

Updates to Canadian Refugee & Humanitarian Case Law

Recent case law, legislative change, and practice implication

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Roadmap

Six parts, thirty-six months of jurisprudence

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IFA, state protection, credibility

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The Big Picture

Doctrine is shifting inside a system running far past capacity

276,866

Refugee claims in the RPD backlog as of June 30, 2026— about 51 months of work at funded capacity

irb-cisr.gc.ca

~30,000

Refugee claims estimated to face termination under Bill C-12's new RPD eligibility bars

[Legal Aid Ontario](#)

1,100

Humanitarian & compassionate admissions planned for 2026 — a small and declining share of overall levels

[IRCC 2026–2028 Levels Plan](#)

10+

Processing times for humanitarian and compassionate permanent residence applications

PART 1

Standard of Review & Adjudicative Method

How courts are checking the IRB and IRCC's reasoning

PART 1 · STANDARD OF REVIEW

International Law as a Vavilov Constraint

Mason v. Canada (Citizenship and Immigration), 2023 SCC 21 — SCC, September 27, 2023

Only one reasonable interpretation of s. 34(1)(e) IRPA: inadmissibility for “acts of violence” requires a nexus to national security or the security of Canada. Both inadmissibility findings quashed.

Canada (PSEP) v. Weldemariam, 2024 FCA 69 & v. Yihdego, 2024 FCA 70 — FCA, April 2024

Espionage inadmissibility under s. 34(1)(a)/(f) also requires a nexus to Canada. Non-refoulement under the Refugee Convention is a binding legal constraint the decision-maker must engage with.

Ali v. Canada (Public Safety and Emergency Preparedness), 2025 FC 1682 — FC, 2025

Extends Mason and Weldemariam: a decision-maker must build a non-refoulement analysis into every s. 34 finding, and the onus falls on them even if counsel never raises it.

Takeaway. *International law obligations — especially non-refoulement — are now an affirmative Vavilov constraint. Plead them explicitly rather than assuming the tribunal will find them unprompted.*

PART 1 • STANDARD OF REVIEW

The Responsiveness Duty: Engaging the Record

Ruiz v. Canada (Citizenship and Immigration), 2026 FC 102 — FC, reported January 2026

RAD dismissed each risk factor individually instead of assessing the totality of circumstances. Quashed: ss. 96/97 require a holistic assessment, not a serial dismissal of isolated elements.

Kayanza v. Canada (Citizenship and Immigration), 2025 FC 1414 — FC, reported September 2025

Credibility findings unreasonable partly because the RAD relied on inconsistencies in counsel's memorandum — not the claimant's own evidence — to impugn credibility.

Omomia v. Canada (Citizenship and Immigration), 2025 FC 1441 — FC, reported August 2025

RAD's state-protection finding was “pure speculation”: it relied on new Irish domestic-violence legislation without evidence that enforcement had actually changed outcomes.

Takeaway. *Nearly every successful 2025–26 refugee judicial review turns on a failure to engage a central argument or contradictory evidence — not a competing legal interpretation.*

PART 2

Refugee Protection Determinations

Practice points, IFA, credibility

PART 2 • REFUGEE DETERMINATIONS

Practicalities

Bill C-12

Two new bars keep claims out of the RPD entirely:

- (1) claims made more than one year after first entry after June 24, 2020, regardless of departures and returns;
- (2) between-ports land-border claims made more than 14 days after entry.

C-12 Charter litigation – Practice Direction and Special Order August 20, 2026

“All current and future applications for leave and judicial review challenging the constitutionality of section 101(1)(b.1) and/or section 101(1)(b.2) of the IRPA (the “C-12 Applications”) are designated as specially managed proceedings.”

IRB My Case system

For assistance with My Case, contact the My Case help desk at 1-833-777-2433 from Monday to Friday between 8 am and 5 pm ET.

Submit a form

Click on  to sort a column. To view cases by group, go to the “Cases by Group” tab.  Appeal to the RAD
Notification of New Clients

Showing 1 to 10 of 18 entries

AI Practice note, September 2026

If you're counsel or a designated representative appearing before the RPD or the RAD, you're expected to use the Immigration and Refugee Board of Canada's (IRB) [My Case portal](#). It's the most efficient and secure way to send documents.

No other form of electronic delivery of documents is allowed without permission from the relevant division.

PART 2 · REFUGEE DETERMINATIONS

Internal Flight Alternative

Mina v. Canada (Citizenship and Immigration), 2025 FC 1909 — FC, reported December 2025

RAD wrongly required proof that relocation would put “life and safety in jeopardy” — importing prong one's persecution threshold into prong two and rendering it redundant.

Guzman v. Canada (Citizenship and Immigration), 2024 FC 433 — FC, reported March 2024

RAD must engage **updated** National Documentation Package evidence as the goal is to assess forward-looking risk.

Takeaway. *Prong two (“objectively reasonable”) cannot be inflated into a second persecution test — but claimants must still build the personal-circumstances record themselves.*

PART 2 • REFUGEE DETERMINATIONS

Credibility v. “Sufficiency” (Singh’s long reach)

Erler v. Canada (Citizenship and Immigration), 2025 FC 1779 — FC, reported November 2025

Unreasonable to fault a claimant for missing corroboration from family who did not witness the events, or for inability to recall exact dates of traumatic incidents.

Derdak v. Canada (Citizenship and Immigration), 2026 FC 919 — FC, reported July 2026

A PRRA “insufficient evidence” refusal was, in substance, a disguised credibility finding — “comprehensible only if the officer had doubts bearing directly on the applicant's credibility.” Required an oral hearing.

Benson v. Canada, 2026 FC 839 — FC, reported June 2026

Officer breached fairness by rejecting an account as “insufficient” while denying a hearing to respond; the “clean hands” doctrine is not a jurisdictional bar to judicial review.

Takeaway. Courts are increasingly unwilling to let “insufficient evidence” language substitute for an honest credibility finding — which would trigger the hearing rights that label was designed to avoid. The consequences of *Singh v. MEI*, [1985] 1 SCR 177 continue to reverberate.

PART 3

Exclusion, Inadmissibility & Cessation

Article 1F, security grounds, duress, and loss of status

PART 3 · EXCLUSION & INADMISSIBILITY

Exclusion & Inadmissibility

Shiraz v. Canada (Citizenship and Immigration), 2025 FC 1775 — FC, reported November 2025

Article 1F(b) exclusion for roughly CAD 2.9 million in alleged financial misappropriation upheld. Serious non-violent crime qualifies; the RPD is “neither required nor allowed” to balance the crime against risk on return. Standard: “serious reasons for considering,” below the balance of probabilities.

PART 3 • EXCLUSION & INADMISSIBILITY

Duress, Foreign Convictions & Non-Refoulement

Rodriguez Anzola v. Canada (Citizenship and Immigration), 2026 FCA 90 — FCA, May 11, 2026

Assessing s. 36(1)(b) equivalency, decision-makers must consider whether a defence like duress (here, FARC threats) was practically available abroad — not merely whether it was formally raised at the foreign trial.

Weldemariam, 2024 FCA 69 / Yihdego, 2024 FCA 70 — FCA, April 2024

Espionage inadmissibility under s. 34(1)(a)/(f) requires a nexus to Canada's own security interests; non-refoulement remains a binding legal constraint.

Takeaway. *The equivalency and inadmissibility framework is more individualized — coercion, foreign context, and Convention obligations must be considered.*

PART 3 · EXCLUSION & INADMISSIBILITY

Cessation & Vacation of Status

Slepcsik v. Canada (Citizenship and Immigration), 2025 FC 1840 — FC, November 19, 2025

ss. 40.1 / 46(1)(c.1) IRPA held constitutionally valid — automatic loss of PR on cessation does not breach ss. 7, 12, or 15. Passport evidence triggers a presumption of reavilment. Two questions certified; **now headed to the FCA.**

Falakdehi v. Canada (Citizenship and Immigration), 2025 FC 1220 — FC, reported July 2025

Cessation set aside — the RPD wrongly asked what the claimant “should have known” about the consequences of reavailing, rather than what she actually knew.

Takeaway. *Reavilment litigation now turns on actual, not imputed, knowledge of re-avilment implications.*

PART 4

PRRA, Systemic Litigation

PRRA practicalities, evidentiary issues, STCA

PART 4 · PRRA & SYSTEMIC LITIGATION

PRRA practicalities

No PRRA without CBSA invitation

Initiate ePost Connect account – EARLY

Allow 5 business days, with 15-day deadline

Send application early, update as needed

Can continue to send updates throughout processing

Takeaway. *Don't stress about how to submit – initiate the ePost Connect account as task #1.*

PART 4 · PRRA & SYSTEMIC LITIGATION

PRRA review

Benson v. Canada, 2026 FC 839 — FC, reported June 2026

PRRA refusal for “insufficient detail” without a hearing breached fairness — a disguised credibility finding requires a hearing under s. 113(b).

Derdak v. Canada (Citizenship and Immigration), 2026 FC 919 — FC, reported July 2026

Same principle: sufficiency framing was “comprehensible only if the officer had doubts... bearing directly on the applicant's credibility.”

Padilla Munoz v. Canada (Citizenship and Immigration), 2026 FC 910 — FC, reported July 2026

Set aside for relying on an internal flight alternative without giving the applicant notice — importing the RAD “new issue” line into PRRA.

Takeaway. *Keep pushing for participation (hearing) rights.*

Systemic Litigation: Safe Third Country & Detention

Canadian Council for Refugees v. Canada (Citizenship and Immigration), 2023 SCC 17 — SCC, June 16, 2023

The Safe Third Country regulation does not breach s. 7 — Charter interests are engaged, but legislative “safety valves” (H&C, public-policy exemptions) save the scheme. The s. 15 claim was remitted to Federal Court and remains pending; the Court itself flagged that safety valves may be applied poorly in practice.

Post-CCR litigation (2026) — Federal Court

The Federal Court is set to hear the remitted s. 15 challenge; CARL and Amnesty International have filed new litigation over the government's failure to actually deliver the safety valves.

Takeaway. *The Safe Third Country Agreement remains live and unresolved, which is significant in light of developments in the United States.*

PART 5

Humanitarian & Compassionate Grounds

Kanthasamy enforced, best interests of the child clarified

PART 5 · HUMANITARIAN & COMPASSIONATE GROUNDS

Kanthasamy Enforced - Fragmented Reasoning Rejected

Kanthasamy v. Canada (Citizenship and Immigration), 2015 SCC 61 — baseline

Rejected a mandatory “unusual and undeserved or disproportionate hardship” threshold. H&C requires a flexible, comprehensive assessment of all circumstances, including vulnerabilities and children's interests.

Rubio v. Canada (Citizenship and Immigration), 2025 FC 609 — FC, 2025

H&C refusal set aside for treating vulnerabilities in a “shallow, segmented and incomplete” manner — BIOC, establishment, and hardship must feed one cumulative merits assessment.

Kang v. Canada, 2025 FC 473 & Mohammadi v. Canada, 2025 FC 1956 — FC, 2025

Emphasizing a survivor's “resilience” cannot substitute for engaging with the severity of abuse; an accepted psychological diagnosis cannot be neutralized by speculation about treatment availability.

Goh v. Canada (Citizenship and Immigration), 2024 FC 364 — FC, 2024

Family and emotional bonds cannot be adequately preserved “through telecommunications” — a direct answer to the phone-and-internet boilerplate.

Takeaway. *Frame submissions as integrated and interconnected, not a series of points responding to the Chirwa factors.*

Best Interests of the Child: Not a Suffering Test

Nagra v. Canada (Citizenship and Immigration), 2025 FC 1942 — FC, 2025

BIOC is not a hardship or “suffering” test — the question is what's in the children's best interests. Cannot rest on speculation; extended-family relationships (e.g., a grandmother) count.

Bethune v. Canada (Citizenship and Immigration), 2025 FC 1996 — FC, 2025

“No authority reduces” best interests “to a simple question of financial or other dependency” — kills the financial-dependency shortcut.

Bibi, 2025 FC 84 & Onifade, 2025 FC 47 — FC, 2025

BIOC means choosing the best option for the child, not just minimizing post-removal harm.

Takeaway. *BIOC asks what is best for the child — not how much harm they can be shown to survive.*

PART 6

Legislative Overhaul & Key Takeaways

Bill C-12, backlog realities, and what to watch next

PART 6 • LEGISLATIVE OVERHAUL

Bill C-12: New Eligibility Bars

- Royal Assent: March 26, 2026 — successor to Bill C-2 (Strong Borders Act, introduced June 3, 2025).
- Two new bars keep claims out of the RPD entirely: (1) claims made more than one year after first entry after June 24, 2020, regardless of departures and returns; (2) between-ports land-border claims made more than 14 days after entry.
- Both apply retroactively to claims made on or after June 3, 2025 — an estimated 30,000 claims face termination. Affected claimants are diverted to PRRA instead of an RPD hearing.
- Bill C-12 also eliminates the Designated Countries of Origin regime and replaces the Basis of Claim Form with a single, Minister-administered online application (proposed regulations, June 20, 2026).
- Constitutional challenge underway: judicial reviews are case-managed before a single Federal Court judge, with lead cases expected to determine the bars' validity.
- Upcoming RPD Rules (eliminating BOC, greater control with Minister)

Backlog, Levels & Federal Court Capacity

- RPD inventory: 276,866 claims as of June 2026, roughly 51 months of work at funded capacity; 76,600 claims still awaiting CBSA security screening.
- 2026–2028 Immigration Levels Plan cuts H&C admissions to 1,100 (2026) and 1,000 (2027–28); refugees and protected persons overall target 49,300 per year.
- Federal Court immigration filings are on track to exceed 30,000 in 2026 — nearly five times the pre-pandemic average; urgent stay-of-removal motions rose 54% year-over-year.
- The Court has responded with practice changes: application record filing extensions, and special case management for all Bill C-12 constitutional challenges (direction of August 20, 2026).

PART 6 • KEY TAKEAWAYS

What This Means for Practice

- Plead non-refoulement and international-law obligations explicitly — they are now an affirmative Vavilov constraint, not a background principle (Mason)
- Challenge “insufficient evidence” labels — courts increasingly treat them as disguised credibility findings that trigger hearing rights.
- Build the BIOC and hardship record as one cumulative narrative — fragmented, resilience-inverting, or dependency-based reasoning can be reviewed.
- Track three unresolved fronts: the Bill C-12 constitutional challenge, the Slepcsik cessation appeal, and the Safe Third Country Agreement litigation.

Discussion and Questions