



## Refugee Reform 2016 – CCR recommendations

June 2016

### A. Making a claim

#### Concerns

- Inland claimants don't get access to services until they file all forms (including BOC)
- Inland claim on arrest: have to produce BOC same day (or within 3 days)
- Downloading to NGOs of responsibility to help fill in forms, get docs translated, etc.
- There are a lot of mistakes in forms completed in rushed and constrained circumstances (e.g. in detention).

#### CCR recommendation

Amend process for making a claim, particularly to resolve issues for inland claimants, to ensure:

- Those wanting to make a claim have access immediately to services (including IFH, social services) **KEY PRIORITY FOR CCR**
- Claimants have time to fill out forms accurately
- Prompt processing by CBSA when claimants are ready for eligibility determination

#### Proposal:

- Same process wherever you make your claim, generalizing the POE process, i.e. not expecting BOC on making claim.
- Issue immediate acknowledgement of claim document that can be used to access services.
- Provide more time for claimants to fill out forms required by CBSA/IRCC, but ensure that eligibility is done promptly once the forms are ready (e.g. eligibility must be determined max 3 days after forms submitted).

NB it is also good from an enforcement perspective to have people present themselves as soon as possible rather than waiting months to get all the forms completed.

#### Also:

- Issue work permits to all adult eligible refugee claimants automatically

## **B. Eligibility**

### **Concerns**

- Some people who are not eligible have protection needs or other compelling issues (e.g. unaccompanied minors, people with family in Canada, second time claimants)

### **CCR recommendations**

- Provide re-opening provision at IRB for all who have made a previous claim.
- Provide other opportunities for people in compelling situations

## **C. Basis of Claim form**

### **Concerns**

- Inland claim on arrest: have to produce BOC same day (or within 3 days)
- Not enough time for claimants to complete the BOC.

### **CCR recommendations**

Eliminate the same day BOC filing for inland claims **KEY PRIORITY FOR CCR**

Provide longer timelines for BOC for all claimants. **KEY PRIORITY FOR CCR**

## **D. DCOs**

### **CCR recommendation**

Abolish the DCO regime entirely **KEY PRIORITY FOR CCR**

## **E. Refugee hearing process**

### **Concerns**

- Not enough time for claimants to prepare for hearing
- Lack of flexibility for claimants who need more time.
- Cases not subject to legislated timelines end up in limbo (e.g. returns from RAD, FC)

### **CCR recommendation**

Provide longer timelines for hearing **KEY PRIORITY FOR CCR**

- There are some advantages to having a fixed hearing date, but there must be more flexibility depending on needs of claimant.
- If IRB can't accommodate a hearing on the normal schedule, the date for the hearing should be AFTER the fixed timeline, not before.
- CCR doesn't have a position on the ideal length of time for first hearing date.
- Note that there can be savings by having more time: RPD can do more expedited if more time before hearing.

## **F. Protection mandate**

### **Concerns**

- There are important gaps in protection in Canada.

### **CCR recommendation**

Expand protection mandate of IRB to cover:

- a. Trafficked persons. (**Core CCR demand** is Legislative amendment to bring a permanent and fundamental change in policy so that trafficked persons in Canada are protected.)
- b. Stateless persons
- c. H&C (where there is some connection to protection grounds e.g. family members of protected person)

## **G. No credible basis and manifestly unfounded**

### **Concerns**

- Experience shows that bad decisions are made and are very difficult to correct because claimants.

### **CCR recommendation**

Eliminate NCB and MUC

## H. RAD

### Concerns

- Several categories of claimants are barred access to RAD (STCA claimants, manifestly unfounded/ no credible basis - who also have no stay of removal at JR)
- Timelines for RAD are too short.
- Process is so complex. Can it be made simpler?

#### CCR recommendations

Remove all bars on access to RAD **KEY PRIORITY FOR CCR**

Provide longer timelines for RAD. **KEY PRIORITY FOR CCR**

## I. Post-claim

### Concerns

- Refused claimants are subject to a one year bar on PRRA (3 years for DCOs)
- Claimants cannot make an H&C application simultaneously or for one year after

#### CCR recommendations

Replace the PRRA with a re-opening provision at the IRB (Eliminate the separate PRRA altogether and transfer all of the decision-making currently assigned to PRRA to the IRB, so that all refugee and other risk determinations (s. 96 and s. 97) are made by the IRB. In the case of claimants who have had a previous hearing at the IRB, provide for an application to re-open based on new evidence). **KEY PRIORITY FOR CCR**

Eliminate the bar on H&C for claimants **KEY PRIORITY FOR CCR**

## J. Cessation

#### CCR recommendation

Cancel loss of PR on cessation finding **KEY PRIORITY FOR CCR**

## K. Automatic permanent residence for protected persons

### Concerns

- Accepted refugees spend long periods waiting for permanent residence, delaying family reunification and integration.

- There are few legal bars to permanent residence for Protected Persons, and CBSA /IRCC have had the opportunity to look into those issues (criminality, security) before the refugee hearing.
- If people can lose PR automatically through loss of PP status – cessation – why not gain PR automatically?

#### **CCR recommendation**

Provide for automatic permanent residence for persons found to be a Protected Person.

(If necessary, the law could provide that this does not apply where CBSA /IRCC has raised an issue of potential inadmissibility.)

## **L. Designated Foreign Nationals rules**

### **Concerns**

- The provisions clearly violate the Charter.
- Although they are not currently being implemented, they should not be on the books.

#### **CCR recommendation**

Eliminate DFN provisions **KEY PRIORITY FOR CCR**

#### **Checklist for good refugee determination**

- Accept that refugee determination is difficult: it is rarely obvious who is a refugee.
- Assess each case on its individual merits.
- Invest in high quality initial decisions: get it right the first time.
- Keep it non-political: have an independent body make all decisions.
- Keep things simple: avoid unnecessary rules.
- Put the necessary resources in place: avoid backlogs.
- Remember that human lives are at stake: adhere to human rights standards.