parties, such as NGOs, from making complaints and limits the commission to addressing individual circumstances rather than systemic and policy complaints. If maintained, these provisions would restrict the ability of the commission to monitor the arrests, detentions, and removals of foreign nationals by CBSA.

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Annex 1: Statistics on Returns from Canada

1. Refugee claimants apprehended by the RCMP between official ports of entry[44]

Year	Total
2023	14,663
2022	39,540
2021	4,246
2020	3,302
2019	16,503
2018	19,419
2017	20,593

Source: Government of Canada (2023)

2. Refugee claimants processed by CBSA and IRCC

Year	Total
2023	144,035
2022	91,740
2021	24,900
2020	23,685
2019	29,360
2018	55,040
2017	50,375
2016	23,860
2015	16,055
2014	13,445
2013	10,365
2012	20,475
2011	25,315
2010	23,130
2009	33,153
2008	36,856
2007	28,496
2006	22,920

[44] When individuals caught crossing the border between ports of entry make a claim for refugee protection, the RCMP turns them over to CBSA or IRCC officers.

2005	19,748
2004	25,526
2003	31,872
2002	33,426
2001	44,640
2000	37,748
1999	30,836

Source: Government of Canada (2023), IRCC (2019b)

3. Refugee claims of 'Irregular Border Crossers'[45] referred to the Refugee Protection Division

Year	Referred	Accepted	Rejected	Abandoned	Withdrawn	Total Finalized	Pending
2023	31,475	9,131	1,921	469	753	12,274	42,387
2022	20,896	4,728	2,665	292	1,546	9,231	23,183
2021	1,551	8,090	4,001	90	1,327	14,799	11,518
2020	4,154	5,465	3,379	72	167	9,306	24,766
2019	16,161	7,781	6,888	325	567	15,561	29,918
2018	20,598	3,305	3,098	342	386	7,131	29,318
2017 (Feb-Dec)	18,061	1,011	632	190	204	2,210	15,851

Source: Immigration and Refugee Board (2023c)

4. All refugee claims referred to the Refugee Protection Division[46]

Year	Referred	Accepted	Rejected	Abandoned	Withdrawn	Total finalized	Pending
2023	137,947	37,222	9,601	1,712	3,313	51,848	156,032
2022	60,158	28,272	12,537	1,351	3,284	45,444	70,223
2021	24,127	30,290	12,190	934	4,600	48,014	55,937
2020	18,500	16,209	7,733	395	1,529	25,866	79,753
2019	58,378	25,034	13,718	1,610	2,129	42,491	87,270
2018	55,388	14,790	8,759	1,376	1,880	26,805	71,675

[45] Irregular border crossers are individuals who crossed the border between ports of entry (Chesoi & Mason, 2021, p. 11).
[46] Referred protection claims include claims that have returned to the Refugee Protection Division by the Refugee Appeal Division or the Federal Court.

2017	47,425	13,553	6,223	740	997	21,513	43,250
2016	23,350	9,972	4,821	286	682	15,761	17,537
2015	16,592	8,596	4,119	212	532	13,459	9,999
2014	13,800	7,156	3,961	271	425	11,813	6,916
2013	10,465	3,064	2,009	221	357	5,651	4,987

Source: Immigration and Refugee Board (2023a, 2023b)

5. Appeals of 'Irregular Border Crossers' dismissed/allowed by the Refugee Appeal Division

Year	Appeals filed	Appeals Dismissed	Appeals allowed (referred back, new decision)	Appeals finalized	Appeals pending
2023	1,156	870	649	1,636	502
2022	2,078	1,621	794	2,529	980
2021	2,960	3,187	1,463	4,770	1,432
2020	3,038	3,242	1,043	4,330	3,242
2019	6,225	3,141	634	3,868	4,534
2018	2,610	688	55	870	2,177
2017 (Apr-Dec)	458	0	0	30	437

Source: Immigration and Refugee Board (2023c)

6. All Appeals dismissed/allowed by the Refugee Appeal Division

Year	Appeals filed	Appeals Dismissed	Appeals allowed (referred back, new decision)	Appeals finalized	Appeals pending
2023	7,965	6,754	3,376	10,130	2,888
2022	11,186	7,766	3,299	11,065	5,005
2021	10,055	8,406	3,862	12,268	4,891
2020	6,894	6,800	2,755	9,555	7,071
2019	11,817	6,803	1,881	8,684	9,700
2018	7,256	3,484	927	4,411	6,561
2017	4,905	2,382	755	3,137	3,710
2016	3,813	2,162	805	2,967	1,938
2015	2,959	2,089	692	2,781	1,092
2014	2,391	1,568	367	1,935	914

2013	1,146	565	123	688	458

Source: Immigration and Refugee Board (2023d)

7. Enforced Removal Orders of Rejected Refugee Claimants

Year	Total
2023	N/A
2022	N/A
2021	N/A
2020	10,511
2019	6,366
2018	4,096
2017	4,624
2016	3,911
2015	4,660
2014	7,350
2013	10,293

Source: Dennler (2022), Dennler & Garneau (2022)

8. Admissibility Hearings by the Immigration Division

Year	Total
2023	1,723
2022	1,409
2021	1,371
2020	1,034
2019	1,806
2018	1,925
2017	2,111
2016	2,169
2015	2,047
2014	2,100
2013	2,176

Source: Immigration and Refugee Board (2023e)

9. Removal Order Appeals considered by the Immigration Appeal Division

Year	Appeals filed	Appeals stayed[47]	Appeals allowed	Appeals dismissed	Appeals abandoned and withdrawn	Appeals finalized	Appeals pending
2023	516	174	221	142	144	507	845
2022	400	226	253	171	115	539	838
2021	485	264	343	215	136	694	980
2020	410	108	262	197	68	527	1,193
2019	579	269	494	415	302	1,211	1,320
2018	719	264	620	464	512	1,596	1,954
2017	979	252	559	547	584	1,690	2,838
2016	1,140	291	607	497	502	1,606	3,554
2015	1,092	190	626	374	451	1,451	4,021
2014	1,050	123	593	429	370	1,392	4,380
2013	1,308	72	544	393	329	1,266	4,722

Source: Immigration and Refugee Board (Immigration and Refugee Board, 2023d)

10. Minister Appeals considered by the Immigration Appeal Division

Year	Appeals filed	Appeals stayed	Appeals allowed	Appeals dismissed	Appeals abandoned and withdrawn	Appeals finalized	Appeals pending
2023	27	0	10	21	2	33	31
2022	28	0	11	10	2	23	35
2021	26	0	5	15	0	20	30
2020	9	0	7	6	1	14	23
2019	27	0	17	18	2	37	29
2018	27	0	21	10	3	34	38
2017	39	0	10	14	7	31	45
2016	24	1	15	6	4	25	37
2015	25	0	14	9	6	29	38
2014	21	0	10	3	6	19	42
2013	26	0	11	5	1	17	40

Source: Immigration and Refugee Board (2023d)

[47] The stay given in a removal order appeal will be reconsidered by the Immigration Appeal Division on a further date; in the meantime the effect of the removal order is stayed (Immigration and Refugee Board, 2023d).

11. Persons detained under IRPA and IRPR

Fiscal year	Total persons detained[48]	Detentions in Immigration Holding Centres (IHC)	Detentions in provincial prisons	Detentions in other facilities (e.g. police stations, CBSA offices)
2023-2022	N/A	N/A	N/A	N/A
2022-2021	3,056	2,256	818	414
2021-2020	1,605	901	783	245
2020-2019	8,825	7,064	1,932	1,359
2019-2018	8,781	7,212	1,679	1,622
2018-2017	8,355	6,609	1,831	831
2017-2016	6,268	4,248	2,041	971
2016-2015	6,602	4,385	2,361	955
2015-2014	6,786	4,486	2,510	828
2014-2013	7,720	5,369	2,738	725
2013-2012	8,742	6,128	3,070	781

Source: CBSA (2019a, 2020a, 2022d)

12. Minors housed/detained[49] under IRPA and IRPR

Fiscal year	Total minors housed/detained	Accompanied Minors	Unaccompanied Minors	Housing/Detention in IHCs	Housing/Detentions in Youth Centres	Housing/Detention in CBSA offices
2023-2022	N/A	N/A	N/A	N/A	N/A	N/A
2022-2021	N/A	N/A	N/A	N/A	N/A	N/A
2021-2020	N/A	N/A	N/A	N/A	N/A	N/A
2020-2019	138	N/A	N/A	N/A	N/A	N/A
2019-2018	118	114	4	115	1	2
2018-2017	151	144	7	145	6	0
2017-2016	162	151	11	N/A	N/A	N/A
2016-2015	201	181	20	N/A	N/A	N/A
2015-2014	232	220	12	N/A	N/A	N/A
2014-2013	N/A	N/A	N/A	N/A	N/A	N/A

[48] The total of persons detained is not equal to the sum of detentions in immigration holding centres, provincial prisons, and other facilities due to transfers between facilities.
[49] Housed minors are kept with their detained parent and legal guardian, but they are free to remain and re-enter in the IHCs with the consent of their parent and legal guardian.

Source: CBSA (2019a, 2020a, 2022d)

13. Minors detained under IRPA and IRPR

Fiscal year	Total minors detained	Accompanied Minors	Unaccompanied Minors	Detention in IHCs	Detention in Youth Centres	Detention in CBSA offices
2023-2022	N/A	N/A	N/A	N/A	N/A	N/A
2022-2021	4	0	4	4	0	0
2021-2020	0	0	0	0	0	0
2020-2019	2	0	2	1	1	1
2019-2018	15	11	4	13	0	2

Source: CBSA (2022d)

14. Persons subject to a Detention Review by the Immigration Division

Year	Total	Adults	Minors
2023	2,914	2,914	1
2022	2,477	2,476	1
2021	1,707	1,705	2
2020	1,674	1,674	0
2019	3,663	3,663	0
2018	3,209	3,198	11
2017	3,554	3,485	69
2016	3,870	3,811	59
2015	4,476	4,386	90
2014	4,722	4,626	98
2013	4,708	4,610	98

Source: Immigration and Refugee Board (2023f)

15. Detention Reviews concluded by the Immigration Division

Year	Total	48-hours reviews	7-day reviews	30-day reviews
2023	9,706	3,052	2,410	4,244
2022	8,174	2,569	2,095	3,510
2021	5,735	1,752	1,474	2,509
2020	5,954	1,736	1,470	2,748
2019	12,123	3,791	3,320	5,012
2018	10,740	3,257	2,716	4,764

2017	11,067	3,407	2,828	4,832
2016	12,251	3,630	2,955	5,666
2015	13,961	4,194	3,294	6,473
2014	14,856	4,451	3,460	6,945
2013	12,789	4,430	2,961	5,398

Source: Immigration and Refugee Board (2023g)

16. Individuals Refused Entry at the Border

Year	Total
2023-2022	N/A
2022-2021	N/A
2021-2020	N/A
2020-2019	N/A
2019-2018	2,800
2018-2017	N/A
2017-2016	N/A
2016-2015	N/A
2015-2014	N/A

Source: Auditor General of Canada (2020, p. 7)

Annex 2: Overview of the Legal Framework on Return Policy

Title of the legislation/policy	Date	Type of law	Link
Canadian Charter of Rights and Freedom	April 17, 1982	Constitutional Act	https://laws-lois.justice.gc.ca/eng/const/page-12.html
Immigration and Refugee Protection Act	November 1, 2001	Legislative act	https://laws.justice.gc.ca/eng/acts/i-2.5/page-1.html
Immigration and Refugee Protection Regulations	2002	Regulation	https://laws-lois.justice.gc.ca/eng/regulations/sor-2002-227/index.html
ENF 1 Inadmissibility	March 4, 2003	Guidelines	https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals.html
ENF 3 Admissibility Hearings and Detention Reviews	September 4, 2003	Guidelines	https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals.html
ENF 9 Judicial Review	January 30, 2006	Guidelines	https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals.html
ENF 10 Removals	May 5, 2003	Guidelines	https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals.html
ENF 20 Detention	December 22, 2015	Guidelines	https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals.html
Smart Border Action Plan	December 6, 2002	Bilateral Agreement	https://2001-2009.state.gov/p/wha/rls/fs/18128.htm
Safe Third Country Agreement	December 5, 2002	Bilateral Agreement	https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/safe-third-country-agreement/final-text.html

Statement of Mutual Understanding on Information Sharing		Bilateral Agreement	https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/statement-mutual-understanding-information-sharing/statement.html

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