



Legislative Guide for the RPD

- *Immigration and Refugee Protection Act*
- *Refugee Protection Division Rules*
- *Oath or Solemn Affirmation of Office Rules (Immigration and Refugee Board)*
- *Immigration and Refugee Protection Regulations*

Refugee Protection Division

Legal Services

June 28, 2002

Preface

The *Legislative Guide for the RPD* has been prepared by David Vinokur, Senior Counsel, Legal Services, IRB, to assist in the study of the *Immigration and Refugee Protection Act* (formerly known as Bill C-11) and the related Rules and Regulations.

Users of the *Legislative Guide* are reminded that it contains only a concise description of the relevant provisions and that the appropriate legislation must be consulted for the complete text of those provisions.

This *Legislative Guide* is based mainly on the following documents:

- ***Immigration and Refugee Protection Act*, S.C. 2001, c. 27**
 - ✓ received Royal Assent on November 1, 2001
 - ✓ published in the *Canada Gazette*, Part III, December 12, 2001
 - ✓ section 1 (short title) and section 4 (responsible Minister) came into force on December 6, 2001¹
 - ✓ most other provisions of the Act came into force on June 28, 2002²
 - ✓ provisions dealing with the new Refugee Appeal Division have not come into force, as the Minister of Citizenship and Immigration announced that the implementation of the RAD has been delayed³
 - ✓ the full text of the Act is available on the Parliamentary Internet site at:
http://www.parl.gc.ca/37/1/parlbus/chambus/house/bills/government/C-11/C-11_4/C-11_cover-E.html

- ***Refugee Protection Division Rules*, SOR/2002-228**
 - ✓ published in the *Canada Gazette*, Part II, June 14, 2002, page 361
 - ✓ came into force on June 28, 2002
 - ✓ the full text of the RPD Rules is available on the Internet on the *Canada Gazette* web site at: <http://canada.gc.ca/gazette/part2/pdf/g2-13613.pdf>
 - ✓ the full text of the **RPD Rules and Commentaries on the Rules** is available on the IRB web site at: http://www.irb.gc.ca/legal/RpdRul_e.stm

¹ “Order Fixing December 6, 2001, as the Date of the Coming into Force of Certain Sections of the Act”, SI/2001-119, published in the *Canada Gazette*, Part I, December 19, 2001, page 2901. “Order Designating the Minister of Citizenship and Immigration as the Minister responsible for the administration of that Act”, SI/2001-120, published in the *Canada Gazette*, Part II, December 19, 2001, page 2902.

² “Order Fixing June 28, 2002 as the Date of Coming into Force of Certain Provisions of the Act”, SI/2002-97, published in the *Canada Gazette*, Part II, June 14, 2002, page 448. Provisions that have not come into force include *IRPA*, ss. 73, 110, 111, 171, 194, and 195.

³ CIC News Release, 2002-12, “*Refugee Appeal Division Implementation Delayed*”, April 29, 2002:
<http://www.cic.gc.ca/english/press/02/0212-pre.html>.

- ***Immigration and Refugee Protection Division Regulations***, SOR/2002-227
 - ✓ published in the *Canada Gazette*, Part II, June 14, 2002, page 1
 - ✓ came into force on June 28, 2002
 - ✓ the full text of the Regulations is available on the Internet on the *Canada Gazette* web site at: <http://canada.gc.ca/gazette/part2/pdf/g2-13613.pdf>

Short Forms and Abbreviations	
ADC	Assistant Deputy Chairperson
Board	Immigration and Refugee Board
CM	Coordinating Member
CRDD	Convention Refugee Determination Division of the IRB (<i>now – RPD</i>)
DC	Deputy Chairperson
GIC	Governor in Council
GIC Member	Member Appointed to the Board by the GIC (i.e., the Chairperson and the Members of the RPD, RAD, and IAD)
H&C	humanitarian and compassionate grounds
IAD	Immigration Appeal Division of the IRB
ID	Immigration Division of the IRB (<i>formerly – Adjudication Division</i>)
IRB	Immigration and Refugee Board
IRP Reg.	<i>Immigration and Refugee Protection Regulations, SOR/2002-227</i>
IRPA	<i>Immigration and Refugee Protection Act, S.C. 2000, c. 27</i>
Minister	Minister of Citizenship and Immigration
<i>Oath of Office Rules</i>	<i>Oath or Solemn Affirmation of Office Rules (Immigration and Refugee Board), SOR/2002-231</i>
PRRA	pre-removal risk assessment
PIF	Personal Information Form
RAD	Refugee Appeal Division of the IRB (<i>implementation has been delayed</i>)
RPD	Refugee Protection Division of the IRB (<i>formerly – CRDD</i>)
RPD Rules	<i>Refugee Protection Division Rules, SOR/2002-228</i>
UNHCR	United Nations High Commissioner for Refugees

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1. Contents of the *Immigration and Refugee Protection Act*

1.1 Structure of the Act

General Provisions:	definitions, objectives, manner of applying the Act, enabling authority, agreements, etc.	<i>IRPA</i> , ss. 1 to 10
Part 1:	Immigration to Canada	<i>IRPA</i> , ss. 11 to 94
Part 2:	Refugee Protection	<i>IRPA</i> , ss. 95 to 116
Part 3:	Enforcement	<i>IRPA</i> , ss. 117 to 150
Part 4:	Immigration and Refugee Board	<i>IRPA</i> , ss. 151 to 186
Part 5:	Transitional Provisions, etc.	<i>IRPA</i> , ss. 187 to 275
Schedule:	<i>Refugee Convention</i> , Articles 1E and F; <i>Convention Against Torture</i> , s. 1	<i>IRPA</i> , Schedule

1.2 Key Provisions for the Board

1.2.1 IRB - General

- appointment of members *IRPA*, s. 153
- powers and duties of Chairperson *IRPA*, s. 159
- authority to make IRB rules of practice and procedure *IRPA*, s. 161
- provisions that apply to all Divisions *IRPA*, ss. 162 to 169

1.2.2 ID Provisions

- report on inadmissibility *IRPA*, s. 44
- decisions by ID at admissibility hearing *IRPA*, s. 45
- detention review by ID *IRPA*, ss. 57, 58
- composition of ID and proceedings *IRPA*, ss. 172, 173
- non-disclosure of protected information at ID *IRPA*, s. 86

1.2.3 IAD Provisions

- appeals to IAD *IRPA*, ss. 62 to 71
- court of record and proceedings *IRPA*, ss. 174, 175
- non-disclosure of protected information at IAD *IRPA*, s. 86

1.2.4 RPD Provisions

- “Convention refugee” *IRPA*, s. 96
- “person in need of protection” *IRPA*, s. 97
- exclusion: *IRPA*, s. 98;
Articles 1E and F of the Refugee Convention Schedule

- cessation *IRPA*, s. 108
- vacation of refugee protection *IRPA*, s. 109
- referral to RPD *IRPA*, s. 100
- ineligibility grounds *IRPA*, s. 101
- RPD decision and no credible basis *IRPA*, s. 107
- proceedings *IRPA*, s. 170

1.2.5 RAD Provisions

- appeal to RAD *IRPA*, ss. 110, 111
- proceedings *IRPA*, s. 171

1.2.6 Grounds of Inadmissibility

- rules of interpretation: inadmissibility under ss. 34 to 37 include facts arising from omissions, etc. *IRPA*, s. 33
- depending on the requirements of the particular section of *IRPA*, a foreign national or a permanent resident may be inadmissible
 - on **security** grounds *IRPA*, s. 34
 - on grounds of **violating human or international rights** *IRPA*, s. 35
 - on grounds of **serious criminality** *IRPA*, s. 36(1)
 - on grounds of **criminality** *IRPA*, s. 36(2)
 - on grounds of **organized criminality** *IRPA*, s. 37
 - on **health** grounds *IRPA*, s. 38
 - for **financial** reasons *IRPA*, s. 39
 - for **misrepresentation** *IRPA*, s. 40
 - for **failing to comply** with this Act *IRPA*, s. 41
 - on grounds of an **inadmissible family member** *IRPA*, s. 42
- the **regulations** may provide for any matter relating to the application of the inadmissibility provisions, may define any of the terms used in the inadmissibility provisions, and may provide for exemptions from any of the inadmissibility provisions *IRPA*, s. 43

1.3 Designations and Delegations by the Minister

1.3.1 Designation of Officers

- the Minister may designate any person or classes of persons as officers to carry out purpose of the provisions of this Act *IRPA*, s. 6(1)

Note: The Act does not give titles to officers, such as visa officer, examining officer, senior immigration officer or immigration officer.

1.3.2 Delegation of Minister's Powers

- anything that may be done by the Minister under this Act may be done by a **person that the Minister authorizes in writing**, without proof of the authenticity of the authorization *IRPA*, s. 6(2)
- however, the **Minister may not delegate** the power conferred by
 - **s. 77(1)** (signing a **security certificate** stating that a permanent resident or foreign national is inadmissible on security grounds, etc.)
 - **s. 34(2)** (the Minister is satisfied that the presence in Canada of a person who is inadmissible on **security grounds** would not be detrimental to the national interest)
 - **s. 35(2)** (the Minister is satisfied that the presence in Canada of a person who is inadmissible on grounds of **violating human or international rights** would not be detrimental to the national interest) or
 - **s. 37(2)(a)** (the Minister is satisfied that the presence in Canada of a person who is inadmissible on grounds of **organized criminality** would not be detrimental to the national interest) *IRPA*, s. 6(3)

1.4 Authority to Make Regulations

- unless otherwise indicated, references in this Act to **“this Act”** include **regulations** made under the Act *IRPA*, s. 2(2)

Note: Authority to make regulations is found in many sections of the Act, as described below. In some cases, terms found in the Act may be defined in the regulations.

1.4.1 General Authority to Make Regulations

- the GIC may make any regulation
 - that is referred to in this Act or
 - that prescribes any matter whose prescription is referred to in this Act *IRPA*, s. 5(1)

1.4.2 Specific Authority to Make Specific Regulations

- *IRPA* also includes specific authority to make regulations with respect to the following provisions of the Act:
 - requirements before entering Canada; selection of permanent residents; and sponsorship of foreign nationals *IRPA*, s. 14
 - examination by officer *IRPA*, s. 17
 - entering and remaining in Canada; status and authorization to enter, *IRPA*, s. 26

- rights and obligations of permanent and temporary residents; status document *IRPA*, s. 32
 - inadmissibility *IRPA*, s. 43
 - report on inadmissibility; ID admissibility hearing; loss of status; enforcement of removal orders *IRPA*, s. 53
 - detention and release *IRPA*, s. 61
 - representation before the Minister, an officer, or the IRB *IRPA*, s. 91
 - examination of eligibility to refer a claim *IRPA*, s. 102
 - pre-removal risk assessment and decisions under *IRPA*, s. 115 regarding non-refoulement *IRPA*, s. 116
 - transportation companies *IRPA*, s. 150
 - transitional provisions *IRPA*, s. 201
- *IRPA* also includes several other specific provisions which authorize regulations to be made regarding topics mentioned within the same section of the Act, such as:
- a permanent resident complies with the residency obligation with respect to a five-year period if, on each of a total of at least 730 days in that five-year period, they are (i) physically present in Canada...or (v) **referred to in regulations** providing for other means of compliance *IRPA*, s. 28(2)(a)
 - if the Minister is of the opinion that the report regarding a foreign national is well-founded, the Minister may refer the report to the ID for an admissibility hearing, except in the circumstances **prescribed by the regulations** *IRPA*, s. 44(2)
 - a person in Canada who is a member of a class of persons **prescribed by the regulations** as being in need of protection is also a person in need of protection *IRPA*, s. 97(2)

1.4.3 Regulations that Must be Tabled in Parliament

- proposed regulations made pursuant to the following sections of *IRPA* must be tabled in each House of Parliament, and each House will refer the proposed regulation to the appropriate Committee of that House: *IRPA*, s. 5(2)
- s. 17 (examinations: ss. 15 and 16)
 - s. 32 (rights and obligations of temporary and permanent residents; status documents: ss. 27 to 31)
 - s. 53 (loss of status and removal: ss. 44 to 52)
 - s. 61 (detention and release: ss. 54 to 60)
 - s. 102 (examination of eligibility to refer claim: ss. 100 and 101)
 - s. 116 (PRRA and principle of non-refoulement: ss. 112 to 115)
 - s. 150 (transportation companies: ss. 148 and 149)

1.5 Objectives and Application of the Act

1.5.1 Objectives – Immigration

- eleven objectives with respect to immigration are set out in the Act, including:
 - to permit Canada to pursue the maximum social, cultural and economic benefits of immigration and
 - to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks

IRPA, s. 3(1)

1.5.2 Objectives – Refugees

- the objectives of this Act with respect to refugees are:
 - to recognize that the refugee program is in the first instance about **saving lives** and offering protection to the displaced and persecuted
 - to fulfil Canada's **international legal obligations** with respect to refugees and affirm Canada's commitment to international efforts to provide assistance to those in need of **resettlement**
 - to grant, as a fundamental expression of **Canada's humanitarian ideals, fair consideration** to those who come to Canada claiming persecution
 - to offer **safe haven** to persons with a well-founded fear of persecution based on race, religion, nationality, political opinion or membership in a particular social group, as well as those at risk of torture or cruel and unusual treatment or punishment
 - to establish **fair and efficient procedures** that will maintain the integrity of the Canadian refugee protection system, while upholding Canada's respect for the human rights and fundamental freedoms of all human beings
 - to support the self-sufficiency and the social and economic well-being of refugees by facilitating **reunification with their family members in Canada**
 - to protect the **health and safety of Canadians** and to maintain the **security of Canadian society** and
 - to promote international justice and security by denying access to Canadian territory to persons, including refugee claimants, who are **security risks** or **serious criminals**

IRPA, s. 3(2)

IRPA, s. 3(2)(a)

IRPA, s. 3(2)(b)

IRPA, s. 3(2)(c)

IRPA, s. 3(2)(d)

IRPA, s. 3(2)(e)

IRPA, s. 3(2)(f)

IRPA, s. 3(2)(g)

IRPA, s. 3(2)(h)

1.5.3 Application of the Act

- the Act is to be construed and applied in a manner that *IRPA*, s. 3(3)
 - furthers the **domestic and international interests of Canada** *IRPA*, s. 3(3)(a)
 - promotes **accountability** and **transparency** by enhancing public awareness of immigration and refugee programs *IRPA*, s. 3(3)(b)
 - **facilitates cooperation** between the Government of Canada, provincial governments, foreign states, international organizations and non-governmental organizations *IRPA*, s. 3(3)(c)
 - ensures that decisions taken under this Act are consistent with the *Canadian Charter of Rights and Freedoms*, including its principles
 - ✓ of equality and freedom from discrimination and
 - ✓ of the equality of English and French as the official languages of Canada *IRPA*, s. 3(3)(d)
 - supports the commitment of the Government of Canada to enhance the vitality of the **English and French linguistic minority communities** in Canada, and *IRPA*, s. 3(3)(e)
 - **complies with international human rights instruments to which Canada is signatory** *IRPA*, s. 3(3)(f)

2. The Immigration and Refugee Board

2.1 Structure of the Board

2.1.1 Divisions and Members

- the IRB created under the *Immigration Act* is continued *IRPA*, s. 188
- “Board” means the IRB, which consists of the Refugee Protection Division, the Refugee Appeal Division, the Immigration Division and the Immigration Appeal Division *IRPA*, s. 2(1)
- the **IRB consists of four Divisions**: the RPD, the RAD, the IAD and the IAD *IRPA*, s. 151

Note: the provisions of IRPA that give power to the RAD to conduct any business have not yet come into force. See “Order Fixing June 28, 2002 as the Date of Coming into Force of Certain Provisions of the Act”, SI/2002-97, published in the Canada Gazette, Part II, June 14, 2002, page 448. RAD provisions that have not come into force include IRPA, ss. 73, 110, 111, 171, 194, and 195.

- the **IRB is composed of a Chairperson and other members as are required to ensure the proper functioning** of the Board *IRPA*, s. 152

Notes: (1) The term “member” includes members of the RPD, RAD, and IAD, who are appointed to the Board by the GIC, and members of the ID, who are appointed under the Public Service Employment Act. (2) There is no statutory minimum or maximum number of members of the Board.

2.1.2 Head Office

- the head office of the IRB shall be in the **National Capital Region** *IRPA*, s. 157(1)
- the **Chairperson** must live in the National Capital Region or within reasonable commuting distance of it *IRPA*, s. 157(2)

2.2 Appointment of GIC Members

2.2.1 Appointment to Regional or District Office of the Board

- the **Chairperson** and the Members of the RPD, RAD, and IAD are **appointed to the Board** by the GIC to serve in a **regional or district office** *IRPA*, s. 153(1)(a)

Note: The GIC appoints members to the “Board”, not to a “Division” of the Board.

- the **Chairperson assigns those members to the RPD, RAD or IAD** *IRPA*, s. 159(1)(b)
- the Chairperson may assign a member to **work in another regional or district office** of the Board in order to satisfy operation requirements, but an assignment *may not exceed 90 days* without the approval of the GIC *IRPA*, s. 159(1)(c)

2.2.2 Term of Office

- GIC Members hold office during good behaviour for a **term not exceeding 7 years**, subject to removal by the GIC for cause *IRPA*, s. 153(1)(a)
- GIC Members are eligible for **reappointment** in the same or another capacity *IRPA*, s. 153(1)(c)
- the Chairperson, DCs, and ADCs are appointed on a **full-time** basis; other members may be appointed on a **full-time or part-time** basis *IRPA*, s. 153(3)

2.2.3 Lawyers / Notaries

- the following persons must be members of at least five years standing at the bar of a province or notaries of at least five years standing at the Chambre des notaires du Québec:
 - the DC (IAD)
 - a majority of the ADCs (IAD), and
 - **at least 10%** of the members of the RPD, the RAD, and the IAD *IRPA*, s. 153(4)

2.2.4 Designation of DCs and ADCs

- the GIC designates, from among the full-time members of the RPD, the RAD, and the IAD:
 - one Deputy Chairperson, RPD,
 - one Deputy Chairperson, RAD,
 - one Deputy Chairperson, IAD, and
 - not more than 10 Assistant Deputy Chairpersons, for the Board *IRPA*, s. 153(2)

2.2.5 Designation of CMs

- the Chairperson designates from among the full-time members of the Board coordinating members for the RPD, RAD, and IAD *IRPA, s. 159(1)(d)*

2.3 Rights and Obligations of Members

2.3.1 Chairperson and GIC Members

- the following provisions apply to the **Chairperson and the members of the RPD, the RAD, and the IAD:**
 - they swear the **oath** or give the solemn affirmation set out in the Rules of the Board *IRPA, s. 153(1)(b), Oath of Office Rules*
 - they receive the **remuneration** fixed by the GIC *IRPA, s. 153(1)(d)*
 - they are entitled to reasonable **travel expenses** *IRPA, s. 153(1)(e)*
 - they are deemed to be in the public service of Canada for the purposes of **pensions** and compensation *IRPA, s. 153(1)(f)*
 - they may **not carry on any activity inconsistent** with their duties and functions under the *IRPA* *IRPA, s. 153(1)(g)*
 - if appointed as full-time members, they must **devote the whole of their time to their duties** under the *IRPA* *IRPA, s. 153(1)(h)*

2.3.2 Chairperson and All Members

- the following provisions apply to the **Chairperson and all members**, including members of the ID, in respect of the exercise of their functions under the *IRPA*:
 - **no criminal or civil proceedings** can be brought against them for anything done or omitted to be done in good faith *IRPA, s. 156(a)*
 - they are **not competent or compellable** to appear as a witness in any civil proceedings *IRPA, s. 156(b)*

2.4 Public Service Appointments

2.4.1 Executive Director

- the Executive Director is appointed in accordance with the *Public Service Employment Act* *IRPA, s. 158*
- the following powers of the Chairperson may be delegated to the Executive Director:
 - powers under s. 159(1)(a) to **direct the work and staff** of the Board
 - powers under s. 159(1)(i) to appoint **experts** *IRPA, s. 159(2)(b)*

2.4.2 Other Personnel

- other personnel necessary for the proper conduct of the business of the Board are appointed in accordance with the *Public Service Employment Act* IRPA, s. 158

Note: This provision permits the appointment of RPOs, registry staff, legal advisers, staff in the Research Directorate, etc.

2.5 Dispositions: Ceasing to Hold Office or Unable to Take Part

2.5.1 Member Ceases to Hold Office

- a former member of the Board, **within 8 weeks** after ceasing to be a member, may make or take part in a decision on a matter that they heard as a member, **if the Chairperson so requests** IRPA, s. 154

2.5.2 Member Unable to Take Part

- if a member of a **three-member panel** is unable to take part in the disposition of a matter that the member has heard, **the remaining members** may make the disposition for the applicable Division IRPA, s. 155

Note: Matters before the RPD and the RAD are conducted before a single member, unless the Chairperson is of the opinion that a panel of three members should be constituted. IRPA, s. 163

2.6 Chairperson

2.6.1 Powers and Duties of the Chairperson

- the Chairperson is a **member of each Division** of the Board IRPA, s. 159(1)
- **as chief executive officer**, the Chairperson
 - has **supervision over** and direction of the **work and staff** of the Board IRPA, s. 159(1)(a)
 - **assigns GIC Members** to the RPD, RAD, and IAD IRPA, s. 159(1)(b)
 - may at any time, despite s. 153(1)(a), **assign a GIC member to work in another regional or district office** in order to satisfy operational requirements, but an assignment **may not exceed 90 days** without the approval of the GIC IRPA, s. 159(1)(c)

Note: Under IRPA, s. 153(1)(a), members of the RPD, RAD, and IAD are appointed to the Board by the GIC to serve in a regional or district office.

 - from among the full-time members, **designates CMs** for the RPD, RAD and IAD IRPA, s. 159(1)(d)

- **assigns administrative functions** to members *IRPA, s. 159(1)(e)*
- **apportions work**; fixes the place, date, and time of proceedings *IRPA, s. 159(1)(f)*
- takes any necessary action to **ensure members carry out their duties efficiently** and without undue delay *IRPA, s. 159(1)(g)*
- may issue **guidelines** and identify decisions as **jurisprudential guides** *IRPA, s. 159(1)(h)*
- may appoint and, subject to the approval of the Treasury Board, fix the remuneration of **experts** or persons having special knowledge to assist the Divisions in any matters *IRPA, s. 159(1)(i)*

2.6.2 Delegation of the Chairperson's Powers

- the **Chairperson may delegate** any of his or her powers to a GIC Member **except** that *IRPA, s. 159(2)*
 - powers under s. 161(1) to make **Rules of the Board** *may not* be delegated *IRPA, s. 159(2)(a)*
 - powers under s. 159(1)(a) to direct the work and staff of the Board *may be* delegated to the **Executive Director** *IRPA, s. 159(2)(b)*
 - powers under s. 159(1)(i) to appoint experts *may be* delegated to the **Executive Director** *IRPA, s. 159(2)(b)*
 - powers in relation to the ID *may only* be delegated to the **Director General, directors or members of the ID** *IRPA, s. 159(2)(c)*

2.6.3 Acting Chairperson

- the Minister may authorize a DC or any other member to act as Chairperson:
 - in the absence or incapacity of the Chairperson, or
 - if the office is vacant *IRPA, s. 160*

2.6.4 Authority to Make Rules of the Board

- subject to the approval of the GIC, and in consultation with the DCs and the DG (ID), the **Chairperson may make rules respecting**: *IRPA, s. 161*
 - the activities, practice and procedure of each Division, including
 - ✓ the periods for appeal
 - ✓ the priority to be given to proceedings
 - ✓ the notice that is required, and
 - ✓ the period in which notice must be given *IRPA, s. 161(1)(a)*
 - the conduct of persons in proceedings before the Board, as well as the consequences of, and sanctions for, the breach of those rules *IRPA, s. 161(1)(b)*
 - the information that may be required and the time within which it must be provided to the Board *IRPA, s. 161(1)(c)*

- any matter considered by the Chairperson to require rules *IRPA*, s. 161(1)(d)
- the Minister shall cause a copy of any IRB Rule to be laid before each House of Parliament during the first 15 days on which that House is sitting after the approval of the rule by the GIC *IRPA*, s. 161(2)

Note: the Chairperson has made the following Rules that apply to the RPD:

- ✓ *Refugee Protection Division Rules, SOR/2002-228*
- ✓ *Oath or Solemn Affirmation of Office Rules (Immigration and Refugee Board), SOR/2002-231*

2.7 Conduct of Members – Remedial and Disciplinary Measures

2.7.1 Grounds for Chairperson’s Request to Minister

- the Chairperson may request the Minister to decide whether any member of the RPD, the RAD, or the IAD should be subject to remedial or disciplinary measures because the member:
 - has become incapacitated from the proper execution of that office by reason of **infirmary**,
 - has been guilty of **misconduct**,
 - has **failed in the proper execution** of that office, or
 - has been placed, by **conduct** or otherwise, in a position that is **incompatible with due execution** of that office *IRPA*, s. 176

2.7.2 Measures Minister May Take

- on receipt of the request, the Minister may take one or more of the following measures:
 - **obtain**, in an informal and expeditious manner, any **information** that the Minister considers necessary;
 - refer the matter for **mediation**, if the Minister is satisfied that the issues in relation to the request may be appropriately resolved by mediation;
 - request of the GIC that a **judicial inquiry** be held under s. 178; or
 - advise the Chairperson that the Minister considers that it is **not necessary to take further measures** under ss. 177 to 185 *IRPA*, s. 177

2.7.3 Judicial Inquiry

- on receipt of a request for an inquiry into the conduct of a member, the GIC may, on the recommendation of the Minister of Justice, appoint a **judge of a superior court** to conduct an inquiry *IRPA*, s. 178
- the powers and procedures at the inquiry are set out in *IRPA*, including provisions regarding summonses, oaths, inquiry staff,

public access, confidentiality, rules of evidence, intervenors, and the right to be heard *IRPA*, ss. 179 to 183

2.7.4 Judge's Report to Minister

- after an inquiry has been completed, the judge must submit a report containing the judge's findings and recommendations, if any, to the Minister *IRPA*, s. 184(1)
- the judge may recommend in the report that the member be suspended without pay or removed from office or that any other disciplinary measure or any remedial measure be taken *IRPA*, s. 184(2)

2.7.5 Measures GIC May Take

- if the Minister receives a report of an inquiry in which the judge makes a recommendation, the Minister shall send the report to the GIC who may, if the GIC considers it appropriate,
 - suspend the member without pay,
 - remove the member from office, or
 - impose any other disciplinary measure or any remedial measure *IRPA*, s. 185
- nothing in *IRPA*, ss. 176 to 185, affects any right or power of the GIC in relation to the removal of a member from office for cause *IRPA*, s. 186

3. Overview of the Refugee Protection Determination Process

3.1 Definitions

3.1.1 “Refugee Protection”

- “*refugee protection*” is conferred on a person when the Board determines the person to be a *Convention refugee* or a *person in need of protection* *IRPA*, s. 95(1)(b)
 - “refugee protection” also is conferred under *IRPA* on a person who, before the coming into force of *IRPA*, was (i) determined in Canada to be a Convention refugee, (ii) was granted landing under the Regulations as a Convention refugee, or (iii) was granted landing under the Regulations as a member of the *Post-determination Refugee Claimants in Canada Class* IRP Reg. 338
- Note: IRPA provides that “refugee protection” may also be conferred through overseas selection and through the pre-removal risk assessment by the Minister.* *IRPA*, ss. 95(1)(a),(c)

3.1.2 “Protected Person” / Rights of Protected Person

- a “*protected person*” is a person on whom “refugee protection” is conferred
- the person is no longer a “protected person” if the person’s claim or application has subsequently been deemed to be rejected under:
 - s. 108(3) (cessation – RPD),
 - s. 109(3) (vacation – RPD), or
 - s. 114(4) (vacation – PRRA) *IRPA*, s. 95(2)
- a protected person:
 - may become a permanent resident, as set out in *IRPA* *IRPA*, s. 21(2)
 - shall be provided with a document indicating their status *IRPA*, s. 31(1)
 - may appeal to the IAD against a decision at an examination or an admissibility hearing to make a removal order against them *IRPA*, s. 63(3)
 - has a right of non-refoulement, as set out in *IRPA* *IRPA*, s. 115

3.1.3 “Convention refugee” / “Person in need of protection”

- the **inclusion clauses** of the “*Convention refugee*” definition are set out in *IRPA*, s. 96, including
 - the **five Convention grounds** (race, religion, nationality,

- membership in a particular social group or political opinion),
and
- the requirement to establish a claim against **each country of the person's nationality**, or, if the person is stateless, against the country of **former habitual residence** *IRPA*, s. 96
- 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**, as described *IRPA*, s. 97(1)
- a person in Canada who is a *member of a class of persons prescribed by the regulations* as being in need of protection is **also** a “*person in need of protection*” *IRPA*, s. 97(2)
- **exclusion clauses:** a person referred to in section E or F of Article 1 of the Refugee Convention is not a *Convention refugee* or a *person in need of protection* *IRPA*, s. 98
- “*Refugee Convention*” means the *United Nations Convention Relating to the Status of Refugees*, signed at Geneva on July 28, 1951, and the Protocol to that Convention, signed at New York on January 31, 1967 *IRPA*, s. 2(1)
 - **Sections E and F of Article 1** of the Refugee Convention are set out in the schedule *IRPA*, Schedule
 - “*Convention Against Torture*” means the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, signed at New York on December 10, 1984 *IRPA*, s. 2(1)
 - Article 1 of the *Convention Against Torture* is set out in the schedule *IRPA*, Schedule
- **cessation clauses:** a claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the five circumstances described, including that “the reasons for which the person sought refugee protection have ceased to exist” *IRPA*, s. 108 (1)
- on application by the Minister, the RPD may determine that

refugee protection has ceased for any of the reasons described in s. 108(1) *IRPA*, s. 108(2)

3.2 Key Provisions in the Refugee Protection Determination Process

3.2.1 Eligibility and Referral

- a **claim** for refugee protection made by a person inside Canada
 - must be made to an officer, and
 - may not be made by a person who is subject to a removal order *IRPA*, s. 99(3)
- an officer shall, **within three working days** after receipt of a claim referred to in s. 99(3), determine whether the claim is **eligible** to be referred to the RPD and, if it is eligible, shall refer the claim in accordance with the rules of the Board *IRPA*, s. 100(1)
IRP Reg. 159
RPD Rule 3
- the RPD may not consider a claim until it is **referred** by the officer
 - if the claim is not referred within the three-day period referred to in s. 99(1), it is *deemed to be referred*, unless there is a suspension or it is determined to be ineligible *IRPA*, s. 100(3)
- *IRPA* sets out six categories of ineligibility for a claimant to have a claim referred to the RPD *IRPA*, s. 101(1)

3.2.2 Process at the RPD

- the **RPD** must hold a **hearing**, *IRPA*, s. 170(b)
 - unless the RPD accepts the claim without a hearing *IRPA*, s. 170(f)
- the RPD:
 - shall **accept** a claim for refugee protection if it determines that the claimant is a *Convention refugee* or *person in need of protection*, and
 - shall otherwise **reject** the claim *IRPA*, s. 107(1)
- on application by the Minister, the RPD may determine that **refugee protection has ceased** for any of the reasons described in s. 108(1)
 - if the application is allowed, the claim of the person is deemed to be rejected
 - cessation (*IRPA*, s. 108(1)(e)) does not apply to a person who establishes that there are **compelling reasons** arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment *IRPA*, s. 108
- the RPD may, on application by the Minister, **vacate** a decision to

allow a claim for refugee protection, if it finds that the decision was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter *IRPA*, s. 109

3.2.3 Process at the RAD

NOTE: IRPA, ss. 110 and 111, and other provisions regarding the RAD, are not yet in force.

- a person or the Minister may appeal, on a **question of law, of fact or of mixed law and fact**, to the RAD against a decision of the RPD
 - to allow or reject the person’s claim for refugee protection, or
 - to reject the Minister’s Application to Vacate Refugee Protection or Application to Cease Refugee Protection *IRPA*, s. 110(1)
- the RAD proceeds **without a hearing**, on the basis of the record at the RPD *IRPA*, s. 110(3)
- the RAD makes one of the following decisions:
 - (a) **confirm** the determination of the RPD;
 - (b) **set aside** the determination and substitute a determination that, in its opinion, should have been made; or
 - (c) refer the matter to the **RPD for re-determination**, giving the directions to the RPD that it considers appropriate *IRPA*, s. 111(1)

3.2.4 Judicial Review – Federal Court

- an application for judicial review in the **Federal Court–Trial Division** requires leave of the Court *IRPA*, s. 72(1)
- an appeal to the **Federal Court of Appeal** from a decision of the Trial Division may be made only if, in rendering judgment, the Trial Division certifies that a serious question of general importance is involved and states the question *IRPA*, s. 74(d)

4. Making a Claim for Refugee Protection

4.1 Claims Inside and Outside Canada

- a claim for refugee protection may be made *in Canada* or *outside Canada* *IRPA*, s. 99(1)

4.1.1 Claims Outside Canada

- a claim for refugee protection made *outside* Canada
 - is made by making an application for a visa as a Convention refugee or a person in similar circumstances, and
 - is governed by Part 1 of the Act (“Immigration to Canada”) *IRPA*, s. 99(2)

Note: The IRB does not determine claims made outside Canada.

4.1.2 Claims Inside Canada

- a claim for refugee protection made *inside* Canada
 - must be made to an officer,
 - may not be made by a person who is subject to a removal order, and
 - is governed by Part 2 of *IRPA* (“Refugee Protection”) *IRPA*, s. 99(3)

- an application to become a permanent resident made by a protected person is governed by Part 1 of *IRPA*: (“Immigration to Canada”) *IRPA*, s. 99(4)

Note: A person whose application for protection has been finally determined by the IRB to be a Convention refugee or to be a person in need of protection becomes a permanent resident if the officer is satisfied that they have made their application in accordance with the regulations, and are not inadmissible on certain grounds, etc. *IRPA*, s. 21(2)
IRP Regs. 175 to 178

4.2 Eligibility to be Referred to the RPD

4.2.1 Officer Determines Eligibility / Deemed Referral

- an officer shall, **within three working days** after receipt of a claim referred to in s. 99(3), determine whether the claim is eligible to be referred to the RPD *IRPA*, s. 100(1)
- the Regulations explain **how to calculate “three working days”**:

- a working day does not include Saturdays and holidays
- a day that is not a working day is not included in the calculation of the three-day period; and
- the three-day period begins from the day on which the claim is received

IRP Reg. 159

Note: the Interpretation Act, s. 35(1), provides that in every enactment, “holiday” means any of the following days, namely, Sunday, New Year’s Day, Good Friday, Easter Monday, Christmas Day, Victoria Day, Canada Day, Labour Day, Remembrance Day, Thanksgiving Day (or any of the other days described in that section, such as a day that is proclaimed in the province as a public holiday).

- if the claim is eligible, the officer shall refer the claim to the RPD in accordance with the rules of the Board IRPA, s. 100(1)
RPD Rule 3
Schedule 2
- if the claim is not referred within the three-day period referred to in s. 100(1), it is **deemed to be referred**, unless there is a suspension or it is determined to be ineligible IRPA, s. 100(3)

4.2.2 Duty of Claimants

- the **burden** of proving that a claim is eligible to be referred to the RPD rests on the claimant IRPA, s. 100(4)
- claimants must **answer truthfully** all questions put to them IRPA, s. 100(4)
- if the claim is referred to the RPD, the claimant **must produce all documents and information** as required by the rules of the Board IRPA, s. 100(4)
RPD Rules 5, 6

4.2.3 Suspension of Eligibility Determination

- the officer shall suspend consideration of the eligibility of the person’s claim if
 - an admissibility hearing is pending regarding grounds of *security, violating human or international rights, serious criminality or organized criminality*; or
 - the officer considers it necessary *to wait for a decision of a court* with respect to an offence under an Act of Parliament that is punishable by a maximum term of imprisonment of at least 10 years IRPA, s. 100(2)

4.2.4 Ineligibility Criteria

- a claim is ineligible to be referred to the RPD if:
 - refugee protection has been **conferred** under this Act
 - a claim for refugee protection has been **rejected** by the Board
 - a prior claim was determined to be **ineligible, withdrawn, or abandoned**
 - the claimant has been **recognized as a Convention refugee by another country** and can be sent or returned to that country
 - the claimant came directly or indirectly to Canada from a country designated by the regulations as a “**safe third country**”, other than a country of their nationality or former habitual residence
 - the claimant has been **determined to be inadmissible** on grounds of security, violating human or international rights, serious criminality or organized criminality, as described *IRPA*, ss. 101(1)(a) to (f)

NOTE: The ineligibility criteria are described in more detail in the subdivisions of this Legislative Guide that follow.

4.2.4.1 Prior Acceptance under this Act

- a claim is ineligible to be referred to the RPD if refugee protection has been conferred under this Act *IRPA*, s. 101(1)(a)
 - “refugee protection” is conferred on a person when the Board determines the person to be a Convention refugee or a person in need of protection, or in the other circumstances described in s. 95(1) *IRPA*, s. 95(1)
 - “refugee protection” also is conferred under *IRPA* on a person who, before the coming into force of *IRPA*, was (i) determined in Canada to be a Convention refugee, (ii) was granted landing under the Regulations as a Convention refugee, or (iii) was granted landing under the Regulations as a member of the *Post-determination Refugee Claimants in Canada Class* IRP Reg. 338

Note: A person who has refugee protection is not eligible to have a determination by the RPD, because the person already has ongoing protected status. The matter would come before the RPD, however, if the Minister brought an Application to Cease or to Vacate Refugee Protection.

4.2.4.2 Prior Rejection by the Board

- a claim is ineligible to be referred to the RPD if a claim for refugee protection has been rejected by the Board *IRPA*, s. 101(1)(b)
 - a determination made in Canada before the coming into force of *IRPA* that a person is not a Convention refugee is deemed to be a claim for refugee protection rejected by the Board IRP Reg. 339

Note: There are no “repeat claims” at the RPD, regardless of whether the earlier claim was dealt with at the RPD or at the CRDD; the repeat claim may be determined by the Minister under the PRRA.

IRPA, s. 112

4.2.4.3 Prior Ineligibility / Withdrawal / Abandonment

- a claim is ineligible to be referred to the RPD if a prior claim was determined
 - ✓ to be **ineligible** to be referred to the RPD,
 - ✓ to have been **withdrawn**, or
 - ✓ to have been **abandoned**
- a prior determination of ineligibility under the former *Immigration Act* is deemed to be a determination of ineligibility to be referred to the RPD
- a withdrawal or an abandonment under the former *Immigration Act* is deemed to be determination of ineligibility to be referred to the RPD

IRPA, s. 101(1)(c)

IRP Reg. 340

IRP Reg. 341

Note: There are no “repeat claims” at the RPD, regardless of whether the earlier claim was dealt with at the RPD or at the CRDD; repeat claims may be determined by the Minister under the PRRA.

IRPA, s. 112

4.2.4.4 Prior Acceptance in Another Country

- a claim is ineligible to be referred to the RPD if the claimant has been recognized as a Convention refugee by another country and can be sent or returned to that country

IRPA, s. 101(1)(d)

Note: This provision applies only to “Convention refugee” status, not to any other form of protection or status.

4.2.4.5 “Safe Third Country”

- a claim is ineligible to be referred to the RPD if the claimant came directly or indirectly to Canada from a country designated by the regulations, other than a country of their nationality or former habitual residence
 - the regulations may govern matters relating to the application of ss. 100 and 101, may, for the purposes of this Act, define the terms used in those sections and, for the purpose of sharing responsibility with governments of foreign states for the consideration of refugee claims, may include provisions
 - (a) designating countries that comply with Article 33 of the *Refugee Convention* and Article 3 of the *Convention Against Torture*;

IRPA, s. 101(1)(e)

- (b) making a list of those countries and amending it as necessary; and
- (c) respecting the circumstances and criteria for the application of s. 101(1)(e)

IRPA, s. 102(1)

Note: A claimant cannot be found ineligible based on the “safe third country” provision unless a regulation has been made to designate such a country. No designations as a “safe third country” have been included in the IRP Regulations.

4.2.4.6 Security Risks / Human Rights Violators/ Criminals

- a claim is ineligible to be referred to the RPD if the claimant has been determined to be **inadmissible on grounds of**
 - **security** (IRPA, s. 34)
 - **violating human or international rights**, (IRPA, s. 35) except for persons who are inadmissible solely on the grounds of s. 35(1)(c) (international sanctions)
 - **serious criminality** (IRPA, s. 36, but see below), or
 - **organized criminality**, (IRPA, s. 37)
- a claim is ineligible by reason of *serious criminality* if
 - ✓ in the case of a conviction **in Canada**, the conviction is for an offence punishable by a **maximum term of imprisonment of at least 10 years and** for which a sentence of **at least 2 years was imposed**; or
 - ✓ in the case of a conviction **outside Canada**, the **Minister is of the opinion** that the person is a **danger to the public** in Canada and the conviction is for an offence that, **if committed in Canada**, would constitute an offence **punishable by a maximum term** of imprisonment of **at least 10 years**

IRPA, s. 101(1)(f)

IRPA, s. 101(2)

4.2.5 Authority for Regulations on Eligibility

- the regulations may govern eligibility determinations under ss. 100 and 101, may define terms and may include authority to make a list of designated countries that comply with Article 33 of the *Refugee Convention* and Article 3 of the *Convention Against Torture*, etc

IRPA, s. 102

Note: IRP Reg. 159 deals with calculation of the three-day period in ss. 101(1) and (3); other regulations define the terms in the eligibility provisions to include activities under the former Immigration Act (IRP Reg. 338 and following). No regulations have been made on “safe third country” at this point.

4.3 Referral to the RPD – Duty of Officer

- an officer must provide a PIF to the claimant:
 - as soon as a claim for refugee protection is referred to the RPD, or
 - as soon as possible after it is deemed to be referred

RPD Rule 3(1)

- after providing the form, the officer must without delay provide to the RPD
 - a written statement of how and when the **PIF was provided** to the claimant;
 - **the information required by Schedule 2** of the RPD Rules; and
 - **a copy of any identity or travel documents** of the claimant and of any other relevant documents that are in the possession of the officer

RPD Rule 3(2)(a)
RPD Rule 3(2)(b),
Schedule 2
RPD Rule 3(2)(c)

- on the request in writing of the RPD, the Minister must without delay provide to the RPD the **original of any document** mentioned in RPD Rule 3(2)(c) that is in the Minister’s possession

RPD Rule 36(2)

4.4 Suspension or Termination of Proceedings at the RPD

4.4.1 Notice to Suspend Consideration of Claim

- proceedings of the RPD and of the RAD are suspended on notice by an officer that
 - an **ID admissibility hearing is pending** regarding grounds of security, violating human or international rights, serious criminality or organized criminality; or
 - the officer considers it **necessary to wait for a decision of a court** with respect to an offence under an Act of Parliament that is punishable by a maximum term of imprisonment of at least 10 years

IRPA, s. 103(1)

- on notice by an officer that the suspended claim was determined to be eligible, proceedings of the RPD and of the RAD continue

IRPA, s. 103(2)

4.4.2 Notice of Ineligible Claim

- an officer may, with respect to a claim that is *before* the RPD, give notice that an officer has determined that
 - the claim is **ineligible under ss. 101(1)(a) to (f)**
 - the claim was referred as a result of **misrepresentation** and was not otherwise eligible to be referred to the RPD

IRPA,
ss. 104(1)(a),(b)
IRPA, s. 104(1)(c)

- an officer may, with respect to a claim that is before or has been determined by the RPD or the RAD, give notice that an officer has determined that
 - the claim is **not the first claim** that was received by an officer in respect of the claimant *IRPA*, s. 104(1)(d)
- a notice of ineligibility, if based on ineligibility under *IRPA*, ss. 101(1)(a) to (f), or on **misrepresentation, terminates pending proceedings** in the RPD respecting the claim *IRPA*, s. 104(2)(a)
- a notice of ineligibility, if based on the fact the claim is **not the first claim** that was received by an officer in respect of the claimant, **nullifies any decision** of the RPD or RAD respecting a claim other than the first claim *IRPA*, s. 104(2)(b)

4.4.3 Extradition Procedure

- **suspension for proceedings under the *Extradition Act***: the RPD and the RAD shall not commence, or shall suspend, consideration of any matter concerning a person
 - against whom an authority to proceed has been issued under section 15 of the *Extradition Act*,
 - with respect to an offence under Canadian law that is punishable under an Act of Parliament by a maximum term of imprisonment of at least 10 years,
 - until a final decision under the *Extradition Act* with respect to the discharge or surrender of the person has been made *IRPA*, s. 105(1)
- **continuation if discharge under *Extradition Act***: if the person is finally discharged under the *Extradition Act*, the proceedings of the RPD or the RAD may be commenced or continued as though there had not been any proceedings under the *Extradition Act* *IRPA*, s. 105(2)
- **deemed exclusion by RPD**: if the person is ordered surrendered by the Minister of Justice under the *Extradition Act* and the offence for which the person was committed by the judge under section 29 of the *Extradition Act* is punishable under an Act of Parliament by a maximum term of imprisonment of at least 10 years, the **order of surrender is deemed to be a rejection of a claim** for refugee protection based on **paragraph (b) of Section F of Article 1 of the Refugee Convention** *IRPA*, s. 105(3)

- the “deemed rejection” referred to in s. 105(3) may not be appealed, and is not subject to judicial review except to the extent that a judicial review of the Order of Surrender is provided for under the *Extradition Act* *IRPA*, s. 105(4)

- **limitation on making a claim:** if the person has not made a claim for refugee protection before the **Order of Surrender** referred to in s. 105(3), the person may not do so before the surrender is carried out *IRPA*, s. 105(5)

5. Refugee Protection Division

5.1 General RPD Provisions – IRPA

5.1.1 Questions of Law / Fact / Jurisdiction

- the RPD has, in respect of proceedings brought before it under this Act, sole and exclusion jurisdiction to hear and determine all *questions of law and fact*, including *questions of jurisdiction* IRPA, s. 162(1)

5.1.2 Informal / Quick / Fair

- the RPD proceeds as informally and quickly as the circumstances and the considerations of **fairness and natural justice** permit IRPA, s. 162(2)

5.1.3 Single Member / Three Member Panels

- RPD matters shall be conducted by a *single member*, unless the Chairperson is of the opinion that a panel of *three members* should be constituted IRPA, s. 163

5.1.4 Physical Presence or Live Telecommunication

- where a hearing is held by the RPD, it may, *in the RPD's discretion*, be conducted
 - **in the presence of the person** who is the subject of the proceedings, **or**
 - **by a means of live telecommunication** with the person who is the subject of the proceedings IRPA, s. 164

Note: In any proceeding before it, the RPD must hold a hearing, unless the RPD allows a claim for refugee protection without a hearing.

IRPA, s. 170(b),(f)

5.1.5 Powers

5.1.5.1 Inquiries Act, Part I

- the RPD and each member of the RPD have the powers of a commissioner appointed under Part I of the *Inquiries Act* IRPA, s. 165

Note: Commissioners appointed under Part I of the Inquiries Act have the power of summoning witnesses and requiring the witnesses to give evidence orally or in writing, under oath or solemn affirmation, and to produce relevant documents.

summonses: see RPD Rules 39 to 41

5.1.5.2 Do Things Necessary to Provide a Full and Proper Hearing

- the RPD and each member of the RPD may do any other thing they consider necessary to provide a full and proper hearing *IRPA*, s. 165

Note: Also see RPD Rule 68: “In the absence of a provision in these Rules dealing with a matter raised during the proceedings, the Division may do whatever is necessary to deal with the matter.”.

5.2 Proceedings in Private / in Public

5.2.1 Proceedings in Private

- subject to the requirements in s. 166(d), the following RPD proceedings must be held *in private*:
 - proceedings concerning a claimant of refugee protection
 - proceedings concerning cessation and vacation applications *IRPA*, s. 166(c)

5.2.2 Proceedings in Public

- on application or on its own initiative, the RPD may
 - conduct a proceeding in public, or
 - take any other measure that it considers necessary to ensure the appropriate access to the proceedings,
 if the RPD considers it appropriate to do so, after having considered all available alternate measures and the following factors:
 - (i) a serious possibility that the **life, liberty or security of a person will be endangered** if the proceeding is held in public,
 - (ii) a real and **substantial risk to the fairness** of the proceeding such that the need to prevent disclosure outweighs the societal interest that the proceeding be conducted in public, or
 - (iii) a real and substantial risk that matters involving **public security** will be disclosed *IRPA*, ss. 166(b),(d)

5.2.3 Application for Public Proceeding

- a person who makes an application to the RPD to have a proceeding conducted in public must apply in writing and follow RPD Rule 51 RPD Rule 51(1)

- in the application the person must
 - state what decision the person wants the RPD to make;
 - give reasons why the RPD should make that decision; and
 - include any evidence that the person wants the RPD to consider in deciding the application
 RPD Rule 51(2)
- the person must provide the original application and two copies to the RPD
 - the RPD will provide a copy of the application to the parties
 RPD Rule 51(3)
- a document provided under this Rule must be received by the RPD **no later than 20 days** before the hearing
 RPD Rule 51(4)

5.2.4 Role of UNHCR

- a representative of the UNHCR is entitled to observe RPD proceedings concerning a protected person or a person who has made a claim to refugee protection
 IRPA, s. 166(e)

Notes:

(1) *The UNHCR is also entitled to observe proceedings in the other Divisions of the Board concerning a protected person or a person who has made a claim to refugee protection.*
IRPA, ss. 166(e)

(2) *Despite IRPA, s. 166(e), the representative of the UNHCR may not observe any part of the proceedings that deals with information protected under IRPA, s. 86(1), or with information in respect of which an application has been made and not rejected under IRPA, s. 86(1) (i.e., Minister's application for non-disclosure of security or criminal intelligence information at the ID or IAD).*
IRPA, ss. 166(f)

(3) *The RAD may accept written submissions from the UNHCR..*
IRPA, s. 110(3)

5.3 RPD Hearings

5.3.1 Inquire into any Matter

- the RPD may inquire into any matter that it considers relevant to establishing whether a claim is well-founded
 IRPA, ss. 170(a)

Note: *The Chairperson's "Instructions" continue to apply to the work of Members and RPOs:*

- *Instructions for the Acquisition and Disclosure of Information for Proceedings in the Refugee Division*
CRDD Instructions:
96-01
- *Instructions Governing Extra-Hearing Communication Between Members of the Refugee Division and Refugee Claim Officers and Between Members of the Refugee Division and Other Employees of the Board*
CRDD Instructions:
96-02

5.3.2 Must Hold a Hearing / Physical Presence or Live Telecommunication

- the RPD *must hold a hearing*, except that it may allow a claim for refugee protection without a hearing at the Expedited Hearing Process IRPA, ss. 170(b), (f)
 - an RPD hearing may, in the discretion of the RPD, be conducted *in the presence of*, or by a means of *live telecommunication* with, the person who is the subject of the proceedings IRPA, s. 164

5.3.3 Notice of Proceeding / Scheduling Conference

- the RPD must notify the person who is the subject of the proceeding and the Minister of the hearing IRPA, s. 170(c)
- the RPD may require a party to participate in a **scheduling conference** or otherwise give information to help the RPD fix a date for a proceeding RPD Rule 21
- the RPD must notify a party **in writing** of the **date, time** and **location** of a proceeding RPD Rule 22 & Commentary

5.3.4 RPD Provides PIF and other Documents to Minister

- the RPD must provide the Minister, on request, with the claimant's PIF and any other information that the claimant produced under the RPD Rules IRPA, s. 170(d)

Note: Also, the RPD is required to give notice to the Minister when the RPD has relevant information on possible exclusion, inadmissibility, and ineligibility, in the circumstances set out in the RPD Rules.

RPD Rules 23, 24

5.3.5 Opportunity to Participate

- the RPD must give the **person** and **the Minister** a reasonable opportunity
 - to present evidence,
 - question witnesses, and
 - make representationsIRPA, s. 170(e)

Note: The Minister is required to give notice of the Minister's intention to intervene, as set out in the RPD Rules.

RPD Rule 25

5.3.6 Oral Representations at End of Hearing

- **representations** made by a party or an RPO must be made **orally** at the end of a hearing **unless the RPD orders otherwise** RPD Rule 60

5.3.7 Rules of Evidence

- the RPD is not bound by any legal or technical rules of evidence IRPA, s. 170(g)

5.3.8 Credibility / Claimant without Identification

- the RPD may receive and base a decision on evidence considered credible or trustworthy in the circumstances IRPA, s. 170(h)
- the RPD *must* take into account, with respect to the credibility of a claimant,
 - whether the claimant possesses acceptable documentation establishing identity, and
 - if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation IRPA, s. 106
- the claimant must provide acceptable documents establishing identity and other elements of the claim
 - a claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them RPD Rule 7

5.3.9 Judicial Notice / Specialized Knowledge

- the RPD may take notice of
 - any facts that may be **judicially noticed**,
 - any other **generally recognized facts** and
 - any information or opinion that is within its **specialized knowledge** IRPA, s. 170(i)
- **before using** any information or opinion that is within its **specialized knowledge, the RPD must notify the claimant or protected person, and the Minister** if the Minister’s counsel is present at the hearing, and give them a chance to
 - make representations on the reliability and use of the information or opinion; and
 - give evidence in support of their representations RPD Rule 18

5.4 General Provisions – RPD Rules

5.4.1 Definitions

- the following definitions apply in the RPD Rules: RPD Rule 1
 - **“contact information”** means a person’s name, postal address and telephone number, and the person's fax number and

electronic mail address, if any

- **“party”** means:
 - ✓ **in a claim for refugee protection**, the claimant and, if the Minister intervenes in the claim, the Minister; and
 - ✓ **in an Application** to Vacate Refugee Protection or an Application to Cease Refugee Protection, the protected person and the Minister
- **“proceeding”** includes a conference, application, hearing and interview

5.4.2 Where There is No Applicable Rule

- in the absence of a provision in the RPD Rules dealing with a matter raised during the proceedings, the RPD may do whatever is necessary to deal with the matter RPD Rule 68 (also see *IRPA*, s. 162(2))

5.4.3 Acting on the RPD’s Own Initiative

- the RPD may act on its own initiative, without a party having to make an application or request to the RPD RPD Rule 69(a)

5.4.4 Changing a Requirement of the Rules

- the RPD may change a requirement of an RPD Rule RPD Rule 69(b)

5.4.5 Excusing Non-compliance with the Rules

- the RPD may excuse a person from a requirement of an RPD Rule RPD Rule 69(c)

5.4.6 Changing Time Limits

- the RPD may extend or shorten a time limit, before or after the time limit has passed RPD Rule 69(d)

5.4.7 Failure to Follow a Rule / Proceedings Not Invalid

- unless proceedings are declared invalid by the RPD, a failure to follow any requirement of the RPD Rules does not make the proceedings invalid RPD Rule 70

5.4.8 Communicating with the RPD

- “registry office” means a business office of the RPD RPD Rule 1
- all communication with the RPD must be directed to the registry

office specified by the RPD RPD Rule 2

5.4.9 Contact Information

- “**contact information**” means
 - ✓ a person’s name, postal address and telephone number, and
 - ✓ the person’s fax number and electronic mail address, if any
 RPD Rule 1

5.4.9.1 Contact Information – Claimant and Counsel

- the claimant must provide the **claimant’s contact information** in writing to the RPD and the Minister RPD Rule 4(1)
- the claimant’s contact information must be received **no later than 10 days** after the claimant received the PIF RPD Rule 4(2)
- the **PIF** also requires the claimant to provide the contact information of the claimant and of any counsel for the claimant RPD Rule 5
Schedule 2, item 39
- if the claimant’s contact information **changes**, the claimant must without delay provide the changes in writing to the RPD and the Minister RPD Rule 4(3)
- on obtaining counsel, a claimant must provide the **counsel’s contact information** in writing to the RPD and the Minister
 - if that information **changes**, the claimant must without delay provide the changes in writing to the RPD and the Minister RPD Rule 4(4)

*Note: A claim may be declared **abandoned**, without giving to the claimant a chance to explain why the claim should not be declared abandoned, if (a) the RPD has not received the claimant’s contact information and PIF within 28 days after the claimant received the PIF, and (b) the Minister and the claimant’s counsel, if any, do not have the claimant’s contact information.* RPD Rule 58(1)

5.4.9.2 Other Rules Requiring Contact Information

- other RPD Rules that require contact information to be provided are:
 - counsel must provide contact information of a person who counsel believes meets the requirements to be designated as representative RPD Rule 15(1)
 - in a notice to intervene in a claim, the Minister must give the Minister’s counsel’s contact information RPD Rule 25(2)
 - a party who wants to call a witness must provide the witness’s contact information RPD Rule 38(1)(a)
 - in the claimant’s application to reinstate claim, the claimant must provide the claimant’s contact information RPD Rule 53(2)

- in the claimant's application to reopen a claim, the claimant must provide the claimant's contact information RPD Rule 55(3)
- in an Application to Vacate or Cease Refugee Protection, the Minister must include contact information of the protected person and their counsel, if any RPD Rule 57(2)(a)

5.5 Commentaries to the RPD Rules

– the RPD has issued **Commentaries** on the following RPD Rules:

- ✓ Personal Information Form RPD RULES 5 and 6
- ✓ Documents Establishing Identity and Other Elements of the Claim RPD RULE 7
- ✓ Designated Representatives RPD RULE 15
- ✓ Disclosure of Information from Another Claim RPD RULE 17
- ✓ Allowing a Claim without a Hearing (Expedited Process) RPD RULE 19
- ✓ Notice to Appear RPD RULE 22
- ✓ Disclosure of Documents and Additional Documents after the Hearing RPD RULES 29, 30 and 37
- ✓ Original Documents RPD RULE 36
- ✓ Changing the Date or Time of a Proceeding (Postponements and Adjournments) RPD RULE 48

Note: these Commentaries are available to the IRB and to the public through the IRB web site. The Commentaries are linked to the related RPD Rule.

5.6 Counsel

5.6.1 Right to Counsel

- both a person who is the subject of RPD proceedings and the Minister may, *at their own expense*, be represented by a barrister or solicitor or other counsel IRPA, s. 167(1)

5.6.2 Contact Information for Counsel

- in the **PIF**, the claimant must provide contact information of any counsel for the claimant RPD Rule 5, Schedule 1, item 39
- a claimant who is represented by counsel must, **on obtaining counsel**, provide the counsel's contact information in writing to the RPD and the Minister
 - if this information **changes**, the claimant must without delay provide the changes in writing to the RPD and the Minister RPD Rule 4(4)

- if an **Application to Vacate Refugee Protection** or an **Application to Cease Refugee Protection** is made, the protected person must without delay notify the RPD and the Minister in writing of
 - any change in their contact information; and
 - the contact information of their counsel, if represented by counsel, and any changes to that information

RPD Rule 8

5.6.3 Counsel of Record

- counsel for a claimant or protected person becomes “counsel of record” as soon as
 - counsel **agrees to a date** for a proceeding, or
 - **becomes counsel after a date for a proceeding has been fixed**

RPD Rule 9

- **to be removed as counsel of record**, counsel must make a request in writing to the RPD and provide a copy of the request to the person represented and to the Minister if the Minister is a party
 - if **two working days or less** remain before the date of the proceeding, counsel **must make the request orally** at the proceeding

RPD Rule 10

- **to remove counsel as counsel of record**, the claimant or protected person must provide written notice to the RPD, to counsel, and to the Minister, if the Minister is a party, that counsel is no longer counsel for the claimant or protected person

RPD Rule 11(1)

- counsel is no longer counsel of record when the RPD receives the notice

RPD Rule 11(2)

5.7 Applications under the RPD Rules

5.7.1 General Procedure – RPD Rule 44

- unless the RPD Rules provide otherwise:
 - a party who wants the RPD to make a decision on any matter in a proceeding, including the procedure to be followed, must make an **application under RPD Rule 44**;
 - a party who wants to respond to an application must **respond under RPD Rule 45**; and
 - a party who wants to reply to a response must **reply under RPD Rule 46**

RPD Rule 43

5.7.1.1 Making an Application – RPD Rule 44

- unless the RPD Rules provide otherwise, an application must be made **in writing** and **without delay**
 - the RPD may allow a party to make an application **orally** at a

- proceeding if the party could not, with reasonable efforts, have made the application in writing before the proceeding RPD Rule 44(1)
- unless the RPD Rules provide otherwise, in a written application the party must:
 - **state what decision** the party wants the RPD to make;
 - **give reasons** why the RPD should make that decision; and
 - if there is another party and the views of that party are known, **state whether the other party agrees to the application** RPD Rule 44(2)
 - unless the RPD Rules provide otherwise, any **evidence** that the party wants the RPD to consider with an application in writing must be given in an **affidavit** or **statutory declaration** that accompanies the application RPD Rule 44(3)
 - a party who makes a written application must provide
 - **to any other party**, a copy of the application and any affidavit or statutory declaration; and
 - **to the RPD**, the original application and any affidavit or statutory declaration, together with a written statement of how and when the party provided the copy to another party, if any RPD Rule 44(4)

5.7.1.2 Responding to a Written Application – RPD Rule 45

- a response to a written application must be **in writing**; in a response, the party must
 - state the **decision** the party wants the RPD to make; and
 - give **reasons** why the RPD should make that decision RPD Rule 45(1)
- any evidence that the party wants the RPD to consider with the written response must be given in an **affidavit** or **statutory declaration** that accompanies the response
 - unless the RPD requires it, an affidavit or statutory declaration is not required if the party who made the application was not required to provide an affidavit or statutory declaration RPD Rule 45(2)
- a party who responds to a written application must provide
 - **to the other party**, a copy of the response and any affidavit or statutory declaration; and
 - **to the RPD**, the original response and any affidavit or statutory declaration, together with a written statement of how and when the party provided the copy to the other party RPD Rule 45(3)
- documents provided under RPD Rule 45 must be received by their recipients **no later than seven days** after the party received the copy of the application RPD Rule 45(4)

5.7.1.3 Replying to the Written Response – RPD Rule 46

- a reply to a written response must be **in writing** RPD Rule 46(1)
- any evidence that the party wants the RPD to consider with the written reply must be given in an **affidavit** or **statutory declaration together with the reply**
 - unless the RPD requires it, an affidavit or statutory declaration is not required if the party was not required to give evidence in an affidavit or statutory declaration with the application RPD Rule 46(2)
- a party who replies to a written response must provide
 - **to the other party**, a copy of the reply and any affidavit or statutory declaration; and
 - **to the RPD**, the original reply and any affidavit or statutory declaration, together with a written statement of how and when the party provided the copy to the other party. RPD Rule 46(3)
- documents provided under RPD Rule 46 must be received by their recipients **no later than five days** after the party received the copy of the response RPD Rule 46(4)

5.7.2 Applications based on RPD Rule 44

- RPD Rule 44, the “applications” rule, applies to the following types of applications:
 - to provide a document by other means, or not at all RPD Rule 34(2)
 - to provide a document to the RPD, after the hearing but before a decision is made RPD Rule 37
 - to cancel a summons RPD Rule 40
 - to change the location of a proceeding RPD Rule 47
 - to change the date or time of a proceeding RPD Rule 48
 - to join or to separate claims or applications RPD Rule 50
 - to withdraw a claim or an Application to Vacate Refugee Protection or an Application to Cease Refugee Protection, where evidence has been presented RPD Rule 52
 - to reinstate a claim that has been withdrawn RPD Rule 53
 - to reopen a claim for refugee protection that has already been decided or abandoned RPD Rule 55
 - to reopen an Application to Vacate or Cease Refugee Protection RPD Rule 56

5.7.3 Application to Change the Date or Time of a Proceeding

- a party may make an application to the RPD to change the date or time of a proceeding RPD Rule 48(1) & Commentary

- the party must **follow Rule 44**, except that the party is **not required** to give evidence in an **affidavit** or statutory declaration RPD Rule 48(2)(a)
- the party must give **at least six dates**, within the period of time specified by the RPD, on which the party is available to start or continue the proceeding RPD Rule 48(2)(b)
- if the party makes an application **two working days or less** before the scheduled date of the proceeding, the **party must appear at the proceeding** and make the application **orally** RPD Rule 48(3)
- in deciding the application the RPD will consider **any relevant factors including**
 - (a) in the case of a date and time that was fixed after the RPD consulted or tried to consult the party, any **exceptional circumstances** for allowing the application;
 - (b) **when** the party made the application;
 - (c) the **time the party has had to prepare** for the proceeding;
 - (d) the **efforts** made by the party to be ready to start or continue the proceeding;
 - (e) in the case of a party who wants more time to **obtain information** in support of the party's arguments, the ability of the Division to proceed in the absence of that information without causing an injustice;
 - (f) whether the party **has counsel**;
 - (g) the knowledge and **experience of any counsel** who represents the party;
 - (h) any **previous delays** and the reasons for them;
 - (i) whether the time and date fixed were **peremptory**;
 - (j) whether allowing the application would **unreasonably delay** the proceedings or likely cause an injustice;
 - (k) the nature and **complexity** of the matter to be heard RPD Rule 48(4)

5.7.4 Application to Change the Location of a Proceeding

- a party may make an application to the RPD to change the location of a proceeding. RPD Rule 47(1)
- the party must **follow RPD Rule 44 but is not required** to give evidence in an **affidavit** or statutory declaration RPD Rule 47(2)
- documents provided under RPD Rule 47 must be received by their recipients **no later than 20 days** before the proceeding RPD Rule 47(3)
- in deciding the application, the RPD must consider **any relevant factors**, including:
 - whether the party is **residing in the location** where the party

- wants the proceeding to be held;
 - whether a change of location would allow the proceeding to be **full and proper**;
 - whether a change of location would likely **delay or slow the proceeding**;
 - how a change of location would **affect the operation of the RPD**; and
 - how a change of location would **affect the parties** RPD Rule 47(4)
- unless a party receives a decision from the RPD allowing the application, the **party must appear for the proceeding** at the location fixed and be ready to start or continue the proceeding RPD Rule 47(5)

5.8 Joinder

- the RPD must join the claim of a claimant to a claim made by the **claimant's spouse or common-law partner, child, parent, brother or sister, grandchild and grandparent** RPD Rule 49(1)
- Applications to Vacate Refugee Protection or Applications to Cease Refugee Protection are joined if the claims of the protected persons were joined RPD Rule 49(2)
- a party may make an application to the RPD to join claims, Applications to Vacate Refugee Protection or Applications to Cease Refugee Protection RPD Rule 50(1)
- a party may make an application in writing to the RPD to separate claims or Applications that are joined RPD Rule 50(2)
- a party who makes an application **must follow RPD Rule 44**, but the party is **not required to give evidence in an affidavit** or statutory declaration; the party must also
 - provide a **copy of the application to any person who will be affected** by a decision of the RPD on the application; and
 - provide the RPD with a written statement of how and when the copy of the application was provided to any affected person, together with proof that the party provided the copy to that person RPD Rule 50(3)
- documents provided under RPD Rule 44 must be received by their recipient **no later than 20 days** before the hearing RPD Rule 50(4)
- in deciding the application, the RPD must consider **any relevant factors**, including
 - whether the claims or Applications involve **similar questions of**

fact or law;

- whether allowing the application would promote the **efficient administration** of the work of the Division; and
- whether allowing the application would likely cause an **injustice** RPD Rule 50(5)

5.9 Disclosure of Personal Information from Other Claims

- subject to RPD Rule 17(4), the RPD may disclose to a claimant personal and other information it wants to use from any other claim if the claims involve **similar questions of fact or if the information is otherwise relevant** to the determination of the claimant’s claim RPD Rule 17(1) & Commentary
- if the personal or other information of another claimant has not been made public, the RPD will make **reasonable efforts to notify this person in writing**:
 - that it intends to disclose the information to a claimant and
 - that the **person may object** to this disclosure RPD Rule 17(2)
- in order to decide whether to object to the disclosure, the person notified may make a written request to the RPD for personal and other information relating to the claimant
 - subject to RPD Rule 17(4), the RPD may disclose only information that is necessary to permit the person to make an informed decision
 - the RPD may impose conditions on the disclosure RPD Rule 17(3)
- the RPD must **not disclose** personal or other information if there is a serious possibility that it will endanger the **life, liberty or security** of a person or is likely to cause an **injustice** RPD Rule 17(4)

Note: The Privacy Act, s. 8(2), provides that “Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed (a) for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose; (b) for any purpose in accordance with any Act of Parliament or any regulation made thereunder that authorizes its disclosure;...”

5.10 Personal Information Form (PIF) / Travel and Identity Documents**5.10.1 Authority to require a PIF**

- if the claim is referred to the RPD, the claimant must produce all documents and information as required by the rules of the Board IRPA, s. 100(4)
- the Chairperson may make rules respecting the information that may be required and the manner in which, and the time within which, it IRPA, s. 161(1)(c)

- must be provided with respect to a proceeding before the Board
- when a claim is referred to the RPD, an officer must provide the claimant with a PIF, and the claimant must complete the PIF and provide it to the RPD RPD Rules 3, 5, 6; Schedules 1 and 2 & Commentary

5.10.2 Claimant's Signature / Interpreter's Statement

- the **claimant must complete the PIF and sign the declaration** on the form which states that
 - the information given by the claimant is complete, true and correct; and
 - the claimant knows that the declaration is of the same force and effect as if made under oath RPD Rule 5(1)
- if the claimant completes the PIF **without an interpreter**, the claimant must also sign the declaration stating that the **claimant can read the language of the form** and understands what information is requested RPD Rule 5(2)
- if the claimant completes the PIF **with an interpreter**, the **interpreter must sign a declaration** that states
 - the interpreter is proficient in the languages or dialects used, and was able to communicate fully with the claimant;
 - the completed form and all attached documents were interpreted to the claimant; and
 - the claimant assured the interpreter that the claimant understood what was interpreted RPD Rule 5(3)

5.10.3 Number of Copies / Time

- the claimant must provide to the RPD the **original and two copies** of the completed PIF by one of the means, other than fax or electronic mail, described in RPD Rule 33 RPD Rule 6(1)
- Note: The other means of providing documents described in RPD Rule 33 are: (a) by hand, (b) by regular mail or registered mail, and (c) by courier or priority post.*
- the completed PIF must be received by the RPD **no later than 28 days** after the claimant received the PIF RPD Rule 6(1)
 - a claimant who cannot, or did not, meet the 28-day time limit may apply for an **extension of time**
 - the claimant must follow **RPD Rule 44**, but is **not required to give evidence in an affidavit** or statutory declaration RPD Rule 6(2)

5.10.4 Copies of Identity and Travel Documents with the PIF

- the claimant must attach to the original and both copies of the PIF:
 - a copy of their identity and travel documents, genuine or not, and
 - a copy of any other relevant documents

RPD Rule 6(3)
- the claimant does not have to attach copies of a document that has been seized by an officer

RPD Rule 6(3)
- if the claimant obtains a **passport, travel document, identity document or any other relevant document after providing the PIF**, the claimant must provide **three copies** of the document to the RPD without delay

RPD Rule 6(5)

5.10.5 Changes to the PIF

- if a claimant wants to change any information given in the PIF, the claimant must
 - provide to the RPD **three copies** of each page of the PIF to which changes have been made, and
 - **sign and date each new page** and underline the change made

RPD Rule 6(4)
- RPD Rule 6(4) does not apply to a change in the choice of language for the proceedings or the language of interpretation

RPD Rule 6(4)

Note: the RPD must receive, no later than 20 days before the proceeding, notice of any changes regarding choice of language or need for an interpreter (see RPD Rules 12(2), 13(2) and 14(2)).

5.10.6 Duty to Provide Acceptable Identity Documents

- the claimant must provide acceptable documents establishing identity and other elements of the claim
 - a claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them

RPD Rule 7 & Commentary
see also
IRPA, s. 106

5.10.7 Minister's Request for the PIF

- if the claim is referred to the RPD, the claimant must produce all documents and information as required by the rules of the Board

IRPA, s. 100(4)
RPD Rules 5, 6, 7
- the RPD, in any proceeding before it, must provide the Minister, on request, with the documents and information referred to in s. 100(4)

IRPA, s. 170(d)

5.11 Duties of the Refugee Protection Officer (RPO)

5.11.1 General

- “refugee protection officer” (RPO) means an employee of the Board who helps the RPD with a proceeding RPD Rule 1

- the duties of RPOs are, as directed by the RPD, to
 - (a) review files to **identify issues** in a claim or other matter;
 - (b) conduct **research**, and collect and provide information;
 - (c) hold **interviews**, prepare **reports** and make **recommendations**;
 - (d) **participate** in hearings and conferences;
 - (e) present **evidence** and call and question **witnesses**;
 - (f) make **representations** to the RPD; and
 - (g) do other thing that is necessary to **ensure a full and proper examination** of a claim or other matter RPD Rule 16

- Notes: (1) Within the context of these duties, the Refugee Protection Officer (RPO) continues to operate under and be governed by Public Service employment regimes.*
- (2) The Chairperson’s “Instructions” continue to apply to the work of Members and RPOs:*
 - *Instructions for the Acquisition and Disclosure of Information for Proceedings in the Refugee Division* CRDD Instructions: 96-01
 - *Instructions Governing Extra-Hearing Communication Between Members of the Refugee Division and Refugee Claim Officers and Between Members of the Refugee Division and Other Employees of the Board* CRDD Instructions: 96-02
- (3), The RPO is not a “party” to the proceedings. “Party” means the claimant or protected person or the Minister (as set out in the RPD Rules).* RPD Rule 1
- (4) Some common activities of an RPO are described in the work of the “Division”, for example, in disclosure of documents under RPD Rule 29(2): “If the Division wants to use a document at a hearing, the Division will provide a copy to each party.”*

- **representations** made by a party or an RPO must be made **orally** at the end of a hearing **unless the RPD orders otherwise** RPD Rule 60

5.11.2 Interview with an RPO – Expedited Process

- before **allowing a claim without a hearing**, the RPD may require the claimant to appear at an **interview with an RPO** who will prepare a report in which the RPO recommends, or does not recommend, that the claim be allowed without a hearing RPD Rule 19(2)

5.12 Acceptance of Claim Without a Hearing (Expedited Process)

5.12.1 Authority for Expedited Process

- the RPD may *allow* a claim for refugee protection *without a hearing*, if the **Minister has not notified the RPD**, within the period set out in the RPD Rules, of the Minister’s intention to intervene IRPA, s. 170(f)
- a claim may be allowed without a hearing only if the Minister has not notified the RPD of the Minister’s intention to intervene
 - **within 15 days** after the Minister receives information about the claim, if the **Minister has requested information**; or
 - **within 28 days** after the referral of the claim, if the **Minister has not requested information** about the claim RPD Rule 19(1)

5.12.2 Procedure at the Expedited Process

- before allowing a claim without a hearing, the RPD may require the claimant to appear at an **interview with an RPO** who will prepare a **report** in which the RPO recommends, or does not recommend, that the claim be allowed without a hearing RPD Rule 19(2) & Commentary
- if the RPO does **not recommend** that the claim be allowed without a hearing, the RPD must provide a copy of the report to the claimant RPD Rule 19(3)
- if the **RPO recommends that the claim be allowed** without a hearing, the **RPD may allow the claim if**
 - there are **no issues** that should be brought to the attention of the **Minister**;
 - the claimant’s **identity** is sufficiently established;
 - there are no serious **credibility** issues; and
 - the information given by the claimant is consistent with information about **conditions in their country of nationality** or, if they have no country of nationality, their country of former habitual residence, and establishes that the claimant is a Convention refugee or a person in need of protection. RPD Rule 19(4)
- if the RPD decides that a hearing of the claim is necessary, it must provide to the claimant a copy of the report in which its decision is recorded RPD Rule 19(5)

5.13 Minister’s Intention to Intervene

5.13.1 Minister’s Authority to Intervene

- at a hearing, the RPD must give the Minister a reasonable

- opportunity to present evidence, question witnesses and make representations *IRPA*, s. 170(e)
- the RPD may allow a claim for refugee protection without a hearing, if the Minister has not notified the RPD, within the period set out in the rules of the Board, of the Minister’s intention to intervene *IRPA*, s. 170(f)

5.13.2 Notice of Intervention

- to intervene in a claim, the Minister must provide:
 - **to the claimant:** a copy of a written notice of the Minister’s intention to intervene; and
 - **to the RPD:** the original of that notice and a written statement of how and when it was provided to the claimant *RPD Rule 25(1)*
- in the notice the Minister must
 - **state how the Minister will intervene** (e.g., in writing, by appearing at the proceedings, or both); and
 - give the **Minister’s counsel’s contact information** *RPD Rule 25(2)*
- if the Minister believes that Articles 1E or 1F of the Refugee Convention (**exclusion clauses**) may apply to the claim, the Minister must also **state** in the notice **the facts and law** on which the Minister relies *RPD Rule 25(3)*
- documents provided under this rule must be received by the RPD and the claimant **no later than 20 days** before the hearing *RPD Rule 25(4)*

5.13.3 Notice to the Minister – Exclusion, Inadmissibility, Ineligibility

- if the RPD believes, **before a hearing begins**, that there is a possibility that Articles 1E or F of the Refugee Convention may apply to the claim, the **RPD must notify the Minister** in writing and provide any relevant information to the Minister *RPD Rule 23(1)*
- if the RPD believes, **at any time during a hearing**, that there is a possibility that Articles 1E or F of the Refugee Convention may apply to the claim, and the **RPD is of the opinion that the Minister’s participation may help** in the full and proper hearing of the claim, the **RPD must notify the Minister** in writing and provide the Minister with any necessary information *RPD Rule 23(2)*
- the RPD must provide to the claimant a copy of any notice and information provided to the Minister *RPD Rule 23(3)*
- the **RPD must without delay notify the Minister** in writing and provide the Minister with any relevant information, if the RPD

believes that

- the claimant may be **inadmissible** on grounds of *security, violating human or international rights, serious criminality or organized criminality*;
- there is an **outstanding charge** against the claimant for an offence under an Act of Parliament that may be punished by a maximum term of imprisonment of at least 10 years; or
- the claimant's claim may be **ineligible** to be referred under *IRPA*, ss. 101 or 104(1)(c) or (d)

RPD Rule 24(1)

- the RPD must provide to the claimant a copy of any notice or information that the RPD provides to the Minister

RPD Rule 24(2)

5.14 Language of Proceedings

5.14.1 Hearing of Claim

- the claimant must choose the English or French language as the language for the proceeding, and must **indicate this choice in the PIF**
- the claimant may **change** the choice of language by notifying the RPD in writing
 - the notice must be received by the RPD **no later than 20 days** before the proceeding

RPD Rule 12(1)

RPD Rule 12(2)

Note: All documents used at a proceeding must be in English or French or accompanied by an English or French translation and the translator's declaration; if the Minister provides a document that is not in the language of the proceeding, the Minister must provide a translation and a translator's declaration.

RPD Rules
28(1), (2)

5.14.2 Application to Vacate or to Cease Refugee Protection

- the **language used by the Minister** in an Application to Vacate Refugee Protection or an Application to Cease Refugee Protection **is the language of the proceedings**
- the **protected person may change the language** of the proceedings by notifying the RPD in writing
 - the notice must be received by the RPD **no later than 20 days** before the proceeding.

RPD Rule 13(1)

RPD Rule 13(2)

5.15 Interpreters

- if the claimant completes the PIF **with an interpreter**, the **interpreter must sign and date the included declaration** that

- states
- the interpreter is proficient in the languages or any dialect used, and was able to communicate fully with the claimant;
 - the completed form and all attached documents were interpreted to the claimant; and
 - the claimant assured the interpreter that the claimant understood what was interpreted
- RPD Rule 5(3)
- if a **claimant needs an interpreter** for the proceedings, the claimant must indicate the language or dialect of the interpreter in the PIF
- RPD Rule 14(1)
- if a claimant wants to change the language or dialect of interpretation chosen on their PIF,
- the claimant must notify the RPD in writing and
 - specify the language or dialect to be interpreted;
 - the notice must be received by the RPD no later than 20 days before the proceeding
- RPD Rule 14(2)
- if a protected person or any party's witness needs an interpreter for a proceeding,
- the party must notify the RPD in writing and
 - specify the language or dialect of the interpreter;
 - the notice must be received by the RPD no later than 20 days before the proceeding
- RPD Rule 14(3)
- the interpreter must take an **oath** or make a solemn affirmation to interpret accurately
- RPD Rule 14(4)

5.16 Designated Representatives

- if a person who is the subject of proceedings is
- **under 18 years** of age, or
 - **unable**, in the opinion of the Division, **to appreciate the nature of the proceedings**,
- the Division shall designate a person to represent the person
- IRPA*, s. 167(2)
- if counsel for a party believes that the RPD should designate a representative for the claimant or protected person because the claimant or protected person is under 18 years of age, or unable to appreciate the nature of the proceedings, **counsel must without delay notify the RPD in writing**
- RPD Rule 15(1) & Commentary
- if counsel is aware of a person in Canada who meets the requirements to be designated as a representative, counsel must provide the person's **contact information** in the notice
- RPD Rule 15(1)

- RPD Rule 15(1) does not apply in the case of a claimant under 18 years of age whose claim is joined with the claim of a person who is 18 years of age or older RPD Rule 15(2)
- to be designated as a representative, a person must
 - be **18 years of age** or older;
 - **understand** the nature of the proceedings;
 - be **willing and able** to act in the best interests of the claimant or protected person; and
 - **not have interests that conflict** with those of the claimant or protected person RPD Rule 15(3)

5.17 Persons in Custody

- the RPD may order a person who holds a claimant or protected person in custody to bring the claimant or protected person to a proceeding at the location specified by the RPD RPD Rule 26

5.18 Documents

5.18.1 Form of Documents Prepared by a Party

- a **document** prepared for use by a party in a proceeding must be **typewritten on one side** of 21.5 cm by 28 cm (**8 1/2” x 11”**) **paper** and the **pages must be numbered** RPD Rule 27(1)
- any **photocopy** provided by a party must be a **clear** copy of the document photocopied and be on **one side of 21.5 cm by 28 cm paper** and the **pages must be numbered** RPD Rule 27(2)
- a party must **number consecutively each document** provided by the party RPD Rule 27(3)
- if more than one document is provided, the party must **provide a list of the documents** and their numbers RPD Rule 27(4)

5.18.2 Language of Documents

- all documents used at a proceeding must
 - be in **English or French** or
 - if in another language, be provided with an **English or French translation** and a translator’s declaration RPD Rule 28(1)
- if the Minister provides a **document** that is **not in the language of the proceeding**, the **Minister must provide a translation** and a translator’s declaration RPD Rule 28(2)

- a **translator’s declaration** must include the translator’s name, the language translated and a statement signed by the translator that the translation is accurate RPD Rule 28(3)

5.18.3 Disclosure of Documents

- if a **party wants to use a document** at a hearing, the party must provide **one copy to any other party** and **two copies to the RPD**, unless these Rules require a different number of copies RPD Rule 29(1) & Commentary
- if the **RPD wants to use a document** at a hearing, the RPD must provide a **copy to each party** RPD Rule 29(2)
- together with the copies provided to the RPD, the party must provide a written **statement of how and when a copy was provided** to any other party RPD Rule 29(3)
- documents provided under this rule must be received by the RPD or a party, as the case may be, no later than
 - **20 days before the hearing**; or
 - **five days before the hearing** if the document is provided to **respond** to another document provided by a party or the RPD RPD Rule 29(4)
- a party who does not provide a document as required by RPD Rule 29 **may not use the document** at the hearing unless allowed by the RPD RPD Rule 30 & Commentary
- in deciding whether to allow the use of such document, the **RPD must consider any relevant factors including**
 - ✓ the document’s **relevance** and **probative** value;
 - ✓ any **new evidence** it brings to the hearing; and
 - ✓ whether the party, with reasonable effort, could have provided the document as required by **RPD Rule 29** RPD Rule 30

5.18.4 Providing a Document (Service and Filing)

- RPD Rules 32 to 35 apply to any document including a notice or request in writing RPD Rule 31
- a document provided **to the RPD** must be provided to the **registry office** specified by the RPD RPD Rule 32(1)
- a document provided **to the Minister** must be provided to the **Minister’s counsel** RPD Rule 32(2)
- a document provided to a **claimant or a protected person** must be

- provided **to the claimant or protected person** or, if the claimant or protected person has counsel, **to their counsel** RPD Rule 32(3)
- a document can be provided in any of the following ways:
 - by **hand**;
 - by **regular mail** or **registered mail**;
 - by **courier** or priority post; or
 - by **fax** if the recipient has a fax number and the document has **no more than 20 pages**, unless the recipient consents to receiving more than 20 pages; and
 - by **electronic mail** if the RPD allows RPD Rule 33
 - if a party is unable to provide a document in a way required by RPD Rule 33, the party may make an **application to the RPD**
 - to be allowed to provide the document in **another way** or
 - to be **excused** from providing the document RPD Rule 34(1)
 - the application must be made under RPD Rule 44 RPD Rule 34(2)
 - the RPD may allow the application if the party has made **reasonable efforts** to provide the document to the other party RPD Rule 34(3)

5.18.5 When a Document is Considered Received

- a document provided to the RPD is considered to be received by the RPD on the day the document is **date stamped by the RPD** RPD Rule 35(1)
- a document provided by **regular mail** to a party is considered to be received by the party seven days after the day it was mailed
 - if the seventh day is a **Saturday, Sunday** or **other statutory holiday**, the document is considered to be received on the **next working day** RPD Rule 35(2)

5.18.6 Original Documents

- **a party** who has provided a copy of a document to the RPD must provide the original document to the RPD:
 - without delay, on the request in writing of the RPD; or
 - if the RPD does not make a request, no later than the beginning of the proceeding at which the document will be used. RPD Rule 36(1) & Commentary
- on the request in writing of the RPD, **the Minister** must without delay provide to the RPD:
 - the original of any document mentioned in RPD Rule 3(2)(c) that is in the Minister's possession RPD Rule 36(2)

Note: RPD Rule 3(2)(c) requires that after providing a PIF to the

claimant, the officer must without delay provide to the RPD “a copy of any identity or travel documents of the claimant and of any other relevant documents that are in the possession of the officer”.

5.18.7 Additional Documents After the Hearing

- a party who wants to provide a document as evidence after a hearing must make an application to the RPD
 - the party must attach a copy of the document to the application
 - the application must be made under **RPD Rule 44** but the party is **not required to give evidence in an affidavit** or statutory declaration

RPD Rule 37(1) & Commentary
RPD Rule 37(2)
- in deciding the application, the RPD must consider **any relevant factors**, including:
 - the document’s **relevance** and **probative** value;
 - any **new evidence** it brings to the proceedings; and
 - whether the party, with reasonable effort, could have provided the document as required by RPD Rule 29

RPD Rule 37(3)

5.19 Witnesses

5.19.1 Providing Witness Information

- if a party wants to call a witness, the party must provide in writing to any other party and the RPD the following witness information:
 - the **witness’s contact** information;
 - the **purpose** and **substance of the witness’s testimony** or, in the case of an expert witness, the **expert’s signed summary** of the testimony to be given;
 - the **time** needed for the witness’s testimony;
 - the party’s **relationship** to the witness;
 - in the case of an expert witness, a description of the **expert’s qualifications**; and
 - whether the party wants the witness to testify by **videoconference or telephone**

RPD Rule 38(1)
- the witness information must be provided to the RPD together with a **written statement of how and when it was provided** to any other party

RPD Rule 38(2)
- a document provided under RPD Rule 38 must be received by its recipient **no later than 20 days before the hearing**

RPD Rule 38(3)
- if a party **does not provide the witness information** as required under this rule, the **witness may not testify** at the hearing unless the RPD allows the witness to testify

RPD Rule 38(4)

5.19.2 Summons to a Witness

- a party who wants the RPD to order a person to testify at a hearing must make a request to the RPD for a summons, either orally or in writing RPD Rule 39(1)
- in deciding whether to issue a summons the RPD will consider **any relevant factors, including:**
 - the **necessity** of the testimony to a full and proper hearing;
 - the **ability** of the person to give that testimony; and
 - whether the person has **agreed to be summoned** as a witness RPD Rule 39(2)
- if a party wants **to use a summons**, the party must
 - provide the summons to the summoned person by hand;
 - provide a copy of the summons to the RPD with a written statement of how and when the summons was provided; and
 - pay or offer to pay the summoned person the applicable witness fees and travel expenses set out in Tariff A of the *Federal Court Rules, 1998* RPD Rule 39(3)
- if a **person summoned** to appear as a witness **wants the summons cancelled**, the person must make an application in writing to the RPD
 - the person must follow **RPD Rule 44** but is **not required to give evidence in an affidavit** or statutory declaration RPD Rule 40(1)
RPD Rule 40(2)

5.19.3 Warrant for Arrest

- if a **person does not obey a summons** to appear as a witness, the party who requested the summons may make a **request to the RPD** orally at a hearing, or in writing, **to issue a warrant for the arrest** of the person RPD Rule 41(1)
- a party who makes a written request for a warrant must provide supporting evidence by affidavit or statutory declaration. RPD Rule 41(2)
- the RPD may issue a warrant if
 - the **person summoned was provided the summons** by hand or the person avoided being provided the summons;
 - the person was paid or offered the applicable **witness fees** and travel expenses set out in Tariff A of the *Federal Court Rules, 1998*;
 - the **person did not appear** at the hearing as required by the summons; and
 - the **person's testimony is still needed** for a full and proper hearing. RPD Rule 41(3)

- a warrant issued by the RPD for the arrest of a person must include directions concerning detention and release RPD Rule 41(4)

5.19.4 Excluding a Witness from the Hearing Room

- unless allowed by the RPD, a person must not communicate to a witness excluded from a hearing room any testimony given while the witness was excluded until that witness has finished testifying RPD Rule 42

5.20 Conferences

- the RPD may require a party to participate at a conference to discuss **issues, relevant facts** and **any other matter** that would make the proceedings more **fair and efficient** RPD Rule 20(1)
- the RPD may require a party to give any information or provide any document, at or before the conference RPD Rule 20(2)
- the RPD must make a **record of any decisions and agreements** made at the conference RPD Rule 20(3)

5.21 Abandonment of Proceedings

- the RPD may determine that a proceeding before it has been abandoned if the RPD is of the opinion that the **applicant is in default in the proceedings**, including by failing
 - to appear for a hearing,
 - to provide information required by the RPD, or
 - to communicate with the RPD on being requested to do so IRPA, s. 168(1)
- a claim may be declared **abandoned, without giving to the claimant a chance to explain** why the claim should not be declared abandoned, if
 - the **RPD has not received** the claimant's contact information and their **PIF within 28 days** after the claimant received the form; and
 - the Minister and any counsel for the claimant **do not have the claimant's contact information** RPD Rule 58(1)
- in every other case, the **RPD must give the claimant a chance to explain** why the claim should not be declared abandoned
- the RPD must give this opportunity:
 - **immediately, if the claimant is present** at the hearing and the RPD considers that it is fair to do so; **or**
 - in any other case, by way of a **special hearing after notifying**

- the claimant in writing** RPD Rule 58(2)
- the **RPD must consider**, in deciding if the claim should be declared abandoned:
 - the **explanations** given by the claimant at the hearing and
 - **any other relevant information**, including the fact that the claimant is ready to start or continue the proceedings RPD Rule 58(3)
- if the RPD decides that the claimant has not abandoned the claim, it must start or continue the proceedings without delay RPD Rule 58(4)

5.22 *Withdrawal / Abuse of Process*

- the RPD **may refuse** to allow an applicant to withdraw from a proceeding if it is of the opinion that the **withdrawal would be an abuse of process** under its rules IRPA, s. 168(2)
- withdrawal of a claim, or of an Application to Vacate Refugee Protection or an Application to Cease Refugee Protection, is an **abuse of process** if withdrawal would likely have a **negative effect on the integrity of the RPD** RPD Rule 52(1)
- **if no substantive evidence** has been accepted in the proceedings:
 - withdrawal is **not an abuse of process**
 - a party may **withdraw the party’s claim or Application** by notifying the RPD **orally** at a proceeding or **in writing** RPD Rule 52(1),(2)
- if **substantive evidence has been accepted** in the proceedings, a party who wants to withdraw the party’s claim or Application to Vacate or Application to Cease must make an application to the RPD under **RPD Rule 44** RPD Rule 52(3)

5.23 *Reinstatement*

5.23.1 *Application to Reinstate a Withdrawn Claim*

- a person may apply to the RPD to **reinstate a claim** that was made by that person and **withdrawn** RPD Rule 53(1)
- the person must
 - follow RPD Rule 44;
 - include their contact information in the application; and
 - provide a copy of the application to the Minister RPD Rule 53(2)
- the RPD must allow the application if it is established that there was a failure to observe a principle of **natural justice** or if it is otherwise

in the **interests of justice** to allow the application RPD Rule 53(3)

5.23.2 Application to Reinstate a Minister's Application

- the Minister may make an application to the RPD to **reinstate an Application** to Vacate Refugee Protection or an Application to Cease Refugee Protection RPD Rule 54(1)
- the application must be made under **RPD Rule 44** RPD Rule 54(2)
- the RPD will allow the application if it is established that there was a failure to observe a principle of **natural justice** or if it is otherwise in the **interests of justice** to allow the application. RPD Rule 54(3)

5.24 Reopening

5.24.1 Application to Reopen a Claim

- a claimant or the Minister may make an application to the RPD to **reopen a claim** for refugee protection that has been **decided or abandoned** RPD Rule 55(1)
- the application must be made under **RPD Rule 44** RPD Rule 55(2)
- a claimant who makes an application must
 - include the claimant's contact information in the application and
 - provide a copy of the application to the Minister RPD Rule 55(3)
- the RPD must allow the application if it is established that there was a failure to observe a principle of **natural justice** RPD Rule 55(4)

5.24.2 Application to Reopen a Minister's Application

- the Minister or a protected person may make an application to the RPD to **reopen an Application** to Vacate Refugee Protection or an Application to Cease Refugee Protection RPD Rule 56(1)
- the application must be made under **RPD Rule 44** RPD Rule 56(2)
- the RPD must allow the application if it is established that there was a failure to observe a principle of **natural justice** RPD Rule 56(3)

5.25 Notice of Constitutional Question

5.25.1 Requirements from the *Federal Court Act*

- where the **constitutional validity, applicability or operability of**

- an Act of Parliament** or of any province, or of regulations made thereunder, is in question before the Court or a federal board, commission or other tribunal, the Act or regulation **shall not be adjudged to be invalid unless notice has been served on the Attorney General of Canada and the attorney general of each province** *Federal Court Act, s. 57(1)*
- except where otherwise ordered by the Court or federal board, commission or other tribunal, the **notice shall be served at least 10 days** before the day on which the constitutional question is to be argued *F.C.A., s. 57(2)*
 - the Attorney General of Canada and the attorney general of each province are entitled to notice of any appeal or application for judicial review made in respect of the constitutional question *F.C.A., s. 57(3)*
 - the Attorney General of Canada and the attorney general of each province are entitled to adduce evidence and make submissions to the Court or federal board, commission or other tribunal in respect of the constitutional question *F.C.A., s. 57(4)*
 - where the Attorney General of Canada or the attorney general of a province makes submissions, that attorney general shall be deemed to be a party to the proceedings for the purposes of any appeal in respect of the constitutional question *F.C.A., s. 57(5)*

5.25.2 Procedure from RPD Rules

- a party who wants to challenge the constitutional validity, applicability or operability of a legislative provision must complete a **Notice of Constitutional Question** *RPD Rule 59(1)*
- the party must provide notice using either Form 69, “Notice of Constitutional Question”, set out in the *Federal Court Rules, 1998*, or any other form that includes:
 - the name of the party;
 - the RPD file number;
 - the date, time and place of the hearing;
 - the **specific legislative provision** that is being challenged;
 - the **relevant facts** relied on to support the constitutional challenge; and
 - a **summary of the legal argument** to be made in support of the constitutional challenge *RPD Rule 59(2)*
- the party must provide:
 - a copy of the Notice of Constitutional Question to the **Attorney**

General of Canada and to the **attorney general of every province and territory of Canada**, in accordance with s. 57 of the *Federal Court Act*;

- a copy of the notice to the **Minister**;
 - a copy of the notice to **any other party**; and
 - the original Notice to the **RPD**, together with a written statement of how and when the copies of the notice were provided
- documents provided under RPD Rule 59 must be received by their recipients **no later than 10 days** before the day the constitutional argument will be made

RPD Rule 59(3)

RPD Rule 59(4)

5.26 Decision on a Claim for Refugee Protection

5.26.1 Decision to Accept or Reject Claim

- the RPD shall *accept* a claim for refugee protection if it determines that the claimant is a Convention refugee or person in need of protection, and shall otherwise *reject* the claim

IRPA, s. 107(1)

5.26.2 No Credible Basis for the Claim

- if the RPD is of the opinion, in rejecting a claim, that there was **no credible or trustworthy evidence** on which it could have made a favourable decision, it shall state in its reasons for the decision that there is **no credible basis** for the claim

IRPA, s. 107(2)

Note: A claimant whose claim is rejected by the RPD is ordinarily entitled to stay in Canada pending the outcome of a review of that decision by the Federal Court or the Supreme Court of Canada. However, when the RPD states in its decision, in accordance with IRPA, s. 107(2), that there is no credible basis for the claim, the claimant is not automatically entitled to that stay of removal. Therefore, the claimant could be removed from Canada 15 days after notification that the claim has been rejected by the RPD, unless the Court grants a judicial stay on a case-by-case basis.

IRPA, s. 49(2)(c)
IRP Reg. 231(2)

5.27 Rendering RPD Decisions and Reasons

5.27.1 Rendering RPD Decisions

- an **RPD decision**, other than an interlocutory decision, may be rendered **orally or in writing**

IRPA, s. 169(c)

Note: an “interlocutory” decision is an interim decision, not the final decision in a matter

- when the RPD makes a decision, other than an interlocutory decision, it must provide a **notice of decision in writing**
- ✓ to the claimant or protected person, and

- ✓ to the Minister RPD Rule 61(1)

5.27.2 Rendering RPD Reasons

- in the case of an RPD decision, other than an interlocutory decision:
 - **reasons for decision must be given** *IRPA*, s. 169(b)
 - Note: This provision requires “reasons”, not “written reasons”.*
 - if the RPD **rejects a claim, written reasons** must be provided to the claimant and the Minister *IRPA*, s. 169(d)
 - ✓ if it rejects a claim, the RPD must provide the notice of decision, together with written reasons for the decision, to the claimant and the Minister RPD Rule 61(2)
 - the RPD **must provide written reasons if the person** who is the subject of the proceedings **or the Minister requests reasons** for a decision **within 10 days** of notification of the decision *IRPA*, s. 169(e)
 - ✓ a **request** made by a claimant, or the Minister, for written reasons for a decision allowing a claim **must be in writing** RPD Rule 62
 - ✓ the **request** must be received by the RPD **no later than 10 days** after the claimant or the Minister, as the case may be, received the notice of decision RPD Rule 62
 - the RPD **must provide written reasons** in circumstances set out in the **RPD Rules**: *IRPA*, s. 169(e)
 - ✓ if the reasons of the RPD indicate that it has allowed a claim for refugee protection after determining that **Articles 1E or 1F** of the Refugee Convention do not apply, the RPD must provide the notice of decision and written reasons for the decision to the claimant and the Minister RPD Rule 61(3)
 - ✓ when the RPD makes a decision on an **Application to Vacate Refugee Protection or an Application to Cease Refugee Protection**, the RPD must provide to the parties, together with the notice of decision, written reasons for the decision RPD Rule 61(4)

5.27.3 Calculating Time to Apply for Judicial Review of an RPD Decision

- the period in which to apply for **judicial review** with respect to a decision of the Board is calculated from the later of:
 - ✓ the giving of notice of the decision, or
 - ✓ from the sending of written reasons *IRPA*, s. 169(f)

Notes: (1) The normal period of time for applying for leave for judicial review in the Trial Division with respect to a matter arising in Canada is 15 days after the day on which the applicant is notified of or otherwise becomes aware of the matter. IRPA, s. 72(2)(b)

(2) An application for judicial review may not be made until any right of appeal provided by IRPA is exhausted. The provisions in IRPA that would permit an appeal to the RAD of a decision of the RPD have not come into force. Therefore, RPD decisions can be reviewed directly by the Trial Division, with leave of the Court. IRPA, s. 72(2)(a)

5.27.4 When RPD Decisions Take Effect

- an RPD decision, other than an interlocutory (interim) decision, takes effect in accordance with the RPD Rules IRPA, s. 169(a)
RPD Rules 63 to 67

5.27.4.1 Decisions allowing claims

- a decision **allowing** a claim takes effect
 - if given **orally** at a hearing, when an RPD member states the decision; and
 - if made **in writing**, when an RPD member signs and dates the decision
- RPD Rule 63(1)

5.27.4.2 Decisions rejecting claims

- a decision **rejecting** a claim takes effect
 - if given **orally** at a hearing, when an RPD member states the decision and gives reasons;
 - if made **in writing**, when an RPD member signs and dates the reasons for the decision.
- RPD Rule 63(2)

5.27.4.3 Applications to Vacate or to Cease Refugee Protection

- a decision on an **Application** to Vacate or an Application to Cease Refugee Protection takes effect
 - if given **orally** at a hearing, when the RPD member states the decision and gives reasons; and
 - if made **in writing**, when the RPD member signs and dates the reasons for the decision
- RPD Rule 64

5.27.4.4 Abandonment Proceedings

- a decision on the **abandonment** of a claim, an Application to Vacate, or an Application to Cease Refugee Protection, takes effect
 - if given **orally** at a hearing, when an RPD member states the decision with the reasons; and
 - if made **in writing**, when an RPD member signs and dates the

reasons for the decision

RPD Rule 65

5.27.4.5 Withdrawal of an Application

- a decision **allowing** an application to **withdraw** a claim, an Application to Vacate, or an Application to Cease Refugee Protection, takes effect
 - if given **orally** at a hearing, when an RPD member states the decision allowing the application and gives reasons; and
 - if made **in writing**, when an RPD member signs and dates the reasons for the decision

RPD Rule 66

5.27.4.6 Three member panels: decision allowing claim

- a decision made by a **panel of three members allowing a claim** takes effect
 - if given **orally** at a hearing, when all the members state their decision; and
 - if made **in writing**, when all the members sign and date the reasons for their decision

RPD Rule 67(1)

5.27.4.7 Other decisions

- a decision made by a **panel of three members** that is a decision
 - ✓ **rejecting a claim**
 - ✓ **allowing** an application to **withdraw**
 - ✓ on the **abandonment of a claim** or
 - ✓ on the **abandonment of an Application** to Vacate Refugee Protection or Application to Cease Refugee Protection, or
 - ✓ on an **Application to Vacate** Refugee Protection or an **Application to Cease** Refugee Protection,
 takes effect:
 - if given **orally** at a hearing, when all the members state their decision and give reasons; and
 - if made **in writing**, when all the members sign and date the reasons for their decision

RPD Rule 67(2)

5.28 Minister's Application to Vacate Refugee Protection

5.28.1 Grounds for the Application

- the RPD **may, on application by the Minister, vacate a decision** to allow a claim for refugee protection, if it finds that the decision was obtained as a result of directly or indirectly **misrepresenting or withholding material facts relating to a relevant matter**

IRPA, s. 109(1)

5.28.2 Rejection of the Application

- the RPD may reject the application if it is satisfied that **other sufficient evidence** was considered at the time of the first determination to justify refugee protection *IRPA*, s. 109(2)

5.28.3 Application Allowed / Deemed Rejection of Claim

- if the application to vacate is allowed,
 - **the claim is deemed to be rejected**, and
 - **the decision** that led to the conferral of refugee protection is **nullified** *IRPA*, s. 109(3)

5.28.4 Procedure for Making the Application

- an Application to Vacate Refugee Protection made by the Minister:
 - must be in writing and
 - must follow RPD 57 RPD Rule 57(1)
- in the application the Minister must include:
 - the contact information of the protected person and their counsel, if any;
 - the identification number given to the protected person by CIC;
 - the date and file number of an RPD decision, if any;
 - in the case of a person whose application for protection was allowed abroad, the person's file number, a copy of the decision and the location of the office;
 - what decision the Minister wants the RPD to make; and
 - the reasons why the RPD should make that decision RPD Rule 57(2)
- the Minister must provide
 - a copy of the Application to the protected person; and
 - the original and one copy of the Application to the registry office that provided the Notice of Decision in the claim or to the registry office specified by the RPD, together with a written statement of how and when a copy was provided to the protected person RPD Rule 57(3)

5.28.5 Other Related Provisions in the RPD Rules

- the RPD Rules contain other provisions related to Applications to Vacate Refugee Protection, such as:
 - if an Application to Vacate is made, the protected person must notify the RPD and the Minister in writing of any change of in the person's **contact information** and contact information of counsel RPD Rule 8
 - the **language** used by the Minister is the language of the

- proceeding, but the protected person may change the language by giving the RPD written notice no later than 20 days before the proceeding RPD Rule 13
- Applications to Vacate are joined if the claims of the protected persons were **joined** RPD Rule 49(2)
 - procedure for **withdrawal** of an Application to Vacate RPD Rule 52
 - procedure for Minister's application to **reinstate** a withdrawn Application to Vacate RPD Rule 54
 - procedure for application to **reopen** an Application to Vacate RPD Rule 56
 - when the RPD makes a decision on an Application to Vacate, the RPD must provide to the parties, together with the notice of decision, **written reasons** for the decision RPD Rule 61(4)
 - **when a decision** on an Application to Vacate **takes effect** RPD Rule 64
 - when a decision on the **abandonment** of an Application to Vacate **takes effect** RPD Rule 65
 - when decisions made by a **three member panel takes effect**: decision allowing an application to withdraw, decision on abandonment, or a decision on an Application to Vacate RPD Rule 67(2)

5.29 Minister's Application to Cease Refugee Protection

5.29.1 Grounds for the Application

- on application by the Minister, the RPD may determine that refugee protection referred to in *IRPA*, s. 95(1) has ceased for any of the reasons described in *IRPA*, s. 108(1) *IRPA*, s. 108(2)

Notes: (1) IRPA, s. 95(1), refers to refugee protection being conferred as a result of (a) a visa application and subsequent status as a permanent or temporary resident, (b) a determination by the IRB, or (c) the Minister allowing an application for protection at PRRA.

IRPA, s. 95(1)

(2) The reasons for cessation in IRPA, s. 108(1), are:

- (a) the person has voluntarily reavailed themselves of the protection of their country of nationality;*
- (b) the person has voluntarily reacquired their nationality;*
- (c) the person has acquired a new nationality and enjoys the protection of the country of that new nationality;*
- (d) the person has voluntarily become re-established in the country that the person left or remained outside of and in respect of which the person claimed refugee protection in Canada; or*
- (e) the reasons for which the person sought refugee protection have ceased to exist.*

IRPA, s. 108(1)

- if the Application to Cease Refugee Protection is allowed, the claim of the person is *deemed to be rejected* *IRPA*, s. 108(3)

5.29.2 Exception for “Compelling Reasons”

- an exception to cessation based on “compelling reasons arising out of previous persecution...” is set out in the Act *IRPA*, ss. 108(1)(e), (4)

5.29.3 Procedure for Making the Application

- an Application to Cease Refugee Protection made by the Minister:
 - must be in writing and
 - must follow RPD 57 RPD Rule 57(1)
- in the application the Minister must include:
 - the contact information of the protected person and their counsel, if any;
 - the identification number given to the protected person by CIC;
 - the date and file number of an RPD decision, if any;
 - in the case of a person whose application for protection was allowed abroad, the person’s file number, a copy of the decision and the location of the office;
 - what decision the Minister wants the RPD to make; and
 - reasons why the RPD should make that decision RPD Rule 57(2)
- the Minister must provide
 - a copy of the Application to the protected person; and
 - the original and one copy of the Application to the registry office that provided the Notice of Decision in the claim or to the registry office specified by the RPD, together with a written statement of how and when a copy was provided to the protected person RPD Rule 57(3)

5.29.4 Other Related Provisions in the RPD Rules

- the RPD Rules contain other provisions related to Applications to Cease Refugee Protection, such as:
 - if an Application to Cease is made, the protected person must notify the RPD and the Minister in writing of any change of in the person’s **contact information** and contact information of counsel RPD Rule 8
 - the **language** used by the Minister is the language of the proceeding, but the protected person may change the language by giving the RPD written notice no later than 20 days before the proceeding RPD Rule 13
 - Applications to Cease are joined if the claims of the protected persons were **joined** RPD Rule 49(2)
 - procedure for **withdrawal** of an Application to Cease RPD Rule 52
 - procedure for Minister’s application to **reinstate** a withdrawn

- Application to Cease
- procedure for application to **reopen** an Application to Cease RPD Rule 54
 - when the RPD makes a decision on an Application to Cease, the RPD must provide to the parties, together with the notice of decision, **written reasons** for the decision RPD Rule 56
 - when a **decision** on an Application to Cease **takes effect** RPD Rule 61(4)
 - when a decision on the **abandonment** of an Application to Cease **takes effect** RPD Rule 64
 - when decisions made by a **three member panel takes effect:** decision allowing an application to withdraw, decision on abandonment, or a decision on an Application to Cease RPD Rule 65
- RPD Rule 67(2)

6. Refugee Appeal Division

PLEASE NOTE: No appeals to the RAD can be made yet. The provisions of IRPA that give power to the RAD to conduct any business have not yet come into force. See “Order Fixing June 28, 2002 as the Date of Coming into Force of Certain Provisions of the Act”, SI/2002-97, published in the Canada Gazette, Part II, June 14, 2002, page 448. RAD provisions that have not come into force include IRPA, ss. 73, 110, 111, 171, 194, and 195.

6.1 General Provisions

6.1.1 Jurisdiction

- the RAD has, in respect of proceedings brought before it under this Act, sole and exclusion jurisdiction to hear and determine all *questions of law and fact*, including *questions of jurisdiction* *IRPA*, s. 162(1)

6.1.2 Informal / Quick / Fair

- the RAD proceeds as informally and quickly as the circumstances and the considerations of fairness and natural justice permit *IRPA*, s. 162(2)

6.1.3 Composition of Panels

- RPD matters shall be conducted by a *single member*, unless the Chairperson is of the opinion that a panel of *three members* should be constituted *IRPA*, s. 163

6.1.4 Proceedings in Private / in Public

- **proceedings in private:** subject to s. 166(d), RAD proceedings must be held in private *IRPA*, s. 166(c)
- **proceedings in public:** on application or on its own initiative, the RAD may
 - conduct a proceeding in public, or
 - take any other measure that it considers necessary to ensure the appropriate access to the proceedings,
 if the RAD considers it appropriate to do so, after having considered all available alternate measures and the following factors:
 - (i) a serious possibility that the *life, liberty or security of a person will be endangered* if the proceeding is held in public,
 - (ii) a real and substantial *risk to the fairness* of the proceeding such that the need to prevent disclosure outweighs the societal interest that the proceeding be conducted in public,

- or
- (iii) a real and substantial risk that matters involving *public security* will be disclosed; *IRPA*, ss. 166(b) and (d)

6.1.5 Role of UNHCR

- the RAD **may accept written submissions from** the Minister, the person who is the subject of the appeal, and a representative or agent of the **UNHCR**, and any other person described in the rules of the Board *IRPA*, s. 110(3)
- a representative of the UNHCR is entitled to **observe proceedings** concerning a protected person or a person who has made a claim to refugee protection *IRPA*, s. 166(e)

Note: Despite IRPA, s. 166(e), the representative of the UNHCR may not observe any part of the proceedings that deals with information protected under IRPA, s. 86(1), or with information in respect of which an application has been made and not rejected under IRPA, s. 86(1) (i.e., Minister's application for non-disclosure of security or criminal intelligence information at the ID or IAD).

IRPA, s. 166(f)

6.1.6 Right to Counsel

- both a person who is the subject of RAD proceedings and the Minister may, at their own expense, be represented by a barrister or solicitor or other counsel *IRPA*, s. 167(1)

6.1.7 Designated Representative

- if a person who is the subject of proceedings is
 - under 18 years of age, or
 - unable, in the opinion of the Division, to appreciate the nature of the proceedings,
 the Division shall designate a person to represent the person *IRPA*, s. 167(2)

6.1.8 Abandonment of Proceedings

- the RAD may determine that a proceeding before it has been abandoned if the RAD is of the opinion that the applicant is in default in the proceedings, including by failing
 - to provide information required by the RAD, or
 - to communicate with the RAD on being requested to do so*IRPA*, s.168(1)

6.1.9 Withdrawal / Abuse of Process

- a Division may refuse to allow an applicant to withdraw from a proceeding if it is of the opinion that the withdrawal would be an

abuse of process under its rules *IRPA*, s. 168(2)

6.2 *Making an Appeal*

6.2.1 Decisions that can be Appealed to the RAD

- a person or the Minister may appeal to the RAD against a decision of the RPD,
 - **to allow or reject** the person's **claim** for refugee protection, or
 - **to reject an application by the Minister** for cessation or vacation *IRPA*, s. 110(1)
- a determination that a refugee protection claim has been **withdrawn** or **abandoned may not be appealed** *IRPA*, s. 110(2)

6.2.2 Grounds for Appeal

- the appeal may be based on a
 - question of **law**,
 - question of **fact** or
 - a question of **mixed law and fact** *IRPA*, s. 110(1)

6.2.3 Procedure for Making Appeal

- the appeal is made in accordance with the rules of the Board *IRPA*, s. 110(1)

6.3 *Procedure at the RAD*

- the RAD shall proceed **without a hearing**, on the basis of the record of the proceedings of the RPD *IRPA*, s. 110(3)
- the RAD may accept **written submissions** from
 - ✓ the Minister
 - ✓ the person who is the subject of the appeal
 - ✓ a representative or agent of the UNHCR, and
 - ✓ any other person described in the rules of the Board *IRPA*, s. 110(3)

6.4 *Participation of the Minister*

- the Minister may, after giving notice within the period that is required by the rules, intervene in the appeal, including for the purpose of filing submissions *IRPA*, s. 171(a)

6.5 *RAD Decisions and Reasons*

6.5.1 Judicial Notice / Specialized Knowledge

- the RAD may take notice of any facts that may be judicially noticed and of any other generally recognized facts and any information or opinion that is within its specialized knowledge *IRPA*, s. 171(b)

6.5.2 Types of Decisions

- after considering the appeal, the RAD shall make one of the following decisions:
 - **confirm** the determination of the RPD
 - **set aside** the determination and substitute a determination that, in its opinion, should have been made, or
 - **refer the matter to the RPD** for re-determination, giving the directions to the RPD that it considers appropriate *IRPA*, s. 111(1)
- the **RAD shall refer the matter to the RPD** for re-determination, giving the directions to the RPD that it considers appropriate
 - if it is of the opinion that a **hearing is required** or
 - if it has allowed an appeal by the Minister that was based on a question of the claimant's **credibility** *IRPA*, s. 111(2)

6.5.3 Precedential Value

- a decision of a **RAD panel of three members** has the same **precedential value** as a decision of an appeal court has for a trial court
 - ✓ for the **RPD** and *IRPA*, s. 171(c)
 - ✓ for a panel of **one member of the RAD**

6.6 *Decisions and Reasons*

6.6.1 Rendering RAD Decisions

- a RAD decision must be rendered in writing *IRPA*, s. 169(c)

6.6.2 Rendering RAD Reasons

- reasons must be given for a RAD decision, other than an interlocutory (interim) decision *IRPA*, s. 169(b)

6.6.3 When RAD Decisions Take Effect

- a RAD decision, other than an interlocutory (interim) decision, takes effect in accordance with the rules *IRPA*, s. 169(a)

6.6.4 Calculating Time to Apply for Judicial Review of a RAD Decision

- the period in which to apply for judicial review with respect to a decision of the Board is calculated from the later of:
 - ✓ the giving of notice of the decision, or
 - ✓ from the sending of written reasons

IRPA, s. 169(f)

Note: The normal period of time for applying for leave for judicial review in the Trial Division with respect to a matter arising in Canada is 15 days after the day on which the applicant is notified of or otherwise becomes aware of the matter.

IRPA, s. 72(2)(b)

7. Judicial Review

7.1 Federal Court – Trial Division

7.1.1 Procedure

- judicial review by the Federal Court with respect to any matter – a decision, determination or order made, a measure taken or a question raised – under this Act is commenced by making an **application for leave** to the Trial Division *IRPA*, s. 72(1)
 - the application may **not be made until any right of appeal** that may be provided by this Act **is exhausted** *IRPA*, s. 72(2)(a)
- Note: The provisions in IRPA that would permit an appeal to the RAD of a decision of the RPD have not come into force. Therefore, RPD decisions can be reviewed directly by the Trial Division, with leave of the Court.* *IRPA*, ss. 110(1),(2)
- subject to s. 169(f), notice of the application shall be served on the other party and the application shall be filed in the Registry of the Federal Court–Trial Division (“the Court”) **within 15 days, in the case of a matter arising in Canada, or within 60 days, in the case of a matter arising outside Canada**, after the day on which the applicant is notified of or otherwise becomes aware of the matter *IRPA*, s. 72(2)(b)
- Note: The period in which to apply for judicial review with respect to a decision of the Board is calculated from the later of:*
- ✓ the giving of notice of the decision, or
 - ✓ from the sending of written reasons *IRPA*, s. 169(f)
- a judge may, for special reasons, allow an **extension** *IRPA*, s. 72(2)(c)
 - a judge shall dispose of the application without delay and in a summary way and, unless a judge directs otherwise, **without personal appearance** *IRPA*, s. 72(2)(d)
 - **no appeal** lies from the decision of the Court with respect to the application or with respect to an interlocutory judgment *IRPA*, s. 72(2)(e)
 - the **Minister may make an application for leave** to commence an application for judicial review with respect to any decision of the RAD, **whether or not the Minister took part in the proceedings before the RPD or the RAD** *IRPA*, s. 73

NOTE: IRPA, s. 73, has not yet come into force, as the other

provisions permitting an appeal to the RAD have not come into force

- judicial review is subject to the following provisions
 - the judge who grants leave shall fix the day and place for the hearing of the application
 - the **hearing shall be no sooner than 30 days and no later than 90 days** after leave was granted, unless the parties agree to an earlier day
 - the judge shall dispose of the application without delay and in a summary way
 - an **appeal to the Federal Court of Appeal** may be made only if, in rendering judgment, the judge certifies that a **serious question of general importance** is involved and states the question *IRPA*, s. 74

- subject to the approval of the GIC, the Chief Justice of the Federal Court may make rules governing the practice and procedure in relation to leave applications, judicial review, and appeals; the rules are binding despite any rule or practice that would otherwise apply *IRPA*, s. 75(1)

- Note: The relevant rules are the Federal Court Rules, 1998, SOR/98-106, and the new Federal Court Immigration and Refugee Protection Rules, SOR/2002-232, published in the Canada Gazette, Part II, on July 3, 2002.*

- in the event of an inconsistency between *IRPA*, ss. 72 to 75, and any provision of the *Federal Court Act*, *IRPA*, ss. 72 to 75, prevail to the extent of the inconsistency *IRPA*, s. 75(2)

7.1.2 Grounds for Judicial Review

- the Trial Division may allow an application for judicial review if it is satisfied that the federal board, commission or tribunal:
 - (a) **acted without jurisdiction**, acted beyond its jurisdiction or refused to exercise its jurisdiction;
 - (b) **failed to observe a principle of natural justice**, procedural fairness or other procedure that it was required by law to observe;
 - (c) **erred in law** in making a decision or order, whether or not the error appears on the face of the record;
 - (d) based its decision or order on an **erroneous finding of fact** that it **made in a perverse or capricious manner** or without regard for the material before it;
 - (e) acted, or failed to act, by reason of **fraud** or **perjured evidence**;
or
 - (f) acted in any other way that was **contrary to law**. *Federal Court Act*,
s. 18.1(4)

7.1.3 Powers of the Trial Division

- on application for judicial review, the Trial Division may
 - (a) **order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do** or has unreasonably delayed in doing; or
 - (b) declare invalid or unlawful, or quash, **set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate**, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal

Federal Court Act,
s. 18.1(3)

7.2 Federal Court of Appeal

7.2.1 Jurisdiction

- there is no appeal to the Federal Court of Appeal from a decision of the Trial Division with respect to a leave application or with respect to an interlocutory (interim) judgment
- **certified question:** an appeal to the Federal Court of Appeal may be made only if, in rendering judgment, the judge of the Trial Division certifies that a serious question of general importance is involved and states the question.

IRPA, s. 72(e)

IRPA, s. 74(d)

7.2.2 Powers of the Federal Court of Appeal

- in the case of an appeal from the Trial Division, the Federal Court of Appeal may
 - dismiss the appeal, or
 - give the judgment that the Trial Division should have given

Federal Court Act,
s. 52(b)(i)

7.3 Supreme Court of Canada

- an appeal to the Supreme Court may be made **with leave of the Federal Court of Appeal** from a final judgment of the Federal Court of Appeal where, in the opinion of the Federal Court of Appeal, the question involved in the appeal **ought to be submitted to the Supreme Court for decision**

Supreme Court Act,
s. 37.1

- also, the **Supreme Court may grant leave** if it is of the opinion that any question involved therein is, by reason of its **public importance** or the **importance of any issue of law** or any issue of mixed law and fact involved in that question, one that ought to be decided by the Supreme Court *Supreme Court Act,*
s. 40(1)

- the Supreme Court may dismiss an appeal or give the judgment and award the process or other proceedings that the court whose decision is appealed against should have given or awarded *Supreme Court Act,*
s. 45

8. Pre-Removal Risk Assessment (PRRA)

8.1 Protection

8.1.1 Application to Minister for Protection

- a person in Canada may apply to the Minister for protection if:
 - they are subject to a **removal order that is in force**, or
 - they are named in a **security certificate** described in s. 77(1)

IRPA, s. 112(1)
IRP Regs. 160
to 174

Notes: (1) A removal order made with respect to a refugee protection claimant is conditional and comes into force on the latest of the five dates set out in IRPA, ss. 49(2)(a) to (e). The date in IRPA, s. 49(2)(c), is 15 days after notification that the claim was rejected by the RPD, if no appeal was made, or by the RAD, if an appeal was made.

(2) A successful application for protection may result in “refugee protection”, including the opportunity to apply for permanent residence; for persons described in IRPA, s. 112(3) (criminals or security risks, etc.), a successful application for protection may result only in a stay of removal.

- the application for protection is made in accordance with the **regulations**
- a person may **not** apply for protection if

IRPA, s. 112(1)
IRP Regs. 160
to 174

IRPA, s. 112(2)

- they are a person referred to in *IRPA*, s. 115(1) (“**a protected person** or a **person who is recognized as a Convention refugee by another country** to which the person may be returned”)

IRPA, s. 112(1)

*Note: The persons described in IRPA, s. 115, can be removed from Canada only in accordance the protections and exceptions regarding the **principle of non-refoulement** set out in IRPA, s. 115.*

- they are the subject of an authority to proceed issued under s. 15 of the *Extradition Act*

IRPA, s. 112(2)(a)

Note: Where the claimant is the subject of extradition proceedings, IRPA provides for the suspension of RPD proceedings and the deemed rejection of a claim for refugee based on Article 1F(b) in certain circumstances.

IRPA, s. 105

- they have made a claim to refugee protection that has been determined under *IRPA*, s. 101(1)(e), to be **ineligible** (“**safe third country**”)

IRPA, s. 112(2)(b)

Note: A removal order made with respect to a refugee protection claimant is conditional and comes into force on the latest of the five dates set out in IRPA, ss. 49(2)(a) to (e). Under IRPA, s. 49(2)(a), the removal order comes into force on the day that the claim is determined to be ineligible under IRPA, s. 101(1)(e)

- in the case of a person who has **not left Canada** since the application for protection was rejected, the **prescribed period has not expired**; or

IRPA, s. 112(2)(c)

Note: In most cases, the person may make an application to the Minister, after notification by the Department. The prescribed period is within 15 days after notification is given.

IRP Regs. 162, 163

- in the case of a person who **has left Canada** since the removal order came into force, **less than six months have passed since they left Canada** after their claim to refugee protection was determined to be ineligible, abandoned, withdrawn or rejected, or their application for protection was rejected

IRPA, s. 112(2)(d)

Note: “repeat claims” are not eligible to be referred to the RPD (IRPA, s. 101(1)(b),(c)); such claims are eligible to be considered by the Minister after the claimant has been absent from Canada for six months.

8.1.2 Where “Refugee Protection” May Not Result (S. 112(3))

- “refugee protection” may **not** result from an application for protection if the person

- is determined to be inadmissible on grounds of *security, violating human or international rights* or *organized criminality*

IRPA, s. 112(3)(a)

- is determined to be inadmissible on grounds of *serious criminality* with respect to a conviction *in Canada* punished by a term of imprisonment of at least *two years* or with respect to a conviction *outside Canada* for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of *at least 10 years*

IRPA, s. 112(3)(b)

- made a claim to refugee protection that was rejected on the basis of **Article 1F** of the Refugee Convention (“**exclusion clause**”)

IRPA, s. 112(3)(c)

- is named in a *security certificate* referred to in s. 77(1)

IRPA, s. 112(3)(d)

*Note: A decision to allow the application for protection, in the case of an applicant **described in s. 112(3)**, has the effect of **staying the removal order** with respect to a country or place in respect of which the applicant was determined to be in need of protection* IRPA, s. 114(1)(b)

8.1.3 Procedures

- the IRP Regs provide that a person may, **on notification by the Department**, apply to the Minister for protection IRP Reg. 160(1)
- a person described in IRP Reg. 165 (subsequent PRRA application while still in Canada) or IRP Reg. 166 (PRRA application where removal order is made at a port of entry) may apply for protection without being given notification IRP Reg. 160(2)
- the notification shall be given:
 - in the case of a person who is subject to a **removal order** that is in force, **before removal from Canada**
 - in the case of a person named in a **security certificate** described in s. 77(1) of the Act, **on the provision of a summary of the information or evidence under s. 78(h)** of the Act IRP Reg. 160(3)
- notification is given
 - when the person is given the application form **by hand**; or
 - if sent **by mail**, **seven days** after the day on which the application form was sent to the person at the last address provided by them to the Department IRP Reg. 160(4)
- **subsequent applications:** a person whose application for protection was rejected and who has remained in Canada since being given notification under IRP Reg. 160 may make another application
 - written submissions, if any, must accompany the application IRP Reg. 165
- **port of entry:** an application for protection by a foreign national against whom a removal order is made at a port of entry must, if the order is in force, be received as soon as the removal order is made
 - written submissions, if any, must accompany the application IRP Reg. 166
- an application **received within 15 days after notification** was given under IRP Reg. 160 shall **not be decided until at least 30 days after notification was given** IRP Reg. 162
 - the **removal order is stayed** under IRP Reg. 232 until the earliest of the events referred to in IRP Reg. 232(c) to (f) occurs IRP Reg. 232

Note: IRP Regs. 232(c) to (f) deal with the following situations: the PRRA application is rejected; the PRRA application is allowed, but the person does not apply for permanent residence; the PRRA application is allowed and a decision is made with respect to the person's application for permanent residence is made; and, in the case of a person described in IRPA, s. 112(3) (criminal, security risk, etc.), the stay has been cancelled under IRPA, s. 114(2) (Minister cancels the stay because circumstances have changed)

- a person who has remained in Canada since being given notification under IRP Reg. 160 may make an **application after a period of 15 days** has elapsed from notification being given under that section, but the application **does not result in a stay of the removal order**
 - written submissions, if any, must accompany the application IRP Reg. 163
- an application by a person who is named in a security certificate (*IRPA*, s. 77(1)) must be received within 15 days after notification was given under IRP Reg. 160
 - an application received within that period shall not be decided until at least 30 days after notification was given. IRP Reg. 164
- a person applying for protection may make **written submissions** in support of their application and for that purpose may be **assisted, at their own expense, by a barrister or solicitor or other counsel** IRP Reg. 161(1)
- a person who makes written submissions must identify the evidence presented that meets the requirements of *IRPA*, s. 113(a) (only new evidence that arose after the RPD rejected the claim, etc.) and indicate how that evidence relates to them IRP Reg. 161(2)

8.1.4 Consideration of Application

8.1.4.1 Types of Evidence

- an applicant whose claim to refugee protection has been rejected may present only
 - **new evidence** that arose after the rejection, or
 - **evidence that was not reasonably available** at the time of the rejection, or
 - evidence that the applicant **could not reasonably have been expected in the circumstances to have presented** at the time of the rejection *IRPA*, s. 113(a)

8.1.4.2 Hearing: When Required and Procedures

- **a hearing may be held** if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required *IRPA*, s. 113(b)
- the prescribed factors for holding a hearing are:
 - whether there is evidence that raises a **serious issue of the applicant’s credibility** and is related to the factors set out in ss. 96 and 97 of the Act;
 - whether the **evidence is central** to the decision with respect to the application for protection; and
 - whether the **evidence, if accepted, would justify allowing the application** for protection IRP Reg. 167
- a hearing is subject to the following provisions:
 - **notice** shall be provided to the applicant of the **time and place** of the hearing and the **issues of fact** that will be raised at the hearing IRP Reg. 168(a)
 - the hearing is **restricted to matters relating to the issues of fact stated in the notice**, unless the officer conducting the hearing considers that other issues of fact have been raised by statements made by the applicant during the hearing IRP Reg. 168(b)
 - the **applicant must respond to the questions** posed by the officer **and may be assisted** for that purpose, at their own expense, **by a barrister or solicitor or other counsel** IRP Reg. 168(c)
 - **any evidence of a person other than the applicant must be in writing** and the officer may question the person for the purpose of verifying the evidence provided IRP Reg. 168(d)

8.1.4.3 Ordinary Cases – All Protection Grounds to be Considered

- in the case of an applicant not described in *IRPA*, s. 112(3), consideration shall be on the basis of *IRPA*, **ss. 96 to 98** *IRPA*, s. 113(c)

Note: IRPA, s. 96 sets out the “Convention refugee” grounds; s. 97 sets out the grounds for “a person in need of protection”; s. 98 sets out the exclusion clauses.

8.1.4.4 Criminal and Security Cases – S. 97 Protection Grounds Only

- in the case of an **applicant** who is described in *IRPA*, **s. 112(3)**, consideration shall be on the basis of the factors set out in *IRPA*, **s. 97** and

- (i) in the case of an applicant for protection who is inadmissible on grounds of **serious criminality**, whether they are a **danger to the public** in Canada, or
 - (ii) in the case of **any other applicant**, whether the application should be refused because of the **nature and severity of acts** committed by the applicant or because of the danger that the applicant constitutes to the **security** of Canada

IRPA, s. 113(d)
- before making a decision to allow or reject an application of an applicant referred to in s. 112(3) of the Act (criminal, security risk, etc.), the Minister shall consider the assessments referred to in IRP Reg. 172(2) and any written response of the applicant to the assessments that is received within 15 days after the applicant is given the assessments

IRP Reg. 172(1)

- the following assessments shall be given to the applicant: (a) a written assessment based on *IRPA*, s. 97 and, (b) a written assessment based on *IRPA*, ss. 113(d)(i) (danger to the public) or (ii) (danger to security), as the case may be

IRP Reg. 172(2)

- the assessments are given to an applicant by hand or, if sent by mail, are deemed to be given to an applicant seven days after the day on which they are sent to the last address that the applicant provided to the Department

IRP Reg. 172(3)

- if the Minister decides that the applicant is not described in *IRPA*, s. 97, no written assessment on the basis of the factors set out in ss. 113(d)(i) or (ii) of the Act need be made, and the application is rejected

IRP Reg. 172(4)

8.1.5 Effect of Decision to Allow the Application

- a decision to allow the application for protection has
 - in the case of an applicant **not described in s. 112(3)**, the effect of **conferring refugee protection**; and
 - in the case of an applicant **described in s. 112(3)**, the effect of **staying the removal order** with respect to a country or place in respect of which the applicant was determined to be in need of protection

IRPA, s. 114(1)(a)

IRPA, s. 114(1)(b)
- if the Minister is of the opinion that the **circumstances** surrounding a stay of the enforcement of a removal order **have changed**, the Minister may re-examine, in accordance with s. 113(d) and the regulations, the grounds on which the application was allowed and may **cancel the stay**

IRPA, s. 114(2)

- the regulations set out the procedures for re-examination of a stay, including the notice, the assessments, and the response IRP Reg. 173
- if the Minister is of the opinion that a decision to allow an application for protection was obtained as a result of directly or indirectly **misrepresenting or withholding material facts** on a relevant matter, the **Minister may vacate** the decision IRPA, s. 114(3)
- if a decision is **vacated** under s. 114(3), it is nullified and the application for protection is deemed to have been rejected IRPA, s. 114(4)

8.1.6 Effect of Abandonment or Withdrawal of the Application

- the abandonment grounds and the withdrawal procedure are set out in the IRP Regs IRP Reg. 169
IRP Reg. 170
- **an application for protection is rejected** when a decision is made **not to allow** the application or **when the application is declared withdrawn or abandoned** IRP Reg. 171

8.1.7 Reasons for Decision

- **on request, the applicant shall be given a copy of the file notes** that record the justification for the decision on their application IRP Reg. 174

8.2 Principle of Non-refoulement

8.2.1 Protection

- a **protected person** or a **person who is recognized as a Convention refugee by another country** to which the person may be returned **shall not be removed from Canada to a country where they would be at risk of persecution** for reasons of race, religion, nationality, membership in a particular social group or political opinion or at risk of torture or cruel and unusual treatment or punishment IRPA, s. 115(1)
- IRPA, s. 115(1) **does not apply** in the case of a person
 - who is inadmissible on grounds of **serious criminality** and who constitutes, in the **opinion of the Minister**, a **danger to the public** in Canada; or IRPA, s. 115(2)(a)
 - who is inadmissible on grounds of **security, violating human or international rights** or **organized criminality** if, in the **opinion of the Minister**, the person should not be allowed to remain in Canada on the basis of the nature and severity of acts committed or of danger to the security of Canada IRPA, s. 115(2)(b)

- after a determination under s. 101(1)(e) that the person’s claim is **ineligible** (“**safe third country**”), the person
 - is to be sent to the country from which the person came to Canada,
 - but may be sent to another country if that country is designated under s. 102(1) or if the country from which the person came to Canada has rejected their claim for refugee protection
- IRPA*, s. 115(3)

8.2.2 Regulations

- the **regulations**
 - may provide for any matter relating to the application of this Division (*IRPA*, Part 2, Division 3), and
 - may include provisions respecting procedures to be followed with respect to applications for protection and decisions made under s. 115, including the establishment of factors to determine whether a hearing is required
- IRPA*, s. 116
IRP Regs. 160 to 174

9. Transitional Provisions – *IRPA*

9.1 *Continuation of the Board*

- the Immigration and Refugee Board is continued *IRPA*, s. 188(1)

9.2 *Continuation of IRB Office Holders*

- the Chairperson, the DCs, and the ADCs, appointed under the former *Immigration Act* continue in the same capacity with the Board until the expiry or revocation of their respective appointments *IRPA*, s. 188(2)
- a member appointed under the former *Immigration Act* to the CRDD or the IAD continues in office as a member of the Board until the expiry or revocation of their appointment *IRPA*, s. 188(3)
- the person who was Executive Director when this section comes into force is deemed to have been appointed as Executive Director under s. 158 of the new Act, without prejudice to previous salary and benefits *IRPA*, s. 188(4)

9.3 *General Application of IRPA*

- every application, proceeding or matter under the former *Immigration Act* that is pending or in progress immediately before the coming into force of this section of the *Immigration and Refugee Protection Act* shall be governed by the *Immigration and Refugee Protection Act* on that coming into force *IRPA*, s. 190

9.4 *Continuation under the Immigration Act by the CRDD*

- every application, proceeding or matter before the CRDD under the former *Immigration Act*
 - that is *pending or in progress* immediately before the coming into force of this section, and
 - in respect of which *substantive evidence has been adduced* but no decision has been made,shall be continued under the former *Immigration Act* by the RPD *IRPA*, s. 191

9.5 Where No Appeal to the RAD

PLEASE NOTE: The provisions of IRPA that give power to the RAD to conduct any business have not yet come into force. See “Order Fixing June 28, 2002 as the Date of Coming into Force of Certain Provisions of the Act”, SI/2002-97, published in the Canada Gazette, Part II, June 14, 2002, page 448. RAD provisions that have not come into force include IRPA, ss. 73, 110, 111, 171, 194, and 195.

- in cases referred to in *IRPA*, s. 191, no appeal may be made to the RAD under s. 110 with respect to a decision by the RPD following a hearing that has been commenced by the CRDD *IRPA*, s. 194
- a decision made by the CRDD before the coming into force of this section is not subject to an appeal to the RAD under s. 110 *IRPA*, s. 195

9.6 CRDD Decisions Set Aside by Federal Court

- the RPD has jurisdiction to consider decisions of the CRDD that are set aside by the Federal Court or the Supreme Court of Canada, and shall dispose of those matters in accordance with the provisions of the *Immigration and Refugee Protection Act* *IRPA*, s. 198

9.7 Regulations for Transitional Provisions

- the regulations may provide for measures regarding the transition between the former *Immigration Act* and this Act, including measures regarding classes of persons who will be subject in whole or in part to this Act or the former Act and measures regarding financial and enforcement matters *IRPA*, s. 201
- “**refugee protection**” is conferred under *IRPA* on a person who, before the coming into force of *IRPA*,
 - ✓ was determined in Canada to be a Convention refugee *IRP Reg.* 338(a)
 - ✓ was granted landing after being issued a visa under the Regulations as a Convention refugee seeking resettlement, etc., *IRP Reg.* 338(b)
 - or
 - ✓ was granted landing as a member of the Post-determination refugee claimants in Canada class *IRP Reg.* 338(c)
- a determination made in Canada before the coming into force of *IRPA* that a person is **not a Convention refugee** is deemed to be a claim for refugee protection **rejected** by the Board *IRP Reg.* 339
- a determination made before the coming into force of *IRPA* that a

- person is not eligible to have their Convention refugee claim determined by the CRDD is deemed to be a determination that the claim is **ineligible** to be referred to the RPD IRP Reg. 340
- a claim to be a Convention refugee that was **withdrawn** or declared to be **abandoned** before the coming into force of *IRPA* is deemed to be a claim determined to be withdrawn or abandoned under *IRPA* IRP Reg. 341
 - a claim made in Canada to be a Convention refugee in respect of which a **determination of eligibility was not made** before the coming into force of *IRPA* is deemed to be a claim for refugee protection made in Canada that is received on the day on which this section comes into force (June 28, 2002) IRP Reg. 342
 - subject to *IRPA*, s. 191, a claim of a person who was **determined eligible** before the coming into force of this section to have a claim to be a Convention refugee determined by the CRDD, and in respect of which **no determination was made by the CRDD**, is a claim that
 - (a) is referred under *IRPA* to the RPD unless an officer gives notice under *IRPA*, s. 104(1); and
 - (b) is subject to the provisions of that Act. IRP Reg. 343
- Note: the effect of this provision is the new grounds for ineligibility apply to claims before the RPD where no substantive evidence was adduced before June 28, 2002; however, the RPD will continue to process those claims, unless an officer gives notice under IRPA, s. 104(1), that the officer has determined that the claim is ineligible*
- a determination made in Canada before the coming into force *IRPA* that a person has **ceased to be a Convention refugee** is deemed to be a determination by the Board that refugee protection has ceased IRP Reg. 344
 - a decision made in Canada before the coming into force of *IRPA* to approve an application to reconsider and **vacate a determination that a person is a Convention refugee** is deemed to be a determination by the Board to vacate a decision to allow a claim for refugee protection IRP Reg. 345
 - an application for landing as a member of the post-determination refugee claimants in Canada class (**PDRCC**) in respect of which **no determination was made** before the coming into force of *IRPA* will be dealt with as a PRRA application under *IRPA* IRP Reg. 346

- if landing was not granted before the coming into force of *IRPA*, an **application for landing** submitted under s. 46.04 of the former *Immigration Act* (by a person determined by the CRDD to be a **Convention refugee**) is an application to remain in Canada as a permanent resident under *IRPA*, s. 21(2) IRP Reg. 347(1)
- if landing was not granted before the coming into force of *IRPA*, an application for landing as a member of the **undocumented Convention refugee in Canada class** is an application to remain in Canada as a permanent resident under *IRPA*, s. 21(2), and is not subject to the requirement in IRP Reg. 175(1) that the application be received within 180 days after a determination is made by the Board IRP Reg. 347(2)
- if landing was not granted before the coming into force of this section, an application for landing submitted by a person pursuant to a determination that the person is a member of the post-determination refugee claimants in Canada class (**PDRCC**) is an application to remain in Canada as a permanent resident under *IRPA*, s. 21(2) IRP Reg. 347(3)

9.8 Repeal of the *Immigration Act*

- the *Immigration Act* and various amendments to the *Immigration Act* (Bill C-86, 1993; Bill C-44, 1995; Bill C-84, 1997) are repealed by the coming into force of the *Immigration and Refugee Protection Act* IRPA, s. 274