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July 20, 2026

Via email: IRB.Policy-Politiques.CISR@irb-cisr.gc.ca

Evan Travers
Senior General Counsel
Legal Services
Immigration and Refugee Board of Canada
Canada Building (Minto Place)
344 Slater Street, 14th Floor
Ottawa, ON K1A 0K1

Dear Mr. Travers,

Re: Rules Amending the Refugee Protection Division Rules, Canada Gazette, Part I, Vol. 160, No. 25 (June 20, 2026)

This submission is made by the Immigration Law Section of the Canadian Bar Association ("CBA Section"). The Canadian Bar Association is a national association representing more than 40,000 lawyers, notaries, law teachers, and law students across Canada. The CBA has a longstanding mandate to promote the rule of law, access to justice, effective law reform, and improvements to the administration of justice. The Immigration Law Section comprises over 1,000 lawyers practising in all areas of immigration, refugee, and citizenship law, advising individuals, families, and employers in Canada and abroad.

Our comments respond to the *Rules Amending the Refugee Protection Division Rules* published in the *Canada Gazette*, Part I on June 20, 2026. They are organized to follow the structure of the Regulatory Impact Analysis Statement and proposed regulatory text as published, so that each comment may be read against the section to which it relates. Where we have no comment on a section, we indicate this. The CBA Section is also providing comments on the corresponding draft amendments to the *Immigration and Refugee Protection Regulations*.

<u>Comment on General Comment:</u>

N/A

<u>Comment on Executive Summary:</u>

The Canadian Bar Association (CBA) welcomes the opportunity to comment on the proposed amendments to the *Refugee Protection Division Rules* (*Rules*) published in the Canada Gazette on June 20, 2026.

We recognize and support the need to align the *Rules* with the legislative changes to the *Immigration and Refugee Protection Act* pursuant to the *Strengthening Canada's Immigration System and Borders Act*, as well as with the objectives identified in the Executive Summary of providing clear and transparent procedural requirements, improving case management, reducing postponements, and supporting more timely and efficient proceedings. However, as set out in our enclosed comments, we note that several of the proposed changes shift procedural burdens onto claimants without corresponding safeguards, as well as creating additional administrative and case burdens on the Refugee Protection Division (RPD) itself, both of which will negatively impact on the objective of timely and efficient refugee proceedings.

Our most significant concerns, outlined in greater detail below, are:

(1) the 30-day post-referral deadline for personal document disclosure neither reflects a realistic time to gather corroborating evidence nor responds to the requirement to provide up-to-date supporting evidence to establish the continuing and changing risk faced by claimants at the time of the hearing, and as such, should be extended with a secondary disclosure deadline tied to the hearing date if the RPD retains a shorter primary deadline. The deadline, as currently set in the *Rules*, will create inefficiencies for the RPD as it will lead to either numerous post-30-day late disclosure applications or disclosure of all additional evidence at the date of hearing;

(2) the new pre-referral abandonment regime should preserve access to oral hearings where a claimant's account, credibility, or capacity is in dispute, given the stakes involved;

(3) shifting the IRB's independent authority to grant extensions to the Minister removes an important independent check at an early, critical stage of the claim; and

(4) the removal of the requirement to accommodate a person's vulnerability as part of the assessment of "exceptional circumstances" in Rules 10(5) and 54(4) is contrary to the Immigration and Refugee Board's own *Chairperson's Guideline 8: Accessibility to IRB Proceedings — Procedural Accommodations and Substantive Considerations*, and risks reducing access to justice for such persons, as well as compromising the fairness of the proceedings.

Comment on Issues section:

The CBA supports the stated objective of improving the efficiency and integrity of the asylum system, including earlier disclosure of information and documents and the elimination of outdated communication methods. We also recognize the significant caseload pressures facing the RPD.

However, as enclosed in our comments, several of the specific mechanisms chosen to achieve this objective, in particular the 30-day post-referral disclosure deadline, the discretionary written-submissions procedure for pre-referral abandonment, and the shift of extension authority from the RPD to the Minister, do not adequately account for the practical barriers claimants face in gathering evidence and complying with early deadlines, and risk undermining procedural fairness in the pursuit of efficiency. Our recommendations, as enclosed in our comments, aim to balance procedural fairness with improvements in the efficiency and integrity of the asylum system as implemented by the RPD.

Comment on Background section:

The CBA acknowledges that the RPD has, in recent years, faced heavy caseload pressures due to increasing numbers of refugee claims, and that it has taken significant operational measures to both increase its capacity to issue decisions and make its processes more efficient. The CBA does not take issue with this description of the operational context or the legislative need to amend the *Rules* in light of amendments to the *IRPA*.

The Background outlines various changes to the refugee application process as established in the draft amendments to the *Immigration and Refugee Protection Regulations* (*Regulations*). The CBA is also providing comments on the draft *Regulations*, in which our concerns regarding many of these changes are addressed, including the transfer of the Basis of Claim (BOC) from the RPD to the Minister. In respect of this transfer, we note that while the draft *Rules* provide a Schedule 1 in which the content of the Basis of Claim information is outlined, there is no corresponding proposed Schedule 1 or definition of the enclosed material in the draft *Regulations*. This will create confusion and the application of different standards regarding what constitutes a "complete" BOC, as the RPD has no jurisdiction to determine the completeness of the BOC before referral to the RPD. The definition in *Rules* Schedule 1 applies only post-referral of the claim, and the *Regulations* have no definition of what a BOC should include pre-referral. This also calls into question the soundness of the newly proposed pre-referral abandonment proceeding, as it is predicated on a Ministerial determination that the claimant has failed to provide the required documents, including the BOC. Yet it is the RPD that will make the final determination on whether the claim should be declared abandoned for failure to provide documents.

The Background also outlines the transfer to the Minister of the previous RPD authority to grant extensions of time for filing the BOC amendments, in line with the changes to the *IRPA*. The CBA remains concerned that shifting the authority over extension requests from the IRB to the Minister removes an important independent check at a critical, early stage of the claim. The RPD, as an independent tribunal, is better positioned than the Minister to weigh extension requests against a claimant's individual circumstances. Since a failure to meet the application deadline (absent a granted extension) triggers the new pre-referral abandonment process and determination by the RPD under Rule 65.1, it would be appropriate that the same independent decision-maker responsible for the abandonment determination also decide whether an extension should have been granted beforehand, rather than splitting the decision-making with the Minister. We also note that this is consistent with the RPD defining the content of BOC information in its *Rules*, which is absent from the new draft *Regulations*.

Although the CBA supports modernization of the RPD's operations, we disagree with the suggestion to eliminate fax as a means of communication for all claimants. For self-represented claimants who are in detention, fax is often the only means by which to communicate with the Board. We recommend that fax be retained as a result for claimants in detention.

It is also of concern that the Background section frames the current 10-day-from-hearing-date disclosure timeline as a source of delay and postponements without equally acknowledging the evidentiary barriers and requirements for current and up-to-date evidence that lead claimants to disclose evidence closer to the hearing date. It also fails to acknowledge that claimants often leave their country in a hurry without all the necessary documentation to substantiate their risk, and, as such, significant time is required to obtain the necessary documents from their home country safely. This may be due to a lack of persons in the country of origin who can safely obtain the documents or, once the documents have been obtained, delivery to Canada becomes a source of delay, for example, where the agent of persecution is the country of nationality itself, sending documents may be delayed until they can be smuggled out via a person due to safety concerns in sending documents by other means. Once the documents are obtained, they need to arrange translation; this can be delayed if they are also required to secure legal aid funding for both counsel and translation, noting that the 30 days begin from referral to the RPD. We also note that the RPD requires up-to-date documentation to prove that the individual meets the refugee definition; the RPD assesses at the time of the hearing, not at the time of referral. These time points are likely to have a significant period in between, given the RPD's current time of 18 to 22 months to the hearing date (per the times provided at the June 2026 RPD Central consultation meeting). As enclosed in our comments, simply shortening the timeline without addressing those underlying barriers risks shifting the delay to a later stage of the process (through late-filing applications) rather than eliminating it.

<u>Comment on Objective section:</u>

The CBA supports the IRB’s stated objective and agrees that a more efficient, digitally-enabled tribunal benefits claimants as well as the system as a whole.

However, we are concerned that several of the specific mechanisms chosen to advance this objective, in particular the 30-day personal document disclosure deadline and the discretionary approach to oral hearings in pre-referral abandonment proceedings, do not, as currently drafted, achieve the stated balance between efficiency and fairness. We request the RPD consider our detailed proposals in those sections to ensure the *Rules* give full effect to both stated goals.

Comment on Description:

The CBA does not take issue with this description of the proposed changes as summarized.

As enclosed in our comments, we have specific concerns with several of these elements as drafted, including the 30-day personal document disclosure deadline, the discretionary approach to oral hearings in pre-referral abandonment proceedings, the removal of RPD authority over extension requests, and the absence of a fax-based alternative for detained claimants. We request that our detailed proposals on these issues be considered.

Comment on Regulatory Development section:

The CBA participated in the IRB's written consultation on the *RPD* and *RAD Rules* launched on June 25, 2025. In our previous submissions, we raised concerns about the elimination of fax without adequate safeguards for self-represented and detained claimants, and about the feasibility of earlier disclosure of evidence given the realities of gathering corroborating evidence. We appreciate the IRB's summary of this feedback and its stated commitment to balancing efficiency with procedural fairness.

As enclosed in our comments, we do not consider the Response provided in this section, particularly regarding the 30-day disclosure deadline and the continued unavailability of fax for detained claimants, to address the concerns raised during that consultation fully. We recommend revisiting these specific points in light of our detailed comments.

Comment on Regulatory Analysis section:

The Regulatory Analysis section concludes that the proposed Amendments are expected to have limited cost impacts on claimants, and that any costs associated with the earlier disclosure deadline would be offset by benefits such as improved triage and fewer postponements. We agree that improved triage and fewer postponements would benefit claimants if these outcomes are in fact achieved. As enclosed in our comments regarding the 30-day disclosure deadline, we do not consider that the cost analysis adequately accounts for the increased translation costs claimants may incur in obtaining a first letter to meet the 30-day deadline and a second, updated letter closer to the hearing, nor the strain this may place on legal aid-funded files where translation funding is limited. Further, the increase in late-evidence applications will result in higher legal fees for claimants paying their representatives privately and a greater strain on legal aid-funded files. We also do not consider that the analysis fully accounts for the administrative costs to the RPD of an anticipated increase in late-filing applications, which we discuss in greater detail in our enclosed comments. We recommend a revisiting of this analysis in light of our enclosed comments.

Comment on implementation, compliance and enforcement, and service standards section:

We support the IRB's commitment to training and updated guidance. We recommend that this training explicitly address how "exceptional circumstances" under new Rules 10(5) and 54(4) should be applied in light of *Guideline 8*, given our concerns set out in our comments regarding the removal of the defined term "vulnerable person." We further recommend that the IRB's performance indicators and public reporting track the volume of late-filing applications and pre-referral abandonment proceedings following implementation, so that the practical impact of the new disclosure deadline and abandonment process on claimants and on the IRB's own efficiency objectives can be assessed and, if necessary, addressed.

Comment on Proposed Regulatory Text section:

Our specific comments on individual provisions as enclosed in our comments under the Amendments and Basis of Claim Information and Documents headings, and we recommend the IRB consider those comments in finalizing the regulatory text.

Rules amending the Refugee Protection Division Rules:

Comment on Amendments section

CBA understands that the defined term "vulnerable person" in Rule 1, 7(5) and 54(4) has been removed in light of changes to the IRB Chairperson's *Guideline 8*. *Guideline 8* was amended in recognition that the previously applied "vulnerable person" definition was a high threshold and did not reflect the reality of the diversity of individuals with vulnerabilities, disabilities, or personal characteristics that must be accommodated to ensure fairness in the refugee proceedings. However, CBA is concerned that this definition has been removed in its entirety without being replaced with terminology that is compliant with *Guideline 8*. The effect of this removal without replacement impacts on the interpretation of subsequent *Rules*, namely to remove any consideration of a claimant's vulnerability, disability or personal characteristics in consideration of what constitutes "exceptional circumstances" in application of *Rules* 7(5) (previously *Rule* 10(5)) and 54(4).

We recommend adding definitions of vulnerability and disability to Rule 1, adopting the definitions provided in *Guideline 8*. Section 9.3 of *Guideline 8* sets out the following definition:

> "disability, vulnerability or personal characteristics, whether identified in the *Canadian Human Rights Act* (*CHRA*) or not. This may include but is not limited to:
>
> - disability including physical, cognitive, or sensory differences, mental illness, or alcohol or substance use disorders,
> - neurodiversity,
> - low literacy,
> - age, such as minors and the elderly,
> - sexual orientation, gender identity and expression, and sex characteristics,
> - past or continuing trauma including survivors of torture, genocide and crimes against humanity, and gender-related violence."

Comment on Basis of Claim Information and Documents section:

Amendment of Abandonment Rules to Include Pre-referral Abandonment (New Rule 65.1)

We are concerned that the choice between proceeding by written submissions and an oral hearing under new *Rule 65.1* is left entirely to the IRB's discretion, with no criteria specified in the proposed *Rules*. Given the stakes involved, a finding of abandonment forecloses a claimant's access to a refugee hearing entirely, we recommend that the *Rules* mandate an oral hearing wherever the claimant disputes the Minister's account of non-compliance, or wherever the claimant's explanation raises credibility or capacity issues that cannot fairly be resolved based on written submissions alone.

Written submissions also presuppose that a claimant has retained counsel and can adequately articulate their position in writing; this is a significant barrier where a claimant does not have English or French fluency, or where vulnerability, mental health, or capacity concerns are present. An oral hearing allows the RPD to ask self-represented claimants questions directly, ensuring that relevant information is properly elicited rather than assuming a level of legal knowledge and language fluency that many claimants, particularly the most vulnerable, will not have. This approach is necessary to meet procedural fairness requirements given that the abandonment process, if a claim is found abandoned, forecloses access to a hearing that is otherwise a constitutionally protected element of Canada's refugee determination system.

We are also concerned about the requirement for a medical certificate under *Rule 65.1(7)* as part of the provisions regarding the opportunity to make representations at their abandonment hearing. Obtaining a medical certificate typically requires payment to the practitioner, and this cost is not covered under the *Interim Federal Health Program*. Requiring a paid medical certificate to establish a medical reason for non-compliance imposes an unnecessary financial burden on claimants already in a precarious position. We recommend the *Rule* remove this requirement and/or permit claimants to provide alternate documentation, such as a printout of medical records documenting relevant visits or a hospital bracelet, instead of a paid medical certificate.

Evidence Disclosure Deadlines (Rule 34(3) and (4))

We have significant concerns with the new 30-day deadline for personal document disclosure. This deadline fails to account for the realities that make early disclosure difficult for many claimants: it takes time after arrival for claimants to connect with community supports or interpreters, which is often a necessary precursor to connecting with counsel; claimants frequently lack access to funds for translation or expert reports and must secure funding from provincial legal aid bodies or other sources, which itself takes time; claimants may be unable to safely request sensitive documentation, such as evidence of sexual orientation or gender identity, gender-based violence, or persecution based on religious activity, from contacts in their country of origin within a matter of weeks, particularly where obtaining or transmitting such documents electronically could place the sender at risk and the safest method is to have a document carried privately by a person travelling to Canada; and claimants may be detained during this period.

There are also significant cost implications to claimants: rather than a single letter obtained closer to the hearing, claimants may need to obtain one letter to meet the 30-day deadline and a second, updated letter closer to the hearing to capture new developments, substantially increasing translation costs. For legal aid-funded files, claimants may be unable to obtain translations of more recent evidence if they have already exhausted the number of words that legal aid organizations will fund.

The existing late-filing application process is not an adequate substitute for a workable primary deadline. It shifts the burden onto already overextended claimants and counsel to justify delay after the fact, rather than building a realistic timeline into the *Rules* themselves. In practice, a claimant would submit the documents in their possession by the 30-day deadline. Then, for each document that arrives later, counsel would either need to bring a separate late-filing application per document, submitted as soon as possible to increase the likelihood of admission, or wait for an accumulation of documents to file one late disclosure application as close as possible to the hearing date, noting the removal of the 10-day deadline before the hearing. This will result in a significant increase in late-filing applications for the IRB to manage and a likely increase in the volume of disclosure filed close to or on the hearing date. This front-loading does not serve the IRB's own triage or efficiency objectives if its practical effect is to generate a wave of late-filing applications, both from claimants who made good-faith efforts to meet the 30-day deadline and could not, and from claimants who obtain significant new evidence over the roughly 18 to 22-month average wait for a hearing. Greater reliance on late-filing applications also increases the risk of inconsistent application across the Division depending on individual member discretion.

We also recommend the *Rules* clarify what evidence is expected to be kept current for accuracy purposes following referral, for example, evidence of new events beyond general country conditions, updated psychological evidence arising from ongoing engagement with mental health professionals in Canada (which itself takes time to establish), and evidence supporting *Guideline 8* accommodation requests, which must reflect what is required at the hearing itself for the claimant to be able to give testimony.

Given the length of current hearing wait times, the difficulty in obtaining corroborating evidence from a claimant's country of origin, and the fact that a claimant cannot know at the outset when their hearing will occur, we recommend that if the IRB must implement a deadline tied to referral, it be extended from the current 30 days to 90 days. We note that at the IAD, where appellants are permanent residents or citizens rather than vulnerable newcomers, and where hearings are scheduled within a few months, there is a 60-day disclosure deadline following receipt of the Appeal Record. A shorter, or even equivalent, period is not appropriate for refugee claimants facing the additional barriers described above, whose hearings will not be scheduled for years.

If the IRB nonetheless retains a 30-day post-referral deadline, we recommend that a second disclosure deadline closer to the hearing (for example, 30 days before the hearing) also be built into the Rules, to allow for orderly, consolidated disclosure of any additional evidence and to avoid the piecemeal, file-by-file late-disclosure applications that would otherwise result and create additional work for claimants, counsel, and the RPD alike. This would also address concerns about the increased volume of late disclosures filed within a few days of the hearing.

Changes or Additions to Basis of Claim Information (New Rule 7)

The new requirement under *Rule 7(1)(a)* to provide "a description of how the new information differs from the information originally provided" is unduly onerous and unwieldy for both claimants and the RPD, particularly where the change is minor, such as a correction to a date. What constitutes a sufficient "description" is undefined and lacking clarity, for example, whether an explanation of the reason for the provision of differing information is required as part of the description or characteristics of the change. This creates an unwieldy and unclear version of the BOC information for the RPD to navigate, as it will not readily identify the change within the text.

In contrast, the current *RPD Rules* require a claimant to "sign and date each new page and underline the changes or additions made," rather than requiring a separate narrative description. As such, under the current *Rule 9(1)(b)*, a claimant need only underline the corrected date (for example, the text would read "July 15" in the actual BOC text to show a change). In contrast, under the new draft *Rule 7(1)(a)*, a claimant would not be underlining the change in the text, but rather describe the change, i.e., "the differing text is a change of date from June 15 to July 15 because the claimant clarified the timeline with a family member". This is an unnecessary additional burden that does not improve the reliability or clarity of the record.

The CBA recommends the replacement of draft *Rule 7(1)(a)* with the wording of the current *Rule 9(1)(b)* as a more efficient and clear mechanism for amendments to the BOC information. The CBA proposes the following wording such that Rule 7(1)(a) would read as "a copy of the BOC information in which changes and additions are underlined, with a signature and date beside the amendments."

Order of Questioning, Postponement Applications, and Removal of "Vulnerable Person" (Rules 10(5), 53(4), 54(4))

We are concerned that new *Rules 10(5), 53(4)* and *54(4)*, when read together with the removal of the defined term "vulnerable person" in *Rule 1*, will be interpreted to exclude vulnerability from consideration as part of "exceptional circumstances." This is contrary to the IRB *Guideline 8*, itself created to be consistent with human rights requirements for accommodation of persons with disabilities, vulnerability and/or personal characteristics that require accommodation to ensure fairness in legal proceedings.

Principles of interpretation require that terms such as "exceptional circumstances" be interpreted by analogy to, or consistently with, other uses of that term throughout the *Rules*. "Exceptional circumstances" are required to allow reverse order questioning (draft *Rule 10(5)*) or a change in the date and time of a hearing (draft *Rule 54(4)*). As the new draft *Rule 54(4)* provides the only example of "exceptional circumstances" as "an emergency or another development outside the party's control and the party has acted diligently" and the new draft Rules as a whole have explicitly removed any reference to "vulnerable persons", then both of these Rules could properly be interpreted to exclude consideration of vulnerability of claimants explicitly. If this is not the RPD's intention, and the underlying purpose is instead to align the *Rules* with the IRB's own *Guideline 8* — which is focused on procedural accommodations and substantive considerations — we recommend these *Rules* be amended to expressly reference "disability, vulnerability or personal characteristics," consistent with the purpose set out in *Guideline 8*, section 1.1.

We propose the following wording:

- Rule 10(5) (Variation of order of questioning): "The Division must not vary the order of questioning unless there are exceptional circumstances, including that the variation is required to accommodate a person's disability, vulnerability and/or personal characteristics."
- Rule 54(4) (Exceptional circumstances): "The Division must not allow the application unless there are exceptional circumstances, such as (a) the change is required to accommodate a person's disability, vulnerability and/or personal characteristics; or (b) an emergency or other development outside the party's control and the party has acted diligently."

Method of Communication — Fax Eliminated (Rule 39)

The amended Rules do not include any exception or alternative arrangement for detained individuals, who may have limited or no reliable access to mail, courier services, or the My Case Portal from within a detention facility. We recommend the IRB retain fax, specifically for the detained population.

Comment on Transitional Provisions section:

N/A

Comment on Coming into Force section:

N/A

Comment on Confidential Business Information section:

N/A

The CBA Section appreciates the opportunity to comment on the proposed amendments and would welcome the opportunity to discuss these comments further with the IRB. We remain available for further consultation as the *Rules* are finalized.

Yours truly,

(original letter signed by Noel Corriveau for Jatin Shory)

Jatin Shory
Chair, Immigration Law Section