

HOW CANADIAN AND AMERICAN LAW WORK TOGETHER IN THE ACT

The Preclearance Act has been designed to provide U.S. officers with the authorities and protections they need to do their job but, at the same time, to avoid the extra-territoriality of U.S. law and to ensure that all travellers in Canada enjoy the protections guaranteed under the Canadian Charter of Rights and Freedoms.

Existing U.S. customs and immigration laws authorize Canadian preclearance officers stationed in the U.S.A. to exercise such functions and perform such duties as United States officials may be authorized to perform under a reciprocal agreement. This means that the authorities and immunities provided to U.S. preclearance officers under the Canadian Preclearance Act will form the basis for Canadian officers at similar preclearance facilities in the U.S.A.

APPLICATION OF CANADIAN LAW

Canadian law both provides the structure for the preclearance regime under the Preclearance Act and directs its enforcement. It does this in three ways:

1. by delineating the application of U.S. law and excluding U.S. criminal law;
2. by ensuring that, in the case of a conflict of laws Canadian law overrides U.S. law; and,
3. by ensuring that all travellers are protected by the Canadian Charter of Rights and Freedoms.

The administration of U.S. law is limited to those laws dealing with customs, immigration, public health, food inspection and plant and animal health. Only the provisions of those laws that are directly related to the admission of travellers and the importation of goods to the United States would be administered. These border-control laws can only be applied in preclearance areas or intransit areas which would be designated by the Government of Canada.

Canadian law underlies the entire regime. The Act contains various provisions that ensure the supremacy of Canadian law, and the exclusivity of Canadian criminal law.

For example:

- Canadian law may be enforced at all times in a preclearance area, and must be enforced with respect to criminal matters.
- If a prosecution is begun under Canadian criminal law in relation to unlawful behaviour in a preclearance area, a U.S. monetary penalty in relation to the same behaviour cannot be imposed.