



Recently the Federal Court of Canada struck down the Safe Third Country Agreement (the "STCA") between Canada and the United States¹. That agreement's legal underpinnings are in provisions contained in The Immigration and Refugee Protection Act and The Immigration and Refugee Protection Regulations. It came into force in December of 2004. The STCA operates such that a person from a country other than the United States who travels through the United States and arrives in Canada by land to claim refugee status is immediately sent back to the United States. The presumption is that the United States is itself a safe country and is able to adjudicate such claims for protection. Consequently the applicants do not need to have their claims considered by Canadian authorities. There are some exceptions as outlined in the STCA, but its effect has been significant. Since its implementation the number of people claiming refugee status in Canada had declined significantly.

In a lengthy and comprehensive decision Mr. Justice Phelan of the Federal Court decided legal requirements for the STCA had not been met, in that the conditions to the enactment of the STCA had not been met. He decided that the Governor-in-Council had acted unreasonably in concluding that the United States had complied with its obligations under the Convention Against Torture, that the Governor-in-Council had failed to ensure the continuing review of the practices and policies of the United States as required by the enabling legislation, and that the applicable Regulations and operation of the STCA are contrary to the Charter of Rights and Freedoms.

Mr. Justice Phelan had reviewed numerous expert affidavits for both the Applicants and the Respondents and stated that he generally accepted the evidence of the Applicants as being more compelling. In his view the key issue was the protection against refoulement - sending back to the persecuting home country. He decided that not only legal safeguards but practical realities needed to be considered.

Not surprisingly Mr. Justice Phelan "certified" a number of questions as "serious questions of general importance". The Federal Court of Appeal can only hear the case if the Federal Court Trial Division certifies questions that are characterized as questions of general importance. So the Federal Court of Appeal will hear the case.

Mr. Justice Phelan had ordered that his order would take effect on February 1, 2008. But on January 31 the Federal Court of Appeal granted a stay such that STCA will remain in effect for the time being.

¹ *Canadian Council for Refugees, Canadian Council of Churches, Amnesty International and John Doe and Her Majesty the Queen* 2007FC1262; Decision dated November 29, 2007.

UNCERTAINTY SURROUNDING SAFE THIRD COUNTRY AGREEMENT BY RANDOLPH K.
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Given the potentially far-reaching consequences of this case - both legally and practically - it will be interesting to follow its continuing progress.

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