CANADIAN BAR ASSOCIATION
ASSOCIATION DU BARREAU CANADIEN

July 20, 2026

Via email: IRCC.AsylumReformRegs-Reformedasileregs.IRCC@cic.gc.ca

Jason Hollmann
Director General, Asylum Branch
Immigration, Refugees and Citizenship Canada
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Mr. Hollmann,

Re: Regulations Amending the Immigration and Refugee Protection Regulations (Asylum System Reform), *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 *Regulations Amending the Immigration and Refugee Protection Regulations (Asylum System Reform)* published in the *Canada Gazette*, Part I on June 20, 2026, and 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 *Rules Amending the Refugee Protection Division Rules*.

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

N/A

<u>Comment on Executive Summary, Issues, Background and Objective sections:</u>

The Canadian Bar Association (CBA) welcomes the opportunity to comment on the proposed *Regulations Amending the Immigration and Refugee Protection Regulations (Asylum System Reform)* (referred to hereafter as the *Regulations*) published in the Canada Gazette on June 20, 2026.

We recognize and support the need to align the *Regulations* 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 addressing system-wide bottlenecks by streamlining the claim process in support of quicker access to the asylum system, enhanced program integrity, and faster processing of asylum claims.

However, as set out below, we note that several of the amendments are contrary to these objectives by introducing delay, ambiguity, and removal of procedural safeguards such as timely access to a designated representative.

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

(1) While the creation of a designated representative regime for non-Immigration and Refugee Board (IRB) matters is welcome, there are significant concerns as to the additional substitute decision-making power granted to these non-IRB designated representatives, particularly in the absence of an independent oversight body or specialized knowledge or training requirements or a requirement that they act in the best interests of the individual to be appointed;

(2) Also of concern is the absence of the ability to appoint designated representatives in either section 44 of the *IRPA* proceedings or in the pre-RPD referral refugee claim period, leaving vulnerable claimants without needed support and accommodation;

(3) The limited time period (60 days with one permitted extension of 30 days) to provide documents including the Basis of Claim Information form is not realistic or reasonable in light of the lived experiences and vulnerability of many refugee claimants;

(4) The length of the Minister's Due Diligence process is unfair to the claimants. It has the potential to leave them in indefinite limbo as all time limits have been removed pending a determination of "operational limitations". The lack of an ability to review this determination or an external time limit is in direct opposition to the stated objective of creating a more efficient refugee process with faster decisions;

(5) The ambiguity in the Reinstatement provisions leaves vulnerable claimants without clarity on what is required to reinstate their refugee claim.

Comment on Regulatory Development section:

With respect to indigenous engagement, it was indicated that as the Amendments are not tied to a specific geographic location, this initiative does not include aspects that could intersect with any modern treaties. However, we encourage that even if modern treaties aren't directly engaged, indigenous peoples are present throughout the asylum and immigration system. Analysis should be broadened beyond treaty and land rights to consider indirect impacts and opportunities for Indigenous involvement in asylum-related services, especially at the community level, and to include Indigenous perspectives in general stakeholder engagement on asylum reform, even if no modern-treaty obligations are formally triggered. It may be useful to consider how asylum procedures intersect with broader issues of colonialism, including residential schools or how removal practices play out on or near Indigenous territories.

Comment on Regulatory Analysis Section:

N/A

Comment on Implementation, compliance and enforcement, and service standards:

N/A

Comment for Proposed Regulatory Text Section:

N/A

Regulations Amending the Immigration and Refugee Protection Regulations (Asylum System Reform): Comment for the Amendments section:

Creation of a non-IRB Designated Representative regime (Division 7):

The CBA is encouraged by the creation of a Designated Representative regime for immigration matters outside of the Immigration and Refugee Board (IRB), as this will enable the voices of the most vulnerable, such as children and those impacted by significant mental health and trauma, to be heard, to enable their participation in immigration proceedings to ensure that their rights are respected. However, we have concerns about the implementation of this framework and the lack of procedural safeguards to ensure that rights are not taken away from the most vulnerable individuals through substitute-decision-making authority seemingly granted to Designated Representatives in these draft *Regulations*.

In respect of draft R13.4(1): we agree that a designated representative should be appointed in the circumstances of a pre-removal risk assessment and removal proceedings. However, we recommend that in addition, the *Regulations* include provision for the appointment of a designated representative in two additional circumstances: 1 — inadmissibility proceedings pursuant to section 44 of the *IRPA*, and 2 — during the pre-referral period of a refugee claim to the Refugee Protection Division (RPD). The latter incorporates the period of time after a refugee claim has been determined eligible but not yet referred and during which the individual is required to provide their Basis of Claim information, and the Minister's Due Diligence (MDD) occurs (pursuant to draft *Regulations* 159(1) and 159.8).

The appointment of a designated representative for a minor under 18 or a person unable to appreciate the nature of proceedings is required in both s.44 proceedings and the pre-referral refugee claim period. This is so, as both require the individual to engage in legal processes, collect and provide documents, such as BOC information, to the Minister, obtain legal counsel, and make legal decisions. The draft *R13.6* recognizes that these comprise part of the role of a designated representative. Leaving such vulnerable persons without the possibility of appointing a designated representative in these processes compromises the fairness of the proceedings for them. We also note that in respect of the pre-referral refugee claim period, under the current refugee regime, determination of eligibility of a refugee claim would mandate referral to the RPD, at which point a designated representative would be appointed early in the asylum process; this has changed in the revised process as the pre-referral refugee claim period may last for over a year, during which a minor or person unable to appreciate the nature of legal proceedings will be left to navigate a significant legal process on their own.

With respect to draft Regulations 13.4(2): we are concerned by the wording regarding appointment of a designated representative for minors at *R13.4(2)(a)*, in particular that there be a requirement that they are “not accompanied by a parent or an adult who is legally responsible for them”. We note that this is different than the wording applied to the appointment of designated representatives for minors in IRB proceedings, which only requires that the “person who is the subject of proceedings is under 18 years of age” (*IRPA* s.167(2)). The changed wording is significant in impact — not only will the designated representative regime apply to different groups of refugee claimant minors depending on whether they are in front of the RPD or have been diverted to a PRRA, but it also has the impact of reducing procedural protections for minors whose interests are different from their parents. For example, a minor who fears persecution due to sexual or gender orientation, including from their parents, will be placed in the untenable situation that they are unable to access an independent designated representative as their parents accompany them. Similarly, where there are conflicts of interest due to matters of child abuse or allegations of child abduction, a minor in such situations will not be appointed an independent designated representative as is consistent with procedural fairness due to the revised wording for the appointment of a designated representative per draft *Regulation 13.4(2)(a)*.

We recommend that the wording of R13.4(2) be brought into line with the wording of the appointment of designated representatives for minors before the IRB, such that it reads as follows: (a) is under 18 years of age; or

The CBA remains concerned that the determination of whether a Designated Representative is required for an individual who is unable to appreciate the nature of the proceedings is made by the Minister, rather than by an independent decision-maker such as the Immigration and Refugee Board (IRB). The Designated Representative designation directly affects an individual's ability to participate meaningfully in their own case. Placing this determination solely with the Minister, in the absence of an independent oversight body, creates a potential conflict of interest. The IRB is an independent decision-maker with a well-established system for the appointment, training, and oversight of the Designated Representative, as well as a Complaints mechanism.

We recommend as such that determinations pursuant to R13.4(2)(b) be reviewable by the IRB or an independent decision-maker. We propose the following wording: (b) has attained the age of 18 years but is unable to appreciate the nature of the proceeding or application, as determined by the Minister, the determination of which is reviewable by the Immigration and Refugee Board."

<u>With respect to draft Regulations 13.5</u>: The CBA recommends that as part of the requirements for potential designated representatives, an additional term be added, namely that they be required to act in the best interests of the person. We note that this is part of the requirements that must be considered by the IRB when determining if a person can act as a designated representative for an individual as laid out in the IRB's Designated Representative Guide[1] and current *RPD Rule* 20(4). Although this is incorporated into a Designated Representative's responsibilities per draft *R13.6*, it should also be part of the initial appointment determination, as a separate consideration from whether the person is in a conflict of interest. If the proposed designated representative is unable to act in the best interests of the individual, they should not be appointed at all, rather than requiring the affected individual to subsequently challenge the Designated Representative's appointment on the basis that they are not fulfilling their responsibilities to act in the individual's best interests.

We recommend the addition of the following wording: (d) that the person be willing and able to act in the best interests of the person.

<u>With respect to draft Regulation 13.6(1)</u>, the CBA recommends adding a responsibility requiring the designated representative to "identify and achieve the views and preferences of the represented person to the extent possible." This should inform the actions of the designated representative throughout their appointment, similar to provisions in provincial family law legislation where the child's views and preferences are a core consideration in decision-making.

<u>With respect to draft Regulations 13.6(3):</u> The CBA has significant concerns as to the substitute decision-making power granted to a designated representative pursuant to R13.6(3) where a designated "representative determines that the represented person is not capable of making decisions respecting the proceeding or application …". This substitute decision-making is beyond that granted to designated representatives at the IRB. Although the provision indicates that the individual must be consulted "to the extent possible", sole decision-making over their immigration legal matters is placed in the hands of the designated representative, as they are required to "consult" only and not to take into account the individual's wishes or instructions. We also note with concern that, although this draft provision requires the designated representative to consult with the person's legal counsel or other adviser, if applicable, it does not require the designated representative to obtain legal counsel for the individual. The designated representative is neither a legal advisor nor is legal training a requirement or responsibility under the draft *Regulations 13.5* or *13.6*. As worded, this provision enables an untrained designated representative to make key legal decisions for the most vulnerable — minors

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[1] Designated representative guide, online.

under 18 and persons impacted by significant mental health or trauma — without any restrictions, oversight, or legal advice. Under this provision, an appointed designated representative may waive the right to file an application, such as a pre-removal risk assessment, even if the individual believes they are at risk. This is deeply concerning, as it clearly has the potential to strip an individual of core rights, including the right to pursue a risk assessment.

We are also concerned that the determination of an individual's capacity to make decisions in their legal proceedings or applications is placed solely in the hands of a designated representative. Medical training or specialized training in the determination of capacity is not a requirement or a responsibility of a designated representative pursuant to the draft *Regulations 13.5* and *13.6*. We note that in other fields such as medicine, where there are concerns as to the ability of a person to make decisions or consent to certain procedures, there are independent and expert decision-making bodies, such as the Ontario Consent and Capacity Board, to make the determination of capacity and ability to consent to each procedure or decision. This legislation prescribes no equivalent oversight body, and the designated representative lacks the authority to make such an important determination.

As such, we recommend removing this provision (R13.6(3)). We also recommend establishing an independent oversight body for the designated representative regime, with a mechanism to review their competence, actions, and decisions.

<u>With respect to draft Regulation 13.8(1)</u>, the CBA recommends removing the requirement that a designated representative be de-designated for a minor under 18 years "when the person is accompanied by a parent or an adult who is legally responsible for them". As noted above, this fails to consider the situation of minors who have different interests, conflicts of interest, or different risk profiles than their parents and has the unintended effect of leading to unfair proceedings for those minors. We recommend the following wording:

> 13.8 (1) A designation made under subsection 6.1(1) of the Act in respect of a person referred to in paragraph 13.4(2)(a) ends when the person attains the age of 18 years, unless the Minister determines that the person is unable to appreciate the nature of the proceeding or application, or <u>upon application for termination of the designation by the person concerned and their appointed designated representative</u>, when the person is accompanied by a parent or an adult who is legally responsible for them.

<u>With respect to draft Regulation 159(1)(2):</u> As noted above, during consultation with various organizations, concerns were raised as to the lack of a time limit for the Minister's Due Diligence (MDD) process. In response, the draft *Regulation 159(1)* limits this period to 365 days after the date the Minister receives the requested documents, including identity and Basis of Claim information (itself 60 days after the determination of eligibility). Although the CBA appreciates the incorporation of a time limit, one year is an extremely long time for individuals to be left in limbo, unsure whether they will have access to the refugee determination process. This time limit is further undermined by draft *Regulation 159(2)*, which removes all time limits from the Minister. This provision does not define what is meant by or included in the analysis of "operational limitations" or "as soon as is feasible", or set an outside time limit after which the refugee claim must be referred to the RPD. *Regulation 159(1)* introduces an unfair situation for refugee claimants who have complied fully with every document and information requirement, introduces a lengthy delay in accessing a hearing at the RPD, is a delay completely and solely within the government's control, has no outside limit in practice, and provides claimants with no right to compel referral or review unreasonable delays. The CBA is concerned that this vagueness and lack of limitations has the potential to leave vulnerable claimants without recourse to move their claim to the RPD for an indefinite period of time. These provisions are also in direct opposition to the stated objective of creating a more efficient refugee process with faster decisions.

We therefore recommend that the 365 days in R159(1) be limited to a shorter period. We also recommend either the elimination of R159(2) as an "operational limit" exception or that a time limit be introduced into R159(2) such as 30 days to prevent an undetermined and indefinite limbo in the pre-referral refugee claim process. Should R159(1)(2) remain unchanged, we also recommend that an avenue for claimants to compel referral be added as R159(3).

We also reiterate our concern for claimants who otherwise would have been appointed a designated representative upon referral to the RPD, as they will be navigating this process without that assistance, hindering their ability to comply with any ministerial requests for documents or interviews as needed.

<u>With respect to draft Regulation 159.71</u>, we welcome the inclusion of a reinstatement process for claims the Minister has deemed withdrawn. However, we are concerned that the criteria for reinstatement are vague and leave broad discretion in the hands of the Minister. Claimants seeking reinstatement will already be in a precarious position, as their claim has been determined withdrawn, potentially due to a lack of legal representation, advice from bad actors such as ghost consultants, capacity issues, or a lack of a designated representative to assist in providing key documents such as the BOC information. As a result, they will likely also be unfamiliar with the reinstatement process or the need to submit the application promptly.

We recommend the inclusion of more clearly defined criteria for reinstatement in s.159.71(2), such as a non-exhaustive list of factors, including access to legal advice, capacity, the need for a designated representative, and whether the decision was fully informed or voluntary. We also recommend that the reinstatement determination be subject to review or transferred to the RPD, similar to the pre-referral abandonment process.

<u>With respect to draft Regulation 159.8</u>, the CBA is concerned that the one-time 30-day extension set out in draft *Regulation 159.8(2)* provides insufficient flexibility in light of the precarious and vulnerable situation of claimants who are newly arrived in the country. This provision caps the total time period for provision of core documents at 90 days, regardless of a claimant's individual circumstances. Section 159.8(3) anticipates additional extensions, but the use of the word "may" and the limiting factors of fairness and natural justice suggest that this extension will not be readily granted.

While 90 days may be enough for some claimants, there will also be very vulnerable claimants who have survived trauma, gender-based violence, or torture, who often require significantly more time to disclose sensitive information or to obtain some of the required documentation. Claimants with limited literacy, cognitive or psychological disabilities, or no fixed address will also face barriers. Similarly, claimants who have not yet retained counsel or secured a Legal Aid certificate within the initial 60-day period will face difficulty meeting this deadline. For these groups, a single 30-day extension is not sufficient.

We also reiterate our concern that there is no provision for the appointment of a designated representative for minors under 18 or for persons unable to appreciate the nature of the proceedings during this period, unlike at the RPD. A core responsibility of a designated representative is to assist the individual in the collection of documents and in the preparation of the Basis of Claim information; such claimants will be navigating this process without the needed assistance of a designated representative and will likely need additional time to complete these steps.

We recommend amending R159.8(3) to permit extensions beyond the initial 30 days in certain circumstances. Rather than being limited to the Minister's own initiative, this could also be on application by the claimant and contain a non-exhaustive list of factors to consider whether to grant the further extension, such as an ongoing medical or psychological condition, unresolved capacity concerns pending a designated representative appointment, demonstrated efforts to obtain documents from abroad, or the absence of retained counsel despite efforts to secure representation.

The CBA has also provided comments on the draft *RPD Rules*, in which we raised concerns regarding the transfer of the BOC from the RPD to the Minister. In respect of this transfer, we note that while the draft *RPD Rules* provide a Schedule 1 in which the content of the BOC information is outlined as defined and assessed by the RPD, there is no corresponding proposed Schedule 1 or definition of the BOC information in these draft *Regulations*. 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 is of concern as draft *Regulation 159.8(1)* identifies that the person "must provide the Minister, in the manner specified by the Minister, with the documents and information specified by the Minister and required by the rules of the Board…". It is the Minister, not the RPD, who will determine whether the "complete" BOC information has been provided. Yet, these draft *Regulations* do not provide such a definition for IRCC officers to apply, nor is the RPD determining whether the BOC information is complete per its own interpretation of its *Rules*.

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, 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 the BOC information in their *Rules*, and which is absent from the new draft *Regulations*.

With respect to draft Regulation 11 (repeal of 159.92 of the *Regulations*): The CBA opposes the removal of the time limit of 90 days for the Refugee Appeal Division to decide on appeal after perfection. We note that this does not meet the objective of timely decision-making or encourage integrity in the system, but rather leaves vulnerable individuals in limbo for longer.

Comment for the Coming in Force section:

N/A

Comment for the 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 IRCC. We remain available for further consultation as the *Regulations* are finalized.

Yours truly,

Jatin Shory
Chair, Immigration Law Section