

LEGAL AID  
RESEARCH SERIES

REPRESENTATION FOR  
IMMIGRANTS AND REFUGEE  
CLAIMANTS:  
FINAL STUDY REPORT



# Representation for Immigrants and Refugee Claimants

## Final Study Report

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*The views expressed herein are solely those of  
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## Executive summary

**T**his study has been undertaken to examine the need that immigrants and refugee claimants have for assistance and representation in relation to legal proceedings under the *Immigration and Refugee Protection Act (IRPA)*. From responses received in interviews with over 150 respondents who have direct experience in these proceedings, it is evident that the persons who are the subject of the proceedings do need assistance and representation at various stages in the legal process. The level of knowledge that most immigrants and refugee claimants have with respect to the Canadian legal system and with respect to the substantive law applicable to their particular situation is extremely limited. It is therefore totally unrealistic to think that these individuals have the capacity to participate in legal proceedings under the *IRPA* without some form of assistance and/or representation.

Respondents interviewed for the study focussed most of their comments on issues relating to representation for refugee claimants, as distinct from the immigrant population in general. Persons who immigrate to Canada through regular immigration channels are less likely than refugee claimants to become involved in legal proceedings for which representation is required. These immigrants are also more likely than refugee claimants to have sufficient resources to hire counsel to represent them when required. This is consistent with the fact that over 90 percent of legal aid expenditure in Canada devoted to immigration and refugee matters is directed to providing representation for refugee claimants. Bearing these considerations in mind, the study has been directed primarily to examining the representation needs of refugee claimants.

### **Legal aid for immigrants and refugee claimants**

The *IRPA* provides that persons who are the subject of proceedings under the Act have a right, at their own expense, to be represented by a barrister, solicitor or other counsel. However, exercise of this statutory right is limited to situations where the person concerned is able to pay for such counsel. As a practical matter, for immigrants and refugee claimants who do not have the financial resources to pay for legal counsel, the exercise of this right to counsel is largely dependent on availability of legal aid.

Legal aid services in immigration and refugee matters are delivered predominantly by members of the private bar under judicare arrangements. British Columbia, Ontario and Alberta have legal aid tariffs that allow lawyers to charge an hourly fee, subject to time limits for specific services. Quebec and Manitoba pay a flat fee for most legal aid services relating to immigration and refugee matters. Newfoundland, alone among the six provinces that provide coverage for immigration and refugee matters, delivers legal aid services to immigrants and refugee claimants exclusively through staff counsel.

There is now a growing acceptance that mixed approaches, which include elements of the judicare and staff models, offer advantages over pure variants of either model.



Legal aid authorities in Alberta and Manitoba have established pilot projects to evaluate the utility of using paralegals to provide some of the services currently being provided by lawyers in most other jurisdictions.

In provinces that do not have legal aid coverage for immigration and refugee matters, non-government organizations (NGOs) have stepped in to assist immigrants and refugee claimants who cannot afford to hire counsel. The work being done by volunteers and by NGOs that are functioning on very limited budgets is filling a pressing need. But the people who are providing these services pointed out that their services are not a realistic substitute for legal representation properly funded by legal aid. Respondents who are providing these services were concerned that they are being used by government to provide a cheap substitute for legal aid that is sorely needed by the clients they serve.

## **Need for representation**

Respondents were generally agreed that the level of assistance required and the qualifications needed to provide the required services vary with different proceedings. As a general proposition, the closer one gets to a proceeding in which decisions are made that affect the legal status of the person concerned, and the more the proceeding involves legal, as opposed to purely factual issues, the more important it becomes to have full legal representation provided by a lawyer.

Respondents' views on the need for representation at admissibility interviews were sharply divided. Citizenship and Immigration Canada (CIC) and Immigration and Refugee Board (IRB) respondents saw little need for representation at these interviews, while most service providers felt there is a need for refugee claimants to be represented at these interviews, or at least to have ready access to advice before the interview. Most claimants felt that, in most cases, it would be sufficient to have access to advice and information before the interview.

There was near unanimity among respondents that refugee claimants need substantial assistance to prepare their personal information form (PIF) and to get ready for the hearing on their claim. Most respondents agreed that there is need for a lawyer to be involved at the preparatory stage, at least in a supervisory capacity, to make sure that all of the issues are adequately addressed. However, there was also general agreement that experienced non-lawyers working under the supervision and guidance of a lawyer can handle much of the pre-hearing preparation.

Respondents expressed a strong preference for full legal representation at refugee hearings, although some felt that relatively straightforward, fact-driven cases that do not raise complex legal issue could be effectively handled by supervised paralegals with appropriate training in basic legal principles and appropriate advocacy skills.

Respondents also felt that representation is needed for detention review hearings, at least for hearings where new evidence is being presented. Trained paralegals or experienced consultants have the requisite skills to handle routine detention reviews, but a lawyer is required in any case involving complex legal issues. Representation is not required for routine immigration inquiries, but representation by a lawyer is required for any inquiry involving complex legal issues.



Persons filing appeals on humanitarian and compassionate grounds (H&C appeals) require assistance, but legal representation is generally not considered necessary. However, legal representation is considered to be an absolute necessity for judicial review applications. Representation is also considered necessary for most immigration appeals, particularly for removal appeals. For straightforward appeals that do not raise complex legal issues, the needed representation can be provided by supervised paralegals and experienced immigration consultants; however, full legal representation is considered to be necessary for complex appeal cases.

## **Special representation needs**

Approximately half of the respondents identified women, minors and persons with mental disabilities as having special representation needs. Women who have been victims of gender-based persecution and women who come from cultures where they have been completely subordinate to men may have difficulty relating their stories to strangers, particularly to men. Respondents suggested that it is preferable, where possible, to allow refugee claimants to choose who will represent them, but they did not see same-gender representation for female refugee claimants as a self-evident requirement.

Designated representatives for minors and persons with mental disabilities need to be appointed as early as possible in the process. Respondents noted that the present practice of appointing a designated representative for these individuals at the commencement of their IRB hearings creates many problems. They also noted that many of the persons appointed as designated representatives do not understand the nature of their role and their responsibilities in legal proceedings involving minors and persons with mental disabilities. Respondents identified the present system in place in Montreal, under which the *Service d'aide aux réfugiés et immigrants du Montréal Métropolitain* (SARIMM), a special agency established by the Quebec government, acts as designated representative in cases before all three divisions of the IRB, as an excellent model for overcoming these problems.

Victims of torture and other extreme trauma need special support to cope with their experience and they require intensive psychological counselling to deal with the stresses associated with recounting that experience in hearings before the IRB.

Immigrants and refugees who are aged, infirm, illiterate or particularly unsophisticated require additional assistance to cope with the complexities of the legal proceedings in which they are involved.

Legal proceedings involving immigrants and refugee claimants who do not speak either of Canada's official languages have to be conducted through an interpreter. This creates special challenges for the persons concerned because of the problems inherent in communicating the nuance and emotional impact of testimony presented through an interpreter. Additional problems arise when the interpreter is associated with an ethnic group that is perceived to be hostile to the ethnic group of the person concerned.

## **Representation and fairness of process**

Proceedings under the *IRPA* that affect life, liberty and security of the persons concerned must presumably be substantively and procedurally fair. Immigrants and refugee claimants who do not understand the issues or the nature of the proceedings, assistance or representation from a third party is a necessary element to ensure that the process is fair and that it is conducted in accordance with the principles of fundamental justice. Respondents differed in their assessment of when representation is required, and as to what type of representation is required in particular circumstances. But all respondents were of the view that, where representation is required and the persons concerned cannot afford to hire counsel, there is need for some form of publicly funded representation.

## **Representation and efficiency**

Respondents were generally in agreement that participation by a competent representative enhances the efficiency of all proceedings after the initial intake stage (i.e., admissibility and eligibility interviews). They also agreed that participation by incompetent representatives has a very negative impact on efficiency at all stages.

With respect to admissibility and eligibility interviews, there was a sharp division of opinion between respondents from CIC and the IRB, on the one hand, and service providers (lawyers, paralegals, immigration consultants, and NGO staff) on the other. The former felt strongly that participation by representatives at that early stage is unnecessary and would severely impair efficiency. Most service providers were of the view that some form of representation, or at least advice, for these interviews would reduce misunderstandings that create problems at subsequent stages in the refugee determination process.

## **Choice of representative**

Most refugee claimants interviewed for this study expressed a strong preference for being represented by a lawyer and for being able to choose their own counsel. In reality, most claimants have little or no idea whom they want as their counsel. They rely heavily on recommendations from trusted sources such as NGOs that have assisted them, and they make a choice among limited alternatives proposed by the person making the recommendation. However, the capacity to make that choice, as opposed to being assigned a representative, is very important to most of the refugee claimants who were interviewed for the study.

## **Availability and quality of representation**

At present the level and quality of representation services available to refugee claimants varies widely across the country. Legal aid plans in six provinces, including the three where most refugee claims are heard, provide coverage for immigration and refugee matters. Claimants in the other provinces who cannot afford to hire counsel on



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their own are dependent on non-government organizations to provide the necessary representation services.

Even in provinces where legal aid is available, the quality of representation varies widely. According to respondents, many of the lawyers working in the field are highly qualified and dedicated advocates. But respondents also noted that low legal aid tariffs have caused many of the most experienced counsel to withdraw from representing legal aid clients.

Respondents from Quebec reported that many lawyers in that province are now charging legal aid clients additional fees over and above the amount paid under the legal aid tariff. As a result, they were concerned that free legal representation for immigrants and refugee claimants who are unable to afford to pay for a lawyer is becoming increasingly difficult to access in that province.

Some lawyers are compensating for the low tariff by taking on more cases than they can realistically handle, with the result that the quality of representation provided often suffers.

Respondents also reported that unqualified, unregulated immigration consultants are taking advantage of unwitting refugee claimants. Respondents had major concerns about the role played by interpreters in directing immigrants and refugee claimants to particular immigration consultants and lawyers who are providing poor quality representation for the persons concerned.

There was virtual unanimity among respondents that there is a pressing need for effective regulation of all persons who purport to represent immigrants and refugee claimants.

## **Proposal for integrated service delivery**

Integration of the delivery of legal services with delivery of other settlement-related services such as housing, health care, and language training would greatly simplify things for newly arrived immigrants and refugee claimants.

In the jurisdictions where they have been established, legal aid clinics that have community legal workers or paralegals working closely with lawyers are providing high quality representation service. Community legal workers (paralegals) at clinics are able to provide needed assistance in relation to housing, social services, and related matters that go beyond strictly legal representation. Many of them are also able to serve clients in their native language, and to provide interpretation and translation services that must otherwise be contracted out.

There is scope for large, well-managed settlement organizations, working in close co-operation with lawyers, to play a more active role in integrated delivery of social services and legal assistance and representation services for immigrants and refugee claimants. This could be accomplished through arrangements under which consortiums of lawyers, working in association with these settlement organizations, could contract with legal aid authorities to deliver representation services in accordance with clearly

established standards, on terms agreed to by the legal aid authorities and the service providers.

Present legal aid tariffs in most provinces do not include provision for payment of services delivered by non-lawyers. As a result, they are not well adapted to enabling the establishment of arrangements involving lawyers and non-lawyers in a team-based approach to service delivery. These tariffs would have to be modified to make possible integrated service delivery built on close co-operation between lawyers and settlement organizations.

Any arrangement involving lawyers and non-lawyers in the provision of representation services would have to be structured in a way that ensures transparency in funding arrangements and accountability for the quality of representation provided.



## 1.0 Introduction

This study has been undertaken to examine the implications of the presence and/or the absence of different forms of representation for immigrants and refugee claimants in the various legal proceedings in which they become involved. Access to representation in immigration and refugee proceedings is of direct relevance to the Department of Justice’s mission of ensuring an “accessible, efficient and fair system of justice” and in upholding Canada’s international obligations (Department of Justice, 2000). At a personal level, it is an issue of immediate and direct concern for immigrants and refugee claimants themselves. It is also a matter of significant concern for persons involved in the management and conduct of the various proceedings involving immigrants and refugee claimants, as well as for those responsible for the operation of legal aid programs across Canada.

There are a number of legal and administrative proceedings mandated by provisions of the *Immigration and Refugee Protection Act (IRPA)* that affect immigrants and refugee claimants in Canada.<sup>1</sup> On the immigration side, these include

- ♦ admissibility interviews conducted by immigration officers;
- ♦ detention review hearings conducted by members of the Immigration Division at the Immigration and Refugee Board (IRB);
- ♦ immigration inquiries conducted by members of the Immigration Division at the IRB;
- ♦ administrative proceedings to obtain permanent resident status;
- ♦ appeals against deportation by permanent residents and by Convention refugees; and
- ♦ sponsorship appeals by permanent residents.

Additional proceedings involving refugee claimants include

- ♦ eligibility interviews conducted by immigration officers in relation to refugee claims;
- ♦ refugee protection hearings conducted by members of the Refugee Protection Division (RPD) at the IRB; and
- ♦ various post-determination reviews available to unsuccessful refugee claimants.

Decisions made by the IRB and certain decisions made by officials at Citizenship and Immigration Canada (CIC) are also subject to judicial review in the Federal Court of Canada.<sup>2</sup>

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<sup>1</sup> This study is limited to proceedings that take place within Canada. Immigration proceedings conducted at Canadian consular offices in foreign countries (for example, processing of visa applications) are not addressed.

Issues relating to representation for all proceedings affecting immigrants and refugee claimants are relevant to this inquiry. However, the fact that more than 90 percent of legal aid expenditures in Canada devoted to immigration and refugee matters is directed to providing representation for refugee claimants cannot be ignored (Frecker, 2002: 1).<sup>3</sup> Bearing this in mind, the principal focus of this study is on representation issues relating to refugee claimants. Representation of immigrants who are not also refugee claimants is addressed in the study only to the extent that respondents have identified separate issues relating specifically to this group.

## 1.1 Methodology

In an effort to get a clearer understanding of what is happening in relation to those proceedings in actual practice, structured interviews of one to two hours duration were conducted with 140 individuals from across Canada who have direct experience in immigration and refugee proceedings. The interviews were conducted in May, June and July of 2002. Interviews with the respondents from Montreal, Toronto, Fort Erie, Niagara Falls, Vancouver, Ottawa, Saint John and St. John's were conducted in person, rather than by phone. Respondents from Halifax, Saskatoon, Calgary and Edmonton were interviewed by phone. One of the respondents from Winnipeg was interviewed in person and the other was interviewed by phone.

Interviews were conducted on the understanding that, unless respondents expressly consented to having comments attributed to them, their comments would be reported anonymously with only a general description of the respondent where necessary to place the comment in context. This has made the reporting of the respondents' comments more detached than would have been the case if each comment were directly attributed. But this limitation was considered necessary to ensure that respondents did not feel constrained in expressing their opinions in the interviews.

On June 28, 2002 the *Immigration Act* was replaced by the *Immigration and Refugee Protection Act (IRPA)*. When the interviews were conducted, the respondents did not have any significant experience with the new procedures established under the *IRPA*. The questions posed in the interviews were therefore framed with reference to proceedings as they existed under the *Immigration Act*. As a consequence of this limitation in scope of the questions, respondents were not specifically asked to comment on the need for representation in the new pre-removal risk assessment (PRRA) process established under the *IRPA*. Respondents were also not asked to comment on implications that may flow from establishment of the new Refugee Appeal Division (RAD). Both of these developments have potentially profound implications with regard to the representation needs of refugee claimants, but these implications have not been systematically addressed in this study. The PRRA process has been in operation since

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<sup>2</sup> Judicial review of these decisions is available only upon leave of a judge of the Trial Division of the Federal Court, but the process for obtaining leave is itself quite complex.

<sup>3</sup> This is presumably because refugee claimants, as a group, are financially more disadvantaged than other immigrants. Immigrants to Canada must generally satisfy requirements with regard to financial capacity and employment that tend to make them ineligible for legal aid. Most refugee claimants, on the other hand, have left their home countries under duress and they arrive in Canada with very limited financial resources.



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June 28, 2002. However, implementation of the provisions in the *IRPA* relating to the RAD has been delayed indefinitely.

All six members of the research team are former members of the Convention Refugee Determination Division (CRDD), all but one of them having served in senior management positions at the IRB for more than five years. The two members of the research team from Montreal have also served as members of the Immigration Appeal Division of the IRB.

The respondents fell roughly into six categories.

1. **Individual immigrants and refugee claimants:** Twenty-two interviews were conducted with individuals who had direct personal experience as the subjects of different proceedings affecting immigrants and refugee claimants. Twenty-one of the respondents were refugee claimants. Seventeen of these had been interviewed by immigration officers when they made their refugee claims and four were found to be eligible to have their claims determined by the CRDD after completing a written questionnaire. Two of the refugee claimants had also been detained and therefore were also able to comment on their experience with detention review proceedings. One of the refugee claimants, who had also been the subject of a removal appeal, was interviewed with respect to both the refugee determination and the appeal proceedings. The twenty-second respondent was an appellant only. Both respondents who had experience in appeal proceedings and eight of the refugee claimants had also been the subjects of immigration inquiries before the Adjudication Division of the IRB. Only three of the refugee claimants had direct personal experience with post-determination proceedings.

Interviews with these individual respondents were focussed on eliciting information about their personal experience in the various proceedings, their level of knowledge about legal and procedural requirements relating to these proceedings, and their experience with regard to representation for these proceedings. The questions asked in these interviews are reproduced in Appendix 1.

2. **Service providers:** Interviews were conducted with 23 lawyers, eight paralegals, four immigration consultants and 16 representatives from non-government organizations that serve immigrants and refugee claimants across Canada. The UNHCR legal officers in Toronto, Ottawa and Montreal were also interviewed. In the report that follows, their responses are included with those from the other lawyers.

Questions addressed to service providers were focussed on eliciting respondents' opinions regarding the need for representation in various proceedings and their assessment of the level of knowledge that the persons who are the subject of these proceedings have about legal and procedural requirements relating to the proceedings. Service providers were also asked to provide assessments regarding access to representation in relation to the various proceedings and regarding the quality of representation services



currently available to immigrants and refugee claimants. The questions addressed to service provider respondents are reproduced in Appendix 2.

3. **Hearing participants:** Personnel from CIC and from the IRB who participate in an official capacity at hearings and interviews involving immigrants and refugee claimants were asked questions similar to those addressed to service providers. Interviews with hearing participants also attempted to elicit the respondents' opinions regarding the impact that presence or absence of representation has on the outcome of proceedings and on the fairness of the process. The 13 hearing participants from CIC included immigration officers and senior immigration officers who deal with immigrants and refugee claimants at ports of entry and at inland offices, as well as officers who represent the Minister in various proceedings before the IRB. The 17 hearing participants from the IRB included refugee claim officers as well as members from the CRDD, the Immigration Appeal Division (IAD) and the Adjudication Division. This group also included two deputy registrars who deal extensively with parties who appear before the IAD and the Adjudication Division of the IRB. The questions directed to hearing participants are reproduced in Appendix 3.
4. **CIC and IRB managers:** Separate interviews were conducted with a cross-section of CIC and IRB managers. These interviews were directed primarily to eliciting the managers' views with respect to what impact the presence or absence of representation has on CIC operations. The respondents were also asked to provide their assessments with regard to the quality of representation services currently available to immigrants and refugee claimants. The eight respondents in this group included CIC managers from Halifax, Winnipeg, Vancouver, Toronto, Niagara Falls, Lacolle, and Montreal. Questions addressed to CIC managers are reproduced in Appendix 4.
5. **IRB managers:** Similar interviews, directed to eliciting information about the impact of representation and assessments regarding the quality of representation services currently available to immigrants and refugee claimants were conducted with 18 IRB managers. This group included the regional directors in Montreal and Vancouver, operations service managers in Toronto, and managers of CRDD and the IAD in Montreal, Toronto and Vancouver. At the request of the CRDD Assistant Deputy Chairperson in Toronto, CRDD co-ordinating members from Toronto were interviewed in their role as managers rather than as hearing participants, which accounts for the apparent over-representation of IRB managers in the respondent groupings. The interviews with the co-ordinating members were extended to include questions addressed to them in their capacity as hearing participants. Questions addressed to IRB managers are reproduced in Appendix 5.
6. **Legal aid managers:** Legal aid managers in British Columbia, Manitoba and Quebec, and program level personnel from Legal Aid Ontario, the Legal Aid Society of Alberta and the Legal Aid Commission of Newfoundland and Labrador were interviewed to obtain information about legal aid program operations and coverage available to immigrants and refugee claimants in



these provinces. The information obtained from these interviews is of a fundamentally different nature than the information obtained from other respondents. Therefore, it is not included in any of the data tables presented in this report. However, relevant information obtained from these interviews is presented throughout the report. The questions addressed to legal aid managers are reproduced in Appendix 6.

The principle objective of the study was to canvass the opinions of key informants who have extensive personal knowledge of the proceedings affecting immigrants and refugee claimants. A deliberate effort was made to interview a diverse group of respondents who have a broad range of experience with the various proceedings affecting immigrants and refugee claimants. The respondents interviewed were chosen because of the perspectives and insights each of them has with respect to the issues under review by reason of their knowledge of proceedings affecting immigrants and refugee claimants and their experience within the system. The interviews were not intended or designed to gather a statistically representative sample of views. Given the diversity of groups to be canvassed, and the limited timeframe and budget for carrying out the study, it was not feasible to construct a statistically representative sample to address the issues under review.. As a result, the respondent groups are not statistically representative of the larger groups of which they form part. However, given the place of the key informants within the immigration system, their responses do articulate significant perspectives that inform the debate about the representation needs of immigrants and refugee claimants.

Separate but overlapping sets of questions were developed for respondents in each group. Responses from these interviews have been analyzed to provide a composite snapshot from the perspective of the various respondents on six key issues:

1. The need that the immigrants and refugee claimants have for assistance and/or representation in the administrative and legal proceedings in which they are involved;
2. The knowledge and sophistication that immigrants and refugee claimants bring to these proceedings;
3. The skill and knowledge required to provide fair and effective representation for immigrants and refugee claimants;
4. The nature and quality of assistance and representation available to immigrants and refugee claimants;
5. The role played by the various categories of service providers who assist and represent immigrants and refugee claimants; and
6. The impact that presence or absence of representation has on fairness and efficiency of the processes in which immigrants and refugee claimants are involved.

The responses have been examined to ascertain whether they disclose any differences in perspective among different categories of respondents and any distinct regional concerns with respect to availability of assistance and representation. The patterns noted in the analysis that follows reflect the shared views of the individual respondents, but they do not necessarily reflect the views of the larger groups (e.g., CIC

personnel, IRB personnel, NGO workers, etc.) with which the individual respondents are associated. Considering the non-random way in which respondents were selected, caution should be exercised when interpreting the data tables in which their responses are summarized in this report.

While the formal questions asked were quite structured, the actual interviews were open-ended, with respondents taking individual questions as a cue to speak broadly about the particular issues under review. In many instances, responses to one question anticipated subsequent questions and the interviewers had to adapt the interviews accordingly.

The categorization of the responses set out in the various tables in this report is based on a close reading of the notes from each interview. Since the responses in many cases were not direct answers to specific questions, a degree of subjective judgment has had to be exercised in categorizing individual responses. As a result, the tabulation of individual responses on particular issues may not exactly reflect the positions of each of the respondents. However, the authors are confident that the overall range and distribution of opinions as related by the respondents is accurately reflected in the report.

Consistent with the fact that over 90 percent of legal aid spending on immigration and refugee matters is directed to providing representation for refugee claimants, the respondents interviewed for the study focussed most of their comments on issues relating to representation for refugee claimants, as distinct from the immigrant population in general. Accordingly, the representation needs of refugee claimants form the predominant focus of this report. Representation needs in relation to immigration inquiries, immigration appeals and detention reviews involving immigrants who are not refugee claimants are addressed only incidentally.



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## 2.0 Background issues

**B**efore reviewing the detailed findings from the interviews conducted for this study, it is useful to establish the context in which the discussion about representation for immigrants and refugee claimants takes place. A starting point for the discussion is the question whether immigrants and refugee claimants have any legal right to representation or counsel in the legal proceedings in which they are involved. To the extent that such a legal right exists, it is also necessary to establish what this means in practical terms. Another part of the context for this discussion is the issue of which level of government bears responsibility for covering the cost of providing representation to immigrants and refugee claimants who cannot afford to retain counsel on their own. Related to this is the fact that legal aid coverage for immigration and refugee matters is not available in every province, despite the fact that the federal government has jurisdiction over the substantive law and the tribunals that apply that law. The issue of representation for immigrants and refugee claimants must be viewed in the context of a broader debate about different models for delivery of legal aid services and the impact of different arrangements for paying the lawyers who provide these services. Each of these elements is briefly addressed in the sections immediately following.

### 2.1 “Right to counsel” in immigration and refugee matters

It is widely recognized that individuals who are involved in complex legal proceedings generally require some form of counsel to enable them effectively to exercise their legal rights. Legal proceedings affecting immigrants and refugee claimants can have profound, life-altering implications for the individuals involved in them. For immigrants, these proceedings determine their right to become and remain permanent residents in Canada and to bring other members of their family to live with them in Canada. For refugee claimants, the proceedings determine whether they will be granted asylum in Canada or will be returned to a country where, they allege, they face risk of persecution, cruel and inhumane treatment or punishment, and possibly even torture or death. As newcomers to the country, often not speaking either of Canada’s official languages, many immigrants and refugee claimants need assistance and counsel to navigate their way through the complexities of the Canadian legal system.

The principle of “right to counsel” is widely recognized in Canadian law. In a situation where an individual is subject to arrest and detention, section 10(b) of the *Charter of Rights and Freedoms* (the Charter) provides a constitutionally guaranteed right for the person “to retain and instruct counsel and to be informed of that right.” In the civil law context, the Supreme Court of Canada has held that the principles of fundamental justice require that persons be provided with state-funded counsel if they cannot afford to retain counsel on their own in circumstances where rights protected under Section 7 of the Charter are affected by the actions of state agents (*New Brunswick*

(*Minister of Health and Community Services*) v. *G.(J.)*).<sup>4</sup> In the context of legal proceedings affecting immigrants and refugee claimants, section 167(1) of the *Immigration and Refugee Protection Act (IRPA)*<sup>5</sup> provides that “... a person who is the subject of Board proceedings ... may, **at their own expense**, be represented by a barrister or solicitor or other counsel.” [emphasis added]

Exercise of the statutory right to counsel in cases involving immigrants and refugee claimants is limited to situations where the persons concerned are able to pay for such counsel. As a practical matter, however, many immigrants and refugee claimants, in particular refugee claimants, do not have substantial financial resources, so the exercise of their right to counsel is largely dependent on the availability of legal aid.

## 2.2 Jurisdictional issues relating to legal aid in immigration matters

Section 95 of the *Constitution Act, 1867* provides that jurisdiction over immigration matters is shared by the federal and provincial governments, subject to federal paramountcy in the event of any conflict between federal and provincial laws in the area. Section 91(25) of the *Constitution Act, 1867* provides that the federal government has exclusive jurisdiction with regard to “Naturalization and Aliens.” The federal government has entered into agreements with a number of provinces, most notably with Quebec, regarding various aspects of the management of immigration programs. Under the Canada-Quebec Accord, signed in 1991, the province of Quebec has sole responsibility for selecting all independent immigrants and refugees abroad who want to settle in Quebec. However, the federal government is responsible for setting national standards and goals, defining immigrant classes, establishing immigration levels in Canada, managing entry to Canada, and enforcement activities (CIC, 2002g).

Under this division of responsibility, enforcement activities are handled by federal authorities, most notably by Citizenship and Immigration Canada (CIC). Adjudication with respect to immigration and refugee matters is handled by an independent federal tribunal, the Immigration and Refugee Board (IRB). This is in contrast to the situation with respect to criminal law, where Parliament has exclusive jurisdiction for setting the substantive law and procedure (*Constitution Act, 1867*, s.91(27)), while the provinces have jurisdiction over “the Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both Civil and Criminal” (*Constitution Act, 1867*, s.92(14)).

Pursuant to this constitutional division of powers, legal aid programs, being a matter relating to the administration of justice, fall within provincial jurisdiction. The federal government provides a portion of the total funding available for civil legal aid programs as part of the Canada Health and Social Transfer (CHST), but the provinces

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<sup>4</sup> This decision deals with the right to state-funded counsel in a civil law, as opposed to a criminal law case. In holding that a right to state-funded legal counsel may exist for civil law matters as well as for criminal law matters, the Court limited its ruling to the context of the specific legal proceedings in issue, namely proceedings between a government agency and a biological parent regarding temporary Crown wardship of children.

<sup>5</sup> S.C. 2001, Chapter 27, assented to 1 November 2001, came into force on 28 June 2002. This Act replaces the *Immigration Act, 1976-77*, R. S.C. 1985, c. I-2.



retain wide discretion with regard to how these payments from the federal government are spent. One consequence of this is that there is wide variation among provinces with regard to what sort of legal aid coverage, if any, is available for immigration and refugee matters.

### **2.3 Legal aid coverage for immigration and refugee matters**

Legal aid plans in six provinces, British Columbia, Alberta, Manitoba, Ontario, Quebec, and Newfoundland and Labrador, provide coverage for immigration and refugee matters, although the specific proceedings covered vary from province to province. These provinces, particularly Ontario, British Columbia and Quebec, have been pressing the federal government to assume a greater share of the responsibility for covering the cost of providing this coverage. They contend that, since immigration is a matter in federal jurisdiction and since all legal proceedings relating to immigration and refugee matters are dealt with by federal tribunals, the federal government should cover a greater share of the legal aid cost in this area. The federal government, in turn, is of the view that these expenses are funded through transfers to the provinces as part of the CHST.

Because the overwhelming majority of refugee claimants and new immigrants arriving in Canada settle in Toronto, Montreal and Vancouver (CIC, 2001: 6), the burden of providing legal aid coverage for immigrants and refugee claimants falls most notably on the three largest provinces, Ontario, Quebec and British Columbia. In the fiscal year ending on March 31, 2002, Legal Aid Ontario spent \$16,457,406 on immigration and refugee matters, representing approximately 6.8 percent of the total legal aid budget, or 11.3 percent of the certificate budget, in Ontario for that year (Mary Marrone, personal communication, January 22, 2003). In addition, the Refugee Law Office budget was \$680,575. The comparable expenditure figure for British Columbia was \$4,435,750, representing 4.9 percent of the total legal aid budget in that province (Thomas Fisk, personal communication, August 19, 2002).<sup>6</sup> Comparable figures for Quebec are not available at the time of writing.

### **2.4 Service delivery models for legal aid**

Legal aid services are delivered in a variety of different ways. Under the *judicare* model, which is the service delivery model most commonly used in Canada, the legal aid authority authorizes individuals who qualify for legal aid to retain a lawyer in private practice to represent them. The legal aid authority issues a certificate that confirms that the lawyer will be paid for the particular matter for which legal aid has been approved. The amount to be paid is established in accordance with a tariff of fees that lawyers are permitted to charge for specific services. Under the *staff* model, legal services are provided by lawyers (and sometimes by paralegals) working on salary for the legal aid authority. Some jurisdictions use a mix of the two models, providing some services through staff and contracting out other services to lawyers in private practice on a case-by-case basis under *judicare* arrangements. (Currie, 2000).

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<sup>6</sup> The total expenditure figure against which this percentage was calculated does not include charges for one-time transition expenses related to reorganization of the legal aid program in British Columbia.

Within the *judicare* model, there are several variants of how services are contracted and how fees are paid. Some tariffs specify an hourly rate that can be charged. The tariff may also specify a cap on the number of hours that can be billed for particular services, for example for case preparation or client interviews. Other tariffs specify a flat fee for particular services. In addition to these variants, legal aid plans sometimes contract services from lawyers in private practice on a block basis, paying a specified amount for representation services on a defined block of cases. The amounts paid under these contracts may be set in advance by the legal aid authority or they may be set by negotiation or through a competitive bidding process.<sup>7</sup>

In British Columbia, Ontario and Alberta, legal services in immigration and refugee matters are paid for predominantly under the hourly fee variant, subject to time limits for specific services. Quebec and Manitoba pay a flat fee for most legal aid services relating to immigration and refugee matters. British Columbia has had some limited experience with the block contract variant, which was used to deal with the Chinese migrants who arrived by boat in an organized smuggling operation in 1999. While this experiment appears to have been cost-effective, members of the legal profession in British Columbia have expressed serious concerns about the quality of representation that was provided under this arrangement<sup>8</sup> and the experiment has not been repeated. Newfoundland delivers legal aid services to immigrants and refugee claimants exclusively through staff lawyers.<sup>9</sup>

There are also variants within the staff model. British Columbia and Quebec provide some services through clinics staffed by lawyers employed directly by the legal aid authority.<sup>10</sup> Legal Aid Ontario (LAO) provides some services through the Refugee Law Office (RLO) in Toronto. The RLO is operated by staff lawyers and paralegals working on salary for LAO.

Legal Aid Ontario also funds 72 independent community legal clinics where staff lawyers and community legal workers (CLWs) or paralegals provide team-based legal services (Legal Aid Ontario, 2002b: 4). These community clinics differ from staff-based offices such as the RLO in Toronto or the IRLC in Vancouver, both in their mandate and in their governance structure. In addition to their role in providing legal representation to individual clients, community clinics play an active role in public legal education and policy advocacy. Community clinics are also managed by boards of directors drawn from

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<sup>7</sup> Under another variant, which is widely used in Britain but has not been tried in Canada, the legal aid authority franchises certain lawyers in particular market areas to provide services at an agreed price, subject to specified quality assurance and reporting standards (Legal Aid Board, 2000: 35–37)

<sup>8</sup> This concern, which was noted by all of the lawyers in Vancouver who were interviewed for this study, has been officially communicated to the Legal Services Society in British Columbia by \*\*.

<sup>9</sup> Outside counsel might be retained if there are insufficient staff resources to handle the caseload, but this happens so rarely that it is not a factor (Nick Summers, interview, May 25, 2002).

<sup>10</sup> LSS staff lawyers handled approximately 8 percent of all immigration and refugee cases approved for legal aid in British Columbia. Almost all of these cases were handled by lawyers and paralegals working at the Immigration and Refugee Law Clinic (IRLC) in Vancouver. (LSS: 2002f: 7). The LSS is currently in the process of winding down IRLC operations as part of a massive restructuring that has been forced by a drastic reduction in funding received from the government of British Columbia. Four staff lawyers employed by the *Centre communautaire des services juridique* in Montreal handle approximately 10 percent of all immigration and refugee legal aid cases in Quebec. The other 90 percent are handled by members of the private bar (Claude Hargreaves, interview with Pierre Duquette, June 14, 2002).



the communities that they serve. Each clinic operates independently from Legal Aid Ontario, and the individual boards of directors set the mandate for each clinic with a view to responding to the needs of the local community in which the clinic operates. A limited number of the 72 clinics across Ontario include representation of immigrants and refugee claimants within their mandate. Some of these clinics utilize the services of law students to supplement the services provided by staff lawyers and CLWs (Zemans and Monahan, 1997: 120–130).<sup>11</sup>

The Legal Aid Society in Alberta is currently running a pilot project under which a staff paralegal has been assigned to provide support services that would otherwise have to be provided by members of the private bar working under legal aid mandates (Cheryl Blunden, interview, July 30, 2002). In another pilot project, three paralegals, two working full-time and one part-time, employed by the Manitoba Interfaith Immigration Council, are handling PIF preparation for most refugee claimants in Winnipeg. Private practice lawyers paid by Legal Aid Manitoba represent these claimants at their refugee determination hearings. The preparatory work done by the paralegals enables the lawyers who are representing claimants to spend less time on each case (Janis Nickel, interview, May 19, 2002).

In addition to these delivery models, volunteer-based services have sprung up in centres where legal aid is not available or where there is a perceived need for additional services. The most notable example of this is the Halifax Refugee Clinic (HRC), which was established by Lee Cohen, a senior immigration lawyer in Halifax, to fill the void created by the total absence of legal aid coverage for refugee claimants in Nova Scotia. The HRC is funded by private contributions, including grants from the Catholic Pastoral Centre and the Law Foundation of Nova Scotia (Lee Cohen, personal communication, July 16, 2002). It provides representation services to refugee claimants almost entirely through volunteers. Mr. Cohen and other lawyers, working on a *pro bono* basis, provide basic training on refugee law and advocacy for the other clinic volunteers, who then act as counsel for refugee claimants at their hearings (Lee Cohen, interview, July 16, 2002).

A salaried paralegal working for a non-government organization (NGO), the Immigrant and Refugee Support Centre in Saint John, is providing representation services for most refugee claimants and low-income immigrants in New Brunswick. The few complex cases that the paralegal does not feel competent to handle are referred to a local lawyer in Saint John or to Mr. Cohen in Halifax (Leticia Adair, interview, May 18, 2002).

Lawyers working on a volunteer basis at Calgary Legal Guidance, a clinic organized by an NGO in Calgary, provide basic legal advice to walk-in clients. The lawyers at this clinic do not represent clinic clients at hearings or work extensively with them on case preparation, but they do try to provide basic explanations about legal issues

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<sup>11</sup> In fiscal year 1999-2000 the RLO handled approximately 280 cases (Macdonald, 2001: 9). That represented approximately 3 percent of the 8,731 certificates in relation to immigration and refugee matters issued by Legal Aid Ontario in that year (Legal Aid Ontario, 2001: 6). That percentage subsequently declined considerably. The number of certificates in immigration and refugee matters increased to 12,885 in fiscal year 2001-02 while the RLO capacity remained at around 300 cases (Mary Marrone, personal communication, September 27, 2002). Data is not available on the number of community clinics in Ontario that handle immigration and refugee cases, or on the percentage of all immigration and refugee cases in Ontario handled by these clinics.



and help the clients to find counsel who can represent them (Jean Munn, interview, July 15, 2002).

The Saskatchewan Refugee Coalition assists refugee claimants in finding legal representation despite the absence of any publicly funded legal aid program. Lawyers in Saskatoon have responded to the problems created by absence of legal aid by accepting deferred payment of their fees and by taking cases on a non-paying basis. In accepting deferred payment of fees, these lawyers are accepting a considerable risk that they will not be paid for their services, particularly if the claim is not accepted (Helen Smith-McIntyre, interview, July 30, 2002).

A number of other NGOs that provide settlement services to immigrants and refugee claimants across the country also provide limited assistance and representation support. But most of the staff and volunteers at these organizations do not have any legal training, so there are limits to the services they feel qualified to provide.

Respondents from a number of settlement organizations that are dependent on the federal government for most of their funding pointed out that they find themselves in a very difficult situation, because funding agreements with the federal government limit them to providing services for landed immigrants. Strictly speaking, they are precluded from providing services to refugee claimants, yet some of their most needy clients are in this group. Respondents reported that they try to get around this limitation by utilizing the limited funds they receive from other sources to assist refugee claimants while devoting all of their federal funding to providing services for landed immigrants.

The work being done by volunteers and by NGOs that are functioning on very limited budgets is filling a pressing need. But the people who are providing these services are the first to point out that their services are not a realistic substitute for legal representation, properly funded by legal aid. A number of respondents from these settlement organizations expressed concern that they are being used by government to provide a cheap substitute for the legal aid that is sorely needed by the clients they serve.

## **2.5 Tariff variations**

Amounts paid for representation services in immigration and refugee matters vary widely under the different legal aid tariffs. For example, lawyers in Quebec are limited to a flat fee of \$170 for preparing a refugee claim involving a single claimant. They can charge \$50 more for each additional family member included in the claim. This amount covers all time spent interviewing the claimant and other witnesses, if any, and time spent to prepare and file the claimant's Personal Information Form (PIF). Lawyers can charge \$285 for the first day of a hearing into the claim, plus \$150 for each additional half-day. If the panel requests written submissions, a lawyer can bill an additional \$150 (*Commission des services juridiques*, 2000). The legal aid authority has discretion to pay more than the amount prescribed in the tariff, but supplementary payments are authorized only in cases where a lawyer can make a strong case for receiving such payment (Diane Petit, personal communication, September 8, 2002).

The Manitoba tariff, which is also based on a hybrid of an hourly rate and flat fees for particular services, provides \$480 for preparation and the first half-day of attendance



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for a refugee hearing at the Refugee Protection Division of the IRB. This is based on a nominal allowance of 10 hours total working time at a rate of \$48 per hour, but, for all intents and purposes, it is a flat fee because it is virtually impossible to complete the required work within 10 hours. The Manitoba tariff provides for payment of a further \$135 for each additional half day of hearing, including all preparation and attendance (Gerry McNeilly, interview, July 29, 2002).

The tariffs in Ontario, Alberta and British Columbia, which are all based on a prescribed hourly rate with maximum allowances for specific tasks, are considerably more generous. For refugee claims, as an example, Legal Aid Ontario allows up to 16 hours preparation time, plus actual time spent at the hearing (Legal Aid Ontario, 2001: 3). Hourly rates in Ontario range from \$70.35 for lawyers with less than four years experience at the bar to \$87.94 for lawyers with ten years experience (Legal Aid Ontario, 2002a). The comparable tariff in Alberta allows up to 25 hours in total for all hearing preparation and attendance, at an hourly rate of \$72 (Pat Bard, e-mail to Austin Lawrence, March 1, 2002). The British Columbia tariff allows up to 10 hours general preparation plus 5 hours for hearing preparation (e.g., client interviews) and actual time spent at the hearing. The hourly rate under the LSS tariff in British Columbia is \$80, but this is subject to a 10 percent holdback. (Legal Services Society, 1999: 3–4). The LSS has announced that it will replace tariff holdbacks with a 10 percent reduction to all tariffs in the 2002-03 fiscal year (Legal Services Society, 2002f: 7). Newfoundland and Labrador, the only other province that provides legal aid coverage for immigration and refugee matters, relies exclusively on staff lawyers to provide the required representation (Nick Summers, interview, May 25, 2002). Legal Aid Manitoba, which in other areas of law makes extensive use of staff counsel, issues legal aid certificates to lawyers in private practice for all immigration and refugee cases (Gerry McNeilly, interview, July 29, 2002).





## 3.0 Need for representation

### 3.1 Admissibility and eligibility interviews

The views of respondents were sharply divided on the issue of whether there is any need for assistance or representation at admissibility and eligibility interviews.<sup>12</sup> The question of right of representation at these interviews, when conducted at the port of entry, was addressed by the Supreme Court of Canada in *Dehghani v. Canada (Minister of Employment and Immigration)* (1993). The Court held in that case that the purpose of port-of-entry interviews is to aid in the processing of applications for entry to Canada and to determine the appropriate procedure for dealing with applications for Convention refugee status. Accordingly, the persons concerned are not detained in the sense contemplated by section 10(b) of the *Charter of Rights and Freedoms* and the eligibility or admissibility interviews are not analogous to a hearing. According to this Supreme Court decision, the principles of fundamental justice do not include a right to counsel in circumstances where an interview is held for routine information-gathering purposes.

In current practice, persons being interviewed at ports of entry are generally not permitted to have a representative at the interview. Persons who make an inland claim, that is, persons who claim refugee status after entering Canada, can be accompanied at the interview, but the accompanying person is generally not permitted to play any active role as the claimant's representative. The manager of the CIC inland office in Montreal estimated that representatives do accompany inland claimants at inland interviews in approximately 5 percent of cases. Respondents from other regions did not provide any estimates in this regard.

A summary breakdown of responses regarding need for representation at these interviews is presented in Table 1. When reading Table 1 and the other tables that follow, it should be noted that the number of respondents reported in each category does not always match the number of persons interviewed, since individual respondents did not answer every question. It must also be borne in mind that the respondent sample is not statistically representative. Therefore caution should be exercised in interpreting the reported distribution of responses.

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<sup>12</sup> The specific questions relating to need for representation were: "In your opinion do refugee claimants need assistance of a representative at eligibility interviews conducted by CIC officials? Please elaborate as to why representation is or is not necessary for eligibility interviews. What sort of representation do refugee claimants need at eligibility interviews?" Parallel questions were also posed with respect to foreign nationals' need for representation at admissibility interviews. Most respondents did not draw any distinction between admissibility interviews and eligibility interviews, since the two are conducted concurrently when a person makes a refugee claim at a port of entry. Responses to the questions relating to the need for representation at these interviews are, therefore, recorded together.

**Table 1****Assistance or Representation Needed for Admissibility and Eligibility Interviews**

| Respondent Group           | Number of Respondents | Type of Representation |                         |               |             |      |             |
|----------------------------|-----------------------|------------------------|-------------------------|---------------|-------------|------|-------------|
|                            |                       | Lawyer                 | Paralegal or Consultant | NGO or Anyone | Advice Only | None | No Response |
| Lawyers                    | 26                    | 6                      | 11                      | 1             | 7           | 0    | 1           |
| NGO                        | 15                    | 6                      | 3                       | 1             | 3           | 1    | 1           |
| Paralegals and Consultants | 12                    | 5                      | 5                       | 0             | 2           | 0    | 0           |
| CIC                        | 21                    | 0                      | 0                       | 0             | 3           | 17   | 1           |
| IRB                        | 36                    | 0                      | 1                       | 2             | 8           | 16   | 9           |
| Claimants                  | 19                    | 0                      | 0                       | 1             | 12          | 6    | 0           |
| Total                      | 129                   | 17                     | 20                      | 5             | 35          | 40   | 12          |

In accordance with the decision of the Supreme Court in *Deghani*, all of the CIC respondents held that claimants have no right to counsel at admissibility and eligibility interviews. They also believed, given the short time frame in which the interviews must be conducted, that it would not be operationally feasible to allow representation, especially at interviews conducted at ports of entry. All 20 of the CIC respondents who commented on this issue felt that there is no need for representation at admissibility and eligibility interviews because they are conducted simply to gather basic factual information. In their estimation, no decision is made at these interviews that might adversely affect claimants' rights. They noted that the threshold for eligibility to have a refugee claim determined by the RPD is so low that virtually every claim received is found eligible to be referred to the RPD. Three CIC respondents felt that it might be helpful for the persons concerned to have access to independent advice before the interview, and they suggested that there could be a role for NGOs in this regard. Six of the CIC respondents thought that, while representation at the interviews is unnecessary, it is important for refugee claimants to have access to advice after the interview so they are properly informed on how to go about locating counsel and preparing their claim for the IRB. These same six and one other CIC respondent suggested that where the person concerned is an unaccompanied minor, or otherwise has difficulty understanding the questions that are asked, it can be helpful to have a friend or family member accompany them to the interview.

One CIC respondent indicated that, in cases involving issues of serious criminality, it may be helpful for the person concerned to be represented by a lawyer. But this comment was made with reference to interviews conducted at inland CIC offices. It may not have been intended to cover port-of-entry interviews. The perspective of CIC personnel is clearly summed up in this statement from an officer involved with inland claims:



There are few instances where any representation is needed at eligibility or admissibility interviews. Someone prone to confusion and persons with low levels of intelligence, unable to even provide their correct address and telephone number, do need the help of a family member or friend. This is quite common at inland offices. Professional, paid assistance is almost never needed. Where there are no family members or friends, an NGO representative might be helpful. Frankly, it is often the interpreter who is the most helpful to everyone involved.

According to the CIC regional managers interviewed for this study, currently all refugee claimants are interviewed by an immigration officer. CIC no longer relies on mail-in responses to determine claimants' eligibility to have their claims referred to the IRB. All regional managers stated that port-of-entry interviews and inland eligibility interviews are essentially the same. The interviewing officer asks the same questions in both instances. Differences that do arise are primarily because of logistical considerations such as limited availability of interpreters at remote ports of entry. One senior officer at an inland office expressed the opinion that inland interviews need to be more intensive "because they [i.e., persons at inland interviews] have already lied once to get into the country." But the other CIC respondents did not give any indication that they draw a similar distinction between the inland and port-of-entry interviews.

All but one of the CIC managers interviewed emphatically stated that officers do not interrogate claimants on the substance of their claims when conducting admissibility and eligibility interviews. As one of them described this aspect of the interview:

The claim-relevant question is limited to: 'What is the basis of the claim?' Officers are told to just ask that question and write down the answers, nothing more.

According to another manager:

We are trying to get them [immigration officers] to raise basic questions about the reasons for the claim. The IRB has indicated that this is helpful. If you don't ask these questions, there is a risk that some claimants may not make it clear that they are seeking protection.

And a third CIC manager was more specific:

We don't get into the substance of the claim during our interview. We limit ourselves to asking three short questions: 1) Why have you left your country? 2) What do you fear in your country? 3) Why do you not want to return to your country? ... We only want short responses and we have to interrupt them when they say more.

The regional manager in Vancouver was a little less emphatic than his colleagues. He indicated that officers sometimes do question claimants on the substance of their claims, but only if this is necessary to get at issues of security.

Opinions of respondents from the IRB were generally in line with those expressed by respondents from CIC. They saw little if any need for claimants to have any representation at admissibility and eligibility interviews. However, some IRB respondents did suggest that it could be useful to have some form of duty counsel or NGO person available at ports of entry to provide basic advice and to monitor interviews without providing active representation. One RPD member interviewed for the study did suggest that under the *IRPA*, more active representation may be needed at eligibility interviews because it is more likely than before that claimants may be found on security grounds to be ineligible to have their claims determined by the RPD. On the other hand,

an official from CIC has pointed out that the more intensive security screening put in place following the terrorist attacks of September 11, 2001 has not resulted in any significant increase in the number of refugee claims found to be ineligible for referral to the RPD. Under the *IRPA*, claims have to be referred to the RPD within three days. The short turnaround provides little time for officers to conduct in-depth interviews. It is possible that even fewer claims may be determined ineligible as a result.

In contrast to the views expressed by CIC and IRB respondents, 38 of the 51 service providers who responded stated that refugee claimants need representation at admissibility and eligibility interviews. They felt that this need is heightened under the *IRPA*, because there is an increased possibility that claimants may be found ineligible and because notes from the interviews form part of the evidentiary record in subsequent proceedings. Of those who felt that representation is required, five suggested that representation is required in any case involving complex issues relating to eligibility or possible detention, as well as in cases involving unaccompanied minors or severely traumatized or illiterate claimants. Four of the service providers felt representation is required at eligibility interviews but not at routine admissibility interviews. Seven service providers, including six of the 26 lawyers who were interviewed, favoured some form of duty counsel, and five others felt that availability of advice is sufficient. Only one service provider respondent, a volunteer at an NGO, felt that representation is not needed at admissibility and eligibility interviews. This respondent suggested that interpreters at these interviews should play a more active role in clarifying matters for claimants, should the need arise.

Among the 38 service providers who felt that representation is required for admissibility and eligibility interviews, 17 suggested that lawyers should provide the required representation. Nineteen respondents felt that paralegals or experienced immigration consultants could provide the required representation, at least in cases that do not involve complex legal issues – such as issues under section 101(1)(f) of the *IRPA* relating to possible inadmissibility on grounds of security, violating human or international rights, serious criminality or organized criminality. Two felt that NGO personnel could provide the required representation.

The CIC managers reported that, since implementation of the *IRPA* on June 28, 2002, immigration officers across the country have been conducting eligibility interviews using a standard set of questions.<sup>13</sup> The manager of one inland office indicated that the practice in that particular office is for the officer to note the responses on computer and to provide a copy of the notes to the claimants and to the IRB at the end of the interview. Another CIC regional manager indicated that officers provide the claimant with a copy of the interview notes if requested, but not otherwise. Since no other respondents mentioned this particular detail, it is not clear whether there is any standard practice in this regard across the country.

There is some confusion on the matter of the duration of interviews. According to a CIC manager in Winnipeg it depends on the individual immigration officer. Some

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<sup>13</sup> There is some question whether this is in fact correct. UNHCR observers who have been monitoring port-of-entry interviews report that officers in different regions are asking different questions (Judith Kumin, personal communication, October 3, 2002).



officers prided themselves on getting through each interview in as short a time as possible, while others took pride in conducting more in-depth interviews. This manager estimated that the interviews range from half an hour to three hours. He acknowledged that interviews might take longer than three hours in exceptional case, but he felt that would be rare. Other CIC respondents indicated that the interviews take up to three hours, but they did not specify whether interviews of this length are typical or exceptional. A CIC manager in Toronto estimated that, on average, the entire interview process, including time to complete the required paperwork, is approximately four hours. It is not clear whether the time estimates provided by other managers include the time that officers take to write up their interview notes.

Time estimates provided by claimants and by service providers who occasionally accompany claimants, particularly at inland interviews, were somewhat longer than the estimate of up to three hours indicated by respondents from CIC. One NGO respondent from Montreal suggested that it is not uncommon for individuals to be interviewed for up to eight hours and some other service providers indicated that interviews of up to four hours are not uncommon. However, these comments were not offered by way of an estimate of the typical duration of eligibility and admissibility interviews. Given simple resource constraints, it is highly unlikely that many interviews last more than three hours. It is possible that people who speak of interviews lasting much longer than that are including the time that the claimants are required to wait between the actual interview and the meeting with the immigration officer to be informed of the outcome.

At one level, the lack of consensus regarding duration of admissibility and eligibility interviews is immaterial. The real issue is what questions are asked at these interviews. CIC respondents felt strongly that the questions are necessary to determine eligibility and that they do not touch on the substance of the individual refugee claims. Many NGO respondents and lawyers, on the other hand, were convinced that the questions touch on the substance of the claims in a way that can be highly prejudicial, especially considering that the officer's report from the interview forms part of the record in subsequent proceedings. It is this fundamental difference in perception that underlies the sharp division of opinion between CIC and IRB respondents on the one hand and service provider respondents on the other.

All respondents agreed that representation is unnecessary at routine admissibility interviews where the person concerned is simply a visitor and not a potential refugee claimant. However, service providers were strongly of the view that persons who are subject to admissibility interviews should, at a minimum, be afforded the opportunity to seek advice regarding their options before the officer finds the person inadmissible and issues a removal order, which renders the person ineligible to make a refugee claim.

A number of service providers, particularly lawyers, noted incidents where individuals with apparently strong refugee claims have been found inadmissible before they could make their claim. One lawyer mentioned a case that he currently has before the Federal Court. The immigration officer in that case viewed two Romanian stowaways as economic migrants and did not acknowledge their request for refugee status. Their case came to light only by luck, because another detainee at the remand centre, on hearing the claimants' story, got a message to a friend who called the respondent. The respondent has secured stay of removal pending judicial review of the



immigration officer's decision. Other respondents mentioned other specific examples, including the high-profile marine arrival cases in British Columbia in 1999. In that instance, a number of individuals who were initially found by immigration officers to be inadmissible managed to have that decision reversed after filing a judicial review application. Some of these claimants were subsequently determined to be Convention refugees. The respondents who noted these incidents suggested that it is the exception rather than the norm that refugee claimants in this situation have access to any legal recourse before they are removed from Canada. The respondents feared that, in most instances where an immigration officer issues a removal order before a refugee claim is made, the person concerned is forced to leave the country without ever having an opportunity to obtain legal advice.

There is no clearly discernable regional variance in the service providers' responses with regard to need for representation at admissibility and eligibility interviews. However, with regard to type of representation required, a majority of NGO respondents from Quebec expressed a preference for legal representation, whereas their counterparts in other provinces were more inclined to view representation by a non-lawyer as sufficient.

The preference of some service provider respondents for legal representation at admissibility and eligibility interviews was rooted in their belief that immigration officers question claimants on the merits of their claim at these interviews, despite assurances from CIC managers that this is not the case. Since the notes from the interview form part of the record in future proceedings, these respondents saw the interviews as a critical step in the refugee claim determination process. As one lawyer from Vancouver described this concern:

Basically, the refugee claim is finished at the eligibility stage. If claimants damage their credibility at this stage, they are sunk. ... All aspects of the claim are explored. There is a strong need for representation by a capable person who is familiar with all aspects of a refugee claim. ... Representation has to be professional, ethical and motivated by the right reasons. It has to be a lawyer throughout the process because you never know when the law is going to come up.

Concerns in this regard are particularly heightened since the incidents of September 11, 2001. As stated by one NGO representative from Montreal:

As for the need for representation, before September 11 there weren't too many problems. Now, many of the officers are trying to secure the border in anticipation of measures in the new Act [IRPA]. For the inland interview, since 9/11 it's a drama. Everything has changed. Before, it [the application] was made in writing and five days later the person could get the kit for social benefits. Some were called for verification interviews, but for the most part it was *yes*. Now there's an interview for everyone. To deal with the huge numbers, they've taken officers with little training, who improvise, and who, at least at the outset, are questioning claimants on their entire story. [translation]



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Another respondent, a lawyer from Vancouver, made a very similar comment:

Since 9/11 there is much talk about the basis of the claim. As long as there is such extensive inquiry into the claim, representation is needed. Clients are unable to articulate their full stories by themselves.

An NGO respondent from Montreal who has attended many eligibility interviews described the interview process as follows:

The officers, by their questions, do touch on the basis for the claim, even if the claimant has not yet seen their lawyer. At the outset, they ask [the claimant] to reply briefly, by a Yes or No, to the five Convention criteria (fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion) without any help to understand the sense accorded to these criteria by the IRB or the courts. Someone coming from a civil war situation doesn't know the sense that one will attribute to his response; the same for a woman fleeing violence against which she has no protection. [translation]

When one considers the observation of some CIC managers that claimants often spontaneously give extensive details of their claim, even when they are asked to provide only brief answers, it is easy to see how the perspective of the two groups of respondents diverge. From CIC's perspective, the questions are very straightforward. There is little immigration officers can do if claimants insist on providing details about their refugee claim. From the perspective of people who provide support services to claimants, however, the questions posed by immigration officers are technical and hard for claimants to understand. As such, these respondents saw the eligibility and admissibility interviews as a potential trap for claimants who are not properly informed. Since the responses claimants give in these initial interviews follow them through the process, and often give rise to serious credibility issues when the refugee claim is heard by the RPD, many claimant advocates felt that it is essential for claimants to be represented at the interview.

Even if the interviews typically take much less than three hours, the service provider respondents did not accept that they are as limited in scope as the CIC managers suggest. In the context of heightened security concerns that have prevailed since September 11, 2001, it is to be expected that some of these interviews touch on substantive issues relating to refugee claims. The officers who conduct the interviews must determine whether the claims are eligible to be referred to the RPD for a hearing. In many cases, eligibility turns on issues such as the claimant's alleged affiliation with a political faction or group that may be suspected of being involved in terrorist activities. Where claimants indicate that criminal charges and convictions in their country of origin are part and parcel of the alleged persecution, the immigration officer may have to delve to some depth into substantive issues relating to the charges – to ascertain whether the matter should be sent for an inquiry before an IRB adjudicator so a decision can be made on admissibility, considering a criminal conviction. As a practical matter, it can be difficult for an officer to understand what a claimant is saying regarding alleged persecution without asking for some elaboration.

A number of service providers expressed concerns about the attitude manifested by some of the immigration officers who conduct admissibility and eligibility interviews. For example, one NGO respondent stated:

Immigration officers often adopt an attitude of an adversary, even when we are there. Because of this confrontational approach, the presence of a lawyer is necessary. [translation]

A consultant commented:

They [refugee claimants] arrive in a country where they hope to receive protection, and they live in fear of failure. At times, immigration officers are going to exacerbate this fear by making threats to get answers to their questions. We have noted that when we are present to accompany the claimant, the officer's tone drops a notch. [translation]

Another respondent from an NGO that serves immigrants and refugees at a port of entry noted:

At ports of entry, the first CIC representatives people see are uniformed immigration officers. This can be intimidating. While most immigration officers are courteous and respectful, some are disrespectful.

A respondent, who has acted as an interpreter at admissibility and eligibility interviews, described one incident where he was unwilling to translate what the officer said because he felt that it was abusive. Another interpreter, who deals primarily with interviews at Pearson International Airport, said that he found the officers' manner to be "intimidating" and "hostile" in most of the interviews in which he has been involved. He commented that "most of these poor people must feel they are back in their own country." A third interpreter spoke of cases where immigration officers intimidated people with the threat of lengthy detention, which he said leads many people to depart voluntarily. This respondent suspected that most of the people who leave in this way are not genuine refugees. But it is possible that some people with a genuine need for protection may feel intimidated by the attitude of the immigration officers whom they first encounter upon their arrival in Canada.

A majority of the service providers seemed to have this negative perception of the manner in which admissibility and eligibility interviews are conducted. However, not all service providers shared this view. Many of them indicated that immigration officers are generally very courteous and patient when dealing with claimants in admissibility and eligibility interviews, especially at ports of entry.

Most of the claimants interviewed for this study also did not share these concerns about possible intimidation of by immigration officers. In fact a majority of claimants had no complaints about their admissibility and eligibility interviews. Eight of the 16 respondents who commented on their experience in these interviews indicated that the immigration officers had clearly explained the purpose of the interview and what the claimants had to do to pursue their claims. One of these was upset that the officer had refused to allow him to consult a lawyer before the interview, but he had no complaint about the manner in which the interview was conducted. Two others specifically noted that the officers had been very friendly. In addition to the eight who indicated that the explanations they had received were clear, five other claimants said that the officers had explained the purpose of the interviews, but that they did not understand the explanations given by the officers.

Only four of the claimants felt that they had been treated poorly at these interviews. A claimant from Tibet, who has been accepted as a Convention refugee, indicated that the officer at the port of entry provided basic information, but he felt that



the officer was rude. The other three indicated that they had been forced to wait for an inordinately long time, without being given any information and without access to food. One of these respondents, who arrived in Canada over four years ago and was subsequently accepted as a Convention refugee from Iran, described his experience in some detail:

At the airport I identified myself as a refugee but I knew nothing about the process and had no idea of what I would have to prove. I had identity papers for myself and my children that were accepted. I had no idea what was going to happen. I was kept 13 hours at the airport in Toronto with my 10-year old son and 16-year old daughter. It was like a prison. My kids were hungry but we were just given water. They asked many questions and searched us. I was allowed to search my children. I was advised about nothing. I did not know where to go and Immigration people did not give advice. They just said, "Go".

Another point noted by an interpreter from Toronto touches on an issue completely opposite to the concern that immigration officers question claimants on the substance of their claims. According to this respondent, the immigration officers in the interviews he has interpreted never ask about refugee matters. If the person being interviewed does not indicate their desire to make a refugee claim, the question of whether they intend to claim asylum in Canada does not get mentioned at all. This raises the possibility that people who are seeking protection, but who do not know when or where they are supposed to make their claim, may become subject to a removal order before their refugee claim is ever raised.

According to the interpreter, potential claimants will often make their intention to claim asylum known when they are informed of the removal order. This frustrates the officers, who then demand to know why this was not raised earlier. This respondent offered three possible explanations for the delay in making a refugee claim. Many of the claimants explain to the immigration officer that they were answering the questions asked. They were not asked anything about a possible asylum claim, so they said nothing, thinking they had to raise the claim at some other point in the process. Indeed, as a number of respondents confirmed, claimants are often advised by the agents who assist them that they should say as little as possible in the first interview with an immigration officer at the port of entry. In other cases, while the persons concerned are waiting for the senior immigration officer's (SIO's) decision following the interview, they may have heard from other people in the waiting area that they should raise their claim at this time. A third possibility is that the claimants are hoping to be admitted as visitors and they only raise a refugee claim when they are told they are inadmissible. In either case, the basic problem arises because, when they arrive in Canada, the prospective claimants are not well informed as to how they should go about making their refugee claim.

The issue of need for representation at admissibility and eligibility interviews was the subject that drew the most animated and most divergent opinions among respondents interviewed for this study. This is to be expected because it is an area where respondents have sharply differing views regarding the nature and potential consequences of the interviews, and where there is virtually no representation or other assistance currently available to refugee claimants. It is also an area where any significant change in the status quo could have profound operational implications for CIC, and major cost

implications for legal aid authorities. While the views of CIC and IRB respondents on this issue appeared to diverge sharply from those of service providers, there was limited agreement among a minority of respondents on both sides of the issue that it could be beneficial to provide refugee claimants with access to reliable, independent advice before they are interviewed by an immigration officer. The CIC and IRB respondents who expressed this opinion were generally more tentative than their counterparts among service providers, who saw access to such advice as a minimum requirement. A majority of the claimants who expressed any opinion on this issue indicated that access to such advice would be welcome and, in most cases, would adequately address their representation needs at that early stage in the refugee determination process. This tentative convergence of views among the different stakeholders suggests that this is a possibility that merits further exploration.

The polarization of opinions between CIC and IRB respondents on one hand and service providers on the other was largely rooted in fundamentally different perceptions regarding the nature and purpose of the admissibility interviews and possible consequences that flow from statements made by claimants at these interviews. From the comments received in the interviews, it appears that the interviews are not as simple and clear cut as has been suggested by many CIC respondents. On the other hand, the fears expressed by many of the service providers also appear to be exaggerated. There may well be instances where, as alleged by some service providers, the interviewing officers are going more deeply into matters relating to the merits of refugee individual claims than is necessary or appropriate at a simple fact-gathering interview. But, if this is the case, it is clearly contrary to the stated direction from CIC management that the interviews should be limited to simple fact gathering.

This is an area where the issue of need for representation turns on what is actually happening on the ground. If the interviews are limited to gathering the basic information needed to determine admissibility and eligibility to have a refugee claim determined by the RPD, one can reasonably presume that principles outlined by the Supreme Court of Canada in the *Deghani* decision in 1993 still apply. However, if the interviews have become more than a simple fact-gathering exercise, it can be anticipated that the demand for representation at these interviews will increase. Lawyers who represent refugee claimants may initiate test cases to see whether the interviews, as currently conducted, conform to the characterization laid out by the Supreme Court in *Deghani*.

### **3.2 Refugee determination proceedings**

Respondents were asked whether, in their opinion, refugee claimants need any form of assistance or representation for refugee status determination proceedings conducted by the IRB. Respondents were then asked to indicate what sort of assistance or representation refugee claimants need at three different stages in the process at the IRB, namely:

- 1) to prepare their refugee claim, including drafting of the Personal Information Form (PIF) and preparing for the RPD hearing where the claim is determined;



- 2) with respect to the expedited process, where claimants with apparently well-founded claims are interviewed by an IRB staff member (a refugee claim officer under the *Immigration Act*, a protection officer under the *IRPA*) to ascertain whether the claimant is suitable to be accepted without a hearing; and
- 3) at the determination hearing itself.

A summary of the responses received is provided below.

### 3.2.1 Preparation for refugee hearings

Eighty-six respondents commented on refugee claimants' need for assistance in preparing their PIFs and getting ready for the hearing into their claim.<sup>14</sup> No one suggested that claimants do not require any assistance or representation to prepare for their hearings. See Table 2.

**Table 2 Type of Representation Required to Prepare for Refugee Hearings**

| Respondent Group           | Number of Respondents | Type of Representation |                      |                                     |      |             |
|----------------------------|-----------------------|------------------------|----------------------|-------------------------------------|------|-------------|
|                            |                       | Lawyer                 | Supervised Paralegal | Unsupervised Paralegal or Non-legal | None | No Response |
| Lawyers                    | 26                    | 10                     | 15                   | 0                                   | 0    | 1           |
| NGO                        | 16                    | 8                      | 4                    | 3                                   | 0    | 1           |
| Paralegals and Consultants | 12                    | 0                      | 4                    | 6                                   | 0    | 2           |
| CIC                        | 21                    | 0                      | 1                    | 2                                   | 0    | 18          |
| IRB                        | 35                    | 1                      | 3                    | 11                                  | 0    | 20          |
| Claimants                  | 21                    | 14                     | 2                    | 2                                   | 0    | 3           |
| Total                      | 131                   | 33                     | 29                   | 24                                  | 0    | 28          |

Sixty-two of the 86 respondents who commented felt that because of the potentially complex legal issues involved and the need to make sure that all critical points are addressed in the PIF, a lawyer has to be involved at the case preparation stage, at least in a supervisory capacity. Twenty-nine of these respondents felt that much of the preparation could be handled by a trained paralegal under a lawyer's supervision, but many of these insisted that a lawyer must assume final responsibility for drafting the

<sup>14</sup> The specific questions addressing the need for assistance in case preparation and the type of assistance required were: "1) In your opinion, do refugee claimants need any form of assistance for refugee status determination proceedings conducted by the IRB? Please elaborate as to why assistance and/or representation is or is not needed for refugee status determination proceedings. 2) What sort of assistance and/or representation do you think refugee claimants need to prepare for their refugee status determination hearing? 3) What qualities or qualifications should persons have in order to provide the sort of assistance and/or representation that you believe is needed by refugee claimants to prepare their case?" Data in Table 3 is based on responses to the last of these questions.

narrative setting out the details of the claim. Thirty-three respondents felt that claim preparation should be handled entirely by lawyers.

Many of the respondents felt strongly that the person who is representing the claimant at the hearing must also be actively involved in preparing the claimant for the hearing. They suggest that this early involvement is essential to establish trust between the representative and the claimant, and to ensure that the claimant understands and will be ready to answer clearly and truthfully the type of questions that likely will be asked. Those respondents who believed that representatives at refugee hearings must be lawyers felt equally strongly that lawyers must be actively involved in case preparation.

Twenty-four respondents indicated that a trained, experienced paralegal or immigration consultant could handle case preparation, without any stipulation that the person be supervised by a lawyer. It is not clear what level of training these respondents have in mind. The emphasis appears to be more on familiarity with the refugee determination process than on legal training in any formal sense. For some of these respondents, experienced caseworkers at NGOs would be suitable for helping claimants draft their PIF and preparing claimants for their hearing. Others felt that some explicit training on the legal principles involved in refugee determination is required.

Among the 18 refugee claimant respondents who commented on their case preparation needs, 14 indicated a clear preference for having a lawyer directly involved. Three of these had very negative experiences with immigration consultants and had to engage lawyers to straighten out their problems. Two others who did most of their case preparation with supervised paralegals expressed frustration about the limited access they had to their lawyer prior to the hearing. Most of the claimants spoke extremely highly of the support they received from NGOs, but felt they needed assistance from a lawyer to complete their pre-hearing preparation. They were encouraged in this view by the supporting NGOs, which encouraged and helped them secure legal representation.

Of the four claimants who felt that support from a paralegal or an experienced person from an NGO was adequate for case preparation, two suggested that the help they had received from NGOs was superior to what they had received from their lawyer. One of these claimants had dealt only with her lawyer's assistant and had not spoken directly with her lawyer up to the time of the interview. As a result, she was very frustrated and felt that she was receiving more effective support from the NGO that was assisting her. The other claimant found his lawyer had been unprofessional. He believed that his claim was accepted despite the representation that the lawyer provided, rather than because of anything the lawyer had done on his behalf.

The responses received from claimants regarding the respective roles of lawyers and paralegals cannot be viewed as representative of perspectives from the claimant population at large. The number of claimants interviewed for the study was quite small (21 principal claimants, 26 claimants in all) and their responses are directly conditioned by their own personal experience. Only two of the claimants had direct experience with supervised paralegals who specialize in assisting claimants with case preparation. One claimant, who was denied legal aid coverage, was receiving assistance from a settlement worker at an NGO. All of the other claimants reported that their lawyers had handled all of the interviews and had drafted their PIFs. Fifteen of the claimants stated that NGOs



had been very supportive, but only the one unrepresented claimant indicated that anyone from an NGO had been directly involved in preparing her claim.

### 3.2.2 Refugee hearings

There is virtual unanimity among respondents in all groups that refugee claimants need to have some form of representation at their refugee hearing.<sup>15</sup> Of the 100 respondents who expressed an opinion on this issue, only one felt that representation is not required at all, while two respondents felt it might not be necessary in relatively simple cases, and one felt that representation is needed only if the claimant is not well educated.

Respondents put forward a variety of reasons in support of the proposition that representation at hearings is essential. Among them, they noted that the process is very court-like and legalistic, despite efforts to make it informal. To be accepted as Convention refugees, claimants are required to prove that they had a well-founded fear of persecution based on one of the five grounds listed in the 1951 *United Nations Convention relating to the Status of Refugees*.<sup>16</sup> Under the *IRPA* these grounds have been extended to include risk of torture within the meaning of Article 1 of the *Convention against Torture*, and risk to life or risk of cruel and unusual treatment or punishment (*IRPA*, s. 97). These grounds are subject to extensive judicial interpretation. Therefore, knowledge of the applicable jurisprudence, principles of international human rights law, and basic principles of administrative law is required to present a claim effectively. Claimants are required to give oral evidence under oath and are subject to being questioned intensively by a refugee protection officer employed by the IRB.<sup>17</sup> In cases where the Minister chooses to intervene, claimants are also subject to being cross-examined by Minister's counsel from CIC. Most claimants are unfamiliar with legal matters and court-like proceedings, and are unable to function in either French or English.

Bearing these considerations in mind, most respondents were of the view that for refugee hearings, full legal representation by a lawyer is required. But opinion on this was not unanimous. See Table 3.

Twenty-nine respondents indicated that a trained paralegal could provide adequate representation. Thirteen of the 29 stipulated that any paralegal representing a claimant at a hearing should be supervised by a lawyer to ensure that significant legal issues are not overlooked. Six respondents stipulated that paralegals and other non-lawyers should be limited to straightforward cases that do not involve complex legal

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<sup>15</sup> In addition to the general question regarding need for representation in refugee status determination proceedings noted in footnote 14, respondents were asked: "1) What sort of assistance and/or representation do you think refugee claimants require at their refugee status determination hearing? 2) What qualities or qualifications should persons have in order to provide the sort of assistance and/or representation that you believe is required by refugee claimants at their refugee status determination hearing?"

<sup>16</sup> The fear of persecution must be based on the claimant's race, religion, nationality, membership in a particular social group, or political opinion. The Convention criteria are incorporated into Canadian law under s. 96 of the *IRPA*.

<sup>17</sup> Refugee protection officers were known formerly as refugee claim officers (RCOs). The title has been changed under the new *Refugee Protection Division Rules*.



issues. Respondents who endorsed representation at hearings by non-lawyers pointed out that good paralegals and consultants provide better representation than incompetent lawyers. They stressed that personal competency rather than formal professional standing is the key consideration. But the clear majority of respondents who expressed any opinion (74 of 104) were strongly of the view that claimants should be represented by a lawyer at refugee hearings.

**Table 3 Type of Representation Required for Refugee Hearings**

| Respondent Group           | Number of Respondents | Type of Representation |                      |                                     |      |             |
|----------------------------|-----------------------|------------------------|----------------------|-------------------------------------|------|-------------|
|                            |                       | Lawyer                 | Supervised Paralegal | Unsupervised Paralegal or Non-legal | None | No Response |
| Lawyers                    | 26                    | 17                     | 5                    | 3                                   | 0    | 1           |
| NGO                        | 16                    | 13                     | 1                    | 2                                   | 0    | 0           |
| Paralegals and Consultants | 12                    | 4                      | 4                    | 4                                   | 0    | 1           |
| CIC                        | 21                    | 2                      | 1                    | 0                                   | 1    | 17          |
| IRB                        | 35                    | 18                     | 3                    | 6                                   | 0    | 8           |
| Claimants                  | 21                    | 20                     | 0                    | 1                                   | 0    | 0           |
| Total                      | 131                   | 74                     | 13                   | 16                                  | 1    | 27          |

Interestingly, of the eight paralegals who commented on the type of representation required for refugee hearings, four felt strongly that it should be a lawyer who represents claimants at hearings. Two felt that lawyers should handle complex cases, but they thought that, with appropriate supervision and experience, paralegals could handle routine cases. Two others felt that paralegals could handle most cases with appropriate supervision and input from lawyers. Two of the paralegals have had extensive experience representing claimants in hearings and they indicated that they sometimes have difficulty coping with the legal issues that arise. Of the four consultants who expressed an opinion on this issue, three felt that they could handle most cases without difficulty, while one indicated that he limited himself to expedited and straightforward cases, and referred all others to lawyers.

Most CIC respondents had limited experience with proceeding before the IRB, so they declined to comment on the need for representation at such proceedings. Of the four CIC respondents who did express an opinion regarding the need for representation at RPD hearings, two suggested that claimants should be represented by a lawyer because of the legal nature of these proceedings. One felt that a supervised paralegal would normally be able to provide the required representation, and one suggested that persons coming from genuine refugee-producing countries would not require representation. This respondent felt that only persons whose claims are very weak would normally need to be represented at their hearing.

Among the 35 IRB respondents, 18 felt that claimants should, preferably, be represented by lawyers at refugee hearings, although many of these felt that supervised



paralegals could probably handle routine cases. Six felt that supervised paralegals could handle most refugee hearings, and three felt that experienced immigration consultants or paralegals could handle most refugee hearings without a lawyer's supervision. Eight respondents from the IRB expressed no opinion on the need for representation at refugee determination hearings.

### 3.2.3 Expedited process interviews

Only 40 respondents expressed any view regarding refugee claimants' need for representation or assistance in relation to expedited process interviews conducted by a refugee protection officer at the RPD (see Table 4).<sup>18</sup> Sixteen of these respondents felt that a lawyer should attend the interview with the claimant. Twelve felt that trained paralegals could effectively represent claimants at expedited interviews, and 12 felt that anyone could serve as a representative at these interviews. Of the 12 respondents who felt that paralegals could provide this service, three stipulated that the paralegals should be working under the supervision of a lawyer.

**Table 4 Type of Representation Required for Expedited Process Interviews**

| Respondent Group           | Number of Respondents | Type of Representation |                         |        |             |
|----------------------------|-----------------------|------------------------|-------------------------|--------|-------------|
|                            |                       | Lawyer                 | Paralegal or Consultant | Anyone | No Response |
| Lawyers                    | 26                    | 7                      | 5                       | 4      | 10          |
| NGO                        | 16                    | 5                      | 0                       | 3      | 8           |
| Paralegals and Consultants | 12                    | 1                      | 3                       | 4      | 4           |
| CIC                        | 21                    | 0                      | 0                       | 0      | 21          |
| IRB                        | 35                    | 3                      | 4                       | 1      | 27          |
| Total                      | 110                   | 16                     | 12                      | 12     | 70          |

The respondents who felt that representation is needed at expedited process interviews posited a number of different reasons. Some felt that there is need for someone to monitor the questions being asked, to intervene when necessary to clarify any misunderstanding that might arise, and to make sure that salient points in the claimant's story are not overlooked. They see this role as especially important in situations where claims not accepted in the expedited process are remitted for a full hearing following the interview. When this happens, notes from the interview form part of the record at the hearing. According to these respondents, a representative is needed at the interview since most claimants would not be aware of the need to place objections or comments on the

<sup>18</sup> The specific question asked was: "What qualities (qualifications) should persons have in order to provide the sort of assistance and/or representation that you believe is needed by refugee claimants in relation to the expedited process?" The refugee claimants who were interviewed were not asked this question, because only one of them had any direct experience with the expedited process. The question was put only to respondents who had previously indicated that refugee claimants require some form of assistance or representation in relation to proceedings before the RPD.

record. Other respondents noted that the presence of a representative whom the claimant knows and trusts is needed to put claimants at ease so they can function effectively at the expedited process interview.

No respondents from CIC commented on this particular matter, and only eight of the 35 respondents from the IRB expressed any opinion on it. Of these, three felt a lawyer is required, four felt a paralegal could provide any needed representation and assistance, and one suggested that all that is required is someone to provide the claimant with moral support. Among the lawyers, seven felt that a lawyer is needed for expedited interviews, five felt that representation by a paralegal would be adequate, and four felt that someone without any legal background could fill this role. Eleven of the lawyers who were interviewed expressed no opinion on this issue. Only half of the 16 NGO respondents commented on the need for representation at expedited interviews. Of these, five felt the representative should be a lawyer, and three felt that any sympathetic person could fill the role. Among the eight paralegals and consultants who commented, one felt that claimants need to have a lawyer for expedited interviews, four felt that an experienced paralegal could provide appropriate representation, and one thought that all that is required is someone to provide moral support.

### **3.2.4 Post-determination proceedings for failed refugee claimants**

The situation with regard to post-determination options available to unsuccessful refugee claimants has changed significantly over the months that research for this study was carried out. Prior to June 28, 2002, when the *IRPA* came into force, any claimant whose refugee claim was rejected by the Convention Refugee Determination Division (CRDD) of the IRB could, within 15 days after receiving notice of that decision, apply to CIC to be considered for inclusion in the post-determination refugee claimants in Canada class (PDRCC). According to many service provider respondents, the success rate on PDRCC applications was so low that they regarded the process largely as a waste of time and felt that it made little difference whether the applicant was represented or not. The grounds under which an applicant might be granted protection in Canada under PDRCC have been subsumed in the definition of a “person in need of protection” under section 97 of the *IRPA*. Therefore, it is considered pointless to report details of responses regarding need for representation in the PDRCC process.

Since there was no experience with the pre-removal risk assessment (PRRA) process at the time of the interviews, very few respondents made any reference to it in their responses. Those who did comment generally felt that legal representation would be required for PRRA applications, especially in cases where a hearing is likely. (For example, in cases relating to claims that were found to be ineligible to be determined by the RPD and for repeat claims raising credibility issues.) PRRA applications involving a simple review of updated publicly available information on conditions in an applicant's home country might not require any representation.

The other administrative appeal option open to unsuccessful refugee claimants – an application to the Minister to be granted permanent resident status in Canada on humanitarian and compassionate (H&C) grounds – remains available under the *IRPA*. However, the scope of H&C applications may be somewhat narrower now that the



grounds on which the RPD can grant protection to persons at risk have been widened from what they were under the *Immigration Act*. Specifically, issues of risks faced by the appellant in his or her home country, which previously might be raised in H&C applications, are now supposed to be dealt with at the RPD hearing and in the PRRA process immediately prior to removal. H&C applications are meant to be limited to circumstances pertaining to the appellant's situation in Canada, and to factors other than risks faced by the appellant in his or her home country, that might justify issuance of a Minister's permit.

In addition to PRRA and H&C applications, unsuccessful refugee claimants can apply to the Federal Court for judicial review of the decision rejecting their claim. Considerations with respect to need for representation in H&C applications and judicial review applications are quite different and respondents' assessments differed accordingly.

With regard to judicial review, respondents in all categories were unanimous in the view that representation by legal counsel is an absolute necessity. The process in the Federal Court is quite complex, even for experienced lawyers. The deadlines for filing a leave application and a supporting brief are quite short. To have any prospect of success, a leave application must be accompanied by convincing, well-crafted legal arguments highlighting reviewable errors in the contested decision. The kinds of errors that can be raised for judicial review are limited and legalistic in nature.<sup>19</sup> The leave application requires a careful analysis of what transpired at the hearing to identify any reviewable error. An in-depth understanding of administrative law principles is needed to recognize the sorts of errors that can reasonably ground a leave application.

While it is theoretically possible for claimants to make such an application on their own, it is utterly unrealistic to expect any claimant to do so, particularly considering their unfamiliarity with the Canadian legal system and the fact that many of them cannot work in either of Canada's official languages. Even if claimants could find someone who is not a lawyer who could handle the technical aspects of the judicial review application, this is not an option open to them. The Federal Court Rules (Rule 119) provide that a person may only appear in person or be represented by a lawyer. Non-lawyers do not have standing to represent clients at the Federal Court.

It is difficult to provide a precise breakdown of responses with regard to the need for assistance and/or representation in post-determination proceedings at CIC because the questions relating to this matter dealt with PDRCC applications, H&C applications and pre-removal risk assessment together.<sup>20</sup> A summary breakdown of these responses is

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<sup>19</sup> The grounds for judicial review, set out in section 18.1(4) of the *Federal Court Act*, are that the federal board, commission or other tribunal whose decision is being challenged: (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 an 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.

<sup>20</sup> The specific questions were: 1) "In your opinion, do failed refugee claimants require any form of assistance and/or representation in post-determination proceedings conducted by CIC (i.e., PDRCC, humanitarian and compassionate appeals, and under the new Act [IRPA] pre-removal risk assessments? Please elaborate as to why assistance and/or representation is or is not needed for these post-determination

provided in Table 5. Of the 65 respondents who expressed any views on the matter, 59 suggested that representation is required for at least some post-determination proceedings. Most of the interviews were conducted before the *IRPA* came into force on June 28, 2002, and only eight of the respondents made any reference to *PRRA* proceedings, with all eight indicating that representation would be required for these proceedings. Three respondents suggested that representation might only be required for H&C applications but not for PDRCC. One respondent felt that representation is required for PDRCC but not for H&C applications. Seventeen of the hearing participants and six of the service providers did not respond to the questions regarding this issue.

**Table 5 Type of Representation Required for Post-Determination Proceedings at CIC**

| Respondent Group           | Number of Respondents | Type of Representation |                         |           |      |             |
|----------------------------|-----------------------|------------------------|-------------------------|-----------|------|-------------|
|                            |                       | Lawyer                 | Paralegal or Consultant | Non-legal | None | No Response |
| Lawyers                    | 26                    | 10                     | 11                      | 3         | 0    | 2           |
| NGO                        | 16                    | 8                      | 4                       | 2         | 0    | 2           |
| Paralegals and Consultants | 12                    | 2                      | 7                       | 1         | 0    | 2           |
| CIC                        | 21                    | 1                      | 1                       | 2         | 5    | 12          |
| IRB                        | 35                    | 2                      | 2                       | 3         | 1    | 27          |
| Total                      | 110                   | 23                     | 25                      | 11        | 6    | 45          |

proceedings. 2) What sort of assistance and/or representation do you think failed refugee claimants need to prepare applications for post-determination proceedings? 3) What sort of assistance and/or representation do you think failed refugee claimants require at hearings or interviews conducted in connection with post-determination proceedings?" These were followed later in the interview by the following question: "What qualities or qualifications should persons have to provide the sort of assistance and/or representation that you believe is required by refugee claimants in relation to post-determination proceedings conducted by CIC?"



Ten of the 24 lawyers who commented, and eight of the 16 NGO respondents, felt that legal representation is needed for these administrative post-determination proceedings. Seven out of the nine paralegals and consultants who commented felt that they were qualified to handle these cases, while two felt that lawyers are required. Only one of nine CIC respondents and two of eight IRB respondents who commented felt that legal representation is required. In general, service providers were more inclined than hearing participants to view these post-determination proceedings as involving complex legal issues that can best be dealt with by someone with the sort of expertise that lawyers and trained paralegals are presumed to have.

Specific questions on the need for representation in post-determination proceedings were not included in interviews with individual refugee claimants because most of the respondents had no direct experience with these proceedings. The two claimants who did have such experience indicated that a lawyer had assisted them. Both felt that this assistance was definitely needed and that they depended on their lawyers to guide them through the process. They were not in a position to comment on whether a non-lawyer could provide adequate representation for the post-determination proceedings.

### 3.3 Detention reviews

A summary of the responses regarding need for representation for detention reviews is provided in Table 6. Sixty-nine respondents commented on the need for representation in detention review proceedings.<sup>21</sup> There was a general consensus that detainees have a right to representation at these proceedings because detention constitutes deprivation of the person's liberty. However, there was also a consensus that representation is needed only when there are new issues to be addressed.

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<sup>21</sup> All of the service providers and the hearing participants, as well as three refugee claimants who had been detained by immigration authorities, were asked the following questions with respect to detention reviews: "1) In your opinion, do persons detained under provisions of the *Immigration Act* [or the *Immigration and Refugee Protection Act*, for interviews after June 28, 2002] need any form of assistance and/or representation for detention review hearings conducted by IRB adjudicators? Please elaborate as to why assistance and/or representation is or is not needed for detention review hearings. 2) What sort of assistance and/or representation do persons detained need to prepare for detention review hearings? 3) What sort of assistance or representation do you think persons detained need at detention review hearings? 4) What qualities or qualifications should persons have in order to provide the sort of assistance and/or representation that you believe is needed by persons detained in relation to detention reviews?"

**Table 6 Assistance or Representation Needed for Detention Reviews**

| Respondent Group           | Type of Representation |           |           |      |   | No Response |
|----------------------------|------------------------|-----------|-----------|------|---|-------------|
|                            | Lawyer                 | Paralegal | Non-legal | None |   |             |
| Lawyers                    | 26                     | 14        | 7         | 2    | 0 | 3           |
| NGO                        | 16                     | 10        | 1         | 0    | 0 | 5           |
| Paralegals and Consultants | 12                     | 6         | 6         | 0    | 0 | 0           |
| CIC                        | 21                     | 11        | 2         | 0    | 0 | 8           |
| IRB                        | 35                     | 6         | 1         | 0    | 0 | 28          |
| Detainees                  | 3                      | 3         | 0         | 0    | 0 | 0           |
| Total                      | 113                    | 50        | 17        | 2    | 0 | 44          |

Fifty of the 69 respondents who commented on this issue felt that detainees should be represented by a lawyer, especially if there are any contentious issues to be addressed. Comments made by one of the lawyers illustrate this point of view very clearly:

Counsel is needed for detention reviews. Most detainees have a poor understanding of why they are detained and what they must establish to be released. Detention is a deprivation of liberty and should be treated as seriously as any other deprivation of liberty.

"Detainees need an effective advocate. They don't understand the legal grounds for their detention and cannot argue against it. They don't know how to respond.

"Detention reviews are adversarial. I have had some real battles with CIC in detention reviews. These are fully equivalent to bail hearings."

A case presenting officer (CPO) from CIC noted that the vast majority of detainees indicate a desire to be represented by a lawyer when they are made aware that they have a right to counsel. The problem is that very few of them can afford to retain counsel. This respondent pointed out that it facilitates the detention review process when detainees have legal representation. According to this respondent:

Adjudicators and the case presenting officer give basic information, but I am not sure the person concerned fully understands. Counsel could go over things more thoroughly.

This respondent also noted that having representation available for detention review hearings avoids the need for adjournments to enable the detainees to retain counsel. Another CIC respondent noted that the key is "competent counsel," not just any counsel.

Any representation at a detention review should be by a person (generally a competent lawyer) who understands the law and can provide a good argument regarding release and bonds. Local NGOs generally cannot do this. They can provide some comfort to detainees, but no real help when it comes to legal issues.



This respondent also noted:

There are exceptions because some NGO staff people have learned a lot over the years.

Seventeen of the respondents who felt that legal representation is required for detention reviews qualified their response.<sup>22</sup> They suggested that such representation may only be required in complicated or contentious cases, cases involving serious issues of criminality or suspected war crimes, for example. These respondents felt that in more routine cases, where a person is detained as a flight risk or to establish identity, for example, representation by a supervised paralegal or an experienced immigration consultant or person from an NGO would be adequate. The other 33 respondents who felt legal representation is required for detention reviews did not draw any distinction between simple and complex cases. Seventeen respondents felt that representation is required, but that it can generally be adequately provided by a paralegal or by some other person who is familiar with the detention review process.

There was division of opinion among respondents in all categories as to when representation is required for detention reviews. Some felt that it is important to have representation at the initial 48-hour review and at any subsequent review where new information is to be considered. Others felt that representation is pointless at the 48-hour review because it is too early for the persons detained to obtain identity documents or to find a surety to secure their release. Other respondents felt strongly that detention is a deprivation of liberty that triggers the right to representation under section 10(b) of the *Charter of Rights and Freedoms* and that it is very important that detainees have access to counsel at the earliest opportunity.

Four of the lawyer respondents suggested that duty counsel should be provided for the initial detention review hearings. An arrangement of this sort is currently in place in British Columbia. Respondents who are familiar with the arrangements in British Columbia noted that quality of representation provided by duty counsel is uneven, but the general sense conveyed by respondents from British Columbia is that the present system is a marked improvement over what existed before the duty counsel roster was established.

Concern was also expressed that some detainees, particularly those who are transferred to provincial jails, and who do not speak English or French, get lost in the shuffle if they are unable to contact a representative early in the process.

### 3.4 Immigration inquiries

A summary of responses relating to need for representation in immigration inquiries is provided in Table 7. Forty-seven respondents commented on the need for representation in immigration inquiries.<sup>23</sup> Thirty-one of these suggested that legal

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<sup>22</sup> Of the 17, eight were from CIC and three were from the IRB. Four lawyers, one paralegal and one consultant expressed the same qualification.

<sup>23</sup> The specific questions asked with respect to immigration inquiries were: “1) In your opinion, do persons who are the subject of immigration inquiries conducted by IRB adjudicators need any form of assistance and/or representation for the immigration inquiry? Please elaborate as to why assistance and/or



representation is needed mainly for inquiries dealing with complex issues, for example, cases involving equivalency between Canadian and foreign laws and cases involving possible deportation of a permanent resident. Twelve of them suggested that routine inquiries are open-and-shut affairs where there is little scope for input by a representative or by the person concerned, other than possibly to argue in favour of a departure order in place of a deportation order. Four of these respondents felt that it is desirable to have representation at all inquiries, but that a paralegal or experienced immigration consultant can handle routine cases.

Five other respondents suggested that representation by a paralegal or a consultant is desirable for inquiries, if only to make sure that the person concerned understands the proceeding, the significance of the order and any appeal rights they might have. These respondents did not draw any distinction between routine and complex inquiries, implying that they felt paralegals and consultants are quite capable of dealing with any issues that arise in inquiries.

**Table 7 Assistance or Representation Needed for Immigration Inquiries**

| Respondent Group <sup>24</sup> | Number of Respondents | Type of Representation |           |                         |      |            |
|--------------------------------|-----------------------|------------------------|-----------|-------------------------|------|------------|
|                                |                       | Lawyer                 | Paralegal | Non-legal <sup>25</sup> | None | No Comment |
| Lawyer                         | 26                    | 16                     | 1         | 0                       | 0    | 9          |
| NGO                            | 16                    | 4                      | 2         | 0                       | 0    | 10         |
| Paralegals and Consultants     | 12                    | 1                      | 6         | 0                       | 0    | 5          |
| CIC                            | 21                    | 8                      | 1         | 1                       | 5    | 6          |
| IRB                            | 35                    | 2                      | 0         | 0                       | 0    | 33         |
| Total                          | 110                   | 31                     | 10        | 1                       | 5    | 63         |

Five respondents felt that moral support for the person concerned is all that is required for most immigration inquiries. However, they felt that legal representation is required in cases where an inquiry may lead to loss of permanent resident status.

In summary, a majority of respondents who commented suggested that representation is needed primarily for inquiries that involve complex legal issues. In

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representation is or is not needed for immigration inquiries. 2) What sort of assistance and/or representation do you think persons who are the subject of an immigration inquiry need to prepare for inquiry hearing? 3) What sort of assistance or representation do you think persons who are the subject of an immigration inquiry need at the inquiry hearing? 4) What qualities or qualifications should persons have in order to provide the sort of assistance and/or representation that you believe is needed by persons who are the subject of an immigration inquiry?"

<sup>24</sup> Responses from individuals who have been involved in inquiries indicate such a complete lack of understanding of the process that they have not been included in Table 5.

<sup>25</sup> Respondents counted in this category suggested that all that is required is someone who can provide general support and assistance for the person who is the subject of the inquiry, as opposed to actively representing that person .



these cases, involvement of a lawyer is preferred. Otherwise inquiries can be handled without representation or with representation provided by a non-lawyer who is familiar with the process.

### 3.5 Immigration Appeals

Service providers and hearing participants were questioned regarding the need for representation in appeal proceedings before the Immigration Appeal Division (IAD) of the IRB.<sup>26</sup> The two appellants who were interviewed were also asked for their assessment regarding need for representation in immigration appeals. Only 41 respondents expressed opinions on this matter, all of them suggesting that representation is needed for appeals. Thirty-four of these felt that the representative should be a lawyer, especially for removal appeals and for sponsorship appeals involving complex legal questions, such as validity of foreign marriages. Six respondents indicated that experienced non-lawyers could provide effective representation for most immigration appeals. A summary breakdown of responses is provided in Table 8.

Only five respondents from the IRB and two from CIC and IRB commented on the need for representation at appeal proceedings before the IAD. Two of the IRB respondents who stated that legal representation is required for removal appeals felt that most sponsorship appeals, which involve exercise of discretion on humanitarian and compassionate grounds, could generally be handled by competent immigration consultants or paralegals. Seven of the lawyers and one of the consultants shared this view. Two other consultants felt they could handle all appeals. Four of the eight paralegals who were interviewed felt that appeals should be handled by lawyers, although one of these thought a paralegal who specialized in appeals could probably handle most appeals.

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<sup>26</sup> The specific questions were: “1) In your opinion, do persons who are pursuing immigration appeals before the Immigration Appeal Division of the IRB need any form of assistance and/or representation for the immigration appeal? Please elaborate as to why assistance and/or representation is or is not needed for immigration appeals. Is there any difference in need for assistance and/or representation for removal appeals and for sponsorship appeals? 2) What sort of assistance and/or representation do you think appellants need to prepare an immigration appeal? Is there any difference in the sort of representation needed to prepare for removal appeals and for sponsorship appeals? 3) What sort of assistance and/or representation do you think appellants need at appeal hearings before the IAD? Is there any difference in the sort of representation needed for removal appeals and for sponsorship appeals?” These were followed later in the interview by the question: “What qualities or qualifications should persons have to provide the sort of assistance and/or representation that you believe is required by persons pursuing immigration appeals?”

**Table 8 Representation Needed for Immigration Appeals**

| Respondent Group           | Number of Respondents | Type of Representation |                         |           |      | No Comment |
|----------------------------|-----------------------|------------------------|-------------------------|-----------|------|------------|
|                            |                       | Lawyer                 | Paralegal or Consultant | Non-legal | None |            |
| Lawyers                    | 26                    | 20                     | 0                       | 0         | 0    | 6          |
| NGO                        | 16                    | 4                      | 1                       | 0         | 0    | 11         |
| Paralegals and Consultants | 12                    | 4                      | 3                       | 0         | 0    | 5          |
| CIC                        | 21                    | 1                      | 1                       | 0         | 0    | 19         |
| IRB                        | 35                    | 4                      | 1                       | 0         | 0    | 30         |
| Appellants                 | 2                     | 2                      | 0                       | 0         | 0    | 0          |
| <b>Total</b>               | 112                   | 35                     | 6                       | 0         | 0    | 71         |

### 3.6 Summary

Respondents' views on the need for representation at admissibility interviews were sharply divided. CIC and IRB respondents saw little need for representation at these interviews, while most service providers felt there is need for refugee claimants to be accompanied by a knowledgeable advocate at these interviews, or at least to have ready access to good advice before the interview. Twelve of the 19 claimants who responded felt that in most cases it would be sufficient if they had access to advice and information before the interview. Only one felt that anything more than this would be routinely required.

There was near unanimity among respondents who commented on the issue that refugee claimants need substantial assistance to prepare their personal information form (PIF) and to get ready for the hearing on their claim. A substantial majority of these respondents (62 of 86) indicated that lawyers must be involved at the preparatory stage, at least in a supervisory capacity, to make sure that all of the issues are adequately addressed. Almost half of the respondents who indicated that a lawyer must be involved in case preparation felt that much of the preparatory work can be handled by experienced non-lawyers working under the supervision and guidance of a lawyer.

Respondents expressed a strong preference for full legal representation at refugee hearings, although some felt that relatively straightforward, fact-driven cases that do not raise complex legal issues could be effectively handled by supervised paralegals with appropriate training in basic legal principles and appropriate advocacy skills.

Respondents also felt that representation is needed for detention review hearings, at least for hearings where new evidence is being presented. Trained paralegals or experienced consultants have the requisite skills to handle routine detention reviews, but a lawyer is required in any case involving complex legal issues. Representation is not



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required for routine immigration inquiries, but for inquiries involving possible loss of permanent resident status or complex legal issues, such as equivalency of foreign convictions, representation by a lawyer is required.

Persons filing H&C applications require assistance, but legal representation is generally not considered necessary. However, legal representation is considered to be an absolute necessity for judicial review applications. Very few respondents commented on the need for representation for pre-removal risk assessments (PRRA) because there had been no experience with this new process when the interviews were conducted. The few who did comment felt that representation similar to that required for initial hearings would be needed in any PRRA case where there is substantial new evidence to be considered. Representation was also considered necessary for most immigration appeals, particularly for removal appeals. For straightforward appeals that do not raise complex legal issues, most respondents felt that the needed representation can be provided by supervised paralegals and experienced immigration consultants; however, full legal representation was considered to be necessary for complex appeal cases.





## 4.0 Special needs

Service providers and hearing participants were asked whether females, minors and persons with mental disabilities have any special representation needs in relation to immigration and refugee proceedings.<sup>27</sup> They were also asked to identify other special needs groups of which they might be aware, and to comment on the availability of services to address the special needs that they identified. Of the 84 respondents who were asked to comment on these special needs groups, 60 expressed opinions with regard to at least one group.

### 4.1 Women

Forty-eight respondents indicated that women have special representation needs over and above those needs that apply to the client population at large. Most of the respondents' comments were addressed to needs of female refugee claimants. Twelve respondents felt that women do not have any special needs and a further 24 expressed no opinion on the matter (see Table 9). The point most commonly noted is that representatives and decisionmakers have to be sensitive to the particular situation in which female claimants find themselves because of their gender.

**Table 9 Respondents' Assessment of Special Representation Needs – Women**

| Respondent Group           | Number of Respondents | Yes | No | No Comment |
|----------------------------|-----------------------|-----|----|------------|
| Lawyers                    | 26                    | 21  | 0  | 5          |
| NGO                        | 16                    | 9   | 1  | 6          |
| Paralegals and Consultants | 12                    | 6   | 2  | 4          |
| CIC                        | 13                    | 4   | 7  | 2          |
| IRB                        | 17                    | 8   | 2  | 7          |
| Total                      | 84                    | 48  | 12 | 24         |

Respondents who noted special representation needs for women pointed out that many female refugee claimants have suffered brutal and degrading sexual and emotional abuse, either at the hands of their spouses or as victims of civil violence. As a result, they

<sup>27</sup> These questions were put only to service providers and hearing participants. Interviews with CIC and IRB managers focussed primarily on issues affecting operations and did not include questions on the special representation needs of particular groups.

are severely traumatized and may have great difficulty relating the details of the persecution they have suffered, particularly relating those details to males. These respondents also noted that women from certain cultures find it easier to relate to other women than to men, simply because they have lived in highly segregated communities where most of their contact has been with other women. There was widespread agreement among respondents that representatives, decisionmakers and other persons involved in the refugee determination process need to be sensitive to these gender-related issues.

Some respondents went further, and suggested that it is important to give women the choice of having a female representative. They also felt that, in cases where female claimants may have difficulty relating details of their story to men, the interpreter, the decisionmaker, and other hearing participants such as the refugee protection officer assigned to the case should be women. Other respondents, including some of those who felt that female refugee claimants have special needs, took exception to the notion that gender sensitivity requires that female claimants be represented by females and that their cases be dealt with exclusively by women. Speaking directly from personal experience, they noted that, in their opinion, the female claimants they have dealt with can be equally well represented by men or by women, provided the representative is sensitive to these issues. Likewise, with regard to decisionmakers, these respondents felt that the key issue is the ability of the individual decisionmaker to deal sensitively with the issues in each case, rather than the gender of the decisionmaker *per se*.

There was no clear consensus on this issue, and the differences of opinion among respondents did not break down on lines of gender or respondent group. Respondents generally acknowledged that it is preferable, where possible, to give the claimant some choice of representative, but they did not see same-gender representation as a self-evident requirement. If there was any consensus among respondents, it was that, first and foremost, claimants require competent representation. Sensitivity to the circumstances of the individual client was seen as an important component of competent representation.

## **4.2 Minors**

Fifty-three respondents identified minors as having special representation needs. Only one respondent expressed the view that minors do not have special needs, while 20 made no comment on the issue (see Table 10). Most of the concerns noted related to the need for minors to have a designated representative.

Children, especially those who arrive in Canada without an accompanying adult, are among the most vulnerable of all immigrants and refugee claimants. They do not have the legal capacity to instruct counsel on their own behalf. When children arrive unaccompanied, it is usually because their parents have sent them. But it is uncertain whether they have been sent for their own protection or for other, more questionable reasons, for example, to work in the sex trade, as couriers for drug dealers, or as indentured labourers in illegal sweatshops. Apart from their lack of legal capacity, most minors lack the education and life experience to fend for themselves when they arrive in Canada. As a result, they are extremely vulnerable to being exploited.



Recognizing this fact, the *IRPA* (s. 167(2)) provides for the appointment of a designated representative for any person who is the subject of proceedings before a division of the IRB where the person is under 18 years of age or unable, in the opinion of the applicable division, to understand the nature of the proceedings. The Rules of all three divisions of the IRB require counsel to notify the division and any other parties to the proceeding, without delay, when counsel believes that a designated representative may be needed. (*Refugee Protection Division Rules*, s. 15; *Immigration Division Rules*, s. 18-19; *Immigration Appeal Division Rules*, s. 19).

**Table 10 Respondents’ Assessment of Special Representation Needs – Minors**

| Respondent Group           | Number of Respondents | Yes | No | No Comment |
|----------------------------|-----------------------|-----|----|------------|
| Lawyers                    | 26                    | 17  | 1  | 8          |
| NGO                        | 16                    | 11  | 0  | 5          |
| Paralegals and Consultants | 12                    | 5   | 0  | 7          |
| CIC                        | 13                    | 11  | 0  | 2          |
| IRB                        | 17                    | 9   | 0  | 8          |
| Total                      | 84                    | 53  | 1  | 30         |

The criteria for designating a representative for a refugee hearing are described in the *CRDD Handbook* (IRB, 1999):

The person to be designated to represent the claimant:

- ◆ must be over 18 years of age;
- ◆ must be able to appreciate the nature of the proceedings;
- ◆ must be willing to represent the claimant;
- ◆ must be readily able to do so;
- ◆ must not stand to gain anything by having a negative decision made against the claimant in the case (i.e., no conflict of interest).

Where the claimant has a parent, other relative, legal guardian, or trusted friend who appears to be capable and can meet the above criteria, then that person will usually be designated as representative.

In other cases, the Refugee Division member may select a representative from a list of professional persons in their region, generally lawyers or social workers, who are available and willing to accept the appointment. Potential representatives named on the list should have been screened to ensure that they have satisfactory knowledge and experience for the task at hand and that their actions will be governed by a code of professional conduct.

Another factor that may often be important in selecting a suitable representative is the representative’s familiarity with the language and culture of the claimant.

Many of the respondents noted that the present system for designating representatives is not working. Some respondents indicated that there is insufficient regard for whether the persons designated fully understand the nature of their role. When



this happens, there is little confidence that the designated representative will put the interests of the child ahead of any personal interests he or she might have. Rather than taking instructions from the designated representative, counsel must often spend additional time when preparing the child's case to make sure that the designated representative understands his or her role and is acting in the best interests of the child. With time limits under present legal aid tariffs being barely adequate to prepare normal cases, counsel who are paid by legal aid have little incentive to spend any extra time on case preparation (Frecker, 2002). As a result, pre-hearing consultation between counsel and designated representatives may not be as thorough or as effective as it should be.

When the formal designation does not take place until commencement of the hearing, there is no one who is formally accountable for watching out for the child's best interests during the critical case preparation stage. The resulting lack of clarity regarding the designated representative's role can compound the problem of inadequate pre-hearing consultation. This can lead to bizarre results. For example, one respondent described an incident where, in the course of a hearing, there was an open disagreement between counsel and the designated representative as to what evidence was to be presented in a child claimant's case.

Children who are accompanied by their parents have fewer problems because, in the normal course of events, one of the parents will presumably be the designated representative and can assume that role even before being officially appointed. However, in cases involving separated or unaccompanied children, and in cases where the child may have a separate claim, independent from the parents' claim, delay in appointing a designated representative can create major problems.

Some of the lawyers and NGO respondents who expressed concerns regarding designated representatives suggested that having each division of the IRB exercise the authority to appoint a designated representative separately, with respect only to the particular proceedings before that division, also creates problems. There is no simple procedure for designating a representative who can act in relation to all proceedings before the IRB. These respondents would prefer a system where a designated representative is appointed for purposes of all proceedings before the IRB. They also suggested, to ensure early involvement of a qualified designated representative, that a professionally qualified public body, such as a child protection agency, should fill the role of designated representative by default. An official from such an agency could then assume responsibility for instructing counsel as soon as a child, or other person who needs a designated representative, becomes involved in proceedings before the IRB. Where an appropriately qualified individual who has some personal link with the child is available, that person could be designated to replace the default representative.

### **4.3 Persons with problems regarding mental capacity**

Fifty-one respondents felt that persons with mental disabilities have special representation needs. As with minors, early appointment of a designated representative was the primary need identified by respondents with respect to immigrants and refugee claimants suffering from mental disabilities. Two respondents suggested that persons with mental disabilities do not have any special representation needs, and 31 did not



comment on the issue (see Table 11). In addition to the basic needs related to appointment of a designated representative, respondents pointed out that many persons with mental disabilities also need to be referred for appropriate psychiatric treatment and support. Many problems experienced by persons with mental disabilities can be traced to the fact that appointment of a designated representative is usually delayed until the commencement of the hearing.

**Table 11 Respondents' Assessment of Special Representation Needs – Mentally Disabled**

| Respondent Group           | Number of Respondents | Yes | No | No Comment |
|----------------------------|-----------------------|-----|----|------------|
| Lawyers                    | 26                    | 16  | 1  | 9          |
| NGO                        | 16                    | 9   | 0  | 7          |
| Paralegals and Consultants | 12                    | 5   | 0  | 7          |
| CIC                        | 13                    | 9   | 0  | 4          |
| IRB                        | 17                    | 12  | 1  | 4          |
| Total                      | 84                    | 51  | 2  | 31         |

Immigrants and refugee claimants who arrive at a port of entry suffering from a severe mental disorder face special problems. These individuals sometimes claim asylum because they do not know any better. One respondent, a lawyer from Ontario who has considerable experience dealing with cases of this sort, noted that mentally disturbed refugee claimants are frequently detained, especially if they behave in an erratic or aggressive way. Often, they are held in provincial jails where they are incarcerated with common criminals. For individuals suffering from paranoid delusions, schizophrenia or depression, the stress of being detained in these circumstances can severely exacerbate their condition. Their refugee claims are referred to the RPD, often without attention being drawn to the fact that they are mentally disturbed. They then get placed on track for a refugee hearing that will be held many months down the road.<sup>28</sup> Meanwhile, in the absence of the appointment of a designated representative, people continue to overlook the core problem, which is that the claimant is mentally disturbed.

Respondents suggested that considerable headway could be made to rectify the problems experienced by persons suffering from mental disabilities if a system were put in place to appoint a designated representative as soon as it becomes apparent that the person concerned is mentally disturbed. The designated representative could then take

<sup>28</sup> The lawyer who raised this concern most forcefully noted that many of these claimants come from the United States or from Western Europe. This observation was re-iterated by a case presenting officer (CPO) from CIC who has dealt with these cases at inquiries. The CPO noted that, in his experience, the problem can often be traced to the fact that the person concerned has stopped taking prescribed medications. Both the CPO and the lawyer suggested that what is needed is a system to ensure that mentally disturbed individuals are quickly referred for appropriate medical treatment. In cases where their alleged refugee claim is based entirely on some psychotic delusion, they would often be better served by being returned quickly to their home country where they can receive appropriate medical care.

appropriate steps to determine whether the refugee claim should be withdrawn, or whether it should be pursued. The biggest single challenge is to identify the cases where the persons concerned are suffering from a disability that warrants the appointment of a designated representative.

Working with a designated representative can be particularly difficult for lawyers when mentally disabled clients do not realize that they lack legal capacity, and they disagree with the course of action proposed by their designated representative. In these cases, the lawyer must endeavour to ascertain what is in his or her client's best interest, but, in a strictly legal sense, the lawyer is expected to take instructions from the designated representative.

#### **4.4 Victims of torture and other special needs groups**

Twenty-eight respondents identified other groups of immigrants and refugee claimants with special representation needs (see Table 12). Some of these respondents identified more than one additional special needs group. Twelve indicated that there were no special needs groups other than women, children and the mentally disabled. Forty-four respondents made no comment on this issue. The most frequently mentioned groups were victims of torture and other trauma, including severe sexual abuse (11 respondents), illiterate claimants (seven), and persons with physical disabilities, including elderly claimants (four). Other groups identified were refugee claimants whose claim is based on sexual orientation (four), undocumented detainees (two), mass arrivals (two), and spouses with separate claims (two). One respondent felt that claimants from unusual language groups have special representation needs, and another mentioned refugee claimants who are exploited by unscrupulous agents as having special needs.



**Table 12 Respondents' Assessment of Special Representation Needs – Torture Victims and Others**

| <b>Respondent Group</b>           | <b>Number of Respondents</b> | <b>Yes</b> | <b>No</b> | <b>No Comment</b> |
|-----------------------------------|------------------------------|------------|-----------|-------------------|
| <b>Lawyers</b>                    | 26                           | 14         | 0         | 12                |
| <b>NGO</b>                        | 16                           | 5          | 0         | 11                |
| <b>Paralegals and Consultants</b> | 12                           | 6          | 1         | 5                 |
| <b>CIC</b>                        | 13                           | 1          | 8         | 4                 |
| <b>IRB</b>                        | 17                           | 2          | 3         | 12                |
| <b>Total</b>                      | 84                           | 28         | 12        | 44                |

Respondents indicated that victims of torture and other extreme trauma need special support to help them cope with their experience. They may also need intensive psychological counselling to enable them to deal with the stresses associated with recounting that experience. Respondents who identified women as having special needs noted that women who have been raped or who have been victims of extreme sexual abuse have special counselling needs that are analogous to those of other severely traumatized claimants.

The respondents who mentioned other special needs groups did not elaborate on what special sort of representation they might require. Presumably, persons who are illiterate need special help to understand the documents that are given to them, and physically handicapped individuals may require special accommodation to deal with the limitations imposed by their disabilities. According to one of the respondents who mentioned homosexual refugee claimants as a special needs group, these claimants face special problems because of a high incidence of homophobia, particularly among interpreters. Detainees face special problems because they are isolated from the normal support networks in the community, and sometimes have great difficulty in making the necessary arrangements to obtain identity documents from their home country. The special representation needs of refugee claimants who arrive in large groups arise from the special way in which mass arrivals are sometimes dealt with. For example, there are special problems related to providing representation to claimants who are detained at remote locations, as happened with the Chinese migrants who arrived *en masse* by boat in British Columbia in 1999.

Spouses with separate claims may need separate counsel, or at least may need to have their claims heard separately to ensure that the unique elements of their respective claims do not get confused or overlooked. Counsel who represent refugee claimants from unusual language groups sometimes encounter problems in finding competent interpreters who can communicate with the claimant in his or her language. Beyond that, the representation needs of such clients are not significantly different from those of other refugee claimants. When dealing with refugee claimants who are being exploited by

unscrupulous agents, representatives need to be aware of the possibility that the claimants may be subject to ongoing intimidation by the agent or may have been wrongly instructed by the agent to tell a false story.

#### **4.5 An effective approach to providing designated representatives**

According to respondents from Montreal, Quebec has developed a system with regard to appointment of designated representatives that appears to be working better than those in other jurisdictions. The Quebec government has established *Service d'aide aux réfugiés et immigrants du Montréal Métropolitain* (SARIMM). The 12 to 16 staff persons who work for SARIMM are employed by a local community service centre (CLSC) that encompasses a variety of government services. SARIMM personnel specialize in providing services to immigrants and refugees. Most notably, they operate a reception service to assist new arrivals to find housing and to access needed medical and social services. SARIMM has a standing agreement under which members of its staff are appointed by the IRB as the designated representatives for unaccompanied minors and persons with mental disabilities who are involved in proceedings before any of the three divisions of the IRB in Montreal. Two SARIMM staff members, one assigned full-time and the other half-time, provide this service. SARIMM personnel who run the reception service identify clients who require a designated representative. One of the staff members who serves as a designated representative meets with the client, lines up legal counsel, and works closely with counsel throughout the preparation and presentation of the client's case.

This arrangement ensures that SARIMM personnel are effectively working on the case from the outset.<sup>29</sup> Beyond this significant benefit, the arrangement also ensures that the client has an experienced designated representative who is thoroughly familiar with the process and who fully understands the responsibilities associated with that role. At present, the formal appointment as designated representative does not take place until the day of the hearing. The respondent who provided detailed information about SARIMM noted that the present arrangement could be further improved if the formal designation were to be made earlier in the process, possibly when the client attends the initial case

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<sup>29</sup> One IRB respondent from Montreal was critical of the way in which SARIMM is handling cases involving unaccompanied minors. According to this respondent, SARIMM is overly deferential to advice from particular ethnic communities when selecting lawyers to represent unaccompanied minors from these communities and when selecting foster homes for the children. This respondent felt that it would be preferable to have lawyers as designated representatives for unaccompanied minors. The respondent was more satisfied with SARRIM's role in providing designated representatives for claimants with mental disabilities, because identity of the claimant is less often a problem and health care personnel are more actively involved in these cases. It must be noted that this was the only negative comment received concerning SARIMM's role as designated representative.



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intake interview at the IRB.<sup>30</sup> This interview takes place seven days after the claim is referred to the IRB. No other regional office of the IRB has an equivalent to these case intake interviews, which are used in the Montreal regional office to facilitate case management and to provide claimants with reliable information as early as possible in the process (Simon Pérrusse and Michel Paulo, interview, May 21, 2002). But the IRB could, without undue difficulty, introduce a summary procedure to appoint a designated representative as soon as it becomes apparent that one is required.

No other province has a single agency working in a role similar to that played by SARIMM in Quebec. Establishment of such agencies in the other provinces would greatly facilitate early appointment of designated representatives and would provide better assurance that the persons serving as designated representatives understand their role and have the qualifications to discharge it competently.

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<sup>30</sup> This intake interview is conducted by a case officer, who does not have the authority to appoint the designated representative. But an arrangement could be made to have the assistant deputy chairperson or a co-ordinating member make the formal designation when that intake interview takes place.





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## 5.0 Interpretation and representation

### 5.1 The challenges of presenting cases through interpreters

**L**egal aid authorities maintain data on disbursements for translation and interpretation services, but this information is not organized in a way that allows one readily to identify the percentage of cases for which such services are required. However, it is clear that this is a significant expense item for legal aid authorities, particularly in relation to refugee claims. Disbursements for these services accounted for more than 16 percent of total legal aid expenditures on immigration and refugee matters in Ontario and British Columbia in recent years (Frecker, 2002: 64). One can safely assume that such services are required in a substantial majority of cases involving refugee claimants. Respondents were asked to comment on the implications of conducting proceedings through an interpreter, and whether the presence of a representative for immigrants and refugee claimants makes any difference in the outcome of these cases.

Respondents who commented on this issue noted how difficult it is to convey the full emotional impact and nuance of testimony when it is presented through an interpreter. They also noted that special problems can arise when the interpreter is perceived by the claimant as belonging to a rival group from within the home country. Even if the individual interpreter is totally removed from the conflict in the home country, the level of distrust that exists as a result of ethnic conflicts in these countries can be profound. Some service providers also indicated that it can be difficult, especially at the case preparation stage, to get refugee claimants to divulge sensitive details about their claim when the interpreter is from the same ethnic community and the claimant is not confident that everything said will remain confidential.

Only three respondents reported incidents where they have observed representatives playing an active role in correcting or challenging the interpretation of particular testimony provided in hearings. Some respondents, particularly from the NGO sector, suggested that interpreters have an important role to play in explaining the context and cultural meaning of testimony that may otherwise be difficult for decisionmakers to understand. Other respondents, particularly among decisionmakers, took strong exception to this proposition, stating that it is imperative for interpreters to remain neutral and to confine themselves to providing an accurate translation of what witnesses say. Representatives and decisionmakers in these cases face a special challenge in finding ways to ensure that testimony is understood in its cultural context, without surrendering their core functions to interpreters.

### 5.2 The relationship between counsel and interpreters

According to a recent report prepared by Legal Aid Ontario, evaluating the cost-effectiveness of the Refugee Law Office in Toronto, approximately 25 percent of



referrals to members of the private bar come from interpreters (MacDonald, 2001: 7). In the present study, a number of service provider respondents expressed concerns about the role played by interpreters in directing clients to particular lawyers and consultants whom the respondents consider to be offering sub-standard representation. Respondents from all regions noted that some interpreters pass out business cards of particular counsel to immigrants and refugee claimants when they attend at CIC offices for admissibility and eligibility interviews. There was a widely held belief among the respondents who raised this issue that the interpreters are receiving a commission from the counsel concerned. The respondents who raised this issue considered such a practice to be clearly unethical.

The close relationship between interpreters and counsel is not entirely a bad thing. Some lawyers and consultants have established specialized practices dealing with claims from particular countries. Interpreters and leaders from the related ethnic communities, who have come to know and trust them, will understandably refer clients to them. The ethical problem arises only when interpreters are used on a commercial basis to recruit business. The problem is especially bad when the representatives involved are providing poor quality service and taking advantage of the ignorance of newly arrived immigrants and refugee claimants about other options that are available to them.

Respondents also expressed concern that a number of individuals with limited experience as interpreters are offering their services as immigration consultants without having the requisite qualifications to do the job properly. Respondents felt that new immigrants and refugee claimants are particularly vulnerable to being taken advantage of by these individuals, and they felt strongly that there is an urgent need to regulate these practices to eliminate abuse.

Information obtained in the interviews conducted for this study is insufficient to confirm the extent of this problem, but the concerns noted were shared among a large number of respondents in all regions. This should definitely be taken as a signal that this matter needs to be investigated more thoroughly, and that appropriate action needs to be taken to deal with the problems identified.



## 6.0 Knowledge and sophistication of persons concerned

### 6.1 Refugee claimants

Service providers were asked to indicate what they thought refugee claimants, in general, on their first contact with the respondent, know about the possibility of claiming refugee status in Canada.<sup>31</sup> Most respondents dealt with this question by describing the sort of knowledge that typical claimants manifest on their first encounter with the respondent. These responses have been grouped roughly into three very imprecise categories (“specific,” “limited” and “none”)<sup>32</sup> to simplify reporting of the respondents’ assessment of claimants’ general knowledge regarding asylum as an option. As a follow-up question, respondents were asked to provide their assessment of claimants’ detailed knowledge – that is to say, their knowledge of the specific elements required and the procedures to be followed to establish a refugee claim.<sup>33</sup> A summary breakdown of responses to both questions is provided in Table 13.

**Table 13 Service Providers’ Assessment of Claimants’ General and Detailed Knowledge about Claiming Refugee Status**

| Respondent Group          | Number | General Knowledge |         |      | Detailed Knowledge |          |         |      |             |
|---------------------------|--------|-------------------|---------|------|--------------------|----------|---------|------|-------------|
|                           |        | Specific          | Limited | None | No Response        | Specific | Limited | None | No Response |
| Lawyers                   | 26     | 3                 | 15      | 3    | 5                  | 1        | 2       | 18   | 5           |
| NGO                       | 16     | 1                 | 10      | 4    | 1                  | 0        | 3       | 12   | 1           |
| Paralegal and Consultants | 12     | 0                 | 9       | 2    | 1                  | 0        | 0       | 11   | 1           |
| Total                     | 54     | 4                 | 34      | 9    | 7                  | 1        | 5       | 41   | 7           |

<sup>31</sup> The specific question was: “When refugee claimants first contact you or your organization for assistance, what do they know about the possibility of claiming refugee status in Canada?”

<sup>32</sup> In the context of the question about claimants’ knowledge of the possibility of claiming asylum in Canada, “specific” knowledge means a clear sense of what it means to be a refugee and the claimants’ coming to Canada with the express intention of finding asylum here. “Limited” knowledge denotes a general sense about the possibility of claiming refugee status, but little understanding of what that means beyond the possibility of being allowed to remain in Canada. No knowledge (or “none”) denotes lack of awareness of the possibility of claiming asylum as a means to remain in Canada.

<sup>33</sup> The specific question was: “When refugee claimants first contact you (your organization), what do they know about the procedures and legal requirements with respect to making a refugee claim?”

Of the 47 service providers who responded to this question, 34 indicated that most claimants have a vague, limited general sense that Canada is a safe country where they can settle, but they have very little sense of what it means to be a Convention refugee. Only four service providers suggested that claimants are generally well informed about what it means to be a Convention refugee when they contact the service provider. Nine service providers indicated that most of the claimants they see are not even aware of the possibility of claiming refugee status. They simply do not want to return to their home country, either because of some fear about what may happen to them there or for other reasons unrelated to any asylum claim.

According to the service provider respondents, most claimants are totally ignorant of the legal requirements that must be met to obtain asylum in Canada. Only five of the 47 service providers who answered this question rated claimants as having any meaningful understanding of legal requirements and procedures. Five felt that claimants have limited knowledge of the legal requirements and procedures, and one respondent stated that most of the claimants he sees are quite knowledgeable about the legal requirements and the procedures for obtaining refugee status in Canada.

Many respondents acknowledged that some of the claimants they see are informed about how to obtain refugee status before they arrive in Canada. Some claimants have even been supplied with carefully scripted stories from which they will not budge, even when it becomes obvious that the story is false. But most service providers say that these are not the norm. Two of the respondents who felt that claimants have extensive information suggested that the level of knowledge varies widely among the clients they see, while the third indicated that much of the information claimants have is incorrect. A number of service provider respondents noted that misinformation often leads claimants to lie about their true story, or to withhold critical information at the outset. This can greatly impair a claimant's credibility. Many claimants are rejected on credibility grounds because of contradictions between what they said at their eligibility interview and what they related in their PIF or in testimony at their hearing.<sup>34</sup> Also, significant omissions at eligibility interviews – for example, failure to mention some important fact relating to a claim, such as the fact that the claimant had been imprisoned and tortured in his home country – are sometimes taken by RPD members as an indication that the claimant has embellished the story for the refugee hearing.

The view expressed by almost all service providers – that most refugee claimants have only vague general knowledge about claiming refugee status and virtually no knowledge of the legal and procedural issues involved – can best be summed up in a few direct quotes from the interviews. According to one paralegal who works exclusively with refugee claimants:

Many think that willingness to work and to be a good Canadian should be sufficient. ... They feel that their suffering is enough to found their claim.

Another respondent, a settlement worker, commented to similar effect:

They think all they have to do is to come to Canada. They don't distinguish between economic and political refugees. They lack focus.

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<sup>34</sup> This is a key reason why service providers are so concerned about the fact that claimants are not represented at eligibility interviews.



As another respondent described it:

They do not know about the procedures. They understand that they are afraid and can't go back, but some even think that once they are in Canada, it is done. These claimants are quite shocked to learn that they must have specific reasons to fear return and that they face a complex and lengthy legal process to establish a right to remain in this country.

This view was not shared by a majority of the CIC respondents interviewed for this study.<sup>35</sup> Eleven of the 12 front-line officers who answered these questions expressed the view that most claimants they see are well informed about the possibility of claiming refugee status in Canada. The other officer who commented felt that claimants have a general sense about the possibility of finding asylum in Canada at the time of their admissibility and eligibility interview. Nine of the officers felt that claimants are also very knowledgeable about the specific legal and procedural requirements for obtaining refugee status when they are first interviewed by an immigration officer, whether at the point of entry or subsequently, when they present an inland claim. Two officers felt that claimants are generally aware of the legal requirements and procedures, and only one officer felt that claimants know little or nothing in that regard. A summary of the responses from CIC personnel is presented in Table 14.

**Table 14 Immigration Officers' Assessment of Claimants' General and Detailed Knowledge about Claiming Refugee Status**

| Number | General Knowledge |         |      | Detailed Knowledge |          |         |      |             |
|--------|-------------------|---------|------|--------------------|----------|---------|------|-------------|
|        | Specific          | Limited | None | No Response        | Specific | Limited | None | No Response |
| 13     | 11                | 1       | 0    | 1                  | 9        | 2       | 1    | 1           |

The immigration officers had a strong sense that claimants have been well briefed by family and friends who have already gone through the process, by the agents who have assisted them in getting to Canada, or by NGOs in Canada or the United States that have assisted them prior to their making a refugee claim. As one port-of-entry officer put it:

Most foreign nationals know a lot by the time they arrive in Canada. They come to Canada with the purpose of remaining here. They have spent a lot of money to get here (particularly those who use smugglers). Many are sufficiently sophisticated to know that, if they have travel documents, they do not have to make a claim at the port of entry. They can make an inland claim later.

This viewpoint was expressed even more forcefully by an officer who deals with inland claims:

Almost every foreign national who wants to claim refugee status knows a great deal about CIC and IRB processes by the time they come to an inland CIC office.

<sup>35</sup> Assessments on the issue of claimants' knowledge provided by IRB respondents are not relevant to the present discussion, because their first contact with claimants is typically at their refugee hearing. By that time, the claimants have been through the process of preparing their claim and they have received extensive advice from their counsel and from supporting NGOs.

They have been in Canada for many days or months or years. Many already have counsel (lawyer or consultant). Most, at a minimum, have connected with family or friends in Canada. Many are in receipt of assistance of ethnic community groups, churches and NGOs.

"Almost all foreign nationals have some knowledge of procedures and legal requirements. They know that CIC officials will interview them and that they will bring forms to submit to the IRB. They know that they need to bring identity documents to the CIC office. They know whether there is a possibility of detention, and, if there is, they have generally engaged counsel who accompanies them to the inland office."

The sharp polarization of views as between service providers and front-line immigration officers is difficult to reconcile. Since many inland claimants will have consulted a service provider before attending the eligibility interview at an inland CIC office, it is probable that they will have a higher level of knowledge about the process than they would have had when they first contacted the service provider. But port-of-entry immigration officers meet with claimants before they have any contact with most of the service providers who were interviewed for this study.

The experience of the immigration officers – that many claimants spontaneously relate details of their refugee claims even when advised to provide only brief answers to questions in eligibility interviews – suggests that these claimants do have a clear sense about the possibility of obtaining asylum in Canada. But the comments received from the immigration officers do not indicate whether the stories they hear at these interviews indicate any clear understanding of what it means to be a Convention refugee. It may well be that claimants arrive in Canada with the vague sense that they can find safe haven here, as described by the service providers, but with very little sense of what is required to establish a refugee claim. One of the lawyers who was interviewed suggested that many claimants think that the interview with an immigration officer at the port of entry is the place where their claim is being determined, which may explain why they relate details of their story at the first opportunity. From the perspective of the service providers, this would be an indication that claimants are indeed confused or misinformed about the procedures. The divergence in responses appears to be as much a function of different perspectives that the respondents bring to the question as it is an indicator of the objective sophistication of refugee claimants when they first make their claim.

Responses from individual refugee claimants interviewed for this study were more in line with the assessments reported by service providers. See Table 15.

**Table 15 Claimants' Assessment of Their Own General and Detailed Knowledge about Claiming Refugee Status**

| Number | General Knowledge |         |      |             | Specific Knowledge |         |      |             |
|--------|-------------------|---------|------|-------------|--------------------|---------|------|-------------|
|        | Specific          | Limited | None | No Response | Specific           | Limited | None | No Response |
| 21     | 3                 | 13      | 5    | 0           | 0                  | 8       | 13   | 0           |

Of the 21 claimants interviewed, only three indicated that they understood before they made their claim that they had to have a well-founded fear based on specific grounds



to be accepted as a Convention refugee.<sup>36</sup> Twelve indicated that they knew that Canada was a country where they could find safety, but they were not aware of the specific requirements to establish refugee status. Five of the claimants indicated that they made their claims on the advice of other people without any understanding of what it meant to be a refugee. They were simply afraid and did not want to return to their home country.

None of the claimants – including one who was a career diplomat from Africa working with the UN, another who was an international airline pilot, and two others who had post-graduate university degrees – had a clear understanding of the procedures for obtaining refugee status in Canada before they became directly involved in the process.<sup>37</sup> Eight indicated that they knew that it was a legal process with some kind of hearing, and 13 reported that they had no idea at all about the process before they made their claim. Every single claimant interviewed expressed surprise and frustration at how long the process takes, indicating that they had no understanding of the complex procedures involved before they made their claims. Many of them thought, when they first decided to make a refugee claim, that they would simply have to say why they did not want to go back to their home country. Only after they made their claim did they realize that they would need extensive assistance to navigate their way through the process. This all suggests that most refugee claimants have a limited understanding of what is involved in making a refugee claim.

## 6.2 Participants in other processes

### 6.2.1 Detainees

Respondents who had direct experience with detention reviews were asked to provide their assessment of detainees' knowledge regarding the reasons they were detained and regarding the procedures and legal requirements relating to review of their detention.<sup>38</sup> Similar questions were asked with respect to knowledge that persons who are the subject of immigration inquiries have regarding the inquiry process,<sup>39</sup> and with

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<sup>36</sup> The specific questions put to claimants were: “1) Before you made your claim, did you know how to obtain refugee status in Canada? 2) Did you know what you would have to prove to qualify as a Convention refugee?”

<sup>37</sup> Assessment of claimants procedural knowledge is based on their responses to the questions noted in footnote 36 and their response to the following questions: “Has your understanding of the procedures and legal requirements to obtain refugee status in Canada changed since you made your refugee claim? In what way has it changed? Why has it changed?”

<sup>38</sup> The specific questions regarding knowledge about the detention review process were: “1) What do [persons who are detained by immigration authorities] know about the reasons why they have been detained? 2) What do they know about the procedures and legal requirements relating to review of their detention? 3) What do they know about obtaining counsel?”

<sup>39</sup> The specific questions regarding knowledge of the immigration inquiry process were: “1) What do [persons who are subjects of immigration inquiries] know about the purpose and potential consequences of the immigration inquiry? 2) What do they know about the procedures and legal requirements relating to the immigration inquiry? 3) What do they know about obtaining counsel?”

regard to appellants' knowledge about the immigration appeal process.<sup>40</sup> Respondents were also asked to comment on the knowledge of failed refugee claimants with regard to post-determination procedures such as judicial review, humanitarian and compassionate applications, and PDRCC landing applications.<sup>41</sup> All respondents were asked to comment only on matters of which they had personal knowledge.

A summary of the responses relating to detention reviews is provided in Table 16.

**Table 16 Respondents' Assessment of Detainees' Knowledge Regarding the Detention Review Process**

| Respondent Group           | Number of Respondents <sup>42</sup> | Knowledge of Reasons for Detention |                 |         | Knowledge of Procedures and Legal Requirements |         |         |
|----------------------------|-------------------------------------|------------------------------------|-----------------|---------|--|---------|---------|
|                            |                                     | Good                               | General         | Limited | Good   | General | Limited |
| Lawyers                    | 9                                   | 0                                  | 7               | 2       | 0  | 2       | 6       |
| NGO                        | 5                                   | 2                                  | 2 <sup>43</sup> | 1       | 1  | 1       | 2       |
| Paralegals and Consultants | 6                                   | 0                                  | 1               | 5       | 0  | 0       | 6       |
| CIC                        | 3                                   | 1                                  | 2               | 0       | 1  | 0       | 2       |
| IRB                        | 3                                   | 0                                  | 3               | 0       | 0  | 0       | 3       |
| Detainees                  | 2                                   | 0                                  | 2               | 0       | 0  | 2       | 0       |
| Total                      | 29                                  | 4                                  | 14              | 8       | 1  | 6       | 21      |

Of the 20 service providers who commented on detainees' knowledge of the detention review process, 10 indicated that most detainees have a general understanding as to why they are being detained when they first contact service providers. However, according to these respondents, most detainees do not fully understand the explanations regarding the reasons for detention that are provided by immigration officers and

<sup>40</sup> The specific questions regarding knowledge about the immigration appeal process were: "1) What do [appellants] know about the decision to be appealed? 2) What do they know about the procedures and legal requirements relating to the immigration appeal? 3) What do they know about obtaining counsel?"

<sup>41</sup> The post-determination application process for landing members of the PDRCC class has been eliminated under the *IRPA* because persons in this class are now included within the definition of "persons in need of protection" under section 97(1)(b) of the *IRPA* and their status is determined by the RPD at the refugee determination hearing. Most of the interviews were conducted prior to implementation of the *IRPA* on June 28, 2002, so respondents were not questioned regarding claimants' knowledge regarding the PRRA process. The specific questions relating to post-determination proceedings for refugee claimants were: "When unsuccessful refugee claimants receive notice that their claim has been rejected: 1) What do they know about possibilities to have the decision judicially reviewed? 2) What do they know about the possibilities of filing a PDRCC application or an H&C appeal? 3) What do they know about the procedures and legal requirements relating to judicial review, PDRCC and H&C appeals? 4) What do they know about obtaining counsel for these proceedings?"

<sup>42</sup> The sum of the responses may not match the total number of respondents in each group, because some respondents did not respond to all of the questions.

<sup>43</sup> One of these respondents estimated that half of the persons who are detained have a general understanding while the other half have no understanding of the reasons why they are detained.



adjudicators. Only two service providers felt that detainees have a good understanding of why they are detained. One of these qualified her assessment by stating:

Some know why they are detained; others do not. CIC and possibly the adjudicator may have explained. Some understand the explanations; others do not..

In contrast, eight of the service providers, including the five paralegals who responded to this question and a lawyer in Montreal who works for an NGO that deals extensively with detainees, indicated that the detainees they see generally have very little understanding of why they are detained.

Fourteen of the 18 service providers who commented stated that detainees, on their first meeting with a service provider, have little if any understanding of the procedures and legal requirements relating to review of their detention and how they might secure their release. Three indicated that detainees have a general understanding of the procedures. Only one felt that detainees have a good understanding of the detention review process when they first contact a service provider. Again, this assessment was qualified: "Some know exactly; others do not have a clue."

The one immigration consultant and seven of the nine lawyers who responded to this question indicated that detainees have a general sense of why they are detained. The other two lawyers felt that most detainees have very little understanding of why they are detained. However, a number of the lawyers commented that persons who are detained awaiting deportation after they have completed a prison sentence for a serious criminal offence generally have a very precise understanding of the reason they are detained and of the procedures and legal requirements relating to detention reviews. The consultant and six of the lawyers felt that most refugee claimants have no understanding of the legal and procedural requirements relating to detention reviews until after they have had a chance to consult counsel.

Two CIC respondents who commented on detainees' knowledge felt that most detainees have a general understanding of why they are detained, but very little understanding of the detention review process. The one other CIC respondent felt that most detainees understand specifically why they are detained and they have a good understanding of the procedures and legal requirements relating to detention reviews. This respondent noted that, while most detainees appear to understand the procedures and legal requirements relating to detention reviews, many of them have absolutely no understanding of the process. The three IRB adjudicators who commented all felt that detainees have a general understanding of why they are detained, but a very limited understanding of the legal and procedural issues relating to detention reviews. One of the adjudicators noted that there is wide variation among individual detainees. The adjudicators felt that some detainees, particularly criminals who are being detained pending removal, have a very clear sense of why they are detained. The adjudicators' assessment was consistent with the overall assessment given by most of the service providers who commented on this issue.

The two individuals who had direct experience as detainees indicated that, from the explanation provided by the immigration officer when they were detained, they had a general understanding why they were detained. They indicated that the explanation provided by the adjudicator at the first detention review hearing had given them a general



sense of the procedural and legal requirements relating to the detention review process. Both felt that their understanding was greatly improved after they had an opportunity to consult with a lawyer. One, a refugee claimant from Hungary, was unable to locate a surety to secure his release. When he was interviewed on the day of his refugee hearing, seven months after he made his claim, he was still being detained. The other, a claimant from Albania who spoke fluent English, was held for 35 days and was released after an NGO helped her to obtain counsel. At the time of the interview, both respondents had a clear understanding of the specific reasons why they were detained and of the legal and procedural requirements of the detention review process. The respondents noted that they had acquired this understanding from immigration officers and adjudicators, and from the NGO persons and counsel who assisted them after they were detained.

### **6.2.2 Persons at immigration inquiries**

Only 13 service providers commented with respect to clients' knowledge relating to immigration inquiries. Seven of the eight lawyers, two NGO respondents, and one paralegal indicated that persons concerned have a general understanding of the purpose and potential consequences of the inquiry. The three other service provider respondents, a lawyer and two paralegals, indicated that persons concerned have very little understanding in this regard. One lawyer and one NGO respondent indicated that their clients have a general understanding of the procedures and legal requirements relating to inquiries. The other eight service providers who responded to this question felt that clients have very little understanding of these matters.

The two CIC respondents and the three IRB adjudicators who commented on inquiries were all of the view that persons concerned have a general understanding of the purpose and potential consequences of inquiries, but very little understanding of the legal requirements or of procedural issues. One of the adjudicators noted that entrepreneur immigrants, in particular, are often very confused about the nature and purpose of immigration inquiries.

Responses from individual immigrants and refugee claimants indicate that they have a very low level of understanding about immigration inquiries. The only respondents who acknowledged that they had ever been the subject of an immigration inquiry were the two appellants interviewed, one a Convention refugee and the other a landed immigrant. Both respondents had made successful appeals against removal orders issued at an inquiry after they had served sentences on criminal convictions. The other respondents, including inland refugee claimants who had presumably been through immigration inquiries themselves, had no idea what an immigration inquiry was, and they did not know whether they had participated in one, even after it was explained to them by the interviewer.

### **6.2.3 Appellants**

Responses regarding appellants' substantive knowledge about their appeal rights and about the decision under appeal, and their knowledge regarding the procedural and legal requirements of the appeal process were very limited (see Table 17). Only 14 respondents provided any comments on this issue. Two lawyer respondents indicated



that prospective appellants are considerably more knowledgeable about issues relating to their appeals than clients are about other immigration and refugee-related processes. According to both of these lawyers, most clients who are contemplating an appeal against an IRB or CIC decision have a good understanding of their appeal rights, and of specific aspects of the decision they wish to appeal, when they first contact their lawyer. Only one other lawyer felt that appellants have a good understanding of their appeal rights and the specific decision under appeal. He felt that appellants have only a general understanding of the procedures and legal requirements relating to appeals. The other 11 service providers who answered questions relating to the appeal process indicated that appellants have only a general understanding of their appeal rights and the decisions they want to appeal. Three respondents indicated that appellants have a general understanding of the procedures and legal requirements relating to immigration appeals. Eight respondents felt that appellants' legal and procedural knowledge was very limited. The one Immigration Appeal Division (IAD) member who responded to this question suggested that most appellants have only general understanding both of the substantive issues in their appeal and of legal and procedural requirements. This IAD member felt that unrepresented appellants have a very limited understanding of legal and procedural issues.

**Table 17 Assessments of Appellants' Knowledge**

|                            |   | Substantive |             |      | Procedural |         |
|----------------------------|---|-------------|-------------|------|------------|---------|
|                            |   | General     | Limited     | Good | General    | Limited |
| Lawyers                    | 3 |             | Substantive | 2    | 3          | 4       |
| NGOs                       | 0 |             | Good        | 0    | 0          | 3       |
| Paralegals and Consultants | 0 | 1           | 0           | 0    | 0          | 1       |
| IRB                        | 0 | 1           | 0           | 0    | 1          | 0       |
| Total                      | 3 | 11          | 0           | 2    | 4          | 8       |

The two appellants who were interviewed for this study both clearly understood the legal and procedural aspects relating to their appeals. But it must be noted that both of these respondents were represented by counsel and that they had already successfully passed their appeals. Both respondents indicated that they relied heavily on their lawyer for advice and information and that they could not have managed their appeals without legal representation.

#### 6.2.4 Participants in post-determination proceedings

Ten respondents commented on failed claimants' knowledge of post-determination options. They indicated that claimants who are represented by lawyers at their refugee hearing generally receive from their lawyers sufficient general information regarding post-determination options to enable them to make informed choices. Six of the respondents mentioned that, under the *Immigration Act*, unrepresented claimants

usually had general information about PDRCC because notice of this option was included with the Notice of Decision received from the IRB. However, respondents felt that unrepresented claimants' understanding of judicial review and humanitarian and compassionate applications is very limited. These respondents also indicated that unrepresented claimants' understanding of the legal and procedural requirements relating to all post-determination options is very limited.

Respondents could not comment with regard to the pre-removal risk assessments (PRRA) since they had no experience with this process when the interviews were conducted. Individuals whose claims are rejected by the RPD receive information about the PRRA with the RPD's Notice of Decision. They receive a second notification regarding the PRRA when removal from Canada is imminent. With this double notification, claimants should be better informed about the PRRA than they have been in the past with respect to other post-determination options. But this additional information cannot be considered a substitute for the more specific advice and assistance claimants might receive from counsel.



## 7.0 Sources of information<sup>44</sup>

### 7.1 Information sources for refugee claimants

**R**espondents generally agreed that the primary sources for whatever information refugee claimants have, when they first become involved in Canadian legal proceedings, are compatriots in their countries of origin and friends and acquaintances in Canada. Of the 21 claimants interviewed, 14 indicated that they had learned of the possibility of making a refugee claim in Canada from these sources. Three relied on information from agents who had assisted them in getting to Canada, and two had personal knowledge as a result of prior experience.<sup>45</sup> Two did not provide any indication of sources of information prior to when they made their refugee claim.

Of the 34 service providers who expressed any opinion regarding the sources from which refugee claimants get information, 22 mentioned family and friends, 21 mentioned the community and 16 mentioned smugglers. Three mentioned other claimants as a probable information source, and three suggested that some claimants rely on their own research. A summary breakdown of responses on presumed sources of information is provided in Table 18. It should be noted that many of the respondents mentioned more than one information source.

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<sup>44</sup> As a follow-up to the questions about what knowledge refugee claimants have regarding the possibility of claiming refugee status in Canada, and about the procedures and legal requirements with respect to making a refugee claim, service providers were asked: "From whom might refugee claimants have obtained information before they contacted you or your organization?" Hearing participants were not specifically asked to identify possible sources of information, but many of them offered opinions on the matter in the course of responding to the questions about level of knowledge.

Claimants who were interviewed were explicitly asked: "Did anyone advise you with respect to procedures and legal requirements to claim refugee status in Canada before you made your refugee claim?" In addition, claimants were asked a series of questions regarding information from government sources, specifically: "1) Have you used any information from government sources in preparing your case? What sort of information? 2) Which agencies provided this information? 3) How did you acquire that information (e.g., brochures, telephone inquiries, Web sites)?" Parallel questions were asked with regard to information from UNHCR and from non-government sources.

<sup>45</sup> One of these was a career diplomat who had worked for six years with the UN. The other had previously made an unsuccessful refugee claim in Germany.

**Table 18 Pre-claim Information Sources**

| Respondent Group           | Smugglers | Family or Friends | Community | Other Claimants and Own Research | No Comment |
|----------------------------|-----------|-------------------|-----------|----------------------------------|------------|
| Lawyers                    | 9         | 9                 | 12        | 1                                | 17         |
| NGO                        | 3         | 9                 | 6         | 2                                | 16         |
| Paralegals and Consultants | 4         | 4                 | 3         | 1                                | 8          |
| Claimants                  | 3         | 8                 | 7         | 2                                | 3          |
| Total                      | 19        | 30                | 28        | 6                                | 44         |

These questions were originally intended to elicit information based on respondents' direct knowledge. Therefore, respondents from CIC and the IRB were not expressly questioned on the matter of sources of information on which refugee claimants rely. But the immigration officers who suggested that claimants are well informed when they arrive in Canada pointed to smugglers and to family and friends already living in Canada as the most likely information sources.

A recurring theme among service providers who commented on this issue was that much of the information claimants have before coming to Canada is incorrect, and sometimes dangerously so. They noted, in particular, that information provided by smugglers is often designed more to benefit smugglers, or to protect them from being apprehended by immigration authorities, than it is to help the claimants.

Respondents generally agreed that once immigrants and refugee claimants become involved in legal proceedings, they acquire substantial additional information from the service providers who assist them after their arrival in Canada. Service providers and claimants noted that immigration officers provide basic information about the process at the admissibility and eligibility interview. Respondents in Montreal also spoke favourably about an arrangement that the IRB has in that city (but nowhere else), under which claimants are required to attend an interview with an IRB staff member seven days after their claim is referred to the Board. This interview is used to provide claimants with accurate information about the process, including information about legal aid and a list of available counsel, and to obtain basic information about the claim before the claimants are misled into providing a fabricated story. A key object of this interview is to quickly correct misinformation claimants may be hearing in the community.

Ten of the 21 claimants interviewed referred to information that they had received from CIC. This information included basic explanations about the process and the official kit of forms that all claimants receive when their claim is referred to the IRB. Three of the 21 claimants referred to information they received from the IRB, but they did not indicate what use they made of that information. One claimant mentioned information on country conditions available at the IRB Documentation Centre, but noted that he only became aware of that information after his claim was accepted. He suggested that it would be helpful if claimants were made aware of that information early



in the process. However, it must be noted that this individual had multiple post-graduate university degrees and is not at all representative of the refugee claimant population at large.

## **7.2 Information sources with regard to other processes**

Before individuals involved with detention reviews contact a service provider, their principal information sources are immigration officers and adjudicators, staff at the detention centre, and other detainees. These sources usually provide only limited general information about the process. They frequently advise detainees to retain counsel, and they sometimes provide names of people the detainees can contact for help. Detainees rely almost exclusively on NGO caseworkers and lawyers or other counsel for more specific information about the process and about their individual case.

Persons involved in immigration inquiries usually rely on friends and acquaintances in the community to explain the process to them. Information from these sources was considered by respondents to be generally unreliable. Otherwise, the persons concerned rely heavily on service providers to explain the inquiry process to them and to guide them through it. Comments received from respondents other than those from CIC and the IRB suggest that persons who are the subject of immigration inquiries have problems understanding information about inquiries provided by immigration and IRB adjudicators. The complete lack of understanding about the inquiry process demonstrated by all of the inland refugee claimant respondents supports this assessment.

Most individuals pursuing immigration appeals have had some form of support in relation to other immigration and refugee proceedings in which they have been previously involved. They tend to return to these sources for information and assistance in relation to their appeals. The IAD provides information about the appeal process on the IRB Web site, but no respondent identified this as a significant information source for prospective appellants.

Failed refugee claimants who have had representation for the initial refugee determination hearing before the RPD (formerly the Convention Refugee Determination Division – CRDD) are generally informed by their counsel about the available post-determination options. However, respondents who commented on this issue indicated that unrepresented claimants are generally poorly informed about their options in the event that their refugee claim is rejected. The service provider respondents who addressed this issue indicated that lack of information about post-determination options creates problems for many unrepresented claimants. For example, they suggested that unrepresented claimants often miss the deadline for filing an application for leave for judicial review because of lack of information.





## 8.0 Access to representation

Service providers and hearing participants were asked for their assessment regarding access to representation for the various processes in which immigrants and refugee claimants become involved. A summary breakdown of responses with respect to access to representation for refugee claimants is provided in Table 19.<sup>46</sup> As will become apparent from the detailed discussion that follows, the numbers in Table 19 are somewhat misleading, because individual respondents qualified their answers in different ways. Respondents who stated that there are no problems with regard to access, but then went on to note specific concerns, are included in the “no” column. Respondents who stated that there are problems regarding access to representation are all counted in the “yes” column, even although the concerns noted by them vary widely in severity. Differences in individual respondent's subjective perception of the significance of particular concerns make it difficult to provide a definitive breakdown of these responses.

**Table 19 Refugee Claimants’ Access to Representation**

| Respondent Group           | Number of Respondents | Any Problem Accessing Representation for RPD Proceedings |                  |             | Any Problems Accessing Representation for CIC Post-determination Proceedings |    |             |
|----------------------------|-----------------------|--|------------------|-------------|--|----|-------------|
|                            |                       | Yes  | No               | No Response | Yes  | No | No Response |
| Lawyer                     | 26                    | 13   | 10 <sup>47</sup> | 3           | 12   | 5  | 9           |
| NGO                        | 16                    | 12   | 4                | 0           | 8 <sup>48</sup>  | 2  | 6           |
| Paralegals and Consultants | 12                    | 8  | 4                | 0           | 2  | 2  | 8           |
| CIC                        | 13                    | 1 <sup>49</sup>  | 7                | 5           | 0  | 6  | 6           |
| IRB                        | 17                    | 3  | 5                | 9           | 0  | 1  | 31          |
| <b>Total</b>               |                       | 35   | 42               | 21          | 22   | 16 | 60          |

<sup>46</sup> The numbers reported in this table are based on the direct “yes” or “no” responses given to the question: “In your opinion, do refugee claimants have any problems regarding access to required assistance and/or representation?”

<sup>47</sup> Five of these respondents indicated that low legal aid tariffs are creating access problems, since many lawyers are unwilling to represent legal aid clients.

<sup>48</sup> One respondent indicated access problems for PDRCC only, and another respondent indicated problems only for H&C appeals.

<sup>49</sup> This respondent from the CIC regional office in Halifax indicated that claimants have problems accessing representation in Nova Scotia, New Brunswick and Prince Edward Island, where immigration and refugee matters are not covered by legal aid, but they do not have problems in Newfoundland where legal aid coverage is available.



A further caution must be borne in mind as one reads the following summary of respondents' comments regarding access to representation. As might normally be expected, the elaborating comments provided by respondents focus more on the issues identified as problems than on what the respondents perceived to be working well in the present system. As a result, the summary of their comments may give an exaggerated picture of perceived problems regarding access to representation.

In very general terms, respondents from CIC felt that refugee claimants do not have any problems accessing representation or assistance. Only one respondent among the eight from CIC who commented on this issue felt that refugee claimants have any problems accessing required representation. This respondent, a case presenting officer from Nova Scotia, noted that claimants do have problems accessing representation in Nova Scotia, New Brunswick and Prince Edward Island, where immigration and refugee matters are not covered by legal aid. But, in this respondent's experience, claimants have ready access to representation in provinces where legal aid coverage is provided.

Opinions among the 17 IRB respondents who commented on this issue were generally to the same effect as those from CIC respondents, although a number of IRB respondents noted specific concerns. Five of the IRB respondents stated that refugee claimants have ready access to required representation, without noting any qualification to that opinion. Two respondents from the IRB Ottawa office, which is responsible for RPD operations in Ottawa and in the four Atlantic Provinces, felt that claimants in Ontario and Newfoundland have no problems accessing representation. But they noted that claimants do have problems in Nova Scotia, New Brunswick and Prince Edward Island, where legal aid is not available. An RCO and an RPD member in Montreal noted that representation is readily available, but they expressed concern about the quality of representation being provided, especially by unregulated immigration consultants. An RPD member in Vancouver felt that timely access to representation is a problem. A comment from RPD managers in Toronto, which is not included among the responses recorded in Table 19,<sup>50</sup> is also relevant in this regard. These managers, who were interviewed as a group, noted that claimants who are sent to places outside of Toronto because of housing shortages find it difficult to connect with or communicate with counsel.

Opinions of service providers differed from those of CIC and IRB respondents on the question of whether refugee claimants have any problems accessing required representation. Among 51 service providers who expressed an opinion on this issue, 34 felt that refugee claimants have problems with regard to access to required representation. Included in this group were 12 of the 16 NGO respondents, eight of the 12 paralegals and consultants, and 14 of the 22 lawyers who responded to this question. Only four NGO respondents stated that claimants do not have problems in this regard, and three of these qualified their response by noting concerns about timeliness of access, and about problems created because claimants lack sufficient information to know whether the persons they retain as representatives are competent. Two of the eight paralegals and two

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<sup>50</sup> Interviews with IRB and CIC managers were focussed on their perception regarding impact of representation, or the lack of representation, on IRB and CIC operations, so the questions regarding access to representation were not included in the interviews with these managers. The managers' comment was incidental to a response to a different question.



of the four consultants felt that refugee claimants do not have problems with regard to access to representation.

Many of the lawyers, including four of the nine who indicated that refugee claimants do not have problems with regard to access to representation, expressed concern that low legal aid tariffs are creating problems because many lawyers are no longer willing to act for legal aid clients. Concern about withdrawal of experienced lawyers from legal aid cases was especially notable in Quebec, where most of the service provider respondents expressed grave concern about this as a mounting problem. Six of the seven lawyers interviewed in Montreal noted that very few experienced lawyers in Quebec are willing to represent refugee claimants on legal aid at the tariff rate of approximately \$500 per case. They claim that this amount is not even sufficient to cover their fixed overhead expenses for necessary support staff to assist with the cases. In order to generate sufficient income to survive, lawyers – primarily inexperienced junior lawyers – are taking on an excessive number of legal aid mandates. Quality of representation is suffering as a result. Three of the seven NGO respondents from Montreal expressed similar concerns.

Many of the Quebec respondents also reported that lawyers have begun charging legal aid clients additional amounts over and above the legal aid tariff. When claimants are unable to pay the additional charges, some lawyers have refused to do any additional work on their claim, leaving them without representation at their hearing. Lawyers reportedly get around the prohibition against extra billing by charging for preparatory work ostensibly done before the legal aid mandate was issued. Other lawyers assign specific tasks that are not explicitly included in the legal aid tariff to interpreters and clerical staff, who bill the clients directly for these extra services, and the lawyers limit themselves to tasks that are paid for by legal aid. The consequence of this trend, according to respondents, is that access to completely free legal aid representation for refugee claimants who are unable to afford a lawyer has almost ceased to exist in Quebec.

Another development, which has arisen as a consequence of the refusal of experienced lawyers to represent claimants under the legal aid tariff, has been an increase in the number of consultants who are offering their services to refugee claimants. Agents from various ethnic communities are reportedly handing out business cards of certain consultants at the YMCA in Montreal, where newly arrived claimants are housed until they qualify to receive social assistance. Respondents also reported that interpreters are being paid to recruit clients for these consultants. The main problem is that many of these consultants are completely unqualified, and they are not subject to any regulation. Competent consultants who are providing a legitimate and valuable service to immigrants and refugee claimants are as alarmed as anyone else about this trend, and say that there is a pressing need for effective regulation in this area.

Respondents, including claimants, report that it is common practice for some of the more unscrupulous consultants and lawyers to demand additional payments at each critical turn in the development of a case –on the eve of a scheduled hearing, for example. Then, when the clients have exhausted all of their resources, the representatives drop them, possibly seriously compromising the claimants' cases. The sad irony in all of this is that the amounts reportedly being charged to unsuspecting refugee claimants by

unqualified consultants are the same or more than the amounts being charged by reputable lawyers and consultants.

One of the four claimants interviewed in Montreal described a situation where, desperate to get out of her home country, she paid \$4,000 to a consultant from Montreal who provided her with a letter of invitation that enabled her to come to Canada. When she arrived, she was housed at the YMCA. The consultant filed a false PIF on her behalf under a false name with a false story, even although she had given him her true story. He told the claimant to give him her passport on the pretext that it was dangerous to be carrying a visitor's visa while she was claiming refugee status. He then demanded an additional \$500 per month. Fortunately, she met a representative from SARIMM who referred her to a shelter, where she was put in touch with a lawyer. When she came to Canada, this claimant thought everything was being taken care of by the consultant. She believed that she would have no further need of assistance. In her own words:

I knew absolutely nothing and I followed like a sheep. When he told me my passport should be destroyed because it was dangerous to keep it, I believed him. But I didn't know that he would use it for someone else. It's when you know nothing that you can fall into the clutches of exploiters. [translation]

These concerns are not confined to Quebec. Respondents from British Columbia expressed concern that the situation there may deteriorate as it has in Quebec. To date, problems with unscrupulous consultants have been fairly limited in British Columbia, because legal aid coverage is available for most cases. However, with the announced closure of the Immigration and Refugee Law Clinic and anticipated cutbacks in legal aid funding, that situation could change radically. The fact that there are unscrupulous or incompetent consultants (as well as honest and competent ones) in British Columbia, just as there are in Quebec and elsewhere, is illustrated by the experience recounted by another claimant who was interviewed for this study.

This claimant made an inland claim eight months after her arrival in Canada. She was denied legal aid because she had scholarship income. A friend referred her to a consultant. The claimant thought the consultant was a lawyer, and the consultant did nothing to correct this impression. He charged the claimant \$6,000 to represent her before the CRDD, and reassured her by showing her reference letters about his past successes. The claimant wrote out her own PIF, which the consultant reviewed with her only briefly. He told her to get documents from home. The consultant failed to have the documents translated and, as a result, they were not accepted in evidence. The consultant did not fully understand the nature of the claim, which was based on spousal abuse. He advised the claimant to rely exclusively on her PIF and not to testify at the hearing. He also declined to call her daughters, who were co-claimants and key witnesses, and he made no submissions at the hearing. Not surprisingly, the claim was rejected.

The claimant subsequently managed to contact another lawyer, who brought a successful application to have the case re-opened. She also brought a successful application in Small Claims Court to recover the fee she had paid to the consultant. However, this case illustrates the problems that even relatively sophisticated claimants can encounter in accessing competent representation when they do not qualify for legal aid, and do not have any information about the professional qualifications of those who offer their services as representatives.



Problems of this sort are not confined exclusively to consultants, but such problem were perceived by most respondents to be much worse with consultants than with lawyers, who, in theory at least, are subject to regulation and disciplinary action by provincial law societies.<sup>51</sup> One of the main reasons that respondents felt so strongly about having lawyers involved in all representation activities, at least in a supervisory role, is that this provides clear standards of service and some prospect for holding the representatives accountable.

In terms of a regional breakdown of responses, three of the six lawyers interviewed in Ontario, as well as three of the five NGO respondents and all four paralegals and consultants from that province, felt that claimants have problems with regard to access to representation. Two Ontario lawyers who were interviewed did not comment on this issue. Only one lawyer in Ontario felt that there are no problems in this regard. Two of the Ontario lawyers noted that lack of information makes claimants vulnerable to being exploited by incompetent counsel and they saw this as an access problem. The third Ontario lawyer who felt that claimants have problems accessing representation saw language and communication as the main problem. This respondent also felt that claimants with mental health problems have difficulty accessing representation. The concerns noted by the consultants and paralegals were the same as those identified by the lawyers.

The general sense among respondents from British Columbia was that legal aid is available for those who require it.<sup>52</sup> However, service providers in British Columbia noted that other factors may be impairing refugee claimants' access to competent representation. Four of the five lawyers interviewed in British Columbia expressed concern that claimants are retaining unqualified consultants to represent them because they do not have accurate information about the availability of legal aid and how to apply for it. One of these four lawyers and the fifth lawyer who was interviewed in British Columbia noted that timely processing of legal aid applications is sometimes a problem. The lawyers' concerns about misinformation were shared by the other service provider respondents from British Columbia. One NGO representative from British Columbia felt that a significant number of claimants who cannot afford to pay for representation are denied legal aid. However, this opinion was not shared by other respondents from British Columbia.

The two NGO respondents in Ontario who indicated that claimants do not have problems accessing representation gave qualified responses. One felt that claimants are having difficulty qualifying for legal aid because Legal Aid Ontario takes the financial

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<sup>51</sup> While provincial law societies do have codes of professional conduct and strong disciplinary powers, there have not been many instances of lawyers who appear before the IRB being disciplined for misconduct or for shortcomings in the quality of services delivered to immigrants and refugee claimants. Some of the IRB managers who were interviewed expressed great frustration with what they perceived to be reluctance on the part of provincial law societies to respond effectively to complaints about competency problems and ethical misconduct that the managers have encountered with some of the lawyers who appear before the Board.

<sup>52</sup> This statement reflects the situation at the time the interviews were conducted in June 2002. Legal aid funding in British Columbia is being reduced by over 38 percent over the next three years (Legal Services Society, 2002: 7). Respondents expressed concern that this could significantly affect refugee claimants' access to legal aid in the future.

capacity of the claimant's relatives in Canada into account when assessing financial eligibility. This concern was shared by one other respondent, who felt that a significant number of claimants are being denied legal aid. The second NGO respondent from Ontario who felt that access to representation is not a problem shared the concerns expressed by other respondents regarding problems encountered by claimants who are ill-informed or misinformed. This respondent felt that NGOs have an important role to play in providing accurate information to refugee claimants. She also noted that claimants in centres outside Toronto are encountering delays of up to six weeks in getting their legal aid applications approved. According to her, this creates major problems for claimants, because they are obliged to file their claims within 28 days after the claim is referred to the RPD.



## 9.0 Quality of representation

It is difficult to deal with the issue of access to representation in isolation from the issue of quality of representation. In the context of the representation needs of immigrants and refugee claimants, as in many other areas, it is difficult to speak of quality in the abstract. The real underlying issue is: What sort of representation do individual immigrants and refugee claimants require at different stages in the various legal and administrative processes in which they are involved? Or, to phrase the question slightly differently: What are the qualities that one would expect of a person competent to provide required representation and assistance at each stage? The interviews with respondents attempted to get at these issues in a number of ways. In the first instance, respondents were asked what sort of assistance and/or representation was required for each of the various processes under review. Respondents were also asked to describe the qualities that they saw as necessary for a person who is providing assistance and/or representation in each of these processes. (Responses to these questions dealing with the need for representation are summarized in Section 3.)

Many respondents chose to answer these questions by naming a particular type of representative, for example a lawyer, a paralegal, or a settlement worker, rather than by describing the set of qualities or qualifications that the individual should have. Other respondents provided fairly detailed descriptions of the desired qualities. In the course of the interviews, respondents also alluded to specific problems with respect to quality of representation being provided to immigrants and refugee claimants. These responses do not lend themselves to simplified summary reporting, but an overview of the comments received does provide a useful way to examine issues related to quality of representation.

The starting point for any discussion of representation needs of immigrants and refugee claimants is that these persons are, by definition, newcomers to Canada. Well-educated immigrants from developed, industrialized democracies where the rule of law is widely respected can generally adapt relatively easily, especially if they also speak one of Canada's official languages. Those who are less educated, who speak neither official language, and who come from countries where the rule of law is not well established, face enormous challenges in understanding and participating effectively in the complex legal proceedings that are an integral part of the immigration and the refugee determination process. Refugee claimants are much more likely than regular immigrants to be included in the second group. Also, immigrants who arrive in Canada as part of a planned and pre-approved move are less likely than refugee claimants to encounter legal problems relating to their status in Canada. For these reasons, among others, refugee claimants, as a group, have much more extensive need for representation and assistance than do other immigrants.

At the initial stage of their odyssey, when refugee claimants first arrive in Canada, their most basic need is for settlement assistance to access housing, language training and other amenities. Respondents were generally agreed that this sort of assistance can effectively be provided by workers associated with NGOs, either as paid staff or as volunteers. The key qualities required of those who provide such assistance are accurate

knowledge about the matters on which they give advice, good interpersonal skills, cross-cultural sensitivity and, ideally, the ability to communicate with clients in their own language.

As noted above, most claimants have little if any understanding of the legal processes in which they are involved. They require guidance and reliable information on how to conduct themselves in the Canadian legal system, to avoid creating problems that may come back to haunt them. Respondents differed in their assessment of what sorts of qualifications are required to provide quality or knowledgeable representation appropriate to address this need.

Some respondents were of the view that it is essential that claimants have access to professional legal advice as early as possible in the process. Others suggested that settlement workers and volunteers affiliated with NGOs are well placed to provide any required assistance and/or representation in the early stages, particularly with regard to admissibility and eligibility interviews. These respondents felt that legal representation is only required for refugee determination hearings and for cases in other proceedings where complex legal issues must be decided.

The view that full legal representation is required from the very beginning of the process was most forcefully stated by a lawyer from Vancouver, who felt strongly that what happens in the initial stages can make or break a case. Since claimants are ill-informed about the process, this lawyer believed that it is imperative that they have access to qualified legal counsel from the outset. He expressed grave concern about the possible harm done to claimants who act on inaccurate or inappropriate advice from well-meaning NGO personnel who do not fully understand the legal issues involved.

While many other service provider respondents felt that claimants need assistance as soon as they present their claim, they did not go as far as this lawyer and insist on full legal representation from the outset. One settlement worker, who has often found herself providing these services because of problems clients have had in accessing other representation, indicated that she felt uncomfortable giving advice about legal issues. In her opinion, a lawyer or trained paralegal has to be involved as a representative from the earliest stages of the process. However, this respondent did not think that clients would normally require anyone in an active representative role at admissibility interviews, but she did feel that they need access to legal advice from a competent, qualified person.

Another respondent who is actively involved in co-ordinating services for immigrants and refugee claimants noted:

Where no legal representation is available, it is better to have some assistance than none. But it is not the role of settlement workers to provide legal advice. Persons without legal training have a role to play in communication. They can inform clients about the process and about progress on their case. And they can refer clients to qualified legal advice.

At the opposite end of the spectrum, a volunteer affiliated with an NGO in Ontario, who works extensively with refugee claimants, suggested that all that is required for the initial interviews at CIC is a competent interpreter and basic advice about the process. He felt that involvement of persons with legal training is only required in a supervisory capacity at the case preparation stage, and is only required for hearings in



complex cases. This view was shared by many of the CIC and IRB respondents, but few other service providers were of the same mind. The preferred view among most service providers and claimants was that competent legal advice is required at both the case preparation and the hearing stage. For these respondents, the capacity to provide sound legal advice is a key component of knowledgeable representation at all stages of the process.

Overall, there was a clear sense among respondents that the closer one gets to proceedings in which decisions are being made that have an impact on the status and rights of the person concerned, the more important it is that representation include the sort of expertise that a lawyer can bring to bear. A majority of respondents favoured an integrated approach in which claimants have access to competent legal advice throughout the process, but opinion was divided on whether they need to be represented by a lawyer at every stage. The desire for a more integrated approach was summed up well by a respondent who works at the refugee law clinic in Vancouver. This respondent suggested that, to ensure knowledgeable representation, claimants “need a person who is very familiar with the whole process and with the legal definition, and, ideally, is integrated with a legal representative.” While there was no clear consensus among respondents as to the requisite balance between legal and non-legal components in knowledgeable representation for refugee claimants, this integrated approach comes closest to capturing the view held by most respondents.

Specific attributes noted by respondents as qualities required to provide knowledgeable representation include the following:

- ♦ Solid understanding of the law and procedures applicable to the particular procedures for which assistance and/or representation is being provided. (This includes a solid understanding of the basic principles of administrative law and, in the case of persons representing refugee claimants, understanding of the basic principles of international human rights law.)
- ♦ A capacity to empathize with clients without becoming overly involved emotionally and without personally taking on the burden of the clients’ plight.
- ♦ Good interpersonal skills, including the ability to put traumatized and disoriented clients at ease so they can effectively tell their story.
- ♦ Willingness to spend time with clients to properly prepare their case.
- ♦ Good interviewing skills, including the ability to confront clients with the tough questions they are likely to be asked at their hearing.
- ♦ The capacity to communicate and work with people from diverse cultural and linguistic backgrounds, and to deal with clients with special material and psychological needs arising out of their experience of severe mistreatment or subjugation.
- ♦ The capacity to remain non-judgmental and to comprehend situations that may appear to be implausible or absurd in the Canadian context, but may be possible in the country where they allegedly arose.



- ♦ The ability to focus on relevant points, to understand the basis of the client's case and to present that case clearly and effectively.
- ♦ The ability to stand up for clients and to represent their interest in situations that at times may be hostile.
- ♦ The ability to research thoroughly, to handle complex and unfamiliar information, and to remain current on changing situations in countries of origin.

Some respondents went beyond listing specific attributes of the sort noted above and stipulated that, in the final analysis, the representative must be a qualified, practising lawyer. Some went even further and insisted that, to provide effective representation in this area, lawyers must be specialized in immigration and refugee law and have particular expertise with respect to the countries from which their clients originate. Other respondents quite explicitly stated that it is not professional qualification as a lawyer that is most important. These respondents noted that there are competent non-lawyers who provide more knowledgeable and more effective representation than is being provided by many lawyers.

While it is true that many non-lawyers possess the sort of skills or attributes listed by respondents, these skills are more likely to be found in people who have formal legal training. This is especially so with regard to substantive legal knowledge and advocacy skills. A substantial majority of respondents indicated a strong preference for legal representation, at least at hearings. This is in large measure a function of the weight they attributed to legal aspects of the processes under review. However, another factor pushing many respondents to favour involvement by lawyers was their sense of the need to hold representatives accountable. Even respondents who saw a major role for consultants and paralegals expressed grave concerns about the inadequate representation being provided by many unqualified immigration consultants. For these respondents, the lack of effective regulation and certification of competency of the non-lawyers who are providing representation is a major problem. Thus, while accountability of representatives is not a feature that one associates with “knowledgeable representation,” it is an important component in ensuring the quality of representation.

The sort of accountability sought by the respondents is that which comes from certification of competency and from regulation of the profession. The focus of their concern is accountability to the body that regulates the profession, and ultimately to the clients, for the quality of service delivered. In the context of legal aid, there is also an ongoing debate about the relative merits of staff versus *judicare* models of service delivery. Delivery of services through the staff model provides a level of accountability to the legal aid authority that might be seen as an alternative way to achieve the same objective. However, critics of the staff-based model have concerns that it can lead to deterioration in quality of service if the legal aid authority assigns an unrealistically high volume of cases to the staff representatives in order to keep costs down. From the perspective of these critics, the limitation on choice of counsel that is inherent in the staff-based model may ultimately diminish accountability.

There was no consensus among respondents on the relative merits of the staff and *judicare* models of service delivery. The overall assessment of the quality of service



currently being provided to immigrants by lawyers and paralegals who work at staff-based clinics was very favourable. But many respondents, particularly among the lawyers who were interviewed, expressed doubts about the relative cost-effectiveness of the clinic model, and had concerns about limitations on choice of counsel that would likely ensue if all services were provided through clinics.

This raises the question of what role can be played by NGO personnel, both paid staff and volunteers, in the provision of “knowledgeable representation” for immigrants and refugee claimants. All respondents acknowledged the importance of the work done by NGO settlement workers and volunteers in providing the basic settlement services. Many also suggested that these individuals could also provide adequate advice and representation for refugee claimants involved in admissibility and eligibility interviews, and possibly even to assist in preparing their PIFs. Others, as already noted, took strong exception to this proposition, insisting that familiarity with legal issues involved in these processes is an essential ingredient of quality representation.

Most respondents spoke highly of the contribution being made by paid staff at NGOs, particularly settlement workers and case counsellors. Respondents noted that these workers generally have a good sense of the processes for which they provide advice, and that they recognize their limitations and know when to refer clients to others for necessary legal advice. However, opinion was more divided on the role played by non-professional NGO volunteers. While acknowledging that most of these volunteers mean well, some respondents expressed concern that they often misinform clients and give them false hope. These respondents suggested that volunteers with no legal training should not be involved at all with providing representation or assistance in relation to legal proceedings. Rather, untrained, non-professional volunteers should limit themselves to providing support in relation to settlement issues.

Taken in context, these comments about the limited role for volunteers referred only to volunteers without any legal training. Other respondents reported that volunteers with basic legal training play a vital role in the delivery of quality representation. For example, the Halifax Refugee Clinic relies almost completely on volunteers to provide representation to refugee claimants in that city. Some of these are lawyers working on a voluntary basis. Others are law students. But a significant number are students from other disciplines, or volunteers from the community who have had no prior legal training. The clinic provides all volunteers with a short orientation course on legal issues relating to refugee determination, and all volunteers work loosely under the supervision of a lawyer. Specifically, a lawyer at the clinic reviews all PIFs before they are filed and the lawyer is available to provide advice to volunteers when required. Also, a lawyer and an experienced paralegal from the clinic monitor hearings where volunteers serve as counsel and they provide feedback on the volunteers’ performance.

Respondents from the Halifax Refugee Clinic felt that the volunteers there are providing knowledgeable and effective representation. The assessment from IRB respondents who have dealt with hearings in Halifax was more mixed. They acknowledged that the work being done by the volunteer counsel from the clinic is very important, particularly considering that legal aid is not available for immigration and refugee matters in Nova Scotia. However, the IRB respondents felt that volunteer counsel who have only limited legal training are unable to provide effective

representation in complex cases. It is not the place of this study to pass judgment on the quality of work being done by these volunteers. A systematic evaluation of the quality of representation provided by volunteers at the clinic is required to assess the capacity of volunteers with basic legal training to provide knowledgeable representation for immigrants and refugee claimants.

Views on the issue of what is required to provide knowledgeable representation were very much influenced by people's perspectives on the extent to which factual and legal analysis are at play in the determination of refugee claims. One very experienced RPD member expressed the view that the legal issues in most of the cases that he sees are very straightforward, and that most decisions turn heavily on the credibility of the claimants' stories. However, this member noted that the cases that do raise complex legal issues are very challenging, and definitely require extensive training and experience in law to sort through. The problem, according to this respondent, is to identify in advance which cases are fact-driven and which are likely to engage challenging legal issues. This suggests that a critical factor in knowledgeable representation is the representative's ability to recognize his or her own limitations, and to know when to call in help from others with more experience and expertise.



## 10.0 Factors influencing clients’ choice of representatives

Claimants and appellants<sup>53</sup> who were interviewed for this study were asked to rank in order of importance the factors that influenced their choice of a representative.<sup>54</sup> A summary of the responses is provided in Table 20. The factors listed in Table 20 are ranked in order of importance, as identified by the respondents.<sup>55</sup> Of the 22 individuals who responded, 12 rated expertise of the representative as most important and three identified expertise as the second most important factor. Seven relied on recommendations of others as the most important factor, and five said that such recommendation was the second most important factor. These two factors, by a wide margin, played the largest role in influencing the choice of a representative. The three remaining claimants identified other factors as most important to them in choosing a representative. For one it was the ability to communicate with the representative in his own language, for another it was the youth and perceived energy of the representative, and for the third it was the representative’s knowledge of the claimant’s home country.

**Table 20 Client Ranking of Factors Influencing Choice of Representative**

|                       | 1 <sup>st</sup> | 2 <sup>nd</sup> | 3 <sup>rd</sup> | 4 <sup>th</sup> | 5 <sup>th</sup> > | Times Mentioned | Weighted Score |
|-----------------------|-----------------|-----------------|-----------------|-----------------|-------------------|-----------------|----------------|
| Expertise             | 12              | 3               | 0               | 0               | 0                 | 15              | 40             |
| Recommendation        | 7               | 5               | 2               | 2               | 0                 | 16              | 35             |
| Country Knowledge     | 1               | 3               | 0               | 2               | 0                 | 6               | 11             |
| Language              | 1               | 0               | 2               | 1               | 4                 | 8               | 10             |
| Cost                  | 0               | 2               | 1               | 1               | 1                 | 5               | 7              |
| Accessibility         | 0               | 0               | 3               | 2               | 1                 | 6               | 6              |
| Gender                | 0               | 1               | 2               | 0               | 1                 | 4               | 5              |
| Availability          | 0               | 2               | 0               | 0               | 0                 | 2               | 4              |
| Age/Experience        | 1               | 0               | 0               | 1               | 0                 | 2               | 4              |
| Ethnicity             | 0               | 0               | 0               | 0               | 0                 | 0               | 0              |
| Advertising           | 0               | 0               | 0               | 0               | 0                 | 0               | 0              |
| Other                 | 0               | 0               | 0               | 0               | 0                 | 0               | 0              |
| Number of Respondents | 22              | 16              | 10              | 9               | 7                 |                 |                |

<sup>53</sup> Twenty of the client respondents interviewed for the study were refugee claimants. Two were appellants, but one of these was also a former refugee claimant.

<sup>54</sup> The specific question asked was: “Please rate in order of importance each of the following factors in your choice of a person to act as your representative in proceedings before Canadian immigration authorities? For each item, please indicate whether it was decisive factor, a consideration, or not a factor at all: a) Languages spoken by representative; b) Ethnicity of representative; c) Expertise of representative; d) Gender of representative; e) Representative’s knowledge about my country of origin; f) Cost; g) Recommendation by someone I trust; h) Accessibility of representative’s office; i) Advertising; j) Other (please specify).”

<sup>55</sup> Responses were assigned a score in accordance with the ranking indicated by each individual respondent. The factor identified by a respondent as most important was given a score of “3.” The second most important factor was given a score of “2,” and all other factors noted by individual respondents were given a score of “1.” The scores from all respondents for each factor were totalled to give the weighted total scores shown in the right-hand column in Table 20.

Six respondents rated knowledge of the client's home country as a factor in their choice of representative, and eight identified the representative's ability to communicate in the client's language as a consideration. Other factors mentioned were cost (five respondents), accessibility of the representative's office (six respondents), gender of the representative (four respondents), availability of the representative (two respondents) and age or experience of the representative (two respondents). No other factors, including advertising and ethnicity of the representative, were identified by any of the respondents as a consideration.

Individual respondents were asked to indicate, in retrospect, what sort of representation and assistance they felt they required to get through the process or processes in which they were involved (i.e., the refugee determination process, detention review and immigration inquiry proceedings, immigration appeal proceedings, etc.).<sup>56</sup> All but two of the respondents felt that they needed to be represented by a lawyer because of the legal nature of the various proceedings. A number of the refugee claimants interviewed spoke very highly of the support and advice they received from NGOs. They particularly valued the time spent by NGO personnel to explain the process to them and to help them locate competent counsel. However, only the two respondents who were dissatisfied with the service they had received from their lawyers felt that the NGOs could have provided the representation they required to prepare for their hearing. Claimants particularly valued the time their representatives spent with them to prepare their case. Four respondents made special mention of how much they appreciated the role their lawyer played in walking them through the difficult issues that they would be likely to face in their hearing, even although, at the time, they felt the lawyer was being unduly harsh.

Claimants who were dissatisfied with their lawyers all complained that their lawyers appeared not to be interested in their case and spent insufficient time with them before the hearing. Two respondents from Montreal reported that most of their pre-hearing preparation was handled by assistants (paralegals) in their lawyer's office. Both expressed a strong desire to have more contact with the person who would be representing them at the hearing, and said that they felt insecure meeting with their lawyer only on the eve of the hearing. One of these respondents acknowledged that, when the hearing finally took place, she found that the preparation done by the assistant was adequate. The other was still waiting for her hearing and had yet to meet her lawyer, because the assistant was handling everything. She said that she would have preferred to meet with the lawyer at the outset, if only briefly, so each could get some idea of the other.

Willingness of the representative to spend time with clients, and the ability to reassure the clients and to explain substantive and procedural matters to them, appear to be important components of the type of representation needed by immigrants and refugee claimants. Clients who speak English or French, and who are reasonably familiar with the Canadian legal system, may have access to information from sources other than the

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<sup>56</sup> The specific question asked in this regard was: "Knowing what you now know about the process in which you have been involved [immigration inquiry/refugee claim/detention review/immigration appeal], what sort of help do you feel that you need (or that you needed)? Please explain."



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representative. However, many immigrants and refugee claimants lack the basic knowledge and language skills needed to access information from these other sources. As a result, they are more dependent on their representatives to provide such information.

It is normal that clients who are involved in legal proceedings want the person who is representing them to spend time with them, explaining the process and discussing the planned course of action. The hourly cost for the representative's time acts as a natural check on this desire when the client is paying for the service, but this constraint is not in play for clients on legal aid.

From the foregoing observations, it appears that knowledgeable representation for refugee claimants requires significant legal expertise. This does not necessarily mean that lawyers are the only people who have any role to play in representing immigrants and refugee claimants in the various proceedings in which they are involved. But the complexity of the issues in play and the fundamentally legal nature of these proceedings mean that knowledgeable representation entails a significant legal expertise.

Many refugee claimant clients need to spend extensive time with their representative to prepare their case. This creates a challenge for legal aid programs, which are under constant pressure to find ways to contain costs. If the objective of a legal aid program is to provide knowledgeable, effective representation, the challenge is to find ways to do so in a cost-effective manner. Competent, well-trained paralegals clearly have a role to play, although it is important that lawyers be involved in a supervisory capacity, especially in cases that raise significant legal issues. There is also an important role for non-legal personnel at NGOs. But this is more in a supporting capacity, providing assistance with settlement-related issues, and serving as a source of reliable information and referrals to competent, qualified representatives.





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## 11.0 Desire for an integrated approach to service delivery

The strong support expressed by many respondents for an integrated, multi-disciplinary approach to representation represents one possible response to this challenge. Lawyers are generally more expensive than other service providers. For a given amount of money, service providers other than lawyers can spend more time with individual clients. It therefore makes sense to utilize other service providers to deliver representation services that do not absolutely require a lawyer. Involvement of non-lawyers also frees up the lawyers to spend more time working on tasks for which their expertise is indispensable. However, it also makes sense to have lawyers working in close co-operation with other service providers. This ensures that the lawyers' input can easily be provided whenever required, and that lawyers can readily assume full responsibility for dealing with the cases that involve complex legal issues.

Because their hourly rates are relatively high, lawyers are under great pressure to complete tasks quickly to keep costs down. When acting for legal aid clients, lawyers are subject to limits on the number of hours for which they can bill on individual cases. This creates a strong incentive for them to maximize income by increasing the number of cases they handle and minimizing the time they spend with individual clients. This pattern of lawyers taking on a large number of cases is particularly noticeable in Quebec, which has a legal aid tariff that is considerably lower than other provinces'. Many of the service providers and claimant respondents specifically alluded to this issue of lawyers running high-volume practices as a problem that is contributing to deterioration in the quality of representation that is being provided.

Seven of eight paralegals who were interviewed for the study work on salary at clinics or at legal aid offices. The other paralegal works for lawyers in private practice on a freelance basis and also works independently as an immigration consultant. All of these respondents felt that they can provide services more cheaply than lawyers can, but they also expressed reservations about the type of work they feel qualified to handle. All of the paralegals interviewed felt that their greatest contribution is made at the case preparation stage where they can take the time required to build a rapport with clients and to help the clients organize their case in a clear and cogent manner. However, the paralegals expressed clear reservations about their capacity to act as counsel at hearings, particularly in cases that require arguments and submissions on legal issues.

Four of the seven paralegals who work in clinic environments operate effectively independently. They all have access to lawyers when needed, but lawyers do not directly supervise their work. The other three work directly under the supervision of clinic lawyers, but report that they are generally allowed wide latitude in their work. The clinic lawyers who work with these paralegals all spoke highly of the quality and the value of the work done by the paralegals. Likewise, lawyers and other respondents who commented on the work done by the other paralegals also provided very positive assessments.



Only three of the lawyers in private practice who were interviewed for this study reported that they use paralegals extensively. Two of these, one in Manitoba and the other in Alberta, indicated that they rarely represent legal aid clients. They primarily represent independent immigrants who are applying for landing as permanent residents in Canada or who are attempting to sponsor relatives for landing as members of the family class, and rarely act for refugee claimants. The third, a lawyer from Ontario who deals mainly with refugee claimants, indicated that he uses freelance paralegals. He bills Legal Aid Ontario for the services provided by these paralegals either as interpreters or as law clerks, depending on the services provided. These lawyers all indicated that they highly value the support provided by paralegals. They noted that this frees them from tasks that require some legal knowledge but do not require high-level legal analysis. This enables the lawyers to concentrate on tasks where they can use their professional skills and training most effectively. The two lawyers, who deal mainly with immigrant clients who are not funded by legal aid, also felt that use of paralegals in their practice enables them to provide services to their clients more economically.

A number of the other lawyers interviewed for this study commented that they do not use paralegals, primarily because they cannot afford them. There is a strong disincentive for lawyers to use paralegals for legal aid work because, under most tariffs, they are not permitted to charge for services provided by non-lawyers, or the amount that can be charged is extremely low. Meanwhile, work done by a junior lawyer, working on a salary comparable to that of a paralegal, can be billed at the rate payable to lawyers, making this clearly a more attractive way for senior lawyers to organize their practice. This situation might be different if tariff rates for work done by paralegals were closer to the rates for work done by lawyers. But that would totally negate the cost advantage of having the work done by paralegals. A comparative analysis of prevailing wage rates for experienced paralegals and junior lawyers would be required to determine whether there is a point at which it is more cost-effective, both for lawyers and for legal aid authorities, to make more extensive use of paralegals under judicare arrangements.

Experience at the RLO in Toronto and the ILRC in Vancouver indicates that paralegals play a vital role in providing quality representation for immigrants and refugee claimants within the staff-based model for service delivery. It may well be more cost-effective under classic judicare arrangements to use junior lawyers rather than paralegals. However, experienced paralegals, simply by reason of their experience and the fact that they are able to spend more time with individual clients, may be better equipped than junior lawyers to provide some of the services required by immigrants and refugee claimants. The challenge is to design a service delivery model that makes it possible to achieve the benefits to be gained from involving paralegals without abandoning the flexibility and the greater scope for choice of counsel that exists under judicare arrangements.



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Two pilot projects currently under way in Manitoba and Alberta offer possible models of how this might be accomplished. Under the Manitoba model, described briefly in section 2.4 above, a paralegal employed by the Manitoba Interfaith Immigration Council, an established non-government settlement organization, provides extensive support to the lawyers in private practice who represent refugee claimants on legal aid certificates. In Calgary, a full-time salaried paralegal employed by the Legal Aid Society of Alberta provides support to members of the private bar who are representing refugee claimants under legal aid mandates. This sort of integration of services provided by NGOs, by the legal aid authority itself, and by members of the private bar may constitute a creative, more cost-effective way to provide knowledgeable representation to immigrants and refugee claimants.





## 12.0 Representation and fairness of processes

Views regarding the need for representation in proceedings affecting immigrants and refugee claimants were very much influenced by respondents' assessments of the impact that presence or absence of representation has upon fairness. The proceedings in question significantly affect the rights and interests of the immigrants and refugee claimants involved. These proceedings are, therefore, assumed to be subject to the rules of natural justice, which require a hearing, unbiased adjudication and a fair procedure.

The traditional view in administrative law jurisprudence is that natural justice does not extend to ensuring that any particular process is substantively fair. Natural justice requirements, being rooted in common law principles, are subject to being overridden by express statutory provisions that may be read as limiting procedural fairness in a particular context (Hogg, 1997: section 44.10(a)). However, Section 7 of the *Charter of Rights and Freedoms* provides that “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.” Section 2(e) of the *Canadian Bill of Rights* provides that “... no law of Canada shall be construed or applied so as to deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations.” The *Immigration and Refugee Protection Act*, being federal legislation, is subject to the *Canadian Bill of Rights*. Also, proceedings under the *IRPA* that might result in deprivation of life, liberty or security of the person concerned must be conducted in accordance with the principles of fundamental justice (*Singh v. Minister of Employment and Immigration* (1985)).

The concept of “fundamental justice” is generally viewed as being synonymous with procedural fairness or natural justice. But, in the *B.C. Motor Vehicle Reference* (1985), the Supreme Court of Canada has gone beyond this narrow view and has held that Section 7 of the Charter prohibits substantive as well as procedural injustice in proceedings that may lead to deprivation of life, liberty or security of a person (Hogg, 1997: section 44.10(a)). Thus, proceedings under the *IRPA* that affect life, liberty and security of the persons concerned must presumably be both substantively and procedurally fair.

As respondents have noted, there are many circumstances in which immigrants and refugee claimants do not understand the issues or the nature of the proceedings. They need assistance or representation from a third party to present their case in a coherent manner. In these circumstances, one might reasonably conclude that such assistance or representation is a necessary element to ensure that the process is fair and that it is conducted in accordance with the principles of fundamental justice.

All respondents acknowledged the need for fair procedures. Most respondents acknowledged that, in a broad sense, processes affecting immigrants and refugee claimants in Canada, including the overall process for determining refugee claims in Canada, are fundamentally very fair. However, as is evident from the discussion in

Section 3 above, they differed in their assessments of what type and what level of assistance and/or representation are required to ensure fairness in each of the processes under review. From an overview of responses to the interviews as a whole, there appeared to be a consensus among respondents that the need for representation increases as the proceedings become more complex. Respondents also generally agreed that the need for representation increases as the consequences of what transpires at proceedings become more definitive. That is to say, there is greater need for the affected parties to have representation in proceedings that are going to result in a final decision affecting their rights than there is in interim proceedings that do not result in a final decision. Also, where issues of a legal, as opposed to a purely factual nature must be dealt with, respondents agreed that the need for legal representation increases accordingly. However, respondents differed widely in their individual assessments of the complexity and consequences of the issues dealt with in various proceedings in which immigrants and refugee claimants are involved. The respondents' differing assessments of what sort of representation is required appeared to be rooted in differing assessments of the nature, complexity and consequences of the various proceedings, rather than in any fundamental difference of opinion regarding the importance, in principle, of access to representation as a component of a fair process.

Most service providers and all of the claimants and appellants interviewed for the study felt that effective representation can have a significant impact on the outcome of proceedings. Decisionmakers and hearing participants were divided in their assessment of whether presence or absence of representation affects outcomes, although they strongly agreed that it does have an impact on the way in which proceedings are conducted. Almost all of the respondents agreed that access to competent representation is an important component of fairness, but respondents from CIC and IRB were more inclined than were the claimant and service provider respondents to qualify this view and to suggest that the process can still be fair without representation. A majority of the CIC and IRB respondents felt that, for routine cases that do not raise complex legal issues, there are sufficient safeguards in the system to ensure a fair process even if the persons concerned are not represented. They also felt that they play an important role in ensuring that proceedings remain fair, even in circumstances where the person concerned is not represented.

The provisions in the *IRPA* that require hearings before an independent decisionmaker, and that provide persons concerned with a right to retain and instruct counsel at their own expense, are clearly intended to ensure that processes under the Act conform with the principles of fundamental justice. There was no specific question in the interviews relating to the need for publicly funded legal aid. However, many of the service providers interviewed indicated that the right to counsel is illusory if the persons cannot afford to pay. According to these respondents, the simple reality is that many refugee claimants are subsisting on social assistance.<sup>57</sup> In the early period after their arrival, when their claims are being decided, many claimants do not have the language

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<sup>57</sup> Service provider and refugee claimant respondents acknowledged that not every refugee claimant is without financial resources. But they felt that the great majority of claimants cannot afford to retain counsel at their own expense when they first arrive and during the critical period in which their claims are heard and determined.



skills to secure employment that might enable them to pay for counsel. Claimants who are victims of torture, or who are suffering from other post-traumatic stress, may not be emotionally and psychologically capable of searching for and engaging in gainful employment for many months after their arrival, even if such work is available for them. It is clear from comments made by the great majority of refugee claimants and service providers who were interviewed for this study that they believe availability of publicly funded legal aid for refugee claimants who cannot afford to retain counsel on their own is critical to maintaining a fair refugee determination process.<sup>58</sup> These respondents appeared to view the situation faced by refugee claimants as similar to that which applied in the *New Brunswick (Minister of Health and Community Services) v. G.(J.)* case, decided by the Supreme Court in 1999. In that case, the Court held that a fair hearing could not take place if the mother did not have legal representation. Since she did not have the financial means to hire counsel, the Court concluded that, under Section 7 of the Charter, she had a right to state-funded legal counsel

Very few respondents from CIC or the IRB expressed any view with regard to the need for publicly funded legal aid. This may be an indication that they did not accord the same importance to the issue of public funding for representation as did the claimant and service provider respondents, but one cannot safely draw that conclusion from the absence of comment on this issue. The issue of public funding for legal representation is a matter of public policy. Because of their respective roles within the system, CIC and IRB respondents may also have been reticent to comment on this issue, particularly since there was no direct question eliciting opinions on the matter.

## **12.1 Ensuring fairness for persons without representation**

Immigration officers who conduct admissibility and eligibility interviews indicated that they carefully explain the process and take steps to ensure that the persons they are interviewing understand why the interview is being conducted and what use will be made of the information provided. Fifteen of the 18 claimants who passed through these interviews confirmed that the officers who interviewed them did explain the process in a way that they understood. Four of the 18 felt that they had been badly treated by immigration officers when they were first interviewed. Three of these claimants indicated that the officers who interviewed them treated them very brusquely and provided no explanation about the process or how they should proceed. The other one indicated that the officer who interviewed him provided a clear explanation of the process, but he felt that the officer was simply rude. All of the other claimants felt that the immigration officers who had interviewed them treated them well.

Service providers were less confident that the measures taken by the interviewing officers are adequate to ensure that the interviews are conducted fairly. Many of the service providers who felt that it is necessary for claimants to have access to independent advice before the interview, and to have access to representation at the interview if they so desire, stated that immigration officers conduct these interviews in an intimidating and overbearing manner. These respondents saw access to representation at all stages of the

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<sup>58</sup> This conclusion is based on a reading of the overall comments made by these respondents, rather than on their response to any specific question.

process as a necessary safeguard to ensure fairness and to protect vulnerable claimants from possible intimidation. The concern that unrepresented claimants might feel intimidated at eligibility and admissibility interviews was not shared by service providers. They indicated that provision of access to independent information and advice prior to the interview is sufficient to ensure fairness at that early stage in the refugee determination process.

Ensuring fairness for unrepresented claimants in refugee hearings is more problematic. Refugee claim officers (RCOs) who were interviewed felt that they play an important role in that regard. They indicated that they try to assist unrepresented claimants by making sure all of the salient points required to establish a refugee claim are addressed at the hearing. However, the RCOs suggested that they feel somewhat constrained as to how far they can go in helping unrepresented claimants present their case. The RCOs indicated that, at the pre-hearing stage, they do advise unrepresented claimants where to go for information, but they do not engage in any pre-hearing discussion with claimants regarding the substance of their claims. As officers of the tribunal, RCOs felt that it would be inappropriate for them to give substantive advice to claimants as to how their cases should be presented.

RPD members stated that they go to great lengths to ensure that unrepresented claimants understand what they must establish to be granted asylum. But these decisionmakers acknowledged that many unrepresented claimants have great difficulty understanding what they are told. IAD members and adjudicators expressed similar concerns regarding the adequacy of the help they are able to provide within the limitations of their roles as independent decisionmakers. As a result, these decisionmakers questioned whether their efforts are sufficient to ensure a fair process.

Three RPD and two IAD members indicated that the manner in which they conduct hearings changes when the person concerned is not represented. These decisionmakers suggested that their tolerance for poorly presented evidence and submissions is considerably lower when they deal with counsel, and that they are less willing to grant adjournments when the person concerned is represented. Adjudicators expressed similar views with regard to how they conduct detention reviews and immigration inquiries when the person concerned is not represented. All of these IRB decisionmakers felt that the presence or absence of representation affected the manner in which they conduct their hearings. They noted that they do not allow this to affect their assessment of the merits of the case before them. However, they also noted that competent representatives can affect the outcome of cases by ensuring that all of the required evidence is presented and that all of the issues in a case are effectively addressed.

Two CIC respondents who have had experience representing the Minister at inquiries and detention reviews expressed concern about the difficult role they find themselves in when dealing with unrepresented parties. According to one of these respondents, it is inappropriate for the Minister's representative or the decisionmaker to be "wearing two hats." Both of these respondents felt that, for this reason alone, independent representation is needed to ensure a fair process.



## 13.0 Impact of representation on efficiency of processes

All respondents from CIC felt strongly that participation of representatives at admissibility and eligibility interviews generally impairs the efficiency of the process. One CIC manager expressed the view that, at ports of entry, it would be virtually impossible to function if the persons being interviewed routinely had representation. The principle concern here appeared to be with regard to the logistical problems that would be created if interviews had to be scheduled to accommodate representatives. However, another common theme noted by many of the officers who conduct admissibility and eligibility interviews was that the process would become more protracted and adversarial if representatives of the persons concerned participated actively in these interviews. The views of the CIC respondents in this regard were very much informed by their strong sense that these interviews are simply for the purpose of gathering factual information. They felt strongly that there is no need for the persons concerned to consult with any representative before answering the sort of questions that are asked at the interviews.

A small minority of service providers shared the view expressed by CIC officials, and felt that it is impractical and unnecessary to have representation at admissibility and eligibility interviews. The majority of service providers, who felt that some form of assistance or representation is needed, offered a different perspective with regard to the impact of representation on efficiency. They suggested that participation of a representative at these interviews could enhance overall efficiency of the process, because the representative could make sure that the person concerned understands what is required. The representative could also ensure that the questions asked are in keeping with the limited purpose for which the interviews are conducted.

For these respondents, the fact that information from the interviews follows the persons concerned in all later proceedings was a crucial consideration. When answers given are incorrect, either because the person concerned misunderstands or because he or she has been wrongly advised to give false or incomplete answers, it creates problems at subsequent hearings. Time must be spent on procedural wrangling over admissibility of the information and the weight to be accorded it. Respondents who held this view suggested that these problems could be avoided if the persons concerned had appropriate representation at admissibility and eligibility interviews.

Many of the IRB respondents, particularly the RCOs, offered a third perspective that was shared by some CIC respondents. According to these respondents, the answers provided by refugee claimants when they first arrive are most likely to reflect their true situation. They believed that claimants are often advised after they arrive in Canada to change critical elements of their story to enhance the likelihood of receiving a favourable decision. Proponents of this view believed that the absence of representation at admissibility and eligibility interviews increases the likelihood that the information provided will be spontaneous and truthful. For them, having this sort of information available at the refugee determination hearing greatly improves the efficiency of the



process. Where the story told at the initial interview is consistent with the story told in the PIF and at the hearing, the claimant's credibility is enhanced and the hearings can generally be concluded more quickly. On the other hand, where the stories differ in a significant way, the resulting lack of credibility can also make it easy to determine the claim quickly.

The difference in these perspectives was driven very strongly by the place within the system occupied by the individual respondents. Each respondent appeared to be looking at the issue from the perspective of what impact it has on his or her particular function within the system. For immigration officers, the interviews generally go more smoothly when the person concerned is not represented. Service providers who assist claimants in presenting their case before the IRB often find that they must "explain away" prejudicial information provided at the admissibility or eligibility interview, or must explain why relevant information was not disclosed at that interview. It would make their job much easier if they had an opportunity to influence the conduct of the interviews, and to ensure that appropriate explanations or objections are placed on the record at the time of the interview. There was a shared belief among the RCOs who were interviewed that much of the information provided in support of refugee claims is false. They saw protecting the integrity of the process and testing claimant credibility as an important part of their role. For them, access to statements made by claimants at admissibility and eligibility interviews is a valuable tool that enables them to discharge their responsibilities more effectively.

The assessment of the impact that representation has on efficiency was conditioned by respondents' perspective regarding the good faith and sophistication of refugee claimants involved in the process. Those who saw representatives as making a positive contribution to the pursuit of truth looked on participation by representatives from the very earliest stages of the process in a positive light. Those who believed that representation at the initial interview may facilitate abuse of the process, either wittingly or unwittingly, regarded participation of representatives at these interviews in a negative light.

Interestingly, respondents were almost unanimous in their assessment that competent representation enhances efficiency in all proceedings other than admissibility and eligibility interviews. A substantial majority of respondents believed that immigrants and refugee claimants are singularly ill-informed about procedural aspects of the processes in which they are involved. Most respondents from all groups, other than CIC, were generally agreed that the substantive knowledge that most immigrants and refugee claimants have is incomplete and vague. When one adds to this the fact that many immigrants and refugee claimants are not able to participate effectively in these legal processes in either French or English, the facilitative role that can be played by competent representatives is evident. The ability of competent representatives to focus case presentation on salient issues, to ensure that all relevant issues are addressed, and that relevant evidence is presented, is also seen by respondents as having a positive impact on efficiency of proceedings.

Respondents in all groups also felt strongly that incompetent and dishonest representation has a very negative impact on efficiency. A number of immigration officers and IRB members commented on the fact that incompetent counsel delay



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proceedings by asking for unnecessary adjournments, by leading irrelevant evidence and by failing to present their clients' cases in an organized fashion. Many service providers deplored the role played by incompetent and dishonest consultants and lawyers. They also expressed concern about the negative impact of misinformation provided by well-meaning but ill-informed individuals who try to assist immigrants and refugee claimants. Four of the claimants who were interviewed for the study related disturbing stories about how the presentation of their claims was badly set back by incompetent representatives. In each of these cases, additional proceedings were required and additional costs were incurred to undo the harm caused by the incompetent representatives.





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## 14.0 Conclusion

This study was undertaken to examine the need that immigrants and refugee claimants have for assistance and representation in relation to legal proceedings under the *Immigration and Refugee Protection Act*. From responses received in interviews with over 140 respondents who have direct experience in these proceedings, it is evident that the persons who are the subject of the proceedings do need assistance and representation at various stages in the legal process. The level of knowledge that most immigrants and refugee claimants have is extremely limited with respect to the Canadian legal system and with respect to the substantive law applicable to their particular situation. When they present their refugee claims, most refugee claimants have limited or no ability to function in either of Canada's official languages. Because of language difficulties and lack of familiarity with even the most basic elements of the Canadian legal system, refugee claimants, in particular, are poorly placed to benefit from forms of assisted self-representation that have been used to good effect in other areas such as family law (Freckler, 2002: 28). It is therefore unrealistic to think that these individuals have the capacity to participate in legal proceedings under the *IRPA* without some form of assistance and/or representation from third parties.

Most permanent residents in Canada who have come here through regular immigration channels have sufficient resources to hire counsel to represent them when required. However, refugee claimants are more likely to be dependent on publicly funded legal aid or on assistance from non-government organizations for the required assistance and representation.

Respondents were generally agreed that the level of assistance required, and the qualifications needed to provide the required services, vary with different proceedings. As a general proposition, the closer one gets to a proceeding in which decisions are made that affect the legal status of the person concerned, and the more the proceeding involves legal, as opposed to purely factual issues, the more necessary it becomes to have full legal representation provided by a lawyer. At the front end of the process, particularly with regard to the initial eligibility and admissibility interviews and preparation of the non-narrative portion of the claimant's PIF, there is considerable scope for persons without formal legal training to provide the required assistance.

Many respondents also suggested that there is scope for experienced non-lawyers, with appropriate training in advocacy and the basic principles of immigration and refugee law, to represent claimants at hearings in cases that are primarily fact-driven and do not raise complex legal issues. However, there was a general consensus among respondents that lawyers should be involved, at least in a supervisory capacity, in pre-hearing preparation and case presentation, even in apparently straightforward cases, to ensure that significant legal issues are not overlooked. For refugee hearings that involve complex legal issues, a clear majority of respondents in all groups felt that claimants should be represented by a lawyer – especially considering that there is no right of appeal, and the consequences for the claimant can be of life-and-death importance if a claim is erroneously rejected.

The level and quality of representation services currently available to refugee claimants varies widely across the country. Legal aid plans in six provinces, including the three where most refugee claims are heard, provide coverage for immigration and refugee matters. Claimants in the other provinces who cannot afford to hire counsel on their own are dependent on non-government organizations or lawyers working *pro bono* to provide the necessary representation services.

Even in provinces where legal aid is available, the quality of representation varies widely. According to respondents in all of the groups interviewed, many of the lawyers who represent immigrants and refugee claimants are highly qualified and dedicated advocates. But respondents, especially in Quebec, also noted that low legal aid tariffs have caused many of the most experienced counsel to withdraw from representing legal aid clients. Some lawyers are compensating for the low tariff by taking on more cases than they can realistically handle, with the result that the quality of representation provided often suffers. Respondents in Quebec, Ontario and British Columbia also reported that there are significant problems with unqualified, unregulated immigration consultants who take advantage of unwitting refugee claimants.

From a public policy perspective, the challenge is to find a cost-effective way to deliver the required services to refugee claimants. At present, a significant portion of assistance available to immigrants and refugee claimants is being provided free of charge by various non-government organizations. These organizations remain ready and willing to continue providing services in this area, but there was a strong sense among respondents from the NGO sector that they should be properly funded to provide these services, and should not be looked upon as a cheap alternative to legal aid.

Respondents were generally agreed that, in the jurisdictions where they have been established, legal aid clinics that have community legal workers or paralegals working closely with lawyers are providing high-quality representation services. Proponents of the clinic model, in the academic literature on legal aid, note that clinics are not limited to dealing with the legal issues, and are designed to address a much broader range of clients' support needs. Paralegals at clinics are well equipped to provide much of the assistance that immigrants and refugee claimants require, and they supposedly can do so at a lower cost than lawyers can. For example, as clinic proponents, both in the academic literature and among the respondents interviewed for this study, point out, community legal workers drawn from immigrant communities are able to provide interpretation and translation services that otherwise have to be contracted out. They are also able to provide services to many clients in their native languages. These supposed advantages appear to make the clinic-based model for legal aid service delivery particularly well suited to the needs of immigrants and refugee claimants. On balance, judging from the comments made by respondents in this study, there seems to be greater recognition of the potential benefits of staff-based service delivery for immigrants and refugee claimants than there may be in other legal aid areas such as criminal law. However, the portion of immigration and refugee legal aid services currently provided by salaried staff is marginal, and, with closure of the IRLC in Vancouver, appears to be shrinking.

In the ongoing public debate about different models for legal aid service delivery, *judicare* proponents cite the advantages of wider choice and competition among lawyers as supposed advantages possible under *judicare* arrangements. Their chief criticism of



staff-based service delivery is that it limits the range of choice that clients have when selecting counsel to represent them. Judicare proponents also question the relative cost-effectiveness of the staff-based model for service delivery, and suggest that there is a constant risk that quality of service will be eroded as salaried staff are pushed to handle unrealistically large caseloads to keep costs down. Respondents who were interviewed for the present study, particularly lawyers from the private bar, echoed these concerns with regard to reliance on clinics for delivery of legal aid services to immigrants and refugee claimants.

The alleged concerns about quality of service and relative cost-effectiveness of staff-based service delivery have largely been laid to rest by the most recent results from the ongoing evaluation of the Refugee Law Office in Toronto. However, a substantial majority of the immigrants and refugee claimants interviewed for this study regarded the ability to choose their own counsel as very important. Assuming this to be reasonably representative of the preference of the general population of immigrants and refugee claimants who rely on legal aid, concerns about limiting choice of counsel therefore remain relevant to any discussion about possible changes in the way legal aid services are delivered.

Limits on clients' choice of counsel are generally not a problem in situations where clinics operate side by side with conventional judicare arrangements. Also, the notion of unlimited choice of counsel is misleading. In reality, most claimants have little or no idea of whom they want as their counsel. They rely heavily on recommendations from trusted sources, such as NGOs that have assisted them, and they make a choice among limited alternatives proposed by the person making the recommendation. Freedom to choose counsel does become significant, however, when claimants lose confidence in the person who is representing them, and they want to change counsel midway through the proceedings.

It is unrealistic in the present economic climate to think that the representation needs of immigrants and refugee claimants can be met simply by increasing legal aid funding. Taking all of the comments received from the respondents who were interviewed for the present study into consideration, it is submitted that the optimal model for delivering legal aid services to immigrants and refugees should draw heavily on the best elements of the present clinic model. At the same time, a way needs to be found to preserve the elements of competition and broader choice of counsel that are inherent in judicare arrangements.

In the legal aid context, discussion about representation needs of immigrants and refugee claimants ultimately comes down to the question of what services must be provided by lawyers and what services can reasonably be provided by non-lawyers. A key element in this discussion is what role, if any, the various non-government organizations that serve immigrants and refugee claimants can play in providing the assistance and representation that immigrants and refugee claimants require for the various legal proceedings in which they are involved.

It is clear from the information provided by respondents in the present study that NGO personnel play a key role in assisting immigrants and refugee claimants in relation to virtually every aspect of their adaptation to life in Canada. However, NGO service

providers felt that there are limits to how far they can go in providing legal advice and representation services. After a client has been referred to a lawyer, NGO personnel continue to take an interest in the client's case, but there does not appear to be any systematic structure for co-ordinating the support they provide with the work being done by lawyers.

Some NGOs, such as the *Réfuge Juan Moreno* in Montreal and Hamilton House in Toronto, have established close working relationships with a select group of experienced lawyers. The lawyers and the NGO, in these circumstances, are able to address the client's needs in an integrated, mutually supportive way. Staff at the NGO play a significant role in assisting clients to prepare their cases. The lawyers concerned closely monitor the work done by NGO personnel, so there is minimal possibility that the clients receive conflicting or erroneous advice.

Judging from the comments made by individual refugee claimants who have benefited from this sort of close co-operation between their lawyer and the supporting NGO, the level of client satisfaction is very high. On the other hand, many of the problems and misunderstandings reported by claimant respondents appeared to be rooted in the absence of any ongoing contact between the supporting NGO and the claimant's lawyer. Claimants in this situation have nowhere to turn if they have difficulties with their lawyer. The supporting NGO's workers are reluctant to give the claimant any advice because they are not aware of what approach the lawyer is taking on presentation of the claim. Conversely, they may give ill-informed advice that creates confusion for the claimant and additional problems for the lawyer.

When looking at possible ways to improve delivery of legal aid services to immigrants and refugee claimants, consideration should be given to options that encourage this sort of co-operation between lawyers and NGOs. The NGO respondents who were interviewed for this study indicated that they are providing services to refugee claimants to the best of their ability. However, they felt that, at times, they are regarded by government authorities as a cheap substitute for legal aid. As a first step, the NGOs need to have access to reliable funding that would enable them to put the services they provide to refugee claimants on a more stable footing.<sup>59</sup>

At the same time, legal aid authorities should look at ways in which they might encourage lawyers to work more closely with NGOs. There are some existing models for this sort of co-operation that merit close examination. The pilot project under which the Manitoba Interfaith Immigration Council in Winnipeg employs paralegals, who handle much of the case preparation work on refugee claims funded by legal aid, is one example of the sort of arrangement that might be considered. Another example is provided by the Halifax Refugee Clinic, which itself is an NGO that brings together lawyers and non-lawyers who work together to assist refugee claimants. The viability of these particular examples may be limited to the unique circumstances in which they have evolved, and it

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<sup>59</sup> Most of the NGOs that provide settlement services for new immigrants are currently working under funding arrangements that actively discourage them from developing any working arrangements with lawyers who represent refugee claimants. Present funding agreements with CIC and Human Resources Development Canada (HRDC), which are the NGOs' principal funding sources, restrict them to providing services to landed immigrants. Services for refugee claimants can only be provided on a volunteer basis or be paid for with funds from other sources.



would be presumptuous to suggest that they could be successfully replicated in a completely different environment. What is required is a flexible approach that encourages creative co-operation between lawyers and NGOs to develop options that are adapted to the particular context in which the lawyers and the NGOs operate.

One way in which this might be accomplished would be to create incentives for settlement organizations that have a well-established governance structure and a substantial client base to form strategic alliances with lawyers who are prepared to provide legal representation for immigrants and refugee claimants. Organizations and lawyers that are party to such an alliance could be invited to submit to legal aid authorities proposals for creative ways in which, together, they could deliver the required legal assistance and representation. Proposals that are accepted by the legal aid authority could be funded to provide representation services for immigrants and refugee claimants who qualify for legal aid. The legal aid authority could contract to pay for the services provided either on a block fee basis, a fee-for-service basis or some combination of the two. It would then be up to the lawyers and the staff of the settlement organizations, having agreed to work together, to sort out what services should be provided by lawyers and what can be provided by paralegals or other paid staff or by volunteers affiliated with the settlement organizations.

Such an arrangement would enable the settlement organizations to expand the range of services they are able to offer to their clients, and would give them access to a new source of funding to finance their operations. It would also give them the opportunity to expand their client base to include refugee claimants, thereby enabling the settlement organizations to serve all newcomers without regard to how they have come to Canada. Some of these services are currently being provided on an ad hoc basis, without compensation or appropriate legal supervision or guidance. The arrangement could provide the lawyers with access to a substantial client base and to support services that personnel at the settlement organization are able to provide. Such an arrangement would also enable the lawyers and the settlement organizations, together, to provide a much more seamless and integrated service than they are currently able to provide separately. From the clients' perspective, such an arrangement would bring them one step closer to being able to access more services from a single provider. This would reduce the considerable frustration they currently experience in accessing diverse services at a number of separate locations.

Settlement organizations might want to create their own legal departments and hire lawyers to provide necessary legal services to the organization's clients. Or they might want to contract with lawyers in private practice to provide legal services on agreed terms. Conversely, lawyers might take the lead in such arrangements and engage settlement organizations to provide paralegal-type support. The range of possibilities is quite extensive.

Lawyers involved with such an arrangement would have to ensure that they provide adequate supervision of any non-lawyers who are assisting in the delivery of legal services. They would also have to ensure that non-lawyers working under their supervision do not contravene applicable legislation and codes of conduct governing the practice of law.



To ensure transparency, it might be useful to open this sort of arrangement to competitive bidding between different settlement organizations and consortiums of lawyers. It is important that any projects approved to provide services under such an arrangement have demonstrated the capacity to meet their commitments. Any settlement organizations involved must also have a sound and stable governance structure. The boards of directors and senior managers of the settlement organizations involved would have to play an active role in providing overall direction and organizational structure for this sort of endeavour.

The main issue from the perspective of any legal aid authority supporting such an arrangement is that there be adequate safeguards in place to ensure the quality of the services provided and the appropriate financial accountability. Contracts between the service providers and the legal aid authority would have to specify the level of service expected, and have to include provisions ensuring that the lawyers involved will provide adequate supervision and guidance for non-lawyers who are providing legal services. The legal aid authority should also put in place measures to monitor the performance of the service providers under any proposal that is approved for funding. A very detailed model for such a quality assurance standard can be found in the *Legal Aid Quality Assurance Standard (Solicitors)* published by the Legal Services Commission in England (Legal Services Commission, 2000).



## References

- Canada. Citizenship and Immigration Canada (2001a). *Pursuing Canada's commitment to immigration: The Immigration Plan for 2002*. Ottawa: Minister of Public Works and Government Services, 2001. Retrieved March 23, 2002, from <http://www.cic.gc.ca/english/pub/anrep02.html>
- Currie, A. "Legal Aid Delivery Models in Canada: Past Experience and Future Developments." *University of British Columbia Law Review* 33,2 (2000), pp. 285–317.
- Canada. Citizenship and Immigration Canada (2002g). *The Immigration and Refugee Protection Act, fact sheet no. 11: Canada – Quebec Accord*. Ottawa: Minister of Public Works and Government Services, 2002. Retrieved September 8, 2002 from <http://www.cic.gc.ca/english/irpa/fs-quebec.html>
- Commission des services juridiques. Tariff of fees – 14 December 2000*. Quebec: *Commission des services juridiques*, 2000. Retrieved April 14, 2002 from [http://www.csj.qc.ca/english/aide\\_juridique/tarif2001.asp](http://www.csj.qc.ca/english/aide_juridique/tarif2001.asp)
- Canada. Department of Justice. *Strategic Plan 2000–2005*. Ottawa, 2000. Retrieved September 27, 2002 from [http://www.justice.gc.ca/corpinfo\\_e/corpinfo/10921\\_Strategic\\_plan\\_EV3.pdf](http://www.justice.gc.ca/corpinfo_e/corpinfo/10921_Strategic_plan_EV3.pdf)
- Frecker. *Immigration and refugee legal aid cost drivers*. Ottawa: Legistec Inc., 2002.
- Hogg, P. *Constitutional Law of Canada*. 4<sup>th</sup> edition. Toronto: Carswell, 1997.
- Legal Aid Ontario (2001). *Guide to legal aid hourly maximums: Immigration and refugee law certificates*. Toronto: Legal Aid Ontario, 2001. Retrieved March 24, 2002, from [http://www.legalaid.on.ca/en/info/pdf/guide\\_immigration.pdf](http://www.legalaid.on.ca/en/info/pdf/guide_immigration.pdf)
- Legal Aid Ontario (2002b). *2002–2003 business plan*. Toronto: Legal Aid Ontario, 2002. Retrieved July 25, 2002 from ). [http://www.legalaid.on.ca/en/about/PDF/Bus\\_plan\\_2002\\_2003.pdf](http://www.legalaid.on.ca/en/about/PDF/Bus_plan_2002_2003.pdf)
- Legal Aid Ontario (2002a). *Notice to profession – Major step forward in tariff reform*. Toronto: Legal Aid Ontario, 2002. Retrieved August 2, 2002, from [http://www.legalaid.on.ca/en/info/tariff\\_reform.asp?pm=1](http://www.legalaid.on.ca/en/info/tariff_reform.asp?pm=1)
- Legal Services Commission. *Legal Aid Quality Assurance Standard (Solicitors)*. London, UK: Legal Services Commission, 2000. Retrieved October 6, 2002 from <http://www.legalservices.gov.uk/contract/lafqas/laf2000.pdf>
- Legal Services Society (1999). *Immigration tariff, January 1999*. Vancouver, BC: Legal Services Society, 1999. Retrieved May 15, 2002, from <http://www.vcn.bc.ca/lssbc/lss-lawyerinfo/lss-tariffguide/immigration.pdf>
- Legal Services Society (2002f). *Annual Report, 2001-02*. Vancouver: Legal Services Society. Retrieved October 6, 2002 from [http://www.legalaid.on.ca/en/publications/pdf/2000\\_Annual\\_Report.pdf](http://www.legalaid.on.ca/en/publications/pdf/2000_Annual_Report.pdf)

MacDonald, G. *Refugee Law Office evaluation: Supplemental report – cost efficiency*. Toronto: Legal Aid Ontario, 2001. Retrieved July 9, 2002, from [http://www.legalaid.on.ca/en/publications/pdf/Supplemental\\_April\\_2301.pdf](http://www.legalaid.on.ca/en/publications/pdf/Supplemental_April_2301.pdf)

Macklin, A. “Report on Immigration and Refugee Law.” In *Report of the Ontario Legal Aid Review: A blueprint for publicly funded legal services*. Vol. 3 (1997): 969–1016. Toronto: Ontario Legal Aid Review

Zemans, F.H. and P.J. Monahan. *From crisis to reform: A new legal aid plan for Ontario*. North York, ON: Osgoode Hall Law School, York University Centre for Public Law & Policy, 1997.

## **Cases**

*B.C. Motor Vehicle Reference*, [1985] 2 S.C.R. 486

*Dehghani v. Canada (Minister of Employment and Immigration)*, [1993] 1 S.C.R. 1053

*New Brunswick (Minister of Health and Community Services) v. G.(J.)*, [1999] 3 S.C.R. 46

*Singh v. Minister of Employment and Immigration*, [1985] 1 S.C.R. 177

## **Statutes**

*Canadian Bill of Rights*, S.C. 1960, c. 44.

*Constitution Act, 1867*, U.K., 30 & 31 Victoria, c. 3.

*Constitution Act, 1982, Schedule B to Canada Act 1982 (U.K.)*, U.K., 1982, c. 11.

*Immigration Act*, R.S.C. 1985, c. 12.

*Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

## **Regulations**

*Federal Court Rules, 1998*, SOR/98-106

*Immigration and Refugee Protection Regulations*, SOR/2002-27

*Immigration Division Rules*, SOR/2002-229

*Refugee Protection Division Rules*, SOR/2002-228

*Immigration Appeal Division Rules*, SOR/2002-230



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## **Interviews and personal communications**

Adair, Leticia: Director, Immigrant and Refugee Support Centre, Saint John, New Brunswick

Blunden, Cheryl: Legal Aid Society of Alberta, Calgary

Cohen, Lee: Director, Halifax Refugee Clinic

Fisk, Thomas: Manager, Corporate Research Services, Legal Services Society, British Columbia

Hargreaves, Claude : *Directeur général, Centre communautaire juridique de Montréal*

Marrone, Mary: Policy Analyst, Legal Aid Ontario

McNeilly, Gerry: Executive Director, Legal Aid Manitoba

Munn, Jean: Lawyer, Caron & Partners, Calgary

Nickel, Janis: Refugee Claimant Advocate, Manitoba Interfaith Immigration Council, Winnipeg

Paulo, Michel: Assistant Deputy Chairperson, Refugee Protection Division, Immigration and Refugee Board, Montreal

Pérusse, Simon: Regional Director, Immigration and Refugee Board, Montreal

Petit, Diane : Director (immigration matters), *Aide juridique, Montréal*

Smith-McIntyre, Helen: Saskatchewan Refugee Coalition, Saskatoon

Summers, Nick: Lawyer, Newfoundland and Labrador Legal Aid Commission

## **Appendix 1 Interview Guide – Individual Claimants, Appellants, Detainees,**

### General introduction

At the outset of each interview, the interviewer should make it clear to each respondent that the interview is for the purpose of gathering information about the respondent's personal experience in the immigration and refugee processes in which they are or have been involved. Explain to respondents that all responses will be treated anonymously and will not be linked to them in any way.

The identity of individual respondents should not be recorded on any interview notes. With the express consent of individual respondents, interviewers may tape interviews for reference in preparation of their interview notes. Any tape recordings are for interviewers' personal use only and do not form part of the documentation for the project.

The interviewer should explain to respondents that the study is being carried out to identify the representation needs of immigrants and refugee claimants and to identify the types of representation available to them.

The interviewer should clarify that questions are designed to gather information on the following matters:

- ◆ types of representation the individual respondents have had;
- ◆ the respondents' subjective assessment of the adequacy of the representation they have had at the various stages of the immigration and refugee proceedings in which they have been involved; and
- ◆ the respondents' overall assessment regarding the need for representation and, specifically, what sort of representation they require.

Immigrant and refugee respondents are divided into three groups, paralleling the processes in the three different divisions of the IRB. Respondents who have been involved in proceedings before more than one division should be questioned on their experience in each division. There is significant overlap in the questions directed to the three different groups. Where an individual respondent is being questioned with respect to experiences in more than one division, the interviewer should collapse the overlapping questions to avoid unnecessary duplication. However, responses should be cross-referenced to related questions.

### **1.0 Questions for specific groups of respondents**

*As a preliminary matter, interviewers need to ask respondents a number of questions to identify the groups into which each respondent falls and to give context to their responses with regard to the specific questions on representation.*

*For refugee claimants, we need to know when the respondent claimed refugee status in Canada; whether the claim was made at the point of entry or inland after the claimant had been in Canada for some time; what stage each respondent is at in the refugee determination process; and, for respondents whose claim has been determined, whether or not the claim was accepted.*

*For persons who have been detained, we need to know when the respondent was detained; the reasons why the respondent was detained; and for how long the respondent was detained.*

*For persons who have been the subject of an immigration inquiry, we need to establish the circumstances under which the respondent was referred to an immigration inquiry.*



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*For respondents who have been involved in immigration appeals, we need to establish the type of appeal in which each respondent has been involved.*

*The following questions are directed to gathering this background information.*

## **1.1 Background questions**

### **1.1.1 Refugee Claimants**

#### **1.1.1.1 When (how long ago) did you make your refugee claim?**

#### **1.1.1.2 Did you make your refugee claim immediately when you arrived in Canada, or did you make it after you had been in Canada for some time?**

- ◆ On arrival (POE)
- ◆ On own initiative after arrival (inland)
- ◆ When faced with possible removal (inland)

#### **1.1.1.3 What stage in the determination process are you at today?**

- ◆ Pre-hearing
  - ◆ PIF not yet filed/PIF filed and waiting for hearing
- ◆ Hearing
  - ◆ CRDD hearing in progress or completed/CRDD decision received
- ◆ Post-determination
  - ◆ Has protected status in Canada
- ◆ Judicial review
  - ◆ Awaiting decision: on leave/on judicial review after leave granted
  - ◆ Judicial review decision received /Awaiting new hearing at CRDD
  - ◆ New CRDD decision received
- ◆ Administrative appeals
  - ◆ PDRCC: application in progress/decision received
  - ◆ H&C: application in progress/decision received
- ◆ Awaiting removal

### **1.1.2 Respondents who have been detained**

#### **1.1.2.1 When were you detained by Canadian immigration authorities?**

- ◆ At point of entry
- ◆ Upon being discovered to be in Canada illegally
- ◆ After presenting an inland refugee claim
- ◆ After refugee claim was determined
- ◆ After departure order issued
- ◆ Other (specify)

#### **1.1.2.2 What reasons were given for detaining you?**

- ◆ To establish identity
- ◆ For security reasons
- ◆ Flight risk

**1.1.2.3 For how long were you detained?**

**1.1.2.4 Were you represented at any of your detention review hearings? Which hearings?**

- ◆ Initial review hearing (within 48 hours of detention)
- ◆ 7-day review hearing
- ◆ subsequent review hearings at which no new evidence was presented
- ◆ subsequent review hearings at which new evidence was presented
- ◆ hearing at which respondent was released

**1.1.3 Respondents involved with immigration inquiries**

**1.1.3.1 Under what circumstances were you referred to an immigration inquiry?**

- ◆ At point of entry
- ◆ Upon discovery in Canada without apparent lawful authorization
- ◆ Upon criminal conviction or charge with a serious offence

**1.1.4 Respondents involved in immigration appeals**

**1.1.4.1 What was the nature of the appeal in which you were involved?**

- ◆ appeal from a removal order
- ◆ sponsorship appeal (specify relationship to person sponsored)

**1.2 Knowledge of Process**

*The following questions are directed to eliciting information from respondents regarding the level of their knowledge about the legal processes in which they are involved. Specifically, we are interested in ascertaining whether claimants had any knowledge about these processes before their case was initiated, what level of knowledge they currently have, and how and from whom they have acquired that knowledge.*

*The question should be presented as clearly and simply as possible. Respondents should be allowed to answer in their own words. If the answers are not clear, interviewers should encourage respondents to elaborate.*

*Specific questions are framed for each group of respondents.*



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## **1.2.1 Refugee Claimants – Refugee Determination Process**

**1.2.1.1 When did you find out that could make a refugee claim in Canada?**

**1.2.1.2 When did you decide to make a refugee claim in Canada?**

**1.2.1.3 Before you made your refugee claim, did you know how to obtain refugee status in Canada? Did you know what you would have to prove to qualify as a Convention refugee?**

**1.2.1.4 Has your understanding about the procedures and the legal requirements to obtain refugee status in Canada changed since you made your refugee claim? In what way has it changed? Why has it changed?**

**1.2.1.5 Did anyone give you advice with respect to these procedures and legal requirements before you made your refugee claim?**

*Where respondents indicate that they have received advice from more than one person, the following two questions should be posed with reference to each person who has given advice.*

**1.2.1.6 What advice have they given to you?**

**1.2.1.7 What use have you made of their advice?**

## **1.2.2 Refugee Claimants – eligibility interview**

*The following questions are intended to examine the respondents' experience in the eligibility interview. Specifically, we are interested in finding out whether the claimants required the assistance of an interpreter, whether they understood the purpose of the interview and the questions that they were asked, and whether they feel the immigration officer understood the answers they gave. This may shed some light on the issue of what advice, if any, claimants need at the front end of the process.*

**1.2.2.1 When you were first interviewed by an immigration officer after you made your refugee claim, did you understand the purpose of the interview? What was your understanding?**

**1.2.2.2 Did anyone explain the purpose of the interview to you?**

**1.2.2.3 Did you understand the immigration officer's questions? Do you think the immigration officer understood your responses? Please explain.**

**1.2.2.4 Is there any information or advice that you feel you should have had when you were first interviewed by an immigration officer? Please elaborate.**

## **1.2.3 Respondents who have been detained**

**1.2.3.1 When you were first detained, what did you know about:**

- ♦ the purpose of detention review hearings?
- ♦ the procedures relating to detention review hearings?
- ♦ what you were required to establish in order to be released from detention?



**1.2.3.2 Who has given you information about the purpose of detention review hearings and what you are required to establish in order to be released?**

- ◆ Representative
- ◆ Adjudicator
- ◆ Immigration officer
- ◆ Officials at detention centre
- ◆ Other
- ◆ No one

**1.2.3.3 What information have they given to you?**

**1.2.3.4 What use have you made of that information?**

**1.2.4 Respondents involved in immigration inquiries**

**1.2.4.1 When you were first summoned to an immigration inquiry, what did you know about:**

- ◆ the purpose of inquiry?
- ◆ the procedures relating to inquiry?
- ◆ what you were required to establish in order to be allowed to remain in Canada?

**1.2.4.2 Who has given you information about the purpose of immigration inquiries and what you are required to establish in order to be allowed to remain in Canada?**

- ◆ Representative
- ◆ Adjudicator
- ◆ Immigration officer
- ◆ Officials at detention centre
- ◆ Other
- ◆ No one

**1.2.4.3 What information have they given to you?**

**1.2.4.4 What use have you made of that information?**

**1.2.5 Respondents involved in immigration appeals**

**1.2.5.1 When and how did you learn that you could appeal the decision of the adjudicator/the visa officer? Please elaborate.**

**1.2.5.2 Before you made your appeal, did you know anything about the procedures relating to immigration appeals, what you needed to prove to succeed in your appeal and the legal requirements for an immigration appeal? Please elaborate.**

**1.2.5.3 Who has given you information about immigration appeals?**

- ◆ Representative
- ◆ Adjudicator
- ◆ Immigration officer
- ◆ Officials at detention centre
- ◆ Other
- ◆ No one



#### **1.2.5.4 What information have they given to you?**

#### **1.2.5.5 What use have you made of that information?**

### **2.0 General questions for all respondents**

#### **2.1 Initial perception of needs**

*The following questions should be asked to ascertain the respondents' perception of their needs when they first became involved in immigration-related legal proceedings before the proceedings got under way. It is anticipated that responses will be quite diverse. Depending on responses received, interviewers should probe further with follow-up questions to clarify the needs identified.*

##### **2.1.1 What did you think you would need by way of advice and other assistance at the beginning of the process, that is when you: [as the case may be for each individual respondent]**

- ◆ were first summoned to an immigration inquiry?
- ◆ made your refugee claim?
- ◆ initiated your immigration appeal?
- ◆ were first detained?

##### **2.1.2 Has that perception changed? How has it changed? Why?**

#### **2.2 Expectations with regard to representation**

*The following questions are directed to determining whether the respondent has sought or is seeking the assistance of an agent or intermediary to act as the respondent's representative in immigration and refugee proceedings before the Canadian authorities. Specifically, the questions are intended to elicit information on the sort of representation sought and the respondents' expectations regarding representation.*

##### **2.2.1 Do (did) you have a person to represent you in the immigration and refugee proceedings in which you are (have been) involved? What sort of representative?**

- ◆ Lawyer in private practice
- ◆ Lawyer at a legal aid office
- ◆ Non-lawyer at a legal aid office
- ◆ Immigration consultant
- ◆ Community service worker
- ◆ Friend or relative
- ◆ Other (specify)
- ◆ No representative

##### **2.2.2 Did you apply for legal aid? Was your application accepted?**

##### **2.2.3 [For respondents who were not represented by a lawyer] Why were you not represented by a lawyer?**

- ◆ Do (did) not know how to find a lawyer
- ◆ Non-lawyer representative meets needs
- ◆ Did not apply for legal aid
- ◆ Applied for legal aid, but not eligible (merit/income)
- ◆ Legal aid not available
- ◆ Other (specify)

**2.2.4 Has anyone other than the person who represents (represented) you helped you with your case?** [*Question is directed to identifying persons who provided any sort of help, not just representation; could be more than one person. If respondent had such help, interviewer should ask follow-up question to find out what sort of person(s) helped the respondent.*]

- ◆ Lawyer in private practice
- ◆ Lawyer at a legal aid office
- ◆ Non-lawyer at a legal aid office
- ◆ Immigration consultant
- ◆ Law student
- ◆ Community service worker
- ◆ Friend or relative
- ◆ Interpreter
- ◆ Other (specify)
- ◆ No one

**2.2.5 What sort of help have you received?**

- ◆ Moral support
- ◆ Assistance on ancillary matters such as housing, welfare, language training
- ◆ Practical advice on how to present case (e.g., where to go, what to say)
- ◆ Legal advice (e.g., explanation of what is required how process works)
- ◆ Assistance in preparing case
- ◆ Other (specify)

**2.2.6 Did more than one person help you with your case? Please elaborate.** [*If respondent was helped by more than one person, interviewer should ask follow up questions to ascertain the sort of help each person provided.*]

**2.2.7 Have you used any information from government sources in preparing your case? What sort of information?**

**2.2.8 Which government agencies have provided this information?**

- ◆ CIC
- ◆ IRB
- ◆ Other (specify)

**2.2.9 How did you acquire that information (e.g., brochures, telephone inquiries, Web sites)?**

**2.2.10 Have you used information from UNHCR or from non-government sources in preparing your case? What sort of information?**

**2.2.11 Which agencies (UNHCR or which specific non-government agency) provided this information?**

**2.2.12 How did you acquire this information (e.g., brochures, telephone inquiries, Web sites)?**

**2.2.13 Knowing what you now know about the process in which you have been involved [immigration inquiry/refugee claim/detention review/immigration appeal], what sort of help do you feel that you need (or that you needed)? Please explain?**

## **2.3 Choice of representative**

*The following questions are designed to explore the dynamics behind respondents' choice of persons to assist them in preparing and presenting their cases. Questions should be adapted as required when dealing with unrepresented respondents.*



**2.3.1 Have you chosen (or do you want) a particular person to represent you in proceedings before the Canadian immigration authorities?**

**2.3.2 Please rate the importance of each of the following factors in your choice of a person to act as your representative in proceedings before Canadian immigration authorities? For each fact, please indicate whether it was not a factor, it was a consideration, or it was a decisive factor.**

- ◆ Languages spoken by representative
- ◆ Ethnicity of representative
- ◆ Expertise of representative
- ◆ Gender of representative
- ◆ Knowledge of representative about my country of origin
- ◆ Cost
- ◆ Recommendation by someone I trust
- ◆ Accessibility of representative's office
- ◆ Advertising
- ◆ Other (specify)

**2.3.3 Did anyone recommend the person you have chosen (want) as your representative? Who made the recommendation?**

- ◆ Family
- ◆ Friend
- ◆ Community leader
- ◆ Interpreter
- ◆ Community service worker
- ◆ Legal aid office
- ◆ Immigration officer
- ◆ Other (specify)

**2.3.4 On the same three-point scale mentioned above, how important was (is) that recommendation to your choice?**

**2.3.5 How would you feel if you had an assigned representative whom you had not chosen? Please explain.**

**2.3.6 Would it make any difference if you knew that the assigned representative had extensive experience with cases like yours?**

## **2.4 Communication with representative**

*The following questions are directed to eliciting information about respondents' experience with persons who have represented them in immigration and refugee proceedings. These questions can be skipped for unrepresented respondents.*

*It is difficult for respondents to provide an informed assessment of their representative's competence. However, they are able to comment on their subjective impressions of persons who have represented them and on the empathy shown to them by the representative. They are also able to comment on the clarity and timeliness of communications they have received from their representative, and on the ease with which they have been able to contact the representative when necessary.*

- 2.4.1** What were your initial impressions of the person who is acting (has acted) as your representative in immigration and refugee proceedings in Canada when you first met that person?
- 2.4.1** Is (was) language a problem for you in dealing with your representative? Do [did] you need an interpreter? Who provides (provided) the interpreter?
- 2.4.2** Do (did) you understand what your representative (has) told you? Do you feel that your representative understands (understood) what you told him/her?
- 2.4.5** How much time has (did) your representative spent (spend) with you prior to your hearing?
- 2.4.6** Has your representative kept you informed on a regular basis regarding developments in your case?
- 2.4.7** Are (were) the explanations and the information that your representative has given (gave) to you clear and easy for you to understand?
- 2.4.8** Has it been easy for you to contact your representative or someone from your representative's office when you have needed advice?

## **2.5 Case preparation**

*These questions are directed to examining the extent to which respondents have been involved in preparation of their cases, and to the quality and importance of work done by the representative. Questions 2.5.2 – 2.5.9 can be skipped for unrepresented respondents.*

- 2.5.1** How involved would you like (have liked) to be in the preparation of your case?
- 2.5.2** Have you been able to give your representative all the information you want to give concerning your case? Please elaborate.
- 2.5.3** Have you had any problems discussing important aspects of your case with your representative?
- ◆ Insufficient time
  - ◆ Do not (did not) know what information to provide
  - ◆ Can not (could not) remember important points
  - ◆ Frightened or confused
  - ◆ Not comfortable with representative (Why?)
  - ◆ Details embarrassing to discuss
  - ◆ Other (specify)



- 2.5.4 [For refugee claimants] **Did you have an opportunity to review your personal information form (PIF) with your representative and an opportunity to suggest changes before you signed it?** [If not, interviewer should ask respondent to elaborate.]
- 2.5.5 [For refugee claimants] **Does the information in your PIF correspond with what you told your representative?** [If not, interviewer should ask respondent to elaborate.]
- 2.5.6 **Do you feel that your representative understands the basis for your case?** [If not, interviewer should ask respondent to elaborate. To help respondent understand this question, interviewer should relate it to the specific type of case in which the individual respondent is involved – i.e., refugee claim, immigration appeal, detention review, or immigration inquiry.]
- 2.5.7 **Do you have any concerns about the way in which your claim is being (has been) presented?** [If yes, interviewer should ask respondent to elaborate.]
- 2.5.8 **Have you been able to provide suggestions regarding witnesses and documents to be presented at the hearing of your case? Have your suggestions been followed?**
- 2.5.9 **Could you have prepared the case on your own? Was the contribution by your representative necessary for the preparation of your case? Please elaborate.**

## 2.6 Representation at hearings

*These questions apply only to respondents who have had a hearing. The questions are intended to shed light on the respondents' experience in relation to the hearing and their assessment of the role played by their representative and other participants at the hearing. When interviewing unrepresented claimants, questions pertaining to persons acting as their representative should be adapted or should be skipped entirely, as appropriate in the circumstances of the individual interview.*

- 2.6.1 **How did your representative prepare you for the hearing?**
- 2.6.2 **Do you think you were adequately prepared for the hearing?**
- 2.6.3 **Was the hearing as you expected it would be from what your representative had told you?** [If not, interviewer should ask respondent to elaborate.]
- 2.6.4 **Should your representative have done more to prepare you for the hearing?** [If yes, interviewer should ask respondent to elaborate.]
- 2.6.5 **Did you understand the submissions [arguments] that your representative made to the panel in support of your case?**
- 2.6.6 **Could you have presented your case on your own? Was it necessary for your representative to be at the hearing? Please elaborate.**
- 2.6.7 **What is your impression of the interaction between your representative and the other hearing participants?**
- ♦ for refugee claims – the panel and the RCO, and the Minister's representative, if Minister's representative was present
  - ♦ for immigration inquiries and detention review hearings – the adjudicator and the hearing officer
  - ♦ for immigration appeals – the panel and the Minister's representative
- 2.6.8 **Did the way in which the panel members, the RCO and the Minister's representative (if present) conducted themselves at the hearing make any difference to your assessment of your need to have a representative at your hearing? That is to say, did these other participants make it make it easier or more difficult for you to present your claim? Please explain.**

## 2.7 Experience in dealing with paralegals

*The following questions are directed primarily to respondents who have been assisted by paralegals either as their principal representative, in a supporting capacity to their principal*

*representative, or in lieu of a representative. The questions are intended to elicit information about the tasks performed by non-lawyers and about the respondents' experience in dealing with paralegals.*

*As a preliminary to these questions, interviewers should ascertain whether respondents fully understand the distinction between lawyers and non-lawyers as representatives, and the role of paralegals in support of principal representatives. Where necessary, interviewers should explain the distinction so respondents understand the thrust of the questions.*

*Paralegals are non-lawyers who provide services that require some form of legal expertise, acquired either through experience or through formal training. For purposes of this study, we draw a distinction between paralegals who work independently, without any supervision from lawyers (immigration consultants), and those who work under the supervision of lawyers, in legal aid clinics, in law offices, or in some other situation where a lawyer is ultimately accountable for their work. We are also interested in examining the role played by persons without any legal experience or training who provide assistance and/or representation to immigrants and refugee claimants. Included in this group are friends, family members and volunteers, as well as staff at community service organizations who assist immigrants and refugee claimants but who do not have the training or experience to be considered true paralegals.*

**2.7.1 Do you know whether your representative is a lawyer?**

**2.7.2 Does it make any difference to you whether your representative is a lawyer?**

**2.7.3 Have non-lawyers played any role in the preparation of your case? Please elaborate.**

- ◆ Interviewed respondent
- ◆ Prepared documents (e.g., PIF, affidavits) and other case preparation (e.g., research, contacting witnesses)
- ◆ Advised respondent about the specific process (refugee determination, detention review, immigration inquiry, immigration appeal)
- ◆ Other (specify)

**2.7.4 Does (did) that (those) person(s) (i.e., the non-lawyers) have any connection with the person who represented you at your hearing?** [*If more than one non-lawyer has worked on the respondent's case, the interviewer should adapt this question to get information about the relationship between the principal representative and each non-lawyer who worked on the case.*]

- ◆ Is (was) principal representative
- ◆ Employed by principal representative
- ◆ Works in same office as principal representative, but not employed by principal representative
- ◆ Assists principal representative, but has own office
- ◆ Independent from principal representative
- ◆ Other (specify)

**2.7.5 Are you satisfied with the help you have received from non-lawyers? Please describe your experience with the non-lawyers who have helped you to prepare and present your case.**

**2.7.6 Could you have prepared your case without this help from the non-lawyers who assisted you? Please explain.**

**2.7.7 Are you satisfied with the help you have received from lawyers? Please describe your experience with the lawyers who have helped you to prepare and present your case.**

**2.7.8 Could you have prepared your case without this help from the lawyers who assisted you? Please explain.**

**2.8 Payment for services**

*The following questions are directed to ascertaining what services respondents have had to pay for and whether they applied for and obtained legal aid. This may shed light on the extent to which respondents are being charged for services not covered by legal aid and to what extent, if any, they are*



*being charged, over and above the legal aid tariff, for services that are covered. The number of persons being interviewed is not sufficient to provide any definitive answers to these issues, but the responses may provide a preliminary indication of whether there are any issues that need to be examined more closely.*

**2.8.1 Have you had to pay anything in connection with the preparation and presentation of your case in any immigration proceedings in which you have been involved? Please elaborate.**

*The following question is intended to elicit information on the respondents' ability to pay for representation from their own resources or from resources provided by family and friends. The question should be posed to all respondents, including those who did receive legal aid funding.*

**2.8.2 Do [did] you have access to financial resources to enable you to pay someone to act as your representative in connection with your refugee claim or other immigration matters?**

[Alternative wording: Do you have enough money to pay for someone to represent you or can you get enough money from private sources to pay someone to represent you?]

**2.8.3 Have you applied for legal aid? Was your application approved? If not, do you know why it was not approved?**

- ◆ No coverage for particular matter
- ◆ Not qualified on merit test
- ◆ Not qualified on income test
- ◆ Other (specify)
- ◆ Don't know

**2.9 Interpretation**

*The following questions are directed to eliciting information about respondents' need for interpretation, both in preparation for their hearing and in dealings with CIC and IRB officials.*

**2.9.1 Do you need the assistance of an interpreter to prepare your case?** [If respondent is fluent in English or French and indicates that he or she does not require the assistance of an interpreter, the interviewer should ask follow-up questions to ascertain whether the respondent may still need an interpreter for some aspects of case preparation.]

**2.9.2 Do you need an interpreter for purposes of preparing and presenting your case, that is, to enable you to communicate with your representative, and to enable you to participate in hearings and other proceedings connected with your case?** [If respondent is fluent in English or French and indicates that he or she does not require the assistance of an interpreter at interviews or hearings, the interviewer should ask follow-up questions to ascertain whether there are circumstances in which the respondent may need an interpreter.]

**2.9.3 Has your representative taken steps to ensure that you are/were able to follow what goes on in the hearings, interviews and other proceedings in which you have been involved? Please elaborate.**

**2.9.4 Have Canadian immigration officers who have interviewed you and the IRB officials who have conducted the hearings in which you have been involved taken steps to ensure that you are/were able to follow what goes on at these interviews and hearings? Please elaborate.**

**2.10 Respondents' overall assessment**

*The following questions are directed to eliciting respondents' overall assessment of the immigration and refugee procedures in which they have been involved. These questions are completely open-ended and are intended to give respondents an opportunity to address matters that may have been overlooked in the preceding questions and to comment in a general way on their experience. The questions*



*explicitly touch on support as well as representation, since some respondents have not had any representation.*

- 2.10.1 Are you satisfied with the support and representation that you have received in relation to these proceedings? Do you feel that the people who have supported and/or represented you have been competent? Please elaborate.**
- 2.10.2 Do you have any other comments about the support and representation you have had for the immigration and refugee proceedings in which you have been involved?**
- 2.10.3 Do you have any suggestions for ways in which representation for immigrants and refugee claimants might be improved?**
- 2.10.4 Do you have any other comments to make about the immigration and refugee proceedings in which you have been involved?**
- 2.10.5 Are there any changes that you would like to see made in these proceedings?**



## Appendix 2 Interview Guide – Service Providers

### Introduction

Questions in sections 1 through 4 and Section 6 are identical to questions in sections 1 through 4 and Section 8 of in the guide setting out questions for CIC and IRB personnel who participate in interviews and hearings with immigrants and refugee claimants, and for UNHCR legal officers. Questions in Section 5 and sections 7 through 9 are directed to respondents in their specific capacities as service providers. Supplementary questions in Section 10 are specific to service providers who are directly involved in providing legal services.

At the outset of each interview, the interviewer should make it clear to each respondent that the study is being undertaken to gather information on the representation needs and services currently available to immigrants and refugee claimants. Indicate that we are interested in the respondent's perspective as service providers involved with assisting immigrants and refugee claimants. Explain to respondents that all responses will be treated anonymously and will not be linked to them in any way unless they specifically want to have comments attributed to them.

The identity of individual respondents should not be recorded on interview notes. Interviewers should simply indicate the nature of the respondent's position, for example as a representative of an NGO or professional group such as the CBA or AAQQDI, as a staff lawyer or paralegal in a clinic, as an immigration consultant, a lawyer in private practice, etc. If interviewers want to tape interviews for their personal reference and use in preparation of their reports, they should first obtain the respondents' express consent.

The interviewer should clarify that questions are designed to gather information on the following matters:

- ◆ Whether immigrants and refugee claimants need any form of assistance and /or representation in connection with the proceedings under the *Immigration Act* (and the new *Immigration and Refugee Protection Act*).
- ◆ Aspects of the various proceedings with respect to which immigrants and refugee claimants are likely to need assistance and/or representation.
- ◆ The sort of assistance and/or representation they require.
- ◆ Access to that assistance and /or representation.
- ◆ Special representation needs of particular sub-groups of immigrants and refugee claimants, such as women, unaccompanied minors and persons who are mentally disabled.
- ◆ Knowledge on the part of immigrants and refugee claimants about the processes in which they are involved when they first contacted the respondent.
- ◆ Respondents' overall assessment of different modes for providing required representation for immigrants and refugee claimants.
- ◆ Role of lawyers and non-lawyers in delivery of assistance and/or representation and the necessary qualifications of people providing these services.

Questions for all service providers

## **1.0 Need for representation**

*The following questions are directed to eliciting the respondent's opinions with respect to the representation needs of immigrants and refugee claimants. Parallel questions are set for each of the major processes in which immigrants and refugees may be involved. Questions should be directed to respondents according to the particular processes in which they are involved or with which they have experience. In most cases, individual respondents are to be questioned only in relation to one process. However, respondents who have direct experience in more than one process may be questioned with respect to each of the processes in which they have direct experience.*

### **1.1 Eligibility and admissibility interviews with CIC officials**

#### **1.1.1 In your opinion, do refugee claimants need assistance of a representative at eligibility interviews conducted by CIC officials? Please elaborate as to why representation is or is not necessary for eligibility interviews.**

*If respondent indicates that some form of assistance or representation is required*

##### **1.1.1.1 What sort of representation do refugee claimants need at eligibility interviews?**

#### **1.1.2 In your opinion, do foreign nationals need assistance of a representative at admissibility interviews conducted by CIC officials? Please elaborate as to why representation is or is not necessary for admissibility interviews.**

*If respondent indicates that some form of assistance or representation is required*

##### **1.1.2.1 What sort of representation do foreign nationals need at admissibility interviews?**

### **1.2 Refugee status determination proceedings**

#### **1.2.1 In your opinion, do refugee claimants need any form of assistance or representation for refugee status determination proceedings conducted by the IRB? Please elaborate as to why assistance and/or representation is or is not needed for refugee status determination proceedings.**

*If respondent indicates that some form of assistance or representation is required*

##### **1.2.1.1 What sort of assistance and/or representation do you think refugee claimants need to prepare for their refugee status determination hearing?**

- ◆ Basic information about the process
- ◆ Advice on how to present their case
- ◆ Assistance in preparing their case (e.g., research, drafting required documents)
- ◆ Other (specify)



**1.2.1.2 What sort of assistance and/or representation do you think refugee claimants need at interviews conducted by refugee claims officers to assess whether the claim is suitable for determination without a hearing?**

- ◆ Representation at the interview
- ◆ Advice after the interview to explain implications of the decision and next steps
- ◆ Other (specify)

**1.2.1.3 What sort of assistance and /or representation do you think refugee claimants require at their refugee status determination hearing?**

- ◆ Representation at the hearing
- ◆ Advice after their hearing to explain implications of the decision and next steps
- ◆ Other (specify)

**1.3 Judicial review proceedings**

**1.3.1 In your opinion, do immigrants or refugee claimants require any form of assistance and/or representation in relation to judicial review proceedings before the Federal Court? Please elaborate as to why assistance and/or representation is or is not needed for judicial review proceedings?**

*If respondent indicates that some form of assistance or representation is required*

**1.3.1.1 What sort of assistance and /or representation do you think immigrants or refugee claimants need to prepare judicial review applications?**

- ◆ Basic information about the process
- ◆ Advice on how to present their case
- ◆ Assistance in preparing their case (e.g., research, drafting required documents)
- ◆ Other (specify)

**1.3.1.2 What sort of assistance and/or representation do you think immigrants or refugee claimants need at judicial review hearings?**

- ◆ Representation at the hearing
- ◆ Advice after their hearing to explain implications of the decision and next steps
- ◆ Other (specify)

**1.4 Other post-determination proceedings for failed refugee claimants**

**1.4.1 In your opinion, do failed refugee claimants require any form of assistance and/or representation in post-determination proceedings conducted by CIC (i.e., PDRCC, humanitarian and compassionate appeals, and [under the new Act] pre-removal risk assessments)? Please elaborate as to why assistance and/or representation is or is not needed for these post-determination proceedings.**

*If respondent indicates that some form of assistance or representation is required*

**1.4.1.1 What sort of assistance and/or representation do you think failed refugee claimants need to prepare applications for post-determination proceedings?**

- ◆ Basic information about the process
- ◆ Advice on how to present their case
- ◆ Assistance in preparing their case (e.g., research, drafting required documents)
- ◆ Other (specify)

**1.4.1.2 What sort of assistance and/or representation do you think failed refugee claimants require at hearings or interviews conducted in connection with post-determination proceedings?**

- ◆ Representation at the hearing
- ◆ Advice after their hearing to explain implications of the decision and next steps
- ◆ Other (specify)

**1.5 Detention review proceedings**

**1.5.1 In your opinion, do persons detained under provisions of the *Immigration Act* need any form of assistance or representation for detention review hearings conducted by IRB adjudicators? Please elaborate as to why assistance and/or representation is or is not needed for detention review hearings?**

*If respondent indicates that some form of assistance or representation is required*

**1.5.1.1 What sort of assistance and/or representation do you think persons detained under provisions of the *Immigration Act* need to prepare for detention review hearings?**

- ◆ Basic information about the process
- ◆ Advice on how to present their case
- ◆ Assistance in preparing their case (e.g., research, drafting required documents)
- ◆ Other (specify)

**1.5.1.2 What sort of assistance or representation do you think persons detained under provisions of the *Immigration Act* need at detention review hearings?**

- ◆ Representation at the hearing
- ◆ Advice after their hearing to explain implications of the decision and next steps
- ◆ Other (specify)

**1.6 Immigration inquiries**

**1.6.1 In your opinion, do persons who are the subject of immigration inquiries conducted by IRB adjudicators need any form of assistance and/or representation for the immigration inquiry? Please elaborate as to why representation is or is not needed for immigration inquiries.**

*If respondent indicates that some form of assistance or representation is required*

**1.6.2 What sort of assistance and/or representation do you think persons who are the subject of an immigration inquiry need to prepare for the inquiry hearing?**

- ◆ Basic information about the process
- ◆ Advice on how to present their case



- ◆ Assistance in preparing their case (e.g., research, drafting required documents)
- ◆ Other (specify)

**1.6.3 What sort of assistance and/or representation do you think persons who are the subject of an immigration inquiry need at the inquiry hearing?**

- ◆ Representation at the hearing
- ◆ Advice after their hearing to explain implications of the decision and next steps
- ◆ Other (specify)

**1.7 Immigration appeals**

**1.7.1 In your opinion, do persons who are pursuing immigration appeals before the Immigration Appeal Division of the IRB need any form of assistance and/or representation for the immigration appeal? Please elaborate as to why representation is or is not needed for immigration appeals. Is there any difference as between removal appeals and sponsorship appeals?**

*If respondent indicates that some form of assistance or representation is required*

**1.7.1.1 What sort of assistance and/or representation do you think appellants need to prepare an immigration appeal? Is there any difference as between removal appeals and sponsorship appeals?**

- ◆ Basic information about the process
- ◆ Advice on how to present their case
- ◆ Assistance in preparing their case (e.g., research, drafting required documents)
- ◆ Other (specify)

**1.7.1.2 What sort of assistance or representation do you think appellants need at appeal hearings before the IAD? Is there any difference as between removal appeals and sponsorship appeals?**

- ◆ Representation at the hearing
- ◆ Advice after their hearing to explain implications of the decision and next steps
- ◆ Other (specify)

**1.7.2 Do appellants need any form of assistance or representation in connection with alternative dispute resolution processes used by the IAD? Please elaborate.**

**2.0 Access to representation**

*The following questions link back to the responses respondents have given to the preceding set of questions. Again, respondents are expected to reply only with respect to processes in which they have direct experience. Where necessary, interviewers should adapt the questions to clarify the link to the preceding responses. For example, the interview might make specific reference to a particular need for assistance or representation as identified by the respondent and then ask whether the subjects of the proceedings in question have any problems accessing that assistance or representation.*

- 2.1 **In your opinion, do refugee claimants have any problems regarding access to required assistance and/or representation?**
- 2.2 **In your opinion, do persons detained under the provisions of the *Immigration Act* have any problems regarding access to required assistance and/or representation?**
- 2.3 **In your opinion, do persons who are the subject of immigration inquiries have any problems regarding access to required assistance and/or representation?**
- 2.4 **In your opinion, do persons appealing removal orders before the IAD have any problems regarding access to required assistance and/or representation?**
- 2.5 **In your opinion, do persons pursuing sponsorship appeals before the IAD have any problems regarding access to required assistance and/or representation?**
- 2.6 **In your opinion, do persons pursuing judicial review applications in the Federal Court have any problems regarding access to required assistance and/or representation?**
- 2.7 **In your opinion, do persons pursuing post-determination appeals with CIC [*PDRCC and H&C*] have any problems regarding access to required assistance and/or representation?**

### 3.0 **Required qualifications**

*The following questions should be addressed, as appropriate, to respondents who have identified needs for assistance and/or representation that persons who are the subject of any of the four processes (refugee determination, detention review, immigration inquiry, immigration appeals, as the case may be) may have. Again, for clarity, interviewers should adapt the questions as appropriate to link them to specific responses to the first set of questions.*

- 3.1 *[Interviewers should preface the following question by indicating that they will be asking the respondent to comment on the qualities and or qualifications required for people who assist and represent immigrants and refugees in different proceedings and at different stages in those proceedings. Interviewers should indicate that respondents need not comment on proceedings with which they are unfamiliar.]* **What qualities (qualifications) should persons have in order to provide the sort of assistance and/or representation that you believe is needed by:**
  - ◆ persons involved in eligibility or admissibility interviews?
  - ◆ refugee claimants to prepare their case?
  - ◆ refugee claimants in relation to the expedited process?
  - ◆ refugee claimants at their refugee status determination hearing?
  - ◆ refugee claimants in relation to post-determination processes conducted by CIC?
  - ◆ immigrants and refugee claimants in relation to judicial review applications and proceedings?
  - ◆ persons detained under provisions of the *Immigration Act* in relation to detention reviews?
  - ◆ persons who are the subject of immigration inquiries?
  - ◆ persons pursuing immigration appeals?
- 3.2 **Where do you see the skills of lawyers being most effectively employed? Are there any aspects of the various proceedings affecting immigrants and refugee claimants for which assistance from or representation by lawyers is essential?**
- 3.3 **Where do you see the skills of paralegals being most effectively employed? Are there any aspects of the various processes for which paralegals can provide effective assistance or representation? In your opinion, are there any circumstances in which paralegals can provide assistance and/or representation more effectively than lawyers?**



**3.4 What role, if any, do you see being played by persons without legal training with regard to assisting and/or representing immigrants and refugee claimants in the various proceedings in which they are involved?**

**4.0 Special needs (women, unaccompanied minors, mentally disabled and others)**

*The following questions are directed to eliciting information from respondents regarding the special needs of particular sub-groups – women, unaccompanied minors and mentally disabled persons involved in immigration and refugee proceedings. Where possible, interviewers should ask respondents to describe in generic terms instances or cases of which they are aware that illustrate the special representation needs of the three groups. Interviewers should also ask respondents if they are aware of any other sub-groups with special representation needs.*

**4.1 Do females have any special representation needs in relation to immigration and refugee proceedings? Please elaborate.**

**4.2 Do unaccompanied minors have any special representation needs in relation to immigration and refugee proceedings? Please elaborate.**

**4.3 Do persons with mental disabilities have any special representation needs in relation to immigration and refugee proceedings? Please elaborate.**

**4.4 Are there any other sub-groups that have special representation needs in relation to immigration and refugee proceedings? Please elaborate.**

*For respondents who identify special needs of any sub-group of immigrants or refugee claimants*

**4.5 Are you aware of any services available to address any of the special needs that you have identified?**

**5.0 Clients' knowledge**

*The following questions parallel questions being asked of individual immigrants and refugee claimants. They are directed to eliciting the insights of respondents with respect to the level of knowledge of immigrants and refugee claimants at the time they contacted the respondent or the respondent's organization.*

**5.1** *[Interviewers should preface the following question by indicating to the respondent that we are interested in hearing the respondent's assessment regarding refugee claimants' knowledge about the processes in which they are involved. Indicate that we are interested in the respondent's assessment with regard to refugee claimants in general, rather than with regard to individual clients or individual cases.]* **When refugee claimants first contact you (your organization) for assistance:**

- ◆ What do they know about the possibility of claiming refugee status in Canada?
- ◆ What do they know about the procedures and legal requirements with respect to making a refugee claim?
- ◆ What do they know about obtaining counsel?
- ◆ What has led them to contact you (your organization)?
- ◆ Who might they have obtained information from before they contacted you (your organization)?

**5.2** *[Interviewers should preface the following question by indicating to the respondent that we are interested in hearing the respondent's assessment regarding detainees' knowledge about the*



*processes in which they are involved. Indicate that we are interested in the respondent's assessment with regard to detainees in general, rather than with regard to individual clients or individual cases.]* **When persons being detained by immigration authorities first contact you (your organization) for assistance:**

- ◆ What do they know about the reasons why they have been detained?
- ◆ What do they know about the procedures and legal requirements relating to review of their detention?
- ◆ What do they know about obtaining counsel?
- ◆ What has led them to contact you (your organization)?
- ◆ Who might they have obtained information from before they contacted you (your organization)?

**5.3** *[Interviewers should preface the following question by indicating to the respondent that we are interested in hearing the respondent's assessment regarding knowledge of persons who are the subject of immigration inquiries about the processes in which they are involved. Indicate that we are interested in the respondent's assessment with regard to persons who are the subject of immigration inquiries, in general rather than with regard to individual clients or individual cases.]* **When persons who are subject to immigration inquiries first contact you (your organization) for assistance:**

- ◆ What do they know about the purpose and potential consequences of the immigration inquiry?
- ◆ What do they know about the procedures and legal requirements relating to the immigration inquiry?
- ◆ What do they know about obtaining counsel?
- ◆ What has led them to contact you (your organization)?
- ◆ Who might they have obtained information from before they contacted you (your organization)?

**5.4** *[Interviewers should preface the following question by indicating to the respondent that we are interested in hearing the respondent's assessment regarding appellants' knowledge about the processes in which they are involved. Indicate that we are interested in the respondent's assessment with regard to appellant in general, rather than with regard to individual clients or individual cases.]* **When persons who are pursuing or contemplating pursuit of an immigration appeal first contact you (your organization) for assistance:**

- ◆ What do they know about the decision to be appealed?
- ◆ What do they know about the procedures and legal requirements relating to the immigration appeal?
- ◆ What do they know about obtaining counsel?
- ◆ What has led them to contact you (your organization)?
- ◆ Who might they have obtained information from before they contacted you (your organization)?

**5.5** *[Interviewers should preface the following question by indicating to the respondent that we are interested in hearing the respondent's assessment regarding the knowledge failed refugee claimants have regarding post-determination recourse, including judicial review, PDRCC and H&C appeals. Indicate that we are interested in the respondent's assessment with regard to failed refugee claimants in general, rather than with regard to individual clients or individual cases.]* **When unsuccessful refugee claimants receive notice that their claim has been rejected:**

- ◆ What do they know about possibilities to have the decision judicially reviewed?
- ◆ What do they know about the possibilities of filing a PDRCC application or an H&C appeal?
- ◆ What do they know about the procedures and legal requirements relating to judicial review, PDRCC and H&C appeals?
- ◆ What do they know about obtaining counsel for these proceedings?



## 6.0 Respondents' overall assessment

*The following questions are intended to elicit respondents' views with respect to the work currently being done by different groups of service providers and to elicit any suggestions they may have to improve present legal aid arrangements relating to immigrants and refugee claimants. Interviewers should specifically canvass the respondents' views on how representation services might best be delivered to immigrants and refugee claimants. To set the stage for these questions, interviewers should draw the respondents' attention to:*

- ♦ the services that should be considered (advice and information, assistance in case preparation, representation at hearings);
- ♦ the avenues available for delivering these services (NGOs, legal aid clinics, service providers in private practice); and
- ♦ the people who provide these services (volunteers and paid community service workers without legal expertise, immigration consultants, supervised paralegals, and lawyers – both staff and private practice).

**6.1** *[Interviewers should preface this question by indicating that they are about to ask respondents for their views with respect to the quality, effectiveness and utility of service provided by different groups of service providers. Indicate that the same question will be asked with respect to each group of service providers.]* **Do you have any comments on the work of the following service providers?**

- ♦ Legal aid clinics, including students
- ♦ Immigration and refugee lawyers in private practice, paid or *pro bono*
- ♦ The Refugee Law Office (if Ontario)
- ♦ Supervised paralegals
- ♦ Paid immigration consultants
- ♦ Paid staff at NGOs
- ♦ UNHCR

**6.2** **Do you have any suggestions as to how assistance and representation services for immigrants and refugee claimants can most effectively be delivered?**

## 7.0 Questions for lawyers

*The following questions are intended only for lawyers who are directly involved in representing immigrants and refugee claimants. Lawyers who are also respondents in some other capacity, for example as representatives of some organization, should be included as respondents for these questions.*

*The questions are directed to eliciting information about lawyers' experience with paralegals in the delivery of legal services to immigrants and refugee claimants.*

### 7.1 Experience with paralegals

**7.1.1** **Do you utilize the services of paralegals in relation to cases in which you are acting for immigrants and refugee claimants?**

**7.1.2** *[For lawyers who do not utilize services of paralegals]* **Why not?**

- 7.1.3** *[For lawyers who do utilize services of paralegals]* **What services do you rely on paralegals to provide?**
- ◆ Interpretation
  - ◆ Client interviews
  - ◆ Ancillary support for clients (housing, employment, welfare, etc.)
  - ◆ Case research
  - ◆ Preparation of documents (PIF, affidavits, etc.)
  - ◆ Contacting and interviewing witnesses
  - ◆ Preparing client for hearing
  - ◆ Appearance on motions
  - ◆ Assistance at hearings
  - ◆ Other (specify)
- 7.1.4** **What services do you provide to immigrant and refugee claimant clients that you do not delegate to paralegals?**
- 7.1.5** **How closely do you supervise the work of paralegals who assist you? What factors affect the degree of supervision you apply?**
- 7.1.6** **How does participation by paralegals affect quality of representation?**
- 7.1.7** **What are the benefits/disadvantages of having paralegals involved in the process?**
- 7.1.8** **On average, how much time do you spend and how much time do paralegals spend on immigration and refugee cases where you are counsel? Please provide separate estimates for refugee claims and immigration cases.**
- 7.1.9** **How are the paralegals who assist you compensated for their services?**
- ◆ Salary paid by lawyer, firm or clinic
  - ◆ Fee for service, paid by lawyer or firm and passed on to client or legal aid
  - ◆ Fee for service, absorbed by lawyer or firm in overall fee
  - ◆ Paid directly by client
  - ◆ Paid by third party (e.g., NGO)
  - ◆ Unpaid
- 7.1.10** **Do you have any comments on the overall utility of paralegals in relation to your immigration and refugee law practice?**
- 7.1.11** **How many (what portion) of your clients pay for representation services?**
- 8.0** **Questions for supervised paralegals and immigration consultants (i.e., unsupervised paralegals)**
- 8.1** **How expert do you consider yourself to be in immigration and refugee matters?**
- 8.2** **What portion of your work is dedicated to immigrants and refugee claimants?**
- 8.3** **What services do you provide to immigrants and refugee claimants?**
- 8.4** **Are there any services that you feel you are able to provide to immigrants and refugee claimants that you are not currently providing? *[If yes, interviewer should ask respondent to elaborate and to explain why respondent does not currently provide these services.]***
- 8.5** **How much supervision, if any, are you subject to?**
- 8.6** **How are you compensated for your services?**
- 8.7** **How does participation by paralegals affect quality of representation?**
- 8.8** **What are the benefits/disadvantages of having paralegals involved in the process?**
- 8.9** **On average, how much time do you spend and how much time do lawyers spend on immigration and refugee cases on with which you are involved? Please provide separate estimates for refugee claims and immigration cases.**



## 9.0 Questions for NGOs

*The following questions are intended only for respondents from NGOs. The questions are directed to profiling the respondent's organization with regard to provision of assistance to immigrants and refugee claimants. The information of this nature required for this study is very limited. More in-depth information along the same lines is being sought in a parallel study being carried out for the Department of Justice by the Social Policy and Research Council. Interviewers should simply mark the applicable cells on the grid provided.*

### 9.1 What services, if any, does your organization provide with regard to representation of persons involved in each of the following proceedings under the *Immigration Act*?

- ◆ Refugee determination
- ◆ Detention review hearings
- ◆ Immigration inquiries
- ◆ Immigration appeals – removals
- ◆ Immigration appeals – sponsorships
- ◆ Judicial review applications
- ◆ Post-determination appeals at CIC (PDRCC and H&C)

### 9.2 Who within your organization provides these services?

- ◆ Volunteers (non-professional)
- ◆ Staff service workers (non-legal)
- ◆ Staff paralegals
- ◆ Law students
- ◆ Lawyers (*pro bono*)
- ◆ Lawyers (paid)

### 9.3 What factors affect the ability of your organization to assist immigrants and refugee claimants in the proceedings in which they are involved?

- ◆ Mandate of organization
- ◆ Financial resources
- ◆ Staff resources
- ◆ Volunteer resources
- ◆ Complexity of legal processes involving immigrants and refugees
- ◆ Other (specify)

**9.4 Do current legal aid arrangements have any impact on the ability of your organization to assist immigrants and refugee claimants in the proceedings in which they are involved? Please elaborate.**

**10.0 Supplementary questions**

**10.1. What, in your opinion, are the strengths/weaknesses of different payment models (e.g., flat fees for specified services, hourly rates subject to overall time limits, block contracts [tendered on price] or franchises [tendered on services offered])?**

**10.2 What, in your opinion, are the strengths and weaknesses of different service delivery models (e.g., judicare, staff, and mixed)?**



## Appendix 3 Interview Guide – Hearing Participants

### General Introduction

At the outset of each interview, the interviewer should make it clear to each respondent that the study is being undertaken to gather information on the representation needs and services currently available to immigrants and refugee claimants. Indicate that we are interested in the respondent's perspective as someone who participates in an official capacity in hearings and interviews involving immigrants and refugee claimants. Explain to respondents that all responses will be treated anonymously and will not be linked to them in any way unless the comments are made expressly for attribution.

The identity of individual respondents should not be recorded on interview notes. Interviewers should simply indicate the nature of the respondent's position, for example, as a CRDD member, an immigration officer, an adjudicator or a refugee claims officer, etc. If interviewers want to tape interviews for their personal reference in reviewing their interview notes, they should first obtain the respondents' express consent. Any tape recordings are for interviewers' personal use only and do not form part of the documentation for the project.

The interviewer should clarify that questions are designed to gather information on the following matters:

- ◆ Whether immigrants and refugee claimants need any form of assistance and /or representation in connection with the proceedings under the *Immigration Act* (and the new *Immigration and Refugee Protection Act*). Aspects of the various proceedings with respect to which immigrants and refugee claimants are likely to need assistance and/or representation.
- ◆ The sort of assistance and/or representation they require.
- ◆ Access to that assistance and /or representation.
- ◆ Special representation needs of particular sub-groups of immigrants and refugee claimants, such as women, unaccompanied minors and persons who are mentally disabled.
- ◆ Knowledge on the part of immigrants and refugee claimants about the processes in which they are involved when they first contacted the respondent.
- ◆ Respondents' overall assessment of different modes for providing required representation for immigrants and refugee claimants.
- ◆ Role of lawyers and non-lawyers in delivery of assistance and/or representation and the necessary qualifications of people providing these services.

### 1.0 Need for Representation

*The following questions are directed to eliciting the respondent's opinions with respect to the representation needs of immigrants and refugee claimants. Parallel questions are set for each of the major processes in which immigrants and refugees may be involved. Questions are directed to respondents according to the particular processes in which they are involved. In most cases, individual respondents are to be questioned only in relation to one process. However, respondents who have direct experience in more than one process may be questioned with respect to each of the processes in which they have direct experience.*

## **1.1 Initial Interviews with CIC Officials**

### **1.1.1 In your opinion, do refugee claimants need assistance of a representative at eligibility interviews conducted by CIC officials? Please elaborate as to why representation is or is not necessary for eligibility interviews.**

*If respondent indicates that some form of assistance or representation is required*

#### **1.1.1.1 What sort of representation do refugee claimants need at eligibility interviews?**

### **1.1.2 In your opinion, do foreign nationals need assistance of a representative at admissibility interviews conducted by CIC officials? Please elaborate as to why representation is or is not necessary for admissibility interviews.**

*If respondent indicates that some form of assistance or representation is required*

#### **1.1.2.1 What sort of representation do foreign nationals need at admissibility interviews?**

## **1.2 Refugee status determination proceedings**

### **1.2.1 In your opinion, do refugee claimants need any form of assistance or representation for refugee status determination proceedings conducted by the IRB? Please elaborate as to why assistance and/or representation is or is not needed for refugee status determination proceedings.**

*If respondent indicates that some form of assistance or representation is required*

#### **1.2.1.1 What sort of assistance and/or representation do you think refugee claimants need to prepare for their refugee status determination hearing?**

- ◆ Basic information about the process
- ◆ Advice on how to present their case
- ◆ Assistance in preparing their case (e.g., research, drafting required documents)
- ◆ Other (specify)

#### **1.2.1.2 What sort of assistance and/or representation do you think refugee claimants need at interviews conducted by refugee claims officers to assess whether the claim is suitable for determination without a hearing?**

- ◆ Representation at the interview
- ◆ Advice after the interview to explain implications of the decision and next steps
- ◆ Other (specify)

#### **1.2.1.3 What sort of assistance and /or representation do you think refugee claimants require at their refugee status determination hearing?**

- ◆ Representation at the hearing
- ◆ Advice after their hearing to explain implications of the decision and next steps
- ◆ Other (specify)



### 1.3 Judicial review proceedings

#### 1.3.1 In your opinion, do immigrants or refugee claimants require any form of assistance and/or representation in relation to judicial review proceedings before the Federal Court? Please elaborate as to why assistance and/or representation is or is not needed for judicial review proceedings.

*If respondent indicates that some form of assistance or representation is required*

##### 1.3.1.1 What sort of assistance and /or representation do you think immigrants or refugee claimants need to prepare judicial review applications?

- ◆ Basic information about the process
- ◆ Advice on how to present their case
- ◆ Assistance in preparing their case (e.g., research, drafting required documents)
- ◆ Other (specify)

##### 1.3.1.2 What sort of assistance and/or representation do you think immigrants or refugee claimants need at judicial review hearings?

- ◆ Representation at the hearing
- ◆ Advice after their hearing to explain implications of the decision and next steps
- ◆ Other (specify)

### 1.4 Other post-determination proceedings for failed refugee claimants

#### 1.4.1 In your opinion, do failed refugee claimants require any form of assistance and/or representation in post-determination proceedings conducted by CIC (i.e., PDRCC, humanitarian and compassionate appeals, and [under the new Act] pre-removal risk assessments)? Please elaborate as to why assistance and/or representation is or is not needed for these post-determination proceedings.

*If respondent indicates that some form of assistance or representation is required*

##### 1.4.1.1 What sort of assistance and/or representation do you think failed refugee claimants need to prepare applications for post-determination proceedings?

- ◆ Basic information about the process
- ◆ Advice on how to present their case
- ◆ Assistance in preparing their case (e.g., research, drafting required documents)
- ◆ Other (specify)

##### 1.4.1.2 What sort of assistance and/or representation do you think failed refugee claimants require at hearings or interviews conducted in connection with post-determination proceedings?

- ◆ Representation at the hearing
- ◆ Advice after their hearing to explain implications of the decision and next steps
- ◆ Other (specify)



## 1.5 Detention review proceedings

### 1.5.1 In your opinion, do persons detained under provisions of the *Immigration Act* need any form of assistance or representation for detention review hearings conducted by IRB adjudicators? Please elaborate as to why assistance and/or representation is or is not needed for detention review hearings.

*If respondent indicates that some form of assistance or representation is required*

#### 1.5.1.1 What sort of assistance and/or representation do you think persons detained under provisions of the *Immigration Act* need to prepare for detention review hearings?

- ◆ Basic information about the process
- ◆ Advice on how to present their case
- ◆ Assistance in preparing their case (e.g., research, drafting required documents)
- ◆ Other (specify)

#### 1.5.1.2 What sort of assistance or representation do you think persons detained under provisions of the *Immigration Act* need at detention review hearings?

- ◆ Representation at the hearing
- ◆ Advice after their hearing to explain implications of the decision and next steps
- ◆ Other (specify)

## 1.6 Immigration Inquiries

### 1.6.1 In your opinion, do persons who are the subject of immigration inquiries conducted by IRB adjudicators need any form of assistance and/or representation for the immigration inquiry? Please elaborate as to why representation is or is not needed for immigration inquiries.

*If respondent indicates that some form of assistance or representation is required*

#### 1.6.2 What sort of assistance and/or representation do you think persons who are the subject of an immigration inquiry need to prepare for the inquiry hearing?

- ◆ Basic information about the process
- ◆ Advice on how to present their case
- ◆ Assistance in preparing their case (e.g., research, drafting required documents)
- ◆ Other (specify)

#### 1.6.3 What sort of assistance and/or representation do you think persons who are the subject of an immigration inquiry need at the inquiry hearing?

- ◆ Representation at the hearing
- ◆ Advice after their hearing to explain implications of the decision and next steps
- ◆ Other (specify)



## **1.7 Immigration appeals**

### **1.7.1 In your opinion, do persons who are pursuing immigration appeals before the Immigration Appeal Division of the IRB need any form of assistance and/or representation for the immigration appeal? Please elaborate as to why representation is or is not needed for immigration appeals. Is there any difference as between removal appeals and sponsorship appeals?**

*If respondent indicates that some form of assistance or representation is required*

#### **1.7.1.1 What sort of assistance and/or representation do you think appellants need to prepare an immigration appeal? Is there any difference as between removal appeals and sponsorship appeals?**

- ◆ Basic information about the process
- ◆ Advice on how to present their case
- ◆ Assistance in preparing their case (e.g., research, drafting required documents)
- ◆ Other (specify)

#### **1.7.1.2 What sort of assistance or representation do you think appellants need at appeal hearings before the IAD? Is there any difference as between removal appeals and sponsorship appeals?**

- ◆ Representation at the hearing
- ◆ Advice after their hearing to explain implications of the decision and next steps
- ◆ Other (specify)

### **1.7.2 Do appellants need any form of assistance or representation in connection with alternative dispute resolution processes used by the IAD? Please elaborate.**

## **2.0 Access to Representation**

*The following questions link back to the responses respondents have given to the preceding set of questions. Again, respondents are expected to reply only with respect to processes in which they have direct experience. Where necessary, interviewers should adapt the questions to clarify the link to the preceding responses. For example, the interviewer might make specific reference to a particular need for assistance or representation as identified by the respondent and then ask whether the subjects of the proceedings in question have any problems accessing that assistance or representation.*

### **2.1 In your opinion, do refugee claimants have any problems regarding access to required assistance and/or representation?**

### **2.2 In your opinion, do persons detained under the provisions of the *Immigration Act* have any problems regarding access to required assistance and/or representation?**

### **2.3 In your opinion, do persons who are the subject of immigration inquiries have any problems regarding access to required assistance and/or representation?**

### **2.4 In your opinion, do persons appealing removal orders have any problems regarding access to required assistance and/or representation?**

### **2.5 In your opinion, do persons pursuing sponsorship appeals have any problems regarding access to required assistance and/or representation?**

- 2.6 In your opinion, do immigrants and refugees pursuing judicial review applications in the Federal Court have any problems regarding access to required assistance and/or representation?**
- 2.7 In your opinion, do failed refugee claimants pursuing post-determination administrative appeals [PDRCC and/or H&C under the present Act] have any problems regarding access to required assistance and/or representation?**

**3.0 Required qualifications**

*The following questions should be addressed, as appropriate, to respondents who have identified needs for assistance and/or representation that persons who are the subject of any of the four processes (refugee determination, detention review, immigration inquiry, immigration appeals, as the case may be) may have. Again, for clarity, interviewers should adapt the questions as appropriate to link them to specific responses to the first set of questions.*

- 3.1** *[Interviewers should preface the following question by indicating that they will be asking the respondent to comment on the qualities and or qualifications required for people who assist and represent immigrants and refugees in different proceedings and at different stages in those proceedings. Interviewers should indicate that respondents need not comment on proceedings with which they are unfamiliar.]* **What qualities (qualifications) should persons have in order to provide the sort of assistance and/or representation that you believe is needed by:**
- ◆ persons involved in eligibility or admissibility interviews?
  - ◆ refugee claimants to prepare their case?
  - ◆ refugee claimants in relation to the expedited process?
  - ◆ refugee claimants at their refugee status determination hearing?
  - ◆ refugee claimants in relation to post-determination processes conducted by CIC?
  - ◆ immigrants and refugee claimants in relation to judicial review applications and proceedings?
  - ◆ persons detained under provisions of the *Immigration Act* in relation to detention reviews?
  - ◆ persons who are the subject of immigration inquiries?
  - ◆ persons pursuing immigration appeals?
- 3.2 Where do you see the skills of lawyers being most effectively employed? Are there any aspects of the various proceedings affecting immigrants and refugee claimants for which assistance from or representation by lawyers is essential?**
- 3.3 Where do you see the skills of paralegal being most effectively employed? Are there any aspects of the various processes for which paralegals can provide effective assistance or representation? In your opinion, are there any circumstances in which paralegals can provide assistance and/or representation more effectively than lawyers?**
- 3.4 What role, if any, do you see being played by persons without legal training with regard to assisting and/or representing immigrants and refugee claimants in the various proceedings in which they are involved?**



#### **4.0 Special needs (women, unaccompanied minors, mentally disabled and others)**

*The following questions are directed to eliciting information from respondents regarding the special needs of particular sub-groups – women, unaccompanied minors and mentally disabled persons involved in immigration and refugee proceedings. Where possible, interviewers should ask respondents to describe in generic terms instances or cases of which they are aware that illustrate the special representation needs of the three groups. Interviewers should also ask respondents if they are aware of any other sub-groups with special representation needs.*

- 4.1 Do females have any special representation needs in relation to immigration and refugee proceedings? Please elaborate.**
- 4.2 Do unaccompanied minors have any special representation needs in relation to immigration and refugee proceedings? Please elaborate.**
- 4.3 Do persons with mental disabilities have any special representation needs in relation to immigration and refugee proceedings? Please elaborate.**
- 4.5 Are there any other sub-groups that have special representation needs in relation to immigration and refugee proceedings? Please elaborate.**

*For respondents who identify special needs of any sub-group of immigrants or refugee claimants*

- 4.6 Are you aware of any services available to address any of the special needs that you have identified?**

#### **5.0 Knowledge of process on part of persons concerned**

*The following questions are directed to eliciting the insights of respondents with respect to the level of knowledge of immigrants and refugee claimants regarding the proceedings in which they were involved, at the time of their first contact with the respondent. The questions are adapted to the different groups of respondents to reflect the different stages in the various proceedings at which respondents have first contact with immigrants and refugee claimants.*

#### **5.1 Questions for immigration officers**

- 5.1.1** *[Interviewers should preface the following question by indicating to the respondent that we are interested in hearing the respondent's assessment regarding refugee claimants' knowledge about the processes in which they are involved. Indicate that we are interested in the respondent's assessment with regard to refugee claimants in general, rather than with regard to individual cases.]* **When you interview refugee claimants for purposes of determining whether they are eligible to have their claims referred to the IRB:**

- ◆ What do they know about the possibility of claiming refugee status in Canada?
- ◆ What do they know about the procedures and legal requirements with respect to making a refugee claim?
- ◆ What do they know about obtaining counsel?

## 5.2 Questions for IRB adjudicators

**5.2.1** *[Interviewers should preface the following question by indicating to the respondent that we are interested in hearing the respondent's assessment regarding detainees' knowledge about the processes in which they are involved. Indicate that we are interested in the respondent's assessment with regard to detainees in general, rather than with regard to individual detainees or individual cases.]* **When persons who are detained by immigration authorities appear for their first detention review hearing:**

- ◆ What do they know about the reasons why they have been detained?
- ◆ What do they know about the procedures and legal requirements relating to review of their detention?
- ◆ What do they know about obtaining counsel?

**5.2.2** *[Interviewers should preface the following question by indicating to the respondent that we are interested in hearing the respondent's assessment regarding knowledge of persons who are the subject of immigration inquiries about the processes in which they are involved. Indicate that we are interested in the respondent's assessment with regard to persons who are the subject of immigration inquiries, in general rather than with regard to individual clients or individual cases.]* **When persons who are subjects of immigration inquiries first appear for the inquiry:**

- ◆ What do they know about the purpose and potential consequences of the immigration inquiry?
- ◆ What do they know about the procedures and legal requirements relating to the immigration inquiry?
- ◆ What do they know about obtaining counsel?

## 5.3 Questions for IRB members, RCOs, hearings officers and UNHCR legal officers

**5.3.1** *[Interviewers should preface the following questions by indicating to the respondent that we are interested in hearing the respondent's assessment regarding refugee claimants' knowledge about the processes in which they are involved. Indicate that we are interested in the respondent's assessment with regard to refugee claimants in general, rather than with regard to individual clients or individual cases.]*

**5.3.1.1** **When refugee claimants submit their PIFs to the IRB, what do they know about the procedures and legal requirements with respect to making a refugee claim?**

**5.3.1.2** **When refugee claimants appear for the hearing into their claim [or for the expedited process interview], what do they know about the procedures and legal requirements with respect to making a refugee claim?**

## 5.4 Questions for IAD members

**5.4.1** *[Interviewers should preface the following question by indicating to the respondent that we are interested in hearing the respondent's assessment regarding appellants' knowledge about the processes in which they are involved. Indicate that we are interested in the respondent's assessment with regard to appellants in general, rather than with regard to individual appellants or individual cases.]* **When persons who are pursuing an immigration appeal first appear for their appeal hearing [or for a settlement conference]:**

- ◆ What do they know about the decision to be appealed?
- ◆ What do they know about the procedures and legal requirements relating to the immigration appeal?
- ◆ What do they know about obtaining counsel?



## **6.0 Impact of representation**

*The following questions are intended for IRB and CIC personnel who participate directly in IRB hearings. UNHCR legal officers may also be in a position to respond based on their experience as observers at IRB proceedings. Interviewers should question respondents only with respect to proceedings in which they have direct experience.*

- 6.1.1** What difference, if any, does it make when refugee claimants are represented, as opposed to when they are not represented at refugee status determination hearings (or expedited interviews)?
- 6.1.2** What difference, if any, does it make when detained persons who are being detained under provisions of the *Immigration Act* are represented, as opposed to when they are not represented at detention review hearings?
- 6.1.3** What difference, if any, does it make when the subjects of immigration inquiries are represented, as opposed to when they are not represented at the inquiry?
- 6.1.4** What difference, if any, does it make when appellants are represented, as opposed to when they are not represented at IAD appeal hearings (or settlement conferences)?
- 6.2** In your experience, is there any difference in the type of representation provided by lawyers, by paralegals and by representatives who have no legal training?
- 6.3** In your experience, does it make any difference to the outcome of cases whether the immigrant or refugee claimant concerned is represented by a lawyer, by a paralegal, or by someone who has no legal training?
- 6.4** Does the presence of a representative for the individual who is the subject of the proceeding make any difference where the proceeding is conducted through an interpreter? Please elaborate.

## **7.0 Procedural fairness and representation**

*The following questions are directed to eliciting the respondents' opinions regarding fairness of proceedings involving immigrants and refugee claimants. The questions are also aimed at eliciting opinions regarding the significance of representation as an element of procedural fairness. Interviewers should explain to respondents that we are looking primarily for their comments with respect to proceedings in which they have direct experience; however, they are free to comment on all of the proceedings listed if they feel so inclined.*

- 7.1** Based on your understanding of the principles of fundamental justice and the rules of natural justice, what elements are required to ensure fairness of the following proceedings?
  - 7.1.1** Eligibility interviews for refugee claimants
  - 7.1.2** Admissibility interviews for foreign nationals entering Canada
  - 7.1.3** Refugee status determination proceedings
  - 7.1.4** Immigration inquiries for foreign nationals in Canada

- 7.1.5 **Detention review proceedings for persons detained by Canadian Immigration authorities**
- 7.1.6 **Immigration appeals (removal and sponsorship)**
- 7.2 **Does the availability of representation for persons who are the subject of these proceedings make any difference to fairness of the proceedings? If so, how? And if not, why not?**
- 7.3 **Does the type of representation available to persons who are the subject of these proceedings (i.e., representation by a lawyer, a non-lawyer with legal training, or a person without legal training) make any difference to fairness of the proceedings? If so, how? And if not, why not?**
- 7.4 **How can fairness of the process be maintained in cases where the persons who are the subject of the proceedings do not have access to representation?**

## 8.0 Respondents' overall assessment

*The following questions are intended to elicit respondents' views with respect to the work currently being done by different groups of service providers and to elicit any suggestions they may have to improve present legal aid arrangements relating to immigrants and refugee claimants. Interviewers should specifically canvass the respondents' views on how representation services might best be delivered to immigrants and refugee claimants. To set the stage for these questions, interviewers should draw the respondents' attention to:*

- ♦ the services that should be considered (advice and information, assistance in case preparation, representation at hearings);
- ♦ the avenues available for delivering these services (NGOs, legal aid clinics, service providers in private practice); and
- ♦ the people who provide these services (volunteers and paid community service workers without legal expertise, immigration consultants, supervised paralegals, and lawyers – both staff and private practice).

### 8.1 *[Interviewers should preface this question by indicating that they are about to ask respondents for their views with respect to the quality, effectiveness and utility of service provided by different groups of service providers. Indicate that the same question will be asked with respect to each group of service providers.] Do you have any comments on the work of the following service providers?*

- ♦ Legal aid clinics
- ♦ Immigration and refugee lawyers in private practice, [paid and *pro bono*]
- ♦ The Refugee Law Office (if Ontario)
- ♦ Supervised paralegals
- ♦ Paid immigration consultants
- ♦ Paid staff at NGOs
- ♦ Volunteers at NGOs
- ♦ UNHCR

### 8.2 **Do you have any suggestions as to how assistance and representation services for immigrants and refugee claimants can most effectively be delivered?**



## Appendix 4 Interview Guide – CIC Managers

- 1.0 General questions**
- 1.1 In your opinion, does the presence or absence of representation for persons involved in immigration and refugee proceedings have any impact on CIC operations? Please elaborate.**
- 1.2 Are there any changes that you would like to see with respect to availability of representation for immigrants and refugees in your region? Please elaborate.**
- 1.3** *[Interviewers should preface this question by indicating that they are about to ask respondents for their views with respect to the quality, effectiveness and utility of service provided by different groups of service providers. Indicate that the same question will be asked with respect to each group of service providers.] Do you have any comments on the work of the following service providers?*
- ◆ Legal aid clinics
  - ◆ Immigration and refugee lawyers in private practice
  - ◆ the Refugee Law Office (if Ontario)
  - ◆ Supervised paralegals
  - ◆ Paid immigration consultants
  - ◆ Paid staff at NGOs
  - ◆ Volunteers at NGOs
  - ◆ UNHCR
- 1.4** *[Interviewers should preface the following question by indicating that they will be asking the respondent to comment on the qualities and or qualifications required for people who assist and represent immigrants and refugees in different proceedings and at different stages in those proceedings. Interviewers should indicate that respondents need not comment on proceedings with which they are unfamiliar.] What qualities (qualifications) should persons have in order to provide the sort of assistance and/or representation that you believe is needed by:*
- ◆ persons involved in eligibility or admissibility interviews?
  - ◆ refugee claimants to prepare their case?
  - ◆ refugee claimants in relation to the expedited process?
  - ◆ refugee claimants at their refugee status determination hearing?
  - ◆ refugee claimants in relation to post-determination processes conducted by CIC?
  - ◆ immigrants and refugee claimants in relation to judicial review applications and proceedings?
  - ◆ persons detained under provisions of the *Immigration Act* in relation to detention reviews?
  - ◆ persons who are the subject of immigration inquiries?
  - ◆ persons pursuing immigration appeals?
- 1.5 Where do you see the skills of lawyers being most effectively employed? Are there any aspects of the various proceedings affecting immigrants and refugee claimants for which assistance from or representation by lawyers is essential?**
- 1.6 Where do you see the skills of paralegals being most effectively employed? Are there any aspects of the various processes for which paralegals can provide effective assistance or representation? In your opinion, are there any circumstances in which paralegals can provide assistance and/or representation more effectively than lawyers?**



- 1.7 What role, if any, do you see being played by persons without legal training with regard to assisting and/or representing immigrants and refugee claimants in the various proceedings in which they are involved?**
- 2.0 Questions re: Proceedings in Adjudication Division**
- 2.1 Do you have any information on the number of detention review cases (number of detainees) you have had in your region in each of the past three years?**
- 2.2 Do you know the rough breakdown of these cases in terms of reasons for detention and at what stage in immigration or refugee proceedings the persons concerned were when they were detained?**
- ◆ Refugee claimants – to establish identity
  - ◆ Refugee claimants – flight risk
  - ◆ Refugee claimants – security risk
  - ◆ Pending removal (including failed refugee claimants) – flight risk
  - ◆ Pending removal (including failed refugee claimants) – security risk
- 2.3 Do you have any information on the number of persons concerned who had some form of representation at their detention review hearings?**
- 2.4 In your opinion, is there any need for the persons concerned to have any form of representation at detention review hearings?**
- 2.5 In your experience, does the presence of a representative for the person concerned at detention review hearings make any difference to the way in which the hearings are run and to the outcome of the hearings?**
- 2.6 Do you have any information on the number of immigration inquiries held in your region in each of the past three years?**
- 2.7 Do you have any information on the number of persons concerned who had some form of representation at their immigration inquiry?**
- 2.8 In your opinion, is there any need for the persons concerned to have any form of representation at immigration inquiries?**
- 2.9 In your experience, does presence or absence of a representative for the person concerned at an immigration inquiry make any difference to the way in which the inquiry is run and to the outcome of the inquiry?**
- 2.10 Do you anticipate any changes in the number of immigration inquiries and detention reviews in your region as a result of implementation of the new *Immigration and Refugee Protection Act*?**



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**3.0 Questions re: Refugee claims:**

**3.1 Do you have any information on the number of refugee claims received by CIC in your region over each of the past three years?**

**3.2 Do you have any breakdown of these cases as between POE and inland claims?**

**3.3 Are there any differences in the way in your region processes POE and inland claims?**

**3.4 Do immigration officers in your region conduct face-to-face interviews with all refugee claimants?**

**3.5 What information do immigration officers in your region rely on when deciding whether a refugee claim should be referred to the CRDD?**

- ♦ Information from the interview with the claimant?
- ♦ Information provided on questionnaires filled out by claimant?
- ♦ Information from government sources (CSIS, RCMP, CIC, Interpol, etc.)?

**3.6 Is the information obtained by immigration officers in your region for purposes of determining eligibility shared with CRDD? In what form is that information shared?**

**3.7 Do immigration officers in your region question claimants on the substance of their refugee claim in the course of assessing eligibility?**

**3.8 In your opinion is there any need for refugee claimants to have any form of representation in connection with eligibility interviews?**

## Appendix 5 Interview Guide – IRB Managers

- 1.0 General questions**
- 1.1 In your opinion, does the presence or absence of representation for persons involved in immigration and refugee proceedings have any impact on IRB operations in your region? Please elaborate.**
- 1.2 Are there any changes that you would like to see with respect to availability of representation for immigrants and refugee claimants in your region? Please elaborate.**
- 1.3** *[Interviewers should preface this question by indicating that they are about to ask respondents for their views with respect to the quality, effectiveness and utility of service provided by different groups of service providers. Indicate that the same question will be asked with respect to each group of service providers.] Do you have any comments on the work of the following service providers?*
- ♦ Immigration and refugee lawyers in private practice
  - ♦ The Refugee Law Office (if Ontario)
  - ♦ Supervised paralegals
  - ♦ Paid immigration consultants
  - ♦ Paid staff at NGOs
  - ♦ Volunteers at NGOs
  - ♦ UNHCR
- 1.4** *[Interviewers should preface the following question by indicating that they will be asking the respondent to comment on the qualities and or qualifications required for people who assist and represent immigrants and refugees in different proceedings and at different stages in those proceedings. Interviewers should indicate that respondents need not comment on proceedings with which they are unfamiliar.] What qualities (qualifications) should persons have in order to provide the sort of assistance and/or representation that you believe is needed by:*
- ♦ persons involved in eligibility or admissibility interviews?
  - ♦ refugee claimants to prepare their case?
  - ♦ refugee claimants in relation to the expedited process?
  - ♦ refugee claimants at their refugee status determination hearing?
  - ♦ refugee claimants in relation to post-determination processes conducted by CIC?
  - ♦ immigrants and refugee claimants in relation to judicial review applications and proceedings?
  - ♦ persons detained under provisions of the *Immigration Act* in relation to detention reviews?
  - ♦ persons who are the subject of immigration inquiries?
  - ♦ persons pursuing immigration appeals?
- 1.5 Where do you see the skills of lawyers being most effectively employed? Are there any aspects of the various proceedings affecting immigrants and refugee claimants for which assistance from or representation by lawyers is essential?**
- 1.6 Where do you see the skills of paralegals being most effectively employed? Are there any aspects of the various processes for which paralegals can provide effective assistance or representation? In your opinion, are there any circumstances in which paralegals can provide assistance and/or representation more effectively than lawyers?**
- 1.7 What role, if any, do you see being played by persons without legal training with regard to assisting and/or representing immigrants and refugee claimants in the various proceedings in which they are involved?**



- 2.0 Questions re: Proceedings in Adjudication Division**
- 2.1 Do you have any information on the number of detention review cases (number of detainees) you have had in your region in each of the past three years?**
- 2.2 Do you know the rough breakdown of these cases in terms of reasons for detention and at what stage in immigration or refugee proceedings the persons concerned were when they were detained?**
- ◆ Refugee claimants – to establish identity
  - ◆ Refugee claimants – flight risk
  - ◆ Refugee claimants – security risk
  - ◆ Pending removal (including failed refugee claimants) – flight risk
  - ◆ Pending removal (including failed refugee claimants) – security risk
- 2.3 Do you have any information on the number of persons concerned who had some form of representation at their detention review hearings?**
- 2.4 In your opinion, is there any need for the persons concerned to have any form of representation at detention review hearings?**
- 2.5 In your experience, does the presence of a representative for the person concerned at detention review hearings make any difference to the way in which the hearings are run and to the outcome of the hearings?**
- 2.6 Do you have any information on the number of immigration inquiries held in your region in each of the past three years?**
- 2.7 Do you have any information on the number of persons concerned who had some form of representation at their immigration inquiry?**
- 2.8 In your opinion, is there any need for the persons concerned to have any form of representation at immigration inquiries?**
- 2.9 In your experience, does the presence or absence of a representative for the person concerned at an immigration inquiry make any difference to the way in which the inquiry is run and to the outcome of the inquiry?**
- 2.10 Do you anticipate any changes in the number of immigration inquiries and detention reviews in your region as a result of implementation of the new *Immigration and Refugee Protection Act*?**
- 3.0 Questions re: Refugee claims**
- 3.1 Do you have any information on the number of refugee claims referred to and heard in your region in each of the past three years?**
- 3.2 Is the information obtained by immigration officers in your region for purposes of determining eligibility of refugee claimants to have claims determined by the IRB shared with IRB? In what form is that information shared?**
- 3.3 In your opinion, is there any need for refugee claimants to have any form of representation in relation to the refugee determination process?**
- 3.4 Do you have any information on the number of claimants who had some form of representation at their refugee hearing?**
- 3.5 In your experience, does the presence or absence of a representative for the claimant at a refugee hearing make any difference to the way in which the hearing is run and to the outcome of the hearing?**
- 3.6 In your experience, does the presence or absence of a representative for the claimant at expedited interviews make any difference to the way in which the hearing is run and to the outcome of the interview?**
- 3.7 Do you anticipate any changes in the number of refugee claims that will be referred in your region as a result of implementation of the new *Immigration and Refugee Protection Act*?**

- 4.0 Questions re: Immigration appeals**
- 4.1 Do you have any information on the number of refugee claims referred to and heard in your region in each of the past three years?**
- 4.2 Do you have any information on the number of appellants who had some form of representation at their refugee hearing?**
- 4.3 In your opinion, is there any need for appellants to have any form of representation in relation to the immigration appeal process?**
- 4.4 In your experience, does the presence or absence of a representative for the appellants at appeal hearings make any difference to the way in which the hearing is run and to the outcome of the hearing?**
- 4.5 In your experience, does the presence or absence of a representative for the appellants at case settlement conferences make any difference to the way in which the conference is run and to the outcome of the hearing?**
- 4.6 Do you anticipate any changes in the number of immigration appeals in your region as a result of implementation of the new *Immigration and Refugee Protection Act*?**



## Appendix 6 Interview Guide – Legal Aid Managers

*Following is a list of the information we would like to obtain from legal aid authorities in Ontario, B.C. and Quebec. We already have some of this information, but not at the desired level of detail. Some of the information is more relevant to the Cost Drivers study than the Representation study. We recognize that some of this information may not be available. We should simply indicate to each of the legal aid authorities that we would appreciate any of the listed information that they are able to produce without undue difficulty.*

- Total cost for immigration and refugee law cases (certificates [including both private retainers and RLO] and clinics), broken out by
  - ◆ type of case (CRDD, IAD, Adjudication, CIC, FCC);
  - ◆ means of delivery (private certificate, RLO, community clinic, student clinic);
  - ◆ source of costs (lawyer, paralegal, articling students, interpreters, students, other staff, other disbursements); and
  - ◆ proceedings covered (e.g., refugee status determination, judicial review, detention review, immigration inquiry, post-determination applications to CIC, immigration appeal).
  - ◆
- Comparative information on fees and disbursements based on means of delivery:
  - ◆ the number of certificates issued and total amount paid;
  - ◆ the number of immigration and refugee cases where fees were billed for paralegals, articling students or others; and
  - ◆ the number of bills received where interpreter time was billed as a disbursement.
- Information re: immigration and refugee clients:
  - ◆ The proportion of cases immigration and refugee cases in which the principal claimant (head of family) is female.
  - ◆ The number of immigration and refugee cases in which clients (or families) sign pay back (loan) agreements, or agree to pay portion of fees.

*The following questions are phrased generically. The questions may have to be adapted or elaborated to fit the different circumstances applicable to legal aid authorities in different provinces.*

- 1. Do you have any information on what happens with immigrant and refugee clients who are refused legal aid? Do you refer ineligible immigrants and refugee claimants elsewhere? Where?**
- 2. What does your agency do to ensure that legal aid coverage is consistent with actual time lawyers spend on immigration and refugee cases?**
- 3. Do you have any information on the amount of unpaid time above tariff allowances that lawyers spend on immigration and refugee cases?**
- 4. How often is discretion exercised to pay above the tariff in immigration and refugee cases? How often is this discretion denied? How much does this add to the cost for immigration and refugee legal aid?**
- 5. Has your agency conducted any cost benefit analysis re: utility of researching ability of family members in Canada to pay for legal representation in immigration and refugee cases?**

6. *[The following question is applicable only to Legal Aid Ontario (LAO)]* **LAO has run pilot projects with specialized counsel panels for Mexico and Nigeria. What is the assessment of those pilots in terms of costs and quality of representation?**
7. **Does your agency carry out research relating to immigration and refugee issues for purposes of providing support material to counsel representing legal aid clients? Has this contributed to cost savings or to the quality of representation?**
8. **Does your agency provide any other similar forms of support to legal aid counsel or legally aided immigration and refugee clients? If so, have these supports contributed to cost saving or to the quality of representation?**
9. **Did your agency have any involvement in administration of the designated counsel program (1989 to 1992) for the federal government? What worked or did not work well in this program? In particular, do you have any information on costs and quality control considerations relating to the designated counsel program?**
10. **What quality control mechanisms does your agency utilize with regard to immigration and refugee cases and how effective are they?**
11. **In your opinion, are any of the services for immigration and refugee clients currently covered under your legal aid plan (or, if not covered, services for which there is significant demand for legal aid) that can adequately be provided by non-lawyers? Please elaborate?**
  - 11.1 *[Interviewers should preface the following question by indicating that they will be asking the respondent to comment on the qualities and or qualifications required for people who assist and represent immigrants and refugees in different proceedings and at different stages in those proceedings. Interviewers should indicate that respondents need not comment on proceedings with which they are unfamiliar.]* **What qualities (qualifications) should persons have in order to provide the sort of assistance and/or representation that you believe is needed by:**
    - ◆ persons involved in eligibility or admissibility interviews?
    - ◆ refugee claimants to prepare their case?
    - ◆ refugee claimants in relation to the expedited process?
    - ◆ refugee claimants at their refugee status determination hearing?
    - ◆ refugee claimants in relation to post-determination processes conducted by CIC?
    - ◆ immigrants and refugee claimants in relation to judicial review applications and proceedings?
    - ◆ persons detained under provisions of the *Immigration Act* in relation to detention reviews?
    - ◆ persons who are the subject of immigration inquiries?
    - ◆ persons pursuing immigration appeals?
  - 11.2 **Where do you see the skills of lawyers being most effectively employed? Are there any aspects of the various proceedings affecting immigrants and refugee claimants for which assistance from or representation by lawyers is essential?**
  - 11.3 **Where do you see the skills of paralegals being most effectively employed? Are there any aspects of the various processes for which paralegals can provide effective assistance or representation? In your opinion, are there any circumstances in which paralegals can provide assistance and/or representation more effectively than lawyers?**



- 
- 11.4** What role, if any, do you see being played by persons without legal training with regard to assisting and/or representing immigrants and refugee claimants in the various proceedings in which they are involved?
- 12.** What scope is there within your agency's mandate and tariff structure to pay non-lawyers for services delivered to immigration and refugee clients?
- 13.** *[Interviewers should preface this question by indicating that they are about to ask respondents for their views with respect to the quality, effectiveness and utility of service provided by different groups of service providers. Indicate that the same question will be asked with respect to each group of service providers.]* **Do you have any comments on the work of the following service providers?**
- ◆ Legal aid clinics
  - ◆ Immigration and refugee lawyers in private practice
  - ◆ The Refugee Law Office (if Ontario)
  - ◆ Supervised paralegals
  - ◆ Paid immigration consultants
  - ◆ Paid staff at NGOs
  - ◆ Volunteers at NGOs
  - ◆ UNHCR
- 14.** *[The following question is applicable only to the Legal Services Society in British Columbia (LSS).]* **The Government of British Columbia has recently announced that the Immigration and Refugee Law Clinic operated by LSS is to be closed. What considerations led to that decision?**
- 15.** Has your agency considered alternatives to present tariff arrangements for immigration and refugee cases (e.g., block contracts where firms bid on price, franchises where firms bid on the basis of services they will provide)? What has been done in this regard? What is your assessment of the utility of these alternatives?
- 16.** Has your agency considered alternatives to the present way in which lawyers are paid for services in immigration and refugee cases under your current legal aid tariff? For example, if your present tariff is based on an hourly rate subject to a limit on the number of hours that lawyers can bill for specific services (B.C., Alberta, Ontario), have you considered adopting a flat rate tariff for specified services (as in Quebec and Manitoba)? If your tariff is based on flat payments for specific services, has your agency considered modifying the tariff to pay for services on an hourly rate? Why has your agency adopted the particular tariff model it is using, and why has it rejected alternative models?
- 17.** What, in your opinion, are the strengths/weaknesses of different payment models (e.g., flat fees for specified services, hourly rates subject to overall time limits, block contracts [tendered on price] or franchises [tendered on services offered])?
- 18.** What, in your opinion, are the strengths and weaknesses of different service delivery models (e.g., judicare, staff, and mixed)?