



Immigration and
Refugee Board of Canada

Commission de l'immigration
et du statut de réfugié du Canada

Canada

Canadian Council for Refugees

Fall Consultation, 2012

Simon Coakeley
Executive Director

Toronto, November 29, 2012



Presentation Overview

- Changes to: *Protecting Canada's Immigration System Act (PCISA)* and *Balanced Refugee Reform Act (BRRRA)*
- The New Refugee Protection Division (RPD)
- The New Refugee Appeal Division (RAD)
- Additional Updates
- Questions and Answers



***PCISA* and *BARRA* – What is New**

- Designated Countries of Origin (DCO)
- Time limits to hearing (in Regulations)
- Basis of Claim (BoC) Form replaces the Personal Information Form (PIF)
- Hearing date fixed by Referring Officer (CIC or CBSA)
- Refugee Appeal Division (RAD) for some claimants
- Pre-Removal Risk Assessment functions will be transferred to IRB's RPD two years after Coming into Force (CIF)



What Remains the Same

- Fundamental cornerstones remain:
 - 1951 Refugee Convention, 1967 Protocol and the *Convention against Torture*
 - Independence and impartiality of decision-makers
- None of the substantive provisions of the *Immigration and Refugee Protection Act* dealing with refugee protection or exclusion from refugee protection have changed
- Proceedings will continue to be carried out as informally and quickly as the circumstances and considerations of fairness and natural justice permit



The New Refugee Protection Division (RPD)



Vision

- Fairness and natural justice
- Faster process
- Increased nimbleness and flexibility
- Quality decisions
- Clear accountability and performance expectations
- Constantly improving



Port of Entry Claims

- Claimant makes claim to CBSA at border crossing or airport
- CBSA Officer fixes date and time of hearing
 - 45 days for DCO
 - 60 days for non-DCO
- CBSA Officer gives claimant BoC, Notice to Appear and Information Kit, and refers claim to IRB
 - BoC must be submitted within 15 days



Inland Claims

- Claimant takes completed BoC to CIC office
- CIC Officer fixes date and time for hearing
 - 30 days DCO
 - 60 days non-DCO
 - Will take counsel availability into account if known
- CIC Officer gives claimant Notice to Appear and Information Kit
- Refers claim and provides copy of BoC to IRB



Basis of Claim Form (BoC)



Immigration and Refugee Board of Canada / Commission de l'immigration et du statut de réfugié du Canada

Client I.D. Number
Claimant's first name(s) and family name(s)
PROTECTED WHEN COMPLETED
RPD file number (for IRB office use)

Basis of Claim Form

(for persons claiming refugee protection in Canada)

ANSWER ALL THE QUESTIONS ON THIS FORM.

- If you are making your claim at an immigration office inside Canada, complete this form and bring the completed form and one copy with you to give to the Officer who will decide if your claim is eligible.
- If you made your claim on arrival at a port of entry into Canada, complete this form and provide the completed form and one copy to the Immigration and Refugee Board of Canada (IRB). You must make sure that the IRB receives the completed form not later than 15 calendar days after the day that the Officer refers your claim to the Refugee Protection Division.
- Make sure that you make a copy of the completed form for yourself.

If the Officer or the IRB, as the case may be, has not received your completed Basis of Claim Form (BOC Form) by the dates mentioned above, the IRB will have a special hearing and may decide to declare your claim abandoned which means you would not be allowed to continue with your claim.

IMPORTANT NOTICE REGARDING COUNSEL AND DOCUMENTS THAT MAY SUPPORT YOUR CLAIM

You have a right to be represented by counsel at your own expense, but the counsel you choose must be available on the date fixed for the hearing.

You are responsible for obtaining and providing to the IRB any documents that may support your claim. Please see the appendix at the end of this form for details on providing documents to the IRB.

INSTRUCTIONS FOR COMPLETING THIS FORM

IMPORTANT: You can find instructions to help you complete your BOC Form both in the appendix at the end of this form and in the *Claimant's Guide* in your *Claimant's Kit*. Please read these instructions carefully. Before giving your original BOC Form to the IRB, **remove the appendix**. If you have written additional information on other sheets of paper, please provide those sheets of paper with your BOC Form.

Date Stamp (for IRB office use)

WHO YOU ARE		
1(a) Given or first name(s)	1(b) Family or last name(s) / surname(s)	1(c) Date of birth (year/month/day)
1(d) Indicate what sex is identified on your passport		
<input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> Other		
If you do not identify with the sex/gender on your passport, you may self-identify your sex/gender:		
1(e) Nationality, ethnic and racial group or tribe	1(f) Religion and denomination or sect	
1(g) List all languages and dialects you speak		

WHY YOU ARE CLAIMING REFUGEE PROTECTION
When you answer the questions in this section, please explain everything in order, starting with the oldest information and ending with the newest. INCLUDE EVERYTHING THAT IS IMPORTANT FOR YOUR CLAIM. INCLUDE DATES, NAMES AND PLACES WHEREVER POSSIBLE.
If the information one of your accompanying family members wrote in this part of their BOC Form applies to you, you do not need to repeat that information here. Simply write the name and file number of the family member and explain that your refugee protection claim is based on the same information.
Attach two copies of any documents you have to support your claim, such as travel documents (including your passport) and identity, medical, psychological or police documents. Include certified translations in English or French for all documents in a language other than English or French. You must pay for these translations yourself. If you get more travel or identity documents after submitting your BOC Form, give two copies to the IRB without delay. A copy of any other document in support of your claim that you get after submitting your BOC Form must be received by the IRB and by the Minister, if the Minister is a party, at least 10 days before your hearing. Please read the appendix at the end of this form for details on providing documents to the IRB.
2(a) Have you or your family ever been harmed, mistreated or threatened by any person or group?
<input type="checkbox"/> Yes <input type="checkbox"/> No
If "YES" explain in detail:
What happened to you and your family.
When the harm or mistreatment or threats occurred;
Who do you think caused the harm or mistreatment or threats;
What do you think was the reason for the harm or mistreatment or threats that occurred;
Whether persons in situations similar to yours experienced such harm, mistreatment or threats.
(Indicate dates, names and places, wherever possible.)
1.
2.
3.
4.
5.
6.



Basis of Claim Form (BoC)

- Given to CIC for inland claims; delivered to IRB within 15 days of POE claim
- Proposed narrative:
 1. Harm feared if returned to country of origin
 2. Harm experienced in past
 3. Protection sought in country of origin
 4. When country was left and why at that particular time



Basis of Claim Form (BoC) Cont.

- Proposed narrative continued:
 5. Intentions upon leaving the country
 6. Move to safety in another part of the country
 7. Move to safety in another country
 8. Details about accompanying minors
 9. Other details regarding claim



Pre-Hearing Booking Tool



Immigration and Refugee Board of Canada

Hearing Booking Tool

Français

Home

Help

irb.admin@irb-cisr.gc.ca

Log out

Hearing Appointment

Hearing Appointment

FOSS ID: **45634563**

Claim Filed Type: Port of Entry
 Inland

Designated Country of Origin: Yes
 No

Hearing Location City:

Language of Preference: English
 French

Availability:

	Date (yyyy/mm/dd)	Avail.	Hearing Location
<input type="radio"/>	2012/12/28 09:00	14	Montreal Office
<input type="radio"/>	2012/12/28 13:00	15	Montreal Office
<input checked="" type="radio"/>	2012/12/31 09:00	13	Montreal Office
<input type="radio"/>	2012/12/31 13:00	14	Montreal Office

Confirmed: **No**

Modified: 2012/11/23 13:16 by irb.admin@irb-cisr.gc.ca

[Home](#) [List](#) [Monthly Calendar](#)



Notice to Appear

Screen 1 of 6

NOTICE TO APPEAR FOR A HEARING

[*Refugee Protection Division Rules*, subsection 3(4)]

In the claim for refugee protection of:

Take notice that you must present yourself at:

The Immigration and Refugee Board
[full address where hearing is to be held]

on _____, 20__ at _____ for
the purpose of attending a hearing of your claim for
refugee protection. You must be present and ready to
proceed at the start time that has been set. If you do

Screen 2 of 6

not appear at the hearing fixed for your refugee claim
your claim may be declared abandoned.

Special Hearing date if you did not attend the hearing of your claim:

If you fail to attend the hearing on the date indicated
above, you must appear on (**original hearing date +
5 working days**) at 9:00 am, at the same location
indicated above, to explain your failure to attend the
hearing. Otherwise, your claim may be declared
abandoned. If you did not attend the hearing on your
claim because of medical reasons, a medical
certificate is required. The medical certificate must
contain the information set out in the *Claimant's
Guide*. If the Refugee Protection Division (RPD) is
satisfied with your explanation and your claim is not
declared abandoned, you should be prepared to
proceed with the hearing of your claim on that day.

Providing the *Basis of Claim Form*:



Important Dates in Notice to Appear

POE Claimants:

- BoC – submit 15 days post claim
- Hearing Date – 45 days (DCO) and 60 days (non-DCO)
- Special Hearing:
 - BoC deadline plus 5 working days
 - Original hearing date plus 5 working days

Inland Claimants:

- BoC – submit upon referral
- Hearing Date – 30 days (DCO) and 60 days (non-DCO)
- Special Hearing:
 - Original hearing date plus 5 working days



Pre-Hearing: Front End Processes

Change of Date and Time of Hearing (Rules 3-5):

- If counsel is unavailable on a fixed date, the IRB will accommodate an *earlier* date
- Otherwise, only for reasons of fairness and natural justice or FESS

Basis of Claim Form (Rules 6-9):

- Inland Claim – BoC must be presented to officer at time of referral
- Port of Entry – BoC must be provided to IRB with a copy to the Minister in accordance with time limits for submission



Pre-Hearing: Front End Processes (cont.)

Extension of Time to Submit a BoC (Rules 8-9):

- No longer than three days before expiry of time limit
- Only granted for reasons of fairness and natural justice

Amendments to the BoC are Permitted (Rule 8-9):

- Must be received by the IRB and the Minister ten days before hearing

Failure to Submit BoC on Time (Rules 3, 65):

- Special hearing, completed BoC must be ready, claimant given opportunity to explain, abandonment possible



Hearing

- Notice to Minister of possible integrity issues (Rule 27)
- Order of questioning set out in Rules (Rule 10) and member required to render oral decision unless not practicable
- Abandonment (Special Hearing; Rule 65)
 - Claimant given opportunity to explain; must be ready to proceed



Post Hearing

- Reopening (Rule 62)
 - Once RAD or Federal Court has rendered a final decision, RPD cannot re-open claim



The New Refugee Appeal Division (RAD)



RAD: Characteristics

- RAD will conduct business primarily in writing
- RAD will review RPD decisions
- RAD is adversarial, party-driven
- RAD will develop jurisprudence



Role of RAD within IRB

- Administrative structure of IRB will reflect adjudicative independence of RAD from RPD
- RAD will promote consistency in refugee determination
- RAD will provide finality in refugee determination



Appeals to the RAD

RPD Decisions that can be appealed to the RAD:

- Decisions to allow or reject the person's claim for refugee protection
 - Except DCO, MUC, NCB, DFN, legacy

Grounds of Appeal:

- Question of law, fact or mixed law and fact



Appeals to the RAD (cont.)

Who Can Appeal?

- Person who is the subject of the RPD proceedings, or
- The Minister

Possible Results

- Confirm RPD decision
- Overturn RPD decision and substitute RAD decision
- Return matter to RPD for new hearing



Structure of the RAD Rules

- Part 1** Rules applicable to appeals made by the person who is the subject of the appeal

- Part 2** Rules applicable to appeals made by the Minister

- Part 3** Rules applicable to all appeals

- Part 4** Rules applicable to oral hearings



Filing Appeal

- Time limits set out in CIC Regulation:
 - 15 working days to File and Perfect appeal after receipt of *written* RPD reasons
 - Claimant must set out full argument (fact and law) why RPD decision is wrong
 - Claimant must submit any new evidence and request an oral hearing
 - Transcripts are *not required* (partial allowed)



Filing Appeal (cont.)

- Response (RAD Rules)
- Reply (if any)
- RAD can render written decision any time after expiry of the deadline for a party's submissions (but no later than 90 days)
- Minister can intervene at any point
- Claimant will be given opportunity to respond prior to RAD rendering decision



Proceedings:

- It is anticipated that in most cases, the RAD will proceed *without* a hearing, on the basis of record of the proceedings or the RPD and written submissions from the Minister and person who is subject of the appeal

Evidence:

- Presented by person who is the subject of the appeal
 - Only *New Evidence*, unless in response to Minister's evidence
- Presented by the Minister
 - No limit



Hearings

Oral Hearing:

- RAD can hold a hearing if there is documentary evidence that:
 - Raises a serious issue with respect to the credibility of the person who is the subject of the appeal;
 - Is central to the decision with respect to the refugee protection claim; and
 - If accepted, would justify allowing or rejecting the refugee protection claim.

Conduct of a Hearing:

- In most circumstances, a RAD hearing is restricted to matters relating to the issues provided with the notice to appear



Panels

Composition:

- Matters before a Division shall be conducted before a single member unless the Chairperson is of the opinion that a panel of three members should be constituted

Assignment of Three Member Panel:

- Ordered by Chairperson
- UNHCR may provide written submissions to the RAD and there may also be participation by interested persons in accordance with the Rules



RAD Decision

- After considering the appeal, the RAD shall make one of the following decisions:
 - Confirm the determination of the RPD;
 - Set aside the determination and substitute a determination that, in its opinion, should have been made; or
 - Refer the matter to the RPD for re-determination, giving the directions to the RPD that it considers appropriate.



Additional Updates



Reaching out to Claimants

- Information about new refugee claim process will be made available to claimants early in the process in clear language
- Additional 'accessibility initiatives' will be developed prior to CIF and posted on the IRB website:
 - Videos
 - Multilingual material
 - Revised claimant guide
- The IRB will also ensure that claimants are informed about their right to be represented as early in the process as possible



Legacy and Backlog

- Backlog
 - IRB has successfully reduced the backlog from 62,000 to approximately 33,000 claims
- Legacy Initiative
 - Decision-maker capacity
 - GICs not immediately needed at RAD
 - Limited funding flexibility next fiscal year
 - Scheduling will minimize conflict (counsel, hearing room, interpreter) with new RPD—which will take priority



Additional Updates

- Self represented claimants
- Vulnerable Claimants
- Detained Persons
- Next Steps



QUESTIONS?