

Komagata Maru

Laws can be discriminatory but it also possible for laws to be executed in an unjust way. That was partially the case with immigration in the early 19th century as there were few standards (such as the Charter or International Laws) on how immigrants and refugees should be treated.

Many Canadian immigration laws at the time did not overtly bar specific ethnicities, but they allowed broad discretion to the government and government officials to decide who was allowed in and under what conditions. Given Canadians' social attitudes towards certain ethnic groups at the time, the laws and policies tended to be administered in a way that excluded people from so-called "undesirable" countries.

The [Contiguous Journey Regulation, 1908](#) only allowed immigration from people who came directly from their country of origin without stopping at other ports. At the time, there were no direct routes from India meaning the regulation was effectively discriminatory.

Komagata Maru was not the only boat of refugees to be turned away by Canada. In the 1930s Canada refused to allow Jewish refugees fleeing the Nazi's to land. The ship eventually returned to Europe and many of the passengers died in the Holocaust.

It was really after the horrors of World War 2 that Canadian and international perspectives on refugees and human rights began to shift significantly. With United Nations came the 1948 Universal Declaration of Human Rights (UDHR). The declaration set out universal and fundamental human rights and established a common standard of protection for all countries.

[Universal Declaration of Human Rights - Download PDF](#)

Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3. Everyone has the right to life, liberty and security of person.

Article 14. Everyone has the right to seek and to enjoy in other countries asylum from persecution. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

[The 1951 Convention relating to the Status of Refugees and its 1967 Protocol](#)

The Convention defines who counts as a refugee and what kind of protections refugees must be afforded, including the right to seek asylum in other countries and to not to be returned to their country if it will put them in serious danger (“non-refoulement”).

Learn more about the history of [Canada’s Refugee Determination System](#).

Immigrant and Refugee Protection Act

“The [Immigration and Refugee Protection Act](#) (IRPA) provides the Immigration and Refugee Board of Canada (IRB) with jurisdiction to hear and decide cases on immigration and refugee matters. The IRPA sets out the core principles and concepts that govern Canada's immigration and refugee protection programs, including provisions relating to refugees, sponsorships and removals, detention reviews and admissibility hearings, and the jurisdiction and powers of tribunals.

The IRPA came into force on June 28, 2002.” - [IRPA](#)

Learn more about the history of [Canada’s immigration legislation and policies](#).

Immigration and Refugee Board of Canada

The Immigration and Refugee Board of Canada (IRB) is Canada's largest independent administrative tribunal. It is responsible for making well-reasoned decisions on immigration and refugee matters, efficiently, fairly and in accordance with the law. The IRB decides, among other responsibilities, who needs refugee protection among the thousands of claimants who come to Canada annually.” -[IRB](#)

The Charter of Rights and Freedoms

The Charter protects many rights and freedoms. The Charter applies to the government and its agents, not private individuals or organizations. It applies to the laws the government creates and how they are executed. . So, if for example, you are being discriminated against by your boss, you would probably use human rights legislation and not the Charter. If a government writes a law that violates the Charter, the Courts may find the law to be of no force and effect.

[Learn more about the Charter](#).

Refugees and the Charter

In 1985, the Supreme Court of Canada (SCC) ruled in [Singh v Minister of Employment and Immigration](#) that refugee claimants in Canada were entitled to fundamental justice under the Charter of Rights and Freedoms. The SCC declared that the Charter applied to all people physically present in Canada not just Canadian citizens. The SCC also determined that refugee claimants are entitled to a full oral hearing. This is because being sent back to a country where their safety is at risk is a threat to their s.7 rights, namely that "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice".



One principle of fundamental justice is when a decision has the potential to seriously impact someone's life and security, stronger safe guards, such as a full hearing and legal representation, are required.