

Canada–United States Safe Third Country Agreement Under Review

by [Edward C. Corrigan](#)

It has been reported by *Global News* that the Canada-United States Safe Third Country (STCA) is under review. They acquired government documents prepared in 2018 under an access to-information request. [1]

Global News quoted briefing material prepared for Canadian Immigration Minister Ahmed Hussen ahead of a planned meeting with US Homeland Security Secretary Kirstjen Nielsen scheduled for January 18, 2018. The meeting was cancelled at the last minute. The Canadian government intended to raise the STCA Agreement as a key issue and outlined efforts to create a new steering group to address “immigration issues” between the two countries.

According to the Memo, “the recent influx of asylum seekers to Canada, the Safe Third Country Agreement is no longer working as intended.” The Briefing Memo prepared for the Canadian Minister of Immigration further stated that:

Asylum seekers are evading the Canada-United States Safe Third Country Agreement by crossing into Canada between ports of entry where the agreement does not apply. This has brought to our attention gaps that may be creating a pull factor for people to cross illegally into Canada. [2]

The discussion of the Briefing Memo comes at a time when warmer weather in Canada leads to an increase in the number of “irregular migrants” crossing the border into Canada. These migrants are crossing into Canada at points where there is no border security or legal points of entry.

Data from Canadian immigration officials show that in 2018, irregular crossings in January and February stood at 1,517 and 1,565 respectively. Then there was an increase in March, April and May to 1,970, 2,560 and 1,869. [3]

Information available for January 2019 show only 888 irregular migrants were intercepted by RCMP in January 2019. Data from 2017 did not show significant spikes between winter and spring. [4]

Minster Hussen struck a positive note during a press conference in May 2018. He praised the Safe Third Country Agreement as a “great tool” and “amazing experience.”

The Canadian Immigration Minister was asked at that press conference if he was trying to get the agreement changed. Hussen dodged the questions following a report from the US Department of Homeland Security that it was looking at a proposal from Canada to amend the agreement.

The memo prepared for Minister Hussen, months prior to the press conference, outlined efforts to create what officials called an “Assistant Deputy Minister-Assistant Secretary Steering Committee on Immigration Issues” between Canada’s Immigration, Refugees and Citizenship Canada Ministry and the United States Department of Homeland Security.

Global News contacted Hussen’s office for comment but was directed to contact Bill Blair Canada’s Border Security and Organized Crime Minister. Responsibility for the Safe Third Country Agreement and any changes to it were assigned to Minister Blair in the fall of 2018.

Minister Blair has said he sent a letter to Nielsen asking to engage American officials on ways to “improve and enhance” the Safe Third Country Agreement.

The Minister with responsibility for the STCA, like Hussen before him, has not publicly been critical of the deal and silent on whether the STCA was actually working. Marie-Emmanuelle Cadieux, press secretary for Blair, in an email stated:

Canada has a long and proud tradition of providing protection to the world’s most vulnerable people. Ultimately, this is an issue of fairness and making sure the rules are being properly followed to uphold the integrity of our shared border... The STCA remains an important tool for Canada and the U.S. to work together on the orderly handling of asylum claims made in our countries. [5]

Cadieux also reported that Minister Blair has met with representatives from the Department of Homeland Security and U.S. Senators, to “discuss issues related to our commitment to securing our perimeter.” [6]

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When asked for more specifics, Cadieux said that, “we are in a different environment than we were when the agreement was signed in 2004.” She did not give any comment on whether or not the STCA was working as intended. [7]

The Minister’s Spokesperson indicated that “Minister Blair is in discussion with his U.S. counterparts to address the loophole that permits people to avoid the provisions in the STCA and improve the way the ‘anchor relative exception’ is defined and

applied.” [8]

The exception being referred to allows asylum seekers who present themselves at a Canadian Port of Entry to enter Canada if they have a close family relative in Canada. This called an “anchor relative” which allows the asylum seeker to enter Canada as they have a family member in Canada. The reverse applies to the United States,

Individuals who have entered Canada irregularly can serve as an anchor relative for their family members who then follow and can legally make asylum claims at the border.

Up until now the United States has shown little interest in amending the STCA and “closing loopholes” because the net flow of asylum seekers was to the United States advantage with many more asylum seekers going to Canada and leaving the United States.

The loop hole that allows irregular migrants who cross at unauthorized points of entry to make refugee claims in Canada is in excess of 40,000. [9] The influx this large number of asylum seekers puts a great deal of pressure on Canada’s Immigration and Refugee Board, and provincial health care and other social services.

The Globe and Mail reported that Canada is in talks with the United States to shut down the loophole that has allowed irregular migrants to cross the border at unauthorized points of entry and make asylum claims. The Canadian government is proposing changes that would effectively allow Canadian Border and Security officers to turn away future asylum seekers and not be allowed to claim refugee status in Canada if they enter illegally. [10]

The problem is that Canada and the United States share the longest border between two countries on the planet. The boundary (including portions of maritime boundaries in the Great Lakes, and on the Atlantic, Pacific, and Arctic coasts) is 8,891 kilometres (5,525 miles) long. This includes 2,475 kilometres (1,538 miles) of Canada’s border with Alaska. In total eight Canadian provinces and territories (Yukon, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, and New Brunswick), and thirteen U.S. States (Alaska, Washington, Idaho, Montana, North Dakota, Minnesota, Michigan, Ohio, Pennsylvania, New York, Vermont, New Hampshire, and Maine) are located along the border.

Under the current regime for the STCA most asylum seekers are turned away at authorized border crossings unless they meet one of the exceptions in the STCA. However, these rules do not apply at unofficial points of entry.

The Canadian government wants to change the Agreement to allow Canadian officials to escort asylum seekers who enter at an unauthorized entry point to a designated crossing area. There the irregular migrants would be refused entry into Canada and be returned to the United States. It is proposed that the change would apply to the entire Canada-United States land border.

Border Security Minister Bill Blair, in an interview with the *Globe and Mail*, said, “the STCA works effectively at authorized border crossings but needs to be modified.” Minister Blair stated:

The agreement remains in effect and is a good model, but there are unfortunately vulnerabilities within that agreement that if someone who presents at any other place other than a regular point of entry, the provisions of safe third country do not apply, so that is part of the discussion that’s taking place. [11]

Canada’s Border Security Minister Blair was in New York recently and also visited Washington discussing border security, including the STCA, with members of Congress and officials from U.S. Customs and Border Protection and the Department of Homeland Security.

Under the present STCA Canada and the United States are to refuse entry to asylum seekers who arrive at official points of entry along the shared border. There are some exceptions to the rule like having a close family member in the country. The premise behind this agreement is that both countries are considered safe for refugees.

There is a loophole. The STCA applies only to those who arrive at official points of entry. Asylum seekers can avoid being immediately turned away by crossing into Canada where there are no border posts. The effect is that Canada is obligated to process most of the claims for refugee protection for those who enter illegally.

Most of the asylum seekers and irregular migrants have entered through a single unauthorized point of entry near Saint-Bernard-de-Lacolle, Quebec. This entry point is located at the end of Roxham Road in New York State and currently is unguarded. [12] There are many other unguarded entry points along the Canada-US border.

It is the hope of the Minister for Border Security that the STCA be amended to allow Canadian officials to take asylum seekers who cross at Lacolle to an official border crossing nearby. There, an amended agreement could be applied, allowing Canada to refuse entry to the asylum seekers who were already in the United States and returning them to the United States. The reverse would apply in the United States where asylum seekers who were in Canada would be denied the right to seek asylum in the US.

One of the main goals of the STCA was to prevent asylum shopping. It also was designed to reduce the numbers of individuals seeking asylum in either Canada or the United States. It also wants to reduce unwarranted refugee claims and economic refugees.

Well known Canadian refugee lawyer Lorne Waldman said Mr. Blair's proposed change to the STCA would not breach international law, as the United Nations Convention on Refugees allows for safe-third-country pacts." Waldman said the question is whether sending asylum claimants back to the United States would violate their Charter right to life, liberty and security because of the risk they could be detained or persecuted under the Trump administration's immigration policies. [13]

Canada's Charter of Rights and Freedoms applies to all individuals who are in Canada including asylum seekers and illegal residents.

Mr. Waldman said the government should instead consider improving Canada's backlogged refugee protection system before changing the STCA. He suggested, "Before we start reforming the system and making changes that take away people's rights let's see if we can make the system work more efficiently."

Waldman further added that a more efficient system would ensure rejected refugee claimants are removed from Canada faster and, as a result, deter illegitimate asylum seekers from entering Canada. [14]

In Canada Conservative Members of Parliament have repeatedly called on the government to close the loophole in the STCA. The NDP have urged the Liberals to suspend the pact so asylum seekers in the United States can claim refugee status at official Canadian land border posts due to problems with the American asylum system.

NDP immigration critic Jenny Kwan said Mr. Blair's proposal to move asylum seekers who cross in Lacolle to an official border post, where they would ultimately be sent back to the United States, demonstrates the Liberals' intention to shut down the border." She added, "All that is going to do is push people further into dangerous situations in trying to get to safety...The United States has created conditions that are not safe for asylum seekers." [15]

Sean Rehaag, an Associated Professor at Osgoode Hall Law School, who specializes in Immigration and Refugee law, writes:

The [purpose of the STCA](#) from a Canadian perspective was to force the U.S. to take responsibility for asylum-seekers who travel to Canada via the United States. Canada had long wanted the STCA because the flow of asylum-seekers is asymmetrical. Far more asylum-seekers come to Canada from the U.S. than the reverse.

For the same reason, the United States has long refused to agree to the STCA. That only changed after 9-11, when Canada offered the U.S. greater border security integration in exchange for the STCA.

Canada now wants to expand the STCA, so the question is: What will Canada have to give the U.S. to get them to agree?

One might expect quite a lot, given that Trump has shown little interest in taking steps that would result in thousands of asylum-seekers who would otherwise go to Canada remaining in the U.S. [16]

The STCA is also under legal attack in Canada. In July 2017 Amnesty International, the Canadian Council for Refugees and the Canadian Council of Churches launched a legal challenge to the Agreement. According to Loly Rico, President of the Canadian Council for Refugees,

The US was never safe for all refugees, and is now even less safe....It is wrong, morally and legally, to send claimants back to the US, knowing as we do that they may face serious violations of their basic rights. [17]

In 2007 the Canadian Federal Court of Canada overturned the STCA due to perceived problems in the United States Asylum system. However, a stay was granted by the Federal Court of Appeal. [18]

The Federal Court of Appeal later overturned the ruling and re-instated the Safe Third Country Agreement. [19]

There is a wide spread concern from refugee lawyers, Human Rights organizations and refugee advocates that there are serious problems with the US Asylum system. On the other hand Conservatives and their supporters want to stem the flow of asylum seekers and prevent what they see as abuse of Canada's laws and the costs of supporting these asylum seekers while they remain in Canada.

No doubt Immigration and refugees will be a major issue in the coming Canadian Federal election expected in the Fall of 2019. Immigration is already a major issue in the United States.

There are other loopholes in the STCA. For example there was no provision for entry by ferries. This means that those who entered Canada by ferry were also exempt from the provisions of the STCA and allowed to make refugee claims in Canada. Correcting this omission will no doubt be part of the revisions in the STCA.

It remains to be seen how these legal and political considerations will be played out. It is doubtful that US President Donald Trump will be eager to change the STCA that would allow the return of thousands of asylum seekers who have entered Canada from the United States.

As experience has shown desperate people will find a means to overcome barriers even if it means risking their lives as the European refugee issue has demonstrated.

It is clear that the STCA is under scrutiny both in Canada and in the United States. For those asylum claimants in the United States the doors may soon be shut as Canada and the United States set up "Fortress North America" with the express purpose of reducing the number of asylum claimants seeking the protection of Canada and the United States.

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[1] "Safe Third Country Agreement,' memo reveals," by Amanda Connolly, National Online Journalist, Global News, March 14, 2019, link at <https://globalnews.ca/news/5055035/s...ration-canada/>

[2] Ibid.

[3] Ibid

[4] Ibid.

[5] Ibid.

[6] Ibid.

[7] Ibid.

[8] Ibid.

[9] "Canada, U.S. in talks to close loophole in border pact on asylum seekers," by Michelle Zilio, Globe and Mail, March 17, 2019, <https://www.theglobeandmail.com/poli...act-on-asylum/>

[10] Ibid.

[11] Ibid.

[12] Ibid.

[13] Ibid.

[14] Ibid.

[15] Ibid.

[16] "Closing the Canada-U.S. asylum border agreement loophole? Not so fast," by Sean Rehaag, The Conversation, March 25, 2019, (link at <http://theconversation.com/closing-t...so-fast-114116>)

[17] "Legal challenge of Safe Third Country Agreement launched," Amnesty International, Press Release, July 05, 2017. Link found at <https://www.amnesty.ca/news/legal-ch...ement-launched>

[18] See "Safe Third Country Agreement with the United States Overturned by Federal Court of Canada,' by Edward C. Corrigan, ImmQuest, Vol 1, Issue 1, January 2008, pp. 1-4. Link at (<http://www.edcorrigan.ca/articles/im...Op.%201-4..pdf>) Also see **Error! Main Document Only.**"Safe Third Country Agreement Between Canada and the United States Struck Down By Federal Court of Canada but Stay Granted by Canadian Federal Court of Appeal," by Edward C. Corrigan, Bender's Immigration Bulletin, Vol. 13, No. 16, August 15, 2008, pp. 1026 -1029.)

[19] See "Safe Third Country Agreement Landmark Ruling Overturned by Federal Court of Appeal of Canada," by Edward C. Corrigan, *Bender's Immigration Bulletin*, Vol. 13, No. 16, August 15, 2008, pp. 1023-1025.<http://www.edcorrigan.ca/articles/im...1023-1025..pdf>

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