

# REFUGEE LAW IN 6 BASIC STEPS

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This paper is designed to give a basic overview of the refugee process from the perspective of a claimant. The hope is that it will give claimants and service providers information about the hearing process and tips on how to prepare for the hearing.<sup>1</sup>

## STEP 1. WHAT IS THE REFUGEE PROCESS ABOUT?

When you make a refugee claim, you are asking the Canadian government to grant you “refugee” or “protected person” status, so that you do not have to return to a country where you are at risk of persecution.

Why does Canada grant refugee protection to people from other countries? Canada has signed the UN *Refugee Convention*. This means that Canada has promised not to *refoule* (return) people to a country where they may be at risk of persecution. If Canada is to fulfill this obligation, it must figure out who is at risk of persecution. The government given this task to the Immigration and Refugee Board of Canada (IRB).

Who qualifies for refugee protection? This is a difficult question, and lies at the heart of the work done by the IRB. Many people may have experienced frightening and even life-threatening events in their home country. But having survived such events does not mean that you will receive refugee protection. To receive refugee protection, you must show that you meet the legal definition of a “Convention Refugee” or a “Person in Need of Protection.”

These definitions are set out in sections 96 and 97 of Canada’s *Immigration and Refugee Protection Act* (“IRPA”). This is the law that regulates immigration and refugee protection in Canada.

Section 96 sets out the definition of a Convention refugee. We use the term “Convention refugee” because the definition is that one that is used in the UN *Refugee Convention*.<sup>2</sup>

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<sup>1</sup> This paper was prepared for the Navigating Refugee Reform workshops funded by the Law Foundation of BC and hosted by Kinbrace House. Please remember that the law and interpretations of the law are continually changing, and this paper should not be relied on as legal advice or a substitute for a consultation with a lawyer. Sorry.

<sup>2</sup> UN *Convention Relating to the Status of Refugees* (1951) and the 1967 *Protocol*. [“Refugee Convention.”] Lesley Stalker  
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<sup>3</sup> The IRB describes this as “delay in departure.”

<sup>4</sup> This is known as “reavailment”.

## Convention refugee

**96.** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Canada also grants protection to people who fit the definition of a “Person in Need of Protection.” A “person in need of protection” is defined in section 97 of *IRPA*.

## Person in need of protection

**97.** (1) A person in need of protection is a person in Canada *whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally*

- a) to a *danger*, believed on substantial grounds to exist, of *torture* within the meaning of Article 1 of the Convention Against Torture; *or*
- b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if
  - i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,
  - ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,
  - iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

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<sup>2</sup> UN *Convention Relating to the Status of Refugees* (1951) and the 1967 *Protocol*. [“Refugee Convention.”]

iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

As you can see, these definitions are complicated. They include concepts or principles that aren't obvious at first glance. We'll explore the definitions in the following section.

Remember, a person only has to show they fit the definition in section 96 OR section 97; you do not have to show you fit both.

<p><b>STEP 2. WHAT YOU NEED TO SHOW TO QUALIFY AS A CONVENTION REFUGEE OR A PERSON IN NEED OF PROTECTION</b></p>
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What do these definitions mean in plain language? Let's break them down into smaller parts.

**I. WHO QUALIFIES AS A CONVENTION REFUGEE?**

To show that you are a Convention refugee, you must show the following.

**1. You are outside your home country**

You can only apply to be a refugee if you are *outside* your home country. If you are in Canada, but are not a Canadian, then you satisfy this part of the definition.

**2. You are afraid to go home**

You must be afraid to go back to your home country. To assess whether you are really afraid, the Immigration and Refugee Board (IRB) will look at the way you behaved in your country and after leaving your country. For example, the IRB may consider whether you

- delayed leaving your country after a frightening event<sup>3</sup>,
- you left your country, then returned to it<sup>4</sup>;

<sup>3</sup> The IRB describes this as "delay in departure."

- passed through other countries without seeking refugee protection;<sup>5</sup>
- did not claim refugee protection right away when you arrived Canada.<sup>6</sup>

If the answers to these questions are “yes”, the IRB may think that you are not really afraid of returning home. You should be able to explain why you made the decisions you did.

### **3. You are afraid because you face persecution**

To qualify as a Convention refugee, you must show that you face persecution. *Persecution* means that you face serious physical or mental harm. Serious harm includes acts of physical violence, such as death, torture, assault and beatings. It can include deprivation of liberty resulting from unlawful arrest<sup>7</sup> or imprisonment<sup>8</sup>. Includes the denial of a fundamental human right, such as the right to practice the religion of your choice.

*Persecution or prosecution:* If you have committed a crime (murder, rape, theft, and so on), then arrest or imprisonment for that crime is not persecution.

*Persecution v. discrimination:* Discrimination and harassment are painful to live with and may be illegal under international law<sup>9</sup>. However, they are usually not considered serious enough to constitute persecution. If you can show that the discrimination has taken place over a long period of time, or that you have experienced many acts of discrimination, and this has caused you significant harm, you may be able to show that the discrimination amounts to persecution.

*Persecution in the future:* Refugee protection is designed to protect people from persecution. The IRB will be looking at whether you are at risk of persecution *in the future*. You do *not* have to show that you have been persecuted in the past, although past persecution may be an indication of the risk you face in the future.

*Change in conditions:* If the conditions in your country have changed since you left (for example, a government that was targeting you has changed), you will have to show why you believe you would still be at risk.

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<sup>4</sup> This is known as “reavailment”.

<sup>5</sup> This is known as “failure to claim elsewhere”.

<sup>6</sup> This is known as “delay in claiming.”

<sup>7</sup> Unlawful arrest means arrest for an arbitrary reason or for a reason that is not legal under the law of your country or under international law.

<sup>8</sup> Unlawful imprisonment means detention or imprisonment for an arbitrary reason or for a reason that is not legal under the law of your country or under international law.

<sup>9</sup> For example, the *International Covenant on Civil and Political Rights*, says that “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.” [Art. 26]

#### **4. The persecution is linked to one of the 5 specific grounds.**

To be found to be a refugee you must be able to show that you personally will be specifically targeted for one of the 5 convention reasons or “grounds” listed below.

The 5 grounds are:

- Race
- Religion
- Political opinion
- Nationality
- Membership of a social group

*Race:* This generally refers to a person who belongs to a particular ethnic or linguistic group. Typically the group is an ethnic minority, which is treated badly by the government or people of your country.

*Political opinion.* Political opinion refers to ideas not tolerated by the authorities, including opinions critical of government laws and methods. It may include the opinion you actually hold or the opinion that your government thinks you hold. For example, you may be targeted in your home country because you are a member of a particular political party. Or, you may be targeted because your government or others think you hold a particular political opinion because of your religious beliefs, ethnic identity or the way you behave.

*Religious beliefs:* This refers to the spiritual beliefs you hold. You may be targetted because the government or other citizens in your country will not let you practice your religious beliefs. Or you may be targetted because you refuse to obey the religious laws and practices that the government imposes.

*Nationality:* Nationality includes your citizenship, and may include your ethnicity, or the cultural group to which you belong. Race and nationality overlap.

*Membership of a particular social group:* This is a very broad group. It can include many categories. For example, a social group may be defined as

- Single women without support of male relatives in a country where it is culturally unacceptable for a woman to live on her own;
- Divorced women, in a country where divorce is considered shameful and a divorced woman will have problems supporting herself and living safely;

- Women who have been beaten or harmed by their husbands or other relatives, but the government or police will not protect her.
- Family members of someone who is targeted because of their political activities;
- Members of a trade union that is targeted by the government;
- Gay men or lesbian women from countries where it is dangerous to be in a same-sex relationship

Can you think of other “social groups”?

*Civil war or widespread violence:* Refugee protection does not usually apply to people who flee their homes because it is dangerous to live in their country. For example, there may be a civil war or high level of criminal violence, which makes day-to-day living dangerous. In these situations, you have to show that you belong to a group that is at special risk: perhaps because of your race, or your political opinion or your gender, and so on. The IRB has published a helpful paper which on situations of persecution in civil war.<sup>10</sup>

**5. The “agent” of persecution is the government or a group that the government cannot control.**

Canada will only protect you if you can show that your government cannot or will not protect you. This principle is known as “State protection.” There is a presumption that your country will protect you; it is up to you to show that your government is “unable or unwilling to protect you.”

To figure out whether your government will protect you, the IRB will ask who is going to persecute you. [In legal terms, “Who is the ‘agent’ of persecution?”] You should be able to explain whom you are afraid of, and why your government cannot or will not stop this person from persecuting you.

**6. Your fear of persecution is well founded**

It is not enough that you are afraid to return to your home. You must show that there are *good reasons* for you to be afraid. You must explain the reasons you are afraid by pointing to what has happened to you, or neighbours, or other people in your situation.

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10. [Guideline 1: Civilian non-combatants fearing persecution in civil war situations](http://www.irb-cisr.gc.ca/eng/brdcom/references/pol/guidir/Pages/GuideDir1.aspx): March 7, 1996  
<http://www.irb-cisr.gc.ca/eng/brdcom/references/pol/guidir/Pages/GuideDir1.aspx>.

You should also try to give the IRB reports about what is happening in your country, to show that this really *is* happening.

**7. You cannot safely relocate to another part of your home country**

You need to be able to show that you cannot easily move and find protection in any part of your home country to be a refugee from you home country. This principle, which is known as “*Internal Flight Alternative*” (IFA), is fundamental, because Canada is only required to protect you if there is nowhere in your country where it is safe for you to live.

When you explain why you cannot live in other parts of your country, it’s not enough to say that you did not have work or know anyone in that part of the country. After all, you probably did not know anyone in Canada or have a job here before you arrived.

**8. The government in your home country cannot protect you**

In refugee law, there is a presumption that your country will protect you. It is up to you to show that your country cannot or will not protect you. This includes the police and the military in your country.

For example, if you asked the police for protection, what did they do? If you did not ask the police for protection, why not? If you think the police will not provide protection, try to obtain reports or newspaper articles that support what you say. This principle, known as *state protection*, is very important in refugee hearings.

**9. You do not have a right to go and live in a safe third country**

If you can go to another country (other than Canada), and you have a visa or some other way to stay in that country permanently – then you will not qualify for refugee protection.

**10. You have not committed a war crime or any other serious crime**

If you have committed a criminal offence or a war crime, you may be excluded from refugee protection, even if you can show that you would be at risk of persecution. This is known as “Exclusion.”

## II. WHAT IS A “PERSON IN NEED OF PROTECTION”?

To qualify as a person-in-need of protection, you must show that following apply to you.

### i. You face a risk of torture or a risk to your life or a risk of cruel and unusual treatment or punishment.

**Torture:** In section 97, “torture” has a very specific meaning. IRPA has adopted the definition of “torture” used in the UN Convention Against Torture. “Torture” means acts which cause severe physical or mental suffering. The torture must be committed by a government official or someone acting with the consent of a government official.

Torture does not include punishments that are ordered by courts for breaking the law, as long as the legal process is fair and the punishment is reasonable.

### ii. You cannot get the protection of your home country.

There is a presumption that your country will protect you. It is up to you to show that your country cannot or will not protect you. For example, if you asked the police for protection, what did they do? If you did not ask the police for protection, why not? If you think the police will not provide protection, try to obtain reports or newspaper articles that support you.

### iii. You face the risk in all parts of your country

If you are at risk of cruel and unusual treatment in one part of the country, but could safely live in another part of the country, you will not qualify for protection. If you believe you would be at risk in other parts of the country, think about how you can show the IRB that you cannot live safely anywhere in your country.

### iv. The risk you face is not one that is faced generally by other people in your country.

If the risk you face is generalized in your country – in other words, many in people your country face the same risk - then you will not qualify for protection. You must show that the risk you face is particular to you, or to a group of people within your country, not to everyone.

For example, if you say you are at risk because there is a civil war in your country, and many people are dying, you would not qualify for protection under section 97. However, if you belong to a particular group (for example, an ethnic group or religious group), which has been specially targeted, then you may qualify.

v. **The risk cannot be related to your country's inability to provide you with adequate health care.**

Canada will not give you protected person status if you are at risk of illness or death because your country cannot give you adequate health treatment. The risk must be for other reasons.

<b>STEP 3. HOW TO PREPARE FOR YOUR HEARING</b>
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Hopefully, the sections above have clarified what are the elements of the definition of a Convention refugee or a Person-in-need of Protection.

The next step is to gather evidence, find witnesses and prepare yourself to testify.

Please note: The [University of Ottawa "Refugee Assistance Project"](http://www.uorap.org) is preparing material to help refugee claimants and settlement workers understand the refugee process. The material should be ready in February or early March 2013. I strongly encourage you to read their material to prepare for your hearing.

<http://ccrweb.ca/en/uorap>

In the meantime, here are some tips.

A. **ATTEND A READY TOUR**

The READY Tours are designed to help you understand what will happen on the day of your refugee hearing. You will see the reception area at the IRB, be shown a refugee hearing room and given information about how to prepare for your hearing. The tours are casual and friendly. Volunteer interpreters will help you understand the information in your own language. **To book a spot on a READY Tour, contact [READY@kinbrace.ca](mailto:READY@kinbrace.ca).**

## B. GATHER EVIDENCE

It is up to *you* to show that you fit the definition of a Convention refugee. In legal terms, this means that you have the “burden of proof.” How can you do this? By gathering “evidence” and giving it to the IRB. Evidence includes:

- Your written story (in the Basis of Claim document),
- Your “testimony” (what you say at the refugee hearing);
- Testimony by family members or other witnesses.
- Sworn statements by family members or other witnesses
- Documents which confirm your identity;
- Documents which confirm what has happened to you (medical reports, photographs, hospital records, police reports, telephone records, and so on)
- Reports and newspaper articles about what is happening in your country.

In addition to the evidence that you give the IRB, Citizenship and Immigration Canada (CIC) or the Canada Border Services Agency (CBSA) will file (give) the IRB information about you that they have collected. This will include forms you have given them, notes of what you said when they interviewed you, and copies of documents which you had when you arrived in Canada. The IRB will give you a copy of all documents they receive from CIC or CBSA.

The Immigration and Refugee Board will decide whether you need protection by considering all the evidence that you present, as well as the evidence from CIC or CBSA. *It is very important to present any documents that support your story and show you are telling the truth about the risk you face.*

## C. TYPES OF EVIDENCE

The [University of Ottawa Refugee Assistance Project](#) [“UORAP”] material (described above) will be very helpful in understanding how evidence will be used at your refugee hearing. **Please take time to read it.**

### 1. Your own evidence: BOC and testimony

Your evidence includes what you have said in writing and your testimony at the hearing. (“Testimony” means the sworn evidence you speak at the hearing.) It is

important to make sure that your Basis of Claim Form (BoC) is accurate and complete; if there are changes, you should try to correct them before the hearing and file the corrections with the IRB.

You can testify about all your identity, your personal refugee story and conditions in your country of origin. You must also explain what you fear if you are obliged to return home.

## **2. Documents about your Identity and your refugee story**

These documents can help you prove your identity or different parts of your refugee story. Some can help you to prove both your identity and a part of your story.

Here are the four main types of these documents:

### **i. Personal Identity documents**

You must prove who you are, that is, your personal identity and your nationality (citizenship).

### **ii. Documents to prove your group identity or the reason you are in danger in your home country.**

You need to prove that you are in danger in your home country. For example, people may want to harm you because of the political party you belong to, your religion, or your membership in a union.

### **iii. Documents to prove important events in your story**

Important events in your story could include changing your employer, moving to a different city, receiving a threatening letter, the death of a family member or friend, or any other event that is important to your story.

### **iv. Police or Medical Reports from your country:**

If you asked the police for help, or if you received medical treatment for injuries, official reports from the police or your doctor can help prove important parts of your story.

## **3. Psychological or medical reports from Canada**

*Scars or marks on your body:* If you have scars or marks on your body which are related to your refugee story, you can ask a doctor in Canada to write a letter describing the scars and – where possible – how the scars were caused and the approximate age of the scars.

If you cannot get a medical appointment in time, you photograph the scars and file the photographs at the IRB as evidence of the injuries.

*Psychological problems (depression, anxiety, trauma).* Often people who have been through terrifying experiences suffer from depression or other mental health problems. These problems can affect your concentration, your memory and your ability to tell what has happened to you.

It can be helpful to have a psychologist or psychiatrist meet with you and prepare a report which confirms that you are suffering from these problems.

If you have tried to see psychologist or psychiatrist but they cannot prepare a report before your hearing, ask whether they could write a short letter to explain why they think it is important for the Board Member to wait for a psychological report to be completed before hearing your case.

If you haven't been able to get an appointment with a psychiatrist or psychologist and you feel you are so traumatized that you need more time to prepare for the hearing, or need special treatment during the hearing, you should inform the IRB that you are vulnerable and need more time to prepare.

#### **4. Documents about conditions in your country of origin**

Please see the [UORAP](#) (described above) material for more detailed information on country reports.

Documents can help you to explain the conditions in your country and how people in your situation are treated. For example, country reports may describe how your government behaves, how women, religious minorities, gays and lesbians or other groups are treated, how the police operate or any other information about your country that is important to prove your claim.

##### Where can i find country information?

##### *i. IRB National Documentation Package (NDP)*

The IRB has collected documents on general conditions in many countries. The documents for a specific country are collected in a binder for that country: for example, Mexico, Honduras, Iran, Sri Lanka and so forth. These are known as National Documentation Packages (NDPs). The NDPs are updated every 6-12 months. These packages contain many documents, arranged according to specific topics, such as: general human rights, political organizations, identity documents, gender, etc.

ii. UNHCR Refworld: <http://www.refworld.org>

The UNHCR research site, Refworld, brings together country information and human rights reports from around the world. You can search for information by country, topic, organization and date.

iii. Human Rights Organizations

Many human rights organizations which give regular reports on the human rights situation in countries around the world. Many of these organizations publish annual reports, which include information for the previous year. These organizations also provide reports on specific problems throughout the year. You can look for annual and periodic reports on your country on the organizations' website. When you get to the website, enter the name of your country.

iv. News Articles

National Documentation Packages (mentioned above) rarely contain the most recent information about your country. Newspaper and internet articles about your country are often more up to date and can be very helpful. You should search for information about specific events or recent developments in your country in newspapers and, if you have access to it, on the internet.

New reports on specific events may relate to general country conditions (for example showing that union activists are often arrested in your country) or to your own refugee story (for example a news report about a specific strike, in which many people, including you, were arrested)

Try to find information from well-known and reputable sources, as they are likely to be more convincing than an article copied from a small online blog.

## 5. DOCUMENTS FILED BY IRB OR CIC/CBSA

CIC or CBSA will usually file a package of documents which includes the forms you signed at your eligibility interview and notes of their interviews with you. Read over these documents to make sure they are accurate and that the information in the forms matches what is in your BOC. If you think that the officer's notes of the interviews are not accurate, be prepared to tell the IRB about the errors. You may be asked to explain why the officer's notes are not correct.

The IRB will also consider the [National Documentation Package](#) ["NDP"] for your country as evidence. The NDP is a thick binder containing documents about your country, including human rights problems. The IRB will not file the actual binder, but only the index of documents. You can look at the NDP at the IRB or, if you have

access to the Internet, you can look at the documents online. [http://www.irb-cisr.gc.ca:8080/Publications/index\\_e.aspx](http://www.irb-cisr.gc.ca:8080/Publications/index_e.aspx).

## **6. WITNESSES**

Just like documents, witnesses can help you to prove your identity, your specific refugee story, and conditions in your country of origin. Some witnesses may help to prove more than one of these things.

You may be the only witness at your hearing. However, if other persons have knowledge about one of more of the things you will be trying to prove, you should consider having them serve as witnesses at your hearing.

Your witness may testify in person or by telephone at your hearing. If the witness lives outside Vancouver, you must *bring a calling card* to pay the long-distance charges. Please see the [UofO RAP](#) guide for more details.

### **Preparing sworn declarations**

If it is difficult for your witness to testify by telephone or in person, he or she may give evidence by sworn declaration.

A sworn declaration is a statement drawn up in short paragraphs. It must be sworn to be true before a notary, lawyer or commissioner of oaths and it is an important legal document.

A sworn declaration should only contain information of which the person signing has a personal knowledge. It is possible the Board Member will wish to speak with the person who signed the declaration, though it is unlikely. Unless it is impossible to reach them (for example, they live in a place where there are no phones) you should have their contact information available.

## STEP 4. HOW TO FILE EVIDENCE & NOTIFY IRB OF WITNESSES

The Immigration and Refugee Board has very detailed and specific rules about how you file evidence. The Rules may be found at [IRB RPD Rules](http://www.gazette.gc.ca/rp-pr/p2/2012/2012-12-19/html/sor-dors256-eng.html). [http://www.gazette.gc.ca/rp-pr/p2/2012/2012-12-19/html/sor-dors256-eng.html] The Rules are complicated, and you will probably find it easier to refer to a summary of the Rules.

The READY Guide has information about how you file evidence. The *University of Ottawa Refugee Assistance Program* ["UofO RAP"] will soon publish a guide which gives more detailed information about how to file evidence it at the IRB. We suggest you review this material carefully so that you understand how to file the evidence.

In the meantime, here are some key rules:

- **Originals & copies**
  - When you file documents with the IRB, keep a copy for yourself.
  - Do not give the IRB original documents before the hearing. File a photocopy of the document, and bring the original document to the hearing.
  - Keep any envelopes in which documents arrived, because the Board Member may want to see when and how you received the documents.
- **10 day disclosure (deadline for submitting documents)**
  - You must file all documents at the IRB at least 10 days before your hearing. If you do not submit your documents by this deadline, the Board Member may not accept them.
  - To calculate your deadline for submitting documents, count backwards on the calendar from the date of your refugee hearing. For example, if your hearing is on April 3, you must file your documents by March 24. If March 24<sup>th</sup> is a Saturday, Sunday or holiday, you must file the documents on the business day before the deadline (usually a Friday).
  - If you cannot bring your documents in person, they can be sent by registered mail or courier service. You must make sure the documents arrive by the deadline.
- **Late documents**

- Sometimes it will not be possible to get all of your documents in time for the 10-day disclosure deadline. Even if you don't have all your documents at the time of the deadline (10 days before your hearing) you must submit the documents you do have.
  - For any documents you receive after that deadline, submit a copy (and translation if necessary) to the IRB as soon as you can.
  - You should prepare and attach a covering letter that explains the reason why the document is late and proof of when you got it, if possible (for example, attach a copy of the envelop).
  - The explanation will depend on your specific situation, but some common reasons are that the document did not arrive on time or you did not get it back from the translator in time.
  - You should make a list of all of your efforts to get documents on time. This should include all the actions you took to get the document and the dates on which you took them. Be prepared to explain these efforts at your hearing.
- **Documents which don't arrive**
    - If you have tried to get documents, but they don't arrive, you should tell the IRB what efforts you made to get these documents. For example, list the dates you telephoned, emailed or wrote to get a document. If you sent an email or letter, bring a copy of your email and the response to the hearing.
    - If you can show that you tried hard to get documents, it will help the Member understand that you have been sincere in your efforts.
- **Translations**
    - The IRB only accepts documents that are in French or English. If any of your documents are in another language, you must get them translated into either French or English. Attach a copy of the original document along with the translation.
    - You must also attach a declaration signed by the translator. The translator does not have to be a "certified" or "official" translator but must be fluent in the original language and English or French.

**Here is an example of a translator's declaration:**

<b>TRANSLATOR'S DECLARATION</b>	
<i>I, _____ (Translator's Name) _____, of the City of _____ (Name of City) _____, British Columbia, declare that I am fluent in the _____ [Original language] _____ and English (or French) languages, and that I have faithfully and accurately translated this _____ (Type of document – eg "Birth Certificate") _____ from _____ (original language) _____ to English (or French).</i>	
_____	_____
<i>Translator's Signature</i>	<i>Date</i>

• **Final preparation and list of documents**

- Your documents must be on 8.5x11" paper.
- The documents can be copied on one side of the paper or both sides.
- Include a list of documents. If you have access to the internet, you can download the "List of Claimant's Documents" form at this website:  
[http://www.irb-cisr.gc.ca/Eng/tribunal/form/Documents/form051\\_e.pdf](http://www.irb-cisr.gc.ca/Eng/tribunal/form/Documents/form051_e.pdf)
- If you don't use this form, you can prepare your own list, making sure to include the following:
  - i. Your name (and names of other claimants whose hearing will be held at the same time as yours);
  - ii. Your IRB file number (and file numbers of other claimants);
  - iii. A list of all the documents you are filing
- Number all the pages in your package of documents consecutively until you reach the end. (1, 2, 3, 4, ...45, 46, 47). You can do this in the upper right corner or lower right corner.

- If you have been notified that the Minister (CIC or CBSA) will participate in your case, you must first send a copy of all your documents, along with your list of documents to the Minister's office. You must then submit all your documents and your list of documents to the IRB, along with a letter explaining how and when you provided your documents to the Minister.

## STEP 5. UNLOCKING YOUR MEMORIES AND TELLING YOUR STORY

We often think we will never forget what has happened to us and that we can describe our experiences when we need to. In fact, it is very difficult to remember events accurately. This is especially true when the events were frightening, because we try to avoid thinking about them. To make matters worse, traumatic events often affect our ability to remember or describe what has happened to us.<sup>11</sup>

Yet, to persuade the IRB that you are at risk, you need to be able to tell your story in a logical way, answer detailed questions, and not contradict your earlier statements. To prepare yourself to do this, you should spend time trying to remember what happened to you and practice describing why you are at risk.

Be careful, however. If you find yourself becoming upset as you try to remember what happened, **please get help from a doctor or a psychologist**. They can provide support and guide you as you try to remember what has happened.

### 1. Unlocking your memories

To tell your story well, you need to have clear memories of what has happened to you. When trying to remember past events, ask yourself the following questions:

- What happened to me?

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<sup>11</sup> Van der Kolk & Fisher, *Dissociation and the Fragmentary Nature of Traumatic Memories: Overview and Exploratory Study*, [1995.]

Herlihy et al, "Asylum claims and memory of trauma: sharing our knowledge", *BJPsych* (2007) 191: 3-4;  
Herlihy, , "Just Tell Us What Happened to You: Autobiographical Memory and Seeking Asylum", *Applied Cognitive Psychology* [Volume 26, Issue 5](#), pages 661–676, September/October 2012

- When did it happen? (What was the date?) If you can't remember the date, try to remember the month, or the season, or whether there was another event that can help pinpoint the time. If you still can't remember what happened, tell the Member that you can't remember. DON'T GUESS – or you may end up contradicting yourself later in the hearing.
- Who was there? Family members, neighbours, police, others?
- How were they dressed? Were they wearing uniforms or in plain-clothing?
- What do you remember about the event? How did you feel when this event happened? (Happy, frightened, scared)
- Did anyone contact the police? If so, what did they do?
- Did anyone need medical care? Did they get it?

And then you go on to the next event.

As you try to remember what happened, there is a greater chance that details will come back to you.

## **2. And if you still can't remember...**

Sometimes, we just can't remember what happened. Traumatic memories are different than other memories. They are often associated with emotions, rather than words, and they can be hard to recall. Or sometimes we remember traumatic events very clearly, but can't remember the things that happened before or after the traumatic event. This is because our brain has focussed on the traumatic event at the expense of less important events.

Often people who have lived in fear or are traumatized have poor mental health. You may suffer from depression, anxiety or other mental health problems relating to your experiences.<sup>12</sup> These conditions can affect your memory, and make it difficult for you to remember what happened and to tell your story in a consistent, logical way.

*If you have problems remember what has happened to you, see if you can get a report from a doctor or psychologist, who can describe in medical terms why you can't remember.*

*If you can't get a medical or psychological report, then tell the IRB that you suffer from mental health problems. Describe the mental health problems you suffer from*

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<sup>12</sup> Cohen, "[Errors of Recall and Credibility: Can Omissions and Discrepancies in Successive Statements Reasonably be Said to Undermine Credibility of Testimony?](#)" *The Medico- Legal Society* 2001 [available on internet]

(Problems sleeping? Worry a lot? Anxiety? Problems with your appetite? Nightmares? Crying? Sometimes people feel embarrassed to admit that they are suffering from depression or mental health problems. Don't be shy or embarrassed to explain what is happening to you to the IRB. This information can help the IRB understand why you get confused about what has happened to you.

### **3. Try to remember your feelings**

At the hearing, you will have to explain to the IRB why you are afraid and why your fear is well-founded. You will probably be speaking through an interpreter, which means that the actual time that you are directly communicating with the IRB Member who is hearing your case will be one or two hours of direct communication. You have very little time to explain your experiences, your culture and why you behaved the way you did.

One way of helping the IRB Member understand your situation is by describing the emotional impact of your experiences. For example:

*If you have converted to a religion:* How did you feel when you were first exposed to the religion? How has the faith affected your personality and your emotional well-being? How would you feel if you could not practice that faith?

*If you were denied an education because of your gender or your ethnic group:* What were your dreams as a child? How did you feel when you realized you couldn't go to the school that other children went to? How has that affected your self-esteem?

*If you are a gay or lesbian:* How did you feel when you realized that you were gay or lesbian? Did you feel excited, scared, disgusted, guilty? If your parents were upset by your sexual orientation, how did that affect you emotionally? (Did you feel frustrated, annoyed, guilty...) Did you ever wish you were not homosexual? Why?

### **4. Practice telling your story**

You want to make it as easy as possible for the Member to understand what has happened to you. However, it can be very difficult to organize our thoughts and describe what has happened to us in a clear and logical way. Sometimes it helps to write our story out first.

At the hearing, you will have to answer questions orally. You can prepare for this by asking yourself questions, and answering them out loud. For example, ask yourself "Why didn't you leave your home after that attack?" You can practice telling your story in front of a mirror, with a friend or while walking along the street.

It can help the Member understand what has happened by starting with a very short summary, and then providing more detail.. Think about how you can answer the same question with a brief answer and then with a more detailed answer.

For example, if the Member says, “Why are you afraid to return to your country?” you can give a brief, summary of your situation.

I saw the police in my country doing something illegal. The police now want to get ride of me, so that I cannot expose their corruption.

or

My husband and his family have abused me very badly for many years. I am afraid he will kill me. The police in my country will not protect me.

These short answers set the stage for your claim. You have given the Member an overview of what has happened. You can then ask the Member if you should give more detail. The Member will often let you know what information she wants to hear about.

## **5. Your witnesses need to practice too!**

The purpose of having a witness testify is to provide evidence that supports your case. If your witness contradicts what you have said, it will affect your credibility and weaken your case.

Just as you prepare yourself to testify, prepare your witnesses to testify.

Ask your witnesses to write out a summary of what they are going to say. Compare this summary to your own story to make sure it does not contradict you. It is important that your witness has not confused any times, dates, or events. To do this, look at these sources to make sure that all of the information in them is consistent:

- Your BOC.
- Other statements you have made which you will find in the “disclosure package”.
- Any evidence that you are submitting, including news reports and official documents like birth certificates.

Review the evidence with the witness and discuss any contradictions or differences. Most people forget details as time goes by. Differences between you and the witness will cause credibility problems. Ask your witness to think about the same things that you are thinking about:

- What happened?

- When?
- Who was there? How were they dressed?
- Did anyone need medical help? Did they receive it?
- Did the police come? What happened?

**REMEMBER: Your witnesses will only be helpful if the IRB Member thinks they are telling the truth. Your witnesses can only testify about things they have seen. It is important that your witnesses not exaggerate. If they don't know the answer to a question, they should say so. If they stick to what they know, the Member is likely to realize that they are telling the truth.**

## STEP 6. YOUR HEARING

**Where:** Your hearing will be held at the Immigration and Refugee Board office, on the 18<sup>th</sup> floor at 300 West Georgia. This is a tall office tower, next to the round library building.

**When:** The date and time for your hearing will be on the sheet that you were given by CIC or CBSA. You should check in at the Reception window on the 18<sup>th</sup> floor 30 minutes before the hearing time.

**What to wear:** Neat, but comfortable clothing. It is not necessary to wear a suit or dress.

**Who will make the decision on your case?** A *Member* of the Refugee Protection Division (RPD) of the Immigration and Refugee Board will decide your claim. (IRB) The Member may be male or female, young or old. They have all had training in refugee law and the principles of a fair hearing.

Sometimes a 3-member panel will hear your case. This usually happens if there are new members who are being trained. Don't worry.

**Who will be in the hearing room?**

- The Member who will decide your case.
- All the claimants (you and any family members who have made a claim with you.)
- The Minister's Representative from CIC or CBSA (if they are intervening)
- Interpreter
- Observers (people you have invited to watch your hearing)
- UN High Commissioner for Refugees. Once in a long while, a representative from the UNHCR may observe your hearing.
- Your witnesses. Your witnesses will only be allowed to come into the room when it is time for them to give evidence.

### **Confidentiality**

The IRB has a duty to make sure that your refugee hearing is confidential. All participants in the hearing, including the Minister's Representative and the Interpreter are required to keep the information in your hearing confidential.

### **Why is the hearing recorded?**

Your hearing will be recorded. This is for your own protection: if you need to appeal the decision, the recording will allow you to review exactly what was said.

### **How will the Member decide whether I need protection?**

The IRB Member has to decide whether you fit the definition of a Convention refugee or a "person in need of protection." He or she will read your BOC, listen to your testimony and consider the other evidence you have presented. The Member will also read the reports in the National Documentation Package about the human rights situation, and see if the country reports say that other people in your situation are at risk.

### **The Member will read the file before the hearing.**

In most cases, the Member will have read your BOC, the evidence you have filed, and the Minister's disclosure before the hearing. It's not necessary for you to repeat everything that is in your BOC.

It may seem to you that the Member is asking questions that aren't relevant to the main problems you have; most likely, the questions occurred to the Member while they were reading your file.

If you think that the Member has forgotten or may not understand the significant of a piece of evidence (for instance, a medical or police report or a statement from a family member), you should mention it.

### **Working with an interpreter**

In most cases, you will tell your story through an interpreter. It is very important that you understand the interpreter and the interpreter understands you. If you have any doubts about your ability to understand each other, you must tell the Member right away. Don't be shy. If you don't inform the Member of the problem, your claim may be misunderstood and denied.

Interpreters have a difficult job. They must tell the Member exactly what you have said, and tell you exactly what the Member has said. To make sure that the interpreter tells the Member everything you have said, you should do the following:

- Pause often while you are speaking, to give the interpreter a chance to interpret what you have said. At first, it can seem awkward or unnatural to speak like that. However, it can be very useful for you, because it gives you a chance to think about what you want to say next.
- *If you think the interpreter has not interpreted a word or a sentence correctly, say so immediately!* If you don't mention the error, it can create a lot of confusion for the Member and you. It may even result in the Member not understanding your story and denying your refugee claim.

### **Bring a glass of water into the hearing room**

You may bring a glass of water into the hearing room with you. You can sip on the water if you are thirsty or as a way to try to calm yourself if you are feeling anxious or upset during the hearing.

### **Observers and witnesses**

You may bring observers into the hearing room with you. The hearing rooms are small, so don't bring more than one or two observers.

For your own protection, your hearing is private. Before your hearing starts, your observers will have to sign a form saying that they will not talk about anything said in your hearing without your permission. You will have to sign the form too. You should ask the reception desk for the form when you arrive for your hearing.

### **Length of your hearing**

Most hearings are scheduled for a half-day (8:30 a.m. -12:00 noon or 1:00-4:30 p.m.). If there are complex legal issues or many claimants, your hearing may be scheduled for a full day.

The Member will usually give a 15-minute break halfway through the morning or afternoon. If you need additional breaks, you may ask the Member.

### **ORDER OF EVENTS AT THE HEARING**

Most hearings follow a similar pattern. The pattern is usually something like this.

#### *i) Introductions*

When the Member comes into the room, you may want to stand up as a sign of respect. The Member will introduce him- or herself to you, and you will have a chance to introduce yourself and your family members.

The Member will also introduce the interpreter, and make sure you and the interpreter understand each other. *If you have any problems understanding the interpreter, be sure to say so. If you don't inform the Member of problems in communication, the Member may miss important parts of your story, because they are not properly interpreted.*

#### *ii) Marking Exhibits.*

At the beginning of the hearing, the Member and you (or your lawyer) will go over the documents to make sure you both have the same evidence. Each of your documents will be given an Exhibit Number. Write down the exhibit number on your document (e.g. Ex.1, Ex.2 in the upper right corner.)

#### *iii) Legal issues:*

The Member will then tell you what the legal issues in the case are. There may be many kinds of legal issues. The most common ones include:

- Credibility: Do you seem to be a truthful person?
  - Are you exaggerating?
  - Are your statements consistent with each other?

- Identity: Are you who you say you are?
  - Are you really Anna from Russia?
  - Do you really belong to the religious group, or ethnic minority or political party you say you belong to?
  - Are you really a gay or lesbian person?
  
- State protection: Why can't you get protection in your own country? (There is a presumption that your own country will protect you. It is up to you to show that you cannot get protection. You can do this by explaining what happened when you asked the police for help, when other people asked the police for help and by showing what newspaper articles and human rights reports say about the police in your country.
  
- Internal Flight Alternative: Why can't you get away from the problem by moving to another area of your country? How would the people who are targeting you find you in another area of your country?
  
- Delay in leaving: If you were having problems for a long time, why didn't you leave your country sooner?
  
- Failure to claim elsewhere: Why didn't you claim refugee protection in another country that you were passing through?
  
- Discrimination or Persecution: Are the problems that you face serious enough that they equal persecution? Or is it a matter of discrimination, which is unpleasant and upsetting, but not serious enough to amount to persecution?
  
- Prosecution or Persecution: Have you committed an offence in your country? If so, are you running away from prosecution (criminal charges) as opposed to persecution? Sometimes prosecution can be a form of persecution, if you are being persecuted for exercising your human rights in a non-violent way.

There may be other legal issues as well. **Make sure you understand what the legal issues are. Don't be afraid to ask the Member to explain exactly what he or she means.**

iv) Children: presenting them to the IRB

If you have young children, the Member will want to identify them at the beginning of the hearing. *Make sure the children come to the hearing.* The Member will appoint a "Designated Representative" for the children. The "designated representative" is a person who is responsible for presenting evidence for the children. The Designated Representative is not the same thing as "counsel" (a lawyer). The Designated Representative is responsible for helping the lawyer understand what risks the children face, and gathering evidence for the children.

After the Member has seen the children and appointed a Designated Representative, the children may leave the room. It is better for adult claimants if your children are *not* present during the hearing, so that you can concentrate on the questions and are not distracted by your children's needs. *Make sure there is someone to care for the children during the hearing.*

Children who are old enough to understand what has happened or to give evidence may remain in the hearing room or come into the hearing room when it is time for them to testify.

v) Affirming (promising) to tell the truth

When the Member is ready to hear your testimony, you will be asked to affirm to tell the truth. The Member will ask you to stand, to raise your right hand, and repeat the promise to tell the truth.

vi) Confirming your BOC is correct.

The Member will ask you to look at your BOC, confirm that it was interpreted to you, and confirm that everything in the BOC is accurate. **If there are errors**, tell the Member that there are corrections to be made. Be ready with a list of the corrections.

Be prepared to explain why you didn't make the corrections earlier.

vii) Questioning:

If the Minister (CIC or CBSA) is intervening, they will be allowed to ask you questions first. Then the Member will ask you questions.

If the Minister is not intervening, only the Member will ask you questions.

viii) Questioning other claimants:

If your claim is joined to the claims of others (usually your relatives), the Minister and Member will finish questioning one claimant, before beginning to question the next claimant.

**It is very important that you not communicate with other claimants while they are being questioned.** Do not speak or pass notes to other claimants or witnesses while they are being questioned, even if you think their answer is wrong. Take notes, and tell the Member that you would like to clarify what was said after the claimant has finished testifying.

ix) Witnesses

Your witnesses will not be allowed into the hearing room until it is time for them to give their evidence. This is so that the Member can compare their evidence to the evidence that you have given.

Witnesses will be called into the hearing room one at a time. After a witness has testified, he or she may remain in the room.

x) Answering questions:

The Member and the Minister's Representative will ask you questions about your experiences. Here are some tips:

- **Tell the truth** about everything that has happened to you.
- **Do not exaggerate** your story to try to strengthen your case. If you exaggerate what has happened to you – this can go against your case. The Member will probably feel that you are not being accurate and may think that other parts of your story are not true either.
- **Answer the question.** This sounds simple, but is surprisingly hard to do. You have a lot of information to share. However, the Member is looking for answers to specific questions. Listen carefully to the question so you understand what the Member is asking.

- **If you don't understand a question**, tell the Member that you don't understand. If you don't ask for an explanation, you may be answering the wrong question!
- **If you don't know something**, say so! It can be tempting to guess, or to say something that you think the Member wants to hear. But this can go against you, if you later contradict yourself. Admitting that you don't know the answer suggests that you are an honest person, who tries to tell the truth.
- **If you forget something**, say so. Under stress, we can forget dates or other information. Explain to the Member the problems you have in remembering things. If the Member asks you to estimate a date, emphasize that you can only give an approximate date.
  - For example, "I am not sure, but I think it was around May or June."
 If you can't give an approximate date, say so. "I'm very sorry – I really can't remember."
- In general, try to **keep your answers fairly short**. If you give a short answer, ask the Member if he or she would like more information or detail.
- **If you become upset or tearful**, don't worry. This happens to many claimants. Ask the Member if you can have a few minutes before you continue asking questions.
- **Try to keep calm**. When we become anxious or upset, it becomes harder to tell our story clearly. If you find yourself becoming upset or anxious, ask for a short break. You can also take some deep breaths during the hearing. Taking deep breaths can help to reduce anxiety. So can taking small sips of water.
- **Be patient** Sometimes it seems that the Member is asking questions that aren't relevant to the risk you faced. You may think that the Member has missed the point of your story. It may be that the Member is trying to clarify questions that occurred to her when she was reading your file. Or she may be testing your credibility by asking questions about non-critical matters.

*xi) Submissions*

At the end of the hearing you (or your lawyer) will have a chance to explain why the evidence shows that you are at risk. Summarize (very briefly) what has happened to you, and remind the Member how the evidence supports your account. Point out the newspaper articles or human rights reports that show the human rights problems in your country and how people in your situation are being treated.

xii) When you get the decision

Sometimes the Member will give a decision at the end of your hearing. Sometimes, however, the Member needs time to review the documents you have filed and consider your testimony. In that case, the IRB will send the decision by mail. It may take a few weeks or even a few months to get the decision.

<b>CONCLUSION</b>
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This is the refugee process in a nutshell. I haven't had time to talk about the Refugee Appeal or judicial reviews to Federal Court or other processes outside the refugee hearing. That will have to wait for now.

There's a lot of information in this paper. The weeks before your hearing will be busy and stressful. It is common for refugee claimants to feel frightened and have trouble sleeping. Try to take good care of yourself during this time. Find out what support services are in the community. Find people you can trust and talk to. Get fresh air and exercise. Try to eat healthy food. Spend time doing things that make you laugh, (movies or television shows or funny friends.)

In the meantime, we wish you the best of luck at your hearing.