

INTRODUCTION

Purpose and currency of checklist. This checklist is designed to be used with the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) and CLIENT FILE OPENING AND CLOSING (A-2) checklists. It is intended for use by immigration counsel representing refugee claimants at hearings before the Refugee Protection Division (the “RPD”) of the Immigration and Refugee Board (the “IRB”) pursuant to the *Immigration and Refugee Protection Act*, 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”), and associated regulations and rules. The checklist is current to October 7, 2024.

LEGEND



Checkbox



Important Reminder



Deadline or Limitation Date

NEW DEVELOPMENTS

- **Procedural changes.** On September 9, 2024, the Refugee Protection Division (“RPD”) produced a [practice notice \(“PN”\)](#) on procedural issues.
- **Basis of Claim (“BOC”) form.** The IRPR provide that the claimant must send their completed BOC to the RPD no later than 15 calendar days after the claim is referred to the RPD. Due to the current volume of new refugee claims being made in Canada, the time limit has been extended to 45 calendar days pursuant to s. 159.8(3) of the IRPR (PN #2.1). A claimant may apply to further extend the time limits to provide the completed BOC to the RPD (PN #2.2).
- **Signatures.** The RPD waives (removes) the requirement for some signatures (PN #3.2).
- **Applications.** The RPD waives (removes) the requirement to provide alternate dates when requesting a change of time and date of a hearing (PN #4.1(b)). Unless directed by the RPD, the RPD waives (removes) the requirement that any evidence must be given in an affidavit or statutory declaration with applications, responses, and replies (PN #4.2).
- **Country conditions evidence.** A party who submits country conditions evidence over the 100-page limit must make an *Application to submit voluminous disclosure to the Refugee Protection Division* (PN #4.5(b)).
- **Minors.** Unless required by the presiding member, a minor (under 18 years of age on the date of their refugee hearing) does not need to attend their hearing (PN #5.1).
- **Content warnings.** When filing evidence containing graphic content, such as picture or videos that show violence, serious injuries, or sexually explicit acts, the party must identify it by labelling it with “Notice: Graphic Content” (PN #5.3).
- **My Case online accounts.** Counsel should ensure they open a My Case online account with the IRB (see <https://my-case-mon-dossier.irb-cisr.gc.ca/en-US/>) and are fully registered to file and receive documents. My Case is now in Phase 3 and counsel can now add up to four delegates to their account, such as legal assistants, paralegals, and associates, as well as articling students. Lawyers must create either Sign-In Partner or GCKey accounts for themselves with the federal government to facilitate registration. Counsel should also ensure they are ready for online

hearings, including having adequate high-quality internet access, arrangements available for witnesses, and the ability to participate in online hearings from their personal computers enabled with the necessary hardware and software.

OF NOTE

- **Virtual hearings.** All IRB hearings are scheduled as virtual hearings by default. Individuals can request the use of IRB premises and equipment to participate in virtual hearings. In-person hearings may be scheduled upon request or at the discretion of the IRB.
- **National Document Packages.** The IRB produces National Document Packages (“NDPs”) for every country when there is a claim for refugee protection. The NDPs report on country conditions such as political, social, cultural, economic, and human rights conditions but do not purport to be exhaustive with regard to conditions in the countries surveyed. The NDPs are updated each month. See www.irb-cisr.gc.ca/Eng/ResRec/NdpCnd/Pages/index.aspx.
- **Interpretation of Convention Refugee and Person in Need of Protection in the Case Law (December 2020).** The IRB produced a paper that discusses the definition of Convention refugee and “person in need of protection” as referred to in ss. 96, 97, 98, and 108 of the *IRPA*. The paper identifies settled principles of law based on jurisprudence with reference to decisions from the Refugee Appeal Division, Federal Court, Federal Court of Appeal, and Supreme Court of Canada. See “Interpretation of Convention Refugee and Person in Need of Protection in the Case Law” at www.irb-cisr.gc.ca/en/legal-policy/legal-concepts/Pages/RefDef.aspx.
- **Law Society of British Columbia.** For changes to the Law Society Rules and other Law Society updates and issues “of note”, see LAW SOCIETY NOTABLE UPDATES LIST (A-3).
- **Additional resources.** Detailed information about procedure under the *IRPA* is available on the IRB website at www.irb-cisr.gc.ca. CLEBC resources relating to immigration practice include annual editions of the *Annual Review of Law and Practice* and annual course materials.

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1. INITIAL CONTACT		
1.1	Conduct a conflicts of interest search and complete the CLIENT FILE OPENING AND CLOSING (A-2) checklist.	<input type="checkbox"/>
1.2	Arrange the initial interview. If an interpreter will attend the interview, ensure that the interpreter contacts the client and advises the client of the interview date.	<input type="checkbox"/>
1.3	Confirm compliance with Law Society Rules 3-98 to 3-110 for client identification and verification and the source of money for financial transactions, and complete the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) checklist. Consider periodic monitoring requirements (Law Society Rule 3-110).	<input type="checkbox"/>
1.4	Gather the following information:	
	.1 Caller:	
	(a) Full name, address, telephone number, occupation.	
	(b) Relationship to client.	
	.2 Client:	
	(a) Full name, home and business address, home and business telephone number, occupation(s).	
	(b) Present location.	
	(c) Age and date of birth.	
	(d) Immigration status in Canada.	
	(e) Languages spoken.	
1.5	Discuss and confirm the terms of your retainer and the calculation of your fee. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist. Also advise that if the transaction becomes more complicated, the fees and disbursements might have to be increased.	<input type="checkbox"/>
	.1 If the case is a referral from Legal Aid BC, advise the caller and client that you will not act until the client's coverage has been confirmed from Legal Aid BC.	
1.6	If you are not in a position to act, advise the client. Make a record of the advice given, and file your notes. Send a non-engagement letter (for samples, see the Law Society website at www.lawsociety.bc.ca/support-and-resources-for-lawyers/practice-resources/).	<input type="checkbox"/>

2. INITIAL INTERVIEW		
2.1	Discuss and confirm the terms of your retainer and the calculation of your fee. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist. Also, advise that if the transaction becomes more complicated, the fees and disbursements might have to be increased.	<input type="checkbox"/>

2.2	Collect information:	<input type="checkbox"/>
	.1 Personal information.	
	(a) Full name.	
	(b) Address in Canada.	
	(c) Phone number.	
	(d) Phone number for leaving messages.	
	(e) Language(s) spoken, written, and read.	
	(f) Occupation	
	.2 Name and phone number of the interpreter (if present).	
	.3 Whether the client has already made the refugee claim, and any documents or forms completed to date. Refugee claims must be made from within Canada, either:	
	(a) Directly to the Canadian Border Services Agency (“CBSA”) at a port of entry (“POE”; i.e., land border or airport). Per the most recent practice notice on filing timelines, clients who initiated a refugee claim at a POE currently have 45 calendar days to complete the BOC with any additional documents and submit them to the RPD.	
	(b) Submitted via online portal, which is forwarded to the CBSA. The CBSA determines whether the claimant is eligible to have their claim referred to Immigration, Refugees and Citizenship Canada (“IRCC”). There is a separate portal for representatives that will submit a claim on behalf of another person and individual claimants who will submit the claim on their own behalf. Once a claim is initiated via the online portal, clients have 90 days to submit their claim online.	
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 to meet timely disclosure requirements.	<input type="checkbox"/>
2.4	Before the BOC is completed by the client (or after, if the form was filed before the client was referred to you), explain to the client the following:	<input type="checkbox"/>
	.1 The fundamentals of the lawyer-client relationship, including the concept of privilege and your role as counsel.	
	.2 The need to obtain all information from IRCC (or CBSA) about the client (at this time, obtain the appropriate consent forms so you can file requests for the client’s file from IRCC and CBSA under the <i>Privacy Act</i> , R.S.C. 1985, c. P-21).	
	.3 Eligibility (<i>IRPA</i> , s. 101).	

.4	Inadmissibility (<i>IRPA</i> , Part I, Division 4).	
.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).	
.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).	
.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).	
.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).	
	(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.)	
.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)).	
.10	Consequences of failure to comply with processing requirements may include abandonment proceedings (<i>RPD Rule 65</i>).	
.11	Importance of notifying the IRB, IRCC, and CBSA of changes in address or telephone number.	
.12	Deadlines for filing:	
	(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.	
	(b) Evidentiary documents (10 days before the hearing), which must be accompanied by translations if they are not in English or French.	
.13	Time frame for processing the case through to the hearing. There are no current set time frames for hearings. The RPD hears most claims within 12 months of referral to the RPD. Some claims are prioritized (see 3.3.7 of Chairperson Guideline 6: Scheduling and Changing the Date or Time of a Proceeding). Claimants in immigration detention will need to expedite preparation of their claim.	
.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.	

	.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).	
2.5	Discuss and make notes on:	<input type="checkbox"/>
	.1 Basic facts of the client’s protection claim (consider how much to discuss in detail if the client appears to have been traumatized). Review Chairperson’s Guideline 8: Accessibility to IRB Proceedings—Procedural Accommodations and Substantive Considerations on Trauma Informed Adjudication.	
	.2 What the client has told CBSA or IRCC about the claim.	
	.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.	
	.4 Whether any documents belonging to the client were seized.	
	.5 Witnesses and additional documentary evidence. Make a list of witnesses, their anticipated written testimony, and other documentary evidence that the claimant may be able to provide. Consider whether a witness should be invited to participate and give live evidence at the claimant’s hearing. Provide a copy of the list to the client to guide them in gathering evidence.	
	.6 The client’s condition:	
	(a) Whether the client has scars/injuries from torture or mistreatment.	
	(b) Whether the client suffers from a mental or psychological condition or disorder (e.g., post-traumatic stress disorder).	
	(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.	
	.7 Medical attention previously received by the client and referrals to medical doctors and specialists.	
	.8 Cost of medical reports from experts, or, if client is on a Legal Aid BC referral, authorization requirements for funding of assessments and reports by experts (e.g., medical doctor, psychologist, or psychiatrist).	
	.9 Referral to counselling.	
	.10 Consider whether a designated representative ought to be appointed for the client (for example, a client under 18 years of age or unable to appreciate the nature of the proceedings) (see RPD Rule 20).	
2.6	Follow-up from initial interview.	<input type="checkbox"/>
	.1 Diarize relevant dates: the date the BOC or evidence is due; dates for requesting/granting a filing extension; the date the BOC is to be filed; authorizations to incur expert disbursements sent/received.	

	.2 Confirm in writing to the client the importance of taking immediate action to obtain identity documents and other materials relevant to the claim, such as witness letters or other documentary evidence.	
	.3 Take copies of the client’s identity documents. Request translations of relevant documents. Confirm compliance with Law Society Rules 3-98 to 3-110 on client identification and verification. See the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) checklist.	
	.4 Ensure you have all relevant documents from IRCC and CBSA. If the client has already made the refugee claim, ensure you have all documents that the IRCC 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 IRCC and CBSA pursuant to the <i>Privacy Act</i> . You may send a letter directly to the RPD with a signed Use of Representative Form requesting a full copy of the file. You may also request CBSA or IRCC documents not forming part of the RPD file via ATIP. These requests can be done online (https://atip-aiprp.apps.gc.ca/atip/). Documents will be released to counsel only if appropriate consents are provided.	

3. COMPLETING THE BASIS OF CLAIM FORM AND NARRATIVE		
3.1	Complete the BOC with the client. Carefully question the client on details of the claim. Prepare a written first-person statement with the client, referred to herein as the “narrative”, with all the details of the claim. The length of the narrative will depend on the claim.	<input type="checkbox"/>
3.2	Review with the client at subsequent interviews the information provided in the BOC and narrative, and repeat advice about the need to complete the form as accurately as possible given the significance of the information as used in refugee hearings.	<input type="checkbox"/>
3.3	Compare the information in the BOC and narrative with that previously provided by the client to CBSA or IRCC, noting any inconsistencies in prior statements or internal inconsistencies in the document itself.	<input type="checkbox"/>
3.4	Review the entire BOC and narrative carefully with the client, making all corrections before the client signs it. If the client is using a translator, ensure that the translator interprets the BOC questions and narrative fully and signs the interpreter’s declaration at section 12 of the BOC. The narrative is included with (attached at the end of) the BOC.	<input type="checkbox"/>
3.5	Discuss and make notes on special issues:	<input type="checkbox"/>
	.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.	
	.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).	

	(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.	
	.3 Consider whether the case warrants special consideration for extra fees.	
3.6	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 BC referral, consider whether further coverage must be obtained.	<input type="checkbox"/>

4.	PREPARATION FOR THE HEARING	
4.1	Study disclosure from the IRCC/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. Note that the claimant is likely to have a virtual hearing and adapt the preparation and the conduct of the hearing accordingly.	<input type="checkbox"/>
4.2	Hearing date:	
	.1 Diarize the date for the hearing.	
	.2 Advise the client of the date in writing, and ensure that the client has noted the date and place.	
	.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). Review your professional obligations regarding withdrawal from representation (see <i>Code of Professional Conduct for British Columbia</i> (the “BC Code”), s. 3.7).	
4.3	Interview the client in light of disclosure from the RPD, CBSA, or IRCC (including disclosure from the Minister, if applicable).	<input type="checkbox"/>
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.	<input type="checkbox"/>
	.1 Request and confirm any procedural accommodations required from the RPD as far in advance of the hearing as possible.	
4.5	Prepare documentary disclosure.	<input type="checkbox"/>
	.1 Documentary disclosure should include:	
	(a) Identity documents: All refugee claimants must prove their identity and citizenship. Ensure that all identity documents have been obtained, translated, and disclosed.	

	(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 (“NDP”), available online at www.irb-cisr.gc.ca (note that there are monthly package updates; see www.irb-cisr.gc.ca/en/pages/index.aspx). The NDP is already in evidence at the RPD. You do not need to file it for the member to consider the NDP documents. You may wish to include excerpts from the NDP or highlight aspects of the NDP at the claimant’s hearing.	
	(c) Supporting documentary evidence that corroborates the refugee claim: this may include copies of police reports, hospital or medical records, photographs, letters, videos, email, 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.	
	(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).	
	(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.	
	.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)).	
4.6	Witnesses:	<input type="checkbox"/>
	.1 Arrange for interviews and statements. Find out if witnesses are represented by counsel. See <i>BC Code</i> , s. 5.3 regarding interviewing witnesses and rules 7.2-4 to 7.2-9 with respect to communicating with witnesses who may be represented by counsel and those who are unrepresented. 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.	
	.2 Decide whom to call.	
	.3 Prepare witnesses for the hearing.	
	.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:	
	(a) Contact information.	

	(b) Purpose and substance of testimony (or, if the witness is an expert, a signed summary statement).	
	(c) The time needed for the witness's testimony.	
	(d) The client's relationship to the witness.	
	(e) In the case of an expert witness, a description of an expert's qualifications.	
	(f) Whether the witness will testify by telephone or videoconference.	
	(g) Proof of disclosure to any other parties, pursuant to RPD Rule 44(2).	
	.5 Summons issued to a witness (RPD Rule 45):	
	(a) Request the summons at the RPD registry in writing.	
	(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 IRCC.	
	(c) Obtain verification of service or affidavit of service.	
	(d) Consider arrangements for teleconference evidence from witnesses who are unable to attend the hearing, and notify the tribunal.	
4.7	Prepare a hearing plan.	<input type="checkbox"/>
4.8	Decide if you require an adjournment, and if so:	<input type="checkbox"/>
	.1 Discuss it with the client.	
	.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.	
	(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)).	
	.3 If the adjournment is granted:	
	(a) Fix the date and diarize it.	
	(b) Explain to the client and ensure that the client has noted the date; confirm the date with the client in writing.	
	(c) Notify witnesses.	

4.9	Prepare hearing brief, including:	<input type="checkbox"/>
	.1 Essential elements of the case you have to establish.	
	.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.	
	.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).	
	.4 Cross-examinations of the Minister's witnesses, if any, considering:	
	(a) Who the Minister's representative will call.	
	(b) What each witness will say (or prove).	
	(c) The weaknesses of each witness.	
	(d) What testimony each can give that might help (and hurt) the client.	
	(e) How to frame questions to emphasize evidence that assists the client and minimize the impact of evidence that does not.	
	(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.	
	.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)).)	
	.6 Arguments under the <i>Canadian Charter of Rights and Freedoms</i> .	
	.7 Closing arguments.	
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.	<input type="checkbox"/>
4.11	If an issue about constitutional validity arises, consider the notice provisions of RPD Rule 66.	<input type="checkbox"/>

5.	CONDUCT AT REFUGEE PROTECTION DIVISION HEARING	
5.1	Note that the hearing may be conducted virtually. When the case is called, introduce yourself, say that your client is present, and respond when asked if you are ready to proceed.	<input type="checkbox"/>
5.2	Consider any preliminary matters/motions:	<input type="checkbox"/>
	.1 Apply for adjournment if it was previously refused (RPD Rule 54(9)).	

	.2 If provided with late disclosure (by the RPD or Minister’s representative), renew any objections.	
	.3 Appointment of designated representative for client(s) under 18 years of age or unable to appreciate the nature of the proceedings (RPD Rule 20).	
	.4 Confirm the exhibits (including the number of pages in each exhibit), and that all parties have the same exhibits and contents.	
5.3	Call witnesses. See <i>BC Code</i> , s. 5.4 regarding rules respecting communication with witnesses giving evidence.	<input type="checkbox"/>
5.4	Consider getting written instructions that the client does not wish certain evidence to be addressed or have certain witnesses called to testify.	<input type="checkbox"/>
5.5	Make final argument.	<input type="checkbox"/>
5.6	In some 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. The length of time in which the claimant receives a notice of decision will vary.	<input type="checkbox"/>

6.	FOLLOW-UP AFTER THE HEARING	
6.1	If the refugee claim is accepted (and if the Minister does not file an appeal to the Refugee Appeal Division (the “RAD”), or an application for leave and judicial review to the Federal Court of Canada for cases ineligible for the RAD):	<input type="checkbox"/>
	.1 Explain the significance to the client:	
	(a) For designated foreign nationals (“DFNs”) seeking permanent residence under <i>IRPA</i> , s. 11(1.1).	
	(b) For permanent residence generally, under <i>IRPA</i> , ss. 21(2), 99(4), and <i>IRPR</i> , Part 8, Division 5.	
	(c) For refugee protection status under <i>IRPA</i> , s. 95.	
	(d) For non-removal under <i>IRPA</i> , s. 115.	
	(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.	
	.2 Follow up with a reporting letter and a statement of account.	
	.3 Close the file. See item 9 in this checklist.	

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.	<input type="checkbox"/>
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7.	REFUGEE APPEAL DIVISION HEARING	
7.1	Consider eligibility. There is no appeal to the RAD for some claims:	<input type="checkbox"/>
	.1 If the claimant is a DFN.	
	.2 If the claimant made the claim at the US-Canada border and qualified for an exception to the Safe Third Country Agreement.	
	.3 If the RPD decided that the claim was manifestly unfounded.	
	.4 If the RPD decided that the claim had no credible basis.	
	.5 If the claim was referred to the RPD before December 15, 2012.	
7.2	File a notice of appeal (see RAD Rule 2).	<input type="checkbox"/>
	.1 The time limit to file the notice of appeal to the RAD is 15 days after having received written reasons from the RPD (<i>IRPR</i> , s. 159.91(1)(a)).	
	.2 The time limit to perfect the appeal is 45 days after having received written reasons from the RPD.	
	.3 Extensions may be sought for reasons of fairness and natural justice (<i>IRPR</i> , s. 159.91(2)).	
7.3	Gather evidence.	<input type="checkbox"/>
	.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)).	
7.4	Prepare and file the appellant's record (Refugee Appeal Division Rules, SOR/2012-257, Rule 3). The RAD is a paper-based appeal; there is only a hearing in exceptional circumstances (<i>IRPA</i> , s. 110(6)). The standard of review at the RAD is correctness with respect to findings of fact and findings of mixed fact and law that raise no issue of credibility of oral evidence: <i>Huruglica v. Canada (Citizenship and Immigration)</i> , 2016 FCA 93.	<input type="checkbox"/>
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.	<input type="checkbox"/>

8.	FURTHER OPTIONS FOR UNSUCCESSFUL CLAIMANTS	
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.	<input type="checkbox"/>
	.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 calendar days for matters arising in Canada or 60 calendar days for matters arising outside Canada 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).	
	.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:	
	<ul style="list-style-type: none"> • the claimant is a DFN; 	
	<ul style="list-style-type: none"> • the claimant is subject to a removal order because they are inadmissible on grounds of serious criminality; 	
	<ul style="list-style-type: none"> • 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 	
	<ul style="list-style-type: none"> • an extension has been sought to file the application for leave for judicial review (<i>IRPA</i>, s. 72(2) to (4)). 	
	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.	
	.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)). See the IMMIGRATION APPEAL AGAINST DEPORTATION (I-2) checklist.	
	.4 Being removed under a deemed deportation order can seriously impact the claimant:	
	(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.	
	(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.	
	(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)).	

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&C”) grounds.	<input type="checkbox"/>
	.1 Note that unsuccessful refugee claimants are barred from filing H&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:	
	<ul style="list-style-type: none"> removal would endanger their lives due to lack of adequate medical care in their home countries; or 	
	<ul style="list-style-type: none"> removal would have an adverse effect on the best interests of a child directly affected (<i>IRPA</i>, s. 25(1.21)). 	
	.2 In practice, this means that many rejected refugee claimants will have been removed from Canada before they become eligible to file an H&C application, rendering that option moot.	
	.3 Note also that an H&C application may not be filed while a refugee claim is in progress (<i>IRPA</i> , s. 25(1.2)(b)). An H&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.	
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 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 on the IRCC’s website . 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.	<input type="checkbox"/>
8.4	Consider potential deportation.	<input type="checkbox"/>
	.1 Any rejected refugee claimant who qualifies to file an H&C application or a PRRA will by that time be under a deemed deportation order (<i>IRPR</i> , s. 224(2)).	
	(a) Filing a PRRA (if eligible to do so) generally stays removal (<i>IRPR</i> , s. 232).	
	(b) Filing an H&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.	
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.	<input type="checkbox"/>

9.	CLOSING THE FILE	
9.1	Prepare a reporting letter and account as soon as practicable after closing. For a sample reporting letter, see the Law Society website at www.lawsociety.bc.ca/support-and-resources-for-lawyers/practice-resources/ .	<input type="checkbox"/>
9.2	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.	<input type="checkbox"/>
9.3	If the client is not going to pursue an appeal to the RAD or judicial review or PRRA, close the file. See the CLIENT FILE OPENING AND CLOSING (A-2) checklist.	<input type="checkbox"/>