



**Comments of the Canadian Council for Refugees on proposed changes to the
*Immigration and Refugee Protection Regulations***

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The CCR submits the following comments on two of the proposed changes.

1. Proposal: Raise from 16 to 18 the minimum age of eligibility to immigrate to Canada as a spouse or partner in all temporary and permanent immigration programs.

CCR comment:

- It is not clear how effective this change would be in achieving the intended goal of preventing forced and early marriages. Most people do not read the Canadian immigration regulations before getting married. While the proposed regulation might influence well-informed individuals who were considering contracting an early marriage at the time that they are planning to immigrate to Canada, it is not likely that many people would fall into this category.
- Setting the minimum age at 18 in the immigration context would be inconsistent with Canadian law, where marriage at 16 is permitted in most provinces. Furthermore, Bill S-7, currently before Parliament, proposes to set 16 years as the federal minimum age to contract a marriage. It is not clear why immigration benefits should be denied to a 16 or 17 year old person, purely on the basis of her age, when Canadian legislation permits her marriage.
- The proposed regulatory change will increase the vulnerability of 16 and 17 year old spouses by excluding them from the definition of family member for immigration purposes. It is important to note that a married child is also excluded from the definition of family member with respect to her parents (IRPR 2). This means that, if the proposed change is adopted, Canadian immigration laws will define 16 and 17 old spouses as belonging to no family for immigration purposes. Both of a young woman's families (her husband and her parents) could immigrate to Canada and neither family could include her in their application.
- Most young spouses are female. The proposed change would therefore mostly affect women, increasing the potential that they are left behind, or deported from Canada, while the rest of their family is in Canada.
- We welcome the fact that the notice in the Canada Gazette acknowledges that the proposed change will increase vulnerability by leaving the young married spouse (usually female) behind. The government suggests that in the refugee context this problem can be dealt with through counting them as de facto family members or through humanitarian and compassionate (H&C) consideration. However, these are by definition discretionary measures without the force of law. Policy guidelines can be easily changed. Furthermore, these processes are not proposed, nor would they necessarily work outside the resettlement context. For example, a 17 year old girl who entered Canada with a parent who was subsequently recognized as a refugee and who married a Canadian citizen (as Canadian law permits) could face removal from Canada because she can neither be sponsored by her

spouse nor included in her parent's permanent residence application. Since there is no regulatory stay on removal, she could be deported even though she applies for humanitarian and compassionate consideration.

- The proposed regulatory change is designed to discourage people from contracting early marriages. However, it fails to take account of the impact on the young persons who are married (whether by force or voluntarily) under the age of 18. It risks exposing them to abuse and exploitation by separating them from the protection of their family. As such it is inconsistent with Canada's obligations under the Convention on the Rights of the Child.
- 2. Proposal: No longer recognize marriages that were conducted abroad by proxy, telephone, fax, Internet or other similar forms, across all permanent and temporary immigration programs. Include an exemption for members of the Canadian Armed Forces who, due to travel restrictions related to their service, were not physically present at their marriage ceremony and registration.**

CCR comment:

- The CCR opposes this proposed regulatory change as it will particularly affect some refugees who marry by proxy because they cannot travel back to their countries of origin. For some couples it is the only way to marry because of Canadian visa restrictions which make it difficult or impossible for the person outside Canada to travel to Canada.
- There is no obvious or necessary link between marriages by proxy and forced marriages. Proxy marriage has long been recognized as a valid form of marriage in various Muslim communities and in Canada for the purpose of sponsorship.
- We note that the proposed regulation includes an exemption for Canadian service personnel. It is not clear why proxy marriage would be permitted for them, on the basis of their travel restrictions, but not others, such as refugees, who similarly face travel restrictions.

CCR conclusion:

For all the reasons stated above, the CCR opposes these proposed changes.