



Montreal City  
**Mission**  
communautaire de Montréal

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# Refugee Law Presentation

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Just Solutions Legal Clinic

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## **(1) Refugee Protection Division (RPD)**

Prior to the RPD Hearing

### **What is a Basis of Claim form?**

A BOC or Basis of Claim form is given to all refugee claimants who claim refugee status at the Canadian border (port of entry). Refugee claimants have 15 days upon entry to submit the BOC to the Immigration and Refugee Board (IRB).

An extremely important part of the BOC is a narrative or a 'story.' The narrative tells the IRB why the refugee claimants cannot go back to their home country and why they want to stay in Canada. The narratives are usually at least 2 pages long. Most lawyers spend hours talking with the claimants to understand their personal hardship and prepare the narrative. The narratives must be very carefully drafted. If the claimant does not understand French or English, the BOC must be interpreted to them.

### **Completing a medical exam**

The claimants will receive instructions to complete their medical exams. These instructions are given at the border. The medical exams can be performed by panel physicians only – special doctors who are authorized to perform medicals for immigration purposes.

### **Getting a work or study permit**

The claimants are asked at the border to specify if they want to apply for a work permit or/and a study permit. Before the pandemic, it would generally take 2-4 weeks to receive the permits in mail.

Work permits are generally not issued if the claimants did not previously complete a medical exam.

If the refugee claimant is pregnant, the standard medical exam will not be performed because most panel physicians ("immigration" doctors) do not perform X-rays on pregnant ladies. In that case, Immigration, Refugees and Citizenship Canada (IRCC) will issue the permit only once the X-rays are done.

It is not possible to start working or studying in Canada unless one has a valid work or study permit.

### **Moving places - change of address**

Most refugee claimants change their address shortly upon arrival in Canada. It is extremely important that, whenever there is a change of address, they notify:

- Immigration, Refugees and Citizenship Canada (IRCC);
- Immigration and Refugee Board (IRB) and
- Canada Border Services Agency (CBSA).

The package that the claimants receive at the border will generally instruct the claimants to inform IRCC only. Unfortunately, there is sometimes a lack of communication between IRCC, IRB and CBSA. It is, thus, better to notify all three entities, just to be on the safe side.

### **What kind of evidence is needed?**

The claimants and their legal representatives should start working on collecting evidence right after the BOC is filed. This is because it usually takes months to prepare, gather, translate and analyze all documents. Moreover, no one knows when the RPD will schedule the hearing.

Many claimants believe that the Refugee Protection Division (RPD) will understand what they have been through and what the situation in their home country is. Many refugee claimants think that their word alone will suffice to have their claim approved. It is extremely dangerous and harmful to think this way! The RPD has a huge backlog of cases, the Board Members (or “the judges”) have multiple cases to handle, they sometimes know very little about the claimant’s country of origin and some Board Members can be very hostile. The best way to fight all those factors is by preparing a well-documented and credible selection of evidentiary materials. Your legal representative will know best what evidence will work in your favor. Depending on the narrative, some of the following documents may be useful:

- signed witness statements (preferably in the form of a Statutory Declaration);
- identity documents;
- marriage certificates, divorce judgments and other proof of civil status;
- research papers or media reports that deal with the specific issue(s) the claimant has experienced back home.

The RPD accepts only 100 pages (single-sided) of country condition documents, so the evidence must be carefully prepared.

- IFA (internal flight alternative) - when it comes to the refugee claims from Nigeria, it is extremely important to address the so called “IFA” - internal flight alternative. Many Nigerian refugee claims get rejected on the basis that the claimant can seek protection in other parts of Nigeria. For example, if you have been targeted by Fulani herdsmen, who generally operate in the northern part of the country, the RPD may conclude that you will be safe if you move to Lagos.

- FGM (female genital mutilation) - some claims from Nigeria are based on a fear that the claimant's daughter(s) will be subjected to FGM, usually due to the family and tribe pressure. This pressure should be well-documented. Sometimes a medical expert report will be needed (to show that the daughter has not been already subjected to FGM).
- Documents - the RPD is particularly sensitive when it comes to documents that the claimants wish to present or use as the evidence. They are used to seeing a lot of fraudulent documents and sometimes, if there is any discrepancy, they will question extensively about this.

### **What is the National Documentation Package and how is it used?**

The NDP (or country conditions) is a selection of research papers, media reports and other documents that the Immigration and Refugee Board prepares in advance for each country. This selection is publicly available on this link: <https://irb-cisr.gc.ca/en/country-information/ndp/Pages/index.aspx>

The Board Members and claimants can rely on any document in the NDP; there is no need to specifically disclose it.

### **When will a hearing be scheduled?**

It is extremely hard to tell. It can take months before the claimants hear from the RPD.

Once the RPD receives the BOC, 3 things can happen:

1. No hearing – the RPD may consider not inviting the claimant to the hearing. This will be the case if they think that the BOC is strong enough, if the country conditions are particularly dire and there is not much to dispute. This happens rarely. If the claimant receives the no hearing notice, the claimant will be invited to file evidence. Then the RPD may just issue a positive decision or may decide to move the matter to a hearing.
2. Short hearing – the RPD may schedule a hearing, but inform the claimant that they want to have a short hearing. This is generally a good sign and it usually means that the RPD is ready to accept the claim, but needs to ask some questions to the claimant. This also happens rarely.
3. Full hearing – most cases go to a standard, full, hearing (usually 3-4 hours). Evidence must be filed 10 calendar days before the hearing.

## During the RPD Hearing

### **What happens at the hearing?**

The hearings usually last up to 4 hours. Most cases finish in one hearing, but some require several days. This is the line of questioning:

- The Refugee Board Member (or “the judge”) starts his/her line of questioning. The claimant(s) respond(s).
- When the Board Member concludes, then it is the claimant’s counsel’s turn to ask questions and to call any witnesses.
- When there are no more questions to ask, the counsel will be asked to give oral submissions.

The Board Members usually have a lot of questions and the biggest part of the hearing is dedicated to their questions. It is, thus, extremely important to prepare the refugee claimants for the hearing.

- In the end of the hearing, two things can happen:
  1. bench positive - the Board Member can verbally say that they accept the claim.
  2. written decision - the Board Member can say that the decision will be rendered later.

### **Who are the Board members?**

The Board Members decide your refugee claims. The Board Members are not necessarily lawyers and many of them have no legal background. Notwithstanding this, in the past few years the RPD has been hiring lawyers, some of whom are refugee and immigration lawyers.

## After the RPD Hearing

### **When will a decision be made?**

It is very hard to tell. Before the pandemic, it would generally take up to 3 months to receive the decision. Now, in the pandemic era, these delays have been extended.

## What happens after a positive RPD decision?

If you receive the positive decision, the next step is to apply for Canadian permanent residence.

## What about negative?

### (2) Refugee Appeal Division (RAD)

This is a division of the Immigration and Refugee Board (IRB) that considers appeals from some decisions of the Refugee Protection Division (RPD) to allow or reject claims for refugee protection. Gives claimants a chance to prove that the RPD decision was wrong in fact or law. It also allows new evidence to be introduced that was not available at the time of the RPD hearing. Usually considers written submissions and documents without an oral hearing.

### How can a negative decision be appealed?

All claimants can appeal negative decisions TO the RAD (including DCO claimants) EXCEPT

- those with a manifestly unfounded claim as decided by the IRB
- those with claims with no credible basis as decided by the IRB
- claimants who are subject to an exception to the Safe Third Country Agreement
- claims referred to the IRB before the new asylum system comes into force and re-hearings of those claims as a result of review by the Federal Court
- individuals who arrive as part of a designated irregular arrival
- individuals who withdrew or abandoned their refugee claims
- those cases in which the Refugee Protection Division at the IRB has allowed the Minister's application to vacate or cease their refugee protection
- those with claims deemed rejected because of an order of surrender under the *Extradition Act*
- those with decisions on PRRA applications

Failed claimants can still ask federal court to review a negative decision

To appeal a negative decision

- 2 major steps
  - **Submit your Notice of Appeal form**
    - § Starts your appeal, protects your rights



§ Do it carefully and on time

§ Will need the following documents to complete this form

- RPD Notice of Decision
- RPD Written Reasons and Decision

§ Page 1

- Will have to put in personal info with everyone involved in claim, including children if they were involved
- Unique client identifier at top right of the RPD Decision
- If children involved, parents are usually designated representative

§ Page 2

- If counsel, fill in counsel contact info section, and must sign
  - can leave it blank if you don't have counsel at the time as long as you inform IRB of this change
- designated representatives must sign
- If interpreter, interpreter has to sign

§ Make 3 additional copies and keep one for your own records

§ Mail hand deliver the signed original form and 2 copies

§ Forms should be sent to the office in your region

§ You have **15 calendar days** (includes weekends and holidays) to send in your appeal form from when you received the decision from the RPD

- If your deadline (15<sup>th</sup> day) lands on a weekend or a holiday, you can send it in on the next working day
- **If you miss your deadline you could lose your appeal**

○ **Completing the Appellants record**

§ Timing is important, as soon as you submitted the notice of appeal,

§ Must point out all the mistakes the RPD made when considering your case

- Use Appellants Memorandum document to do this

§ Gather documents

- RPD Notice of decision
- RPD reasons and decision
- Recording of RPD hearing
- Appellants kit
  - All documents will have been mailed to you by RPD

§ Optional docs

- New evidence that was not available or not accepted by the RPD that you believe is relevant to your claim

- If not in French or English, must get documents translated
  - Docs/evidence that made up your RPD file
- § Appellants memorandum
  - Completed form should not be more than 30 pages long
  - Anything that can't fit must be attached on additional paper
  - Section 1.2
    - Leave last box "date of providing the appellant's record to the RAD" blank - need to fill it out on date you send this package to the RAD
  - 2.1
    - Explain mistakes and why they impacted your case
    - Use additional paper if needed
  - 3.1
    - New evidence or evidence not available at time of hearing
    - Must explain why the evidence is new or why it wasn't available at the time of the RPD hearing
  - Sign and date
- § If you submit new evidence
  - Submit "Written statement concerning new evidence" form
- § If you request a hearing
  - Submit "Written statement concerning the Hearing at the RAD" form
- Assemble all documents
  - § These make up the appellants record
    - Printed copies needed in following order
      - Notice of decision and written reasons from the RPD
      - All or part of the transcript of the RPD's hearing that is relevant to the appeal
      - Documents that you tried to give the RPD but they refused to accept
      - Written statements concerning new evidence and/or written statement concerning the hearing
      - Documents that have new evidence or evidence that was not available at the time of the RPD decision
      - Any additional docs like laws or legal decisions that you want the RAD to look

- Completed memorandum
- Now number all pages consecutively with table of contents at the top
- Make 2 additional photocopies of the entire package and keep one for your own records

#### § Checklist

- Go over checklist for the RAD

#### § Mailing

- Must mail or hand signed original and one copy of package to IRB office in your area

#### § Time limits

- Must mail no later than **30 days** (including weekends and holidays) after the day when which you received the written reasons for the RPD decision

- **Highly recommended to get professional legal advice from counsel who can represent clients before the board - eg. has the proper certification**
- Legal aid can help cover fees or you could get a family member, friend or NGO to help you with your appeal

Notice of Appeal Form: <https://irb-cisr.gc.ca/en/forms/Docum...> IRB Office Addresses: <https://irb-cisr.gc.ca/en/contact/Pag...> Appellant's Guide and Kit: <https://irb-cisr.gc.ca/en/refugee-app...> Appellant's Record and Memorandum: <https://irb-cisr.gc.ca/en/forms/Docum...> Checklist and other Forms: <https://irb-cisr.gc.ca/en/forms/Docum...> IRB Office Addresses: <https://irb-cisr.gc.ca/en/contact/Pag...> Appellant's Guide and Kit: <https://irb-cisr.gc.ca/en/refugee-appeals/Pages/RefAppGuide.aspx>

### **What happens after an appeal is submitted?**

- After an appeal is submitted, the RAD will review your RPD file and documents and come to one of the following possible outcomes
  - Reverse the RPD's decision, granting you refugee status
  - Return the decision to the RPD for a new hearing and decision
  - Uphold the RPD's decision that denied your refugee claim
- Decision usually made within 90 days of receipt of appellant's record

**\*\*\*What happens if the RAD decision is positive? What about negative?**

- If RAD decision is positive
  - o Reverse the RPD's decision, granting refugee status
- If RAD decision is negative
  - o Appeal to the Federal Court?
  - o Uphold decision of RPD to deny your refugee claim

**(3) Federal Court (FC)**

**How can a negative RAD decision be appealed?**

If the IRB rejects your claim for refugee protection, you must file an application for a Federal Court review within 15 days of that decision.

2 stage process for a review by the federal court

- Leave stage
  - o Court reviews the documents about your case
  - o Must show the Court that the decision was not fair or reasonable or that there was an error
  - o If Court gives leave = the court agrees to examine the decision in depth
- Judicial review stage
  - o You (and your lawyer) attend an oral hearing before the Court and explain why you believe the IRB decision was wrong
  - o These hearings are currently being done over zoom as well

**What happens after an appeal to the FC is submitted? How long does it take?**

- During the Federal Court review, your removal order status is different depending on which IRB division made the decision
  - o If RAD
    - § Your removal order is **on hold**. You can stay in Canada until the court makes a decision
  - o If RPD
    - § Your removal order is **not on hold**. You may need to leave Canada.

Decision on leave can take months (based on case law toolkit resource)

If no error found by court – you have to leave Canada

If the court returns your case to IRB – case will be reconsidered (does not mean that IRB will reverse the original decision)

#### **(4) Pre-Removal Risk Assessment (PRRA)**

##### **What is a PRRA?**

A Pre-Removal Risk Assessment is a way to ensure that people being removed from Canada are not sent back to a country in which they would be in physical danger or at risk of persecution. Approved applications allow applicants to remain in Canada. If you are being removed from Canada and believe you may face such dangers, you may be eligible for a PRRA.

##### **When is a PRRA submitted?**

If you are eligible, a Canada Border Services Agency (CBSA) officer will contact you and provide you with a *Notification Regarding a Pre-Removal Risk Assessment* before you are removed from Canada. You must complete the application form and submit your application in:

-15 days, if you received the form **in person**

-22 days, if you received the form **in the mail**

The deadline for submission can be found in your PRRA *Notification*. It is extremely important to submit before your deadline as a late application may result in the cancellation of the stay of your removal order. There is no fee to apply for a PRRA.

All of your family members in Canada who are 18 years of age or older who are also applying for a PRRA must complete their own application form.

Usually you will need to wait 12 months before you can apply for a PRRA after you get a negative decision from:

-the Immigration and Refugee Board (IRB) on a refugee claim

-Immigration, Refugees and Citizenship Canada (IRCC) or another PRRA application. This includes if your application was rejected, abandoned, or withdrawn.

### **How long does it take to get a decision?**

Due to COVID-19, it is extremely difficult to predict how long it will take for a decision to be made about your application. It may take up to 12 months to receive a decision.

If you leave Canada for any length of time while you are waiting to hear back, your application will be declared abandoned, and therefore rejected.

During this period, you must also keep your application up-to-date. If circumstances change that may affect the information you provided in your application, you must send this information to the IRCC centre (the same address to which you sent your application, found in your *Notification*).

In addition, you may receive notice through the mail that you must attend a hearing. Such hearings are rare as applications are generally assessed solely on the information you provided in your application but they are sometimes held in order to acquire additional information. At this hearing you would be asked questions about your application. You may bring a lawyer or other authorized representative for support, but they cannot intervene on your behalf.

### **What happens after a decision?**

-If your application is accepted: If you receive a positive decision, you typically would become a *protected person*. Soon after, you will receive notice that you are able to apply for permanent residence in Canada

In some cases, a PRRA is accepted but the applicant is not eligible to become a protected person or to apply for permanent residence. Applicants in this group are permitted to remain in Canada until their situation changes or if it is safe to send them to their home country.

-If your application is rejected: If you receive a negative decision, you will have to leave Canada. Rejected applicants, however, are able to apply to the Federal Court of Canada for a review of the PRRA officer's decision if you believe that your application was not adequately assessed.

## **(5) Humanitarian and Compassionate Application (H&C)**

### **What is an H&C application?**

A Humanitarian and Compassionate Application may allow people to become permanent residents of Canada even if they would not normally be eligible. This applies only to people with exceptional cases and such applications are assessed on a case-by-case basis. Factors that are considered include:

- how settled a person is in Canada
- general family ties in Canada
- the best interests of any children involved
- effects on the applicant if the request is not granted
- hardship if forced to return to home country (country conditions)

### **When can an H&C application be made?**

Almost anyone can make a humanitarian and compassionate application with a few exceptions

- You can't have more than one H&C grounds application at the same time.
- They do not assess risk factors such as persecution, risk to life, or cruel and unusual treatment or punishment.
- You can't apply for H&C grounds if you have a pending refugee claim. If you want to apply, you must first withdraw your refugee claim before your Immigration and Refugee Board of Canada (IRB) hearing.
- You can't apply for H&C grounds if you had a negative decision from the IRB within the past 12 months. This is called the "one year bar". The one year bar does not apply if:
  - you have children under 18 who would be adversely affected if you were removed from Canada, OR
  - you have proof that you or one of your dependents has a life-threatening medical condition that can't be treated in your home country

### **How long does it take to get a decision?**

Currently, processing time for an H&C application can take anywhere from 2-3 years. Keep in mind that assessment processes are impacted by COVID-19 and will vary as the situation changes.

## What happens after a decision?

If your application is approved: You will be contacted and provided with information regarding your next steps towards obtaining your permanent residence status. This usually involves a medical exam and a background check.

If your application is refused: You will receive a document informing you that your application was unsuccessful.

If you believe that your application was inadequately assessed by the appointed officer, you have 15 days after receiving this notification to start a Judicial Review process within the Federal Court. If the judge agrees that the negative decision was unreasonable, they will order a new decision to be made by a different officer.

If you believe your application was refused because it was poorly-prepared, you may re-file with a strengthened application.

## (6) Healthcare

### Who and what is covered by the Interim Federal Healthcare Plan (IFHP)?

- IFHP covers certain **pre-departure** medical services for refugees coming to Canada for resettlement

- o Including

- § Immigration medical exams and follow-up treatment of health conditions that would make someone inadmissible to Canada under para 38 (1)(a) of the Immigration and Refugee Protection Act

- (a) is likely to be a danger to public health;
    - (b) is likely to be a danger to public safety; or
    - (c) might reasonably be expected to cause excessive demand on health or social services.

- § Vaccinations

- § Outbreak management and control



§ Medical support needed for safe travel

- Coverage in Canada

- **Limited, temporary coverage of health care benefits** for people in the following groups who aren't eligible for provincial or territorial health insurance

§ Protected persons (resettled refugees)

§ Refugee claimants

- Basic coverage

§ In-patient and out-patient hospital services

§ Services from medical doctors, RNs and other health care professionals licensed in Canada including pre- and post- natal care

§ Laboratory, diagnostic and ambulance services

- Supplemental coverage

§ Limited vision and urgent dental care

§ Home care and long-term care

§ Services from allied health-care practitioners including clinical psychologists, psychotherapists, counselling therapists, occupational therapists, speech language therapists, physiotherapists

§ Assistive devices, medical supplies and equipment, including

- Orthopedic and prosthetic equipment
- Mobility aids
- Hearing aids
- Diabetic supplies
- Incontinence supplies
- Oxygen equipment

- Prescription drug coverage
  - § Prescription medications and other products listed on provincial/territorial public drug plan formularies
- Coverage for the immigration medical exam (IME)
  - § Cover cost of one IME and IME-related diagnostic tests required under the Immigration refugee protection act

**To have access to health services and products covered by IFHP** you need to prove that you are eligible with any of the following documents

- Acknowledgement of claim and notice to return for interview letter
- A refugee protection claimant document
- Interim Federal Health Certificate
  - Bring these when accessing health care services

**Length of coverage** depends on which category of eligibility you fall into

- For refugee claimants, the coverage continues until the beneficiary leaves Canada or becomes eligible for provincial/territorial health insurance

There are certain limits including maximum dollar amounts

- [Basic Coverage \(PDF, 67.7 KB\)](#)
- [Supplemental Coverage \(PDF, 515 KB\)](#)
- [IME and IME Tests \(PDF, 203 KB\)](#)
- [Dental Benefit Grid \(PDF, 142 KB\)](#)
- [Prescription Drug Coverage \(PDF, 129 KB\)](#)

[https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/help-within-canada/health-care/interim-federal-health-program/coverage-summary.html?fbclid=IwAR1pBFeiz8dGpxEOiNuRDPt\\_eBVLBnHfi2TsqTqqyjOMR7V3fCQWjcmEzUc](https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/help-within-canada/health-care/interim-federal-health-program/coverage-summary.html?fbclid=IwAR1pBFeiz8dGpxEOiNuRDPt_eBVLBnHfi2TsqTqqyjOMR7V3fCQWjcmEzUc)

## What about the Ontario Health Insurance Plan (OHIP)?

- Need to apply for an OHIP card, show it every time you see doctor, have a medical test...etc
- Who qualifies
  - o Minimum qualifications
    - § be physically in Ontario for 153 days in any 12-month period
    - § be physically in Ontario for at least 153 days of the first 183 days immediately after you began living in the province
    - § make Ontario your primary home
  - o Plus ONE of the following additional requirements
    - § are a Canadian citizen
    - § are an Indigenous person (registered under the federal *Indian Act*)
    - § are a permanent resident (formerly called a “landed immigrant”)
    - § have **applied for permanent residence**, and Immigration, Refugees and Citizenship Canada has confirmed that:
      - you meet the eligibility requirements to apply
      - you have not yet been denied
    - § are in Ontario on a **valid work permit** and are **working full-time** in Ontario, for an Ontario employer, for at least six months
      - your spouse and any dependents also qualify if you do
    - § are in Ontario on a **valid work permit** under the federal [Live-in Caregiver Program](#)
    - § are a **convention refugee** or other **protected person** (as defined by Immigration and Refugee Board of Canada)
    - § have a **Temporary Resident Permit** (only certain case types, e.g. 86 through 95)
    - § are a **clergy member** who can legally stay in Canada and is ministering full time in Ontario for at least six months
      - your spouse and any dependents also qualify if you do
- Ontario is waiving the three month waiting period for OHIP coverage to start
- Immediate coverage
  - o convention refugees and other protected persons as defined by the Immigration and Refugee Board of Canada
- Applying
  - o In-person at a service Ontario centre bringing the required docs:
    - § a completed [Registration for Ontario Health Insurance Coverage form](#)

§ three separate, original (not photocopies or printouts of electronic documents) identification documents:

- one that proves your **Canadian citizenship or OHIP-eligible immigration status** (e.g. Canadian birth certificate, Permanent Resident Card )
- one that proves you **live in Ontario** (e.g. Ontario Driver's Licence, income tax assessment)
- one that supports **your identity** (e.g. credit card, passport from any country)

§ children under 16 – parent or guardian can register for them

### **What about the Régie de l'assurance maladie du Québec (RAMQ)?**

If you are a refugee claimant you are not eligible for Quebec Health Insurance. Refer to IFHP coverage instead.

<https://www.ramq.gouv.qc.ca/en/citizens/health-insurance/know-eligibility-conditions>

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**Presentation Schedule**

Start Time	Speaking Time	Subject	Speaker
7:00	2 mins	Introduction (slides 1-4)	Kelsey
7:02	30 mins	RPD (slides 5-19)	Daniela
7:32	3 mins	Questions (slide 20)	Daniela or anyone
7:35	15 mins	RAD (slides 21-27)	Robyn
7:50	3 mins	Questions (slide 28)	Robyn or anyone
7:53	10 mins	FC (slides 29-35)	Allisa
8:03	3 mins	Questions (slide 36)	Allisa or anyone
8:06	15 mins	PRRA (slide 37-41)	Allisa
8:21	3 mins	Questions (slide 42)	Allisa or anyone
8:24	15 mins	H&Cs (slides 43-47)	Kelsey
8:39	3 mins	Questions (slide 48)	Kelsey or anyone
9:42	10 mins	Healthcare (slides 49-52)	Robyn
9:52	5 mins	Questions (slide 53)	Robyn or anyone
9:57	-	If extra time, more questions	Anyone
9:58	2 mins	Conclusion	Kelsey