

Court File No. CV-25-00747841-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

THOMAS NDAYIRAGIJE,
EMMANUEL NDAYIRAGIJE and DORETTA NDAYIRAGIJE

Plaintiffs

- and -

ATTORNEY GENERAL OF CANADA

Defendant

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM
(Notice of action issued: July 18, 2025)

CLAIM

A. Definitions

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following defined meanings:

- a. **“Crown”** or **“Canada”** – the Government of Canada;
- b. **“Minister”** – the Minister of Immigration, Refugees and Citizenship, previously the Minister of Citizenship and Immigration;

- c. “**IRCC**” – Immigration, Refugees and Citizenship Canada, previously Citizenship and Immigration Canada;
- d. “**IRPA**” or the “**Act**” – *Immigration and Refugee Protection Act*, SC 2001, c 27;
- e. “**IRPR**” or the “**Regulations**” – *Immigration and Refugee Protection Regulations*, SOR/2002-227;
- f. “**PR**” – permanent residence;
- g. “**Protected Person**” – a person described in s. 95(1)(b) or s. 95(1)(c) of the *IRPA*. That is, a person found to be Convention refugee in Canada as defined in s. 96 of the *IRPA*, or a person in need of protection as defined in s. 97 of the *IRPA*, by either the Immigration and Refugee Board, or the Minister;
- h. “**Dependent Child**” – a biological or adopted child who is less than 22 years of age and is not a spouse or common-law partner, or a biological or adopted child who is 22 years of age or older and has depended substantially on the financial support of a Protected Person parent since before attaining the age of 22 years and is unable to be financially self-supporting due to a physical or mental condition;
- i. “**Overseas Dependent**” – a Dependent Child of a Protected Person in Canada who is not present in Canada when making an application for permanent residence. For the purpose of this Statement of Claim, Overseas Dependents do not include the spouses or common-law partners of Protected Persons; and
- j. “**Class Period**” – July 17, 2019, to the date of certification of this action.

B. Relief Sought

2. The Plaintiffs claim against the Defendant, on their own behalf and on behalf of the Class:

- a. an order pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6 (“CPA”) certifying this action as a class proceeding and appointing the Plaintiffs as representative plaintiffs for a Class defined as:

All current and former Protected Persons who were separated from one or more of their Overseas Dependent(s) for six months or longer from the date of submission of the Protected Person’s application for permanent residence (“Parent Class”), and

All current and former Overseas Dependents who were separated from one or more of their Protected Person parent(s) for six months or longer from the date of submission of their parent’s application for permanent residence (“Dependent Child Class”)

(together, the “Class” or “Class Members”);

- b. declarations that the Defendant’s policies, actions and conduct in processing applications for permanent residence by Dependent Child Class Members infringed the equality rights of all Class Members under ss. 7 and 15(1) of the *Charter of Rights and Freedoms* (“Charter”) and that such infringements are not saved under s. 1 of the *Charter*;
- c. damages under s. 24(1) of the *Charter* on an aggregate or individual basis, to achieve the purposes of compensation, vindication and deterrence in relation to the breaches of ss. 7 and 15(1) of the *Charter* pleaded above;
- d. any other remedies as this Court considers appropriate and just in the circumstances pursuant to s. 24(1) of the *Charter*;

- e. an equitable rate of interest on all sums found due and owing to the Plaintiffs and other Class Members or, in the alternative, pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, RSO 1990, c C.43 (the “*CJA*”);
- f. costs of this action on a full indemnity basis, together with applicable HST, or in an amount that provides substantial indemnity, plus the costs of notices and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to s. 26(9) of the *CPA*; and
- g. such further and other relief as this Honourable Court may deem just.

C. Overview

3. Refugees fleeing persecution are sometimes forced to leave their children behind when they flee. Canadian law addresses this reality. Individuals who are recognized as Convention refugees or protected persons by Canada have the right to permanent residence both for themselves and their children overseas. This right to refugee family reunification is codified in the *IRPA*, the stated purposes of which include reunifying refugee families “to support the self-sufficiency and the social and economic well-being of refugees.”

4. The current processing time for applications for permanent residence by overseas dependents of protected persons is more than *four years*. This is in addition to earlier periods of parent-child separation, including the time taken to adjudicate the refugee claim. This system frustrates the right to refugee family reunification and guarantees years of mental anguish and suffering for both refugee parents and their separated children, who are often in dangerous circumstances without parental care or protection.

5. In the two decades since the enactment of the *IRPA*, and recognizing and affirming the right to family reunification for separated refugee families, Canada has repeatedly been put on notice of damaging and prolonged refugee family separation times, including by the United Nations, the Auditor General of Canada, and House of Commons Standing Committees. Nevertheless, through their policies, actions and conduct, years-long separation times have persisted, frustrating the right to family reunification for refugees in Canada and their children overseas.

6. Canada could address this problem by allowing separated refugee children to travel to Canada while their applications for permanent residence are pending, as the House of Commons Standing Committee has recommended. Canada has offered no justification for its failure to do so.

7. Canada also offers no justification for its discriminatory treatment of separated refugee families compared to non-refugee families, who benefit from a 12-month service standard in applications for family reunification.

8. Canada's actions in subjecting separated refugee families to years-long processing delays violate the *Charter* rights of refugee parents and their overseas children. They are discriminatory on the grounds of family status (for refugee parents), age (for separated refugee children), and race, national and ethnic origin (for both refugee parents and their separated children). Canada also violates the right to security of the person of refugee parents and their overseas children who are forced to endure years of state-imposed psychological suffering without justification.

D. Parties

(i) Plaintiffs & the Class

9. The plaintiff Thomas Ndayiragije (“Thomas”) is originally from Burundi and is a member of the Parent Class.

10. Thomas has four children, including the plaintiffs Emmanuel Ndayiragije (“Emmanuel”) and Doretta Ndayiragije (“Doretta”), who are each members of the Dependent Child Class.

11. Thomas and his four children, including Emmanuel and Doretta, reside in Ottawa, Ontario.

12. The plaintiffs seek damages on behalf of themselves and all refugee families forced to endure years of unnecessary family separation and associated mental anguish and suffering.

(ii) Defendant

13. The Defendant, the Attorney General of Canada, is the legal entity liable for the wrongful acts and torts committed by agents and servants of the Crown pursuant to s. 3 of the *Crown Liability and Proceedings Act*, R.S.C. 1985 c. C-50 (the “CLPA”), including:

- a. the Minister and her delegates; and
- b. officials, employees, servants and agents of IRCC, which administers Canada’s immigration system and processes Class Members’ applications for permanent residence.

E. Background on Refugee Family Separation

(i) Harms of Refugee Family Separation for Parent and Child

14. Refugees fleeing persecution are sometimes forced to leave their children behind when they flee. This initial separation is rarely a matter of choice. Rather, reasons for this initial separation may include, *inter alia*: that the journey is unsafe; that the family does not have enough

money to evacuate everyone all at once; or that other practical obstacles like lack of travel documents prevent the children from fleeing and getting to Canada with their parents.

15. Once in Canada, refugee parents may be granted protection pursuant to ss. 95(1)(b) or (c) of the *IRPA*. They may be determined to be Convention Refugees under s. 96, or to be in need of protection under s. 97. Where refugee parents have children overseas, their children often remain in dangerous situations linked to the persecution of the refugee parents who were granted protection in Canada. Often, these children are themselves displaced, whether internally or in another country.

16. Refugee children who are separated from their parent(s) are at heightened risk of violence, including sexual violence, often do not have safe and stable housing or adequate food, and are frequently unable to access education and/or health and social services. They may be left in the care of adults who cannot care for them properly (*e.g.* infirm grandparents) or without adult supervision at all.

17. The prolonged separation of refugee parents from their children harms the mental health and psychological wellbeing of both parents and children. Refugee parents separated from their children experience mental anguish and psychological distress. Refugee children separated from their parents experience not only depression and profound grief, but also lasting developmental and psychological harms associated with parent-child separation.

18. Due to ongoing threats of persecution in the country of origin and limitations on the availability of temporary resident visas, it is virtually impossible for separated refugee families to even visit temporarily.

19. As recognized in the statutory objectives of the *IRPA* (discussed above and below), prolonged refugee family separation also undermines the self-sufficiency and the social and economic well-being of refugees, and in turn, harms Canada.

(ii) The Plaintiffs' Separation

20. Thomas Ndayiragije is a Burundian human rights activist. He faced persecution in Burundi on the basis of his human rights activism and lived in exile as a refugee starting in or around 1996. Emmanuel and Doretta were born in Uganda in 2003 and 2007, respectively, while Thomas worked for Amnesty International. The children's mother disappeared in 2011.

21. Thomas and his younger children, including Emmanuel and Doretta, escaped Uganda for South Africa in 2012. Their hopes of a safer life in South Africa were not realized – their family endured endemic xenophobic violence and Thomas faced repeated threats and intimidation as a result of his activism.

22. In March 2018, after surviving a brutal attack intended to silence his work, Thomas fled to Canada. His visa permitted only his own passage, and he was forced to make the agonizing decision to leave his children behind in Johannesburg. When Thomas left South Africa, Emmanuel was 15 years old and Doretta was 11 years old.

23. Thomas called his children and spoke with them twice a day throughout their separation, but he would not see his children again until September 2023 – five years later.

24. Thomas was granted refugee protection in Canada in August 2019. In March 2020, Thomas applied for permanent residence for Emmanuel, Doretta, and their siblings, to be processed

concurrently with his own PR application. Thomas had full custody of all his children and filed proof of custody along with the children's PR applications.

25. In August 2021, Thomas submitted applications for Temporary Resident Permits for Emmanuel and Doretta, in an effort to allow them to live in safety and in his care pending the approval of their PR applications. His applications stressed the profound psychological toll of the separation, the risks to the children, their lack of status in South Africa, and the discrimination they were enduring without the protection and care of their father. These applications were refused.

26. From August 2021 to June 2022, Thomas responded promptly to requests from IRCC for biometrics and criminal record checks in respect of his children. In June 2022, Thomas filed written arguments with IRCC, requesting to expedite the children's PR applications, again on the basis of the psychological impact of the separation, the dangers to the children, and their lack of status in South Africa.

27. In August 2022, Thomas received his Confirmation of Permanent Residence. Thereafter, he fell into a major depression due to the ongoing separation from his children. He nonetheless continued to meet the relevant deadlines whenever documents were requested from IRCC.

28. During their approximately five-year-long separation from their father, Doretta and Emmanuel were left in the care of an individual whom they did not know well, and in an unfamiliar environment that was increasingly hostile to them as foreigners.

29. Emmanuel and Doretta were called slurs at school, had their food stolen, and were subjected to physical intimidation by classmates. When they endured abuse, administrators looked the other way. The violence became so severe that Thomas was forced to enroll them in private

schools, stretching the family's limited resources in an effort to protect the children's safety and dignity. These educational disruptions hindered the children's development and further isolated them from peers.

30. Emmanuel and Doretta's neighbourhood in Johannesburg was afflicted by armed break-ins, sexual violence, and gang activity, but relocation was financially impossible. Thomas, living and working in Canada as a newly arrived refugee, did not have the means to secure both safer housing and education for his children abroad.

31. As a teenage girl, Doretta faced a particular and persistent threat from men. Without parental protection, she was routinely sexually harassed and lived in constant fear of rape in a country where sexual violence against girls had become endemic.

32. The children's precarious legal status in South Africa further exacerbated their vulnerability. As dependents on Thomas' refugee permit—which became void upon his departure—they were left in legal limbo. Without valid documents, or a parent to advocate on their behalf, they were in bureaucratic limbo, at risk of detention or deportation, and ineligible for certain protections, social services, or lawful residence.

33. The rise of COVID-19 in 2020 brought another wave of danger. Foreign nationals, including refugees and asylum seekers, were scapegoated as the cause of the pandemic in South Africa. Anti-immigrant hostility spiked, which led to increased threats and violence against Emmanuel and Doretta.

34. Emmanuel was separated from his father between the ages of 15 and 20. Doretta was separated from her father between the ages of 11 and 16. They experienced, and continue to

experience, serious and prolonged harms to their mental health, and disruptions to their emotional, social and psychological development, as a result of their lengthy separation from their only parent.

35. The pain of separation was no less profound for Thomas. In Canada, he lived with the knowledge that his children were suffering and unsafe. He carried the trauma of his own persecution while his mental health deteriorated under the strain of prolonged separation and bureaucratic delay.

36. Thomas experienced, and continues to experience, serious and prolonged harms to his mental health, including insomnia, depression and anxiety, as a result of the lengthy separation from his children, and the knowledge that his children were suffering and unsafe in his absence.

37. Emmanuel and Doretta finally arrived in Canada on September 20, 2023. They arrived bearing the psychological scars of prolonged separation, displacement, and violence. Their educational and emotional development had been profoundly disrupted. The attachment between parent and child had been strained by absence, and the process of rebuilding their bond continues to this day.

38. The plaintiffs' and Class Members' damages arise from Canada's systemic failure to account for the foreseeable and profound harms of family separation among the refugee class. Despite Canada's legal obligations under the *IRPA*, the *Charter*, and international instruments including the *Convention on the Rights of the Child*, detailed below, the plaintiffs and thousands of other separated refugee families in the Class endured unnecessary suffering caused by Canada's unlawful failure to provide a timely path to reunification.

F. Class Members' Statutory Right and Entitlement to Family Reunification

39. Since its enactment in 2001, the *IRPA* has recognized and affirmed the right of refugees to be reunited with their families in Canada, both in the statutory purposes of the *IRPA* and in specific provisions of the Act and Regulations that give effect to those purposes.

(i) Statutory Purpose of Refugee Family Reunification

40. The statutory purposes of the *IRPA* include the reunification of immigrant families generally, and refugee families specifically:

3(1) The objectives of this Act with respect to immigration are ... (d) *to see that families are reunited in Canada;*

...

3(2) The objectives of this Act with respect to refugees are ... (f) *to support the self-sufficiency and the social and economic well-being of refugees by facilitating reunification with their family members in Canada.*

41. By enshrining the foregoing objectives, Parliament expressly recognized the realities that refugee families will sometimes be separated when fleeing persecution, and that prolonged refugee family separation undermines the self-sufficiency and the social and economic well-being of refugees, and in turn, harms Canada.

42. The statutory purpose of the *IRPA* is not merely to protect individuals from persecution, but to support their self-sufficiency, and social and economic well-being, by facilitating their reunification with family members. That objective cannot be achieved where parents are in Canada grieving for children they cannot protect, and children are left abroad in danger. The administration of the *IRPA* by the Minister and her delegates must be in accordance with, and further—not undermine—these statutory objectives.

(ii) Legislative Rights and Entitlements to Refugee Family Reunification

43. The statutory objective of family reunification for refugees is furthered through specific legislative provisions that confer rights and entitlements to refugees and their overseas dependents to be reunified in Canada.

44. Individuals who are recognized as Convention refugees or Protected Persons by Canada have the right to permanent residence for themselves and their dependents, including Dependent Children.

45. Pursuant to s. 21(2) of the *IRPA*, an individual who has been found to be a Protected Person in Canada “becomes” a permanent resident if they make their application for permanent residence and they are not inadmissible as a result of criminality or presenting a danger to public safety.

46. Pursuant to s. 176(1) of the *IRPR*, a Protected Person may include in their application to remain in Canada as a permanent resident any of their “family members”. Pursuant to s. 1(3) of the *IRPR*, “family member” is defined to include, *inter alia*, a Dependent Child of the Protected Person or their spouse or common-law partner.

47. Thus, following a determination by Canada that an individual is a Protected Person, that individual, as well as their Overseas Dependents, gain statutory rights and entitlements to permanent residence in Canada. The *IRPA* stipulates that each of these individuals “become” permanent residents subject to certain exceptions.

(iii) IRPA Implements Canada’s International Legal Obligations

48. Pursuant to s. 3(f) of the *IRPA*, both the Act and the Regulations are to be construed and applied in a manner that complies with “international human rights instruments to which Canada

is signatory.” This interpretive direction affirms that Canada’s immigration and refugee framework must operate in harmony with international legal obligations.

49. Within the category of international human rights instruments to which Canada is signatory are several authoritative instruments that articulate fundamental human rights norms—including the rights to family unity and the best interests of the child—that are directly engaged in the context of refugee family separation. In addition to the United Nations’ *Universal Declaration of Human Rights*, Canada has signed and ratified, or acceded to, the following treaties: the 1966 *International Covenant on Civil and Political Rights* (“ICCPR”), the 1966 *International Covenant on Economic, Social and Cultural Rights* (“ICESCR”), the 1989 *Convention on the Rights of the Child* (“CRC”), and the 1951 *Convention Relating to the Status of Refugees* (“Refugee Convention”).

50. Children are granted special rights and protections under international law in view of their particular vulnerability. The CRC, at Article 3, requires states to make the best interests of the child a primary consideration in all actions that concern them, and to ensure protection and care for children, taking into account the rights and duties of their parents and guardians. The CRC further requires, at Article 10(1), 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.”

51. International legal instruments also recognize the family as the cornerstone of human dignity and social stability. Article 16(3) of the *Universal Declaration of Human Rights* and Article 23(1) of the ICCPR both provide: “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” Comparable language appears in the ICESCR. Article 17 of the ICCPR also provides, among other things, that “no one shall be

subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence.”

Similarly, Article 16 of the CRC protects children from “arbitrary or unlawful interference with his or her privacy, family, home or correspondence.”

52. The Final Act of the Conference of Plenipotentiaries at which the *Refugee Convention* was adopted confirms that “the unity of the family...is an essential right of the refugee”. It also recommends that governments should “take the necessary measures for the protection of the refugee’s family, especially with a view to ensuring that the unity of the family is maintained...”.

53. The *IRPA* and its Regulations must be read in a manner consistent with Canada’s international obligations to protect family unity, particularly in the refugee context and where children are affected. The rights conferred under the *IRPA* to refugee parents and their dependents are not discretionary benefits, but the domestic expression of Canada’s binding international obligations. The interpretation and application of Canada’s statutory obligations concerning refugee family reunification in the *IRPA* must be in accordance with—and not undermine—Canada’s international obligations.

G. Canada Frustrates Class Members’ Right to Family Reunification

(i) Reported Processing Time of 50 Months

54. Through its policies, actions and conduct in processing permanent residence applications for Class Members, Canada has created a system where years-long parent-child separation is standard for parents seeking refuge in Canada. Canada’s actions frustrate the right to family reunification for both Protected Persons in Canada and their Overseas Dependents, and frustrate the statutory objectives of the *IRPA* concerning refugee family reunification.

55. As of August 2025, IRCC reported that the processing time for applications for permanent residence by Overseas Dependents of Protected Persons was 50 months. This means that 80% of the Dependent Child Class Members' PR applications finalized in the preceding six months had taken 50 months or fewer – and 20% had taken even longer than 50 months (over four years).

56. The period of family separation pending finalization of a Dependent Child's permanent residence application is in addition to earlier periods of separation, including: (i) the parent's flight from persecution to arrive in Canada; (ii) the time period before a claim for refugee protection is referred to the Immigration and Refugee Board's Refugee Protection Division; and (iii) the time taken to adjudicate the parent's claim for refugee protection, which may be 37 months or longer, or 43 months or longer where there is an appeal (as reported by the Immigration and Refugee Board).

57. Canada's policies, actions and conduct ensure prolonged family separation for refugees, in defiance of Parliament's express intent to reunify refugee families, with the effect of depriving children of their parents during crucial developmental years, causing permanent social and psychological impacts on both parent and child. On a systemic level, they cause the harms that Parliament intended to prevent through the enactment of *IRPA*, including undermining the self-sufficiency and the social and economic wellbeing of refugee parents and their children.

(ii) Canada's Knowledge of the Problem

58. Canada has implemented a series of policies and practices that have significantly prolonged parent-child separation times for refugees, including during the Class Period, despite repeatedly being put on notice of the gravity of the problem – including by the United Nations, the Auditor

General of Canada, the Canadian Council for Refugees (“CCR”), and House of Commons Standing Committees:

- a. In October 2003, the United Nations Committee on the Rights of the Child observed that, in Canada, “in cases of family reunification... priority is not accorded to those in greatest need of help.” The Committee recommended, in accordance with provisions of the Convention on the Rights of the Child, that Canada “[e]nsure that family reunification is dealt with in an expeditious manner”;
- b. In November 2004, the CCR published a report entitled “More than a Nightmare: Delays in Refugee Family Reunification.” The report called for immediate action and recommended that spouses and children of refugees recognized in Canada should be brought to Canada for processing of their permanent residence applications;
- c. In October 2009, the CCR published a report entitled “Nairobi: Protection Delayed, Protection Denied” highlighting the extraordinarily long processing times in the systemically under-resourced Nairobi visa office, which was responsible for processing applications in a large part of Africa;
- d. In August 2010, the CCR published a resource entitled “Making Speedy Family Reunification a Priority”, again highlighting the prolonged waiting periods faced by children of refugees in Canada;
- e. In August 2011, the CCR published a resource entitled “Canada has work to do: Children and Youth Rights”, noting that the United Nations previously urged

Canada to ensure faster family reunification, and Canada was failing to meet this standard;

- f. In February 2014, the CCR published a resource entitled “Focus on Refugee and Immigration Families” again highlighting systemic delays at the Nairobi visa office;
- g. In October 2016, the CCR published its submission to the House of Commons Standing Committee on Finance, which highlighted the economic impacts of prolonged refugee family separation and the psychological stress this imposes;
- h. In November 2016, the CCR published its submission to the House of Commons Standing Committee on Citizenship and Immigration entitled “Family Reunification”, again highlighting the worsening problem of prolonged refugee family separation. At that point, the processing time for dependent children was 38 months. The CCR urged Canada to commit to a six-month timeline for refugee family reunification involving minor children;
- i. In December 2016, the CCR published a resource entitled “Refugee Family Reunification”, noting the Canadian government’s announcement of a 12-month standard for non-refugee, family class sponsorships, which was in stark contrast to the 38-month processing time for refugee dependents;
- j. In March 2017, the Report of the House of Commons Standing Committee on Citizenship entitled “Family Reunification” noted witness testimony about prolonged refugee family separation and underscored that children who are left

behind in conflict zones “sometimes are exposed to very dangerous situations, similar to the situations their parents fled.” Recommendations included:

Recommendation 21: That IRCC expedite the processing of children under the age of 18 to less than six months if both parents are in Canada.

...

Recommendation 39: That IRCC establish service standards of 12 months for applications under the One-Year Window family reunification program for resettled refugees and for processing applications for dependents abroad of protected persons.

In its published response to the above recommendations, the Canadian government “agreed with” and “supported” the “intent of the recommendations”, but failed to implement them, and failed to address the problem of refugee family separation;

- k. In December 2021, the Prime Minister’s Mandate Letter to the Minister included instructions to “speed up family reunification” and to “implement a program to issue temporary resident status to spouses and children abroad while they wait for... permanent residency.” The latter initiative, when implemented, excluded refugee families, and the Minister failed to deliver on his mandate with respect to refugee family reunification;
- l. In July 2022, the CCR submitted its report to the Standing Committee on Citizenship and Immigration entitled “Accepted refugees: on hold and separated from their family.” The report highlighted the painful delays experienced by refugees awaiting reunification with their immediate family members in Canada. The average processing time for cases of family members of refugees finalized between April 2020 and March 2021 was 39 months – more than three years;

- m. In October 2023, the Auditor General of Canada issued an independent report entitled “Processing Applications for Permanent Residence: Immigration, Refugees and Citizenship Canada”. The Auditor General’s report documented the extent of the problem: from January to July 2021 and 2022, processing times for overseas dependents of protected persons fluctuated between 38.5, 38.7 and 41.9 months. The Auditor General Report also highlighted systemic racism in the under-resourcing of IRCC offices in sub-Saharan Africa;
- n. In December 2023, the House of Commons Standing Committee on Citizenship and Immigration published its report entitled “In Demand Yet Unprocessed: Endemic Immigration Backlogs.” The recommendations included:

Temporary Public Policy for Protected Persons

Recommendation 19

That Immigration, Refugees and Citizenship Canada create a temporary public policy for protected persons to allow them to obtain permanent residence automatically, as they have waited in the backlog, in some instances, for years.

Acting on Ministerial Mandate Letter for Accelerated Family Reunification

Recommendation 20

That the Minister of Immigration, Refugees and Citizenship act on his mandate letter to speed up family reunification applications for both refugee applications and family class applications and that the government regularly publish the processing times for these streams.

In its published response to Recommendation 19, the Canadian government stated that it “agreed in principle” – but did not implement the recommendation. In its published response to Recommendation 20, the Canadian government “agreed” –

but did not implement the recommendation with respect to refugee family reunification;

- o. In April 2024, the Canadian Bar Association and CCR published a joint letter to the Minister, “Re: Processing delays for the dependents of Protected Persons.” Noting current processing delays of 47 months for dependents abroad, they urged the Minister to issue Temporary Resident Permits to dependents of Protected Persons.

H. State Actions that Result in Years-Long Refugee Family Separation

(i) Combination of the Metering Approach and Default Processing

59. Through the combined operation of immigration levels and the “Metering Approach” (described below), and IRCC’s default system of processing applications without regard for the specific circumstances of separated families, Canada imposes years-long delay for separated refugee families.

(a) Immigration Levels and the “Metering Approach”

60. Pursuant to s. 94 of the *IRPA*, the Minister must table annual Reports to Parliament on the past year’s operation of the *IRPA*. In those Reports, the Minister also publishes a forward-looking Immigration Levels Plan. Since 2017, and throughout the Class Period, each Immigration Levels Plan has followed a rolling three-year model incorporating projected admission targets across PR programs (the “Metering Approach”).

61. In accordance with the operative Immigration Levels Plan, IRCC processes the number of PR applications needed in each program to achieve these targets and allocates personnel and resources in proportion to these targets. Once the target for the year in a particular program has

been met, processing slows in that program, and applications in the “inventory” of that PR program are processed in a future year. The Immigration Levels Plan effectively limits the number of PR applications that will be finalized in a given program in a given year.

62. The number of pending PR applications from Protected Persons and their overseas dependents has far exceeded the annual level in that category throughout the Class Period.

63. By the end of January 2022, there was an inventory of over 70,000 pending PR applications from Protected Persons and Overseas Dependents, including 43,000 applications from Protected Persons and their family members in Canada, and 26,500 applications from Overseas Dependents. Yet, in February 2022, despite the significant volume of applications in the inventory, the government announced a processing target of only 24,500. In this way, Canada set an annual processing limit at one-third the size of the backlog – creating built-in processing delay of three years, regardless of whether the case involved separated parents and children or not.

64. By the end of February 2023, the number of PR applications in the inventory from Protected Persons and Overseas Dependents had ballooned to 88,000, with 46,800 applications attributed to Protected Persons in Canada and 31,200 attributed to Overseas Dependents.

65. By the end of August 2023, the total inventory, comprising both prospective and processing inventories, had further expanded to 100,380 applications: 68,022 applications from Protected Persons in Canada and 32,358 applications from Overseas Dependents of Protected Persons.

(b) No Special Consideration for Separated Families

66. Having created a system of built-in, multi-year delay (by setting annual processing levels at one-third the size of the backlog), Canada has also failed to prioritize processing for separated

refugee children or give special consideration to separated refugee families. Instead, IRCC's general objective is to process oldest inventories first, resulting in a default processing system that treats separated refugee families the same as refugee applicants without separated children overseas.

67. Families who fled together and are united in Canada wait in the same queue and are subjected to the same annual levels, as separated families. There is no differentiation based on family status or parent-child separation. In the context of sequential processing of overseas dependent applications (described below), Canada subjects separated refugee families to even longer periods of delay in practice than refugees without separated children.

68. By utilizing a default processing system that treats Protected Persons who are separated from their children overseas the same as Protected Persons who have their families with them in Canada—despite the profound mental anguish and suffering experienced by refugee parents and their separated children during any periods of delay—Canada has exacerbated the built-in delay inflicted on the Class Members.

(ii) Sequential Processing Further Increases Delay for Separated Families

69. In practice, Overseas Dependents are not processed concurrently with their Protected Person parents in Canada. Instead, the processing of their PR applications typically begins after the parents in Canada receive PR. This contributes to even greater periods of delay for separated families than for individuals or families who are already together in Canada.

70. Despite a recent IRCC Pilot Program in a small number of visa offices aiming to process overseas dependents concurrently with in-Canada Protected Persons, the default processing system for the majority of refugee families is sequential. The Pilot Program is small and impermanent.

71. The practice of sequential processing is reflected in the disparate processing times for Protected Persons in Canada compared to Overseas Dependents. As of August 2025, the processing time for Protected Persons in Canada was 29 months, as compared to 50 months for Overseas Dependents.

72. Sequential processing contributes to significantly longer processing times for overseas dependents compared to protected persons in Canada – creating years of additional delay for refugee parents who are separated from their children, compared to refugee parents who are not separated from their children.

(iii) No Service Standards for Protected Persons and Overseas Dependents

73. The Treasury Board of Canada Secretariat (“TBS”) mandates federal departments and agencies to establish and publish service standards as a cornerstone of effective public service management. Further, pursuant to s. 6.1 of the Cabinet Directive on Regulation, departments and agencies are responsible for developing, publishing, and reviewing service standards for high-volume regulatory transactions.

74. Service standards are public commitments, outlining measurable performance levels that Canadians can expect under normal circumstances when interacting with government programs and services. The primary objectives of implementing service standards include enhancing transparency, predictability, managing client expectations, and reinforcing accountability within government services.

75. IRCC has established service standards for most, but not all, of its programs. According to IRCC, service standards signify a commitment to render a decision on an application within a certain amount of time, giving applicants a realistic estimate of when to expect a decision after

submitting an application. The department expressly aims to meet its service standards for 80% of submitted applications (within the approved annual immigration levels plan) and considers an application to be backlogged if its processing time does not meet the standard. Accordingly, it regularly updates and publishes its service standards to reflect current processing times and ensure transparency for applicants.

76. Contrary to TBS and Cabinet directives, service standards are not in place for PR applications by Protected Persons and Overseas Dependents. Accordingly, there is no stated objective for processing times for such applications.

77. In contrast, in April 2010, IRCC implemented a 12-month service standard for processing family immigration sponsorship applications, particularly for spouses, common-law partners, conjugal partners, and dependent children applying from overseas. This standard aims to process 80% of applications within 12 months, provided all required documents are submitted.

(iv) Systemic Racism

78. Refugee families disproportionately come from countries in sub-Saharan Africa. IRCC systemically underfunds and under-resources visa offices in that region. In 2023, the Auditor General's Report No. 9 put Canada on notice of the chronic under-resourcing of offices in sub-Saharan Africa. Despite these findings, refugee family separation times have gotten markedly worse in the years since.

(v) State Failure to Provide Immediate Redress

79. The Minister has the authority to implement measures that would provide immediate redress to separated refugee families, accomplishing the objectives in the *IRPA* without altering its permanent residence procedures. Such measures include the issuance of temporary visas or

permits, or the issuance of a temporary public policy. Throughout the Class Period, despite being put on notice of the availability of these measures, Canada has declined to implement them.

(a) Temporary Visas or Permits Program

80. The Minister has the statutory authority to issue temporary permits or temporary visas to Overseas Dependents of Protected Persons authorizing them to travel to Canada pending the processing of their PR applications. Allowing Overseas Dependents to enter Canada on temporary permits or temporary visas pending the processing of their PR applications would advance the statutory objective of refugee family reunification and would mitigate the devastating harms of prolonged refugee family separation. Indeed, the authority to issue Temporary Resident Permits (“TRPs”) was created through a 2001 amendment to the *IRPA*, in part to allow “early admission on a permanent residence application” for urgent humanitarian purposes in the context of processing delays.

81. Pursuant to s. 3(2)(f) of the *IRPA*, a temporary visa program would also benefit the self-sufficiency and social and economic well-being of refugees in Canada.

82. Canada has been repeatedly put on notice of the availability of such measures, yet has failed to implement them. IRCC’s current Program Delivery Instructions for officers limit the use of TRPs in family separation cases to the rarest of cases of risk to physical safety, and even then, officers are instructed only to “consider” early admission. In practice, TRPs are seldom used to reunite families in a timely manner.

83. Even after the Prime Minister mandated the Minister, in December 2021, to “implement a program to issue temporary resident status to spouses and children abroad while they wait for...

permanent residency,” the Minister implemented the program for non-refugee families only and has never offered any justification for excluding refugee families.

84. Canada’s refusal to implement a temporary visa program for the Class stands in sharp contrast to its use of such programs for other populations in crisis. For instance, following the Russian invasion of Ukraine, Canada established the Canada-Ukraine Authorization for Emergency Travel (“CUAET”). This program granted Ukrainians and their immediate family members extended temporary resident status, free visitor visas valid for up to three years (far longer than the standard 6-month visitor stay), and open work permits to support themselves in Canada. CUAET was implemented swiftly and at scale as a humanitarian response, and demonstrates the Minister’s clear authority to provide temporary relief for a vulnerable group without changing permanent residence pathways.

85. This type of response underscores that the Minister has both the legal authority and practical capacity to provide temporary entry to vulnerable groups during periods of displacement or insecurity. The government has chosen to exercise that authority for other populations, but not for refugee children separated from their parents in Canada. The failure to extend comparable temporary measures to refugee families is not a matter of legal constraint—it is a governmental choice. That choice has left thousands of refugee children in harm’s way and deprived their parents of any meaningful form of interim redress.

(b) Temporary Public Policy

86. Canada also has the authority to issue a temporary public policy for Protected Persons, allowing Overseas Dependents to obtain permanent residence automatically, as they have waited in the backlog for years. Such a temporary public policy was specifically recommended by the

House of Commons Standing Committee on Citizenship and Immigration in December 2023, yet Canada has still not implemented it.

87. Despite the availability of these and other measures to address refugee family separation, separated refugee children continue to languish in dangerous and precarious situations for years, for no discernible public purpose. Allowing separated refugee children to reunify with their parents immediately, either through temporary permits or a temporary public policy as outlined above, would advance the objectives of the *IRPA* without any deleterious impacts. Such a measure would have no effect on Canada's immigration levels because the refugee children being reunified with their parents already have a statutory entitlement to permanent residence; the only question is when they will be permitted to reunify with their parents – immediately, or after years of parent-child separation and associated psychological anguish and suffering.

I. Breaches of *Charter* rights

(i) Section 15 – Discrimination based on Family Status and Age

88. Canada's actions and inaction, set out above, discriminate against Class Members on the basis of family status and age in violation of s. 15(1) of the *Charter*.

89. In processing applications for permanent residence, Canada groups together all Protected Persons and Overseas Dependents into a category. Canada treats the applications in this group in a facially neutral manner, in accordance with the Metering Approach and the default system of processing applications without regard for the specific circumstances of separated families. In doing so, Canada discriminates against the Class Members, who experience disproportionate hardship as a result of processing delay, compared to those Protected Persons who are not separated from their children during any periods of delay.

90. For the Class Members, every additional period of processing delay represents additional pain and anguish associated with parent-child separation. It represents additional mental suffering and psychological distress for both parent and child. Years of processing delay represent years of lost parenting and child development that cannot be repaired or recovered.

91. Processing delays also adversely impact the self-sufficiency and social and economic well-being of separated refugee families compared to refugee families who are not separated during equivalent periods – a fact that Parliament recognized and affirmed in s. 3(2)(f) of the *IRPA*.

92. Protected Persons in Canada who do not have children, or whose children are present with them, do not endure the serious psychological suffering or physical danger or associated hardships arising from family separation during delays in processing PR applications.

93. As a result of sequential processing, Canada imposes even longer periods of delay for separated refugee families than for unified families. Canada's actions in processing permanent residence applications fail to have regard for the unique needs and circumstances of separated families in the processing of permanent residence applications. Canada discriminates against separated refugee parents (Parent Class Members) on the basis of family status, and against separated refugee children (Dependent Child Class Members) on the basis of age.

(a) Family Status

94. Parent Class Members experience effects-based discrimination based on family status:

- a. The differential treatment of Parent Class Members creates a distinction under s. 15(1) of the *Charter* based on the analogous ground of family status. Refugee parents whose children are overseas experience disproportionate hardship

associated with processing delay due to the psychological pain and suffering they endure, the harm to their self-sufficiency and social and economic well-being as recognized in s. 3(2)(f) of the *IRPA*, and other harms to be particularized prior to trial. Such burdens and harms are not experienced by refugees who are not parents, or who are not separated from their dependent children overseas, during equivalent periods of processing delay; and

- b. The distinction is discriminatory in that it fails to respond to the actual capacities and needs of the group (refugee parents with dependent children overseas) and instead imposes burdens and denies benefits in a manner that has the effect of reinforcing, perpetuating, or exacerbating the disadvantage of separated refugee families. The psychological harms endured by Parent Class Members as a result of parent-child separation reinforce and aggravate the psychological harms experienced by refugees generally. The discrimination also delays social and economic integration for Parent Class Members, reinforcing and aggravating the settlement challenges experienced by refugees generally.

(b) Age

95. Dependent Child Class Members experience effects-based discrimination based on age:

- a. The differential treatment of Dependent Child Class Members creates a distinction under s. 15(1) of the *Charter* based on the enumerated ground of age. Refugee children have the same statutory right and entitlement to permanent residence as others in the category of Protected Persons and Overseas Dependents, yet they experience disproportionate hardship associated with delays in processing their

applications. Such disproportionate hardship includes both psychological harms, such as developmental delays and mental distress, as well as physical risks and dangers. By treating Dependent Child Class Members' applications in the same manner as all other applications, and/or by delaying such applications as a result of sequential processing (described above), Canada imposes disproportionate hardship on Dependent Child Class Members based on their age; and

- b. The distinction is discriminatory in that it fails to respond to the actual capacities and needs of the group (refugee children separated from their parents in Canada) and instead imposes burdens and denies benefits in a manner that has the effect of reinforcing, perpetuating, or exacerbating the disadvantage faced by refugee children, directly undermining the statutory objective of refugee family reunification in s. 3(2)(f) of the *IRPA*.

(ii) Section 15 – Discrimination based on Race, National or Ethnic Origin, and/or Refugee Status

96. Canada also discriminates against Class Members on the basis of intersectional grounds of race, national or ethnic origin, and/or refugee status, in violation of s. 15(1) of the *Charter*.

97. The distinction between refugee and non-refugee families on the issue of family separation, though framed in facially neutral terms, maps onto existing racial hierarchies and reproduces patterns of systemic exclusion and delay that fall overwhelmingly on Black and racialized populations.

98. Canada has adopted a twelve-month service standard and temporary resident visa policies for non-refugee families seeking reunification but has excluded refugee families from these

measures. Refugee families—particularly those in the Protected Person/Dependent Abroad (PP/DA) category—are subject to slower, metered processing and are denied temporary reunification pathways, even where children are at risk abroad. This unequal treatment causes significant harm to refugee families, who often face more urgent circumstances.

99. Parent Class Members experience effects-based discrimination on the basis of intersecting grounds of race, national or ethnic origin, and refugee status:

- a. Canada creates a distinction on the basis of race and national or ethnic origin by privileging non-refugee families for timely and temporary reunification, while denying similar measures to refugee families, who are disproportionately Black and racialized and originating from sub-Saharan African countries. Parent Class Members are in the same situation as non-refugee parents seeking to reunite with children abroad. Yet they are denied access to key benefits—such as timely processing and temporary reunification—based on their immigration category, which operates as a proxy for race and national origin. The distinction is reinforced by demographic data and publicly reported findings, including those of the Auditor General of Canada, which confirm racial disparities in immigration processing and outcomes; and
- b. The distinction is discriminatory because it fails to respond to the actual needs and circumstances of racialized refugee families. It imposes burdens and denies benefits in a manner that reinforces, perpetuates, and exacerbates historical racial disadvantage. Refugee families—many of whom are fleeing war, state persecution, or sexual violence—experience prolonged separation as a compounding trauma.

Racialized children remain trapped in dangerous or unstable regions, unable to access safety in Canada, while their parents suffer in silence, unable to protect or care for them. The psychological toll of these delays is unique to refugee families who are disproportionately Black and racialized.

100. Canada's regime ignores the compounded vulnerabilities of refugee families and fails to apply a differential approach that would mitigate harm or advance equality. By treating refugee families in a uniform and procedurally rigid manner, while offering flexibility and support to non-refugee families, Canada reinforces a two-tiered system of family reunification grounded in racial and national origin-based exclusion.

(iii) Section 7 – Serious State-Imposed Psychological Harm

101. By the establishment and operation of a refugee family reunification regime that subjects refugee parents and their overseas children to prolonged and indefinite family separation, Canada has breached the s. 7 rights of Class Members. Subjecting refugee parents and their overseas children to parent-child separation times of over four years to process the children's Permanent Residence applications, over and above earlier periods of parent-child separation, engages the security of the person rights of both Parent and Dependent Child Class Members.

102. Canada's policies and practices governing the processing of PR applications for Protected Persons and their Overseas Dependents have caused serious and lasting psychological harm. These policies exclude refugee families from service standards, deny them access to temporary reunification measures, and fail to consider the urgent and precarious circumstances in which many separated children live. As a result, Parent Class Members—all of whom have been recognized as

Protected Persons in Canada—endure years of forced separation from their children, while Dependent Child Class Members similarly endure years of forced separation from their parents.

103. The prolonged separation of Protected Persons in Canada from their Overseas Dependents has caused profound anguish, helplessness, and guilt. It has deprived Parent Class Members of the ability to raise, protect, and care for their children during formative years, and has resulted in devastating, long-term impacts on their mental health and well-being. It has deprived Dependent Child Class Members of the care and support of their parents during crucial developmental years, causing depression and profound grief, as well as lasting developmental and psychological harms associated with parent-child separation. This serious interference with the psychological integrity of refugee parents and their overseas children is a violation of their right to security of the person under s. 7 and is not in accordance with the principles of fundamental justice.

104. Canada's refugee family reunification regime operates in a manner that is arbitrary, overbroad, grossly disproportionate, and procedurally unfair. It offers no rational basis for treating refugee families differently from non-refugee families, who benefit from a 12-month service standard when reunifying with family members, and it disregards the disproportionate harms experienced by separated refugee families. There is no transparent, public and accessible process to avoid or address these deprivations. Class Members are subjected to unnecessary and avoidable trauma for reasons that bear no justifiable relationship to any legitimate state interest.

(iv) Section 1

105. The infringements of Class Members' rights under ss. 7 and 15(1) of the *Charter* are not justified under s. 1. The harms resulting from Canada's refugee family reunification regime are neither reasonable nor demonstrably justified in a free and democratic society.

106. Canada has not established that the prolonged separation of refugee families, or the exclusion of refugee parents and their children from existing family reunification initiatives, serves a pressing and substantial objective. There is no evidence that the impugned practices are necessary to preserve the integrity of the immigration system, ensure administrative efficiency, or uphold public safety. Rather, the harm results from discretionary policy choices that fail to take account of the specific needs and vulnerabilities of refugee families.

107. Even if Canada were to identify a pressing objective, the means chosen are not minimally impairing. There are clear and feasible minimally impairing alternatives—including, as discussed above, temporary resident visas or permits, service standards, and temporary public policies—that would protect the rights of Class Members while advancing any legitimate governmental purpose.

108. Canada has already implemented a temporary resident visa policy for overseas dependents of non-refugee applicants, allowing families to reunite in Canada while their permanent residence applications are processed. Similarly, a 12-month service standard applies to Family Class PR applications.

109. Canada has the authority to create temporary public policies under s. 25.2 of the *IRPA*, including policies tailored to urgent humanitarian needs. This mechanism has been used in the past to facilitate the entry of Ukrainians fleeing conflict. Refugee families have been excluded from such policy responses despite their vulnerability, and despite the urgent risks posed by prolonged separation.

110. The above measures could be extended to refugee families with minimal administrative burden. Reunifying refugee children with their parents more quickly, or reunifying them during

the processing of their PR applications, would have salutary benefits both for Class Members and for Canadian society as a whole, as contemplated in s. 3(2)(f) of the *IRPA*.

J. Relevant Legislation

111. The Plaintiffs and Class Members plead and rely on provisions of the following statutes and regulations:

- a. *Class Proceedings Act 1992*, S.O. 1992, c. 6;
- b. *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11;
- c. *Immigration and Refugee Protection Act*, SC 2001, c 27;
- d. *Immigration and Refugee Protection Regulations*, SOR/2002-227;
- e. *Crown Liability and Proceedings Act*, RSC 1985, c C-50; and
- f. *Courts of Justice Act*, R.S.O. 1990, c. C.43.

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GOLDBLATT PARTNERS LLP
20 Dundas Street West, Suite 1039
Toronto, ON M5G 2C2
Tel: 416-977-6070

Tina Q Yang LS#: 60010N
tyang@goldblattpartners.com

Louis Century LS#: 66582C
lcentury@goldblattpartners.com

Ikram Handulle LS#: 90996K
ihandulle@goldblattpartners.com

LANDINGS LLP

25 Adelaide St. E., Suite 1414
Toronto, ON M5C 3A1
Tel: 647-490-3968

Erin Simpson LS#: 66741K
esimpson@landingslaw.com

Kassandra Neranjan LS#: 90168I
kneranjan@landingslaw.com

Lawyers for the Plaintiffs

TO: ATTORNEY GENERAL OF CANADA

Ontario Regional Office
Department of Justice Canada
120 Adelaide Street West, Suite #400
Toronto, ON M5H 1T1

Tel: 416-973-0942

Email: AGC_PGC_TORONTO.LEAD-DCECJ@JUSTICE.GC.CA

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at TORONTO

STATEMENT OF CLAIM

GOLDBLATT PARTNERS LLP
20 Dundas Street West, Suite 1039
Toronto, ON M5G 2C2
Tel: 416-977-6070

Tina Q Yang LS#: 60010N
tyang@goldblattpartners.com

Louis Century LS#: 66582C
lcentury@goldblattpartners.com

Ikram Handulle LS#: 90996K
ihandulle@goldblattpartners.com

LANDINGS LLP
25 Adelaide St. E., Suite 1414
Toronto, ON M5C 3A1
Tel: 647-490-3968

Erin Simpson LS#: 66741K
esimpson@landingslaw.com

Kassandra Neranjan LS#: 90168I
kneranjan@landingslaw.com

Lawyers for the Plaintiffs