

**Regarding Proposed Amendments
to the *Immigration and Refugee Protection Act*
in Division 38 of the *Budget Implementation Act 2024***

**DESIGNATED REPRESENTATIVES:
SUPPORTIVE VS SUBSTITUTED DECISION-MAKING**

Designated Representatives: Legislation must specify that the appointment of a designated representative is for supported decision-making, not substituted decision-making.

Sections 385 and 386 of the *Budget Implementation Act, 2024, No. 1* (“BIA”) would amend the *Immigration and Refugee Protection Act* (“IRPA”) to allow the Minister of Citizenship and Immigration and the Minister of Public Safety to designate a representative for an individual under the age of 18, or for someone who is not able to appreciate the nature of the proceedings. Responsibilities of designated representatives, and their full scope of authority, will be described in regulations that are not yet available, but would include “the circumstances in which a representative may make decisions on behalf of the person they represent.”

Concerns

The Canadian Association of Refugee Lawyers (“CARL”) is supportive of extending appointment of designated representatives for immigration and refugee proceedings. However, CARL is deeply concerned that substitute decision-making will be used to effect or waive service of Pre-Removal Risk Assessments (“PRRAs”)¹, with the consequence of expediting removals for individuals with serious mental illness² without an individual’s ability to meaningfully participate in those applications or decisions, resulting in *refoulement* to persecution or torture.

¹ Pre-Removal Risk Assessments are applications where a person’s risks in their home country (such as risk of persecution or torture) are assessed prior to removal.

² Per [s. 162](#) of the *Immigration and Refugee Protection Regulations* (“Regulations”), a stay of removal applies to PRRA applicants if they submit their application within 15 days of being given notification (ie, served with PRRA). Per [s. 163](#) of the Regulations, applications received late may still be decided, but there is no stay of removal.

Supportive vs substituted decision-making

There is a move from substituted decision-making to supportive decision-making amongst disability rights advocates.

The right to make one's own choices is inherent in the right to equal recognition before the law, which is enshrined in various international human rights instruments, including the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights, and the Convention on the Elimination of All Forms of Discrimination against Women.

In its [General comment No. 1 \(2014\)](#),³ the Committee on the Rights of Persons with Disabilities explains the “shift from the substitute decision-making paradigm to one that is based on supported decision-making” (para 3). It states that “Support in the exercise of legal capacity must respect the rights, will and preferences of the person with disabilities and should never amount to substitute decision-making” (para 17), and “At all times, including in crisis situations, the individual autonomy and capacity of persons with disabilities to make decisions must be respected” (para 18).

Recommendation

- Add language specifying that representatives are appointed for the purpose of supporting an individual's decision-making (supported decision-making) in section 386 of the BIA by adding the following in sub-clause 6.1(3)(a)
 - (a) the responsibilities of a representative, in particular their primary role to support an individual's decision-making, and the requirements that must be met to be designated as a representative;
- Remove sub-clause 6.1(3)(b) in section 386 of the BIA on substitute decision-making; and
- Add a clause that explicitly limits the scope of a designated representative's authority, and in particular, ensure no substitute decision-making for the purpose of effecting PRRA service and waivers of PRRA service in section 386 of the BIA by adding the following sub-clause in 6.1
 - (4) A designated representative may not provide a substitute decision for the purpose of effecting service or waiver of a Pre-Removal Risk Assessment pursuant to section 160.

³ Committee on the Rights of Persons with Disabilities, [General comment No. 1 \(2014\)](#), 19 May 2014.