

Irregular Border Crossings and Asylum Seekers in Canada: A Complex Intergovernmental Problem

Mireille Paquet and Robert Schertzer



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SUMMARY

Between 2017 and mid-2020, the Royal Canadian Mounted Police (RCMP) intercepted 59,658 people as they crossed into Canada outside official ports of entry. This spike in crossings was a clear break with past trends and with Canada's managed migration programs. It was driven in part by a global decrease in refugee protection, coupled with changes in US immigration policies following the election of Donald Trump. Part of the increase was also a direct consequence of the Safe Third Country Agreement (STCA) between Canada and the United States, which bars individuals already in the United States from applying for asylum at regular ports of entry into Canada.

A large majority of these migrants went on to apply for refugee status in Canada, setting in motion what Mireille Paquet and Robert Schertzer label a complex intergovernmental problem – a boundary-spanning, intractable and politically salient policy problem that challenges existing modes of and venues for intergovernmental relations. Because supporting asylum seekers falls to the provinces where they settle, they have become a contentious issue between Canadian provinces and the federal government.

This study explores how Canada's intergovernmental system reacted to the increase of irregular border crossings, beginning in 2017. The study highlights how all orders of government in Canada have a limited ability to address the causes of irregular border crossings, yet are forced to manage the consequences of these population movements, especially their financial costs. This complex intergovernmental problems challenges the established norm of multilateralism in intergovernmental relations on migration and calls into question Ottawa's traditional unilateralism in the management of the asylum system.

The authors make four recommendations. First, improve federal funding to help cover provincial costs associated with the support and integration of asylum seekers. Second, clarify the responsibilities of each level of government and how they can continue to work together on this file. Third, create a permanent, intergovernmental forum where cities can be partners in the planning and policy development on immigration issues. Fourth, explore new ways to settle asylum seekers across different regions of Canada.

Until COVID-19, the relative stability of intergovernmental relations associated with irregular border crossings seemed to be holding. Despite a temporary lull in 2020 due to the COVID-19 pandemic, there are strong reasons to believe that irregular border crossings will resume and potentially increase in the post-COVID-19 period. The social, economic and political consequences of the pandemic are likely to negatively shape perceptions of migration and increase the push factors supporting displacements. The underlying drivers of migration are also likely to increase, notably political and economic insecurity paired with divergent approaches among host societies to welcoming migrants.

The post-COVID-19 context could increase pressure on Canada to accept more refugees. It may also mean that Canada will face more frequent episodes of irregular

immigrant arrivals. The lessons learned from Canada's response to this episode of irregular border crossings should serve as a foundation for reforms to the intergovernmental system to address this complex intergovernmental problem. Action in these four areas should help ensure that Canada's intergovernmental relations system is better prepared to manage future flows of irregular border crossers seeking asylum in Canada.

RÉSUMÉ

De 2017 à la moitié de l'année 2020, la Gendarmerie royale du Canada a intercepté 59 658 personnes qui entraient au pays par d'autres voies que ses points d'entrée officiels. Cette croissance des passages irréguliers à la frontière marquait une rupture avec les tendances antérieures et la philosophie de contrôle centrale aux programmes de gestion des migrations au Canada. L'augmentation s'explique en partie par l'affaiblissement mondial de la protection des réfugiés, combiné à la réorientation des politiques d'immigration américaines depuis l'élection de Donald Trump. Mais elle découle aussi directement de l'Entente entre le Canada et les États-Unis sur les tiers pays sûrs, qui interdit à quiconque se trouvant aux États-Unis de demander l'asile aux points d'entrée terrestres du Canada.

La plupart des migrants interceptés ont demandé le statut de réfugié, créant ce que Mireille Paquet et Robert Schertzer appellent un « problème intergouvernemental complexe » : un enjeu de politique publique difficile à résoudre et politiquement saillant qui traverse les secteurs et qui remet en cause les pratiques et le cadre même des relations intergouvernementales.

Cette étude examine comment le système intergouvernemental a pris en compte l'augmentation des passages irréguliers à la frontière observée depuis 2017. Ses auteurs soulignent qu'aucun des trois ordres de gouvernement ne dispose de pouvoirs suffisants pour traiter les causes de tels mouvements de population et que chacun s'est vu contraint d'en gérer lui-même les conséquences, notamment sur le plan financier. Ce problème intergouvernemental complexe défie la norme du multilatéralisme dans les relations intergouvernementales sur les questions migratoires et met en cause la gestion unilatérale du système de demandeurs d'asile par Ottawa.

Les auteurs formulent quatre recommandations : améliorer le financement fédéral pour aider les provinces à couvrir les coûts liés au soutien et à l'intégration des demandeurs d'asile ; préciser les responsabilités de chaque ordre de gouvernement et renforcer les normes dictant les relations intergouvernementales sur le sujet ; créer un forum intergouvernemental permanent de planification et de collaboration autour des questions d'asile dont les grandes villes seraient parties prenantes ; explorer de nouvelles façons d'inciter les demandeurs d'asile à s'établir dans différentes régions du pays.

Avant la pandémie, les relations intergouvernementales s'étaient relativement stabilisées sur l'enjeu des passages irréguliers à la frontière. Ceux-ci ont marqué une

pause avec la crise sanitaire, mais tout indique qu'ils repartiront à la hausse une fois la pandémie enrayée. Les conséquences économiques, sociales et politiques de la crise pourraient alors altérer les perceptions à l'égard des migrants et élargir l'appui à la fermeture des frontières. On pourrait aussi observer une aggravation des causes sous-jacentes des migrations, notamment une insécurité économique et politique liée aux divergences d'approche des sociétés d'accueil.

Dans l'après-pandémie, le Canada pourrait subir des pressions accrues pour accepter un plus grand nombre de réfugiés. Les épisodes d'arrivées d'immigrants irréguliers pourraient aussi se faire plus fréquents. Les leçons de la période récente devraient servir à réformer notre système intergouvernemental en vue de résoudre le « problème intergouvernemental complexe » engendré. En s'inspirant des recommandations de cette étude, notre système de relations intergouvernementales serait mieux équipé pour gérer les prochaines arrivées au Canada de migrants irréguliers en quête d'asile au pays.

INTRODUCTION

In a break with past trends and Canada's managed migration programs, the number of individuals crossing the Canada-US border irregularly to claim asylum in Canada started to increase in 2017. Between 2017 and mid-2020, the Royal Canadian Mounted Police (RCMP) intercepted 59,658 people as they crossed into Canada outside official ports of entry (Canada 2020a). The spike in these crossings was driven in part by a global decrease in refugee protection, coupled with changes in US immigration policies following the election of Donald Trump. Part of the increase was also a direct consequence of the *Safe Third Country Agreement* (STCA) between Canada and the United States, which bars individuals already in the US from applying for asylum at regular ports of entry into Canada.

A large majority of these migrants applied for refugee status in Canada. More than 25,000 applications are still pending (Canada 2020d). While COVID-19 and the temporary travel restrictions implemented by Canada have slowed these population movements, irregular border crossings from the US remain an issue for Canada's immigration program. These asylum seekers have also become a contentious intergovernmental issue because supporting them falls to the provinces in which they settle.

This study explores how Canada's intergovernmental system reacted to the increase of irregular border crossings, beginning in 2017. We argue that these arrivals are a clear example of a complex intergovernmental problem (CIP), a boundary-spanning, intractable and politically salient policy problem that challenges existing modes and venues for intergovernmental relations. Our study highlights how all orders of government in Canada have a limited ability to address the causes of irregular border crossings, yet are forced to manage the consequences of these population movements, especially their financial costs. We show how this complex intergovernmental problem challenges the established norm of multilateralism in intergovernmental relations on migration and calls into question Ottawa's traditional unilateralism in the management of the asylum system.

We document the response of governments and the intergovernmental dynamics associated with the spike in border crossings. The response and the dynamics demonstrate the short-term resilience of Canada's system of intergovernmental relations. Yet they also illustrate some of the limitations of current arrangements. At the outset, a lack of federal-provincial coordination and an opaque understanding of the respective roles and responsibilities for asylum seekers had an impact on on-the-ground operations. In response to these early tensions, novel intergovernmental mechanisms were created to help coordinate activities and open lines of communication between policy and operational areas that were not used to working together. The intergovernmental relations system now supports a clear suite of services for irregular border crossers. However, deep intergovernmental tensions remain and have yet to be addressed. These tensions are likely to manifest themselves over the medium and long terms as governments continue to deal with the consequences of these arrivals. The consequences include the distribution of asylum seekers across Canada, the involvement of

cities in intergovernmental relations and, centrally, the financing of the costs incurred by provinces when providing services to asylum seekers, such as housing, education and social services.

It is crucial to address these tensions to ensure future intergovernmental collaboration and, ultimately, the resilience of Canada's asylum system. This study makes four recommendations. First, establish more clarity in funding arrangements for provincial costs associated with the support and integration of asylum seekers. Second, explore novel arrangements for the distribution of asylum seekers across Canada. Third, clarify the responsibilities of each level of government and solidify emerging norms in intergovernmental relations on this file. Fourth, create a permanent intergovernmental forum that would include large cities as full participants, dedicated to planning and collaboration on asylum issues.

IRREGULAR BORDER CROSSINGS INTO CANADA

Between January 2017 and July 2020, the RCMP intercepted 59,658 asylum seekers entering Canada outside ports of entry (Canada 2020a). Although the increase was significant, it is worth noting that Canada welcomed 1 million permanent residents through its managed migration program during the same period (Canada 2020e). It is necessary to distinguish between the different types of humanitarian migrants in order to understand the unique status of these individuals within Canada's immigration system, and how the management of their entry creates a complex intergovernmental problem.

The 1951 *Convention Relating to the Status of Refugees*, a UN agreement, and its 1967 *Protocol* are the foundations of the global management of refugees. The Convention defines a refugee as someone "who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country" (UNHCR 2010). Under this framework, an asylum seeker is a "person who seeks safety from persecution or serious harm in a country other than his or her own and awaits a decision on the application for refugee status under relevant international and national instruments" (IOM 2020).

In 2018, approximately 190,000 refugees and asylum seekers sought protection in Canada (IOM 2019, 109). Canada permanently resettled more than 28,000 refugees that year, a higher number than any other country and the first time since 1980 that Canada surpassed the number resettled in the United States (IOM 2019, 41–42). The 28,000 refugees represent a significant proportion of the 92,400 resettled in various countries in 2018. But it is only a small fraction of the estimated 26 million people seeking refuge around the globe.

There are three main pathways to refugee status in Canada. Government-assisted refugees are individuals who are generally situated outside of Canada and who are

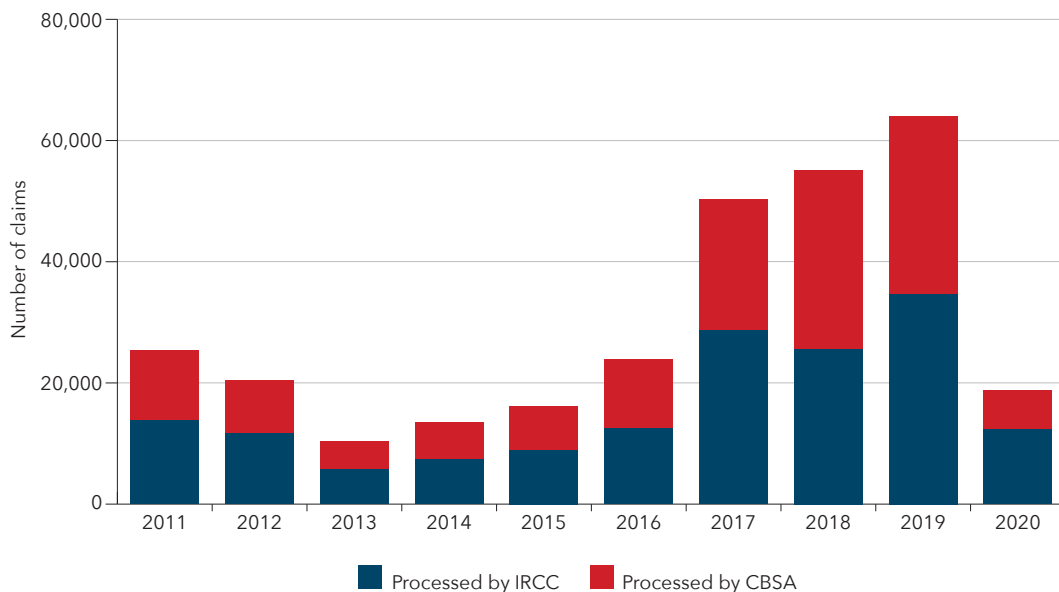
referred for resettlement by the United Nations High Commissioner for Refugees (UNHCR) or a partner organization. Their status is usually determined prior to arrival in Canada. They receive direct financial support from the federal government or the Quebec government for the first 12 months of their settlement in Canada and can access government-funded integration services (Canada 2019b).

Privately sponsored refugees come to Canada through programs that allow individual Canadians, community groups or charitable organizations to support their settlement. As with government-assisted refugees, their status as refugees is determined before their arrival in Canada. Their sponsors support them financially during their first year in Canada (Labman and Pearlman 2018).

Asylum claims made in Canada follow a different path. Individuals who need protection or who fit the Convention definition may submit a claim for asylum at a regular port of entry or at an office of the federal department of Immigration, Refugees and Citizenship Canada (IRCC) in Canada. Eligible claims are then assessed by the Immigration and Refugee Board of Canada (IRB). Figure 1 summarizes the annual number of these types of claims processed by the Canada Border Services Agency (CBSA) and the federal immigration department between 2011 and July 2020.

An emerging and important distinction has arisen between “regular” and “irregular” border crossings. The 59,658 asylum seekers intercepted after crossing the border between 2017 and 2019 are considered to have come into Canada “irregularly” because they did not request asylum at an official port of entry. This irregularity stems

Figure 1. Asylum claims made in Canada, 2011-2020 IRCC and CBSA



Source: Canada (2020a).

from Canada's STCA with the United States, which came into force in 2004.¹ The agreement's principal objective is to coordinate the management of asylum claims in Canada and the United States, taking as a model the Dublin Convention among members of the European Union (Macklin 2013). This coordination was part of a broader trend among Western states to limit what was perceived as "asylum shopping" and to buttress deterrence mechanisms (Abell 1997, 575; Atak 2018; Mountz 2010; Gilbert 2019; Amnesty and Canadian Council for Refugees 2017). The core principle of the agreement is that people should seek protection and asylum in the *first* safe country they land in. They should not be allowed to transit countries that could provide them with protection in order to reach another safe country (Gil-Bazo 2015). In the agreement, both countries recognize each other as a "safe third country" because they allow and process refugee protection claims in accordance with the international standards and obligations outlined in the Convention and Protocol.

The consequence of the agreement is that individuals who arrive at an official port of entry, such as an airport, road border post or sea port, and make a claim for asylum are denied entry into Canada and sent back to the US, and vice versa.² However, people crossing the border at locations that are not regular ports of entry, such as the now-famous Roxham Road in Quebec, may make asylum claims after being intercepted by the RCMP. This confluence of factors has led some people to claim that irregular asylum seekers are taking advantage of a loophole in the agreement (Rehaag 2019). Table 1 shows the total number of these asylum seekers that were intercepted from 2017 to July 2020.

Table 1. Asylum seekers intercepted by the RCMP outside regular ports of entry, 2017-2020¹

	2017	2018	2019	2020 (January to July) ¹
Newfoundland and Labrador	0	0	0	1
Prince Edward Island	0	0	0	–
Nova Scotia	0	0	0	–
New Brunswick	1	0	0	–
Quebec	18,836	18,518	16,136	3,067
Ontario	0	0	0	0
Manitoba	1,018	410	180	19
Saskatchewan	14	0	4	0
Alberta	6	12	1	0
British Columbia	718	479	180	56
Total	20,593	19,419	16,503	3,143

Source: Canada (2020a)

The government of Canada does not publish data on these interceptions prior to 2017. See Leuprecht (2019).

¹ These partial numbers have been affected by the COVID-19 travel restrictions implemented as of March 2020.

¹ The STCA was part of a larger package of reforms designed to coordinate border management policies under the Smart Border Action Plan, a response to the terrorist attacks of 9/11. See Anderson (2017).

² The STCA identifies some exemptions and exceptions to this rule: stateless individuals residing in the United States; claimants who have family members in Canada; unaccompanied minors; those holding valid Canadian travel documents or visas; and claimants who have been "charged with or convicted of an offence that is punishable by the death penalty." See CBSA (2009).

Most of the individuals making an irregular crossing from the United States are nationals of other countries, including Colombia, the Democratic Republic of Congo, Haiti, Nigeria and Turkey (Smith 2019). Many different factors drive their decision to come to Canada under these conditions. These include powerful push factors, such as the changing politics of immigration in the United States and in other parts of the world (Smith 2019; Pierce and Selee 2017; Schmidt 2019). There is also a view that Canada is a safe and welcome destination for those seeking refuge. Pull factors include Prime Minister Justin Trudeau's #WelcomeToCanada tweet in January 2017, which is often singled out as the key piece of evidence of this position. These population movements also reflect a global trend. Economic, social and environmental conditions can encourage migration. Western states are limiting pathways for entry and reinforcing border crossing points (UNHCR 2018; FitzGerald 2019). The confluence of these push and pull factors suggests that people will continue to seek asylum in Canada, both through regular ports of entry and through more irregular channels.

COMPLEX INTERGOVERNMENTAL PROBLEMS

Irregular border crossings into Canada represent complex intergovernmental problem.³ The opioid crisis, pandemics and climate change are other examples of CIPs. These problems share four characteristics. First, exogenous conditions outside the direct control of governments generally drive the policy problem. Governments are thus not able to address the root causes of the problem. Individual or coordinated government action, both domestically and internationally, can generally only manage the consequences. Second, addressing the problem requires high levels of coordinated action and collaboration between multiple orders of government. Adequate responses cannot be achieved by a single order of government or a singular actor in an intergovernmental system. These two conditions, particularly the need for collaboration, apply to many of the policy challenges governments face in intergovernmental systems. The increase in boundary-spanning policy problems, their tendency to create collective-action dilemmas and the related need for intergovernmental collaboration are not new (see Cameron and Simeon 2002).

The third characteristic of a complex intergovernmental problem is that the nature of the problem challenges the existing modes and venues of intergovernmental relations. This may be because the novel nature and consequences of a CIP demand close collaboration from agencies and governments that have not traditionally worked together. It can also reflect the fact that a given issue does not align with the existing mandates, agendas and timelines of intergovernmental forums. The fourth factor is

³ Intergovernmental systems are governing arrangements that organize the modes and sites of interaction between multiple actors. Their principal feature is to help clarify or codify the norms of engagement (working rules), the responsibilities of the actors involved (substantive roles) and the objectives of their interaction. These arrangements can take many different forms, including more informal relationships between actors, more formal institutions (including legislation and mechanisms for redistribution) and venues for policy coordination.

political salience, or the level of public and political attention paid to an issue.⁴ Major events like pandemics or natural disasters can quickly increase the political salience of a policy problem. A particularly high level of political salience can accentuate existing ideological, power and identity cleavages. In these situations, stable intergovernmental relations are challenging because the strategic calculations for actors shift and additional barriers to collective action arise, beyond the normal costs and benefits of collaboration. Partisan politics and ideological divides may trump the ability of the intergovernmental system to effectively coordinate a response. It is the intersection of all four of these factors that turns policy problems into complex intergovernmental problems. This combination of characteristics leads to the paradoxical nature of CIPs. They require high levels of intergovernmental collaboration to manage the situation, but also challenge the existing ways governments work together.

In this respect, CIPs are not only complex to manage, but also present existential threats to intergovernmental systems by challenging traditional interactions between governing actors and creating pressures for adaptation. Failure to respond to these challenges with effective cooperation can have dire consequences for the intergovernmental system. As a consequence, these problems limit the capacity of governments to effectively coordinate and deliver satisfactory policy outputs. They can also modify the core interests of actors and lead them to disengage from intergovernmental systems (Weaver 1986; Harrison 1996). A novel complex intergovernmental problem can also exacerbate poorly functioning aspects of intergovernmental relations, creating a stress test that exposes cracks in the system. Failure to respond to CIPs can have knock-on effects on intergovernmental relations in other sectors and lead to conflicts between actors in other areas.

There is no one-size-fits-all solution for responding to CIPs. An important starting point is to explore new modes of interaction and cooperation. Building on past experiences and the literature on policy and intergovernmental relations more broadly, we can identify lessons and best practices that can help devise effective responses. These best practices also serve as a useful framework to assess how governments have responded to a novel complex intergovernmental problem. These best practices include the following:

1. *Building a common understanding of the policy problem and recognizing how it impacts the different actors within the intergovernmental system.* To achieve this goal, actors must engage early and often, showing a genuine willingness to learn from one another the contours and consequence of the problem within each area of jurisdiction. This understanding will also depend on the circulation of information and the sharing of expertise. Actors can have limited expertise on the problem and can lack awareness of each actor's previous experience with similar problems. This process of learning and information exchange requires regular deliberation to reach an agreed-upon definition of the problem, with a view to establishing the responsibilities and duties of the different actors in the possible responses.

⁴ Political salience is often measured by news coverage or public opinion polling. See Givens and Luedtke (2004, 150). The salience of issues rises and falls over time, often in response to external events or a crisis.

2. *Identifying existing intergovernmental venues and actors that can be leveraged and adapted to respond to the novel policy problem.* Complex intergovernmental problems challenge traditional governing arrangements, roles and responsibilities, making actors inherently slow to respond and prone to suboptimal behaviours. In the face of a new problem, it is crucial to identify appropriate coordination venues and review the membership, working rules and organization of the institutions. Identifying and adapting these key elements of an intergovernmental institution require careful consideration of how the content of a problem aligns with existing arrangements and where changes are needed. Reviewing the list of participants to intergovernmental relations and reflecting on their respective roles are among the most critical aspects of institutional adaptation. CIPs may demand that new actors be included in the intergovernmental system. New types of relations might be necessary as a result.
3. *Establishing – and continually reassessing – the roles, actions and progress of key actors and resource allocations, set against an accountability framework.* Once the key actors, their respective roles and the related intergovernmental venues that can be leveraged to respond to a CIP are identified, the venues need to be used to closely coordinate action and report back on progress. This process should include identifying specific actions for the respective parties and how these fit into the broader coordinated strategy. The related revenue capacities and constraints and the costs to undertake actions should be clearly communicated, with initial cost-sharing arrangements established and regularly monitored.

These actions should help increase the capacity of intergovernmental systems to deliver effective policy outputs. This is especially important in cases where CIPs generate dangers for citizens, such as a pandemic, or challenge core governing functions of governments, such as in the case of large-scale fraud (Paquet and Schertzer 2019). These practices are not panaceas, however. Intergovernmental systems have resource differentials, power struggles and diverging interests (Béland, Segatto and Lecours 2019; Paquet 2017). Still, working toward an agreed-upon understanding of the problem and adapting institutions will set the foundation for further developments in response to a CIP. These practices are the necessary conditions for any revision to intergovernmental compensation mechanisms, new responsibility-sharing arrangements and novel intergovernmental agreements.

IRREGULAR BORDER CROSSINGS AS A COMPLEX INTERGOVERNMENTAL PROBLEM IN CANADA

Irregular border crossings into Canada are a complex intergovernmental problem. Among the clearest attributes of this wave of irregular border crossers was that they became politically salient. The relative novelty of asylum seekers crossing the Canada-US border, combined with the sharp increase in flows in August 2017, drove media coverage and political commentary. The media closely tracked the flows,

raising public awareness through reporting on monthly increases and the challenges governments were facing in receiving and housing new arrivals (for an overview, see Duncan and Caidi 2018). Some politicians seized on the crossings, branding them a crisis that the government was failing to manage (Harris 2018). These patterns of negatively framing asylum seekers and refugees and the rising political salience of these forms of migration are increasingly common in Canada. They mirror trends in Europe (Lawlor and Tolley 2017; Dennison and Geddes 2019).

Political salience and the associated framing have limited discussions on other dimensions of this issue that are particularly important for intergovernmental relations in immigration. The causes of irregular border crossings are not easily addressed through government intervention. Increased intergovernmental collaboration is nevertheless required to manage the consequences of people arriving in Canada seeking asylum. More to the point, these irregular border crossings challenge the traditional modes of intergovernmental relations in the immigration sector. These population movements are associated with federally controlled policy areas but generate considerable financial consequences for areas under provincial and municipal jurisdiction.

The causes

Research on immigration policy and border enforcement reveals strong limits to the capacity of states to eradicate irregular movements. Efforts at controlling borders always remain incomplete and can often generate considerable unintended consequences. They also represent an important risk in terms of political acceptability (FitzGerald 2019). Nonetheless, Canada, like other countries in the West, regularly engages in pre-emptive immigration control through increased border surveillance and collaboration with other countries (Leuprecht 2019; Young 2018; Bhuyan, Korteweg and Baqi 2018).

Any analysis of the recent irregular border crossings must acknowledge that Canada, like any other country, has a limited ability to influence the factors pushing individuals to migrate. It also has a limited capacity to police its borders. Deterrence efforts can have the unintended consequence of facilitating more irregular pathways of migration by limiting more traditional and regulated methods of migrating and seeking refuge. The clearest causes of the recent rise in irregular asylum seekers are the changing politics of immigration in the US and the Safe Third Country Agreement. The US is a central destination for immigrants and a space of transit. The closure of several immigration programs, including the cancellation of Temporary Protected Status for several groups, contributed to the initial and continuing waves of population movements into Canada (Smith 2019; Pierce and Selee 2017; Schmidt 2019). The agreement makes it impossible for individuals who have transited or lived in the United States to make an asylum claim at a regular port of entry in Canada. That encourages them to avoid official ports of entry.

The agreement does not include accountability mechanisms, apart from evaluation reports to be produced in the first years after the implementation (UNHCR 2006). As a

result, a complete analysis of its effects remains elusive. Evidence suggests that it has resulted in a considerable number of rejections of potential claimants at land ports of entry and helped deter individuals from claiming asylum at the border (Arbel 2013, 71). Yet the CBSA said in a 2010 evaluation that while the agreement initially decreased land border claims, their levels rose after 2005. In-Canada claims also increased considerably.⁵ The report suggested the increases were an unintended effect of the agreement, saying, “The CBSA Intelligence Directorate suggests that the rise in inland claims is due in part to irregular migrants entering Canada between POEs to file refugee claims at inland CBSA and/or CIC offices, to avoid being turned back at the border based on the Safe Third Country Agreement” (CBSA 2010).

Since the increase in the number of irregular border crossings in 2017, the Liberal government led by Justin Trudeau has maintained a strict position toward the enforcement of the border and the agreement with the US (Levitz 2017). Central to this position is the volatile character of US politics and the high-stakes bilateral issues at play during Trudeau’s first mandate, including the renegotiation of North American Free Trade Agreement (NAFTA). This position was maintained during the 2019 electoral campaign, despite a call by the New Democratic Party to cancel the agreement and promises by the Conservatives to “close the loophole” in the agreement that allowed asylum claims outside of regular ports of entry.

In July 2020, the Federal Court of Canada invalidated the agreement on the basis that it violates section 7 of the Canadian Charter of Rights and Freedoms, the right to life, liberty and security of the person. The court gave the federal government six months to address the infringement of rights before the decision would take effect.⁶ One month later, the Ministry of Public Safety and Emergency Preparedness filed an appeal, indicating that the cancellation of the agreement is not on the agenda of the current government (Canada 2020c). These moves are in line with the federal government’s consistent emphasis on the importance of enforcing border and asylum laws (Canada 2019e).

⁵ According to the report : “Although the December 2004 Safe Third Country Agreement initially reduced the number of land border refugee claimants, such claims more than doubled between 2005 and 2008 (from 4,042 to 10,801) – essentially increasing the number of refugee claimants to pre-Safe Third Country Agreement levels.” See CBSA (2010).

⁶ See *Canadian Council for Refugees v. Canada (Immigration, Refugees and Citizenship)* 2020 FC 770. This was not the first judicial challenge to the agreement. In 2007, the Federal Court of Canada invalidated it on grounds that the United States was not meeting its international obligations toward refugees, and that by implementing the agreement, Canada engaged indirectly in the forcible return of refugees to a country where they were liable to be subjected to persecution. The judgment also said the agreement was invalid since it violated the Canadian Charter of Rights and Freedoms (sections 7 and 15; life, liberty and security of the person, as well as equality). See Arbel (2013). This decision was overturned by the Federal Court of Appeal in 2008 on grounds that the Charter did not apply to this case and that “it was outside the Federal Court’s ambit to decide whether the US could be considered a ‘safe’ country” (Gilbert 2019, 428). Researchers and non-governmental associations have criticized the agreement, saying it runs counter to Convention principle, violates human rights and contributes to the criminalization of asylum seekers (Sanders 2017).

The asylum system in the Canadian federation: A complex web of roles, responsibilities and actors

Immigration is one of only three areas of explicit federal-provincial concurrent jurisdiction laid out in sections 94A and 95 of the *Constitution Act, 1867*. Despite immigration being a shared jurisdiction, the legislative and policy framework for Canada's asylum and refugee system clearly establishes a paramount federal role in the domain. The pillars of this system stem from the *Immigration and Refugee Protection Act (IRPA)*,⁷ which provides a clear picture of the asylum system and the roles of the various governments and their departments. The IRPA reinforces a division between the rules and system governing the selection of permanent residents (economic and family reunification migration, in part 1) and refugees and asylum seekers (humanitarian migration, in part 2). It also establishes the framework for the federal and provincial roles in immigration.

It lays out the federal role in managing the refugee and asylum process in section 4. The Minister of Immigration is responsible for the general administration of the *IRPA*. This means the minister's department is the main authority to carry out policy development and program implementation. The *IRPA* also empowers the Minister of Public Safety to carry out examinations at ports of entry, to enforce procedures and to determine inadmissibility of migrants on grounds such as criminality or national security. These actions are carried out by the department or two agencies that report to the minister, the CBSA and the Canadian Security Intelligence Service. The government may also empower ministers to carry out activities in related areas. Notably, it appointed Bill Blair in 2018 to a new post as Minister of Border Security and Organized Crime, with a specific mandate to assist the ministers of Immigration and Public Safety by "[leading] the government's plan on irregular migration" (Canada 2018c). Following the 2019 federal election, Blair was made the Minister of Public Safety, and these responsibilities were once again incorporated into the mandate of this position. The RCMP is an additional actor. Its involvement in the management of arrivals at the border has become more visible since 2017.

Parts 2 and 4 of the *IRPA*, along with related regulations, policies and rules, govern the conduct of the Immigration and Refugee Board (IRB). The board is an arm's-length body responsible for determining the status of individuals arriving in Canada seeking refuge and asylum. It was formed following the Supreme Court of Canada's 1985 decision in *Singh v Minister of Employment and Immigration*,⁸ which extended Charter rights to all persons on Canadian soil, regardless of immigration status, and found that asylum seekers had a Charter right to a fair, in-person hearing. The board consists of two divisions, the Refugee Protection Division and the Refugee Appeals Division. The *IRPA* also provides the framework for the functions of the board (see section 161.1). It is important to note that the IRB is an administrative tribunal that is independent from the federal government. Board decision-makers serve as quasi-judicial third parties. This brings a measure of independence to the determination of cases. The determi-

⁷ S.C. 2001, c. 27

⁸ *Singh v. Canada* [1985] 1 SCR 177. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/39/index.do>.

nation is made through the application of the Convention definition, based on existing evidence about countries of origin. Asylum claimants are temporary residents of Canada while the board is considering their status. If the board determines that an asylum meets the criteria for protection in Canada, the claimant may apply for permanent residence in Canada, and subsequently access the same entitlements as other immigrants. In the case of a negative decision, asylum seekers might be removed from Canada or can, in certain cases, appeal the decision.

While border enforcement and the determination of refugee status are clearly federal responsibilities, irregular border crossings and the rise of in-Canada asylum claims illuminate the central role that provinces and cities play in supporting refugees. While waiting for their claim to be processed by the board, asylum seekers are allowed to reside, work and interact with the different governments of Canada. However, because in-Canada asylum claimants are in the country while their refugee status is being determined, they do not have access to the same support and services as other classes of humanitarian migrants, such as government-assisted refugees and privately supported refugees. They do not receive financial support for resettlement and cannot use most federally funded integration services. During this period, they may get a work permit or a study permit (Canada 2020b). They may also access some provincial services, including social assistance and basic education institutions. If they are granted refugee status, asylum claimants will have access to the suite of immigrant integration services provided by the federal government (Praznik and Shields 2018; Canada 2016). Until this time, these individuals must rely on services provided by provinces. Table 2 compares the responsibilities of each government for asylum claimants.

Missing from this table is the role played by municipalities. While Canadian cities do not have any jurisdiction over immigration issues, they have developed multiple initiatives to provide services to immigrants and refugees (Tolley and Young 2011; Fourot 2013; Good 2009). Because most immigrants settle in urban areas, cities need to adapt services such as housing, transportation and leisure for a range of new arrivals (Seidle, forthcoming). In Ontario, the city of Toronto has multiple responsibilities for service delivery to asylum seekers. Ontario already had a unique role in the immigration intergovernmental system

stemming from the 2018 *Canada-Ontario-Toronto Memorandum of Understanding on Immigration* (Canada 2018a). Provincial legislation also granted Toronto responsibility for the administration of social assistance programs and housing, including shelters, in the Greater Toronto Area (GTA).

Ottawa is responsible for controlling borders and status determination. Provinces and municipalities provide basic services for asylum seekers. This

Table 2. Federal and provincial responsibilities related to asylum seekers

Federal	Provincial
<ul style="list-style-type: none"> • Border control and enforcement • Status determination • Temporary work permit and documentation • Basic health care (funded via Interim Federal Health Program) 	<ul style="list-style-type: none"> • Public health • Social assistance • Education • Housing • Legal aid

Table 3. Refugee claims made by irregular border crossers, by calendar year and quarter

	Finalized Applications						Cumulative pending claims
	Intake	Accepted	Rejected	Abandoned	Withdrawn & Other	Total Finalized	
February to March 2017	433	0	0	0	0	0	433
April to June 2017	2,159	131	24	7	11	173	2,419
July to September 2017	8,559	409	139	22	88	658	10,320
October to December 2017	6,910	600	493	170	111	1,374	15,856
January to March 2018	5,587	519	620	109	71	1,319	20,124
April to June 2018	6,183	686	584	70	79	1,419	24,888
July to September 2018	5,034	797	575	109	126	1,607	28,315
October to December 2018	3,799	1,305	1,325	54	105	2,789	29,325
January to March 2019	2,917	2,436	1,892	80	109	4,517	27,725
April to June 2019	3,948	2,180	2,140	86	90	4,496	27,177
July to September 2019	5,138	1,509	1,564	70	169	3,312	29,003
October to December 2019	4,137	1,667	1,288	89	193	3,237	29,903
January to March 2020	3,465	2,215	1,311	72	168	3,766	29,602
April to June 2020	356	490	66	0	17	573	29,385
Total	58,625	14,944	12,021	938	1,337	29,240	

Source: Canada (2020d).

is not a new situation. Even before 2017, provinces recognized their responsibilities for asylum seekers and established administrative benchmarks for service provision. In general, provinces have not resisted their role in this respect, especially when the numbers of asylum seekers remained small. Still, in the face of surging numbers, the implementation of these services has required an intricate level of collaboration between different government agencies and has raised significant resource constraints. Provincial departments not directly involved in immigration, such as health, education, employment and social assistance, have had to learn about status, regulations and processes associated with these policy sectors, all while dealing with a significant rise in the number of individuals seeking support.

The role of provinces and cities in providing services to asylum seekers has grown in part, as a result of relation to the increasing delays at the Immigration and Refugee Board. Pre-existing backlogs in the treatment of claims grew worse with the rise in irregular border crossers (Canada 2019f). Table 3 shows the number of claims submitted by these individuals since 2017 and how they contributed to the growth of pending cases at the board.⁹

These pending cases can potentially result in increased demands for provincial services and an associated growth in costs paid by provinces. As this study documents, affected provinces and cities have heavily mobilized to seek funds from the federal government to cover these costs. And while the federal government has announced multiple measures to decrease the delays and pressures on the board, the full impact of these changes will take several years to be felt throughout the Canadian asylum system (Canada 2018b; 2019a; 2019d; 2019e; PBO 2018).

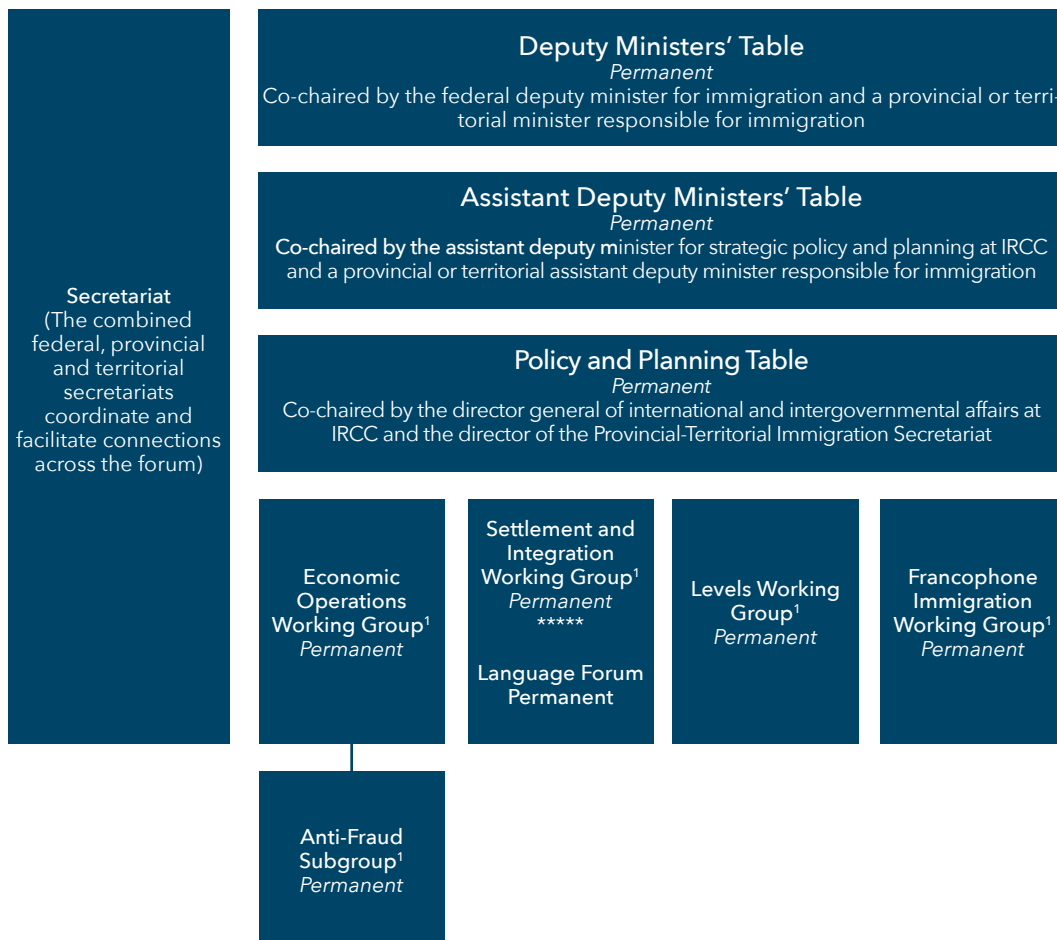
Challenges to the intergovernmental system

Analyses of intergovernmental relations in immigration generally start by recognizing it is a shared constitutional jurisdiction (Hartery 2018). By the mid-twentieth century, provinces began to recognize the importance of immigration and sought to increase their involvement (Paquet 2019; 2014a). Quebec was the clear leader in this respect. Through four iterations of intergovernmental agreements between 1971 and 1991, Quebec secured significant control over the selection and settlement of immigrants in the province. Spurred by Quebec's success, the other provinces began to seek similar deals. Throughout the 1990s and 2000s, a series of bilateral agreements to establish a provincial role in immigration, largely through Provincial Nominee Programs, took shape. So too did a patchwork of approaches to managing settlement services (Seidle 2010; Schertzer 2015; Banting 2012; Paquet 2014a). Provincial involvement in this policy sector led the provinces to develop administrative and intergovernmental capabilities, more often with labour-related departments taking the lead on these files (Jenson and Paquet 2019).

A relatively stable intergovernmental system to manage immigration emerged from regular federal-provincial engagement. In addition to diverse bilateral immigration agreements, intergovernmental relations in the field have been managed through a set of institutions. The most notable is the Forum of Ministers Responsible for Immigration (FMRI) (Schertzer, McDougall and Skogstad 2016 and 2018; Schertzer 2015). As figure 2 illustrates, the forum has two decision-making tables, one planning table and several working groups. In addition to information-sharing and coordination, these venues facilitate a deliberative and collaborative approach to setting shared objectives for Canada's immigration system (Schertzer 2015). The forum has reinforced relationships between federal and provincial public servants and political actors responsible for immigration in their respective jurisdictions. It has also generated multilateralism and reciprocity as organizing norms of the intergovernmental system

⁹ The IRB did not collect data on irregular border crossers before 2017.

Figure 2. Governance structure of the Forum of Ministers Responsible for Immigration



Source: FMRI (2019).

Note: As requested by the Government of Quebec, the Quebec minister responsible for immigration holds observer status at the tables and in the working groups and subgroup

¹ All of the working groups and the subgroup are co-chaired. One chair is from the federal government; the other is from a province or territory.

(Schertzer 2015). Relations in the sector have, at times, been strained by unilateral actions. The most notable were federal moves to reassert control over federally funded settlement services, reductions in funding for health care to refugee claimants and changes to citizenship policy. However, the clear trend over the last three decades has been toward a more collaborative and multilateral approach whereby the federal and provincial governments share responsibility for managing immigration.

Irregular border crossings challenge this established intergovernmental system in several ways. First, the geography of these population movements challenges the trend toward multilateralism and the norm of reciprocity. As table 4 illustrates, nearly 95 percent of crossings have occurred in the province of Quebec, particularly through the now-famous Roxham Road. This concentration of crossings is largely because of physical barriers elsewhere and because of the patterns of settlement in both Canada and the United States. Post-arrival patterns of asylum claims and settlement remain concentrated in Quebec and

Table 4. Percentage per province of asylum seekers apprehended by the RCMP outside of regular ports of entry, 2017-2020

	2017	2018	2019	2020	2017-2020 total	2017-2019 total percentage
Newfoundland and Labrador	0	0	0	1	1	< 1%
Prince Edward Island	0	0	0	-	0	0%
Nova Scotia	0	0	0	-	0	0%
New Brunswick	1	0	0	-	1	< 1%
Quebec	18,836	18,518	16,136	3,067	56,558	94.8%
Ontario	0	0	0	0	0	0%
Manitoba	1018	410	180	19	1627	2.7%
Saskatchewan	14	0	4	0	18	< 1%
Alberta	6	12	1	0	19	< 1%
British Columbia	718	479	182	56	1434	2.4%
Total	20,593	19,419	16,503	3,143	59,658	100%

Source: (Canada 2020a).

Ontario, primarily in large urban areas like Montreal and Toronto. For most provinces, irregular border crossings are not a significant issue or pressing policy problem. These distributional realities of asylum flows challenge the emerging norm of sharing both the benefits and the responsibilities for migration across the regions of Canada.

Second, irregular border crossings dramatically highlight that the development of the contemporary immigration intergovernmental system has not extended to issues of asylum. The intergovernmental system has primarily focused on managing economic migration (Schertzer 2015). With one exception, bilateral immigration agreements seek to clarify roles and responsibilities as they relate to planned and *economic* migration. Family and humanitarian classes of migrants are generally not covered in any substantive detail. The 1991 *Canada-Quebec Accord relating to Immigration and Temporary Admission of Aliens* is the only agreement that includes a substantive discussion of refugees. While Ottawa remains entirely responsible for status determination, the accord provides Quebec with the ability to select refugees to be resettled from abroad from a pool of candidates pre-approved by Canada. However, this agreement covers only the resettlement of government-approved refugees, not asylum seekers.

The forum of ministers follows a similar pattern. Its tables and working groups focus on planned immigration and economic immigration. Asylum processes and refugee resettlement are not high on the forum's agenda. Moreover, the membership of the forum, the focus of its planning tables and the structure of immigration agreements have limited the participation of the agencies and actors involved in refugee resettlement and in the management of the border. Indeed, the IRB, CBSA and the RCMP are not active participants in this intergovernmental system. Large cities are also excluded. As a complex intergovernmental problem, irregular border crossings thus challenge the norms and the organization of intergovernmental relations in the immigration

sector. This is reinforced by the fact that Ottawa has tended to act unilaterally in the asylum sector. Indeed, the overview of intergovernmental relations in the sector, the roles of the different actors and the legal architecture of the asylum system reinforce the same point. Unlike in other areas of immigration, the federal government sets refugee and asylum policy with little substantive intergovernmental discussion taking place, despite the considerable roles played by provincial, municipal and non-governmental actors in managing asylum seekers.

This lack of constructive engagement has been particularly noticeable during past reforms of the refugee system. In 2012, the Conservative government made changes to both the process for determining refugee status and the federal funding for services to claimants awaiting a hearing. These reforms designated a number of countries as “safe.” They streamlined and reduced appeal rights for claimants from these countries (Macklin 2013; Atak 2018; Paquet and Larios 2018). The changes also significantly reduced the level and eligibility for the Interim Federal Health Program (Harris and Zuberi 2014). There was little meaningful federal-provincial engagement on these reforms. While federal officials consulted provinces, the changes were not the result of a joint policy development process.

Refugee policy, particularly the management of the asylum system, has in practice remained the exclusive purview of the federal government. Irregular border crossings challenge this status quo because the rise in asylum seekers has real consequences for the provinces. While a rich intergovernmental system has developed in the immigration sector, the structure of institutions, the norms of participation and the actors involved do not match the characteristics of this complex intergovernmental problem.

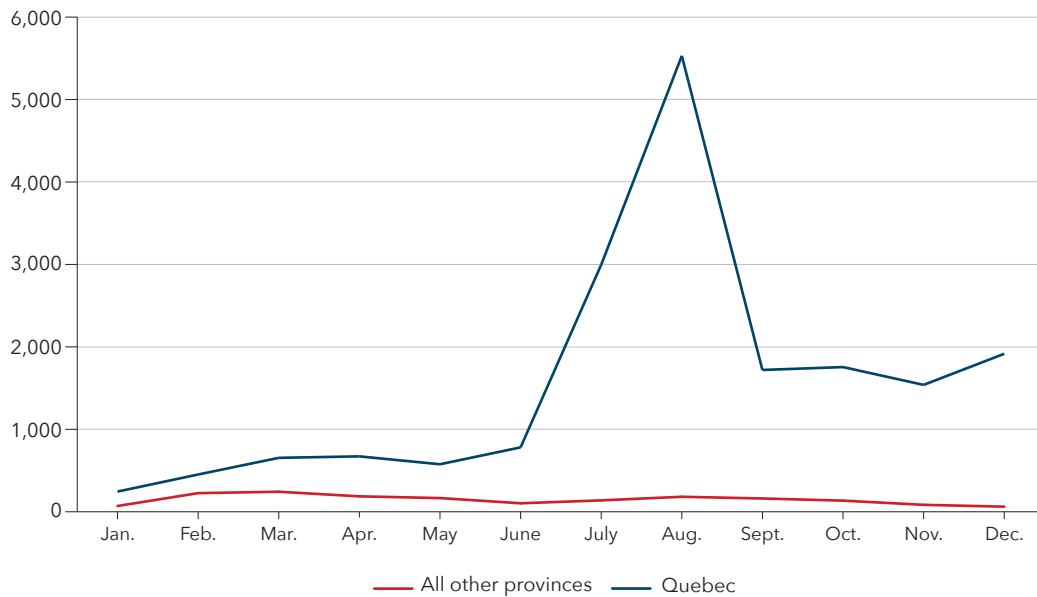
RESPONSE OF THE INTERGOVERNMENTAL RELATIONS SYSTEM TO IRREGULAR BORDER CROSSINGS

We draw from a series of primary and secondary sources to trace how Canada’s intergovernmental system for immigration has responded to irregular border crossings, a complex intergovernmental problem. Our narrative of events and key figures is based on official reports and briefings from governments, academic studies and media coverage. The analysis of intergovernmental venues and meetings builds on a review of all jointly released federal-provincial (and, in some cases, municipal) communiqués from relevant intergovernmental forums from 2017 to 2019. We also reviewed internal briefing material released through federal access to information. This included transition briefing material for deputy heads at Immigration, Refugees and Citizenship Canada and the CBSA. Between April and December 2019 we conducted in-depth, semi-structured interviews with senior federal and provincial government officials directly involved in the intergovernmental and operational aspects of the asylum file. We approached a wide range of senior officials for interviews. Due to political sensitivities, many declined. In total, eight senior officials from the federal and provincial governments agreed to interviews. To protect their anonymity, they will be referred to as “senior government officials” when we attribute their insights. We also held informal discussions and had confidential communications with actors involved in the policy sector.

The initial spike in irregular border crossings and the lack of intergovernmental coordination

The vast majority of irregular border crossings took place in Quebec in 2017. Figure 3 shows that the number of border crossings started to increase in the spring. By July 2017, the RCMP was intercepting significant and unprecedented numbers of people. In June 2017, the RCMP intercepted just over 780 people crossing the border into Quebec. By July, this had risen to just under 3,000 people. In August, it increased to just over 5,500 people.

Figure 3. Individuals intercepted by the RCMP crossing the Canada-US border in 2017



Source: Canada (2020a).

In the initial months following the rise in crossings, there was considerable confusion about the roles of government agencies, a lack of coordination between federal and provincial officials, and delays and issues regarding the provision of key services and supports to the asylum seekers. This confusion is characteristic of complex intergovernmental problems because such problems require high levels of coordination while challenging existing modes and venues of intergovernmental relations. In this case, these challenges extended to intergovernmental collaboration on the ground as well as to high-level relations between political and bureaucratic actors. One senior official said the federal government was slow to respond to the developing issue. Quebec played a central role, coordinating the transport, shelter and supports for those coming across the border after they were intercepted by the RCMP. There were issues with setting up reception areas and temporary accommodations, such as tents, at the Roxham Road crossing. A backlog quickly grew in the initial screenings required to establish status as an asylum seeker. Officials noted the challenge in dealing with the lack of documents for asylum seekers and securing work permits to allow those awaiting their status determination by the IRB to seek employment.

The principal issue for intergovernmental relations in the initial wave of border crossings was the sense that the problem was growing exponentially, paired with the fact that actors within the intergovernmental system had differing levels of knowledge and experience dealing with the issue. The rise in border crossings required a more robust reception process. Officials feared that the numbers were exceeding Quebec's ability to provide temporary shelter. There was a view among officials that it was reasonable for Quebec to play a key role in housing the migrants at the outset, given the unexpected number of people crossing into the province. In addition, many of the asylum seekers were of Haitian descent. Some had connections to the large French-speaking Haitian population in Montreal. At the same time, the initial confusion over the reception procedures and emerging questions about the ability of Quebec to find temporary housing space drove a sense of crisis management. One senior Quebec official said it was "panic time" when the first wave of crossings began at Roxham Road.

This initial phase of relative confusion over the scope of the problem, lack of coordination in devising a response and an opaque sense of the roles and responsibilities of the main actors is entirely understandable for two related reasons. First, in the first few months of 2017 the steady increase of asylum seekers crossing the border into Quebec was a relative novelty for Canada and for the province. Nevertheless, senior officials said that the surge was entirely foreseeable, given the shifting context in the US and the increase in crossings earlier in 2017. More planning and coordination should have taken place in advance of the increase during the summer of 2017. Instead, officials were forced to think on their feet and respond to a novel problem as it was unfolding.

The second related factor is that this lack of planning and ability to coordinate in real time reflected the fact that federal-provincial coordination mechanisms were not well developed enough to manage asylum flows. One senior official said that even though immigration is a shared federal-provincial jurisdiction, the management of asylum seekers takes place inside "water-tight compartments." Another senior official confirmed that the asylum file was an "orphan file" in the Quebec government before Roxham Road. There was little expertise or wider knowledge of the province's role in managing and hosting asylum seekers. They were seen as a "federal responsibility." The intergovernmental relations system had developed with this understanding. Clear roles and communication channels related to the management of the file simply did not exist.

This initial phase came to a head with the announcement on August 2, 2017, that the Olympic Stadium in Montreal would be used as a temporary shelter (Banerjee 2017). Programme régional d'accueil et d'intégration des demandeurs d'asile (PRAIDA), the service provider responsible for managing the reception of asylum seekers in Quebec, asked to use the stadium to house up to 450 individuals for a number of weeks while they waited for the necessary documentation and could secure more long-term housing (McKenna 2017). The provider had run out of space and was overwhelmed by the sharp increase in numbers and the need for temporary shelter. The images of housing asylum seekers in a sports stadium received widespread domestic and international attention (Kassam 2017). This proved to be a turning point, crystalizing in

the minds of the public and policy-makers the scale of the problem and the need for coordinated action. Multiple senior officials confirmed this view. One said that things changed after the story on the use of Olympic Stadium, and there was a considerable increase in federal-provincial engagement.

At the outset, irregular border crossings challenged traditional interactions between government actors and created pressure to adapt the intergovernmental system. The response unfolded at the operational level, with limited high-level understanding or agreement on the respective roles and responsibilities of the actors involved. Similarly, there was no clear agreement on the cause of the problem, beyond people showing up at Roxham Road. Despite this, *operational collaboration* within the intergovernmental system allowed for the provinces and Ottawa to deliver crucial services for these asylum seekers. Housing, work permits, social assistance, health care and the first steps in status determination were largely provided to the individuals without too many delays. The officials we interviewed uniformly felt that these results were impressive.

Building institutions, clarifying the problem, establishing roles and developing operational coordination

Following the media stories in August 2017 about housing migrants at the Olympic Stadium, a series of developments signaled a considerable uptick in federal-provincial engagement on the asylum file. This led to the implementation of a number of best practices in response to CIPs, notably the creation of an intergovernmental venue, the Ad Hoc Intergovernmental Task Force on Irregular Migration. The task force, announced on August 17, was to address the novel policy problem, foster a collective understanding of the problem and develop innovative responses.

The taskforce had representatives from the federal, Quebec and Ontario governments. The federal representatives were Marc Garneau, Minister of Transport and chair of the task force; Ralph Goodale, Minister of Public Safety; Ahmed Hussen, Minister of Immigration, Refugees and Citizenship; Harjit Singh Sajjan, Minister of National Defence; and Emmanuel Dubourg, MP for Bourassa. The provincial members were Kathleen Weil, the Quebec Minister of Immigration, Diversity and Inclusiveness; and Laura Albanese, Ontario Minister of Citizenship and Immigration (IRCC 2017d).

The initial mandate of the task force was that its members work together on issues related to the asylum seekers entering Canada from the US. The first two meetings focused on examining “the ongoing challenges, and exploring strategies being put in place by federal and provincial governments, with the help of local governments and partners, in order to address this situation” (IRCC 2017d). In line with this somewhat ill-defined mandate, the initial membership of the task force was relatively broad, encompassing relevant federal and provincial departments with a stake and a role in the management of the asylum seeker file.

In addition to this ministerial forum, existing and new institutional forums at the officials’ level were also engaged, accompanied by a series of operational and policy

changes. This provided complementary venues to address the gap between existing, multi-level intergovernmental institutions and the specific contours of the problem at hand. It responded to the absence of a dedicated table for the asylum file at the Forum of Ministers Responsible for Immigration. It also responded to the fact that less-affected provinces openly resisted further engagement with the issue of irregular border crossings. The task force broke with the norm of widespread multilateralism that included all provinces and territories. But it allowed for increased coordination among directly affected parties, while also limiting the potential for the issue to contaminate discussions related to the broader immigration file.

The task force became the *de facto* apex forum to manage the intergovernmental relationship, coordinate action and clarify roles and responsibilities related to the asylum flows. It met often during the initial stages and regularly over the next year. Twelve meetings took place between August 2017 and August 2018. Given its role, the forum can help us understand how the intergovernmental relations system responded and adapted to this complex intergovernmental problem.

The task force developed a shared, if shifting, understanding over time of the drivers and scope of the policy problem associated with the rise in asylum seekers. The public statements and joint communiqué following the first two meetings in August 2017 indicate that the initial discussions focused on the lack of a coordinated federal-provincial response as the primary challenge. Early comments from the ministers noted that the task force was necessary because collaboration between the federal and provincial governments, and with community partners, “will be key” in responding to the crossings (IRCC 2017d). Collaboration on data-sharing and finding suitable temporary shelter for asylum seekers were the more specific operational concerns first singled out by the joint task force.

Interviewees confirmed that the task force was a critical mechanism, designed in large part to address the need for federal-provincial collaboration. One senior official noted that it served an important “informational role,” ensuring that all parties were on the same page and had the same expertise related to the drivers and processes associated with asylum claims. The forum also helped to coordinate and signal the importance of the file *within* the federal and provincial governments. Senior officials from both orders of government commented on this impact. It facilitated a “whole of government” approach within the federal bureaucracy, with the Privy Council Office acting as the central point of contact for the federal response. It also signalled to the Quebec civil service that cooperation was the key to delivering results on the file.

In the fall of 2017, the task force shifted its attention to more substantive issues beyond the need for collaboration. A shared understanding emerged of the key internal and external policy problems that required intervention. The task force communiqués in September, October and November 2017 highlighted joint action on a series of related, internal, operational problems (see, in particular IRCC 2017c; 2017a; 2017e, respectively). The problems that received the most consistent attention included delays in conducting the initial screening of claimants to establish their status as asylum seekers,

insufficient reception facilities and temporary housing shortages, and significant delays in providing key documents to claimants. These included their Interim Federal Health Program certificates and work permits that would allow them to seek employment and avoid drawing resources from provincial health services and social support.

Over this same period, the task force demonstrated an increasingly shared understanding the key external drivers for the irregular border crossings. Three interrelated factors were consistently presented as causes of the increase in asylum seekers coming to Canada. They were global and regional refugee flows; changes in US immigration policy, particularly the removal of Temporary Protected Status for groups such as Haitians and Nigerians; and misinformation and misunderstandings in the US and Canada about how Canada's asylum system functioned (see, in particular: IRCC 2017c; 2017b; 2017a; 2017e).

The task force served as an important venue to clarify norms for the participants on their roles and responsibilities. These emerging norms informed a series of interventions launched in late August, which continued through the fall of 2017. For example, to help increase the speed of the initial screening of claimants, the federal government expanded its operations in Montreal and created a mobile response unit to help with processing near the main crossing point at Roxham Road (see, in particular, IRCC 2017b; 2018b). The federal government also dedicated resources to expand the processing capacity of the Immigration and Refugee Board to handle the claims and determine the status of the asylum seekers.

The interventions to address the external drivers of the flows focused on outreach activities with communities affected by shifts in US immigration policy. These activities were meant to clarify the rules and procedures for claiming asylum in Canada and to reinforce the validity of the STCA (IRCC 2017c; 2017b). There was also coordinated federal and provincial outreach to communities in Canada to help address any misinformation. In tandem with these outreach efforts, a significant focus was put on working with the US to share information about decisions that would cause additional movements of people and to discuss the status of the STCA and its unintended consequences. The members of the task force agreed "that further collaboration with the U.S. will be essential to identify effective multipronged solutions to the current situation" (IRCC 2017b).

As is often the case with Canada's intergovernmental relations system, this ministerial table was supported by a wide network of working groups and committees of officials. While the existing intergovernmental relations system for immigration did not have dedicated working groups or processes to coordinate action related to the asylum file at the outset of the influx, the highly developed multilateral and bilateral channels used for federal-provincial relations facilitated considerable interaction among government officials. For example, federal and provincial deputy ministers responsible for immigration in the affected jurisdictions would regularly hold calls, up to twice a week when the flows were high. Assistant deputy ministers were in regular contact, engaging even in micro-level, operational considerations, such as the number

of buses that were available for transporting individuals between sites. New working groups and processes among officials were formed to help coordinate action. These innovations in the intergovernmental relations system included the formation of a new federal-provincial working group on irregular migration. Officials confirmed in interviews that the working group was critical in speeding up the issuance of documents to claimants. Interviewees noted that provincial officials would spend time working with federal officials inside federal operations centres with a mandate to coordinate and manage the federal response. This was seen as an innovative process to better coordinate delivery of key services to asylum seekers, such as transportation, issuing of documents, temporary shelter and child care.

After November 2017, the task force and intergovernmental relations system shifted to forward planning. The task force noted in November 2017 that key federal departments (CBSA, RCMP, Public Safety, IRCC and the Public Health Agency) had worked together to develop a “national plan...based on lessons observed” at the sites near Roxham Road (IRCC 2017e). It placed a priority on further developing and testing this plan with provincial officials from across the country. The goal was a scalable and flexible approach that could be deployed in response to similar situations of irregular crossings happening in future. As subsequent meetings show, the continued development and testing of this coordinated response plan was a priority for the intergovernmental relations system throughout the winter and spring of 2018. Irregular crossings were expected to rise again in the summer of 2018 (see IRCC 2018c; 2018b).

The task force continued to meet throughout the first half of 2018. The membership shifted shortly after the June election of a Progressive Conservative government led by Premier Doug Ford in Ontario. Toronto Mayor John Tory was invited to participate. Tory’s participation reflected the increasing impact on Toronto of secondary migration and the stress this was placing on temporary housing in the city. His presence also likely reflected a desire for the federal government to bypass what was expected would be an intransigent and difficult partner in the new Ontario government.

The task force demonstrated that it is sometimes important to break with dominant norms and practices to better address an emerging policy problem. This is in line with best practices to respond to complex intergovernmental problems. Yet this innovation was far from perfect. Power differentials and information deficits were central irritants in getting different governments, elected leaders and officials to collaborate. Ultimately, such an ad hoc solution was limited by the unwillingness of all participants to use the venue to manage relations. The August 2018 meeting of the task force was the last publicly announced meeting of this intergovernmental relations forum (IRCC 2018a).

Unstable politics and fiscal federalism

The financial considerations associated with irregular border crossings became a focal point of tension in the intergovernmental system as the situation evolved and as operations stabilized. Despite an emerging shared understanding of the problem, there was still no answer to the question of who should pay for the services offered to

asylum seekers (Cardinal 2018). Once in Canada, asylum seekers rely on both federal and provincial services. This financial interdependence is further complicated by three factors. First, the unequal fiscal capacities of different orders of governments in Canada, including the limited revenues and financial resources of municipal governments, conditioned their response to the issue. Second, provinces have no power over border enforcement and refugee status determination. Provincial finances are affected by increased needs for which they have a limited ability to plan, let alone control. Third, financial interdependence increases over time, especially if there are increased delays at the Immigration and Refugee Board in determining status. The Parliamentary Budget Officer said, “In comparison to federal costs which are primarily determined by the number of migrants, provincial and municipal costs also increase with the time it takes the federal government to make a final determination on asylum claims. Hence, the longer the claim takes to reconcile, the greater the costs incurred by provincial and municipal governments” (PBO 2018, 15).

The issues of cost sharing and cost recovery appeared in the media as early as April 2017. They were on the agenda of the task force from the start. Ottawa recognized that the situation created financial pressures for provinces (Morasse and Bellavance 2017; Champagne 2017b). Quebec said publicly that as long as the status of asylum seekers was not determined, they generated costs for the province (Champagne 2017a; Pineda 2017). During that first year, the financial dimension of the complex intergovernmental problem was visible. But it was not a polarizing issue for the two orders of government, particularly as most efforts were focused on responding to the surge of crossers. Provincial premiers and provincial officials largely indicated their satisfaction with the financial discussions as they unfolded in the task force.

This relative equilibrium changed in 2018, in large part because of electoral and partisan dynamics in Quebec and Ontario. After being content to collaborate through intergovernmental institutions, the Liberal government in Quebec then led by Premier Philippe Couillard issued public requests to the federal government for cost recovery. This move towards an open and public conflict with Ottawa was part of a political strategy in advance of the October 2018 provincial election. It was meant to show that the provincial Liberals were protecting Quebec’s interests. In March 2018, Quebec sent a letter to Ottawa demanding to be reimbursed for the costs associated with irregular border crossers, then estimated at \$146 million (Pineda 2018). The federal Minister of Immigration responded to this request by noting federal efforts to speed up the delivery of work permits and by arguing that these costs were in fact covered by the grant Quebec received for immigrant integration through the 1991 Canada-Quebec immigration agreement and the Canada Social Transfer (Cornellier 2018; Journet 2018). Quebec rejected this interpretation. The task force discussed this issue. In April 2018, Quebec threatened to refuse new asylum seekers space in provincial-run housing if Ottawa did not act. David Heurtel, the Quebec immigration minister at that point, demanded more money, arguing that Quebec’s temporary housing options for asylum seekers were about 85 percent full (Gervais 2018).

Through April and May 2018, Ottawa’s response to Quebec’s demands was to ask the province to provide a detailed analysis of provincial spending and costs associated

with irregular border crossings. Ottawa also maintained that existing federal transfers covered these expenses (Lessard 2018). In June 2018, Ottawa finally announced it would give \$50 million to the three affected provinces. Quebec would receive \$36 million; Ontario would get \$11 million; and Manitoba would receive \$3 million (Dib 2018). Quebec welcomed this support but maintained that it represented only an initial settlement to recover the costs incurred by the province.

Fiscal federalism also moved to the top of the Ontario government's priorities following Ford's election as premier. His Liberal predecessor, Premier Kathleen Wynne, was a close ally of Prime Minister Trudeau. Under Ford, the governments of Ontario and Canada no longer shared a common ideological position and close relationship. Ontario's approach to intergovernmental relations under Ford was not focused on finding common ground with the federal government. As one senior official noted, Ontario lacked any true intergovernmental relations strategy and had very little interest in, or clear priorities for, intergovernmental collaboration. Ford's government de-emphasized immigration as a policy priority. There were many indications of this shift, none more obvious than the decision to disband the Ontario ministry responsible for immigration and transfer its main functions to other departments (Meyer and Syed 2018).

The relationship between the governments in Ontario and Ottawa quickly became openly hostile. The Ontario government continually pushed the narrative that the crossings were created by the decisions and inaction of the federal government, rather than being an externally driven policy problem (Benzie 2018). Ontario focused its efforts almost entirely on seeking financial compensation for the costs incurred by the province and municipalities to house and support asylum seekers. Despite the June 2018 federal funding announcement, Ontario requested an additional \$200 million from Ottawa in July 2018. Of this amount, \$89 million was requested for housing, \$90 million for social assistance and \$20 million for education. As one senior government official noted, the perception of the Ford government was that the flow of asylum seekers making their way to Ontario was unfair. The political thinking in Ontario was that the problem was a federal responsibility, which meant the province could take a hands-off approach to managing the response.

Ottawa disapproved of the rhetoric of the Ontario government and did not accept its funding request. Following a meeting of the federal-provincial ministers responsible for immigration in early July 2018, Minister Hussen publicly confronted Lisa MacLeod, the Ontario minister responsible for immigration, calling her government's approach to the asylum file "dangerous," "fear-mongering" and "un-Canadian" (Zimonjic 2018). By early August 2018, the conflict had escalated. The Premier and Prime Minister sparred over the file, with Ontario publicly announcing it would disengage from collaboration (Benzie 2018). As a result, the city of Toronto became Ottawa's main point of contact in the province. The mayor was invited to the task force. Toronto also became the main recipient of federal funding for the costs associated with asylum seekers in the province. While Toronto had already received some funding from Ottawa in June 2018, the changing political context increased this trend over time.

The election of François Legault and of the Coalition Avenir Québec in October 2018 further complicated intergovernmental relations. Immigration was central to Legault's campaign. The new government vowed to limit immigration to the province and to implement coercive integration requirements for all newcomers. In January 2019, Legault met Trudeau to request \$300 million for Quebec's response to irregular border crossings (Dutrisac 2019). This request and the approaching federal election increased the pressure on Ottawa (Bélair-Cirino and Crête 2019). In 2019, the federal immigration department received \$324 million to support jurisdictions providing housing for newcomers (Senate 2019, 10). This sum was to be distributed to provinces on a negotiated, case-by-case basis through the Interim Housing Assistance Program "and, if necessary to municipal governments should a cost-sharing agreement not be reached with provinces" (Canada 2019c). This new program opened the door to the distribution of new resources. In multiple payments throughout 2019, Toronto was granted \$62 million for housing to supplement previous federal funds. Manitoba also received \$5 million. After three months of negotiations, Quebec agreed in August 2019 to a \$250-million transfer to recover the costs for 2017-2018. Legault clearly indicated this was a temporary solution, since the sum did not cover costs associated with entries in 2019 (Crête 2019; Bellavance and Chouinard 2019).

In response to the complex policy problem of irregular border crossing, the issue of costs has increasingly become an irritant in the intergovernmental system. The Ontario and Quebec provincial governments have moved this issue to the terrain of high politics, making the financial dynamic increasingly salient. Ottawa's response has been mostly ad hoc but has also included innovations. They include the creation of the Interim Housing Assistance Program and the conclusion of robust financial agreements with the city of Toronto. Despite these decisions, several irritants remain. For affected provinces, irregular border crossings will likely continue to represent a financial pressure they have trouble planning for and for which federal support remains unclear. For Ottawa, the politicization of the issue of cost recovery signalled that the provinces are far from accepting the responsibility that they might have in this area.

CONCLUSION AND RECOMMENDATIONS

The spike in irregular border crossings by asylum seekers in 2017 was significant for intergovernmental relations in Canada. As we document in this study, the response to the surge of border crossers showed both the resiliency and the limitations of Canada's intergovernmental relations system to manage irregular border crossers seeking asylum. The initial lack of intergovernmental coordination was evident from the start. Actors were not clear on their respective roles and responsibilities in receiving, screening, transporting, housing and providing services for the asylum seekers. Several factors contributed to this lack of clarity. The shared understanding and norm among federal and provincial actors were that asylum seekers were a federal responsibility. Few of the existing intergovernmental institutions in the sector were focused on this issue or used as means for collaboration. The asymmetry of the crossings, which occurred largely in Quebec, created a barrier to a common provincial front with

Ottawa. The salience of the problem grew considerably with a series of events, notably the lack of temporary housing in Quebec and the need to use the Olympic Stadium for shelter. These events stimulated more concerted federal-provincial engagement.

This federal-provincial engagement built on the foundation of trust, solid relationships and a wide set of multilateral and bilateral intergovernmental institutions that had been developing in the immigration sector over the last 15 years. This foundation facilitated the building of new institutions that helped bring about a shared understanding of the problem and the respective roles of governments. The Ad Hoc Intergovernmental Task Force on Irregular Migration played a particularly important role. It served as a forum to identify the key policy problems at different stages and to build norms related to the substantive roles of the various governments. The political salience of the issue began to have an impact on relations over time. The initial consensus among federal, provincial and municipal officials on the main problems and responses gave way to a focus on cost recovery and blame. One of the key drivers of this shift was the change of governments in Ontario and Quebec. The new governments wished to generate political capital by taking harder lines on the file. Still, the political conflict and lobbying for cost recovery have yet to disrupt operations.

Until COVID-19, the relative stability of intergovernmental relations associated with irregular border crossings seemed to be holding. On-the-ground operations continued to manage flows. Provincial and municipal officials continued to seek reimbursements for the added costs to their health and social services budgets. The conflict over resources had not spilled over into other areas of federal-provincial relations. The system largely functioned well to manage a novel situation, despite the threat that growing political salience could jeopardize collaboration. Existing systems facilitated a collaborative federal-provincial-municipal response, with some predictable outstanding issues, mainly financial, that still needs to be negotiated. Despite this relative stability, more work is needed to avoid a deterioration in the intergovernmental system and policy response in the face of likely long-term flows of asylum seekers and the possibility of future surges. While Canada adopted some early best practices to respond to this complex intergovernmental problem, we cannot simply count this as a win and move on.

Future actions need to capitalize on the political and civil service relationships and trust built up over the past three years. Decision-makers need to further develop and cement the ad hoc intergovernmental forums. They must facilitate collective learning, socialization and understanding of the asylum file. They need to use these institutions to establish how federal, provincial and municipal governments can work together to clarify their respective roles and to create accountability mechanisms. Furthermore, decision-makers need to find stable, sustainable funding arrangements that reflect shared norms associated with the intergovernmental response to asylum seekers and refugee protection. Drawing on the set of principles on the way intergovernmental systems can respond to CIPs, we recommend four specific actions that can help ensure Canada's intergovernmental system can manage future surges of irregular border crossings and future pressures stemming from the ever-increasing global displacement crisis.

A stable, transparent and predictable fiscal framework

The first action would be to regularize federal funding arrangements. This would increase trust and predictability for provincial and territorial governments. Financial compensation for the costs associated with managing the reception, processing and integration of asylum seekers has been a major irritant since 2017. Provinces provide temporary housing and services to asylum claimants while claims are assessed by the Immigration and Refugee Board. Provincial irritation grew as processing times increased. The federal government has instituted a series of emergency and ad hoc funding arrangements to deal with these pressures.

A stable, transparent and predictable funding framework is needed. A funding mechanism that augments existing federal transfers to provinces and municipalities would help ensure that services can be quickly delivered to asylum seekers. It would also alleviate the fear that costs incurred by provinces and municipalities will not be recovered in some manner. This mechanism is particularly important to ensure that future surges will not lead to critical shortages of housing and social services due to budget uncertainties. Predictability can help avoid an increased politicization of cost recovery and prevent immigration from becoming part of larger fights over fiscal federalism. In the post-COVID-19 context, fiscal federalism and transfers to provinces are likely to be among the most pressing and hotly contested federal-provincial-territorial issues (Béland et al. 2020; Schertzer and Paquet 2020).

A possible model for such framework is the Fiscal Stabilization Program. It acts as an emergency supplement to the Equalization Program and provides support to provinces when they experience sudden and significant drops in revenue (Tombe 2020). An emergency fund based on this model could offset the costs to provinces and municipalities of managing irregular border crossers. Provincial and municipal governments could apply for funds on a cost-recovery basis, using a per claimant formula. The amounts could be determined once provinces or municipalities provide evidence of the services they provided and the impacts of receiving, housing and serving asylum seekers. Such a fund would need to recognize that its role is to *augment* existing transfers to provinces through the general block grants. A stable, transparent and predictable funding framework to recover costs during times of increased flows would help to stabilize the intergovernmental system and allow it to better respond. Ultimately, it would generate more trust and provide incentives for all provinces and territories to engage with the issue of asylum seekers.

A new deal for housing

Second, governments should negotiate a plan to share the responsibility for housing asylum seekers who are awaiting their status determination. This has been among the most pressing issues in other jurisdictions facing this problem, notably the European Union. Shared responsibility for housing asylum seekers is difficult to negotiate in Canada because of the asymmetrical nature of the crossings. The vast majority of individuals enter Quebec and settle there or in Ontario (particularly Toronto) while awaiting

their status determination. There is little incentive for other provinces and municipalities to proactively take on the resettlement of asylum seekers, given the associated costs for their budgets.

A pilot “triage” or distribution system was set up in 2018 to encourage irregular border crossers to settle in regions other than Montreal and Toronto (Bélair-Cirino 2018). Interviewees confirmed that a considerable amount of work was done on this project. The results were decidedly disappointing. Ultimately, the program was able to resettle only five families in the municipality of Chatham-Kent in Ontario. Senior officials confirmed that support from the mayor of Chatham-Kent made these arrangements possible. Similar engagement from other communities was not forthcoming. The pilot program was wound down in 2019 (Canadian Press 2019).

Despite the lack of success of this initial pilot program, some model to redistribute asylum seekers across Canada should be pursued. Establishing and negotiating complex arrangements are difficult during times of perceived crisis. However, with the benefit of relative stability in the number of crossers and lessons learned from the initial response, a revised and negotiated program could be established to respond to future flows. Such a program could provide added funding to communities and support to asylum seekers in regions outside the main centres of Montreal and Toronto. The program could be linked to the funding mechanisms proposed above.

Solidifying intergovernmental institutions in the asylum sector

Third, action is required in a more foundational area – the solidification of the norms and institutions of intergovernmental relations related to asylum. In response to the increase in irregular border crossings, a series of ad hoc, innovative intergovernmental institutions and processes were developed in the immigration sector. This led to an emerging set of norms and shared understandings about the nature of the problem, the respective roles and responsibilities of the governments involved, and, to a lesser extent, how costs for the delivery of services would be shared. However, the institutions and norms remain ad hoc. A lot of collective learning remains to be done by all governments when it comes to responsibilities for asylum seekers and refugees. Federal, provincial and municipal governments need to work together to codify in an agreement their respective roles and responsibilities in this area and to establish a more permanent set of institutions to manage relations on this aspect of immigration policy.

The likeliest route to success is to encourage working-level collaboration through federal-provincial working groups at the level of officials. These could be integrated into the existing multilateral intergovernmental institutions responsible for immigration, especially the Forum of Ministers Responsible for Immigration. At the same time, an effort should be made to draft and agree on a shared federal-provincial-territorial vision for humanitarian immigration. This would complement the existing vision for economic immigration. This combination of working-level forums that build trust, relationships that allow for regular information sharing, and high-level political

commitments that help codify roles and responsibilities has been critical to building a well-functioning, federal-provincial relationship in the areas of economic immigration and settlement. At times of heightened political salience on an issue, these foundations of the intergovernmental system can help weather and mitigate political conflicts.

Formally including municipalities

Fourth, there is an urgent need for a dedicated forum to include municipalities, especially in big cities, in the discussion, planning and collaboration on the asylum file. The role of municipalities in immigration has been growing over time. Cities play an important role in providing temporary housing and supports to asylum seekers. Yet this increased role has not been met with an increase in municipal representation when decisions are made about policy and program delivery. When representation has occurred, it has been ad hoc. This issue is much broader than simply the asylum seeker file.

The time has come for a dedicated federal-provincial-municipal forum on migration, including but not restricted to border crossings. There are clear logistical and practical considerations in setting up such a forum. Who will represent municipalities? How many municipalities should attend? How can provinces be convinced to open up space for such a venue? And what role would such a venue have in the intergovernmental system? The answers to these questions need to account for the varying capacities of Canadian municipalities to engage in such forum and the limited models that policy-makers can draw on for inspiration. The establishment of a working group with representatives from the Federation of Canadian Municipalities at a special meeting of federal, provincial and territorial ministers responsible for immigration would be a first step. Such a venue is necessary.

Action in these four areas should help ensure that Canada's intergovernmental relations system is better prepared to manage future flows of irregular border crossers seeking asylum in Canada. While the number of irregular border crossers has dropped from its peak of over 5,000 people a month in the summer of 2017, the flows have remained significant. In 2019, the RCMP intercepted an average of 1,375 people a month crossing the border (with a low of 800 in February and a high of over 1,800 in July) (Canada 2020d). These numbers largely held in the first few months of 2020, before the COVID-19 pandemic interrupted population movements worldwide (Canada 2020a; 2020d). In March 2020, the Government of Canada announced a temporary closure of the Canada-US border to non-essential travel. As part of this closure, Ottawa moved to stem the flow of asylum seekers. Canada secured a *temporary* agreement with the United States to extend the *Safe Third Country Agreement* to all points along the land border, including non-official ports of entry. This means that any asylum seekers arriving in Canada from the US will be sent back. The number of people crossing the border seeking asylum has fallen drastically since April 2020. Moreover, the federal government's recent decision to appeal the July 2020 Federal Court judgment invalidating the bilateral agreement indicates that a major driver for irregular arrivals will likely remain in place in Canada.

Despite a temporary lull in 2020, there are strong reasons to believe that irregular border crossings will resume and potentially increase in the post-COVID-19 period. It is likely that the social, economic and political consequences of the pandemic will negatively shape perceptions of migration and increase the push factors supporting displacements. They could also limit the will or capacity of some states to welcome immigrants. The underlying drivers of migration are also likely to increase, notably political and economic insecurity. This dynamic will be set to a background of divergent approaches among host societies to welcome migrants. The post-COVID-19 context could increase pressure on Canada to accept more refugees. It may also mean that Canada will face more frequent episodes of irregular immigrant arrivals. The lessons learned from Canada's response to this episode of irregular border crossings should serve as a foundation for reforms to the intergovernmental system to address this complex intergovernmental problem. We expect irregular crossings will return as a pressing public policy issue following the COVID-19 pandemic.

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