



**PROPOSAL TO REDUCE THE IRB BACKLOG  
BRIEF TO MINISTER MARC MILLER  
BY CANADIAN IMMIGRATION LAWYERS ASSOCIATION (CILA) AND CANADIAN  
ASSOCIATION OF REFUGEE LAWYERS (CARL)  
DECEMBER 2024**

***Background***

As of September 2024, the IRB has [249,857 pending claims](#).<sup>1</sup> This level of pending claims is unsustainable and only likely to grow. Measures to clear this backlog must be taken immediately to prevent spill-over effects on other processes—including the already overburdened Federal Court—and to protect the integrity of the refugee determination system and to avoid the impact of delayed processing for refugee claimants. CILA and CARL propose a series of measures to address this issue.

Regardless of the measures that are adopted, Canada should streamline meritorious claims, but not fast track refusals. A backlog clearance policy must be firmly rooted in the reality of Canada’s acceptance rates and respect of procedural rights guaranteed in the Charter. The vast majority of refugee claims that are heard on their merits – 80% – are accepted, not refused.<sup>2</sup> As a result, a fast track refusal process runs the real danger of putting refugee claimants’ lives at risk.

In addition, introducing new ineligibility provisions for a class of claimants, such as former visa holders (of which there are likely tens of thousands) and those who entered from the U.S. irregularly, by redirecting these claimants into the enhanced Pre-Removal Risk Assessment (PRRA) will reroute, not resolve, the problem. There are four major concerns:

1. Wait times for PRRA hearings can be just as long as RPD hearings and therefore could become a pull factor.

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<sup>1</sup> Note that “pending claims” includes all claims referred on or after December 15, 2012, that have not been finalized. Immigration and Refugee Board of Canada, “Claims by Country of Alleged Persecution - 2024” online < <https://www.irb-cisr.gc.ca/en/statistics/protection/Pages/RPDStat2024.aspx>>.

<sup>2</sup> IRB, [Claims by Country of Alleged Persecution – 2023](#); Refugee Law Lab, “2023 Refugee Claim Data and IRB Member Recognition Rates”, note by Sean Rehaag, Director of the Refugee Law Laboratory, Director of the Centre for Refugee Studies, and Associate Professor at Osgoode Hall Law School, York University, online < <https://refugeelab.ca/refugee-claim-data-2023/>>.

2. A dramatic increase in the number of PRRA hearings would require a major overhaul of the existing PRRA system and drain resources from other IRCC programs.
3. PRRA hearings are not designed to deal with vulnerable claimants (e.g. unaccompanied minors, individuals with serious mental health issues, etc.).
4. Since PRRA determinations preclude access to the Refugee Appeal Division (RAD), this will likely drastically increase the number of cases at the already overwhelmed Federal Court.<sup>3</sup> These applicants would also need to seek a judicial stay at the Federal Court to avoid removal pending the judicial review.

Finally, CILA and CARL urge the Government to place high priority on ensuring that public discourse remains free from negative rhetoric concerning refugee claimants during this difficult moment, recognizing that the issue stems from the limited capacity within the refugee determination system to handle the global rise in refugees and not the lack of merit to refugee claims.

### **Recommendations**

CILA and CARL propose four measures, none of which requires legislative amendments, and which can be adopted without delay. Notably, to avoid “pull factors”, the measures could have lock-in and end dates. These measures can also operate in tandem.

#### **Proposal 1: Metered refugee class public policy based on country of origin**

The Minister has the authority to create a special refugee class under public policy under section 25.2 of the *Immigration and Refugee Protection Act* (IRPA). CILA and CARL propose a special refugee class that would offer refugee claimants a two-year permit, after which individuals would be eligible to apply for permanent residence upon meeting certain criteria. Alternatively, the public policy could lead directly to permanent residence.

A special class program based on country of origin is in keeping with past programs. Humanitarian asylum landing (PR) programs for nationals of certain countries were created in the 1980's. These applied to Vietnamese boat people, Poles & other self-exiles from Communist countries, Central Americans—El Salvador & Guatemala, Sri Lankans (Tamils), Lebanese Christians, Iranians (Bah'ai), and Afghans. Nationals from those countries were relieved from the technical requirements of the refugee definition, were given a Minister's Permit for two years and, if gainfully employed for this period and had no criminal convictions, were allowed to apply for permanent residence.<sup>4</sup>

CILA and CARL propose that the class include refugee claimants who:

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<sup>3</sup> 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>>.

<sup>4</sup> Dirks, Gerald, *Controversy and Complexity: Canadian Immigration Policy during the 1980s* 1995, McGill-Queen's University Press, chapter 6.

- either instituted their claims or were found eligible to be referred to the IRB as of a certain date;
- may be from countries or regions which are subject to an ADR or TSR: Currently an ADR is in place for certain regions in Somalia (Middle Shabelle, Afgoye, and Mogadishu), the Gaza Strip, Ukraine, Syria, Mali, the Central African Republic, South Sudan, Libya, Yemen, Burundi, Venezuela, Haiti, Iran, Sudan and Lebanon. A TSR is in place for Afghanistan, the Democratic Republic of Congo, and Iraq],<sup>5</sup> **OR** may be from a country that has a minimum 90% acceptance rate at the IRB <sup>6</sup>;
- have worked in Canada for a set number of hours with a valid work permit (note: this additional factor could be added or not depending on the desired scope of the program, since adding a work requirement would reduce the number of eligible applicants and eliminate more recent arrivals who otherwise meet the criteria);  
**and**
- are not inadmissible to Canada on account of security issues, war crimes, and serious or organized criminality as specified in sections 34, 35, 36(1) or 37 of the IRPA.

To get an idea of the numbers, approximately **52,000** claims from potentially included countries were referred to the IRB in 2023. At least the same number are expected to have been referred by the end of 2024. Additional criteria could also be added to the program to accommodate the numbers, as well as any special security or exclusion concerns that might arise.

**Proposal 2: General backlog clearance program under public policy**

In the alternative, or in addition, IRCC could establish a special program to clear all the claimants in the backlog (or at least all those not covered by other clearance programs). This would essentially be a “fast-tracking” system based on a *prima facie* approach as suggested by the UNHCR for emergency and non-emergency contexts.<sup>7</sup>

CILA and CARL propose that a specialized IRCC hearing unit review the merits and recommend approval based on the claimant establishing a *prima facie* case or a “credible basis”;

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<sup>5</sup> Canada Border Services Agency, “Removal from Canada”, online: <[www.cbsa-asfc.gc.ca/security-securite/rem-ren-eng.html](http://www.cbsa-asfc.gc.ca/security-securite/rem-ren-eng.html)>.

<sup>6</sup> Countries with 90-100% acceptance rates at the IRB in 2023: Albania, Azerbaijan, Barbados, Benin, Burkina Faso, Chad, Cameroon, Cote D’Ivoire, Cuba, Czech Republic, Dominican Rep, Egypt, Eritrea, Ethiopia, Gambia, Iran, Iraq, Mauritania, Myanmar, Nepal, Nicaragua, Saudi Arabia, Senegal, Slovakia, Sudan, Syria, Togo, Trinidad, Turkey, Uganda, Ukraine, Venezuela, Yemen, Zimbabwe. Some of these countries are already on the ADR/TSR list.

<sup>7</sup> See UNHCR

<https://emergency.unhcr.org/protection/legal-framework/prima-facie-approach-recognition-refugee-status>

Under this program, refugee protection would not be conferred, but successful claimants could apply for PR. Unsuccessful claimants would return to the regular IRB refugee stream for a full hearing on the merits.

A special class (PR) program based on the *prima facie* approach is in keeping with past programs. A special program was announced for 122,000 refugee claimants in the **backlog** as of December 31, 1988.<sup>8</sup> The backlog was cleared in three years. Claimants attended at a special backlog clearance office where they attended an “administrative review” hearing before an IRB member and an adjudicator where they were required to demonstrate that they had a “credible basis” for their claim.

As noted, this proposal has the potential to encompass all claims in inventory (250,000), and allow the IRB to start fresh as of the cut-off date; however, we acknowledge that processing this extremely large number of claims fairly would pose a very significant challenge. Nonetheless, this type of program might be a more efficient alternative to new ineligibility provisions that require a mandatory PRRA hearing and all that that entails (i.e longer hearing times, more Federal Court litigation, etc.).

### **Proposal 3: IRB expedited process based on country of origin and/or profile**

CILA and CARL propose that the Minister recommend to the IRB to re-institute the expedited process for claimants in inventory that are not included in other measures, and for future claims as well. The IRB developed an expedited process in the 1990’s that improved efficiency by removing a significant number of claims from the hearing room. The process involved an IRB officer interviewing a claimant for no more than 30 minutes and recommending to an IRB member whether the claim should be accepted. The vast majority of claims were approved without a hearing pursuant to section 170(f) of IRPA, once an IRB member was satisfied that an officer had vetted the claim.

We recommend that claimants:

- be selected based on either profile (domestic violence survivor, torture victim, LGBTQ etc.) or country of origin, or both, based on paper review;
- be interviewed by an IRB officer; and
- if endorsed, have their claim approved by a designated IRB member.

This would complement the IRB’s Less Complex Claims process for short hearings as well as the file-review process, and would capture many more claims.

### **Proposal 4 : Economic/sector-specific regularization program**

Minister Miller has indicated that a sector-specific regularization program for out-of-status persons in Canada remains on the table. CILA and CARL propose that such a program include refugee claimants who are in the backlog.

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<sup>8</sup> *Backlog Clearance Program: Program Overview*. Ottawa: Employment and Immigration Canada, 1989.

In 2020, IRCC successfully implemented a PR pathway for frontline health care workers in the refugee stream (“Guardian Angels”) based on having worked a minimum of 120 hours during the first peak of the COVID-19 pandemic between March and August 2020 in designated occupations including nurses, allied primary health practitioners, orderlies, and patient service associates.<sup>9</sup> As of September 2023, this program led to PR status for 9,060 individuals.<sup>10</sup>

A new regularization program can be based on sector-specific needs set by the Minister including healthcare, construction, and other essential work sectors (e.g. Energy and Utilities, Food, Water, Transportation, Manufacturing, etc.) Refugee claimants, like other applicants, would be subject to security and admissibility checks. This measure can lead to PR status or can be metered as in Proposal 1.

### **Immigration Levels**

Since proposals 1, 2 and 4 are IRCC pathways to PR status, the large numbers of backlog claimants may require the Minister to revise his stated immigration levels upwards—although the benefits of clearing the backlog should outweigh the negative effects of revising the levels. Proposal 3 (which occurs entirely within the IRB and confers refugee protection) would not require a revision of the levels nor would it impose additional burdens on Quebec applicants who would otherwise require a CSQ.

### **Conclusion**

The IRB hearing process is a tried-and-true method for ensuring that refugee claimants are provided with a fair hearing before their claims are refused. However, the above proposals can help clear the growing backlog while safeguarding procedural protections for applicants and maintaining the integrity of the immigration system.

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<sup>9</sup> Government of Canada, “Health care workers permanent residence pathway: About public policies”, online: < <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/healthcare-workers-permanent-residence.html>>.

<sup>10</sup> Government of Canada, “CIMM – Guardian Angels – November 07, 2023” online:< [5](https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/committees/cimm-nov-07-2023/guardian-angels.html#:~:text=Key%20Facts%20and%20Figures.%20As%20of%20September,permanent%20residence%20under%20the%20Guardian%20Angels%20program.>.</a></p></div><div data-bbox=)