

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p style="text-align: center;"><b>INTRODUCTION</b></p> <p><b>Purpose and currency of checklist.</b> This checklist is designed to be used with the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist. It is intended for use by immigration counsel representing refugee claimants at hearings before the Refugee Protection Division (“RPD”) of the Immigration and Refugee Board (“IRB”) pursuant to the <i>Immigration and Refugee Protection Act</i>, S.C. 2001, c. 27 (the “IRPA”), the Immigration and Refugee Protection Regulations, SOR/2002-227 (the “IRPR”), the Refugee Protection Division Rules, SOR/2012-256 (the “RPD Rules”), the Refugee Appeal Division Rules, SOR/2012-257 (the “RAD Rules”), and associated regulations and rules. This checklist is current to August 31, 2016.</p> <p><b>New developments:</b></p> <ul style="list-style-type: none"> <li>• <b>Policy on the expedited processing of refugee claims by the Refugee Protection Division: Designation of Iraq.</b> Effective June 8, 2016, claims from Iraq are designated as eligible for processing under the Policy on the Expedited Processing of Refugee Claims by the Refugee Protection Division. Under the policy, which was first issued by the IRB on September 18, 2015, Syrian claims continue to be eligible. The policy may be found at <a href="http://www.irb-cisr.gc.ca/Eng/BoaCom/references/pol/pol/Pages/polRpdSprExpProAcc.aspx">www.irb-cisr.gc.ca/Eng/BoaCom/references/pol/pol/Pages/polRpdSprExpProAcc.aspx</a>.</li> <li>• <b>Refugee Appeal Division access for Designated Countries of Origin (“DCO”) claimants.</b> On July 23, 2015, the Federal Court found that <i>IRPA</i>, s. 110(2)(d.1), which denied access to the Refugee Appeal Division (“RAD”) for refugee claimants from a DCO, violates s. 15(1) of the <i>Charter of Rights and Freedoms</i> and is not saved by s. 1 (<i>Z. (Y.) v. Canada (Citizenship and Immigration)</i>, 2015 FC 892). The court declined to suspend the declaration of invalidity. The effect of the decision is that DCO claimants now have access to the RAD.</li> <li>• <b>Pre-removal risk assessment bar constitutional.</b> The prohibition in s. 112(2)(b.1) of the <i>IRPA</i>, against bringing an application for a pre-removal risk assessment until 36 months after the claim for refugee protection was abandoned (for a person from a DCO), does not violate s. 7 of the <i>Charter of Rights and Freedoms: Atawnah v. Canada (Public Safety and Emergency Preparedness)</i>, 2016 FCA 144, leave to appeal refused 2016 CanLII 82912 (SCC). In <i>Savunthararasa v. Canada (Public Safety and Emergency Preparedness)</i>, 2016 FCA 51, the Federal Court of Appeal held that the judge below should not have certified questions about the constitutional validity of s. 112(2)(b.1) on an insufficient evidentiary record.</li> <li>• <b>Standard of review at the Refugee Appeal Division (“RAD”).</b> The RAD is not to apply the standard of reasonableness used in judicial review proceedings to the RPD’s assessment of evidence. In <i>Huruglica v. Canada (Citizenship and Immigration)</i>, 2016 FCA 93, the Federal Court of Appeal held that with respect to findings of fact, and mixed fact and law, which raise no issue of credibility of oral evidence, the RAD is to review RPD decisions applying the correctness standard.</li> <li>• <b>Law Society Rules.</b> On July 1, 2015, revised and consolidated Law Society Rules came into effect. See <a href="http://www.lawsociety.bc.ca/page.cfm?cid=4089&amp;t=Law-Society-Rules-2015">www.lawsociety.bc.ca/page.cfm?cid=4089&amp;t=Law-Society-Rules-2015</a>.</li> <li>• <b>Code of Professional Conduct for British Columbia (the “BC Code”).</b> In July 2015, rule 3.7-9 of the <i>BC Code</i> was amended to require that a lawyer promptly notify the client, other counsel, and the court or tribunal of the lawyer’s withdrawal from a file.</li> </ul>					

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<p><b>Of note:</b></p> <ul style="list-style-type: none"> <li><b>Additional resources.</b> Detailed information about procedure under the <i>IRPA</i> is available on the IRB website at <a href="http://www.irb-cisr.gc.ca">www.irb-cisr.gc.ca</a>.</li> </ul> <p style="text-align: center;"><b>CONTENTS</b></p> <ol style="list-style-type: none"> <li>Initial Contact by the Client or Client Representative</li> <li>Initial Interview with the Client</li> <li>Completing the Basis of Claim Form</li> <li>Preparation for the Hearing</li> <li>Conduct at Refugee Protection Division Hearing</li> <li>Follow-up After the Hearing</li> <li>Refugee Appeal Division Hearing</li> <li>Further Options for Unsuccessful Claimants</li> </ol> <p style="text-align: center;"><b>CHECKLIST</b></p> <p><b>1. INITIAL CONTACT BY THE CLIENT OR CLIENT REPRESENTATIVE</b></p> <p>1.1 Consider Law Society Rules 3-98 to 3-109 on client identification and verification, and complete the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist. In addition, gather the following information:</p> <ol style="list-style-type: none"> <li>Caller:           <ol style="list-style-type: none"> <li>Full name, address, telephone number, occupation.</li> <li>Relationship to client.</li> </ol> </li> <li>Client:           <ol style="list-style-type: none"> <li>Full name, home and business address, home and business telephone number, occupation(s).</li> <li>Present location.</li> <li>Age and date of birth.</li> <li>Immigration status in Canada.</li> <li>Languages spoken.</li> </ol> </li> </ol> <p>1.2 Decide whether to accept the case considering:</p> <ol style="list-style-type: none"> <li>The time limits relating to the refugee claim.</li> <li>Conflicts of interest. See <i>Code of Professional Conduct for British Columbia</i> (“<i>BC Code</i>”), s. 3.4 and the model conflicts of interest checklist on the Law Society website at <a href="http://www.lawsociety.bc.ca/docs/practice/resources/checklist-conflicts.pdf">www.lawsociety.bc.ca/docs/practice/resources/checklist-conflicts.pdf</a>.</li> <li>The duty to make legal resources available to the public (see <i>BC Code</i> rule 2.1-5(c)); whether declining would make it difficult for the person to obtain legal representation. See also <i>BC Code</i> rule 6.3-5, which sets out that a lawyer must not discriminate against any person.</li> <li>Amount of fee and whether it will be paid; whether the client is eligible for legal aid through the Legal Services Society (“LSS”).</li> </ol>					

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<p>1.3 If you do not wish to act:</p> <ul style="list-style-type: none"> <li>.1 Advise the caller, and, if the caller does not know how to find another lawyer, suggest names, Lawyer Referral, or legal aid.</li> <li>.2 Make a record of the advice given, and file your notes.</li> </ul> <p>1.4 If you agree to act:</p> <ul style="list-style-type: none"> <li>.1 Advise the caller and client of the scope and amount of your retainer and if it must be paid in advance. Follow up in writing, confirming your retainer and setting out the manner in which the fees, disbursements, interest and taxes will be determined. See <i>BC Code</i>, s. 3.6 for the rules regarding reasonable fees and disbursements, and commentary [1] to rule 3.6-3 regarding the duty of candour owed to clients respecting fees and other charges. If you will be providing limited representation under the auspices of a not-for-profit organization, see <i>BC Code</i> rules 3.4-11.1 to 3.4-11.4.</li> <li>.2 If the case is a referral from LSS, advise the caller and client that you will not act until the client’s coverage has been confirmed from LSS.</li> <li>.3 Arrange for an interview/meeting with the client (on receipt of LSS referral, diarize dates of assignment and coverage expiry).</li> <li>.4 If an interpreter will attend the interview, ensure that the interpreter contacts the client and advises the client of the interview date.</li> </ul>					
<p><b>2. INITIAL INTERVIEW WITH THE CLIENT</b></p>					
<p>2.1 At the initial interview(s), collect information:</p> <ul style="list-style-type: none"> <li>.1 Personal information: <ul style="list-style-type: none"> <li>(a) Full name.</li> <li>(b) Address in Canada.</li> <li>(c) Phone number.</li> <li>(d) Phone number for leaving messages.</li> <li>(e) Language(s) spoken, written, and read.</li> <li>(f) Occupation.</li> </ul> </li> <li>.2 Name and phone number of the interpreter.</li> <li>.3 Whether the client has already made the refugee claim, and any documents or forms completed to date: <ul style="list-style-type: none"> <li>(a) If the claim was made by the client inside Canada, the agency dealing with the client’s claim is CIC.</li> <li>(b) If the claim was initiated by the client at a port of entry (“POE”), the agency dealing with the client’s claim is the CBSA.</li> </ul> </li> </ul> <p>2.2 Collect sufficient detail to complete the required forms:</p> <ul style="list-style-type: none"> <li>.1 Clients who make a refugee claim inside Canada at a CIC office must have all the forms in the application package completed and with them, including the Basis of Claim (“BOC”), upon making the claim. The application package is available on the CIC website at <a href="http://www.cic.gc.ca/english/information/applications/protection.asp">www.cic.gc.ca/english/information/applications/protection.asp</a>; see item 3.8 below.</li> </ul>					

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<p>.2 Clients who initiated a refugee claim at a port of entry have 15 days to complete the Basis of Claim form and any additional documents and submit them to the IRB. If the client completed any forms with a CBSA officer at the port of entry, be sure to obtain and review copies; see item 3.9.</p> <p>2.3 The very short timelines require counsel to work quickly, efficiently, and diligently to ensure that the factual bases of their client’s protection claims are developed sufficiently in advance of the RPD hearing and that claimants have either obtained, or begun the process of obtaining, the documents required to establish their identities and corroborate important aspects of their claims. Counsel will also have to ensure that they receive documents well before the hearing date in order to meet timely disclosure requirements.</p> <p>2.4 Before the BOC is completed and signed by the client (or after, if the form was filed before the client was referred to you), explain to the client the following:</p> <ol style="list-style-type: none"> <li>.1 The fundamentals of the lawyer-client relationship, including the concept of privilege and your role as counsel.</li> <li>.2 The need to obtain all information from CIC (or CBSA) about the client (at this time, obtain the appropriate consent forms so you can file requests for the client’s file from CIC and CBSA under the <i>Privacy Act</i>, R.S.C. 1985, c. P-21).</li> <li>.3 Eligibility (<i>IRPA</i>, s. 101).</li> <li>.4 Inadmissibility (<i>IRPA</i>, Part I, Division 4).</li> <li>.5 Effect of a conditional departure order, and the requirement to meet its conditions within 30 days or it becomes a deportation order (<i>IRP Regulations</i>, s. 224).</li> <li>.6 When the order comes into force (<i>IRPA</i>, s. 49(2)), and when it becomes enforceable (<i>IRPA</i>, s. 48(1); <i>IRP Regulations</i>, s. 231).</li> <li>.7 The definition of a Convention refugee (<i>IRPA</i>, s. 96) and of a person in need of protection (<i>IRPA</i>, s. 97).</li> <li>.8 The grounds upon which a person is to be excluded from refugee protection pursuant to section E or F of Article 1 of the Refugee Convention (<i>IRPA</i>, ss. 2(1), 98, and the Schedule).               <ol style="list-style-type: none"> <li>(a) These grounds can arise if the claimant has some form of long-term immigration status in a safe third country (section E), or has committed or been complicit in a war crime or other similar atrocity, a violation of the principles of the United Nations, or a serious non-political crime (section F). (With regard to complicity in war crimes, consider the test set out in <i>Ezokola v. Canada (Citizenship and Immigration)</i>, 2013 SCC 40.)</li> </ol> </li> <li>.9 The pre-removal risk assessment (“PRRA”) rights of a person so excluded (<i>IRPA</i>, s. 112(2)(b.1)), and the special restrictions and considerations applicable to such persons during and after the PRRA process (<i>IRPA</i>, ss. 112(3)(c), 113(d), 114(1)(b), and 114(2)).</li> <li>.10 Consequences of failure to comply with processing requirements may include abandonment proceedings (<i>RPD Rule 65</i>).</li> </ol>					

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<p>.11 Importance of notifying the IRB and CIC of changes in address or telephone number.</p> <p>.12 Deadlines for filing:</p> <p>(a) The BOC, identity documents, and any additional forms (noting the dates these documents are posted and due). If the deadline for filing the BOC has passed, determine if the IRB has set a date for an abandonment hearing.</p> <p>(b) Evidentiary documents (10 days before the hearing), which must be accompanied by translations if they are not in English or French.</p> <p>.13 Time frame for processing the case through to the hearing:</p> <p>(a) Claimants from DCOs will receive a hearing before the RPD within 30 days of being found eligible to make a claim, if the claim is made inside Canada.</p> <p>(b) Claimants from DCOs who make a claim upon arrival at an airport or a land border (a “port of entry” or “POE”) will receive a hearing within 45 days of being found eligible.</p> <p>(c) All other claimants will receive a hearing within 60 days of being found eligible.</p> <p>.14 Importance of taking immediate action to obtain relevant identity and claim-related documents, as well as the names, addresses and telephone numbers of potential witnesses.</p> <p>.15 The contents and significance of the BOC (leave a copy with the client to complete for subsequent interviews; you might consider creating foreign-language versions of the document to make it easier for the client to see what information needs to be gathered for your next meeting).</p> <p>2.3 Discuss and make notes on:</p> <p>.1 Basic facts of the client’s protection claim (consider how much to discuss in detail, if the client appears to have been traumatized).</p> <p>.2 What the client has told CBSA or CIC about the claim.</p> <p>.3 Whether the client was detained and, if so, under what circumstances, and if the client was informed of the right to retain and instruct counsel.</p> <p>.4 Whether any documents belonging to the client were seized.</p> <p>.5 Witnesses and additional documentary evidence.</p> <p>.6 The client’s condition:</p> <p>(a) Whether the client has scars/injuries from torture or mistreatment.</p> <p>(b) Whether the client suffers from a mental or psychological condition or disorder (e.g., post-traumatic stress disorder).</p> <p>(c) Whether the client’s condition requires you to seek an extension of time to file the BOC or defer the claim pending medical treatment.</p> <p>.7 Medical attention previously received by the client and referrals to medical doctors and specialists.</p>					

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<p>.8 Cost of medical reports from experts, or, if client is on a LSS referral, authorization requirements for funding of assessments and reports by experts (e.g., medical doctor, psychologist, or psychiatrist).</p> <p>.9 Referral to counselling.</p> <p>2.4 Follow-up from initial interview(s).</p> <p>.1 Diarize relevant dates: the date the BOC is due; dates for requesting/granting a filing extension; the date the BOC is to be filed; authorizations to incur expert disbursements sent/received.</p> <p>.2 Confirm in writing to the client the importance of taking immediate action to obtain identity documents and other materials relevant to the claim.</p> <p>.3 Take copies of the client’s identity documents. Review documents not in English with an interpreter, and request translations of relevant documents. Confirm compliance with Law Society Rules 3-98 to 3-109 on client identification and verification.</p> <p>.4 Ensure you have all relevant documents from CIC and CBSA. If the client has already made the refugee claim, ensure you have all documents that the CIC or CBSA officer should have provided to the client (RPD Rule 3). File requests for the client’s full electronic and physical file from both CIC and CBSA pursuant to the <i>Privacy Act</i>. These requests can be done online (<a href="https://atip-aiprp.apps.gc.ca/atip/">https://atip-aiprp.apps.gc.ca/atip/</a>). Documents will be released to counsel only if appropriate consents are provided.</p>					
<p><b>3. COMPLETING THE BASIS OF CLAIM FORM</b></p>					
<p>3.1 Complete the BOC with the client. Carefully question the client on details of the claim.</p>					
<p>3.2 Review with the client at subsequent interviews the information provided in the BOC, and repeat advice about the need to complete the form as accurately as possible given the significance of the forms as used in refugee hearings.</p>					
<p>3.3 Compare the information in the BOC with that previously provided by the client to CBSA or CIC, noting any inconsistencies in prior statements or internal inconsistencies in the document itself.</p>					
<p>3.4 After completing questions 1 and 3 to 10 of the BOC, and after eliciting details of facts giving rise to the claim, prepare typed draft answers to questions 2(a) to 2(j).</p>					
<p>3.5 Review the entire BOC (including the draft answers to question 2) carefully with the client, making all corrections before the client signs it.</p>					
<p>3.6 Discuss and make notes on special issues:</p> <p>.1 Whether issues of serious criminality (foreign or Canadian convictions or charges) or other factors affect the client’s eligibility, noting any discrepancies in the information previously provided by the client to immigration authorities.</p> <p>.2 Whether the facts of the claim may give rise to an exclusion under section E or F of Article 1 of the Refugee Convention (see <i>IRPA</i>, s. 2(1) and the Schedule).</p>					

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<p>(a) If notice from the Minister of Public Security and Emergency Preparedness of an Intention to Participate was filed and served, note the date it was served on you or the client, the date a disclosure demand was sent, and when disclosure was received.</p> <p>.3 Consider whether the case warrants special consideration for extra fees.</p> <p>3.7 If special issues are raised, review the scope of retainer with the client and whether there should be an adjustment to the fees. If the client is a legal aid referral, consider whether further coverage must be obtained.</p> <p>3.8 Inland claimants (those who initiated a refugee claim from inside Canada at a CIC office) must deliver the BOC in person to a CIC office.</p> <p>.1 The following forms and documents must be also delivered with the BOC (forms are available on the CIC website at <a href="http://www.cic.gc.ca/english/information/applications/protection.asp">www.cic.gc.ca/english/information/applications/protection.asp</a>):</p> <p>(a) Generic Application Form for Canada (IMM 0008).</p> <p>(b) Additional Dependants/Declaration (IMM 0008DEP) (if the client has more than five dependants).</p> <p>(c) Schedule A: Background/Declaration (IMM 5669).</p> <p>(d) Schedule 12: Additional Information—Refugee Claimants inside Canada (IMM 0008 SCH12).</p> <p>(e) Document Checklist (IMM 5745).</p> <p>(f) Use of a Representative (IMM 5476).</p> <p>(g) Originals of all identity documents, including translations if the document is in a language other than English or French.</p> <p>(h) Four passport-sized photographs of the client(s), with their names written on the back.</p> <p>.2 If the additional forms are completed to the satisfaction of CIC staff, arrangements will be made for the client to see a CIC officer for an eligibility interview. If required, CIC will arrange to have an interpreter present.</p> <p>.3 Inland claimants must bring two copies of the BOC to their eligibility interview (and all attached documents).</p> <p>.4 Inland claimants will be given a date for their refugee hearing:</p> <p>(a) If the claimant is from a DCO, within 30 days after CIC determines eligibility.</p> <p>(b) For other claimants, within 60 days after eligibility determination.</p> <p>3.9 POE claimants (those who initiated a refugee claim at a port of entry) may already have completed the forms set out in item 3.8.1 (also see item 2.2.2), which you should review.</p> <p>.1 POE claimants must submit the completed BOC (and all attached documents, and provide a copy) to the IRB within 15 days of their eligibility determination.</p> <p>.2 Failure to meet the 15-day deadline will result in an abandonment hearing being scheduled five days after the original date the BOC was due (RPD Rule 65(2)).</p>					

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<p>.3 POE claimants will be given a date for their refugee hearing:</p> <p>(a) If the claimant is from a DCO, within 45 days after CBSA determines that their claims are eligible to be referred to the RPD.</p> <p>(b) For other claimants, within 60 days after eligibility determination.</p> <p>3.10 Receive the client’s translated identity documents from the interpreter, and file them with the tribunal.</p> <p><b>4. PREPARATION FOR THE HEARING</b></p> <p>4.1 Study disclosure from the CIC/CBSA and the RPD; note important evidence, and copy it to the client; ask the client to review it. Ensure you have all documents listed in RPD Rule 5.</p> <p>4.2 Hearing date:</p> <p>.1 Diarize the date for the hearing.</p> <p>.2 Advise the client of the date in writing, and ensure that the client has noted the date and place.</p> <p>.3 Diarize the file for attention sufficiently in advance of the hearing. If you have not been fully retained or the client has lost contact with you, at least three working days prior to the hearing (if possible) send a written request to be removed from the record to the client’s last address, to the Minister (if a party), and to the RPD (RPD Rule 15).</p> <p>4.3 Interview the client in light of disclosure from the RPD, CBSA or CIC (including disclosure from the Minister, if applicable).</p> <p>4.4 Determine whether your client requires any procedural accommodation as a minor, a woman claimant fearing gender-related persecution, or an otherwise vulnerable person, having regard to the RPD Chairperson’s Guidelines, available on the IRB website.</p> <p>.1 Request and confirm any procedural accommodations required from the RPD as far in advance of the hearing as possible.</p> <p>4.5 Prepare documentary disclosure.</p> <p>.1 Documentary disclosure should include:</p> <p>(a) Identity documents: All refugee claimants must prove their identity and citizenship. Ensure that all identity documents have been obtained, translated, and disclosed.</p> <p>(b) Country conditions: Research current conditions in the country from which the client is seeking asylum. Consider human rights and the treatment of persons who are comparable to the client. Include in this research the RPD’s National Documentation Package, available online at <a href="http://www.irb-cisr.gc.ca">www.irb-cisr.gc.ca</a> (there is a package update, effective August 28, 2015, for certain countries).</p> <p>(c) Supporting documentary evidence that corroborates the refugee claim: this may include copies of police reports, hospital or medical records, photographs, letters, videos, e-mail, or other documents that provide evidence of problems the client encountered in the country from which the client is seeking asylum. If the claim is based on religious identity or membership in a group, documents establishing membership should be obtained.</p>					



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<p>(d) Expert evidence: Determine whether you require expert testimony on conditions in that country or on any other issue (if so, notify the client and obtain instructions to hire an expert).</p> <p>(e) Psychological evidence: Determine with the client whether to obtain and/or disclose claimant-specific medical reports, and disclose them with the client’s authorization.</p> <p>.2 Provide documentary disclosure to the RPD. Documents must be provided to the RPD and the other party (if the Minister has intervened) 10 days before the day of the hearing. (RPD Rule 34(3)). Documentary evidence disclosed in response to another party’s disclosure must be provided five days prior to the hearing (RPD Rule 34(3)).</p> <p>4.6 Witnesses:</p> <p>.1 Arrange for interviews and statements. Find out if witnesses are represented by counsel. See <i>BC Code</i>, s. 5.3 and rules 7.2-6 to 7.2-9. If a person is represented by a lawyer in respect of a matter, another lawyer must not, except through or with the consent of the person’s lawyer, approach, communicate, or deal with the person on the matter or attempt to negotiate or compromise the matter directly with the person.</p> <p>.2 Decide whom to call.</p> <p>.3 Prepare witnesses for the hearing.</p> <p>.4 Witness information must be provided to the RPD and the other party (if the Minister has intervened) 10 days before the day of the hearing. (RPD Rule 44(3)). Pursuant to RPD Rule 44(1), the following witness information must be provided to the other party, if any, and the Division:</p> <p>(a) Contact information.</p> <p>(b) Purpose and substance of testimony (or, if the witness is an expert, a signed summary statement).</p> <p>(c) The time needed for the witness’s testimony.</p> <p>(d) The client’s relationship to the witness.</p> <p>(e) In the case of an expert witness, a description of an expert’s qualifications.</p> <p>(f) Whether the witness will testify by telephone or videoconference.</p> <p>(g) Proof of disclosure to any other parties, pursuant to RPD Rule 44(2).</p> <p>.5 Summons issued to a witness (RPD Rule 45):</p> <p>(a) Request the summons at the RPD registry in writing.</p> <p>(b) Deliver the summons and conduct money, unless the witness has already declined it (RPD Rule 45(3)), to a process server; or, if serving immigration officials, arrange other service through the CIC.</p> <p>(c) Obtain verification of service or affidavit of service.</p> <p>(d) Consider arrangements for teleconference evidence from witnesses who are unable to attend the hearing, and notify the tribunal.</p>					

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<p>4.7 Prepare a hearing plan.</p> <p>4.8 Decide if you require an adjournment, and if so:</p> <ol style="list-style-type: none"> <li>.1 Discuss it with the client.</li> <li>.2 File a written application, in accordance with RPD Rules 50 and 54 at least three working days before the scheduled hearing date, unless the application is made for medical reasons or other emergencies, explaining the reasons for seeking a change in the date of the hearing.               <ol style="list-style-type: none"> <li>(a) Note that postponement or adjournment can be granted only for exceptional reasons, such as those specified in RPD Rule 54(4), or where counsel is retained after the hearing date was set, is unavailable on that date, and applies to change that date within five working days after it was set (RPD Rule 54(5)). If an application for a postponement or adjournment is allowed, the new date fixed by the RPD will be no later than 10 working days after the date originally fixed for the proceeding or as soon as possible after that date (RPD Rule 54(11)).</li> </ol> </li> <li>.3 If the adjournment is granted:               <ol style="list-style-type: none"> <li>(a) Fix the date and diarize it.</li> <li>(b) Explain to the client and ensure that the client has noted the date; confirm the date with the client in writing.</li> <li>(c) Notify witnesses.</li> </ol> </li> </ol> <p>4.9 Prepare hearing brief, including:</p> <ol style="list-style-type: none"> <li>.1 Essential elements of the case you have to establish.</li> <li>.2 Your client’s testimony. Consider your duty as an officer of the court and the professional conduct expected of an advocate in <i>BC Code</i> rules 5.1-1, 5.1-2, and 5.1-4 to 5.1-6.</li> <li>.3 Re-examinations of the claimant and the claimant’s witnesses. Note: the tribunal member must question the claimant and any witnesses first, save in exceptional circumstances, for example, where the variation in order of questioning is required to accommodate a vulnerable person (RPD Rule 10).</li> <li>.4 Cross-examinations of the Minister’s witnesses, if any, considering:               <ol style="list-style-type: none"> <li>(a) Who the Minister’s representative will call.</li> <li>(b) What each witness will say (or prove).</li> <li>(c) The weaknesses of each witness.</li> <li>(d) What testimony each can give that might help (and hurt) the client.</li> <li>(e) How to frame questions to emphasize evidence that assists the client and minimize the impact of evidence that doesn’t.</li> <li>(f) Note that order of questioning of any Minister’s witnesses is set out in RPD Rule 10(2) and (3). Claimant’s counsel questions such witnesses last.</li> </ol> </li> <li>.5 Evidentiary arguments; arguments regarding admissibility and the weight to be given to evidence. (Note that the RPD is not bound by any legal or technical rules of evidence (<i>IRPA</i>, s. 170(g) and (h)).)</li> </ol>					

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<p>.6 Arguments under the <i>Canadian Charter of Rights and Freedoms</i>.</p> <p>.7 Closing arguments.</p> <p>4.10 Prepare the client for the hearing by addressing dress, manner, testifying, and being questioned by the RPD Member and perhaps a Minister’s representative, and possible dispositions of the claim by the tribunal.</p> <p>4.11 If any professional responsibility issues arise, consult the <i>BC Code</i>. For more assistance, contact a Law Society Practice Advisor for confidential help, or a Benchers or a senior lawyer.</p> <p>4.12 If an issue about constitutional validity arises, consider the notice provisions of RPD Rule 66.</p> <p><b>5. CONDUCT AT REFUGEE PROTECTION DIVISION HEARING</b></p> <p>5.1 When the case is called, introduce yourself, say that your client is present, and respond when asked if you are ready to proceed.</p> <p>5.2 Consider any preliminary matters/motions:</p> <p>.1 Apply for adjournment if it was previously refused (RPD Rule 54(9)).</p> <p>.2 (Renew) any objections if provided with late disclosure (by the RPD or Minister’s representative).</p> <p>.3 Appointment of designated representative for client(s) under legal disability, such as minor children (RPD Rule 20).</p> <p>.4 Confirm the exhibits (including the number of pages in each exhibit), and that all parties have the same exhibits and contents.</p> <p>5.3 Consider getting written instructions that the client does not wish certain evidence to be addressed or have certain witnesses called to testify.</p> <p>5.4 Call witnesses. See <i>BC Code</i>, s. 5.4 regarding rules respecting communication with witnesses giving evidence.</p> <p>5.5 Make final argument.</p> <p>5.6 In most cases the tribunal member will give the decision orally at the end of the hearing. All claimants will receive a written notice of decision after the hearing.</p> <p><b>6. FOLLOW-UP AFTER THE HEARING</b></p> <p>6.1 If the refugee claim is accepted (and if the Minister does not file an appeal to the RAD, or an application for leave and judicial review to the Federal Court for cases ineligible for the RAD):</p> <p>.1 Explain the significance to the client:</p> <p>(a) For designated foreign nationals (“DFNs”) seeking permanent residence under <i>IRPA</i>, s. 11(1.1).</p> <p>(b) For permanent residence generally, under <i>IRPA</i>, ss. 21(2), 99(4), and IRPR, Part 8, Division 5.</p> <p>(c) For refugee protection status under <i>IRPA</i>, s. 95.</p> <p>(d) For non-removal under <i>IRPA</i>, s. 115.</p>					

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<p>(e) For cessation of refugee protection under <i>IRPA</i>, s. 108 and its consequences, even for permanent residents, under <i>IPRA</i>, ss. 40.1(2) and 46(1)(c.1). Caution the client against taking steps that may constitute re-availment of the protection of their country of nationality (i.e., obtaining and/or travelling on a national passport, returning to their country of nationality). Inform the client of the availability and limitations of a Refugee Travel Document from Passport Canada.</p> <p>.2 Follow up with a reporting letter and a statement of account.</p> <p>.3 Close the file.</p> <p>6.2 If the refugee claim is refused (either at the conclusion of the hearing or after the decision was reserved), consider appealing to the RAD under <i>IRPA</i>, s. 110, or for cases ineligible for the RAD, filing an application for leave and judicial review to the Federal Court.</p> <p><b>7. REFUGEE APPEAL DIVISION HEARING</b></p> <p>7.1 Consider eligibility. There is no appeal to the RAD for some claims:</p> <p>.1 If the claimant is a DFN.</p> <p>.2 If the claimant made the claim at the US-Canada border and qualified for an exception to the Safe Third Country Agreement.</p> <p>.3 If the RPD decided that the claim was manifestly unfounded.</p> <p>.4 If the RPD decided that the claim had no credible basis.</p> <p>.5 If the claim was referred to the RPD before December 15, 2012.</p> <p>7.2 File a notice of appeal (see RAD Rule 2).</p> <p>.1 The time limit to file the notice of appeal to the RAD is 15 calendar (not working) days after having received written reasons from the RPD (IRPR, s. 159.91(1)(a)).</p> <p>.2 The time limit to perfect the appeal is 30 days after having received written reasons from the RPD (IRPR, s. 159.91(1)(b)).</p> <p>.3 Extensions may be sought for reasons of fairness and natural justice (IRPR, s. 159.91(2)).</p> <p>7.3 Gather evidence.</p> <p>.1 Claimants can submit new evidence at the appeal (but only evidence that arose after the RPD decision or evidence the claimant could not reasonably have known about or presented at the time of the RPD hearing) (<i>IRPA</i>, s. 110(4)).</p> <p>7.4 Prepare and file the appellant’s record (RAD Rule 3). The RAD is a paper-based appeal; there is only a hearing in exceptional circumstances (<i>IRPA</i>, s. 110(6)).</p> <p>7.5 Under <i>IRPA</i>, s. 111, the RAD has the power to: 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, with directions.</p>					

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<p><b>8. FURTHER OPTIONS FOR UNSUCCESSFUL CLAIMANTS</b></p> <p>8.1 If the claim was not successful at the RPD or at the RAD, discuss with the client the advisability of an application for leave and judicial review to the Federal Court.</p> <p>.1 Note that claimants rejected by the RPD who are ineligible to appeal to the RAD, or claimants rejected by the RAD and who wish to pursue judicial review, must file and serve an application for leave to the Federal Court (<i>IRPA</i>, s. 72(1)) within 15 days from the giving of notice of the decision or from the sending of written reasons, whichever is later. (<i>IRPA</i>, ss. 72(2)(b) and 169).</p> <p>.2 A claimant’s removal order will be stayed if an application for leave for judicial review is filed with respect to a decision of the RAD, unless:</p> <ul style="list-style-type: none"> <li>• the claimant is a DFN;</li> <li>• the claimant is subject to a removal order because they are inadmissible on grounds of serious criminality;</li> <li>• the claimant resides or sojourns in the United States or St. Pierre and Miquelon and is the subject of a report prepared under s. 44(1) of the <i>IRPA</i> on their entry into Canada; or</li> <li>• an extension has been sought to file the application for leave for judicial review (<i>IRPA</i>, s. 72(2) to (4)).</li> </ul> <p>If the removal order is stayed, counsel will need to carefully review the length of effectiveness of the stay, as set out in IRPR, s. 231.</p> <p>.3 If there is no stay of removal, the conditional departure order against the claimant will become a deemed deportation order well before the leave application is decided (<i>IRPA</i>, s. 49(2); IRPR, ss. 224(2) and s. 231(4)).</p> <p>.4 For those with no right to appeal to the RAD, an application for leave for judicial review with respect to a decision of the RPD will not result in a stay of the removal order except for decisions made by the RPD in a claim for refugee protection that was referred to that Division before August 15, 2012 (<i>Protecting Canada’s Immigration System Act</i>, S.C. 2012, c. 17, s. 68; Regulations Amending the Immigration and Refugee Protection Regulations, SOR/2012-272, s. 2).</p> <p>.5 Being removed under a deemed deportation order can seriously impact the claimant:</p> <p>(a) It will often be necessary to seek a stay of removal from the Federal Court pending its decision on the leave application and any resultant judicial review. This is a difficult, urgent, and costly procedure.</p> <p>(b) Unsuccessful refugee claimants who might qualify to immigrate to Canada, for example, as skilled workers, were they to leave Canada under conditional departure orders within 30 days after their removal order became enforceable (IRPR, s. 224(2)), will have difficulty returning to Canada if they are removed under deemed deportation orders.</p>					

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<p>(c) Persons removed under deportation orders cannot return to Canada unless they first obtain an authorization to return to Canada (<i>IRPA</i>, s. 52(1)).</p> <p>8.2 If the claim was not successful, consider whether the client is eligible to apply for permanent residence in Canada on humanitarian and compassionate (“H&amp;C”) grounds.</p> <p>.1 Note that unsuccessful refugee claimants are now barred from filing H&amp;C applications for 12 months after their claims were rejected by the RPD or the RAD (<i>IRPA</i>, s. 25(1.2)(c)), except where:</p> <ul style="list-style-type: none"> <li>• removal would endanger their lives due to lack of adequate medical care in their home countries; or</li> <li>• removal would have an adverse effect on the best interests of a child directly affected (<i>IRPA</i>, s. 25(1.21)).</li> </ul> <p>.2 In practice, this means that many rejected refugee claimants will have been removed from Canada before they become eligible to file an H&amp;C application, rendering that option moot.</p> <p>.3 Note also that an H&amp;C application may not be filed while a refugee claim is in progress (<i>IRPA</i>, s. 25(1.2)(b)). An H&amp;C application can, however, be filed instead of a refugee claim, or upon the withdrawal of a refugee claim before any substantive evidence has been heard by the RPD.</p> <p>8.3 Explain that unsuccessful refugee claimants (except those few whose claims were rejected on the basis of section E or F of Article 1 of the Refugee Convention or certain individuals who fall within the exception in <i>IRPA</i>, s. 112(2.1)) are now barred from filing PRRA applications for 12 months after rejection of their claims by the RPD or RAD (<i>IRPA</i>, s. 112(2)). The list of nationalities exempted from the PRRA bar (pursuant to <i>IRPA</i>, s. 112(2.1)) are set out in CIC’s website (<a href="http://www.cic.gc.ca/english/refugees/inside/prra/exemptions.asp">www.cic.gc.ca/english/refugees/inside/prra/exemptions.asp</a>). Note that the waiting period before rejected DCO claimants can file a PRRA is three years, by which time most would already have been removed from Canada. Again, in practice, this means that many rejected refugee claimants will be removed from Canada before they become eligible to file a PRRA, rendering that option also moot. If the client is alleging a risk that merits the filing of a PRRA but is subject to the time limits, counsel may make a request to CBSA to defer removal until the 12-month (or 36-month) time limit has passed, pursuant to CBSA’s discretion to determine the timing of removal (<i>IRPA</i>, s. 48(2)). The threshold for obtaining a deferral of removal is very high.</p> <p>8.4 Consider potential deportation.</p> <p>.1 Any rejected refugee claimant who qualifies to file an H&amp;C application or a PRRA will by that time be under a deemed deportation order (IRPR, s. 224(2)).</p> <p>(a) Filing a PRRA (if eligible to do so) generally stays removal (IRPR, s. 232).</p> <p>(b) Filing an H&amp;C application does not stay removal, and it is necessary to request a deferral of removal from CBSA. Such deferrals are often refused, rendering it necessary to make a stay application to the Federal Court and a simultaneous application for leave to have that refusal judicially reviewed.</p>					

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<p>8.5 Notify the client of limitation periods for appeals to the RAD, and for leave and judicial review under the <i>IRPA</i> and for PRRA applications.</p> <p>8.6 Send a reporting letter and statement of account; emphasize to the client the scope of your retainer, if you were not retained to provide services beyond conclusion of the hearing before the RPD.</p> <p>8.7 If the client is not going to pursue an appeal to the RAD or judicial review or PRRA, close the file. Consider storage and destruction requirements. See <i>Closed Files—Retention and Disposition</i>, July 2015, Appendix B, at <a href="http://www.lawsociety.bc.ca/docs/practice/resources/ClosedFiles.pdf">www.lawsociety.bc.ca/docs/practice/resources/ClosedFiles.pdf</a>.</p>					