UPDATE

REFUGEE PROTECTION · CHARTER & CONSTITUTION

# New Asylum Rules and the Requirements of a Fair Hearing

IN THIS UPDATE


- Overview
- I · Bill C-12 changes
- II · Fair hearing
- III · Questions raised by Bill C-12
  - (i) Fair hearing (*Singh*, *Baker*, *Vavilov*, *Mason*)
  - (ii) Credibility
  - (iii) Administrative convenience
- IV · Legislative background
- Sources


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Refugee claims | Section 7 | Bill C-12 | Pre-removal risk assessment

## OVERVIEW

On November 3, 2026, regulations made under the *Strengthening Canada's Immigration System and Borders Act* came into force. The measures are summarized in the table that follows. Notably, certain refugee claims are no longer referred to the Immigration and Refugee Board.

This change returns to a question the Supreme Court of Canada answered in 1985, in *Singh v. Minister of Employment and Immigration*: where a person seeks protection and asserts that they will be persecuted if removed, what form of hearing does the Constitution require?

## I · BILL C-12 CHANGES

### Claims caught by the new rules go to a risk assessment, not to the Board

There are two time-based ways in which an individual can be found ineligible for referral to the Immigration and Refugee Board and diverted to a paper-based risk assessment.

THE MEASURES AT A GLANCE

| MEASURE | LEGAL EFFECT | ISSUES RAISED |
|---|---|---|
| **One-year rule** | A claim made more than a year after first entry into Canada (after June 24, 2020) is not referred to the Board. The rule applies to claims made on or after June 3, 2025. | It reaches people who have lived here for years, and claims made before the bill was introduced. |
| **14-day rule** | A person who enters between ports of entry along the Canada–United States land border must claim within 14 days. | A short window in which to retain counsel and understand the process. |
| **Risk assessment in place of a hearing** | A person whose claim is ineligible may apply for a pre-removal risk assessment. A hearing may be held if prescribed factors are met. | Whether credibility will be tested in person where it is in serious issue, as *Singh* requires. |
| **Public-interest powers** | Where it is of the opinion that it is in the public interest, the Governor in Council may, by order, stop accepting, suspend or terminate the processing of applications for visas, electronic travel authorizations, work and study permits and other documents. It may also cancel, suspend or vary documents. The Act says the public interest covers matters such as administrative errors, fraud, public health, public safety or national security. | How broadly "public interest" will be read. The provisions do not mention refugee claims or protected persons either way. |

There are two time-based ways in which an individual can be found ineligible for referral to the Immigration and Refugee Board.

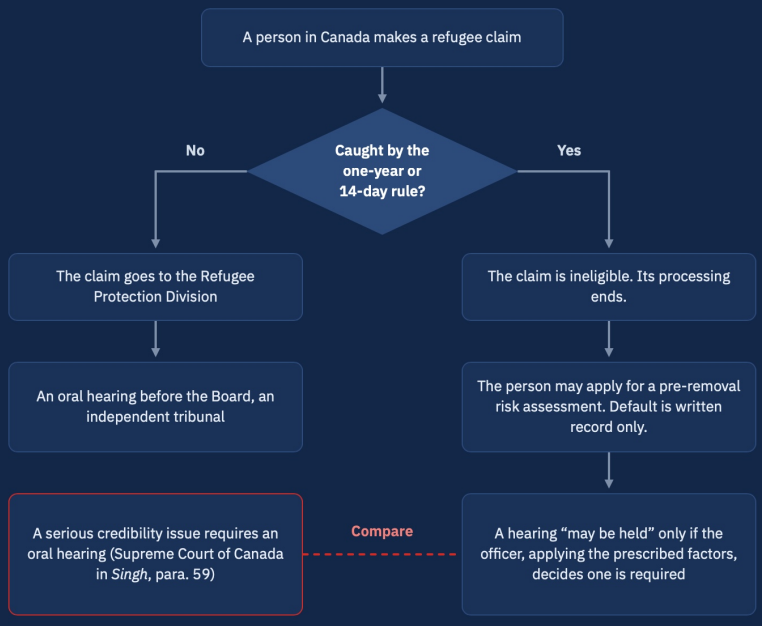
> *A claim is ineligible for referral to the Refugee Protection Division if the claimant entered Canada after June 24, 2020 and claimed more than a year later, or crossed the Canada–United States land border between ports of entry and claimed after the prescribed time limit.*
>
> *Immigration and Refugee Protection Act*, s. 101(1)(b.1)–(b.2), (1.1)

Under the Act's transitional provision (s. 75), the two new rules apply to claims made on or after June 3, 2025, the day the earlier Bill C-2 was introduced. They therefore reach claims made before Bill C-12 itself was introduced. The one-year period runs from a person's first

entry after June 24, 2020, even if the person has since left and returned. For entries between ports of entry along the land border with the United States, the time limit is 14 days.

On November 3, 2026, further provisions of the Act came into force, together with regulations that set out how the new process works. An eligible claim now moves on fixed deadlines.[1] An ineligible claim is closed, and the person's only route to protection is a pre-removal risk assessment. Some claimants are exempt from the new rules.[2]

**New Refugee Protection Claim Process Under C-12**




Limited exceptions: Neither rule applies to a claimant under 18 with no parent or legally responsible adult in Canada, and the one-year rule does not apply to a claimant who submitted documents or information toward a claim within a year of entry.

The government reports that asylum claims fell 52 per cent from January to August 2026 compared with the same period in 2025.

For those affected by these changes, the question is whether the new decision-maker and the new procedure amount to a fair hearing.

II · FAIR HEARING

## Requirements of a Fair Hearing in the Refugee Protection Context

### *Singh*

*Singh v. Minister of Employment and Immigration*, [1985] 1 SCR 177, is a decision of the Supreme Court of Canada. The seven appellants, six citizens of India and one citizen of Guyana, each claimed Convention refugee status. Under the *Immigration Act, 1976*, the Minister, acting on the advice of the Refugee Status Advisory Committee, determined that none of them was a Convention refugee, on the record of an examination under oath. Each applied to the Immigration Appeal Board for a redetermination; the Board refused to allow the applications to proceed, without a hearing, and the Federal Court of Appeal denied their applications to review that refusal. At no stage did any claimant have a hearing at which to answer the case against them.

*Singh*, [1985] 1 SCR 177, paras. 6 to 8, Wilson J.

The Supreme Court of Canada found that procedure unconstitutional. It allowed the appeals, set aside the Board's decisions and remanded the claims for a hearing on the merits in accordance with the principles of fundamental justice. The decision, and its requirement of an oral hearing, led to the creation of the Immigration and Refugee Board of Canada, an independent tribunal established by Parliament in 1989 to assess claims for refugee protection, and to the oral hearing of claims where credibility is in issue.

*Singh*, [1985] 1 SCR 177, para. 74, para. 79
Immigration and Refugee Board, About the Board
Immigration and Refugee Board, 30 years (2019)

The Supreme Court Justices agreed on the result but divided evenly on the reasons:

Charter, s. 7
Bill of Rights, s. 2(e)

- Justice Beetz, writing for himself and Justices Estey and McIntyre, decided the case under section 2(e) of the *Canadian Bill of Rights*.
- Justice Wilson, writing for herself, Chief Justice Dickson and Justice Lamer, held that section 7 of the Charter applied, because removing someone to a place where their life or freedom would be threatened engages security of the person.

### The *Canadian Bill of Rights*

The *Canadian Bill of Rights* is a quasi-constitutional instrument, enacted by Parliament in 1960, that guarantees a fair hearing to anyone whose rights and obligations are being determined. Section 2(e) provides:

> "... no law of Canada shall be construed or applied so as to ... deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations"
> *Canadian Bill of Rights*, S.C. 1960, c. 44, s. 2(e)

Individuals impacted by the new rules are physically present in Canada when they claim, and anyone caught by the one-year rule arrived more than a year earlier. Being ineligible for a Board hearing does not take anyone outside section 7.

*Singh*, [1985] 1 SCR 177, para. 35

In *Singh*, Justice Beetz, writing for three of the six judges, applied that guarantee to refugee claimants. He held that deciding the appellants' refugee claims "involves the determination of rights and obligations for which the appellants have, under s. 2(e) of the *Canadian Bill of Rights*, the right to a fair hearing", and he had "no doubt" that the procedure under the *Immigration Act, 1976* did not provide one. Because the claimants faced threats to life or liberty, he set the minimum at an oral hearing.

*Singh*, [1985] 1 SCR 177, para. 97, para. 100, para. 107, Beetz J.

> **... nothing will pass muster short of at least one full oral hearing before adjudication on the merits**
>
> **Justice Beetz, *Singh*, [1985] 1 SCR 177, para. 107**

The Bill of Rights still governs federal law and continues to operate notwithstanding the Charter.

*Hassouna v. Canada (Citizenship and Immigration)*, 2017 FC 473, para. 66
*Singh*, [1985] 1 SCR 177, para. 85

Bill C-12 must comply with section 2(e). It protects the fairness of any hearing that determines a person's rights, and the immigration Parts of Bill C-12 contain no declaration that they operate notwithstanding the Bill of Rights.

*Canadian Bill of Rights*, ss. 2 and 2(e)

### Section 7 of the Charter

Section 7 of the Charter applies to everyone physically present in Canada:

THE CHARTER · SECTION 7

"Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

*Canadian Charter of Rights and Freedoms*, s. 7

> *"['Everyone' in section 7] includes every human being who is physically present in Canada and by virtue of such presence amenable to Canadian law."*
>
> *Singh*, [1985] 1 SCR 177, para. 35, Wilson J.

Returning a person to a place where they face a risk to life or liberty engages section 7, and the procedure by which that risk is assessed must therefore accord with the principles of fundamental justice.

In *Singh*, Justice Wilson, writing for the other three judges, reasoned in three steps.

**Section 7 applies.** "Security of the person" protects against "the threat of physical punishment or suffering", not only the punishment itself. A refugee had a legal right not to be returned to a country where their life or freedom would be threatened. Denying that right deprives the person of security of the person.

*Singh*, [1985] 1 SCR 177, para. 47, Wilson J.

**Fundamental justice requires a fair procedure.** It "includes the notion of procedural fairness".

*Singh*, [1985] 1 SCR 177, para. 57

**The procedure fell short.** The refugee procedures then in place did not give claimants fundamental justice and were "incompatible with s. 7 of the Charter".

*Singh*, [1985] 1 SCR 177, para. 64

The Act's safety valves do not answer the point. The Supreme Court treated them as ensuring compliance with fundamental justice only in the section 7 context (*Canadian Council for Refugees*, 2023 SCC 17); in the administrative law context it did not find them curative (*Mason*, 2023 SCC 21, para. 104; *Weldemariam*, 2024 FCA 69, paras. 49, 50 and 102). The Federal Court has applied *Mason* in *Ali*, 2025 FC 1682 (Grammond J.) and *Ahamba*, 2026 FC 498, and the same issue is under reserve at the Federal Court of Appeal in *Talukder* (A-348-24), heard on October 20, 2026 by a panel presided over by the Chief Justice.

*Canadian Council for Refugees*, 2023 SCC 17 (Case in Brief)
*Mason*, 2023 SCC 21, para. 104
*Weldemariam*, 2024 FCA 69, paras. 49, 50, 102
*Ali*, 2025 FC 1682
*Ahamba*, 2026 FC 498
*Talukder*, FCA file A-348-24, under reserve

III · QUESTIONS RAISED BY BILL C-12

## The questions Bill C-12 raises

> "Do [the procedures set out in the Act for the adjudication of refugee status claims] provide an adequate opportunity for a refugee claimant to state his case and know the case he has to meet?"
>
> *Singh*, [1985] 1 SCR 177, para. 58, Wilson J.

For the claimants it reaches, Bill C-12 changes both the decision-maker and the procedure. The Supreme Court of Canada in *Singh* set out what is required by a fair procedure. Measured against *Singh* and the rules of procedural fairness, Bill C-12 raises questions of fairness - namely, whether the regulations provide for a fair hearing.

### (i) Fair hearing

*Singh*

Per *Singh*, every individual caught by the new rules is owed a fair hearing, on two grounds. First, *Singh* holds that section 7 of the Charter protects "every human being who is physically present in Canada and by virtue of such presence amenable to Canadian law" (para. 35). Second, section 2(e) of the Bill of Rights guards against depriving "a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations".

A person whose claim is ineligible never reaches the Board. Their only route to protection is a pre-removal risk assessment. Bill C-12 amended the twelve-month bars on applying for one in section 112(2), but it did not amend sections 113 or 113.01, which govern hearings. The significance is this: the assessment is decided on the written record, and the person has no right to be heard. A hearing "may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required" (*Immigration and Refugee Protection Act*, s. 113(b)). A person who says they will be persecuted if removed may therefore have their claim decided, including whether they are believed, without ever appearing before the decision-maker. The question *Singh* asks of such a process is whether it provides "an adequate opportunity for a refugee claimant to state his case and know the case he has to meet" (para. 58).

The way the new rules decide who is ineligible raises further concerns of fairness. The one-year rule turns on a single date: the person's first entry into Canada after June 24, 2020, even if they have since left and returned. A person who came to Canada as a student years ago, and who fears persecution because of events that happened since, is caught by the rule, although the date of that first entry has no bearing on the risk they now face. The rule looks only at the calendar, not at when the risk arose or why the claim was made when it was. The 14-day rule, for those who cross between ports of entry from the United States, leaves little time to retain counsel and gather evidence. An opportunity to be heard must be one a claimant can actually use.

*Baker*

What a fair hearing requires depends on context. In *Baker v. Canada (Minister of Citizenship and Immigration)*, the Supreme Court of Canada held that the content of the duty of fairness "is to be decided in the specific context of each case" (para. 21). Its purpose is to ensure "that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker" (para. 22).

*Baker* sets out five factors that determine the content of a fair hearing.

THE CONTENT OF A FAIR HEARING · THE *BAKER* FACTORS

1. **The nature of the decision and the process followed in making it.** The closer the process is to judicial decision-making, "the more likely it is that procedural protections closer to the trial model will be required by the duty of fairness" (para. 23).
2. **The statutory scheme.** Greater protections are required "when no appeal procedure is provided within the statute, or when the decision is determinative of the issue and further requests cannot be submitted" (para. 24).
3. **The importance of the decision to the person affected.** "[T]he more important the decision is to the lives of those affected and the greater its impact on that person or those persons, the more stringent the procedural protections that will be mandated" (para. 25).
4. **The legitimate expectations of the person challenging the decision** (para. 26).
5. **The procedural choices of the decision-maker itself** (para. 27).

The list is not exhaustive (*Baker*, para. 28).

For a person who says they face persecution if removed, few decisions could matter more, and the third factor calls for the most stringent protections.

***Vavilov***

*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, restated the *Baker* factors and described the duty of fairness as "eminently variable", inherently flexible and context-specific (para. 77). The Supreme Court has since confirmed that "individuals are entitled to greater procedural protection when the decision in question involves the potential for significant personal impact or harm" (*Vavilov*, para. 133). The same paragraph holds that where a decision has consequences "that threaten an individual's life, liberty, dignity or livelihood", the reasons "must reflect the stakes".

***Mason***

In *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, the Court reaffirmed that principle (para. 76) and applied it to a decision that would affect whether two individuals could be deported from Canada, holding that the "reasons must reflect these stakes" (para. 81).

### (ii) Credibility

*Singh* holds that "where a serious issue of credibility is involved, fundamental justice requires that credibility be determined on the basis of an oral hearing" (para. 59). The Regulations set three factors for a risk-assessment hearing: whether there is evidence that raises a serious issue of the applicant's credibility, whether that evidence is central to the decision, and whether it would justify allowing the application if accepted (*Immigration and Refugee Protection Regulations*, s. 167). The second and third are conditions that *Singh* does not contain, and the Act provides that a hearing "may be held", not that one must be.

Parliament has guaranteed a hearing to one group of ineligible claimants before. Since 2019, section 113.01 of the Act has required one, "despite paragraph 113(b)", for claimants found ineligible only because they had already claimed protection in another country, as confirmed under an information-sharing agreement with Canada (s. 101(1)(c.1)). Bill C-12 did not extend that guarantee to the one-year and 14-day rules. The question is whether a significant finding of credibility can still be made on paper, which para. 59 says fundamental justice does not allow.

Both sets of reasons in *Singh* arrive at the same place: where credibility is in issue, the claimant must be heard. Justice Wilson held that a serious issue of credibility must be resolved at an oral hearing, and she found it difficult to conceive of a tribunal fairly making significant findings of credibility on written submissions alone (para. 59). Justice Beetz reached the same conclusion by another route. Where life or liberty may turn on findings of fact and credibility, written submissions are not enough, even with an opportunity to reply (para. 108).

Those are the standards against which the new process falls to be measured.

**FROM THE DECISION · CREDIBILITY AND THE ORAL HEARING**

| JUDGE | PARA. | HOLDING |
|---|---|---|
| **Wilson J.** | para. 59 | A serious issue of credibility must be decided at an oral hearing. "... where a serious issue of credibility is involved, fundamental justice requires that credibility be determined on the basis of an oral hearing." |
| **Wilson J.** | para. 59 | Significant credibility findings cannot be made on paper alone. "I find it difficult to conceive of a situation in which compliance with fundamental justice could be achieved by a tribunal making significant findings of credibility solely on the basis of written submissions." |
| **Beetz J.** | para. 107 | Where life or liberty is at stake, the minimum is a full oral hearing. "... nothing will pass muster short of at least one full oral hearing before adjudication on the merits." |
| **Beetz J.** | para. 108 | Written submissions, even with a right of reply, are not enough. "... where life or liberty may depend on findings of fact and credibility ... the |

> opportunity to make written submissions, even if coupled with an opportunity to reply in writing to allegations of fact and law against interest, would be insufficient."
>
> *Singh v. Minister of Employment and Immigration*, [1985] 1 SCR 177. The para. 108 passage is from the appellants' submission, with which Justice Beetz agreed.

### (iii) Administrative convenience

The government says the changes produce timely decisions, and reports that asylum claims fell 52 per cent from January to August 2026 compared with the same period in 2025. In *Singh*, the Minister argued that an oral hearing for every claimant would overburden the system. Justice Wilson responded that "the guarantees of the Charter would be illusory if they could be ignored because it was administratively convenient to do so" (para. 70), and doubted that considerations of that kind could justify limiting section 7 rights under section 1.

IV · LEGISLATIVE BACKGROUND

## Bill C-12 became law in March after five months in Parliament

> *The Strengthening Canada's Immigration System and Borders Act received royal assent on March 26, 2026, as S.C. 2026, c. 4.*
>
> LEGISinfo, Bill C-12 (45-1)

KEY DATES

| | |
|---|---|
| **June 3, 2025** | Bill C-2 introduced. Claims made on or after this date are caught by the new eligibility rules. |
| **October 8, 2025** | Bill C-12 introduced in the House of Commons. |
| **December 11, 2025** | Passed by the House of Commons. |
| **March 26, 2026** | Royal assent, after the Senate and the House settle their amendments. The one-year and 14-day rules take effect. |
| **June 2026** | Draft regulations published in the *Canada Gazette*, Part I, for comment. |
| **November 3, 2026** | Further provisions of the Act and the implementing regulations come into force. |
| **November 4, 2026** | Final regulations published in the *Canada Gazette*, Part II. |

The bill was introduced on October 8, 2025, passed the House of Commons on December 11, 2025, and received royal assent on March 26, 2026, once the Senate and the House had settled their amendments. The regulations were first published for comment in June 2026.

The Act also requires the Minister of Citizenship and Immigration to report on the one-year rule at the start of its fifth year in force. The report must state how many claimants the rule made ineligible, how many of them applied for a pre-removal risk assessment and how those applications were decided. It must then be tabled in Parliament.

NOTES

1. A claimant whose claim is found eligible must provide the required documents, in the manner the Minister specifies, within 60 days, and may request one 30-day extension. The Minister must then consider the claim within 365 days, unless operational limitations prevent it (SOR/2026-218). ↩
2. The one-year rule does not apply to a claimant who submitted documents or information toward a claim within a year of entry. Neither rule applies to a claimant under 18 who has no parent or legally responsible adult in Canada (SOR/2026-218). ↩

SOURCES

**Legislation**

*Strengthening Canada's Immigration System and Borders Act*, S.C. 2026, c. 4, Parts 6 to 8, including ss. 73–75.1, Justice Laws Website

*Regulations Amending the Immigration and Refugee Protection Regulations (Asylum System Reform)*, SOR/2026-218, and SI/2026-59, *Canada Gazette*, Part II, November 4, 2026

*Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s. 101, s. 113(b) and s. 113.01, Justice Laws Website

*Immigration and Refugee Protection Regulations*, SOR/2002-227, s. 167, Justice Laws Website

*Canadian Bill of Rights*, S.C. 1960, c. 44, s. 2(e), Justice Laws Website

**Parliament of Canada**

Bill C-12 (45-1), *Strengthening Canada's Immigration System and Borders Act*, S.C. 2026, c. 4, LEGISinfo

**Government of Canada**

Immigration, Refugees and Citizenship Canada, "Canada modernizes the asylum system to support timely decisions", November 3, 2026 (the 52 per cent figure only)

Immigration and Refugee Board of Canada, "About the Board", and "The Immigration and Refugee Board of Canada celebrates 30 years", May 16, 2019

**Supreme Court of Canada**

*Singh v. Minister of Employment and Immigration*, [1985] 1 SCR 177, case file 17898

*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817

*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65

*Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21

*Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, 2023 SCC 17

**Federal Court of Appeal**

*Canada (Public Safety and Emergency Preparedness) v. Weldemariam*, 2024 FCA 69

**Federal Court**

*Hassouna v. Canada (Citizenship and Immigration)*, 2017 FC 473, [2017] 4 FCR 555

*Ali v. Canada (Public Safety and Emergency Preparedness)*, 2025 FC 1682

*Ahamba v. Canada (Public Safety and Emergency Preparedness)*, 2026 FC 498

*Talukder v. Canada (Public Safety and Emergency Preparedness)*, Federal Court of Appeal file A-348-24, heard October 20, 2026, under reserve

*This update is general information, not legal advice.*

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## MORE UPDATES

CLIENT BULLETIN · NOVEMBER 3, 2026

### Express Entry 101

How Canada's Express Entry system works, from profile to invitation.

Read the bulletin →

FOR MORE INFORMATION

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