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Canadian Council  
for Refugees  
Conseil canadien  
pour les réfugiés

April 29, 2024

Via email: [Minister@cic.gc.ca](mailto:Minister@cic.gc.ca)

The Honourable Marc Miller, P.C., M.P.  
Minister of Immigration, Refugees and Citizenship  
365 Laurier Avenue West  
Ottawa ON K1A 1L1

Dear Minister Miller:

**Re: Processing delays for the dependents of Protected Persons**

We write on behalf of the National Immigration Law Section and Child and Youth Law Section of the Canadian Bar Association (CBA Sections), and the Canadian Council for Refugees, to recommend the issuance of Temporary Resident Permits (TRPs) to dependents of protected persons to avoid lengthy and harmful separation of families.

The Canadian Bar Association is a national association of 38,000 members, including lawyers, judges, notaries, academics and law students, with a 120-year-old mandate to seek improvements in the law and the administration of justice. The CBA Immigration Law Section is comprised of over 1,200 lawyers, practicing in all aspects of immigration, refugee and citizenship law and rendering professional advice and representation in the Canadian immigration system to clients in Canada and abroad. The CBA Child and Youth Law Section coordinates activities, gives advice and responds to law, policy and legal research developments on matters affecting Canadian children.

The Canadian Council for Refugees (CCR) is a leading voice for the rights, protection, sponsorship, settlement, and well-being of refugees and migrants, in Canada and globally. The CCR is driven by 200 member organizations working with, from and for these communities from coast to coast to coast.

**Current processing delays**

People who initiate a refugee claim in Canada and are found to be *Convention* refugees or a Person in need of protection are entitled to reunification with their immediate family members.

Once accepted as refugees by the Immigration and Refugee Board (IRB) or by a Pre-Removal Risk Assessment (PRRA) application, Protected Persons can apply for Permanent Residence (PR). Their application can also include family members, both inside and outside Canada (also known as “Dependents of Protected Persons”).

IRCC [processing times](#) for such PR applications are currently extremely long – **29 months** for principal applicants and **47 months** for dependents abroad.

Lengthy processing times result from immigration levels set far below the actual number of applicants, causing pending applications to be deferred to the following year(s). The [Immigration Levels Plan 2024-2026](#) reflects this trend:

Levels target 2024 for Protected Persons Landed In Canada and dependents abroad	27,000
<b>Inventory as of end Aug. 2023</b>	
Dependents Abroad of Protected Persons (DR2s)	32,350
Protected Persons Landed In Canada	68,000
<b>Total</b>	<b>100,350</b>
<b>Refugees accepted by the Immigration and Refugee Board in 2023</b>	<b>37,000</b>

The accumulated inventory of applications exceeds by 371% the levels target. The number of refugees accepted in 2023 (excluding their dependents) also greatly exceeds the levels target for 2024.

As a result, Protected Persons inevitably face a four-year delay to be reunited with their dependents.

### **Impacts of long-term separation**

The wait to PR is challenging for all Protected Persons, whether their dependents are in Canada or not: full integration is delayed and refugees face added difficulty building a life here.

The worst impacts are felt by those who are separated from their spouse and young children. Family members often live in extreme insecurity in their home country, or in a place of temporary refuge. Some also face persecution. Common scenarios include women and girls at risk of sexual assault, children unable to go to school, minimal or no healthcare, and youth forced into gangs.

Prolonged separations damage family relationships. Families grow apart. Relationships between spouses become fragile. Children grow up in the absence of one or both parents.

Protected Persons in Canada, unlike other immigrants, are unable to visit their home country as a result of the risks they face. They are often unable to travel to neighbouring countries for both safety and practical reasons, as many countries don't recognize Refugee Travel Documents issued to Protected Persons in Canada.

Protected Persons and their family members overseas suffer health consequences from such lengthy separation. Protected Persons in Canada often work hard to send money to support their family back home, while lacking the emotional benefits of family support. Mental or physical breakdowns resulting from these situations are commonly reported.

The consequences of long separations are also felt throughout Canadian society. For example, family members often arrive with compromised mental and physical health, and children enter Canadian schools at an older age, making official language acquisition and social integration more difficult.

Children often develop trauma after being forcibly separated from their parents, primary caregivers and other family members. This can result in irreversible damage to children’s development, behaviour, mental health, and feelings of attachment with their family members.

Research shows a correlation between immigration-related separations and several trauma-related symptoms, much like what is experienced following exposure to violence. Direct consequences include functional impairment, psychiatric disorders, reactive attachment symptoms, emotional and behavioral dysregulation and anxiety.<sup>1</sup>

### **Canada’s legal obligations under the United Nations Convention on the Rights of the Child**

The Supreme Court established in *Baker v Canada* that where the best interests of a child (BIOC) or children are affected by a decision, they must carry substantial weight, and officers must be alert, alive and sensitive to these interests.<sup>2</sup> This is consistent with Canada’s international obligations under the United Nations Convention on the Rights of the Child (UNCRC), which states that the best interests of the child must be a primary consideration in all actions related to the child.<sup>3</sup> Like other international human rights instruments which Canada has ratified,<sup>4</sup> the UNCRC recognizes the family as the fundamental unit of society and the natural environment for the growth and well-being of all its members, particularly children.<sup>5</sup> The family must be afforded necessary protection and assistance to allow the child to grow up in a family environment for their full and harmonious development.<sup>6</sup> Various articles of the UNCRC reinforce these principles, including the child’s right not to be separated from their parents against their will, except where necessary for the best interests of the child, and the child’s right against arbitrary interference with their family.<sup>7</sup> The UNCRC also specifically states that “applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner”.<sup>8</sup>

We respectfully submit that Canada has a legal obligation, under the UNCRC, to expeditiously reunite minor dependents of Protected Persons, and that a four-year delay does not meet that threshold. Given the deleterious impact of prolonged separation on family members, the extraordinary processing delays have *Charter* implications. The Supreme Court has consistently confirmed that the *Charter* should be presumed to give, at least, as great a level of protection as is found in the international human rights instruments that Canada has ratified.<sup>9</sup>

### **Procedural fairness and access to justice**

Current processing delays defeat the objectives set out in subsections 3(1)(d) and 3(1)(f.1) of the *Immigration and Refugee Protection Act* (IRPA) to support family reunification and to ensure fair and efficient processing of applications.<sup>10</sup> These delays are also inconsistent with subsections 3(3)(d) and

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1. “Adverse impact of multiple separations or loss of primary caregivers on young children” (13 August 2019), [online](#): *European Journal of Psychotraumatology*.

2. [1999] 2 SCR 817, [1999] ACS no 39, at para 75, [online](#).

3. United Nations Convention on the Rights of the Child (UNCRC), article 3, par.1, [online](#).

4. Universal Declaration of Human Rights, article 16; International Covenant on Civil and Political Rights, article 23; International Covenant on Economic, Social and Cultural Rights, article 10.

5. UNCRC, preamble, [online](#).

6. *Ibid.*

7. UNCRC, articles 9 and 16. See also articles 18(2), 19 and 20, [online](#).

8. UNCRC, article 10, [online](#).

9. *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038, at para. 23; *Quebec (Attorney General) v. 9147-0732*, 2020 SCC 32, at para. 31

10. *Immigration and Refugee Protection Act*, s.3(1)(d) and s.3(1)(f.1), [online](#).

3(3)(f) which require that the Act be applied in a manner that complies with the *Charter* and the international human rights instruments to which Canada is a signatory.<sup>11</sup> The duty of fairness to Protected Persons and their dependents and their absolute right to a fully fair immigration process are compromised.

Systemic processing delays across the immigration system have led to a surge of Applications to the Federal Court for Orders for *Mandamus*. Protected Persons in Canada and their dependents have been forced to turn to the Federal Court, often at costs so high they compromise their financial stability. Expediting processing delays for dependents of Protected Persons would have direct impacts on access to justice for all Canadians, as it would reduce the strain on resources experienced by the Federal Court of Canada.

### **The Solution: Temporary Residence Permits**

We recommend that family reunification with dependents of Protected Persons be achieved by way of Ministerial instructions to issue TRPs under section 24 of the IRPA.<sup>12</sup>

The current application of section 24 in the context of refugee family reunification is done on a case-by-case basis, at the initiative of applicants. Binding guidance from the Minister is consistent with the objectives of the IRPA, would increase procedural fairness, reduce the number of cases litigated before the Federal Court and assist in achieving Canada's obligations under the UNCRC.

The issuance of TRPs would allow dependents of Protected Persons to reside in Canada for a meaningful period, to access work and study permits, and grant access to provincial health care coverage.

The financial implications would be minimal for IRCC, as TRP applications are fee-exempt for those with pending PR applications. They would, however, create a substantial relief on Federal Court of Canada and Department of Justice resources.

From an operational perspective, the proposed pathway for dependents of Protected Persons presents minimal risk in the administration of the IRPA, as dependents of Protected Persons in Canada already benefit from more lenient inadmissibility rules and are virtually assured permanent resident status.<sup>13</sup> TRP applications require information that is already available to IRCC through pending applications. TRPs could therefore be issued through an existing PR process or through a simplified pathway designed by the Minister via ministerial instructions.

From a fairness and equity perspective, the proposed pathway for dependents of Protected Persons would align refugee claimants' rights with those of other types of migrants. The proposed pathway is similar to the May 2023 commitment to faster visitor visa processing and the Temporary Public Policy allowing issuance of open work permits to foreign nationals applying under the Spouse or Common-Law Partner in Canada class or the Family Class. This Temporary Public Policy served an important role in facilitating the integration of spouses in Canada. It allowed spouses and common-law partners to work in Canada while IRCC processed the spousal sponsorship permanent residence application, which takes approximately 9 months (or approximately 25 months for Quebec-based cases). The issuance of open Work Permits to spousal PR applicants recognizes that "the work of sponsored spouses and partners, and their family members, creates social and economic benefits for Canadian citizens and permanent residents". It enables spouses to begin integrating into Canada's economy and society even before their permanent residence application is finalized.

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<sup>11</sup> IRPA, s.3(3)(d) and s. 3(3)(f), [online](#).

<sup>12</sup> IRPA, s.24, [online](#).

<sup>13</sup> Per subsection 21(2) of the IRPA, section 38 of the IRPA and, subsection 176(3) of the IRPR, the following inadmissibilities do not prevent the grant of PR status to family members of Protected Persons in Canada: subsection 36(2), paragraph 38(1)(c), sections 39 - 42.

**Conclusion**

We believe that the establishment of a unique pathway for dependents of Protected Persons to be issued TRPs is an accessible, equitable and cost-effective way to achieve IRPA's objectives and contribute to the implementation of Canada's international human rights obligations to children. The CBA Sections and the CCR would be pleased to discuss this proposed mechanism with you and the relevant program delivery team from the Department.

Sincerely,

*(original letter signed by Véronique Morissette for Gabriela Ramo and Caterina Tempesta)*

Gabriela Ramo  
Chair, Immigration Law Section

Caterina Tempesta  
Chair, Child and Youth Law Section

*(original letter signed by Tanja Maleska for Diana Gallego)*

Diana Gallego  
CCR President