Bill C-12

Strengthening Canada's Immigration System and Borders Act

Brief prepared for the
Senate Standing Committee on
Social Affairs, Science and Technology

Canadian Association of Refugee Lawyers
February 2026

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I. Introduction

The Canadian Association of Refugee Lawyers ("CARL") is a national not-for-profit, non-partisan organization dedicated to advocating for the legal rights of refugees and other vulnerable migrants. Our membership includes approximately 300 lawyers, academics and law students.

II. Overview

CARL is deeply concerned by certain provisions of Bill C-12. Contrary to its stated goals of creating a more efficient system, Bill C-12 threatens to overwhelm both Immigration, Refugees, and Citizenship Canada ("IRCC") and the Federal Court, and risks deporting claimants to harm.

CARL's primary concerns include:

(A) Two new categories of ineligibility for refugee claimants will shift newly ineligible claims away from the Immigration and Refugee Board of Canada ("IRB") to a deficient paper-based process with no right to a hearing. This will decrease efficiency by overburdening IRCC and the Federal Court, and risks sending vulnerable people back to harm.

(B) New powers to cancel, suspend or change immigration documents lack sufficient definition and constraints to protect against discrimination and abuse.

(C) Efforts to streamline the refugee claim and removals processes must still allow for adequate flexibility to accommodate vulnerable individuals.

(D) Any extension of the Designated Representative regime must be limited to *supportive* decision-making and exclude the possibility of *substitute* decision-making.

III. Recommended Amendments to Bill C-12

(A) New Ineligibility Categories for Refugee Claimants (Part 8)

1. PRRA system cannot effectively replace IRB adjudication

Bill C-12 adds two categories of persons ineligible to have their claim determined by the IRB: (1) persons who claim more than one year after their first entry to Canada (after June 24, 2020); and (2) persons who claim more than 14 days after entering Canada irregularly.

These claimants would instead have access to a Pre-Removal Risk Assessment (PRRA).

PRRAs are an inadequate substitute for adjudication by the IRB:

PRRAs are paper-based applications determined by an IRCC officer. There is no right to a hearing, no witnesses, no administrative appeal mechanism, and no statutory stay of removal if the Federal Court is judicially reviewing a negative decision. This means fewer safeguards against "getting it wrong" and increased deportation to harm before the Federal Court can correct first instance mistakes.

The current PRRA system is not designed to deal with vulnerable claimants (e.g. unaccompanied minors, individuals with serious mental health issues, etc.). Unlike the IRB, which has robust safeguards such as the Chairperson's guidelines[1], specialized teams (i.e. the Gender Related Task Force), and recorded proceedings to ensure fairness and consistency, the current PRRA system lacks these procedural protections.

IRCC and the Federal Court are overburdened:

Diverting refugee claims from the IRB to the PRRA system does not solve the backlog at the IRB. Instead, a dramatic increase in the number of PRRAs would require a major overhaul of the existing PRRA system and would overwhelm IRCC's capacity.

PRRA determinations preclude access to the Refugee Appeal Division (RAD), meaning the number of cases at the already overwhelmed Federal Court will further increase.[2] Because the RAD acts as a screening tool for flawed decisions in refugee claims, the Federal Court grants leave and judicial review far more often for refused PRRAs than for refused appeals at the RAD.[3] In addition to the extra public resources expended through the Federal Court process (e.g. courtroom time and staff, government lawyers, legal aid expenditures), these matters are then remitted for redetermination, further clogging up the system.

Moreover, by rerouting claimants into the PRRA stream, families with identical claims may be split up solely because of their date or manner of entry to Canada – forcing parallel proceedings, duplicating work, and undermining fairness.

2. One-year asylum ban

[1] Chairperson's guidelines assist decision-makers assess claims involving minors, sexual orientation, gender identity and expression, and gender considerations, among other specialized topics. Decision-makers are expected to apply these guidelines or explain why they are not following them. See Immigration and Refugee Board of Canada, Chairperson's guidelines, online: <https://www.irb-cisr.gc.ca/en/legal-policy/policies/Pages/chairperson-guideline.aspx>.

[2] National Post, "Federal Court chief says hearings may be cancelled, amid soaring immigration cases, from funding shortfall", December 5, 2024 online: <https://nationalpost.com/news/politics/federal-court-funding-crisis>. See also Federal Court Statistics, https://www.fct-cf.ca/en/pages/about-the-court/reports-and-statistics/statistics.

[3] Wallace, Simon. "Getting It Right the First Time: Exploring the False Economy of Bill C-12's Refugee Process Shortcuts," Refugee Law Lab Working Paper, October 2025, online: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5620250.

Refugee protection is grounded in the obligation not to return people to places where they face persecution or danger, regardless of how or *when* they arrive. Restricting claims based on entry time risks sending vulnerable people back to harm.

There are many circumstances where an individual may not have submitted a refugee claim within one year of their first entry to Canada but faces risk in their country of origin. These amendments risk excluding particularly vulnerable groups of asylum seekers, including survivors of gender-based violence and LGBTQ+ individuals.[4] Further, changes in one's home country may result in a new fear of persecution.

Recommendations:

(i) **The "clock" should start on a claimant's most recent entry to Canada.** The current draft is overly broad and would apply to claimants who had no fear when they previously entered Canada and subsequently left (e.g. an individual who visited Niagara Falls for a few hours, or for vacation as a child, would be banned from a hearing even if the basis of their claim arose years later).

(ii) **The "clock" should reset if country conditions change**. Many people arrive in Canada without fear of returning home and subsequently claim refugee protection based on a change in their home country. This is known as a *sur place* claim.[5] The Bill should be amended to allow an exemption from the one-year clock in circumstances of significant and relevant changes in country conditions.

3. Asylum ban for claimants who entered irregularly

A person's need for protection cannot be inferred from the manner or timing of their entry to Canada. Data from the IRB and UNHCR consistently shows that the acceptance rate of claims made by individuals who entered Canada irregularly is very similar to that for other claimants. In 2023, for example, 81% of claims finalized on the merits for individuals who entered irregularly were accepted, compared to a 79% acceptance rate for claims generally.[6] The ban for claimants

[4] For example, the gay man from Uganda who came to Canada with a work permit in early 2024. While he always feared returning to Uganda because of his sexual orientation, there was no need to resort to the refugee system because he previously had a path to permanent residence in Canada. That path has since been removed, and now he will not get a hearing if he makes a refugee claim. Or, in another example, consider the survivor of domestic violence who arrived in Canada in spring 2024 and suffers from PTSD and major depression. She does not speak English, has been trying to navigate registering her children in school and ensuring they have a place to live. She has spent years trying to come to terms with her experiences and is only now able to start talking about them. But her "delay" in initiating a claim now means she will not have access to a refugee hearing.

[5] For example, consider a student from Afghanistan who started at a Canadian university in January 2021 and who did not fear returning to Afghanistan at the time. Under Bill C-12, they would be ineligible to have their claim heard by the IRB if they claimed from January 2022 onwards due to fears stemming from the Taliban's takeover of the country in August 2021.

[6] UNHCR Canada, "Asylum Fact and Figures 2023", online: https://www.unhcr.ca/in-canada/statistics-on-asylum-seekers-in-canada/

who entered irregularly bears no relation to the viability of those claims and risks sending vulnerable claimants back to harm without access to a hearing.

4. Exceptions

CARL recommends that the following classes/categories of claimants be excluded from the application of the two new ineligibilities:

- Claimants from moratorium countries[7];
- Claimants who first came to Canada as minors;
- Survivors of gender-based violence and other vulnerable claimants.

5. Protections for newly ineligible claimants

(i) **Mandatory hearing**: To increase procedural fairness and accuracy in decision-making, individuals subject to any new ineligibilities must have access to a hearing as part of their PRRA.[8]

(ii) **Statutory stay of removal**: Individuals subject to new ineligibilities should be afforded a statutory stay of removal pending determination of an application for leave and judicial review of their negative PRRA, if one is filed.[9]

(B) Measures in Respect of Applications and Documents (Part 7)

CARL is gravely concerned about the powers to be afforded to the Governor in Council regarding blanket cancellation of immigration documents and termination of pending applications. The language of the legislation is vague (in the "public interest") and it does not allow for individualized assessment or due process. The proposed legislation would permit applications and documents to be cancelled in a discriminatory manner (e.g. cancellation of all applications from a particular country).[10]

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[7] Some applicants from countries on the Temporary Suspension of Removals (TSR) or Administrative Deferral of Removal (ADR) lists, such as Afghanistan, Syria, Venezuela, may not be offered PRRAs at all, as PRRAs can only be offered to individuals when removal is possible, and risk being left in a legal limbo for years.

[8] In 2019, when a new refugee ineligibility was introduced for individuals who had previously made a refugee claim in a "Five Eyes" country in IRPA 101(1)(c.1), the CIMM recommended an amendment of this exact nature and mandatory hearings were incorporated into the legislation.

[9] Currently, refugee claimants who receive a refusal from the RPD are entitled to a stay of removal while their claim is appealed to the RAD as well as to Federal Court. The same protection should be extended to PRRA applicants.

[10] See, e.g., CBC News, "Ottawa seeking mass visa cancellation powers to deter fraud from India: internal documents," November 3, 2025, online: https://www.cbc.ca/news/politics/mass-cancellation-power-visas-india-bangladesh-9.6956426

The Minister of Immigration testified before the House Standing Committee on Citizenship and Immigration on October 30, 2025, that "public interest" was intentionally undefined in C-12 in order to provide maximum flexibility in the use of this new power. This is deeply concerning. It would allow the barring of entry or the removal of categories of people on the basis of prohibited classifications such as national origin, language, socioeconomic status. This runs afoul of the *Canadian Charter of Rights and Freedoms* and would be vulnerable to legal challenge on that basis.

Recommendation: Proposed sections 87.301 and 87.302 should be withdrawn.

(C) In-Canada Asylum System (Part 6)

1. Abandonment proceedings

CARL is concerned by the proposed amendment to s. 102.1(1) that would require the mandatory referral of a claim to the IRB for an abandonment hearing if documents and information are not provided as required. This will have the greatest impact on the most vulnerable claimants. It eliminates all discretion to grant extensions for completing the portal or providing certain documents, likely to lead to a significant workload increase for the IRB that would undermine other efficiency measures. It is likely to cause immense confusion and stress for claimants, and increase the burden on lawyers and community organizations assisting them. Further, the amendments are unclear with respect to the next steps following a finding by the RPD that a claim has not been abandoned.[11]

Recommendations:

CARL opposes the mandatory referral of a claim for an abandonment hearing. CARL recommends that the proposed amendments be modified to allow a grace period during which abandonment will not be pursued and give the Minister discretion not to refer a claim for abandonment at all.

2. Further amendments to the *IRPA* are necessary as a result of the longer interval between claim and referral

To the extent that the claims process will be amended such that Minister's Due Diligence ("MDD") activities will occur prior to a claim being referred to the IRB, amendments will need to be made to other provisions that tie claimant rights to a claim having been "referred to the IRB." These include:

- Family reunification[12];

[11] For claims that the RPD has found not to be abandoned, a deadline to comply with the requirement of proposed IRPA s. 102.1(4) should consider the needs of the individual claimant and the reasons for having previously been unable to comply with requirements. This is critical as a finding by the RPD that a claim is not abandoned confirms that the claimant has an ongoing intention to pursue their claims.

[12] IRPR s. 159.5(c) defines a claimant whose family would qualify for an exception to the Safe Third Country Agreement as one whose claim "has been referred to the Board for determination."

- Work permits[13];
- Designated Representatives.[14]

(D)Designated Representatives

The proposed amendments to s.31 would require the Minister to appoint a designated representative in non-IRB proceedings concerning a minor or an individual who is unable to appreciate the nature of the proceedings.[15]

CARL welcomes the acknowledgement that the current legislative scheme fails to provide necessary accommodations for minors and individuals who are unable to appreciate the nature of proceedings. However, a well-established process for management, appointment, and oversight of designated representatives already exists at the IRB. We strongly recommend that appointment of designated representatives for all immigration and refugee proceedings rest with the IRB, given their experience and impartiality. Additionally, to facilitate efficiency, the same representative should have authority throughout all proceedings with IRCC, CBSA and before the IRB.

Supportive vs. substitute decision-making: It is especially important that a designated representative not be granted substitute decision-making power in situations that could lead to expedited removal of individuals without capacity to comprehend the nature of proceedings.[16]

Recommendations:

Any IRCC or CBSA proceedings should be deferred until an appropriate designated representative can be appointed in all matters concerning a minor (who is not with a parent or legal guardian) or a person who may not be able to appreciate the nature of the proceedings. This mirrors the current approach used by the IRB.

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[13] IRPR s. 206(1)(a) provides for the issuance of a work permit to a foreign national who cannot support themselves without working where they have made a refugee claim "that has been referred to the Refugee Protection Division but has not been determined."

[14] Per IRPA s. 167(2), the IRB mandate to appoint a designated representative only applies to persons who are "subject of proceedings" before the IRB.

[15] This mirrors the existing provision in section 167 which authorizes any Division of the IRB to appoint a designated representative in the same circumstances.

[16] For example, individuals have the right to a timely assessment of risks they may face in their home country (including risks of persecution and torture) before they are removed from Canada. Once a PRRA is served on an individual, very strict timelines apply that, if not followed, may lead to removal before the risk assessment is considered (IRPR ss. 162-163). Delegating authority to a substitute decision-maker to accept service of a PRRA application, or even to waive PRRA, would prevent an individual from exercising their right to participate meaningfully in the PRRA, exposing them to expedited removal without a substantive assessment of risk.

CARL recommends that designated representatives should not have authority to either accept or waive PRRA service, by adding the following sub-clause in IRPA s. 31(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.

(IV) ANNEX: Summary of Recommended Amendments to Bill C-12

New Ineligibility Categories for Refugee Claimants (Part 8)

- **The "clock" should start on a claimant's most recent entry to Canada.**

  Bill C-12 should be amended as follows:

  Section 101 of the Act is amended by adding the following after subsection (1):

  Paragraph (1)(b.1) — multiple entries
  (1.1) For the purposes of paragraph (1)(b.1), if the claimant has entered Canada more than once after June 24, 2020, the one-year period referred to in that paragraph begins on the day after the day of their ~~first~~ most recent entry.

- **The "clock" should reset if country conditions change**.

  CARL proposes the following additional amendment be included in Bill C-12:

  101(3) The Minister may exempt from the application of paragraph (1)(b.1)
  (a) the nationals – or, in the case of persons who do not have a country of nationality, the former habitual residents – of a country;
  (b) the nationals of former habitual residents of a country who, before they left the country, lived in a given part of that country; and
  (c) a class of nationals or former habitual residents of a country.

  Regulations
  (4) The regulations may govern any matter relating to the application of subsection (3) and may include provisions establishing the criteria to be considered when an exemption is made.[17]

- **Mandatory hearings for PRRAs resulting from new ineligibilities**

  Bill C-12 should be amended as follows:

  Mandatory Hearing
  113.01 Unless the application is allowed without a hearing, a hearing must, despite paragraph 113(b), be held in the case of an applicant for protection whose

[17] CARL proposes the following regulation to accompany the amendment:

159.9 For the purposes of subsection 101(3) of the Act, the Minister must consider, when an exemption is made, any event having arisen in a country that could place all or some of its nationals or former habitual residents referred to in that subsection in a situation similar to those referred to in section 96 or 97 of the Act for which a person may be determined to be a Convention refugee or a person in need of protection.

claim for refugee protection has been determined to be ineligible solely under paragraphs 101(1)(b.1), (b.2), or (c.1).

- **Statutory stay of removal**: Individuals subject to new ineligibilities should be afforded a statutory stay of removal pending determination of an application for leave and judicial review of their negative PRRA, if one is filed.[18]

Bill C-12 should be amended as follows:

Stay
50 A removal order is stayed
[…]
(d) for the duration of a stay under paragraph 114(1)(b); ~~and~~
(e) for the duration of a stay imposed by the Minister~~.~~; and
(f) in the case of an individual found ineligible under paragraph 101(1)(b.1) who receives a negative pre-removal risk assessment determination
(i) for 15 days where no application was made to the Federal Court for leave to commence an application for judicial review concerning the decision referred to in (f); or
(ii) until the Federal Court refuses their application for leave to commence an application for judicial review, or denies their application for judicial review, in respect of the decision described in (f).

In-Canada Asylum System (Part 6)

- **Referral to abandonment proceedings should allow for a grace period and Ministerial discretion**

CARL recommends that Bill C-12 be modified as follows:

IRPA s. 102.1(1): "the Minister must transmit the claim to the Division…" should be changed to "the Minister may transmit the claim to the Division…"

The amendments should also establish a grace period before files are sent to the IRB for abandonment of at least an additional 45 days.

Regulations related to **IRPA s. 102.1(4)** should take into account reasons for claimants' inability to comply with previous requirements and include sufficient flexibility to encourage subsequent compliance.

Designated Representatives

[18] Currently, refugee claimants who receive a refusal from the RPD are entitled to a stay of removal while their claim is appealed to the RAD as well as to Federal Court. The same protection should be extended to PRRA applicants.

- **Specify supportive vs substitute decision-making**

  Authorization to appoint a designated representative should specify that representatives are appointed for the purpose of supporting an individual's decision-making. CARL recommends adding the following to **IRPA s. 31 (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)** on substitute decision-making

- **Designated representative should not have authority to waive PRRA**

  CARL recommends adding the following sub-clause in **IRPA s. 31(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.