

Border Rights for Refugees

A know your rights guide for non-US citizens coming to Canada from the United States to make a refugee claim.

You have the right to seek safety for yourself and your family. This guide is to provide you with information to support your decisions. It is general information and not legal advice. There are many specific details that you need to consider in addition to the information provided here, so please consult a lawyer if possible.

The guide is produced by the Immigration Legal Committee of the Law Union of Ontario and No One Is Illegal. Supported by the African-Canadian Legal Clinic.

Coming by a port of entry

A port of entry is a place where you can legally enter Canada. A land port of entry is where pedestrians, buses, cyclists, trains and cars enter Canada from the United States. Other ports of entry are Airports and Marine ports.

Canada and the United States have signed an agreement called the **Safe Third Country Agreement (STCA)** that **stops many people from claiming refugee status in Canada if they arrive at any legal land port of entry.**

There are three main exceptions to this ban. Under these three circumstances, even if you arrive at a land port of entry you may be eligible to make a refugee claim.

1) You may be eligible to make a refugee claim if you arrive at a land port of entry if you have family in Canada, such as same or opposite sex spouse, common-law partner, legal guardian (if claimant is under 18 years of age), child, parent, sibling, grandparent, grandchild, uncle or aunt, nephew or niece. Not all family members qualify.

You must prove to the immigration officer when you arrive that your family member is physically in the country when you arrive at the border and that they have immigration status in Canada. Immigration status in Canada means that they have won their refugee claim or Pre-removal Risk Assessment, are a permanent resident, a Canadian citizen or a person whose removal order has been stayed (stopped), a person who has a work permit or study permit, or a person who has made a refugee claim that is still being processed. You will need to have contact information for your family member (the officer may call your family member and ask them questions). You may need documents confirming your relationship to them, and their status in Canada.

2) You may also be eligible to make a refugee claim if you arrive at a land port of entry if you are an unaccompanied minor. This means you are under 18, unmarried and not coming into Canada with a parent or a legal guardian, and don't have a parent or a legal guardian in Canada or the U.S.

3) You may also be eligible to make a refugee claim if you arrive at a land port of entry if you have a valid visa or travel document allowing you to come to Canada or a valid work or study permit; or you are from a country where you do not need a visa to enter Canada.

If you come by **plane or boat you will not be excluded under the STCA** and may be able to start your application for refugee status at the port unless you have been refused refugee status in the U.S. and are **transiting through Canada after being deported from the United States.**

Making a refugee claim at a Port of Entry

If you are allowed into Canada because of the STCA exceptions or because you arrived at an Airport or Marine Port, you will be **interviewed by an officer** at the port of entry who will decide if you can start applying for refugee status (eligible to make a refugee claim).

The officer may allow you to make a refugee claim immediately, or allow you to enter into Canada and ask you to return for an interview on another day. The officer may also place you in detention (jail) to gather more information.



Some reasons that you may not be allowed to make a refugee claim are (1) if you have refugee status in another country you can return to or (2) you already made a refugee claim in Canada and it was refused, withdrawn or abandoned, or not allowed to proceed, or (3) you are considered 'inadmissible' and are found to be a security threat or to have committed serious crimes.

If the officer allows you to make a refugee claim, you will be given a **Refugee Protection Claimant Document** that you can use to get healthcare and/or welfare, and you may also be able to apply for a work permit.

You will also be given an important form called the **Basis of Claim**. Be prepared. You will need to fill out this form and ensure it is delivered to the Immigration and Refugee Board within **15 days**. Get help if you can to complete it, and make sure that you include all the information about your claim.

Entering Canada somewhere other than at a regular port of entry

Many people come to Canada over land but not at a port of entry or official border crossing. **This is not "illegal", but you may be detained.** If you end up in the custody of police or Canadian immigration enforcement after coming into Canada tell them immediately if you are in danger in your country of origin.

Once you are in Canada, you can legally make a refugee claim to any officer of the Canada Border Services Agency or at any Immigration, Refugees, and Citizenship Canada office (www.cic.gc.ca). You will be given a bundle of forms at this office. Until you come back to the office with these forms filled out, you cannot get health care or social services or apply for a work permit. **This is called an in-land claim.** Prepare carefully as these forms become the basis of your claim and will be seen by the decision-maker who will be deciding your refugee claim.

Protecting yourself

Whatever you say to immigration enforcement (Canada Border Services Agency) officers, and possibly police, will become part of your refugee claim file and you could be asked questions at your refugee hearing later. Try to include as many details about why you are afraid to go back to your country of origin. Providing information that is found to be false or leaving things out of your answers can affect whether your story will be believed later.

You should get counsel (a lawyer or licensed immigration consultant) to help you complete your forms and your refugee application. There are lawyers and immigration consultants who act in a bad manner so try to get names of counsel from trusted sources or a community agency. You should try to speak to a lawyer before your travel. You may also be eligible for free legal assistance once you are in Canada, through a program called Legal Aid.

If the person helping you cross is being paid for their assistance, they can face criminal or immigration related charges. Those providing assistance to people crossing the border need to ensure that they are doing so on a purely humanitarian basis with no "material benefit" to themselves. If you are assisting refugees to come to Canada, get legal advice.

You may be left in Canada in a place that is very isolated with no maps, housing, or support. It is very possible in the winter (October to April in some parts of Canada) to suffer serious health problems if you are outside for any period of time. Bring many warm clothes, food, water and hand and feet warmers. Bring your cell phone but make sure it will be able to do calls in roaming areas. In most cases of emergency you can call 911 in Canada, but this may mean police will come as well.

This legal guide is limited to Canadian refugee law, which is the dominant legal system that refugee claimants deal with. We urge newcomers to understand that Canada is all Indigenous lands.

Get more information on the refugee process in Canada here:
<http://refugee.cleo.on.ca/en/refugee-claim-flowchart>



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