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BILL C-12 AND THE NEW ASYLUM RULES: ELIGIBILITY, ADMINISTRATIVE GATEKEEPING AND PROTECTION AFTER CANADA'S 2026 BORDER OVERHAUL

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Abstract.

The *Strengthening Canada's Immigration System and Borders Act*, S.C. 2026, c. 4 (Bill C-12), materially alters Canada's refugee-claim architecture. This article examines four connected reforms: new temporal grounds of ineligibility under IRPA s. 101; a more structured pre-referral process; physical-presence and abandonment rules; and expanded information-sharing and public-interest authorities. It argues that Bill C-12 moves legal risk upstream. Questions once treated primarily as matters of scheduling, intake or post-filing administration can now determine whether a claimant reaches the Refugee Protection Division at all. The paper identifies likely sites of statutory, procedural-fairness and Charter litigation, while emphasizing that ineligibility is analytically distinct from the substantive need for protection and from access to a pre-removal risk assessment.

Keywords: Bill C-12; Canadian asylum law; refugee protection; IRPA s. 101; one-year asylum rule; Canada-US border; Safe Third Country Agreement; procedural fairness; PRRA; immigration information sharing; Oghenehoro Evi Eni.

I. Introduction

Canada's 2026 border legislation does not merely accelerate refugee processing. It redistributes legal power across the asylum system. Bill C-12 creates new statutory gates before merits adjudication, strengthens ministerial control over pre-referral processing, ties adjudication to physical presence, broadens domestic information-sharing authority, and equips the Governor in Council with class-wide powers over immigration applications and documents.[1]

The central thesis of this article is that Bill C-12 moves the decisive moment in many asylum cases upstream. The claimant's chronology, entry route, documentary completeness and continuing presence in Canada now carry greater legal significance before the Refugee Protection Division ('RPD') considers whether the claimant is a Convention refugee or person in need of protection.

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This distinction matters. Refugee law contains at least two conceptually separate questions: whether a person requires protection, and whether the statutory scheme permits that person to access a particular adjudicative route. Bill C-12 makes the second question more consequential. A claimant may allege a genuine fear of persecution while nevertheless being found ineligible for referral to the RPD. The policy objective is system control; the legal challenge is ensuring that gatekeeping remains compatible with procedural fairness, the Charter and Canada's protection obligations.[10,12]

II. From merits adjudication to temporal eligibility

A. *The new one-year ground*

Section 73 of Bill C-12 adds IRPA s. 101(1)(b.1). It renders a claim ineligible where the claimant entered Canada after June 24, 2020 and made the refugee claim more than one year after the day of entry. New s. 101(1.1) addresses multiple entries: where there has been more than one entry after June 24, 2020, the one-year period runs from the first entry.4

Statutory text: paragraph 101(1)(b.1) applies where "the claimant entered Canada after June 24, 2020 and made the claim more than one year after the day of their entry." The accompanying multiple-entry rule prevents a later departure and re-entry from automatically restarting the clock.[4]

The legal effect is to make historical travel records outcome-determinative at the eligibility stage. A later re-entry may be factually important to the protection narrative, but it does not necessarily revive access to the RPD. Counsel must therefore distinguish between the date on which protection concerns crystallized and the date from which Parliament directs the eligibility clock to run.

The provision also raises hard cases. Risk can emerge after entry. Political conditions can deteriorate; sexual orientation or gender identity may be disclosed only after arrival; family or state actors may discover facts later; a temporary resident may receive threats long after admission. The statute's temporal gate does not itself answer whether the underlying risk is genuine. Instead, it changes the forum and pathway through which risk may later be assessed.

B. *The irregular-border timing rule*

New s. 101(1)(b.2) addresses entry between ports of entry along the Canada-US land border, including relevant waters, where the claim is made after the time limit incorporated from the Regulations. IRCC describes the operative period as 14 days.4,5

The provision should not be collapsed into the Safe Third Country Agreement. The STCA

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remains independently relevant to claims connected to the United States. IRCC's post-assent guidance states that persons who claim at a land port of entry or within the applicable period after irregular entry may still be returned to the United States unless an STCA exception or exemption applies.[2,5]

The resulting analysis is layered. Counsel must determine the place and manner of entry, elapsed time before the claim, STCA application, any exception, and other's. 101 ineligibility grounds. A strong substantive protection case cannot cure a threshold statutory bar.

III. The pre-referral stage becomes a substantive legal stage

Bill C-12's importance is not confined to s. 101. Amended s. 100 and news. 100.1 make the period before IRB referral more structured. An officer determines initial eligibility; the Minister may later determine ineligibility despite that initial decision; and referral depends on specified documents and information having been provided and considered, as well as attendance at an examination where one is requested.[3]

New s. 102.1 adds an abandonment mechanism for claims not yet referred to the RPD where the claimant fails to provide required information or attend an examination. The RPD is assigned the abandonment determination after an opportunity for representations. New s. 102.2 permits the Minister to determine a pre-referral claim withdrawn following written notice, subject to possible reinstatement under the statutory and regulatory framework.[3]

These provisions blur the old practical distinction between 'intake' and 'adjudication.' The merits remain for the RPD, but pre-referral conduct can now determine whether the merits tribunal ever receives the file. That increases the significance of notice, accessible procedures, deadline calculation, accommodation, interpretation and meaningful opportunities to respond.

IV. Physical Presence as a Condition of Adjudicative Momentum

New IRPA s. 104.1 provides that, where a claimant is not physically present in Canada, the RPD generally must not commence or must suspend consideration. If the claimant voluntarily returns to the country in respect of which protection is claimed before the RPD decides the claim, the RPD must determine the claim abandoned. Parallel restrictions apply to the Refugee Appeal Division.[3]

The rule has an intuitive evidentiary rationale: voluntary return to the alleged country of persecution may be relevant to whether the claimant continues to seek Canada's protection. Yet Bill C-12 does more than create an inference. It specifies a procedural consequence. The law therefore makes travel advice a central component of competent refugee representation.

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A future dispute may concern what counts as 'voluntarily' returning, especially where travel is shaped by coercive family circumstances, documentation problems, third-country transit, medical necessity or other constraints. The statutory word should be interpreted in its full text, context and purpose rather than treated as a label detached from facts.

V. Information sharing and the integrated immigration record

Part 5 amends the Department of Citizenship and Immigration Act by adding ss. 5.3-5.7. Section 5.4 authorizes disclosure of personal information within the Department for lawful departmental purposes, subject to regulations. Section 5.5 authorizes specified disclosure to federal and provincial public bodies under written agreements or arrangements that address the information shared, purpose, secondary-use limits and subsequent transfer. Express categories include identity, status in Canada and information about ministerially issued documents.[6]

The statute contains safeguards, including restrictions on provincial onward disclosure to foreign entities absent written ministerial consent and compliance with Canada's international obligations concerning mistreatment. Bill C-12 also amends IRPA s. 150.1 to support regulations governing information disclosure to federal departments and agencies for cooperation.[6]

The practical implication is an increasingly integrated administrative record. Applicants should expect inconsistencies to be more discoverable across programs. That does not justify flattening genuine complexity into artificial uniformity. A lawful strategy is to identify discrepancies, explain why records differ, correct errors through proper channels and preserve corroborating evidence. Accuracy, not cosmetic consistency, is the governing principle.

VI. Public-interest orders and systemic immigration management

Part 7 introduces IRPA ss. 87.3001-87.305. Section 87.3001 identifies administrative errors, fraud, public health, public safety and national security as examples of matters capable of supporting a public-interest order. Section 87.301 authorizes orders affecting classes of applications, including non-acceptance, suspension and termination of processing. Section 87.302 authorizes cancellation, suspension or variation of specified immigration documents and the imposition or variation of conditions.[7]

These powers are structurally different from ordinary individualized immigration decisions. They are exercised through the Governor in Council, with statutory publication and parliamentary reporting requirements. Section 87.3031 requires reporting to Parliament after specified orders, including reasons, the number of affected applications or documents and a description of affected persons or groups.[7]

For administrative lawyers, the questions will include statutory purpose, rational connection between the identified public interest and the class affected, procedural implications for individuals caught by an order, and the availability and scope of judicial review. *Vavilov* supplies the contemporary framework for reasonableness review of administrative action, while the precise reviewability of particular order-making exercises will depend on the statutory context and the challenge advanced.[9]

VII. PRRA is a safeguard, but not an identical substitute

IRCC states that persons affected by the new one-year and irregular-border ineligibility rules may still have access to a pre-removal risk assessment. That matters because the core protection principle is non-refoulement: Canada must not return a person to persecution, torture or other prohibited serious harm contrary to its legal obligations.[2,12]

Yet an available PRRA should not be analytically equated with an RPD hearing. The procedures, timing, evidentiary setting and appeal architecture differ. Litigation may therefore ask whether, in a particular statutory configuration, the alternative process provides a sufficiently meaningful opportunity to present risk before removal.

VIII. Procedural fairness and Charter pressure points

The Supreme Court of Canada's refugee jurisprudence has long treated protection decisions as capable of engaging profound interests. *Singh* is foundational because it rejected the idea that non-citizens physically present in Canada fall outside constitutional procedural protection. Bill C-12 does not displace that principle; it changes the statutory points at which procedure matters.[11]

Potential disputes may arise around notice of missing information, opportunities to cure defects, abandonment findings, interpretation of 'first entry,' proof of irregular-entry dates, exceptions for vulnerable claimants, and decisions about access to alternative risk assessment. Section 7 of the Charter may be invoked where state action creates a sufficiently direct risk to life, liberty or security of the person; section 15 arguments may arise where a rule is alleged to create discriminatory effects. The success of any challenge will depend on the factual record, statutory scheme, causation and justification analysis, not on the mere severity of the claimant's circumstances.[10]

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IX. A lawful practice framework after Bill C-12

Bill C-12 rewards early issue-spotting. A competent initial assessment should establish: (1) every entry and exit after June 24, 2020; (2) the first relevant entry; (3) the location and manner of any Canada-US land-border entry; (4) the date the protection claim was made or initiated; (5) prior refugee claims in Canada or elsewhere; (6) immigration and removal history; (7) criminality or security concerns; (8) STCA issues and exceptions; and (9) whether the claimant falls within an express statutory or regulatory exception.

Where an ineligibility ground appears to apply, the proper response is not to manufacture a workaround. Counsel should test the legal trigger against the evidence, identify genuine exceptions, preserve procedural objections, advise on PRRA or other lawful avenues where available, and assess judicial review where there is a reviewable error. The distinction is important: creative advocacy is legitimate; evasion of a statutory condition is not.

X. Conclusion

Bill C-12 represents a shift from an asylum system organized primarily around merits adjudication toward one in which access, timing, pre-referral compliance and system-level management play a larger role. The one-year and 14-day rules are the most visible reforms, but the deeper transformation lies in the architecture surrounding them.

The next phase will be shaped by regulations, operational guidance and litigation. Courts will be asked to interpret new statutory language against Canada's established commitments to fairness and protection. For applicants and counsel, the immediate lesson is less dramatic but more practical: build the chronology first, identify the gate before arguing the merits, and treat every pre-referral step as legally consequential.

Author note: Oghenehoro Evi Eni writes on immigration, refugee protection, administrative law and cross-border mobility. The views expressed are the author's. This manuscript is general legal scholarship and not legal advice.

Footnotes

1. Strengthening Canada's Immigration System and Borders Act, S.C. 2026, c. 4, assented to March 26, 2026, especially Parts 5-8.
2. Immigration, Refugees and Citizenship Canada, “New immigration and asylum measures from Bill C-12 ... have become law” (March 27, 2026).
3. Immigration and Refugee Protection Act, S.C. 2001, c. 27, as amended, ss. 100, 100.1,

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101, 102.1, 102.2, 104.1, 112 and 150.1.

4. Strengthening Canada's Immigration System and Borders Act, s. 73, adding IRPA s. 101(1)(b.1), (b.2), and s. 101(1.1).
5. Immigration, Refugees and Citizenship Canada, "Claiming asylum at the border when you enter Canada: Meet the requirements to submit an asylum claim" (updated March 27, 2026).
6. Department of Citizenship and Immigration Act, R.S.C. 1994, c. 31, as amended by Bill C-12, ss. 5.3-5.7.
7. IRPA, as amended by Bill C-12, ss. 87.3001-87.305 (orders made in the public interest).
8. Immigration, Refugees and Citizenship Canada, "Canada proposes new regulations to modernize the asylum process and support timely decisions" (June 19, 2026).
9. Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 (administrative-law framework relevant to review of administrative decisions).
10. Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, including ss. 7 and 15.
11. Singh v Minister of Employment and Immigration, [1985] 1 SCR 177 (procedural fairness and Charter protection in refugee determination).
12. United Nations Convention Relating to the Status of Refugees, 28 July 1951, 189 UNTS 137, art. 33 (non-refoulement), as incorporated into Canada's protection framework.

Selected Bibliography

Legislation: Canadian Charter of Rights and Freedoms; Department of Citizenship and Immigration Act; Immigration and Refugee Protection Act; Immigration and Refugee Protection Regulations; Strengthening Canada's Immigration System and Borders Act, S.C. 2026, c. 4.

Cases: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65; *Singh v Minister of Employment and Immigration*, [1985] 1 SCR 177.

Government materials: Immigration, Refugees and Citizenship Canada, Bill C-12 backgrounder (March 27, 2026); IRCC asylum eligibility guidance (updated March 27, 2026); IRCC proposed asylum-regulation announcement (June 19, 2026).

International: Convention Relating to the Status of Refugees, 28 July 1951, 189 UNTS 137.