



CCR proposed model for refugee determination

January 2020

The Canadian Council for Refugees proposes a model for refugee determination, which it believes meets the needs of both fairness and efficiency. Our proposed model is based on simplifying the existing model and could therefore be implemented quickly and inexpensively. It does not require new structures to be created. In the current context, where many people are waiting for determination of their claims, the implementation of our proposed model would be an effective way to quickly and fairly address the challenges in Canada's refugee determination system.

The model is designed to meet the following **checklist for good refugee determination**

- Accept that refugee determination is difficult: it may not be immediately 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.

CCR's model: streamlined model focused on the RPD

The CCR proposes a streamlined model that is based on simplifying current rules in order to focus on getting to the right decision on the protection claim in a timely way. All decision-making on first level refugee protection decisions would be centralized at the Refugee Protection Division (RPD), allowing it to manage claims more effectively, while maintaining the necessary independence. The model would send all claims to the RPD for a decision on the need for protection, rather than (as currently) having different processes if the claim is ineligible or the person is excluded from refugee protection.

Making the claim: People asking for refugee protection would follow a simplified process, with a single simplified form to initiate the claim. All claimants, whether at Port of Entry (POE) or inland, would follow the same process. No information would be gathered at this stage about the basis of the claim. Claimants would receive an immediate acknowledgement of claim document that can be used to access services.

Eligibility: All claims would be referred immediately to the RPD (eligibility provisions are eliminated). The RPD would be responsible for making a determination of the person's need for protection, in accordance with Canada's international obligations:

- a) The RPD would determine whether the claimant has refugee status in other countries to which person can be safely returned.
- b) In the case of people who have made a previous refugee claim in Canada, their new claim would take the form of an application for a new or renewed claim. The RPD would allow a hearing on the merits if there is new evidence or changed circumstances meriting a new hearing. If not, the person would not be entitled to a hearing at the RPD.
- c) In the cases of allegations of criminality or security, the issues would be considered within the refugee hearing, as relevant to the Refugee Convention exclusion clauses. In the tiny number of cases where the person is found to be in need of protection, but the federal government has criminality or security concerns, the proceedings for inadmissibility could be pursued after the RPD decision, or in parallel.

Individualized determination: Under this model, all claimants would be subject to the same rules: provisions treating some groups of claimants differently (Designated Countries of Origin, Designated Foreign Nationals) would be eliminated. Processing before the RPD may however vary depending on the needs and realities of the individual claim: e.g. expedited processing for clearly documented claims meeting the refugee definition, or procedural accommodations for claimants with particular vulnerabilities.

Basis of Claim form: All claimants would have the same reasonable timeline to file their Basis of Claim (BOC) form (the timeline would be longer than 15 days).

Refugee hearing process: Hearings would be scheduled by the RPD only after the BOC is received. Once the BOC is received, the RPD would triage the case and schedule a hearing date, taking into account the specifics of the case (e.g. whether it is appropriate for expedited processing, or more time is needed to gather evidence, and whether there is a Ministerial intervention). The RPD should be required to provide a hearing date within a reasonable time, given the difficulty for claimants to wait very long periods with no idea of when they will be heard.

Ministerial interventions: Interventions by IRCC should be discontinued. CBSA should review their processes in order to ensure interventions are useful and that they rigorously respect the timelines.

Return to RPD in lieu of Pre-Removal Risk Assessment: The PRRA should be discontinued and replaced with a provision allowing people to apply to the RPD to present new evidence or changed circumstances, with a stay while the application is being considered. Similar to the provisions for second claims, the RPD would review the application on paper and decide whether there is new evidence or changed circumstances that merit a new hearing.

Refugee Appeal Division: All refused claimants should have access to the RAD (eliminate bars for STCA claimants, manifestly unfounded/ no credible basis). The jurisdiction of the RAD should be modified so that it can hold more hearings, hear any relevant evidence and finalize more cases (as opposed to sending them back to the RPD, as happens currently in many cases overturned by the RAD).

Rapid adjustment of IRB funding and appointment of members: A mechanism is required to ensure that the IRB quickly receives additional resources when claim numbers go up, to avoid backlogs emerging.

Eliminate the bar on concurrent H&C applications and refugee claims: The need for refugee determination by the IRB could be avoided in some cases if the bar on H&C applications by claimants was eliminated. In cases with particularly compelling humanitarian and compassionate factors, the case might be favourably resolved while awaiting the outcome of the IRB process, thus reducing the IRB caseload.

Advantages of the proposed model

- By centralizing decision-making at the RPD, the model would have all the processes under a single independent body. The need for coordination between government bodies is minimized by having the RPD fully responsible for all aspects of refugee determination.
- The model would maintain refugee determination fully under an independent and quasi-judicial tribunal, a key asset of the Canadian system that is admired around the world.
- The proposed model clarifies and simplifies the relationships between the IRB, IRCC and the CBSA. Currently roles are confused and overlapping. IRCC and the CBSA have roles in the refugee claim process (notably eligibility, and PRRA – actual refugee determination), while they are also potential adversarial parties in the claim itself through an intervention. The CCR's proposed model distinguishes the roles more clearly, minimizing the potential conflicts of interest and the need for communication and collaboration.
- The proposed model is designed to give enough time for claimants to present their case properly. This is important as on first arrival claimants often cannot fully articulate the relevant parts of their experience. This is particularly the case for people who have been highly traumatized and people fleeing gender persecution, or LGBT claimants. It is fairer and in the end more efficient to make sure the basis of the claim is properly presented before making decisions on scheduling.
- Bringing all protection applications to the RPD (rather than having some at the PRRA) would be a fairer and more efficient way of dealing with issues arising immediately prior to removal, or second claims, or people ineligible under the 2019 changes to the legislation. Currently, people who make a second claim, or who are ineligible on the basis of a claim in the US, UK, Australia or New Zealand, or whose claim has been rejected but who have new evidence that they are at risk, are not heard by the RPD, but rather apply for a Pre-Removal Risks Assessment (PRRA), conducted by officials at IRCC (although a provision in the legislation, never implemented, actually transfers this decision-making to the RPD). Having a whole parallel structure at IRCC to make refugee determination is very expensive. PRRAAs are frequently very slow.
- The proposed model is based on simplifying the existing model and could therefore be implemented quickly and inexpensively. It does not require new structures to be created. Given that many people are currently waiting for determination of their claims, this is a very important advantage.

- The RPD has recently shown that it can dramatically increase its efficiency, particularly when not constrained by hearing dates scheduled by IRCC and the CBSA. Under the proposed model, the RPD would have an opportunity to find even more efficiencies in processing by having greater control over the whole claim process.
- The current legislation has a complicated system to deny access to the RPD to people who are inadmissible on security or criminality grounds. Often this turns out to be very inefficient: there may be long delays in determining inadmissibility when in fact the person could quickly have been determined not to need protection. Under the current system people found inadmissible still need to have an assessment of their risk: this is done as an extra step through the PRRA, after the inadmissibility has been determined. The current statutory scheme is conceptually and legally problematic because the eligibility grounds are broader than the Convention exclusion grounds. The current process leads to protracted parallel litigation (at a minimum there is an ID hearing, followed by a PRRA application; in some cases there can be an RPD hearing, interrupted or followed by an ID hearing and a PRRA application, or an exclusion decision followed by a PRRA application). The current process is also often delayed further by protracted Ministerial Relief applications. The proposed model would focus on making the determination on refugee protection for everyone and without delay, by the same body that has the relevant expertise. This is more in line with Canada's international obligations. Inadmissibility matters can be dealt with afterwards, if necessary, or in parallel.