



**FCJ Refugee Centre**

*Walking With Uprooted People*

# Preparing for a Refugee Claim after the Basis of Claim (BOC)



PREPARING FOR  
A REFUGEE  
CLAIM AFTER  
THE BOC

# IMPORTANT

- Refugee claims are much more likely to be successful if you hire a lawyer.
- Check to see if you qualify for legal aid!
- Many lawyers are willing to accept payment plans.
- If you cannot afford a lawyer and don't qualify for legal aid, ask a community organization for help;
- Review the [RPD rules and Refugee Claimant's Guide](#);

# UPDATING YOUR STORY

- You may want to change your story or add to it because:
  - Subsequent events have occurred since you submitted your story or
  - You've noticed a mistake in your story (if this happens, you should be prepared to explain why there was a mistake in the first place).

# UPDATING YOUR STORY

Examples of events that you should add to your story:

- Your family/friends back home receive threats or are attacked.
- You participate in events in Canada that could lead to danger for you if you return to your home country (religious conversion, demonstration, pride parade)

# UPDATING YOUR STORY

- When making corrections or updating your story send a copy of your story with anything you want to delete crossed out and anything you want to add underlined.
- Sign and date any page with a change.
- Sign a declaration at the end.
- If you require an interpreter, they should sign an interpreter's declaration.
- Your lawyer can help you with this!

# GATHERING EVIDENCE

**First, review your narrative, incident by incident to make a list of possible evidence; then, think how that evidence could be obtained.**

- It is important:
  - that you start trying to obtain evidence ASAP
- Keep a written diary of:
  - who you contacted to ask;
  - how you contacted them;
  - on what date;
  - and their response or no response.

# GATHERING EVIDENCE

- There are two types of documents:
  1. **Documentary evidence that speaks to your personal situation and incidents described in your narrative.**
  2. **Country conditions evidence:**
    - That speaks to the conditions/situations in country or countries affecting you.

<https://irb-cisr.gc.ca/en/country-information/ndp/Pages/index.aspx>



# WHY TO KEEP A DAIRY FOR PERSONAL EVIDENCE?

- The RPD will expect you to be able to answer questions at your hearing about the efforts you made to try to obtain the supporting documents.
- Keep all envelopes and packaging that the documents arrive in. This helps to prove that the documents really came from your country.

# COUNTRY CONDITION EVIDENCE

- Examples of country conditions include: ACADEMIC JOURNALS, REPORTS WRITTEN BY EXPERTS.
- News articles are useful, but preferably they should be from a reliable source.
- **That speaks to the conditions in the country or countries that you fear persecution.**
- **The RPD already have documents about your country, these documents are called the national documentation package (NDP).**
- **Your lawyer should be able to help you gather country condition evidence.**

# PERSONAL EVIDENCE

- All documents not in English or French must be translated into one of those languages and be accompanied by a declaration from the translator.
- The translator can use the following certification:

I, \_\_\_\_\_ of the City of Toronto, declare that I am competent to translate from Spanish to English, and that the above documents have been faithfully and accurately translated from Spanish into English.

Declared on Toronto, \_\_\_\_\_, 2018

# EXAMPLES OF PERSONAL EVIDENCE

## Proof of Identity and Relationships:

- Birth certificates, death certificates, marriage certificates, identity cards, affidavit of identity, etc.

# EXAMPLES OF PERSONAL EVIDENCE

**Proof of membership in group (political, religious, ethnic etc.):**

Membership card, notarized letters or affidavits from officials, etc.

# EXAMPLES OF PERSONAL EVIDENCE

**Documents that prove the incidents in your narrative:**

- Medical reports, police reports, notarized letters or affidavit from witnesses, warrants, notarized letters or affidavit from people in a position similar to yours, etc.
- All these evidences could be supported by photographs

# EXAMPLES OF PERSONAL EVIDENCE

## Evidence regarding current mental state:

- Medical reports from psychologists or psychiatrists, confirming:
- that you needed or you are in need of treatment for psychological injury or
  - if you think you are experiencing psychological issues that will impact your ability to testify.
  - Reports could be obtained:
  - This can be especially important for survivors of major trauma like rape or torture.

# EXAMPLES OF PERSONAL EVIDENCE

The reports should state:

- the credentials of the person writing the report
- talk about the conditions affecting you or that you are experiencing
- and how they will impact your:
  - Your life
  - Your ability to testify



# AFFIDAVITS/NOTARIZED LETTERS

Affidavits/notarized letters from family and others inside or outside your country should include:

- Copy of ID documents;
- Your full name;
- Their full name, Date of birth, nationality, how they know you;
- Their first-hand knowledge regarding events in your narrative;
- Why you cannot return to your country and what would happen to you if you returned there.

# **ALL EVIDENCE, PERSONAL EVIDENCE OR COUNTRY CONDITIONS MUST:**

- Be either in English or French.
- You must submit your evidence at least 10 days before your hearing date.
- If you want to submit evidence late you must make an application with an explanation for why it is late and why the evidence is important..

BEFORE YOU SUBMIT YOUR EVIDENCE,  
REVIEW IT. NOT ALL EVIDENCE WILL  
HELP YOUR CLAIM!

**Personal evidence example:** your story says “attacked by a group of men in December 2015” but, a letter from a witness says “attacked by one man in November 2015”, it might be better to keep the letter to yourself.

**Country evidence example:** if you are afraid of a gang and you find a newspaper article that says the gang has now disbanded, do not submit the article.

# SUBMITTING EVIDENCE

- When you submit the evidence, include a cover page with a table of contents. Number the pages.
- Submit scanned copies of the documents but hold onto the originals; the decision-maker may want to inspect the originals to determine their authenticity.

# COMMUNICATING WITH THE RPD

Communicate with the RPD to:

- change your address or contact information
- be aware that the RPD is separate from Immigration Canada (IRCC), and the Canada Border Services Agency (CBSA).
- Changing your contact information with one, does not change it with all of them. You must communicate to all of them separately.

# COMMUNICATING WITH THE RPD

- Keep a copy of all communications with the RPD (including evidence disclosure and updates to your story)
- Keep proof that they received your communication (if handed in, ask them to stamp your copy; if faxed, keep the transmission receipt)

# COMMUNICATING WITH THE RPD

- If you want a witness to testify in your hearing, you must communicate it to the RPD.
- Be careful, sometimes a witness who is trying to help can say something that hurts your claim.
- The witness should have first-hand knowledge about an important aspect of your claim.

# TO BE CONSIDERED A REFUGEE IN CANADA

You have to meet either the definition of:

## CONVENTION REFUGEE :

well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group, or political opinion, and are unable or, because of this fear, unwilling to seek protection from your country of origin.



# TO BE CONSIDERED A REFUGEE IN CANADA

## PERSON IN NEED OF PROTECTION:

if it is determined that you would face a risk to your life, a risk of cruel and unusual treatment or punishment, or a danger of torture if you were to return to your country of origin.

# KEY ISSUES EXPECTED TO BE ANSWERED

1. IDENTITY
2. CREDIBILITY
3. INTERNAL FLIGHT ALTERNATIVE
4. SUBJECTIVE FEAR
5. GENERALIZED RISK
6. STATE OF PROTECTION

## PROTECTED PERSONS & CONVENTION REFUGEES

- During your hearing, you will have a chance to tell the decision maker why you are afraid, and about whom and what you fear
- Board Members may make their decisions right away at the end of the hearing, or they may reserve their decision for later.

# PREPARING YOUR TESTIMONY

- Review your story
- Make sure your story matches with your forms/portal (e.g. – if your portal says you were living in China in 2015 and your story says you were in Nigeria in 2015 you will have to provide an explanation).

# PREPARING YOUR TESTIMONY

- Review the evidence you submitted.
- Review any evidence that was disclosed to you.
- Review the national documentation package for your country.
- Think about how:
  - your story lines up with the country evidence
  - your story shows that you have a genuine fear in your country (i.e. how did your actions reflect your fear.)

# PREPARING YOUR TESTIMONY

– Sometimes we act in a way that makes it seem like the fear is not genuine:

- e.g. we stay in Canada for months before making a refugee claim or
- we travel through countries without making a claim.
- Prepare an explanation about why you acted the way you acted.

# PREPARING YOUR TESTIMONY

- Think about why:
  - Your country cannot protect you.
  - Did you try to go to the police? What was the result?
  - Why do you think the police would not/could not protect you in the future?
  - you cannot move to another part of your country and be safe.
  - you fear in another part of the country,
  - it would be unreasonable for you to try to live there

# JOINT CLAIM

- Sometimes, two or more people make a joint claim for refugee protection.
- This would be the case when a family is making a claim together.
- All adult claimants may speak for themselves during the hearing but in most cases, one person acts as the spokesperson for the family
- children under the age of 12 who are accompanied by an adult making a refugee claim will not be required to appear before the RPD unless the presiding member requires their attendance.



# DAY OF YOUR HEARING

- Follow the instructions and link on your **NOTICE TO APPEAR**
- If you fail to show up for your hearing you will have to attend a special hearing within 5 days and provide an explanation for not attending the hearing (bring proof)
- Failure to show up at your hearing a second time can lead to your hearing being abandoned.

# THE HEARING

- Who will attend the hearing: you, your lawyer, The Board Member, and possibly an interpreter.
- Hearings are generally scheduled for 2 hours or 3 hours, although they may be longer or shorter.

# ATTENDING YOUR HEARING

## At the start of the hearing:

- If you have an interpreter make sure you understand the interpreter;
- Inform the RPD member of any relevant considerations:
  - If you are nervous... if you are feeling ill...
  - If you will require to take medicine...
  - if you just noticed a mistake in your story or any other part of your BOC
  - Be aware that you can request a break, ask for a break.

# ATTENDING YOUR HEARING

## At the start of the hearing:

- Go over the evidence with the RPD member.
- Make sure:
  - they have everything you submitted,
  - that you have everything.

If you don't have everything ask for a copy and for the hearing to be rescheduled so you have an opportunity to review the document.

# DECISION MAKER EXPECTATIONS

The decision maker will expect you to be able to answer a number of important questions at your hearing, such as:

- What do you fear will happen to you if you return to your country of origin?
- Do you think you will be harmed if you return to your country of origin?
- Did you seek help from authorities, including police or any other organizations, in your country?
- Did you try to move to another part of your country?

# ATTENDING YOUR HEARING

## The golden rule of answering questions:

- Do not attempt to answer a question unless you understand the question.
- if you don't know the answer... say I don't know
- Before you answer, get them to clarify until you understand or say that you don't know the answer.
- You will be asked similar questions in different wording... answer same way

# ANSWERING QUESTIONS (CONT.)

- For 'when,' 'where,' or 'who', provide short answers.
- For questions asking 'explain,' 'tell me about,' or 'describe' provide a longer answer.
- Don't assume that the Board Member knows anything about you beyond what is in your narrative.

# DURING YOUR HEARING

- At the end of your hearing, the RPD member may:
  - give you a decision and reasons either positive/negative right there or,
  - they may say that they need time to come to their decision.



# DECISION AFTER REFUGEE HEARING

## POSITIVE DECISION

- If a claim is accepted... that person is granted protected person status in Canada.
- Protected persons can apply for Landing (Permanent Residence).
- When eligible, permanent residents can apply for Canadian Citizenship

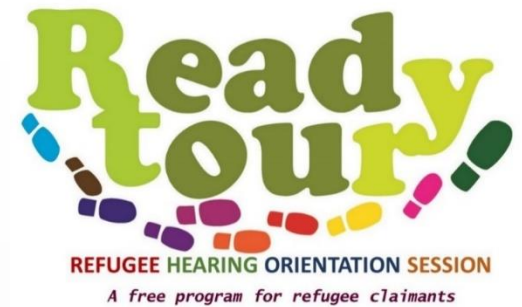
# DECISION AFTER REFUGEE HEARING

## NEGATIVE DECISION

Some cases:

- are allowed to appeal to RAD-IRB
- Can only make an application to the Federal Court for Judicial Review
- may decide to make a Humanitarian and Compassionate Application

# Sign in for a Refugee Hearing virtual orientation session:



<https://www.fcjrefugeecentre.org/refugee-orientations-online/>



# REFUGEE HEARING PROGRAM

It is a free program that allows refugee claimants to participate in a simulated hearing.

Volunteers including lawyers, law students, retired IRB members, and experienced community members serve in the role of “adjudicators” during a 2-3 hour simulated hearing, allowing claimants to tell their story.



<https://www.matthewhouserhp.com>

For more details contact: 416-203-7396 or [rhp@matthewhouse.ca](mailto:rhp@matthewhouse.ca)

# Thank You

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