

## Overview of Canadian Refugee Law January 31, 2023

This handout is solely for informational purposes. We urge you to consult with us at [info@connectingottawa.com](mailto:info@connectingottawa.com) if you have any specific legal questions about a client's situation.

### KEY TERMS

**Immigration, Refugees and Citizenship Canada (IRCC):** The government immigration department that processes applications like permanent residence, and conducts eligibility interviews for individuals initiating a refugee claim after already entering Canada (think someone on a visitor visa).

**Canadian Border Services Agency (CBSA):** Agency in charge of detention and deportation, as well as assessing the eligibility of individuals seeking to make a refugee claim at the border or an airport.

**Immigration and Refugee Board (IRB):** Independent tribunal that conducts refugee status determination and hears all refugee cases.

**Claimant:** someone in the refugee process who has not yet received a decision on their claim.

**IRPA:** The *Immigration and Refugee Protection Act*; the Act which governs immigration and refugee law in Canada.

### OVERSEAS VERSUS INLAND REFUGEES

#### Overseas:

- UNHCR referral, Canadian visa office interview, resettlement.

#### Inland:

- Claim made at port of entry or IRCC

### THE CONVENTION REFUGEE DEFINITION (IRPA, s. 96)

#### Convention refugee means any person who

- a) by reason of a **well-founded fear** of **persecution** for reasons of **race, religion, nationality**, membership in a **particular social group** or **political opinion**,
  - i. is **outside the country of the person's nationality** and is unable, or by reason of that fear, is unwilling to avail himself of the **protection of that country**, or
  - ii. not having a country of nationality, is outside the country of the person's former habitual residence and is unable, or by reason of that fear, is unwilling to return to that country.

#### Burden and Standard of Proof

- Burden on claimant to prove credibility and bring forth evidence to prove facts of case.
- Past persecution not required; well-founded fear is forward-looking.
- Must prove nexus, link between persecution and a Convention ground.
- Standard of proof is a serious possibility or reasonable possibility of persecution. This is the level of likelihood of future persecution required.
- Underlying facts have to be proven on balance of probabilities but required likelihood of persecution is only a serious or reasonable possibility.

## Outside Country of Nationality

- Must prove well-founded fear in all countries of nationality.
- If claimant has right to citizenship in another country where not at risk, and could easily obtain that citizenship, the individual must do so and will not be granted refugee status by Canada.
- If citizenship in another country is discretionary, claimant not required to apply for it.

## Well-Founded Fear: Subjective and Objective Fear

<p><b>Subjective fear: must prove genuinely afraid; expected to act in certain ways.</b></p> <p>Behaviours used <u>against</u> claimants to find lack of subjective fear include:</p> <ul style="list-style-type: none"> <li>▪ failure to flee at first opportunity;</li> <li>▪ failure to claim in first country reached;</li> <li>▪ failure to claim immediately upon arrival in Canada;</li> <li>▪ failure to move sufficiently far from the risk right away;</li> <li>▪ reavailment.</li> </ul>	<p><b>Objective fear: must prove objective basis of claim with evidence.</b></p> <p>Evidence could include:</p> <ul style="list-style-type: none"> <li>▪ Human rights reports</li> <li>▪ Expert testimony or declaration on country conditions and/or claimant's particular profile</li> <li>▪ Police reports</li> <li>▪ Medical and psychological reports.</li> <li>▪ Witness testimony</li> <li>▪ Claimant's own sworn testimony</li> </ul>
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## Persecution

- Mistreatment suffered or anticipated must be serious (denial of core human right).
- Repetitive and persistent or systematic (unless something as serious as torture or death, that need not be repetitive).
- Must consider age and experience, persecution for child versus adult.
- State need not be agent of persecution.
- Multiple harassing acts or forms of discrimination may amount to cumulative persecution.
- Persecution versus prosecution: laws of general application may be persecutory in their application or punishment.
- Persecution versus discrimination: Persecution more serious; being fired for reasons of race (discrimination) versus denial of right to work (persecution).

## Convention Grounds (Race, Religion, Nationality)

Race	Religion	Nationality
<ul style="list-style-type: none"> <li>▪ Viewed in widest sense to encompass all ethnic and racial groups.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Right to embrace or reject any religion or belief without interference or reprisal.</li> <li>▪ Right to manifest in public and private, teaching, practices, worship and observance</li> </ul>	<ul style="list-style-type: none"> <li>▪ Citizenship, ethnic, linguistic group. Can overlap with race.</li> </ul>

## Political Opinion

- Any opinion on any matter in which the machinery of state, government and policy may be engaged.
- Need not be expressed outright; can be perceived or imputed.
- Need not be claimant's true belief to qualify.
- Perception of the persecutor (state or nonstate actor) about what is political is what matters.
- No requirement to abandon political activism to avoid persecution.

## Particular Social Group

The size of the group is irrelevant; can be large groups like women from a certain country if documentary evidence shows that women in general face risk of persecution.

### Three categories of social groups:

**(1) Innate or unchangeable characteristic**

E.g. Gender, sexual orientation, age, membership in your family.

**(2) Groups whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake the association**

E.g. Human rights activists, journalists, teachers, union leaders.

**(3) Groups associated by a former voluntary status, unalterable due to its historic permanence**

### State Protection

- Particularly an issue when persecutor is nonstate actor; claimant must prove home state **unable or unwilling** to protect them.
- Absent total breakdown, states assumed capable of protecting citizens.
- Claimant has burden to rebut presumption of state protection with some clear and convincing evidence.
- Requirement to approach state if protection might be reasonably forthcoming but no requirement to put self at risk to prove lack of protection.
- State protection must be effective/adequate; case law is split on this.
- Laws on the books and best efforts of the state not enough.
- The more democratic the state, the more claimant expected to have done to demonstrate lack of state protection.
- Only protection from the state, not non-governmental sources, is relevant.

## INTERNAL FLIGHT ALTERNATIVE (IFA)

Claimant is not a refugee if they can live safely somewhere else in their country.

### Two-part test:

1. the decision maker must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country in which they find an IFA exists;
2. conditions in the part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, to seek refuge there.
  - Unreasonable has to be more than just lacking family in the IFA location or it being inconvenient to relocate there.
  - Need to show unreasonable because of issues like psychological reasons, people with the claimant's profile can't live alone in the home society, would be entirely unable to support self there.

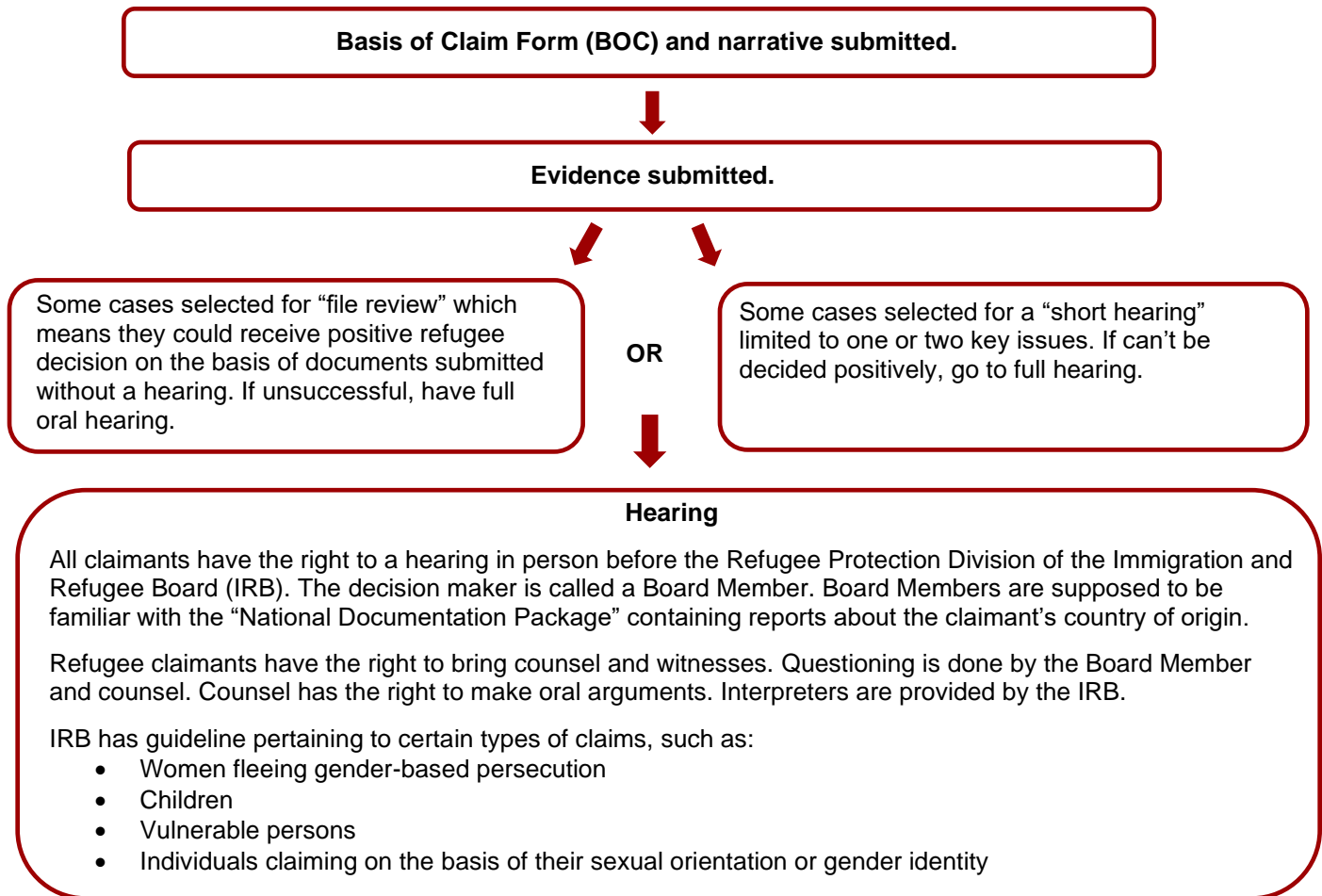
## PERSONS IN NEED OF PROTECTION (IRPA, s. 97)

- Extra safeguard for individuals at risk but who do not meet refugee definition.
- Risk to life, risk of torture, risk of cruel and unusual treatment or punishment.
- Must prove lack of state protection, risk throughout country, and that the risk is not faced generally by others from the country (the generalized risk restriction).

## EXCLUSION FROM REFUGEE PROTECTION

- Exclusion for Crime against peace, war crime, crime against humanity.
- Serious non-political crime.
- Act contrary to the purposes and principles of the UN.
- Individuals who have status in another country to which they could return.

## CANADIAN REFUGEE PROCESS



## RIGHTS POST-ACCEPTANCE

- Right to apply for permanent residence as soon as refugee status granted.
- Right to include dependents in Canada or abroad in permanent residence application (spouse/common-law partner and dependent children).
- Right to health care and social assistance and work in any job (rights which exist for claimants as well).
- Right to refugee travel document.
- Right to eventually apply for citizenship.
- Right to Canada Child Benefit