Introduction

In September 2012, The University of Ottawa Refugee Assistance Project (UORAP) brought together more than 25 experts from the refugee law, academic and frontline support communities to discuss the access to justice issues resulting from Bill C-31, the Protecting Canada’s Immigration System Act (PCISA). Stakeholders expressed a great deal of concern about the many barriers that refugee claimants will face in navigating the new refugee system, and the refugee support community's limited ability to address these barriers. Stakeholders also had significant concerns about the many ‘unknowns’ around the precise character of the new system.

This outcome document aims to reflect the discussion at the stakeholder meeting, beginning with very broad Guiding Questions that were raised, moving on to cross-cutting Key Activity/Resource Gaps that were identified, and finishing with a Detailed Access to Justice Analysis in table form.

Guiding Questions

Stakeholders across sectors are struggling to cope with a high degree of uncertainty as they attempt to plan for the impending implementation of the PCISA, and to cope with the changes that are already underway. Major questions that serve as the backdrop to any planning discussions in the refugee support community at this stage include:

- How do we judge which actions will carry the most positive impact in a context with so much uncertainty?
- How do we strategically prioritize and address the many major service gaps (in legal advice, representation, interpretation/translation, etc.)?
- How do we share and/or standardize legal and other information on a national level without risking misuse or overuse?
- How do we effectively communicate amongst ourselves and with other groups for the benefit of claimants (including CIC, CBSA, refugee lawyers, immigration consultants, community service organizations, and claimants themselves)?
- How do we best engage the human resources at our disposal to help claimants (including community service workers, lawyers, and students)?
- How do we address and challenge root problems in the new system as well as the day-to-day challenges it causes?
Key Service and Resource Needs

There are a number of service and resource needs resulting from the myriad access to justice concerns in the PCISA. These needs cut across all parts of the new refugee process; they touch on immediate and day-to-day needs of claimants, and address underlying system issues. Generally speaking, stakeholders identified as concerns the availability and quality of:

- Legal advice and representation for claimants and in support of community workers;
- Interpretation and translation services;
- General information about the claim process for claimants, community workers, and lawyers;
- Training and education on operating in the new system for lawyers, community workers, and students;
- Shared and standardized information, templates, and other resources for legal and community workers to support operations in the new system;
- Communication channels and cooperation with various stakeholders, including CBSA, CIC, immigration consultants, community service workers, students, and refugee claimants themselves; and
- Strategy and support for broader initiatives that address root issues, including test case litigation and Charter challenges.

Mapping Potential Responses

Within the context of the Guiding Questions and Key Service and Resource Needs outlined above, stakeholders engaged in a detailed discussion of the potential services that could address the access to justice concerns at each stage of the refugee process. The tables in the following pages reflect this discussion and draw on other insights gleaned from UORAP’s Environmental Scan. Access to justice issues and analysis of service needs and responses are grouped according to the part of the process, or broad activity area, within which they fall. These are:

1) Basis of Claim form (BOC)
2) Refugee Protection Division (RPD)
3) Refugee Appeal Division (RAD)
4) Applications for leave for Judicial Review (JR)
5) Applications for Stays of Removal
6) Pre-Removal Risk Assessment (PRRA)
7) Humanitarian and Compassionate Consideration (H&C)
8) Detention
9) Post-Acceptance (preliminary discussion only)

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1 See University of Ottawa Refugee Assistance Project (2012) “Access to Justice and Bill C-31: Environmental Scan”.
The categories for analysis within each broad activity area are:

- **Access to Justice Issues**: aspects of the part of the process that pose access to justice problems;
- **Service Needs**: the services needed to create an ideal situation for claimants;
- **Potential Services**: possible initiatives that could address service needs;
- **Service Considerations**: potential pitfalls or opportunities in a given area; and
- **Current Initiatives**: ongoing or planned initiatives as identified in UORAP’s Environmental Scan and in the stakeholder meeting.
### 1) Basis of Claim form

#### Access to Justice Issues
- Tight timelines - limit ability to access information, advice, legal services, interpretation and translation, to gather evidence and complete the form
- Limited access to counsel - shortage of available lawyers given scheduling restrictions, legal aid certificate changes
- Shortage of translation or interpretation resources
- BOC too complex for self-represented claimants or community workers - complex legal test, importance of framing the case, important role of BOC in claim, importance of accuracy; official materials likely not sufficient
- Increased difficulty for detained claimants - difficulty obtaining counsel, meeting with counsel, gathering evidence, gaining Internet access; psychological stress of detention; assistance with detention review needed

#### Service Needs
- Reach claimants and assign counsel as early as possible (ideally pre-BOC)
- Reach claimants in detention
- Reach inland claimants before claims are made since there is less time to complete BOC once claim is made
- Address/overcome communication barriers - interpretation and translation; literacy; trust, psychological issues
- Complete the BOC - understanding the legal test and its complexities; getting biographical information/narrative; gathering evidence
- Employ strategic measures - e.g. covering letter stating that time was insufficient; noting that amendments will be made; standardized language stating that most information will be in oral arguments

#### Potential Services
- Engage community centres and port of entry staff - early contact, orientation, referrals to legal assistance before the BOC; help with covering letter; help with strategic advice on BOC; other non-legal assistance; handouts
- Link with CBSA and CIC to provide immediate information about legal aid; influence content of the IRB’s Claimant Guide
- Have Legal Aid allow application immediately so that it can be processed while working on BOC
- Have lawyers offer to do a special intake process in community centres and shelters, advice hotline for front-line workers with immediate legal issues (one-day turn around), roster, duty counsel, or student model
- Strategic approaches to the BOC via collaboration by lawyers or training frontline service workers, e.g. by including less detail, a cover letter saying to expect amendments, or a cover letter saying detail will be given at the hearing
- Link end of BOC process to hearing preparation - list of evidences, etc.; e.g. checklist for hearing with examples of corroborating evidence
- Provide self-help materials and other orientation to claimants
- Have access to Legal Aid interpretation services for private lawyers/clinics

#### Service Considerations
- Detained claimants will be much more difficult to reach than non-detained ones
- Inland claimants have a much shorter timeline so outreach before a claim is made is needed
- For all claimants, risk of information overload if too many written materials; need to find a way of informing claimants in short form
- Reaching claimants in smaller centres will pose challenges
- The role of front-line workers (community sector) needs careful consideration - implications of omissions, mistakes and amendments; overall quality of argument (framing the case); determining which agencies can do what, especially meeting with claimants regarding the BOC will be important
- Getting a lawyer assigned early is very difficult given constraints; potential to ask legal aid to accept applications immediately? Lawyer shortages in different centres mean cases will be dropped (Vancouver - 30 lawyers, Montreal - 12 but some remaining capacity).
- For inland claimants, tension between waiting to file claim until legal advice is available and needing to file ASAP because it is a gateway to other benefits/supports (e.g. social assistance)
- Different opinions about the best way to strategically approach the BOC - ‘less is best’ versus thoroughness as paramount; trying to lower the expectations of the RPD? Or will any amendments/omissions adversely affect the claim? Take lessons from the ‘credible basis process'/detention tactics where a bare bones application is put in with explanation that time was too short to do more?
- In giving information or advice, it is difficult to be practical in such uncertain times; knowing who to target; how to standardize and share resources; what approach to take to training, etc.
- It would be ideal to find synergies, share materials, resources, training models, etc. and want standardization
- Suggestion that the IRB should be responsible for making it possible for claimants to present their claim; the non-refoulement principle applies whether or not a refugee was able to find an interpreter/translation

**Current Initiatives**

- General orientation programs, such as READY Tours and similar initiatives in Ontario;
- Various PLE initiatives: South Ottawa Community Legal Services, HIV & AIDS Legal Clinic Ontario, Barbra Schlifer Commemorative Clinic, Rainbow Refugee, Mennonite Coalition for Refugee Support, Metropolitan Community Church of Toronto, Ecumenical Support Committee for Refugees, Canadian Red Cross First Contact Program, St. Christopher House, Rainbow Refugee Committee, The Salvation Army Toronto, PLE Society of BC
- Various training initiatives; Micah House Refugee reception Services Inc., South Ottawa Community Legal Services, etc.
- READY Tours with plain language handout – able to compare information on the tour with what unrepresented claimants get; also does public legal education
- CLEO – informational materials
- Montreal – public legal education is a gap, may fall on community sector
- FCJ Refugee Centre doing 4-5 training sessions a week in community centres, hostels, etc.
## Access to Justice in Canada’s New Refugee System

**Stakeholder Meeting Outcome Document**  
**UORAP – October 2012**

### Access to Justice Issues

- Tight timelines - limit access to counsel or support services, inhibit ability to correct errors or omissions in the BOC, or to gather evidence and complete documentation
- Translation costs and quality of interpretation during preparation limit understanding
- General costs – lawyer, documents, translation, etc.
- Gathering evidence on a tight timeline with limited resources
- Increase in number of unrepresented claimants
- Strict rules around additions in facts relative to the BOC (omissions)
- Requirement for legal or other professional services for various steps - motions, information gathering, supporting documents and compilation; medical certificates
- All problems exacerbated for DCO claimants (30 days for inland and 45 for Port of Entry)

### Service Needs

- Legal services for certain legal requirements - including adjournments, amendments, evidence; this would ideally be continued full counsel from the BOC stage
- Translation and interpretation - high-quality interpretation at the hearing and in preparation
- Support materials/programs for self-represented claimants and community workers who support them
- Availability of medical assessments and certificates

### Potential Services

- Various models for legal services - supervised students, duty counsel, rosters, greater co-ordination between small and sole practitioners so that they can collectively provide services to meet tight timelines
- To support self-represented claimants and community workers, standard forms for requests for medical services; public legal information and training on the process, definition; commissioners of oaths at community centres; ‘hefty topics in simple pamphlets’; check forms for things like types of proof
- Medical certificates given at community health clinics
- Interpretation system like the one available to Legal Aid Ontario where services are over the phone; scheduled simultaneous interpretation
- Seeing if there is a way for legal aid to fund both RPD and RAD for the first year or two - without legal representation at both stages, it is impossible to know how the system will function and which stage is most important

### Service Considerations

- The quality of interpretation remains a major problem - there is a shortage of interpreters and resources to procure their services
- RPD preparation may need to be thought of as a separate step from RPD representation, especially due to the anticipated high number of self-represented claimants
- It would be ideal to link RPD preparation and representation to the end of the BOC, but difficulties remain around continuous representation
- Using students brings up many questions about the quality of the work and the supervision responsibilities on the part of practicing lawyers; considerations include training of students, length of engagement, and nature of work
Using a duty counsel or roster model may be good for preventing burnout but the quality and continuity of work may suffer if roster lawyers are not specialized in refugee law
- Without Interim Federal Health coverage for many claimants, the costs of getting a medical certificate will be too high
- There is a mix of potentially self-help tasks and tasks that must be done by a lawyer

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<thead>
<tr>
<th>Current Initiatives</th>
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<tbody>
<tr>
<td>Potential Legal Aid (Ontario, Quebec, BC) assistance for representation (still in planning phase)</td>
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<tr>
<td>Various public legal education initiatives (Downtown Legal Services in Toronto, those listed at the BOC stage, etc.)</td>
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### 3) Refugee Appeal Division

#### Access to Justice Issues
- Very tight timelines to file and perfect appeal - limits legal aid, access to new counsel if necessary; even if retaining same counsel it is difficult to file and perfect in 15 days
- Lack of time and funds for RPD transcripts to be created, reviewed, and translated
- Not accessible to many classes of claimants
- Will often be paper review only, adding to legal burden
- If a hearing is held it will be no earlier than 10 days after notice of the hearing is given; may still be tight timeline for claimants and counsel to prepare

#### Service Needs
- Continued representation by competent RPD counsel
- Expedited assessment of merit by Legal Aid; automatic finding of merit in cases of ministerial appeals; facilitation of quick change of counsel
- Transcript creation and translation in a timely manner

#### Potential Services
- Legal Aid approach where an expedited assessment of legal merit is made - internal staff review of BOC and RPD to try to assess merit quickly
- Similar legal service models as at the RPD (see above)
- Seeing if there is a way for legal aid to fund both RPD and RAD for the first year or two - without legal representation at both stages, it is impossible to know how the system will function and which stage is most important

#### Service Considerations
- There are many categories of claimants who will not have access to this mechanism
- Standard of review may be unclear; it is unknown what acceptance rates will be at this stage
- Unclear how often the Minister will make an appeal, and the procedure that this will follow in terms of legal aid funding
- This stage may be too legalistic for any self-help materials to be beneficial
- Unclear what proportion will be self-represented claimants
### Current Initiatives
- Potential legal aid in some provinces?

### Applications for Judicial Review

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<thead>
<tr>
<th>Access to Justice Issues</th>
<th>Service Needs</th>
<th>Potential Services</th>
<th>Service Considerations</th>
<th>Current Initiatives</th>
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<tbody>
<tr>
<td>- Given that public servants are now first-instance decision-makers, possibility that acceptance rates will decline, making the RAD the crucial stage for legal focus</td>
<td>- Full representation by counsel in order to file application for leave; process service fee; process filing fee; complete, serve and file applicant's record; draft affidavit and legal memos</td>
<td>- Various models for legal services - supervised students, duty counsel, rosters, etc.</td>
<td>- For the five categories of claimants who do not have access to the RAD, this is the only chance for a review of their case</td>
<td>- Potential legal aid in some provinces?</td>
</tr>
<tr>
<td>- RAD applications and associated legal aid applications may be complicated by adverse credibility findings</td>
<td>- Resources for counsel, including brief banks and other shared resources</td>
<td>- Brief banks on frequent issues that lawyers could use to draft applications; expanding what Legal Aid Ontario law does now with regard to standard memorandums and also making other lawyers’ memos available, and working on standardized issues (e.g. irreparable harm)</td>
<td>- Without a stay of removal, this step becomes moot because claimants will be deported while waiting for leave or the results of their review</td>
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## 5) Applications for Stays of Removal

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<tr>
<th>Access to Justice Issues</th>
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<tbody>
<tr>
<td>• Counsel is required, and will need to submit an abridged version of leave to appeal quickly</td>
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<tr>
<td>• Timeline will be tight given plans for speedy deportations</td>
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<tr>
<td>• Very high stakes - for many categories of claimants a stay is necessary to hold off deportation while review of a negative decision is being made</td>
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<tr>
<th>Service Needs</th>
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<tr>
<td>• Full representation by counsel - affidavits, memoranda, arguing the stay motion</td>
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<tr>
<td>• Resources for counsel, including brief banks, etc.</td>
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<tr>
<td>• Transcript creation and translation in a timely manner</td>
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<tr>
<td>• Interpretation services</td>
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<tr>
<td>• Possibility of seminars to support some self-represented claimants on judicial review and stay applications</td>
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<tr>
<th>Potential Services</th>
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<tr>
<td>• A roster of lawyers (and possibly law students) who would be involved in emergency stay applications - could be based on BC duty counsel system (helps with burnout); legal aid would need to pay; Student Legal Aid Services Societies or &quot;E-team&quot; of students to work on stays on an emergency basis</td>
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<tr>
<td>• Brief banks on frequent issues that lawyers could use to draft applications; expanding what LAO law does now with regard to standard memorandums and also making other lawyers’ memos available, and working on standardized issues (e.g. irreparable harm)</td>
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<tr>
<td>• Standardized legal arguments on issues likely to come up on a repeated basis (e.g. limitation of the issues, request for an extension of time)</td>
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<td>• Constitutionality case pushing for all stays to be automatic until the constitutionality of the idea of no stays for certain claimants is solved; also a potential 'right to counsel' case in one of the provinces with no legal aid</td>
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<tr>
<td>• Interpreters</td>
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<td>• Better information dissemination on where there are statutory stays</td>
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<tr>
<th>Service Considerations</th>
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<tr>
<td>• Very urgent - without a stay the leave application is pointless</td>
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<tr>
<td>• We can expect that unrepresented claimants will have their stays refused</td>
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<tr>
<td>• Sharing any 'brief banks' or other information will need to be on a national level, but will also need to be protected from misuse (even overuse of certain arguments); memos may be more appropriate than facta in terms of overuse</td>
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<tr>
<th>Current Initiatives</th>
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<tr>
<td>• Potential legal aid in some provinces?</td>
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## 6) Pre-Removal Risk Assessment

### Access to Justice Issues
- 12-month bar on PRRA applications following a negative protection decision or previous negative PRRA decision; and 36-month bar for DCO claimants
- Quick enforcement of removal orders may limit access to PRRA
- Access to counsel to seek a stay of deportation when no PRRA is available

### Service Needs
- Assistance from counsel in completing PRRA applications
- Access to counsel for emergency stays of removal
- Information about recourse when no PRRA available

### Potential Services
- Duty counsel or use of law students with lawyer supervision

### Service Considerations
- Given the bar on PRRAs, a more or as likely pressure point would be emergency stays of removal in terms of preventing *refoulement*
- Currently, potentially high-profile *refoulement* situations are being given stays in order to enable a PRRA

### Current Initiatives
- Potential legal aid in some provinces?

## 7) Humanitarian and Compassionate Consideration

### Access to Justice Issues
- Limited access to adequate information on H&C versus refugee protection application
- One-year bar on lodging an H&C application following a negative refugee decision; speedy deportation of failed claimants may make this avenue completely inaccessible for failed refugee claimants
- Unknown whether removal will be delayed to consider H&C
- H&C applications can no longer include s.96/97 (IRPA) factors (in place since 2010)

### Service Needs
- Assistance from counsel in completing H&C applications
- Early legal advice on whether to pursue H&C or RPD

### Potential Services
- Early access to counsel to advise on path of the claim
- Get counsel consensus on what to advise for transitional situations; disseminate these opinions
- Accessible information about the difference between H&C and RPD
- Counsel for RPD claim that is transferred to H&C to write to Legal Aid to request continued funding

### Service Considerations
- Many unknowns in terms of legal aid support
- It will take time to figure out a good strategy for determining between the RPD and H&C routes
## Current Initiatives
- Potential legal aid in some provinces?

### 8) Detention

#### Access to Justice Issues
- Increased length of and grounds for detention; probable increase in number of detainees
- Location and restrictiveness of detention centres and jails limits access to counsel
- Security clearance limits access to advice and assistance from non-lawyers
- Limited legal aid support and indication that legal aid agencies will not be able to respond to increased need
- Choice of counsel very limited, even in areas with a roster program

#### Service Needs
- Access to counsel for detention reviews and BOC, RPD, etc.
- Access to information while in detention to enable gathering evidence and communicating with those who can assist with the claim
- Adequate infrastructure and resources to prepare for hearings, including meeting rooms, access to detention facilities for lawyers and others who can assist
- Available shelter upon release; having shelter is a condition for release

#### Potential Services
- More integration of detention and detention review - meeting rooms, phones, to enable in other locations a duty counsel system like the one in British Columbia
- Duty counsel system - weekly rotation, hourly pay (NB: in BC this is only for immigration detention reviews, not for refugee claims), or teams of students well-trained to assist detained claimants with the BOC
- Move detention downtown to make it more accessible to counsel; or have trailers/temporary shelters where counsel can work
- Arrange for shelter for detainees up for release

#### Service Considerations
- Extent of detention under the new system is unclear; depending on how widespread it is, may be an area of major concern
- The average length of time in detention (28 days) is well over the 15-day limit for submitting a BOC
- DCO claimants are more likely to be detained; their claims are assumed unfounded and they are therefore seen as a flight risk
- Extremely difficult to obtain evidence or plan for RPD hearing in detention

#### Current Initiatives
- Some Legal Aid Assistance with detention reviews (Legal Services Society BC, Brydges Line, etc.)
### 9) Post-Acceptance (preliminary discussion only)

| Access to Justice Issues | • Conditions of release for Designated Foreign Nationals - 10 year cycle which may include reporting requirements, etc.  
• Use of cessation and vacation by Minister |
|--------------------------|---------------------------------------------------------------------------------------------------|
| Service Needs | • Counsel to monitor legality of conditions  
• Community workers to monitor use of conditions and report violations  
• Counsel for cessation/vacation hearings |
| Potential Services | • (none elicited) |
| Service Considerations | • (none elicited) |
| Current Initiatives | • (none elicited) |