Conseil canadien pour les réfugiés
Canadian Council for Refugees

Family Reunification:

Submission to the Standing Committee on Citizenship and Immigration

Introduction

The Canadian Council for Refugees (CCR) welcomes the Standing Committee on Citizenship and Immigration's study on important issues related to the reunification of families in Canada.

The CCR is a national non-profit umbrella organization committed to the rights and protection of refugees and other vulnerable migrants in Canada and around the world and to the settlement of refugees and immigrants in Canada. The CCR's over 175 members are organizations involved in various ways in the settlement, sponsorship and protection of refugees and immigrants. The Council serves the networking, information-exchange and advocacy needs of its membership.

Since its creation nearly four decades ago, the CCR has been concerned about barriers to family reunification. The CCR believes that family reunification should be a top priority in our immigration policy. The family is the natural and fundamental group unit of society, which governments have an obligation to protect, under international human rights law.

We affirm as central the need to respect the integrity of the family unit and to ensure that families are not separated for any longer than is absolutely necessary. The notion of 'family' has different meanings in different cultural contexts: we encourage a definition of 'family' that is as broad and as inclusive as possible.

We have particular concerns for children separated from their parents. Speedy family reunification should be of the highest priority for any society that cares for the best interests of the child.

The following represents the CCR's key concerns and comments about the issues currently under study. Our comments form 3 main parts, as follows.

1. **Major barriers to family reunification in the Family Class sponsorship program for immediate family members**
   a. Excluded family members
   b. Family reunification for children
   c. Biological child and DNA testing
   d. Definition of family

2. **Barriers to family reunification outside Family Class sponsorships**
   a. Unacceptable processing times for refugee and live-in caregivers' family reunification
   b. Lack of transparency of available statistics on processing times
   c. Barriers to family reunification further to in-Canada H&C applications
   d. Family separation imposed by Temporary Foreign Worker Program and Seasonal Agricultural Worker Program

3. **Making family reunification accessible and equitable**
   a. Overall immigration levels
   b. Income requirements
   c. Parents and grandparents

Submissions

1. Major barriers to family reunification in the Family Class sponsorship program for immediate family members

a. Excluded family members

Section 117(9)(d) of the *Immigration and Refugee Protection Regulations* imposes a lifelong sponsorship ban on family members who were not examined at the time of the sponsor's immigration to Canada. Although R.117(9)(d) affects all categories of immigrants, it has a disproportionately negative effect on refugees and vulnerable migrants who fail to disclose a family member. Their reasons for doing so include fear of endangering the family member, gender-based oppression, lack of information, and unexpected life events. The regime set out in R.117(9)(d) is overbroad, excessive, and inflicts devastating harm on vulnerable people, especially children.

This rule interacts with other provisions in the law to also bar access to the Immigration Appeal Division which would (otherwise) consider humanitarian and compassionate factors. For those who had legitimate reasons for not disclosing a family member, the only remedy possible is to request an exemption from R.117(9)(d) on humanitarian and compassionate grounds (IRPA s. 25). However, this process is expensive, lengthy, and inconsistent – very often putting it beyond the reach of the Regulation's most vulnerable victims.

This rule was intended to capture fraud, by deterring prospective immigrants to Canada from hiding inadmissible family members. CCR members have carried out significant research on this provision which concludes that this rule mostly separates families who were not meant to be captured by it. In response to a recent *Access to Information* request, the Department disclosed that from 2010 to 2014 approximately 1,200 Family Class sponsorships were refused because of this rule. More than 50% of these cases involved the sponsorship of children ("FC3" cases) as opposed to spousal ("FC1") sponsorships. CCR member research of published Federal Court decisions also found that, in approximately 90% of cases, there was no fraudulent intent or act because the undisclosed family member was not inadmissible

The CCR believes R.117(9)(d) violates Canada's international human rights commitments and recommends its elimination as a simple and effective way to address the problems it has created.[1]

b. Family reunification for children

Under the *Immigration and Refugee Protection Regulations*, children who are granted "protected person" status in Canada are not permitted to include their parents and siblings, either abroad or in Canada, in their applications for permanent residence. They cannot sponsor them through the Family Class after landing either.

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[1] For more information, see CCR, "Excluded Family Members: Brief on R. 117(9)(d)", May 2016, ccrweb.ca/en/excluded-family-members-brief or an infographic ccrweb.ca/en/117-9-d-infographic. In 2008 the CCR published, "Families Never to be United: Excluded family members", a backgrounder and series of case profiles, ccrweb.ca/en/families-never-be-united-excluded-family-members-profiles.

The CCR recommends that Regulations be amended so that a "family member" of a Protected Person includes the parents and siblings of a Protected Person who is a minor.[2]

c. Biological child and DNA testing

The definition of "dependent child" in the *Immigration and Refugee Protection Regulations* is restricted to a "biological" or "adopted child". This may result in greater recourse to DNA testing, which is intrusive and possibly harmful to the best interest of children. By this practice, non-biological children who have no other family can be left behind.

The CCR has therefore called upon the government to develop guidelines for immigration and visa officers to accept uncontradicted affidavit evidence by parents and third parties as evidence of relationship in the absence of birth certificates, before requesting DNA testing.[3]

d. Definition of family

The CCR is pleased that the government has pre-published its intention to bring the age of dependent children back up to under 22 years of age, out of recognition for the continued dependency of older children on their families.[4] The CCR calls on the government to make the definition of "family" for immigration purposes more broad and inclusive, to reflect the realities of diverse cultural communities.[5]

2. Barriers to family reunification outside Family Class sponsorships

While the Committee has focused its study on Family Class sponsorship, the CCR urges it to consider situations where family reunification occurs outside the Family Class. These situations are not receiving the attention they deserve, although the processing times are longer than Family Class, and in many cases separated family members are in a situation of grave risk.

a. Unacceptable processing times for refugee and live-in caregivers' family reunification

The CCR welcomes the government's commitment to speeding up processing of Family Class sponsorships (specifically, of spouses and children) but is troubled that this does not cover:

- Family reunification for refugees accepted in Canada
- Family reunification of live-in caregivers
- Family reunification for resettled refugees through the One Year Window of Opportunity

In each of these cases we are also talking about reunification with spouses and children, although these family reunification streams do not involve Family Class Sponsorships.

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[2] CCR Resolution 28, Nov 2003, Family reunification for children with protected person status
[3] See the CCR's report, *DNA Tests: A barrier to speedy family reunification* ccrweb.ca/en/dna-tests, and CCR Resolution 26, Nov 2003, DNA and evidence of parent-child relationship
[4] CCR Resolution 2, June 2013, Age of Dependency
[5] CCR Resolution 2, November 2011, Increased commitment to family reunification

For in-Canada accepted refugees and for live-in caregivers, the *Immigration and Refugee Protection Regulations* provides for "concurrent processing" of their overseas spouses and children. That means that in-Canada refugees and live-in caregivers can include their overseas family members to be processed *concurrently* along with their own applications for permanent residence.

In the case of resettled refugees, immediate family members are processed through the "One Year Window of opportunity" if the application is received within one year of the refugee's landing in Canada.[6]

Refugees and caregivers who benefit from these regulatory provisions do not have to submit a Family Class sponsorship application. There are no financial eligibility requirements for these streams. These provisions are granted out of recognition of their special circumstances, either to honour Canada's international human rights obligations or to recognize the valuable contributions made to Canada's families and economy.

However, these special streams and their ameliorative goals have been totally undermined by unacceptably long processing times: it takes on average **38 months** for refugee dependants ("DR2s") to be processed[7], and **51 months** for caregiver dependants ("LC2s").[8] In the case of One Year Window applications, the government is unable to provide any processing times; CCR members report that processing times for these applications are often very lengthy.

For refugees who have left their families behind in dangerous or precarious situations, this delay keeps people, including many children, in harm's way. For caregivers, it is shameful that we are asking them to leave their own children behind while they care for Canadian children. These delays hinder integration and have long-term negative impacts on families.

The immigration levels play a part in contributing to long processing times for these groups. When targets do not match the existing inventory, the backlog grows. Once the target for the year in a particular category has been met, the visa offices stop processing further applications.

Immigration Category	**Target 2016**	**Target 2017**	**Inventory June 2016**
Protected Persons in Canada			14,148
Dependants Abroad (DR2)			12,201
Total Protected Persons in Canada and Dependants Abroad	**11,000**	**15,000**	**26,349**

[6] *Immigration and Refugee Protection Regulations* s. 141 (Non-accompanying family member)

[7] This was the processing time at the end of 2015. As explained below, more recent information is not available. IRCC has ceased to publish processing times by visa offices and globally only publishes the combined processing times of Protected Persons in Canada and Dependants Abroad.

[8] 51 months is the processing time for Live-in caregivers posted on the IRCC website as of 10 November 2016, www.cic.gc.ca/english/information/times/index.asp. This is the time for Live-in caregivers and their dependants.

The above table shows that the combined immigration targets for 2016 and 2017 for refugees landed in Canada and their dependants abroad are insufficient for the backlog that was accumulated at June 2016. In addition the numbers of claims made in 2016 have increased over 2015. 5,000 claimants were accepted as refugees from January to June 2016: their applications for permanent residence, for themselves and their family members, will be added to the inventory.

Similarly the backlog of caregivers' application is only gradually being addressed, since the 2016 target is nowhere close to meeting the inventory in the system in mid-2016.

Immigration Category	Target 2016	Target 2017	Inventory June 2016
Caregivers	22,000	18,000	31,168

The CCR urges the government to commit to Express Entry family reunification, meaning immigration processing for immediate family members – especially children – within a six month timeline as is promised for so-called "economic" immigration applications under the Express Entry program. Reuniting children with their parents should be at least as high a priority as processing economic immigrants.

b. Lack of transparency of available statistics on processing times

The CCR is particularly concerned about the elimination of information on processing times for DR2s (dependants of refugees). Several years ago IRCC (then CIC) eliminated information about processing times for DR2s from its website. This means that affected individuals consulting the IRCC website have no indication of how long they can expect their application to take.

Until recently the data could at least be obtained from the government's Open Data website.[9] IRCC used to post datasets there, where it was possible to drill down by visa office and immigration category, in order to discover the processing times by visa office.

Historically there have been very significant regional variations in processing times for DR2s, as for other categories. In particular processing times in Africa have often been much longer than for other regions. It is therefore crucial that the public be able to analyze times by region.

However, in 2016 IRCC removed data on regional variations and posted only global overviews. The explanation given was that this is a consequence of files being moved around IRCC's global network. However, IRCC continues to post on its website rolling processing times by country of residence and type of application, so this information is available. The decision to remove the data by region (visa office or country of origin) from the Open Data website means that it is now extremely difficult (in the case of immigration categories where processing times are posted on the IRCC website) or impossible (in the case of DR2s) to compare processing times by region.

In the case of dependants of refugees, the elimination of the visa office breakdown means that it impossible to know even the global processing times. IRCC has combined processing times for refugees landed in Canada

[9] http://open.canada.ca/data/en/dataset?_organization_limit=0&organization=cic&q

with those for their family members (DR2s). The processing time therefore represents an average of the two categories, and is inaccurate both for applicants in Canada and for the dependants abroad.

CCR urges IRCC to publish the regional breakdown of DR2 processing times.

For One Year Window applications, processing times are not available, either publicly or on request.

c. Barriers to family reunification further to in-Canada H&C applications

Until 2004, the family members of persons accepted in Canada on humanitarian and compassionate (H&C) grounds were processed concurrently with the principal applicant in Canada. This meant that once the medicals, criminality and security checks were complete, the family members overseas could be landed immediately. It also meant the ages of the children were "locked in" from the time of the permanent residence application of the person in Canada.

In August 2004 the regulations were modified to remove this concurrent processing. This has resulted in a significant delay in family reunification for persons accepted on H&C grounds, and children "ageing" out during the long processing times. It also causes inefficiencies, as the family members overseas often have to re-do inadmissibility checks.

The people affected have compelling humanitarian and compassionate considerations.

The CCR recommends an amendment of the Regulations to restore concurrent processing of family members of persons accepted on H&C grounds.[10]

d. Family separation imposed by Temporary Foreign Worker Program and Seasonal Agricultural Worker Program

Canada requires low-skill/low-wage workers in our temporary labour migration programs (including caregivers) to be separated from their families for prolonged periods of time. While high-skilled/high-wage workers are allowed to bring their families, low-skilled workers are not. This is discriminatory, and causes significant distress and mental health issues including anxiety and depression.

The CCR believes that low-skilled workers should be able to immigrate permanently to Canada through the economic class. However, as long as temporary labour migration programs are in use, all workers should be entitled to bring their spouse or partner and children to Canada with them, and that they be issued work permits.[11]

3. Making family reunification accessible and equitable

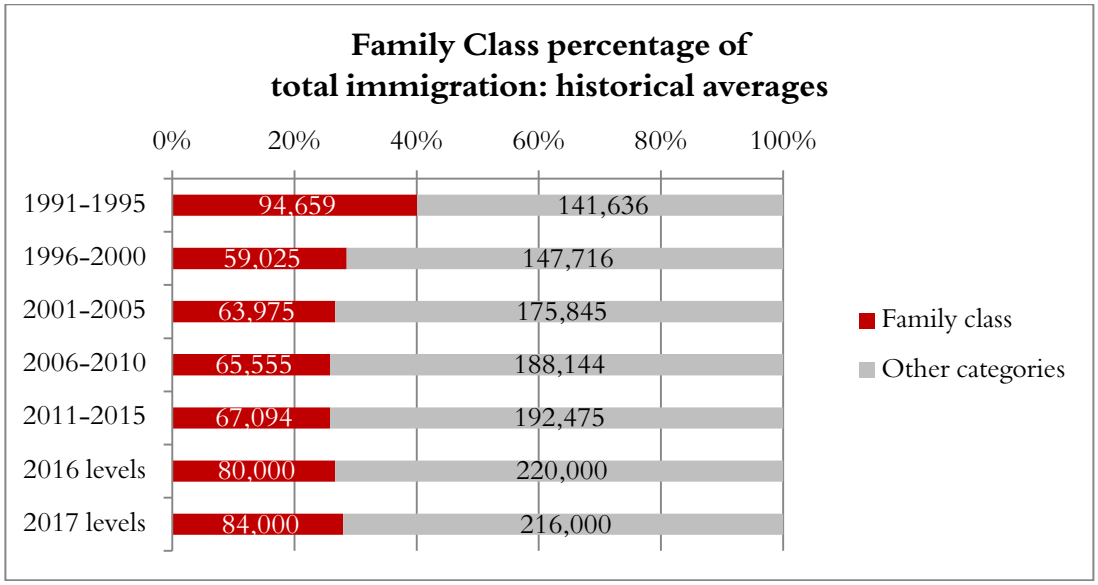
The CCR is concerned that the restricted levels numbers, the narrow definition of who can be sponsored, and the high income requirements make family reunification inaccessible for many. This is particularly the case for

[10] CCR Resolution 12, May 2009, Concurrent processing of family members of persons accepted on H&C grounds
[11] CCR Resolution 4, Nov 2011, Caregivers, Live-in Status and Family Reunification, Resolution 4, May 2008, Temporary Foreign Workers, Resolution 4, Nov 2007, Right to permanent residence for migrant workers

people who came to Canada as refugees, who often cannot meet the criteria to sponsor a family member, and yet are deeply preoccupied by the family member's situation as a displaced person or facing risk in the home country. The inaccessibility of the Family Class program has a strong impact on the Private Sponsorship Program as many people turn to private sponsors as an alternative way of reuniting with family members who are also refugees.

a. Overall immigration levels

The CCR urges the Canadian government to rebalance immigration levels so that family-linked applicants make up at least 40% of the total.[12]



The table below shows that the backlog of cases exceeds the immigration targets for the Family Class categories, meaning that people inevitably must wait years for processing.

Immigration Category	Target 2016	Target 2017	Inventory June 2016
Family			
Spouse, Partners and Children	60,000	64,000	79,553
Parents and Grandparents	20,000	20,000	57,382
TOTAL	**80,000**	**84,000**	**136,935**

[12] CCR Resolution 2, November 2011. Increased commitment to family reunification

b. Income requirements

The CCR has long called on the Canadian government to make family reunification a central objective out of recognition for the principle of family unity, and in keeping with this objective, has urged the government to eliminate the minimum income requirement for family reunification in all classes.[13]

c. Parents and grandparents

Non-nuclear families including parents and grandparents are important to the social and economic wellbeing of families, including those of refugees and immigrants.

The CCR opposed the recent changes to the regulations[14] that made sponsorship of parents and grandparents more difficult.[15]

- The increased financial requirements mean that only the wealthy can sponsor their parents. Family reunification should not be a privilege reserved to the wealthy.
- The changes disproportionately affect racialized communities and women, as they are economically disadvantaged in Canada, and are less likely to meet the higher income thresholds.
- The focus on economic contributions ignores the many other contributions newcomers make to our societies. The *Immigration and Refugee Protection Act* recognizes in its objectives that newcomers make many types of contributions. The first objective, with respect to immigration, is "to permit Canada to pursue the maximum social, cultural and economic benefits of immigration". The second is "to enrich and strengthen the social and cultural fabric of Canadian society". Keeping families together is an important social benefit for the country.
- Parents and grandparents often support the members of the family who are earning a salary, for example by providing childcare. For lower income immigrants, bringing a parent may mean that the immigrant can work fulltime because someone is available to care for young children.
- Immigrants who are contributing to Canada may leave if they can't bring their parents here.
- Refugees who arrive in Canada as unaccompanied minors do not have the right to family reunification with their parents and siblings. The changes greatly delay, and likely prevent, their ability to ever sponsor their parents and siblings once the refugee is an adult.
- Twenty year sponsorships increase the risk of serious hardships for families, in the case of illness or accident. Immigrants are paying the same taxes as Canadians: it is not fair that they should be deprived for decades of the services paid for by those taxes.
- Longer sponsorships increase the risk of abuse because the relationship of financial dependency makes it more difficult for parents and grandparents to leave the home if the relationship becomes abusive.

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[13] CCR Resolution 2, November 2013, Eliminate income requirement for Family Reunification
[14] Regulations Amending the Immigration and Refugee Protection Regulations SOR/2013-246 December 13, 2013
[15] CCR, Sponsorship of parents and grandparents: comments on proposed regulatory changes, June 2013