



Claimant's Guide

Refugee Protection Division

Information for claimants

www.irb-cisr.gc.ca

This guide is also available in French.
Ce guide est également disponible en français.

2009

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About This Guide

This guide is for people who are claiming refugee protection in Canada. It will give you basic information about

- how refugee protection is decided in Canada;
- what the Immigration and Refugee Board does; and
- what you need to do.

Definitions of all underlined words can be found at the beginning of this guide.

An Introduction to Refugee Protection in Canada

The Immigration and Refugee Board of Canada (IRB) is an independent tribunal responsible for deciding refugee protection claims in Canada.

You can be granted refugee protection in Canada if: you meet the United Nations (UN) definition of a Convention refugee, or you are a person in need of protection. The UN defines Convention refugees as people who have a well-founded fear of persecution because of their race, religion, nationality, political opinion, or membership in a particular social group. People in need of protection must show that if they return to their home country, they will face a danger of torture, a risk to their life or a risk of cruel and unusual treatment or punishment.

Definitions

Abandoning a claim: Failing to do all things required for the Immigration and Refugee Board (IRB) to make a decision about your claim (for example, if you fail to provide your Personal Information Form on time, fail to appear at a proceeding, or fail to communicate with the IRB when you are asked to do so). Failing to do any of these things may lead the IRB to conclude that you do not wish to continue with your claim. If the IRB determines that your claim has been abandoned, you lose the right to have your claim decided.

Convention refugee: A person who meets the definition of “refugee” in the 1951 *United Nations Convention Relating to the Status of Refugees*. In general, it is someone who has left his or her home country and has a well-founded fear of persecution based on his or her race, religion, nationality, political opinion, or membership in a particular social group, and is unable or, by reason of that fear, unwilling to seek the protection of his or her home country.

Counsel: A person who represents the claimant in the refugee process. This person may be an “authorized representative” which is defined as a member in good standing of either a bar of a province, the Chambre des notaires du Québec or the Canadian Society of Immigration Consultants and may therefore charge a fee to represent the claimant. Counsel may also be a family member, a friend or a volunteer who helps the claimant at no charge.

Designated representative: A person who is responsible for explaining the refugee process to children under the age of 18 or to adults who are unable to understand the proceedings and for protecting their interests in the process. This person is usually a parent, but can be another family member, a friend or a social services worker.

Eligibility/eligible to be referred: This is the first step in the refugee protection claim process. An officer decides whether your claim meets certain basic conditions. If it does, the officer sends (“refers”) it to the IRB, which will make a decision.

Excluded person: A person who cannot be considered a Convention refugee or a person in need of protection. This includes people who have committed a serious, non-political crime outside Canada, a crime against peace, a war crime, or a crime against humanity. It also includes people who are guilty of acts that are contrary to the purposes and principles of the United Nations, or who have taken up residence in a country where they have rights and obligations that are similar to those of a citizen of that country.

Legal aid: A service that some provincial or territorial governments offer, in which they pay for certain legal services for some people who cannot afford to pay a lawyer.

Member: The IRB decision-maker who hears and decides on the claim.

A Party: The claimant or, if the Minister intervenes in the claim, the Minister.

Permanent residence: The right to live in Canada permanently without being a citizen.

Person in need of protection: A person in Canada who would face a danger of torture, a risk to his or her life, or a risk of cruel and unusual treatment or punishment if he or she were returned to his or her home country.

Refugee protection: The protection given by Canada to a Convention refugee or a person in need of protection.

Withdrawal: A claimant's decision not to continue with his or her claim. To withdraw a claim, a claimant must inform the IRB of this decision.

Claiming Refugee Protection

How do I make a claim for refugee protection?

You can make a claim for refugee protection by speaking to an officer at any port of entry (the border, an airport or a seaport), or at a Canada Immigration Centre.

The officer from the Canada Border Services Agency (CBSA) or Citizenship and Immigration Canada (CIC) will determine whether your claim is eligible to be referred. If your claim is eligible, it will be sent (“referred”) by CIC/CBSA to the Immigration and Refugee Board of Canada (IRB) to be decided. You will be given a Personal Information Form (PIF) to complete. The IRB will then hold a hearing for your claim and a decision-maker called a Member will make a decision.

What are my responsibilities?

As a refugee protection claimant, you must:

- provide information that is complete, true and correct;
- attend all interviews and hearings;
- read and respond to all correspondence from the IRB;
- provide all documents requested to the IRB on time;
- give the IRB your current address and your current telephone number no later than 10 days after you receive your PIF. This is called your contact information;
- give the IRB your counsel's current address and current telephone number, if you have counsel, no later than 10 days after you receive your PIF;
- give the IRB your new address each time you move;
- tell the IRB if you change counsel, and give the IRB your counsel's contact information;
- ask the IRB to move your hearing if you want your hearing to take place in a different city no later than 20 days before the proceedings;
- tell the IRB if you wish to change the official language (English or French) chosen for the proceedings no later than 20 days before the proceedings;
- tell the IRB if you wish to change the foreign language and dialect of interpretation no later than 20 days before the proceedings.

Which language can I choose for my proceedings?

Canada has two official languages: English and French. You are required to choose either English or French as the language for the proceedings and indicate your choice in the *Language of proceedings* section of your Personal Information Form (PIF) described elsewhere in this Guide.

In what circumstances can the IRB determine that my case has been abandoned?

The IRB may determine that your refugee protection claim has been abandoned if you do not

- provide your PIF on time;
- provide your current contact information; or
- appear for interviews or hearings.

If you abandon your refugee protection claim, your claim will not be heard. It also means that you will not be allowed to make another refugee protection claim in the future. A claimant who abandons a claim may have to leave Canada.

Forms and Paperwork

What is a Personal Information Form (PIF)?

The PIF is a form that contains questions about your identity, your family, your work history, your military service, and other aspects of your life, including citizenship and immigration matters. You must answer all of these questions truthfully. You must also explain what you would fear if you were sent back to your country. **It is important for you to include all important facts and events.** At your hearing, you may be questioned about anything you have included, or not included, in your PIF. The IRB will use the information in your PIF when making a decision about your claim. Therefore, it is important for everything in your PIF to be complete, true and correct.

You must sign and date your PIF. By signing your PIF, you are swearing that the information it contains is complete, true and correct.

What language can I use to complete my PIF?

You must complete your PIF in either English or French. If an interpreter helps you complete the form, the interpreter must also sign the form. If an interpreter does not help you, you must sign a statement (included in your PIF) saying that you have read and understood the PIF in the language (English or French) in which you completed it.

Do my children need to complete PIFs?

All family members must complete a PIF. For children who are 6 years old or younger, only questions 1 and 2 need to be completed. Older children and all children who are not accompanied by an adult must answer all of the questions. If you complete the PIF for a child in your care who is under the age of 18, you or the child's designated representative must sign the child's PIF as complete true and correct.

What is a designated representative?

A designated representative is a person who is responsible for protecting the interests of a child under the age of 18 or an adult who is unable to understand the proceedings, and for explaining the refugee protection process to that person. The designated representative is usually the child's parent, but another family member, a legal guardian, a friend, or a worker from agencies providing such services can also act as designated representative where they meet the requirements for being designated. If you have children who are claiming refugee protection, you will receive a notice explaining the responsibilities of a designated representative. The decision to appoint a designated representative is made by the IRB.

How long do I have to complete my PIF?

The IRB must receive your completed PIF, plus two copies, no later than 28 days after you receive it. If your PIF was mailed to you, you have 35 days from the date it was mailed to provide the completed form to the IRB. You must provide 3 copies of each PIF. **It is very important to meet this deadline.**

What happens if I don't complete my PIF or give my contact information on time?

If the IRB does not receive your contact information and your completed PIF on time, it may determine that your claim has been abandoned. This means that your claim will not be heard.

What if I need to make changes to my PIF?

If you discover a mistake on your PIF or realize that you have left out something important, you must write to the IRB immediately so that the information can be put in your file. At your hearing, you may be asked to explain the reason for any changes.

Representation

Do I need a counsel to represent me for my claim?

You may represent yourself. You are not required to have a counsel to represent you. The IRB treats all refugee protection claimants equally, whether they have counsel or not. If you want to have someone represent you, you should try to find counsel as early as possible in the process.

If your counsel is charging you a fee to represent you, then he or she must be a lawyer (a member of a provincial law society or of the Chambre des notaires du Québec) or a licensed immigration consultant (a member of the Canadian Society of Immigration Consultants) in which case you would need to have your counsel complete the *Counsel Contact Information* form (the **IRB/CISR 687** form) included in your PIF kit. A family member, a friend or a volunteer may help you at no charge in which case you would need to complete the *Notice of Representation Without a Fee* form (the **IRB/CISR 692** form) also included in your PIF kit.

If you have counsel, that person must be available and ready to proceed on the date of your hearing.

What if my counsel wants to represent me in the other official language (English or French)?

If your counsel prefers to plead your case in the official language of Canada other than the one you chose for the proceedings (English or French), he or she has the right to do so. The IRB must be notified as soon as possible and no later than 20 days before the proceedings.

This will not automatically change the language of the proceedings. If you wish to do so, you must notify the IRB in writing no later than 20 days before the proceedings.

In such cases, an interpreter will be available if one is requested no later than 20 days before the proceedings, to interpret from one official language to the other.

How will my counsel be paid?

If you decide to hire a lawyer or an immigration consultant, you are responsible for paying him or her. If you cannot afford to pay for counsel, you may contact the legal aid office in your province to find out what assistance is available. There are also local community groups and refugee rights groups that may be able to help you find counsel or prepare for your hearing.

How do I get my documents if my counsel is no longer representing me?

If you are no longer going to be represented by counsel, it is important for you to get all of the documents you need in order to be fully prepared for your hearing. If you have asked your counsel for copies of your PIF or other documents the IRB has sent to him or her (such as documents describing country conditions) and your counsel has not provided them to you, you can obtain copies of these documents directly from the IRB. Please contact the IRB well in advance of your hearing date to obtain copies of these documents. If you have a new counsel representing you, it is **your responsibility** to make sure that your new counsel receives all documents relevant to your claim. This includes documents that may have been provided to your previous counsel, either by yourself, the RPD or another party.

Preparing for Your Hearing or Interview

Once the IRB receives your PIF, an IRB official called a Tribunal Officer will screen your file. The purpose of screening is to identify the key issues that will be discussed at your refugee protection hearing. The Tribunal Officer will inform you in writing of what key issues were identified and of whether the IRB needs any more information before your hearing. You will also receive a list of documents about country conditions. These documents are available at your local IRB Documentation Centre.

You should review the information you receive from the Tribunal Officer carefully and think about what you would like to say about the key issues that will be discussed at the hearing. If you do not have counsel and you have trouble understanding these issues, you should call or visit the IRB to speak to a Tribunal Officer.

Once all the preparations are complete, the IRB will mail you a *Notice to Appear* telling you when and where to go for your hearing or interview.

How will I know when my refugee protection hearing will take place?

You will receive a *Notice to Appear* from the IRB telling you the date of your hearing and where it will be held. The Notice will also indicate the time at which your hearing will begin. **You should arrive at least 15 minutes early, and check in with the clerk at the reception desk when you arrive.**

What does it mean if I have received a Notice to Appear for an Interview?

The IRB holds interviews for claims that appear to be straightforward and that may not require a hearing. This kind of interview is called an “expedited interview”.

If you receive a *Notice to Appear for an Interview*, you must bring all your documents (the originals plus one copy of each) to the interview. At the interview, a Tribunal Officer will ask you questions and prepare a report. At the end of the interview, the Tribunal Officer will make a recommendation about whether or not your claim can be accepted without a hearing.

The final decision about your claim is made by an IRB Member. If, after the interview, the Tribunal Officer recommends that your claim can be accepted without a hearing and the Member agrees with that recommendation, then the IRB will not hold a hearing and you will be granted protection immediately. If the Tribunal Officer or the Member decides that a hearing is necessary, the IRB will give you a copy of the report from the interview, and a hearing will be scheduled for your claim.

What happens if my counsel and I cannot appear on the hearing date?

When a hearing date is set, you must be ready for the hearing on that date. If you have a very good reason why you will not be able to appear on that day, you may make an application to change the date or time of your hearing. You must make this application in writing. It can be a letter. You must send your application to the IRB as soon as possible. If your hearing is scheduled to take place in less than two days, you must appear at your hearing.

If a representative of the Canada Borders Services Agency (CBSA) is going to participate in your hearing, you must first provide a copy of your application to CBSA. Next, you must provide your application to the IRB's Registry office, along with a written statement of how and when you provided a copy of your application to CBSA.

In your application, you must

- explain why you want to change the date or time of your hearing; and
- give at least six new dates on which you are available for your hearing. These six dates must be within a time period specified by the IRB. Therefore, you should first contact the IRB Registry office to find out which weeks or months the IRB has available for hearings.

The IRB will only change the date or time of your hearing if you have a very good reason. If the IRB refuses your application to change the date or time of your hearing, or if you do not receive a decision from the IRB about your application, you must appear at your hearing on the date that was originally scheduled. You must be ready for your refugee protection hearing on that date. If you do not appear, the IRB may determine that your claim has been abandoned.

In which language will my hearing or interview take place?

Your hearing or interview will take place in the official language (English or French) that you have selected in the *Language of proceedings* area of your PIF.

If you need an interpreter for a foreign language and dialect, you will need to indicate the foreign language and dialect in the *Interpreter for foreign language and dialect* area of your PIF.

Can I change the language of proceedings after submitting the PIF?

If you decide after providing the PIF to the IRB that you wish to change the language of proceedings from the official language you have chosen (English or French) to the other one, you will need to advise the IRB in writing as soon as possible and no later than 20 days before the date of the proceedings.

What are some of the consequences of changing the language of the proceedings?

If you decide to change the language of the proceedings, as a general rule, documents that are already part of your file will remain in the official language they were submitted in.

Documents that the IRB will send to you after you change the language of the proceedings such as *Notices to Appear* and your final decision will be provided to you accordingly in the new official language (English or French) that you have chosen.

Can I change the foreign language of interpretation after submitting the PIF?

If you decide after providing the PIF that you wish to change the foreign language of interpretation and/or dialect chosen on your PIF, you will need to advise the IRB in writing of this, no later than 20 days before the date of the proceedings and indicate the foreign language and dialect to be interpreted.

Do I have to provide the IRB with any documents?

You must provide documents that establish your identity, and any other documents that are needed to prove your claim. If you do not provide identity documents, you will have to explain why you do not have them and what you did to try to obtain them.

Some examples of documents you should provide to the IRB include:

- your passport, travel documents, birth certificate or driver's licence
- your school records, education certificates or professional qualifications
- police or medical reports
- your membership cards for political groups, unions or other groups
- news articles and human rights reports on country conditions

If you provide documents, you must make two copies of each document and provide them to the IRB's Registry office. If CBSA is participating in your claim, you must also provide one copy to the representative from CBSA called the Minister's counsel. The documents you prepare must be typewritten or be photocopies of original documents; they should not be handwritten. All documents should be printed on one side of 8½ x 11 inch paper (21.5 cm by 28 cm). If you are providing photocopies of documents, all photocopies must be clear and easy to read. The pages of your documents must be numbered consecutively.

When does the IRB need to receive my documents?

You must make sure that the IRB **receives** copies of all these documents – translated into either English or French – at the earliest opportunity and **no later than 20 days before your hearing**. If your documents are available to you at the time you complete your PIF, you should attach copies of them to your PIF and send them to the IRB with your completed form.

You can provide your documents by delivering them in person, by mail or by courier. You can also provide your documents by fax (except the PIF), but only if you have fewer than 20 pages in total. **You must bring the original documents to your hearing if you have them.**

Do my documents need to be translated?

If your documents are not in either English or French, you must have them translated into the official language (English or French) that you have chosen for your proceeding. The translations and a translator's declaration must be provided to the IRB, along with the copies of the documents. The translator's declaration must include

- the translator's name;
- the language translated; and
- a statement signed by the translator that the translation is accurate.

If you do not provide your documents in either English or French, they cannot be used at the proceeding unless the Member agrees. Translations can be done by a professional translator or interpreter, a trusted friend, a family member or a volunteer at a refugee-serving organization.

What do I need to do for my claim to be accepted?

It is your responsibility to prove that you are a Convention refugee or a person in need of protection. You are a Convention refugee if you have a well-founded fear of persecution in your home country based on your race, religion, nationality, membership in a particular social group or political opinion. You are a person in need of protection if you would be subjected personally to a danger of torture, to a risk to your life or to a risk of cruel and unusual treatment or punishment if you were returned to your home country.

Certain people may be excluded from refugee protection – for example, serious criminals and people who are Convention refugees in other countries.

Can I withdraw my refugee protection claim?

Prior to your hearing, if you do not want to continue with your refugee protection claim, for whatever reason, you must inform the IRB immediately that you are withdrawing your claim. This can be done in a letter, or you can obtain a withdrawal form at any IRB office. If you withdraw your refugee protection claim, you may have to leave Canada.

Your Hearing

Who will decide my refugee protection claim?

Unless your claim is accepted following an interview, the IRB will hold a hearing at which you can present your claim. Hearings normally take place before one IRB member who has received special training in refugee protection matters. Hearings usually take place in private in order to protect you and your family.

If the Member cannot be in the same city as you, your hearing may take place by videoconference. This allows you to see and talk to the Member through a television.

Will I need an interpreter?

The IRB will provide an interpreter for your proceedings at no cost to you. If you do need an interpreter, you must state on your PIF, in the *Interpreter for foreign language and dialect* section which foreign language and dialect (if applicable) you want to communicate in. The interpretation will be provided between the foreign language and dialect (if applicable) you choose and the official language of Canada - English or French - that you have chosen in the *Language of proceedings* area of your PIF.

Interpreters are required to keep your personal information confidential. If you have trouble understanding the interpreter, tell the Member or Tribunal Officer immediately.

Can I bring witnesses?

You may bring witnesses to your hearing if you think this will help your claim. A witness is a person who knows about your claim and can provide information that will help the Member make a decision. Witnesses must be prepared to answer questions about the information they provide at your hearing (this is called testifying or giving testimony).

You must provide certain information about your witness(es) to the IRB in writing **no later than 20 days before your hearing**. You must tell the IRB

- the witness's contact information (address, telephone and fax numbers);
- how long his or her testimony will take;
- your relationship to the witness;
- whether you want him or her to testify in person, by videoconference or by telephone; and
- if he or she needs an interpreter.

If the witness is an expert, you must also include a report signed by him or her giving his or her qualifications and summarizing the evidence he or she will provide.

It is your responsibility to make sure your witness or witnesses appear at your hearing.

What will happen at my hearing?

a) You will testify

Before you testify, you will be required to make a solemn affirmation, which means making a promise to tell the truth. You may then be asked questions by the Tribunal Officer (if one is present), by your counsel and by the Member. The Member will decide what subjects you will be questioned about and who will ask questions first. Usually, this will be the Tribunal Officer (or the Member, if no Tribunal Officer is present). If Canada Border Services Agency (CBSA) is participating in your hearing, the Minister's counsel may ask you questions. If you do not have counsel, the Tribunal Officer and the Member may also ask you more questions and give you an opportunity to tell the Member what you think is important.

b) Witnesses will testify.

If you bring any witnesses, they will testify after you have testified. Any witnesses you bring to your hearing will usually be asked to stay in the waiting room and will not join the hearing until after you have testified. The witness will then be called in to answer questions.

If your witnesses do not speak the official language of Canada - English or French - that you have chosen as the language of proceedings, they will have the right to request the services of an interpreter as long as the request is received at the IRB no later than 20 days before the proceeding date.

c) Comments (representations) will be made about the evidence.

After you and any witnesses have testified, the Member may ask you or your counsel to explain why you think the evidence shows that you are a person in need of protection or a Convention refugee. The Member may also ask the Tribunal Officer to comment on your claim and to point out the various aspects of your claim, without arguing for or against it. You or your counsel may also be asked to respond to the comments made by the Tribunal Officer. The Member will decide who should speak first.

Do my children need to attend the hearing?

If your children are also claiming refugee protection, they must attend the hearing. Usually, children are only required to be present at the start of the hearing to establish their identities and to make sure they are properly represented, either by their parents, by a designated representative, a guardian or by legal counsel. After this, they may be allowed to leave the hearing. Please make arrangements for someone you trust to take care of your children while you remain at the hearing.

In some situations, older children will need to participate in the hearing. If you have concerns or questions about your child being involved in the hearing, you should contact the IRB before your hearing takes place.

When will I find out the decision about my claim?

The IRB Member will decide whether you are a Convention refugee or a person in need of protection. You may be told the decision orally at the end of your hearing, or you may receive the decision later by mail. It may take a few days, or several months for more complicated cases, to receive your written decision in the mail.

What happens after the decision?

If your refugee protection claim is allowed, the IRB will send you a written *Notice of Decision*. You may then apply to Citizenship and Immigration Canada (CIC) for permanent residence. You may include close family members in this application.

If your refugee protection claim is rejected, the IRB will send you a written *Notice of Decision* and an explanation of the reasons why your claim was rejected. You may then apply to have the Federal Court of Canada review the negative decision (called a “judicial review”).

GETTING HELP

Immigration and Refugee Board of Canada (IRB)

Website: www.irb-cisr.gc.ca

OFFICE

AREA OF RESPONSIBILITY

EASTERN REGION

MONTREAL

200 René-Lévesque Boulevard West
Guy-Favreau Complex
East Tower, Room 102
Montreal QC H2Z 1X4
Telephone: 514-283-7733
Fax number: 514-283-0164

QUEBEC (EXCEPT GATINEAU)
NEW BRUNSWICK
NOVA SCOTIA
PRINCE EDWARD ISLAND
NEWFOUNDLAND
NUNAVUT

OTTAWA

Canada Building
344 Slater Street, 11th Floor
Ottawa ON K1A 0K1
Telephone: 613-943-8630
Fax number: 613-943-1550

OTTAWA ON
GATINEAU QC

CENTRAL REGION

TORONTO

74 Victoria Street
Suite 400
Toronto ON M5C 3C7
Telephone: 416-954-1000
Fax number: 416-954-1165

ONTARIO (EXCEPT OTTAWA)

WESTERN REGION

VANCOUVER

Library Square
300 West Georgia St.,
Suite 1600
Vancouver BC V6B 6C9
Telephone: 604-666-5946 or 1-866-787-7472
Fax number: 604-666-3043

BRITISH COLUMBIA
ALBERTA
SASKATCHEWAN
MANITOBA
YUKON
NORTHWEST TERRITORIES

Citizenship and Immigration Canada (CIC)

Telephone: 1-888-242-2100

Hearing Impaired: 1-888-576-8502

Web site: www.cic.gc.ca

Canada Border Services Agency (CBSA)

Telephone: 1-800-461-9999

Hearing Impaired: 1-866-335-3237

Web site: www.cbsa-asfc.gc.ca