Evaluating the Impact of Bill C-12 on Asylum System Efficiency and Integrity
Nicholas A. R. Fraser | February 2, 2026

BRIEFING NOTE

TO: Members of the Senate Committee on Social Affairs, Science and Technology; Leadership of the Immigration and Refugee Board (IRB)

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Executive Summary

The core restrictive measures in Bill C-12 – specifically the one-year filing bar and the 14-day irregular entry rule – are predicated on the negative link hypothesis: the assumption that scaling back procedural rights will deter unfounded claims and reduce administrative backlogs. However, empirical analysis of approximately 180,000 first-instance refugee applications adjudicated in Canada shows that rights-restrictive measures consistently fail to reduce the volume of withdrawn or abandoned (WA) claims. Conversely, the data identifies a positive link between procedural rights and efficiency, where access to competent legal counsel serves as a vital lubricant for the system. To achieve “faster, fairer, and final” decisions, Bill C-12 should be amended to bolster adjudicative competence rather than expanding arbitrary exclusion.

The Issue: The Failure of the Deterrence Model

Bill C-12 seeks to address a strained asylum system by introducing new ineligibility grounds in Part 8 and broad discretionary powers in Part 7. The underlying policy narrative suggests that the current system is a "shortcut" that attracts "bogus" claimants who "game" the system.

- **Deterrence Logic vs. Empirical Reality:** Statistical modeling shows that the withdrawal/abandonment (WA) rate – a primary proxy for administrative waste – remained persistent at roughly 14 per cent (over 24,000 cases in the dataset) regardless of whether restrictive regimes like the Designated Countries of Origin (DCO) were in place.

- **Push Factors:** Global evidence demonstrates that asylum flows are driven by conditions in sending countries (persecution, conflict) rather than the procedural hurdles of the receiving state. Arbitrary deadlines like the 14-day rule serve as traps for the vulnerable rather than effective deterrents for the determined.

Evidence: Rights as a Tool for Bureaucratic Efficiency

Rather than slowing down the system, procedural rights – specifically the right to high-quality legal counsel – foster efficiency through three primary mechanisms:

- **Gatekeeping (The Pre-Screening Effect):** Competent lawyers act as informal pre-screeners who often discourage non-meritorious claims from proceeding to a hearing. This saves the state the cost of full adjudication for cases that would otherwise end in withdrawal or abandonment.

- **Information Extraction:** IRB adjudicators rely on counsel to bridge cultural and linguistic gaps and to identify the narrow legal issues of a case. In a survey of 188 IRB Members, over 80 per cent agreed that the process is more efficient when claimants have specialized legal representation.

- **Reducing Attrition:** Represented applicants are roughly 90 per cent less likely to abandon their claims mid-process compared to those without counsel. Unrepresented claimants frequently struggle with documentation and scheduling requirements, leading to adjourned hearings and administrative churn.

Analysis of Bill C-12's Administrative Risks

The architecture of Bill C-12 creates significant institutional risks that may exacerbate current backlogs:

- **The Pre-Referral Abandonment Trap (Part 6):** New provisions allow the IRB to deem claims abandoned before they are even referred for a hearing if documentation is incomplete. Without legal counsel to assist in this high-speed window, the system will likely see an increase in administrative churn rather than merit-based resolution.

- **The PRRA Litigation Explosion (Part 8):** Shifting "late" claimants from the IRB to the Pre-Removal Risk Assessment (PRRA) does not eliminate the burden; it moves it to a federal bureaucracy lacking the IRB's specialized expertise. Negative PRRA decisions and mass ministerial cancellations in the "public interest" are high-frequency sources of litigation that command significant judicial resources in the Federal Court.

Broad Recommendations

To ensure a functional and efficient refugee status determination (RSD) system, the following shifts are recommended:

1. **Prioritize Merits over Deadlines:** Replace the one-year bar and 14-day rule with a system focused on the substance of the claim to prevent the redistribution of cases into more expensive judicial review streams.

2. **Bolster the IRB's Adjudicative Core:** Resource the IRB to make decisions on merits rather than empowering it as a gatekeeper of exclusion. The Board's record-setting decision rates should be supported by strengthening its specialized tribunal expertise.

3. **Invest in Early Legal Aid:** Expanding the mandate for designated representatives to ensure all claimants have access to competent counsel early in the process will yield greater efficiency gains than the "savings" from mass exclusion.

Detailed Recommendations for Legislative Consideration

Based on the empirical evidence regarding asylum system efficiency, I respectfully submit the following considerations for the Committee's clause-by-clause review of Bill C-12.

Table 1., Overview of Suggested Bill Amendments

Objective	Policy Consideration	Empirical Rationale
Reduce Litigation	Merit-Based Assessment (Part 8, §73)	Arbitrary deadlines redistribute cases to the Federal Court. Prioritizing "manifestly unfounded" status uses IRB expertise to prevent judicial backlogs.
Protect Judicial Resources	Procedural Safeguards (Part 7, §72)	Mass cancellations without counsel windows guarantee an explosion of judicial reviews. Impact assessments ensure efficiency is not lost downstream.
Decrease Administrative Waste	Legal Aid Trigger (Part 6, §45)	Unrepresented claimants and IRB Members are the primary source of administrative churn. Access to ethical and effective legal counsel prevents files from being abandoned due to technical struggle.
Improve Speed	Efficiency-Based Representation (Part 6, §31)	Counsel acts as a system "lubricant." Expanding representation to accelerated streams ensures files are hearing-ready and reduces attrition by **90%**.
Ensure Accountability	Performance Metrics (Part 6, §39)	Mandatory reporting on abandonment rates, disaggregated by representation status, allows the Senate to measure if Bill C-12 actually improves integrity.

1. Addressing Arbitrary Deadlines (Part 8, Section 73)

- **Current Provision:** Introduces a one-year filing deadline and a 14-day window for irregular entries.

- **Consideration:** To avoid the redistribution of merit-based claims into expensive judicial review streams, the Committee may wish to consider replacing arbitrary time limits with a **merit-based preliminary assessment**.

- **Suggested Focus:** Prioritize identifying "manifestly unfounded" claims through the IRB's existing expertise. This ensures that delay in filing is treated as one factor in a holistic assessment of credibility and access to justice, rather than a blunt instrument of automatic exclusion.

2. Balancing Discretionary Powers (Part 7, Section 72)

- **Current Provision:** Grants broad powers to suspend or terminate processing based on public interest.

- **Consideration:** To mitigate the high risk of a litigation surge in the Federal Court, the Committee might consider a **procedural safeguard** for these new powers.

- **Suggested Focus:** Require that any mass suspension or termination be preceded by a specific impact assessment on judicial resources and a designated window (e.g., 60 days) for affected individuals to consult with legal counsel. This transparency and counsel provision ensures that executive efficiency does not inadvertently create a downstream judicial backlog.

3. Mitigating Pre-Referral Abandonment (Part 6, Section 45)

- **Current Provision:** Allows the IRB to deem claims abandoned *before* referral if documentation is incomplete.

- **Consideration:** Since unrepresented claimants are statistically significantly more likely to struggle with scheduling-ready requirements, the Committee could consider a **legal aid trigger** for abandonment determinations.

- **Suggested Focus:** Ensure a claim is not deemed abandoned unless it can be demonstrated that the claimant had access to high-quality legal information or the opportunity to secure counsel. Addressing the root cause of administrative waste ensures the system remains both fast and fair.

4. Strengthening the Mandate for Representation (Part 6, Section 31)

- **Current Provision:** Mandates representatives only for minors and vulnerable persons.

- **Consideration:** To realize the full efficiency gains of the committed and competent immigration lawyers being involved in the asylum system, the Committee could consider expanding the **availability of representation** to complex or “fast-tracked” proceedings.

- **Suggested Focus:** Amend Section 6.1 to include an **“Efficiency-Based Representation”** provision. Access to specialized counsel should be a prerequisite for accelerated processing to ensure files are "hearing-ready" and to reduce attrition.

5. Mandatory Reporting on System Integrity (Part 6, Section 39)

- **Current Provision:** Requires monthly reporting on removal orders.

- **Consideration:** To ensure these changes improve integrity rather than just increasing exclusion, the Committee may wish to add **efficiency and representation metrics** to the reporting requirements.

- **Suggested Focus:** Require the IRB and IRCC to report on processing times and abandonment rates, **disaggregated by whether the claimant was represented by counsel and whether the IRB Member consulted with Legal Services**. **For claimants, continue to record the identity of counsel (names) but also distinguish between immigration consultants and lawyers.** This provides higher resolution administrative data necessary to adjust policy in real-time based on institutional performance. This allows for more precise tracking and data-driven systemic audits based on statistics to ensure transparency to report to Parliament and the Canadian public.