



CAPIC's Feedback on IRB Consultations on RPD and RAD Rules – Modernizing Asylum Processes and Proceedings at the IRB

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Consultation on RPD and RAD Rules – Response Document

Modernizing Divisional Rules of Practice at the Immigration and Refugee Board 2024-2025

Instructions: Please provide any comments on the proposals listed in the consultation document. If applicable, please indicate the Division the comments pertain to and the corresponding number.

Area of Focus 1: Enabling a digital tribunal

Questions:

- 1.1 As we move to a single online portal for all users, what design features or functionality would you like to see integrated to support those appearing before the IRB in using the Portal?
- 1.2 Are there any factors that currently constrain your use of the My Case portal?

Comments:

1.1 Efficiency v. Integrity

First of all, while utilizing technological advancements for efficiency is important, CAPIC is cautious about the direction of a digital tribunal based on its holistic studies of the Board’s own report¹ and a Federal Court’s study.² In its Feedback on the Review of the ID Rules and IAD Rules, CAPIC presented the Court’s approach for the Board’s consideration: Adopting virtual hearings as a complement to the in-person hearing instead of transitioning to a virtual tribunal.³

Second, regarding the above questions, CAPIC recommends implementing a two-pronged approach that includes mechanisms to protect the integrity of the refugee determination system alongside measures for improving efficiency.

CAPIC understands that the move towards a single online portal for all users aims to achieve greater efficiency, as noted in the Board’s consultation document,

¹ Pr. Nicolas Vermeys and Valentin Callipel, “Report on the sense of access to justice associated with virtual hearings held before the IRB using MS Teams,” IRB, modified July 13, 2022, [online](#).

² Action Committee on Modernizing Court Operations, “Virtual Hearings: Orienting Principles,” Federal Judicial Affairs Canada,” Office of the Commissioner for Federal Judicial Affairs Canada, modified Nov. 19, 2024, [online](#).

³ CAPIC, “CAPIC’s Feedback on the Review of the ID Rules and IAD Rules,” posted February 14, 2025, [online](#).

which states that this review is “for efficiency gains where possible.”⁴ This aligns with a key point in the *Immigration and Refugee Board of Canada’s 2025 to 2026 Departmental Plan*, which notes that, “Over the past two years, the number of refugee claims being referred to the RPD has grown significantly and has been greater than the number of claims it is funded to decide.”⁵

CAPIC has little doubt that a single portal for all users can enhance efficiency in processing refugee claims. However, CAPIC raises the following questions for the Board’s consideration regarding the impact on the integrity of the refugee determination system when efficiency is prioritized in the review of RPD and RAD Rules:

- (i) Both the RPD and RAD are quasi-judicial tribunals instead of refugee protection facilitators or advocates.⁶ Therefore, while improving efficiency is crucial for the effective operations of the Board, without accompanying mechanisms to protect the integrity of the refugee claim system, could the role of the RPD and RAD be compromised?
- (ii) Efficiency is not the ultimate goal. The fair and efficient procedures mandated by the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (IRPA) are built on the integrity of the Canadian refugee protection system.⁷ The rapid increase in refugee claims that exceed the admission capacity of Canada⁸ has prompted the Parliament to address loopholes in the refugee protection system, and the process is currently underway.⁹ The Board also plays a vital role at the operational level. What mechanisms can be implemented to ensure the integrity of the refugee protection system while streamlining the proceedings?
- (iii) Unauthorized practitioners (UAPs)¹⁰ have been illegally practicing in all areas of Canadian immigration practice, both at home and abroad,¹¹ including in IRB proceedings.¹² These bad actors present themselves as free service providers or even in the form of designated representatives.

⁴ IRB, 191531-0-EN_Consultation-Document, “Why we are consulting,” page 1.

⁵ IRB, “Core responsibility: Adjudication of immigration and refugee cases,” modified June 17, 2025, [online](#).

⁶ IRPA s. 162(1).

⁷ IRPA s. 3(2)(e).

⁸ IRCC, “Asylum claimants processed by year,” modified February 27, 2025, [online](#). Also see IRB, “Refugee claims statistics,” modified May 23, 2025, [online](#).

⁹ Public Safety Canada, “Government of Canada strengthens border security,” modified June 3, 2025, [online](#).

¹⁰ IRPA s. 91(9).

¹¹ CILA, “The State of Immigration Fraud in Canada,” posted March 4, 2025, [online](#).

¹² The Board’s decisions of public interest posted on the “Decision” web page of the Board concerning UAPs show that UAP practice has been an issue since the inception of the first regulator of immigration consultants. See an early example: IRB, “*Ehikwe Decision*,” decided on December 17, 2007, [online](#). Also see a recent one: IRB, “*Shahin Decision*,” decided on January 12, 2024, [online](#).

Additionally, some foreign nationals exploit the system¹³ when they meet the eligibility criteria¹⁴ but do not have legal grounds to be granted refugee protection.¹⁵ Opening the My Case portal to all users, including non-authorized representatives, could unintentionally boost UAP practice. How will the Board detect and address UAP practice and abuse of the system if the portal is accessible to all users?

1.2 Detecting UAP practice and fraudulent claims

Currently, CAPIC has no concerns regarding the constraints on the use of My Case. However, with the ongoing issue of UAP practice, CAPIC has two main concerns once the portal is open to all users: (i) UAP practice becomes more prevalent, which would put authorized representatives in a more disadvantageous position. (ii) Based on the experience of CAPIC members with Immigration, Refugees and Citizenship Canada (IRCC) portals, a significant increase in the number of users of the portal may lead to system instability and inadequate technical support. This could create a misleading impression of efficiency: On the Board's side, portal issues may go unnoticed or unresolved; on the user's side, persisting common issues on and off become pain points. It could result in increased uncertainty for end users.

Recommendations for Area of Focus 1:

- Open the portal to parties of the proceedings but not non-authorized representatives. IRCC portals are for authorized representatives and applicants only.¹⁶
- Implement a notification function that alerts claimants and appellants about any changes, updates, or documents submitted by their authorized representatives within the representatives' My Case portal.
- Report UAPs to CBSA or RCMP for further investigation once UAP practices are detected.

¹³ Tara Carman, Owen Leitch, "Canada's acceptance of refugee claims has ballooned in last 6 years — more for some countries than others," CBC, posted January 11, 2025, [online](#).

¹⁴ IRPA s. [101](#).

¹⁵ IRPA ss. [96](#) and [97](#).

¹⁶ IRCC, "Sign in to an account for representatives," modified June 3, 2025, [online](#).

Area of Focus 2: Refugee Protection Hearings and Appeals – Document Requirements

Questions:

2.1 What kinds of digital documents or electronic files do you want to be able to submit to the IRB? What issues do you experience submitting electronic files to the IRB?

2.2 How would digital files support your practice? Are there any suggestions regarding the format and content of country information?

Comments:

2.1 Electronic file submission

CAPIC members have expressed the following concerns:

- Strict formatting rules do not work well with digital documents.
- The Board permits up to 5 attachments per submission, with a maximum of 110 MB. Since refugee claim/appeal files can be extensive, file size limits may cause difficulties for large evidence packages.
- The current font and formatting restrictions may be too rigid.

CAPIC has observed that sending the BOC form to the RPD electronically does not require claimants to sign.¹⁷ We recommend reinstating the signature requirement due to the importance of the BOC form in the refugee claim determination proceedings.

2.2 Country information

CAPIC believes that digital files can support ethical and competent authorized practitioners' practice. However, on the flip side, with good intentions for accessibility and efficiency, digital files may unintentionally create more opportunities for UAP practice and fraudulent claims. That may not only jeopardize the integrity of the refugee protection system but also make it easier for UAPs and fraudsters to doctor files to fit false, favourable narratives. The case of Sunny Wang, although related to immigration applications, serves as a pertinent example.¹⁸ Therefore, it is essential to implement mechanisms that verify the authenticity of electronic files.

¹⁷ IRB, "Do you need to sign your BOC form," accessed July 10, 2025, [online](#).

¹⁸ CBSA, "Additional sentence in large-scale immigration fraud case," modified August 9, 2025, [online](#).

When it comes to using hyperlinks, CAPIC believes that if they are limited to country condition information on the Board's website, it can enhance navigation for all parties involved. This information could be further organized with searchable tags and improved with interactive filtering options by topic and date.

CAPIC has concerns about accepting hyperlinks from claimants unless there are proper authentication and verification mechanisms in place to detect any false information.

CAPIC remains cautious about the usefulness of machine-translation tools in enhancing efficiency. Translation errors that influence the heart of a decision by RPD (we suppose it applies to RAD, too), could be an issue resulting in a breach of procedural fairness.¹⁹

Recommendations for Area of Focus 2:

- Establish clear and adequate rules for document verification to safeguard the integrity of the refugee determination system.
- Modernize BOC form by (i) developing two versions of BOCs for port-of-entry claimants and in-land claimants; (ii) clearly defining authorized representatives in the BOC; (iii) having a warning in bold type for the use of UAPs; (iv) including a mandatory section identifying the person who assists with the BOC.
- Implement an electronic signature feature for files submitted electronically.
- Create clear rules for using hyperlinks in files, ensuring that the content remains unchanged throughout the proceedings and is properly documented.
- Emphasize the clarity and substance of evidence by accepting professionally legible documents as long as their readability is maintained.
- If machine translation is permitted, establish clear rules, especially regarding the responsibility and consequences.

¹⁹ [Paulo](#) v. Canada (*Citizenship and Immigration*), 2020 FC 990 at para 29.

Area of Focus 3: Refugee Protection Hearings – Filing of Evidence

Questions:

- 3.1 Do you have feedback on how claimants, counsel and Minister’s representatives provide evidence and other important information for refugee protection claims?
- 3.2 Are there any suggestions you may have to motivate earlier transmission of information?
- 3.3 Do you have any feedback on the process to submit documents in cases brought forward by the Minister for the cessation or vacation of refugee protection status?

Comments:

3.1 Provide evidence and other information

The BOC is intended to capture the basic information of claimants. The timeline set up by the *Immigration and Refugee Protection Regulations, SOR/2002-227 (IRPR)*, for claimants to submit their BOCs is reasonable. The Board has extended the timeline to 45 days. The Minister’s time to notify the RPD of his/her intention to intervene remains within 10 days after the receipt of the BOC.

The RPDR allows claimants to amend or add information to their BOCs, provided the changes are received no later than 10 days before the scheduled hearing. The submission deadline for disclosing documents is also set for 10 days before the hearing, with a response time limit of five days.

The current time limits are generally close to hearing dates, which could be the cause of delays. CAPIC recommends that the Board analyze its data to determine the percentage of postponements caused by last-minute changes to BOC or document disclosures. For instance, if the Minister intervenes in a claim, any party that submits disclosure documents close to the deadline could contribute to a postponement, as the other party may need adequate time to review the materials.

3.2 Earlier transmission

What are the main causes of delays in processing and postponement of proceedings, especially hearings? Are these delays due to the last-minute transmission of documents or the late transmission? A positive answer to either seems to suggest that the solution may not lie in earlier transmission.

For the last-minute transmissions, one possible solution could be to review and adjust the time limits established in IRPR and RPDR. For the late transmission, [s. 168\(1\)](#) of IRPA empowers the IRB Divisions to determine abandonment.

CAPIC members have shared their insights regarding the reasons for postponements. Some delays stem from administrative issues or members' unavailability. Examining the causes of these types of postponements could help improve efficiency.

3.3 Cessation and vacation document submission

Cessation is based on the fact that the refugee concerned is no longer in need of protection,²⁰ which may exist when the claims/appeals are in process. Vacation of refugee protection is based on misrepresentation, namely, the refugee-concerned would have been unsuccessful in the refugee claim/appeal if not for misrepresentation.²¹

The Minister has the opportunity to intervene during refugee claim or appeal proceedings to examine the refugee claims/appeals. Through such interventions, factors that could lead to cessation/vacation, if they already exist when the RPD and RAD proceedings are ongoing, may be detected through intervention. Neither the RPDR²² nor the RADR²³ restricts the Minister's intervention purpose. Additionally, the RPDR²⁴ obliges the RPD to notify the Minister where the RPD believes that there's a possibility of issues of exclusion, integrity, inadmissibility, and ineligibility.

Therefore, ideally, there are mechanisms in place that would encourage the Minister to seek intervention during the refugee claim/appeal proceedings if there are allegations of factors leading to cessation/vacation factors when the refugee claim/appeal proceedings are underway.

Recommendations for Area of Focus 3:

- Examine time limits for evidence filing. Based on the review, adjust the time limits to allow sufficient time for filing, minimizing the need for extensions (which should be granted in exceptional circumstances) from becoming a regular occurrence.
- Strict application of [s. 168\(1\)](#) of IRPA. Reserve leniency for exceptional cases to uphold the Board's role of adjudicator.

²⁰ IRPA [s. 108\(1\)](#).

²¹ IRPA [s. 109\(1\)](#).

²² RPDR [s. 29](#).

²³ RADR [s. 4\(1\)](#).

²⁴ RPDR [s. 26](#).

- Caution in file review proceedings. This is to prioritize integrity over efficiency. A lack of thorough scrutiny could inadvertently allow fraudulent claims that would otherwise be rejected.
- When the Minister applies for cessation/vacation of a refugee protection, for which the Minister did not intervene, the Minister should explain the reason for non-intervention if the cessation factors existed when the claim/appeal proceedings were in process or the Minister was aware of the possible vacation factor.

Area of Focus 4: Refugee Protection Hearings – Scheduling Practices

Questions:

- 4.1 Do you have any suggestions on how to improve scheduling practices?
- 4.2 Do you have feedback on how and when procedural information to support hearings should be provided (e.g., witness, interpretation requirement, etc.)?

Comments:

4.1 Improving scheduling practices

The short-notice hearing list approach could improve scheduling practices. However, the criteria for cases to be on the list need to be clear and transparent.

Unless authorized representatives acting as counsel have affirmed their flexibility with short notice, this approach could disadvantage claimants represented by authorized representatives while potentially empowering UAPs. This may lead to an unforeseen consequence of the proposed method.

A hearing scheduling tracker may facilitate communication and improve the management of this matter.

4.2 Procedural information

The time limit for changing the language of interpretation, requesting an interpreter for a protected person, or a witness is no later than 10 days before the next proceeding.²⁵ The Board's interpreters work for the Board on a contract basis. This raises two questions: (i) how the time limits affect the scheduled proceedings, and (ii) what is the main reason for requesting a change of language?

The time limit for providing witness information is the same as mentioned above. The RPDR allows a party to request a summons to order a person to testify either orally at a proceeding or in writing. If the request is made orally at a proceeding, could it cause delays? If it is made in writing, what would the time limit be?

Recommendations for Area of Focus 4:

- Based on the analysis of how the time limit affects the scheduled proceedings, consider adjusting or retaining the time limits.

²⁵ RPDR rules [19\(2\)](#) to (4).



- Based on the primary reason for requesting a language change, determine whether the Board's approval is required.
- A further examination of RPDR rules 44 to 47 RPDR may be helpful to determine whether the time limit for witness information submission, as well as for summons and arrest warrant requests, should be amended.

Area of Focus 5: Refugee Protection Hearings – Written Reasons

Questions:

- 5.1 Do you have any feedback on whether to provide the Minister with written reasons for a positive decision that is issued orally?
- 5.2 Do you have any feedback on the reasons to be provided for a decision from the paper process?

Comments:

5.1 Reasons to be provided for a positive decision rendered orally

CAPIC believes that the reasons for a decision made on an accepted claim rendered orally are necessary for the Minister to understand the rationale behind the decision. For this reason, CAPIC supports the continuation of the RPD's current practice.

[S. 169](#) (b) of IRPA requires all Divisions of the Board to provide reasons for decisions. While it does not require reasons to be provided to the Minister, s. 169(e) of IRPA allows the Minister to request written reasons for the decision. It is important to note that the time limit for the Minister's appeal against an RPD decision starts from the date on which the Minister receives written reasons for the decision.²⁶ Because reasons must be given and they are linked to the Minister's right to appeal, providing the Minister with written reasons for orally rendered positive decisions would offer several benefits:

- Maintain consistency and transparency of the decision-making process of members.
- No adverse impact on operational efficiency.
- Reduce uncertainties for parties involved by making the Minister's time limit to appeal clear.

5.2 Reasons to be provided for a decision from the paper process

CAPIC believes that providing reasons for decisions from the paper process is essential. Therefore, CAPIC supports maintaining the RPD's current practice in this respect.

According to s. 169(b) of IRPA, reasons for a decision must be given. [S. 170](#)(b) requires a hearing to be held for any proceeding before the RPD except in the

²⁶ IRPR s. [159.91](#)(1)(a).

circumstances that the Minister has not notified the RPD within the time limit for the Minister's intervention,²⁷ which is the paper process.

Allowing a claim is based on findings of the facts presented and applicable IRPA provisions. For the rationale elaborated in #5.1, reasons for a decision from a paper process should be provided.

Recommendation for Area of Focus 5:

- Reasons to be provided for all decisions made by RPD, regardless of the form of the proceeding and the decision delivery methods.

²⁷ IRPA s. [170](#)(f).

Area of Focus 6: Preparing an Appeal of a Refugee Protection Decision

Questions:

- 6.1 Do you have any suggestions to clarify and simplify the content of records and memoranda?
- 6.2 Do you foresee any challenges if the RAD were to remove the requirement to provide the appellant's record at the same time as a request for extension? How could these challenges be addressed?

Comments:

6.1 RPD transcript

The RPD transcript often needs to be reproduced to address negative credibility findings. Having a certified tribunal record helps prevent discrepancies that may occur with privately contracted transcriptionists. It also ensures consistency if the RAD dismisses the appeal and the claimant wishes to pursue judicial review.

6.2 The rationale for this proposed move is unclear

The time for perfecting an appeal set out by IRPR is 30 days after the day on which the claimant or the Minister receives written reasons for the decision.²⁸ The RAD has the authority to extend for reasons of fairness and natural justice.²⁹ The RAD has extended it to 45 days.³⁰

Filing the appeal record with the extension of time application motivates transparency. When requesting an extension of time, it is important to clearly outline the reasons for the delay in filing and to demonstrate that there is merit to the appeal. There is a risk of allowing extensions of time for frivolous or vexatious appeals if the merits are not adequately disclosed in such an application.

Recommendations for Area of Focus 6:

- Provide parties with the RPD transcript where refugee appeals are filed.
- Retain the current requirement for extension of time applications.

²⁸ IRPR s. 159.91(1)(b).

²⁹ IRPR s. 159.91(2).

³⁰ IRB, "Appellant's Guide Version 5," modified October 15, 2024, [online](#), "What are the time limits for an appeal?"

Area of Focus 7: Interventions of the Minister in Appeals of a Refugee Protection Decision and Right to Reopen an Appeal

Questions:

- 7.1 Are there considerations that you would like the Board to take into account concerning the timeline for the filing of a Minister's intervention record?
- 7.2 Do you have any concerns with clarifying the RAD's obligation to notify the Minister of new issues it will assess? In addition to those listed above [in *Canada (Citizenship and Immigration) v. Alazar*, 2021 FC 637], are there other specific circumstances in which the Minister should be provided notice?
- 7.3 Do you have any concerns about codifying the RAD's obligations to provide late disclosure filed by the PSA [Person who is Subject to the Appeal] to the Minister?
- 7.4 Do you have any concerns with clarifying the right of the PSA and Minister to make an application to reopen an appeal?

Comments:

7.1 Submitting the Minister's intervention record at the same time as the notice of intervention

CAPIC supports establishing a time limit for the Minister to submit the intervention record either simultaneously with or shortly after the notice of intervention, as the Minister's intervention should be based on evidence.

7.2 RAD's clarification on its obligation to notify the Minister of new issues it will assess

CAPIC recommends that the Board assess whether RAD has the authority to limit the circumstances under which it should notify the Minister of new issues. The recommendation is based on the following reasons:

First, the RAD's obligation to notify the Minister when considering new issues stems from the requirement of procedural fairness, *Canada (Citizenship and Immigration) v. Alazar*, 2021 FC 637 at para 83.

Second, the fact that the Minister only intervenes in a small number of cases does not provide the RAD with grounds to alter the precedent established by the Federal Court in *Alazar*. Also, potential delays do not justify a breach of procedural fairness in such circumstances.

Third, in *Alazar* at para 84, the Federal Court has laid out the test for determining what constitutes new issues.

7.3 Codify such obligations to comply with the requirements of procedural fairness

CAPIC supports the codification of such obligations, which is in line with the requirements of procedural fairness. Further, CAPIC suggests that the codification may extend beyond the situations of late submissions.

Canada (Citizenship and Immigration) v. Miller, 2022 FC 1131, following the jurisprudence set out in *Alazar* at paras 83 and 87, confirms the procedural fairness rights of the Minister.

It states, “[T]he Minister was not given an opportunity to make an informed decision as to whether to intervene in the appeal.” *Miller* at para. 60. Therefore, while *Miller’s* facts concern late submission, they are not restrictive factors. When RAD’s decision is reached through a process that deprives the Minister of the opportunity to make an informed intervention decision, it would be in breach of the Minister’s right to procedural fairness.

7.4 The legal authority for the Minister and the PSA to apply to reopen an appeal when they are not the appellant

A Person who is Subject to Appeal (PSA) is also a party to the RAD proceedings.³¹ Parties involved in proceedings inherently have the right to procedural fairness. *Miller* makes it clear that if the Minister’s non-intervention results from a breach of the Minister’s procedural fairness, the Minister has the right to request reopening of the appeal even though he/she initially decided not to intervene, *Miller* at para. 72. Therefore, both the PSA and the Minister may apply to reopen an appeal even when the PSA is not the appellant and the Minister did not intervene.

However, CAPIC suggests implementing safeguard measures simultaneously to prevent abuse of process.

Recommendations for Area of Focus 7:

- Establish a time limit for the Minister to submit the intervention record.
- Codify the RAD’s obligations to notify the Minister of new issues following the test set out by the Federal Court in *Alazar* at para. 84.
- Codify the RAD’s obligations to notify the Minister when procedural fairness requires it, following the direction in *Miller* at para. 60.

³¹ RADR [s. 1](#).

- Specify the rules for the PSA and the Minister to request the reopening of an appeal, retaining a breach of procedural fairness/natural justice as the basis for such requests.
- Establish a rule that a reopening will be denied if it is determined to be an abuse of process.



About CAPIC

The Canadian Association of Professional Immigration Consultants (CAPIC) is the professional organization representing the interests of Canadian Immigration Consultants. The organization advocates for competency, ethical conduct, and consumer protection in the immigration consulting industry. CAPIC's mission is to lead, connect, protect, and develop the profession, serving the best interests of its nearly 4400 members. It is the only association recognized by the Government of Canada as the voice of Canadian immigration and citizenship consultants. CAPIC is a major stakeholder consulting with federal and provincial governments and their respective departments on legislation, policy, and program improvements and changes.

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