



LEGAL AID  
RESEARCH SERIES

A SYNTHESIS OF THE ISSUES  
AND IMPLICATIONS RAISED  
BY THE IMMIGRATION AND  
REFUGEE LEGAL AID  
RESEARCH





# A SYNTHESIS OF THE ISSUES AND IMPLICATIONS RAISED BY THE IMMIGRATION AND REFUGEE LEGAL AID RESEARCH

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*The views expressed in this report are those of the  
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## Acronyms

CHST	Canada Health and Social Transfer
CIC	Citizenship and Immigration Canada
CRDD	Convention Refugee Determination Division
H&C	Humanitarian and Compassionate
IRB	Immigration and Refugee Board
<i>IRPA</i>	<i>Immigration and Refugee Protection Act</i>
LAO	Legal Aid Ontario
NGOs	Non-Government Organizations
PDRCC	Post-Determination Refugee Claimants in Canada Class
PIF	Personal Information Form
PLEI	Public Legal Education and Information
PRRA	Pre-Removal Risk Assessment
RAD	Refugee Appeals Division
RPD	Refugee Protection Division

Word and phrases which are defined in “Appendix B: Glossary of Terms”, at the end of this document, are highlighted with dotted underlining when they are first used.







# Executive Summary

## Introduction

The research into immigration and refugee legal aid services<sup>1</sup>, conducted as part of the joint Federal, Provincial, and Territorial Legal Aid Initiative, focused on three key areas of interest:

1. The availability of immigration and refugee legal aid services across Canada;
2. The need for representation during the different stages in the immigration and refugee process and the ways in which representation could be provided; and,
3. The factors that affect the cost of providing immigration and refugee legal aid services.

The research was intended to identify the issues that should be considered in developing legal aid policy as part of the joint federal, provincial, and territorial renewal strategy for legal aid, 2003-2006.

## Availability of Service

Immigration and refugee legal aid services are provided by legal aid plans in six provinces in Canada: British Columbia, Alberta, Manitoba, Ontario, Quebec, and Newfoundland. Under these plans, legal aid is largely provided to refugees (as opposed to immigrants). All six legal aid plans provide full legal aid services at hearings and appeals – the points in the process where the risk to a claimant’s “security of the person” is highest. Legal aid services provided during other stages in the process vary from province to province.

NGOs are another important source of legal services for immigrants and refugees. In general, NGOs tend to provide these services along with other, non-legal, settlement-related services (for example, health- or housing-related services). NGOs generally tend to provide services not offered by the provincial or territorial legal aid plan. Therefore, in provinces with extensive legal aid coverage, NGOs provide fewer legal services, whereas in provinces with little or no legal aid coverage, they provide a wide range of legal services. NGOs face two key constraints in providing services to refugees. The first is that many are not mandated to address the needs of asylum refugees and the second is an overall lack of funding for their activities.

## Need for Assistance

The research indicates that most refugee claimants will require some assistance at all stages of the immigration and refugee determination process.<sup>2</sup> However, assistance does not necessarily imply representation by a lawyer. In general, respondents believed that the need for representation by a lawyer was directly related to the complexity of the legal issues involved and

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<sup>1</sup> “Immigration and refugee legal aid” refers to civil legal aid services provided for refugee claimants and others before refugee protection and immigration proceedings.

<sup>2</sup> “Refugee claimants” was the term most commonly used under the *Immigration Act*, with the advent of the *IRPA* the term “refugee protection claimant” is now being used.

the potential for impact on a claimant’s “security of the person”. In other words, they considered whether asking a claimant to go through the stage without representation would affect the fairness of the process. Hearings and appeals are examples of stages where respondents generally felt that representation by a lawyer is required to ensure fairness. Respondents also pointed out that providing appropriate assistance to refugees during the process would increase efficiency overall.

Based on the research, the need for some form of assistance at the various stages of the immigration and refugee determination process is as follows:

- *Eligibility and Admissibility Stage* – At this stage, claimants usually need assistance in completing CIC administrative documents. It is important that these documents are prepared carefully, because the information provided in any forms filled out later in the process must be the same as the information provided at this stage. Services at this stage are generally provided by NGOs. Ontario and Alberta both provide some coverage for cases where a claimant is likely to be considered ineligible at this stage.
- *Before the Hearing* – Most legal work takes place at this stage, including the preparation of the Personal Information Form (PIF) and other case materials. At this point, trust and open communication between a claimant and the representative are key. Services are provided by the legal aid plans (in the six provinces with coverage) or by NGOs. Supervised paralegals can also play a useful role because of their cross-cultural experience and ability to spend more time with a claimant.
- *Refugee Determination Hearings* – For many claimants, the refugee determination hearing is the stage in the process that will have the greatest impact on their status and their rights. Therefore, services at this stage are provided by legal aid counsel in all six provinces with coverage. Some respondents felt that for simple cases such as expedited claims, supervised paralegals might also be able to provide representation at this stage.
- *Detention Hearings and Immigration Inquiries* – Detention hearings are another point where a claimant’s “security of the person” is at risk and therefore where the six legal aid plans provide representation by counsel. Immigration inquiries are a means for a claimant to contest decisions made by the CIC. Legal aid is available for immigration inquiries in British Columbia, Alberta, Manitoba, and Quebec, although few applications for this service are received.
- *Immigration Appeals* – Immigration appeals on removal orders, family class sponsorship applications and by the CIC Minister on decisions rendered by the Immigration Division are made to the Immigration Appeals Division of the IRB. They are covered under the legal aid plans of British Columbia, Alberta, Manitoba, Ontario, and Quebec.
- *Federal Court of Canada and Supreme Court of Canada Appeals* – The Immigration and Refugee Board’s (IRB) rulings can be appealed to the Federal Court of Canada and the Supreme Court of Canada. These appeals are complex and have a significant potential to affect a claimant’s “security of the person”. Therefore, they are covered under all six legal aid plans.
- *Post-Determination Refugee Claimant in Canada Class (PDRCC) and Humanitarian and Compassionate (H&C) Applications* – PDRCCs are applications made by claimants



whose claim has been rejected by the IRB but who may be considered to be at risk if they return to their country of origin. Under the *Immigration and Refugee Protection Act (IRPA)*, PDRCC applications are replaced by a pre-removal risk assessment – PRRA. PRRAs now consider consolidated grounds, including risks referred to in Article 1 of the *Convention Against Torture*. H&C applications are made by individuals who are, for example, married to a permanent resident or parents of children born in Canada. British Columbia, Alberta, Manitoba, and Ontario provide coverage for H&C applications. Only British Columbia and Alberta cover PDRCC applications. NGOs also provide significant service in these areas.

- *Refugees with Special Needs* – Some refugee claimants – unaccompanied minors<sup>3</sup>, victims of torture, people with mental illnesses or disabilities (such as Post-Traumatic Stress Disorder), cases where gender-based persecution is an issue – have special needs. These claimants require special attention and support throughout the process.

## Cost Drivers

Legal aid plans have little control over the factors affecting the cost of service provision. Therefore, reducing the cost of immigration and refugee legal aid would require either reducing the level or quality of services provided or making use of alternative service delivery mechanisms.

A number of factors were identified that affect the cost of providing refugee legal aid services, including:

- *The number of refugee claims* – The more refugees there are making claims in Canada, the higher the demand for services and the funding required to provide those services. A rise in the number of refugees has an indirect effect on cost by putting pressure on the system to process more cases every year. If these refugees arrive through illegal smuggling or unanticipated mass arrivals (such as the Chinese marine arrivals), costs increase even further because these refugees are more likely to be detained and the process they undergo may differ from standard practice.
- *The impact of the Immigration and Refugee Protection Act (IRPA)* – The impact of the *IRPA* on cost is not entirely clear, as the *Act* is not yet fully implemented. However, the *IRPA* has the potential to increase the cost of service provision in several ways:
  - Through more stringent eligibility and admissibility policies, which may increase the need for assistance at this stage;
  - Through increased volume of hearings due to the use of single member refugee protection determination panels instead of two-member panels (in the short-term, as experience with the new system is developed, cases may also take longer to process);
  - Through the addition of a new stage in the process, the Refugee Appeals Division (RAD);

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<sup>3</sup> “Unaccompanied minors” are now often being called “separated children”.

- Through the PRRA, which is more complex than the PDRCC application process it replaces and therefore may require some form of legal assistance for a claimant; and,
- Through an increase in the number of judicial reviews as aspects of the legislation are clarified.
- *Lack of understanding of the process among refugees* – The lower the overall understanding among refugees of the immigration and refugee process and their rights and obligations under Canadian law, the greater the demand for and cost of providing legal aid services.
- *Interpretation and translation* – Interpretation and translation are required for clear and open communication between service providers and claimants. These costs make up a significant part of legal aid budgets and the effort involved in coordinating translation and interpretation services represents a significant burden for legal aid staff.
- *The number of judicial reviews* – Although judicial reviews are very infrequent, seeking leave for judicial review is quite frequent. As a result, combined they account for a significant portion of overall legal aid costs.

## Looking Forward

Two potential innovations were suggested for providing legal aid services to refugees:

- *Increased use of supervised paralegals* - Increased use of paralegals would likely increase the quality of service provided because of their greater cross-cultural skills and ability to spend more time with a claimant. However, the use of paralegals would not necessarily reduce the amount of legal aid provided by lawyers, and therefore the cost of service provision, unless complimentary service delivery changes were made
- *Increased service provision by NGOs* - NGOs may be capable of providing high-quality legal services very effectively if they receive the proper funding and training for their staff and volunteers, are connected to networks of expertise, and are able to expand their mandate to include providing assistance to asylum refugees.



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# 1.0 Introduction

## 1.1 Purpose of the Document

This document presents a synthesis of the results of the research into immigration and refugee legal aid services conducted as part of the joint Federal, Provincial, and Territorial Legal Aid Initiative, carried out between February 2001 and March 2003. The research carried out as part of the joint initiative was designed to:

- Provide empirical information about the nature and extent of unmet need for criminal legal aid;
- Examine cost drivers affecting legal aid services; and,
- Examine selected issues in civil legal aid, and in particular immigration and refugee legal aid.

The research was intended to identify the issues that should be considered in developing policy options as part of the joint federal, provincial and territorial renewal strategy for legal aid, 2003 to 2006.

## 1.2 Underlying Research

The research into immigration and refugee legal aid was carried out between September 2001 and August 2002. There were three studies, each with different objectives:

- *Immigration and Refugee Law Services in Canada*<sup>4</sup> – provided a description of the immigration and refugee legal aid services available in each of the Canadian provinces. The purpose of this study was to look at differences in the type of legal aid services offered and the ways in which those services are delivered so as to lay the groundwork for a national strategy that would reflect the unique situation of each province.
- *A Study of Representation for Refugee Claimants and Immigrants*<sup>5</sup> – looked at the needs of refugee claimants for representation at different stages in the immigration and refugee process. The purpose of this study was to clarify which legal aid services are most demanded or required by immigrants and refugees, and how those services could best be provided.
- *Immigration and Refugee Legal Aid Cost Drivers*<sup>6</sup> – examined the factors that affect the cost of providing immigration and refugee legal aid services. The purpose of this study was to better understand what issues lead to higher costs for providing legal aid services and how service provision can be made more cost effective.

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<sup>4</sup> Andrea Long, *Immigration and Refugee Law Services in Canada*, Social Planning and Research Council of British Columbia, 2002. For more details on the studies, please refer to the Appendix A.

<sup>5</sup> John Frecker, *A Study of Representation for Refugee Claimants and Immigrants*, Legistec Inc., 2002. For more details on the studies, please refer to the Appendix A.

<sup>6</sup> John Frecker, *Immigration and Refugee Legal Aid Cost Drivers*, Legistec Inc., 2002. For more details on the studies, please refer to the Appendix A.

Several issues emerged that have an impact on the results presented in this document:

- *Shifts in service provision* – Several major shifts took place in the field of immigration and refugee legal services:
  - New immigration legislation, the *Immigration and Refugee Protection Act (IRPA)*, was enacted on June 28, 2002<sup>7</sup>.
  - Citizenship and Immigration Canada (CIC) has developed changes to its administrative and operational policies to increase processing effectiveness, better manage access and protect the integrity of the immigration and refugee systems.
  - The *Immigration and Refugee Board (IRB)* began implementing policy changes designed to increase case processing and reduce processing times.
  - The Province of British Columbia significantly reduced the budget of the Legal Services Society, the body that provides legal aid services in that province.
- *Focus on refugee legal aid* – Few legal aid services are provided to immigrants. Therefore, all three of the studies focused primarily on *asylum refugees*.
- *Defining representation* – “Representation” can be defined in a number of different ways. Members of the legal community tend to define representation as the services of a lawyer. However, in the area of immigration and refugee law (including in the text of the *IRPA*), a broader definition is used which includes “other counsel” such as a *settlement worker*, family member, *paralegal*, *immigration consultant*, social worker, or even religious advisor, along with lawyers. This is the definition of representation used in this document.
- *Measuring the need for representation* – During the course of the research, it became apparent that respondents’ assessment of the need for representation by a lawyer at a particular point in the immigration and refugee determination process was tied to the complexity of the legal issues involved, the extent to which a claimant’s “security of the person” (e.g. life and liberty) is at stake, and the impact that such representation would have on the fairness of the process.

### 1.3 Format of Document

The synthesis document reflects the three underlying research studies. Each study component is discussed in a separate section. The format of the document is as follows:

Section 1.0 – *Introduction* – Discusses the purpose of the document, the underlying research, and the format of the document.

Section 2.0 – *Background Information* – Briefly discusses the stages of the immigration and refugee determination process and the *IRPA*.

Section 3.0 – *Availability of Service* – Describes the current level of service in immigration and refugee legal aid across Canada.

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<sup>7</sup> For more information on the *IRPA*, please refer to section 2.2.



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Section 4.0 – *Need for Representation* – Assesses the need for legal aid services during each stage of the immigration and refugee determination process and identifies options for providing those services.

Section 5.0 – *Cost Drivers* – Identifies the key factors contributing to the cost of immigration and refugee legal aid service provision and their effects.

Section 6.0 – *Looking Forward* – Discusses alternatives for providing immigration and refugee legal aid services that may improve the quality of service or increase cost-effectiveness.

Section 7.0 – *Conclusions* – Summarizes the key points of the research into immigration and refugee legal aid services.

*Appendix A* contains a brief description of the three research papers.

*Appendix B* contains a glossary of the terms used in this report.





## 2.0 Background Information

This section provides information to set the context for the discussion of immigration and refugee legal aid provision. In particular, this section identifies the stages of the immigration and refugee determination process and changes to immigration law in Canada resulting from the *IRPA*.

### 2.1 Stages of the Refugee Determination Process

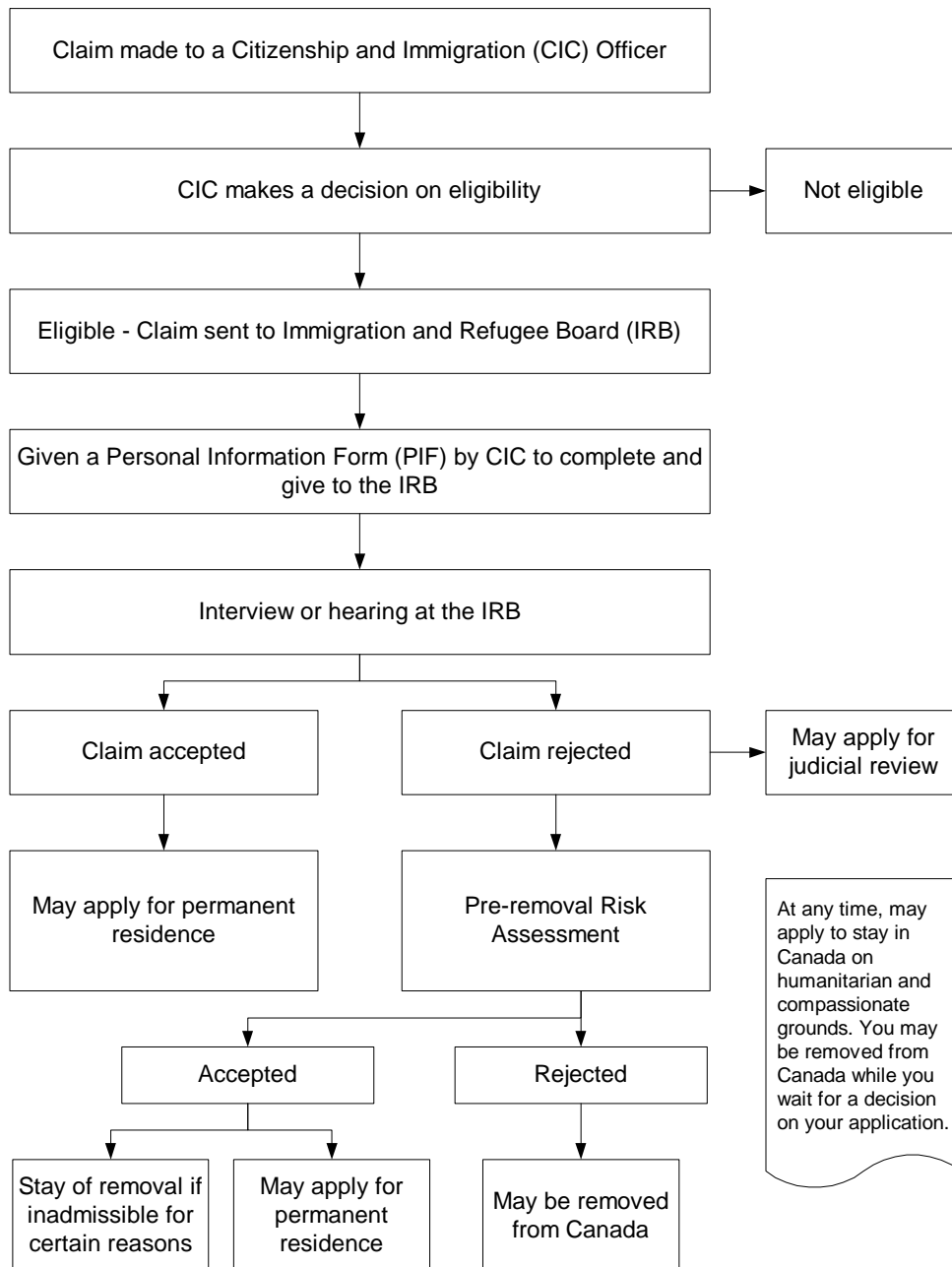
Canada's immigration and refugee systems have three components:

- *Administrative* – The administrative component includes processes set out in procedures or in law or regulations, which are largely administrative in nature. These processes can include activities at both CIC and the IRB. For instance, CIC interviewing of people to determine if they are admissible to Canada or eligible to be referred to the IRB, and completing administrative forms required for security or for processing claims at the IRB.
- *Quasi-judicial* – The quasi-judicial component includes tribunal processes set out within the divisions of the IRB. Hearings are held at the IRB where an individual's claim is discussed and decisions are rendered.
- *Judicial* – The judicial components of the system come into play when the decision of any of the divisions of the IRB is appealed to the Federal Court of Canada or the Supreme Court of Canada.
- *International* - When all Canadian remedies have been exhausted, a person can also appeal to international tribunals, such as the Committee Against Torture established under the Convention Against Torture.

All refugee claimants make use of both the administrative and quasi-judicial components of the system. However, not all cases reach the judicial component, and very few ever reach the international component.

Figure 2.1 (on the following page) shows the stages involved in the refugee protection determination process. These are the stages that a person claiming to be a refugee must go through in order to have their claim accepted and be eligible to apply for permanent residence in Canada. As the focus of the studies was on refugee legal aid, the diagram does not address the immigration determination process, which is similar.

**Figure 2.1: The Refugee Protection Determination Process**



## 2.2 The IRPA

Canada’s immigration and refugee system is made up of policies and procedures designed to foster immigration to Canada, ensure that newcomers meet certain criteria related to Canada’s skill requirements and integrate successfully into Canadian life with their families, manage access into Canada in order to ensure the health and security of Canadians and meet its humanitarian commitment towards persons in need of protection. The system is designed to



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include checks and balances to ensure that all people are treated fairly while minimizing abuses to the immigration and refugee protection systems.

The most recent change to Canada's immigration and refugee system has been the introduction of the *Immigrant and Refugee Protection Act (IRPA)*, which was enacted on June 28, 2002. The *IRPA* will result in many changes to the refugee determination process; some of which have already occurred, while others are yet to be implemented. In some cases, respondents felt that the *IRPA* could have a significant effect on the demand for legal aid services or on the cost of service provision. These issues are discussed in greater detail in Section 5.2.





### 3.0 Availability of Service

This section describes the level of refugee legal aid service provision across Canada and the way in which these services are provided. The section is divided into three sub-sections. The first discusses service provision across Canada; the second service provision in provinces with a high number of refugee claimants; and, the third service provision in provinces with a low number of refugee claimants.

TABLE 3.1: SERVICE PROVISION ACROSS CANADA							
Stage	Activity	Legal Aid Coverage by Province					
		BC	AB	MN	ON	PQ	NF
Port-of-entry	S. 20 Admissibility Interviews	No	No	No	No	No	No
	Eligibility determinations	No	No	No	Yes	No	No
Inland Claims	S. 27 Inland Violations of the Act	No	Yes*	Yes <sup>§</sup>	No	Yes	No
	Eligibility Determinations	No	Yes*	No	Yes	No	No
Convention Refugee Determination	Personal Information Form preparation	Yes	Yes*	Yes	Yes	Yes	Yes
	Determination Hearings (preparation and attendance)	Yes	Yes*	Yes	Yes	Yes	Yes
	Other Hearings (preparation and attendance)	Yes	Yes*	Yes	Yes	Yes	Yes
Immigration Appeals	Appeals	Yes	Yes*	Yes	Yes <sup>#</sup>	Yes	No
Adjudication	Immigration Inquiries	Yes	Yes*	Yes	No	Yes	No
	Detention Hearings (first and other instances)	Yes	Yes*	Yes	Yes	Yes	Yes
Humanitarian/Compassionate	Applications	Yes	Yes*	Yes	Yes <sup>#</sup>	No	No
PDRCC	Applications	Yes	Yes*	No	No	No	No
'Danger Opinions'	Submissions to the Minister	No	Yes*	No	Yes	No	Yes
Federal Court	Judicial Review and Appeals	Yes	Yes*	Yes	Yes	Yes	Yes
Supreme Court	Appeals	Yes	Yes*	Yes	Yes	Yes	Yes
International Tribunals	Appeals	No	Yes*	No	Yes	No	No

\* In Alberta, the extent of legal aid coverage in all of these areas is subject to the submission of a favourable legal opinion by a private bar legal aid lawyer.

<sup>§</sup> Coverage is only provided when there is an accompanying criminal charge.

<sup>#</sup> Respondents described the availability of coverage for cases in these areas as discretionary.

### 3.1 Service Provision across Canada

Legal aid plans are independent organizations that are created by the province or territory, run by a board of directors, and jointly funded by the provincial or territorial and federal governments. The federal government contributes toward the provision of criminal legal aid services through the legal aid program and to civil legal aid services through the Canada Health and Social Transfer (CHST). Additional criminal legal aid contributions are made to offset the costs six provinces incur in providing immigration and refugee legal aid services.

The level of immigration and refugee legal aid services varies considerably across Canada. Only six provinces cover immigration and refugee legal aid: British Columbia, Alberta, Manitoba, Ontario, Quebec, and Newfoundland. All six provinces provide full legal aid representation at Convention Refugee Determination Division (CRDD) hearings, detention hearings, and appeals to the Federal Court of Canada or the Supreme Court of Canada. In general, legal aid is most likely to cover services at stages where the complexity of the issue and the risk to “security of the person”, and therefore the need for representation, is highest. Table 3.1 outlines the services provided in each of the six provinces.

Some legal aid services are also provided by non-governmental organizations (NGOs). These organizations are active across the country and assist immigrants and refugees with their legal problems by providing public legal education and information (PLEI), non-legal advice, interpretation, and limited representation. In most cases, the services offered by NGOs are not offered by local legal aid plans. In provinces where there is no refugee legal aid service, NGOs attempt to meet the legal and non-legal needs of refugees. However, these services are only sporadically provided to refugees, either because the mandate of these organizations does not technically include asylum refugees or because of a lack of funds.

Immigration and refugee law services are also provided by private lawyers and by immigration consultants.

### 3.2 Service Provision in “High Volume” Provinces

Ontario, Quebec, and, to a lesser extent, British Columbia attract the majority of refugee claimants. The legal aid plans in these provinces provide the broadest range of services in the immigration and refugee area<sup>8</sup>. These provinces are also the main providers of immigration and refugee PLEI, including pamphlets and information sessions for community organizations. However, only British Columbia and Ontario have formal mechanisms in place to offer general advice and assistance in immigration and refugee law, and most of the services they provide are delivered on an as-needed or very limited basis.

The provinces with high volumes of refugee claimants also tend to have the highest number of practicing immigration consultants and private lawyers providing immigration and refugee services<sup>9</sup>. The immigration consultants tend to provide representation in only a small number of

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<sup>8</sup> It should be noted that, since the completion of the studies, there have been significant changes to the services available in British Columbia.

<sup>9</sup> The CIC has recently established an Advisory Committee on Immigration Consultants to identify issues and make recommendations to Minister of Citizenship and Immigration in response to concerns about the practices of some immigration consultants.



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refugee claims, usually in parts of the process where legal representation is not ordinarily used or that are largely administrative.

### **3.3 Service Provision in “Low Volume” Provinces**

The remaining provinces receive few of Canada’s refugee claimants. The “low volume” provinces in Eastern Canada, however, are different from those in Western Canada because they receive different types of refugee claimants and they have, historically, provided services in different ways.

Of the three “low volume” provinces in Western Canada, Alberta and Manitoba provide legal aid services to refugees whereas Saskatchewan does not. In Alberta and Manitoba legal aid plans provide legal services to refugee claimants through a combination of supervised paralegals and private bar lawyers working on certificates.

The Atlantic Provinces receive few refugee claimants and, in the region, only Newfoundland offers any immigration and refugee legal aid services. Services, including representation at refugee determination hearings, immigration hearings and appeals, in the remaining three Atlantic Provinces are provided by community organizations, volunteers, and lawyers who provide services without charge.

The low number of refugee claimants in Atlantic Canada makes it difficult for legal aid plans to set aside funds for immigration and refugee legal aid when there are other areas with much higher demand for service. When demand is low, the required expertise is also harder to develop and maintain. Therefore, it may be difficult to develop a pool of people with expertise in representing refugees and to coordinate scarce associated services, such as translation and interpretation.

Most paralegals and respondents from NGOs felt that refugee claimants have problems accessing legal representation in Atlantic Canada. Respondents from the CIC and the IRB felt that the problem is limited to those provinces where immigration and refugee legal aid is not funded under the legal aid plan.







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## 4.0 Need for Representation

Most respondents agreed that refugee claimants usually require some assistance at all stages of the immigration and refugee determination process, although there was less agreement on how that assistance could best be provided. This section reviews the stages of the immigration and refugee determination process (see Section 2.1) and identifies where refugee claimants would most likely require assistance and of what sort. The stages discussed are:

- Eligibility and admissibility stage;
- Before the hearing;
- Determination hearings;
- Detention hearings and immigration inquiries;
- Federal Court of Canada and Supreme Court of Canada;
- Immigration appeals;
- Post-determination refugee claimant in Canada class and humanitarian and compassionate applications; and,
- Pre-removal risk assessment.

The question of refugees with special needs is discussed separately at the end of the section.

### 4.1 Eligibility and Admissibility Stage

CIC immigration officials interview all persons entering Canada at points of entry to determine whether they are admissible. It is normally at this point that refugees seek to claim refugee protection status. CIC immigration officials then determine whether they are eligible to make a refugee claim and, if they are, whether they should be referred to the IRB for a refugee protection hearing. These interviews are designed to be non-confrontational and to gather basic information about the claim. All CIC respondents reported that this was their experience. However, other respondents, including the respondents from NGOs, felt that misunderstandings can occur during these interviews that have a negative impact later in the refugee determination process or may result in a claimant being found ineligible. However, very few claimants are currently found to be ineligible<sup>10</sup> at this stage in the process.

Refugee claimants usually need assistance in completing CIC administrative documents (for example, acknowledgement forms and screening documents). It is important that these documents are prepared carefully, because the information provided in any forms filled out later in the process must be the same as the information provided at this stage.

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<sup>10</sup> Claimants who are found ineligible can pursue legal options to appeal that decision.

#### **4.1.1 Current Level of Service Provision<sup>11</sup>**

At the eligibility and admissibility stage, the legal and non-legal needs of refugees and immigrants are usually met by the same organization (most likely an NGO, but in some cases legal services plans). Refugee claimants face many practical difficulties when arriving in Canada. They are often destitute, unfamiliar with either official language or the majority culture, and require assistance finding housing, health services, and other social services. These needs must often be met in tandem with legal service needs, for example, to make sure that a claimant has a home address that can be used on forms or simply to better support a claimant through the refugee determination process. In general, a claimant's immediate needs, legal or non-legal, are dealt with by the first service a claimant comes in contact with, whether an NGO or a legal aid plan.

Ontario is the only province that provides legal aid for claims made at Canadian ports-of-entry at the point where a claimant enters Canada (for example, the airport where they arrive – referred to as a “port-of-entry claim”). Legal aid is provided in the rare cases where Legal Aid Ontario (LAO) has been informed that a claimant is likely to be considered ineligible or that a claimant is suspected of having committed crimes that would affect their claim.

Both Ontario and Alberta provide legal aid in similar situations for claims made “inland” to an immigration officer not working at a border. These types of claims are made by individuals who have been in the country as visitors, students, or workers.

#### **4.1.2 Options for Service Provision**

Some respondents felt that additional services should be provided in the areas of PLEI and non-legal advice and assistance since the vast majority of refugees have little or no accurate knowledge about the refugee determination process. The IRB is currently developing PLEI materials for claimants to guide them through the process. The guide will be made available to claimants and those providing assistance early on in the process.

Some respondents also indicated that if the interviews conducted during the eligibility and admissibility stage become more confrontational or more stringent, then additional assistance may be required to meet the needs of claimants at this stage in the process.

### **4.2 Before the Hearing**

For those deemed admissible, most legal aid work takes place after eligibility is determined and before the refugee determination hearing. At this stage in the process, the central document of the refugee determination hearing, the Personal Information Form (PIF), is completed through a series of client interviews. The rest of the case is also prepared by examining notes from the eligibility and admissibility stage, collecting identity documentation and conducting relevant research.

A relationship of trust between a claimant and their representative is critical to the quality of representation, as the preparation of the PIF and other research activities depends on open

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<sup>11</sup> Note that, throughout Section 4.0, “representation” is by counsel unless specified otherwise.



communication. This trust must be established during the pre-hearing stage. Translation and interpretation are also key to the communication process during this stage.

Some respondents, many from NGOs, observed that the pre-hearing stage is frequently the point at which claimants seek assistance. At this stage, they discover that they cannot navigate the refugee determination process themselves. Claimants soon realize the importance of how facts are presented and that they lack the English or French literacy skills required to deal with the paper-dependent process.

#### **4.2.1 Current Level of Service Provision**

Legal services are currently provided by the legal aid plans in all six provinces that cover immigration and refugee legal aid. In some cases, paralegals are successfully carrying out pre-hearing tasks under the supervision of a lawyer. Supervised paralegals generally have cross-cultural experience and are able to spend more time with clients, which is useful in building the necessary trust between claimant and representative.

#### **4.2.2 Options for Service Provision**

Some respondents felt that supervised paralegals could carry out the bulk of pre-hearing work, as they have the skills and the time to build the necessary trust and communication with a claimant. However, others felt that paralegals could not carry out all pre-hearing tasks, as lawyers frequently want to retain control of the narrative section of the PIF since its structure is closely related to the legal arguments the lawyer would present at the refugee protection hearing.

### **4.3 Refugee Determination Hearings**

For many claimants, the refugee determination hearing is the stage in the process where decisions are made that have the greatest impact on their status and their rights. It is at this point that a person's protection claim is accepted, rejected, withdrawn, or declared abandoned.

#### **4.3.1 Current Level of Service Provision**

Representation at refugee determination hearings is currently provided by lawyers under the legal aid plans of all six provinces that cover immigration and refugee legal aid.

#### **4.3.2 Options for Service Provision**

Some alternatives to service provision by legal aid lawyers at this stage were considered:

- *Self-representation* – In the justice system as a whole, the option of self-representation is common, especially at administrative tribunals. However, respondents felt that this is not appropriate at immigration and refugee hearings because the legal matters at hand are very complex and refugees generally lack literacy in either official language and the necessary educational background to represent themselves<sup>12</sup>.
- *Representation by supervised paralegals* – Overall, the research suggests that supervised paralegals can represent claimants in the less complex CRDD cases. It was felt that this

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<sup>12</sup> During refugee protection hearings at the IRB, the claimant has access to an interpreter in their own mother tongue or in one of the official languages. Also, the IRB makes a concerted effort to explain the process to the claimant who is unrepresented during these proceedings.

should also hold true for expedited Refugee Protection Division (RPD) hearings that replace CRDD hearings under the *IRPA*. However, it was also acknowledged that in more complex situations representation would be best provided by lawyers.

#### **4.4 Detention Hearings and Immigration Inquiries**

Some refugee claimants are detained following their admissibility interview because CIC officials believe that they are likely to pose a danger to the public or are not likely to appear for an examination, an inquiry or removal. Once a claimant is detained, there is a hearing within the first 48 hours. During this hearing, if it is determined that the person will be further detained, then there is another hearing in 7 days and then every month thereafter that a claimant remains in detention. These hearings are known as detention hearings and represent a stage in the process where a claimant's status and rights may be greatly affected.

If the CIC officer finds that there is reason to believe that a person is inadmissible to Canada or that a person in need of protection is ineligible to be referred to the IRB, then an immigration inquiry will be held at the Immigration Division (formerly the Adjudication Division) of the IRB. At the immigration inquiry a member will determine whether the person is inadmissible to enter Canada or ineligible to be referred to the IRB.

##### **4.4.1 Current Level of Service Provision**

Representation during detention hearings is primarily provided by legal aid lawyers in provinces where immigration and refugee legal aid is covered. Most respondents agree that lawyers are required for many detention hearings because the cases are very complex and there is a high potential for negative consequences for a claimant.

Legal aid is available for immigration inquiries in British Columbia, Alberta, Manitoba, and Quebec. However, immigration inquiries make up a very small part of legal aid services in these provinces. Very few applications are made for this type of legal aid and a claimant's case must be seen to have merit before the application is accepted.

##### **4.4.2 Options for Service Provision**

The research suggests that supervised paralegals can represent refugee claimants effectively at routine immigration inquiries, detention reviews and hearings. However, most respondents agreed that the services of a lawyer would best meet a claimant's needs when new evidence comes to light between the admissibility interview and the refugee determination hearing.

#### **4.5 Immigration Appeals**

Overseas CIC officials indicated that the following groups could make immigration appeals to the Immigration Appeals Division of the IRB:

- Canadian citizens and permanent residents who have sponsored family class applications that have been refused;
- Permanent residents and protected persons who have been ordered removed from Canada;
- The Minister of Citizenship and Immigration (to appeal an Immigration Division decision in an admissibility hearing); and,



- Permanent residents who have not fulfilled their residency obligations.

#### **4.5.1 Current Level of Service Provision**

Immigration appeals are currently covered under the legal aid plans of British Columbia, Alberta, Manitoba, Ontario, and Quebec.

#### **4.5.2 Options for Service Provision**

There are mixed views regarding the need for legal representation during immigration appeals. Legal representation is seen as being definitely required for most removal appeals, though it may be less essential for sponsorship appeals.

### **4.6 Federal Court of Canada and Supreme Court of Canada**

All claimants before the IRB can apply for ‘leave’ to seek judicial review at the Federal Court of Canada, Trial Division, of a negative decision rendered by any of the IRB divisions. If the claim is denied at the Federal Court of Canada, appeals can go as high as the Supreme Court of Canada in certain precedent-setting cases.

#### **4.6.1 Current Level of Service Provision**

Judicial review and appeals at the Federal Court of Canada and appeals at the Supreme Court of Canada are covered by legal aid representation in all six provinces with immigration and refugee legal aid coverage.

#### **4.6.2 Options for Service Provision**

All respondents agreed that representation by a lawyer is required at the judicial review stage of the process. Refugee claimants cannot be expected to effectively appeal decisions at this level without qualified professional legal counsel.

### **4.7 Post-Determination Refugee Claimant in Canada Class and Humanitarian and Compassionate Applications**

Post-determination refugee claimants in Canada (PDRCC) are claimants whose claim has received an ‘unsuccessful determination’ from the IRB, but who are considered to still be at risk if they returned to their country of origin. The category of PDRCC is established under the *Immigration Act*. Under the *IRPA*, this group of claimants will be covered by the pre-removal risk assessment (PRRA), where individuals whose claims are rejected can apply in writing to stay in Canada on “consolidated protection grounds”, which include the *Geneva Convention*, and risks referred to in Article 1 of the Convention Against Torture, such as the risk of danger of torture or the risk of cruel and unusual treatment or punishment<sup>13</sup>.

Humanitarian and compassionate (H&C) applications can be made by any non-Canadian, including refugee claimants whose claims are rejected by the IRB. Humanitarian and compassionate grounds that are considered may include being married to a permanent resident or having children born in Canada.

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<sup>13</sup> For more on the potential impact of this change, see Section 5.2.

The number of PDRCC and H&C applications is fairly low, as is the cost of providing service in this area.

#### **4.7.1 Current Level of Service Provision**

British Columbia, Alberta, Manitoba, and Ontario provide legal aid coverage for H&C applications. Only British Columbia and Alberta provide coverage for PDRCC applications.

Legal services for PDRCCs and individuals filing H&C applications are also often provided by NGOs. It is at these two stages of the process where these organizations tend to provide most of their legal assistance to refugee claimants and immigrants.

#### **4.7.2 Options for Service Provision**

Opinions varied on how service for PDRCCs and individuals filing H&C applications could be improved. Non-lawyers suggested that lawyers are best suited to provide service as the cases involve complex legal issues. Lawyers suggested that non-lawyers (for example, paralegals) could provide service in this area, as the processes are largely fact-based.

### **4.8 Refugees with Special Needs**

In some cases, refugee claimants have special needs that must be considered at all stages of the refugee determination process. Special needs cases include cases involving unaccompanied minors, victims of torture, people with mental illnesses or disabilities (such as Post-Traumatic Stress Disorder), or have cases where gender-based persecution is an issue. In these cases, the refugee claimants require more attention and support throughout the process. For example, they may require counseling or an appropriate guardian or designated representative may be assigned to them<sup>14</sup>.

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<sup>14</sup> Some respondents believe that it is important to ensure that a claimant has a lawyer of the same gender in cases involving sexual abuse. Other respondents feel that experience with this type of case is more important than the gender of the lawyer.

## 5.0 Cost Drivers

The research found that the legal aid plans have little control over many of the factors that affect the cost of service provision. To reduce the cost of service provision, legal aid plans would either have to reduce the level or quality of service or consider alternative service delivery mechanisms (for some options on other ways of delivering refugee legal aid, see Section 6.0).

This section discusses the key factors that respondents identified as contributing to the cost of providing immigration and refugee legal aid. These include:

- The number of refugee claims;
- The impact of the *IRPA*;
- Lack of understanding of the process;
- Interpretation and translation; and,
- Judicial reviews.

Respondents also identified a number of issues that, while they do not currently contribute greatly to the cost of service provision, could potentially contribute to an increase in cost in the future.

### 5.1 Number of Refugee Claims

The number of people making refugee claims is the most important factor contributing to demand for legal aid services and, therefore, to the cost of providing these services. An increase in the number of people making refugee claims in Canada in a given year increases the total amount of funding required to provide those services. Increased numbers of refugee claimants also have indirect effects on legal aid costs, for example:

- If the CIC and the IRB process more cases per year in response to higher numbers of claimants, the cost of providing immigration and refugee legal aid will increase because more cases per year will require legal aid funding.
- If the increase in number of refugee claimants is partly due to the illegal smuggling of migrants or to unanticipated arrivals of large numbers of refugees (such as Chinese marine arrivals), the cost of providing immigration and refugee legal aid will increase. Immigrants and refugees who arrive in these ways are more likely to be detained, the refugee claims process they undergo may be more adversarial, and more interventions may be required by the Minister to oppose the granting of refugee status.

The research indicates that the refugee policies of other developed countries are not likely to have a major influence on the number of people making refugee claims in Canada. The exception may be the United States, with whom Canada has recently signed a “safe third country” agreement. Under this agreement, a refugee who arrives first in the United States will be required to claim refugee status there, rather than come to Canada and make a claim here. Likewise, a refugee who arrives in Canada first would have to claim refugee status here, rather than going to the United States. It is not clear whether the “safe third country” agreement will increase or

decrease the number of refugee claimants in Canada and, by extension, the cost of providing legal aid services. The agreement may result in fewer refugee claims and therefore lower costs. However, there may be other aspects to enforcing the “safe third country” agreement that increase the demand for legal aid services, such as:

- An increased number of refugee claimants may arrive without identity or travel documents, so that the first country they arrived in is not clear;
- Refugee claimants may change their travel patterns in order to ensure that they arrive in Canada first and are able to claim refugee status here; and,
- Hearings may be required to determine which country should process the claim (Canada or another “safe third country”), at least until there is some experience with the law and precedents are established.

## 5.2 The Impact of the IRPA

The *Immigration and Refugee Protection Act (IRPA)* has resulted in several changes to the immigration and refugee determination process in Canada. In some cases, the *IRPA* may also have an effect on the demand for immigration and refugee legal aid services or the cost of providing those services (some of the cost implications of the *IRPA* are not yet clear, as the *Act* has not been fully implemented to date).

Respondents identified the following potential effects of the *IRPA* on the cost of service provision:

- *More stringent CIC policies at the eligibility and admissibility stage* – Some respondents predict that the *IRPA* may result in a more stringent application of CIC policies at the eligibility and admissibility stage of the determination process. Respondents at one legal aid plan felt that an increase in stringency might result in the extension of legal aid coverage at this stage, which would increase demand for legal aid services.
- *Single member RPD panels* – The Refugee Protection Determination (RPD) process is intended to make the IRB more efficient by using single member panels instead of two-person panels to increase the processing rate for claims. In the short-term, a number of issues may arise that could result in increased legal aid costs:
  - Hearings could be longer until IRB board members and claimant representatives gain experience with the new system, which could increase costs in those jurisdictions that compensate counsel on an hourly basis.
  - The number of cases being processed each year could increase as existing case backlogs are cleared, which could significantly increase demand for legal aid services.
- *Refugee Appeal Division (RAD)* – This division is mandated to decide appeals relating to RPD status decisions made at the IRB. The appeal is intended to be a paper-based, administrative process<sup>15</sup> that occurs between the IRB hearing and the application for leave for judicial review stage. Many respondents believe that RAD appeals will require

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<sup>15</sup> Note that the implementation of the RAD provisions in the *IRPA* has been delayed.





legal representation. If legal aid provides representation for RAD appeals, the cost implications could vary considerably. In cases where the RAD is able to correct errors in RPD decisions without resulting in a new RPD hearing or an application for leave for a judicial review, there could be cost savings for legal aid. However, in cases where RAD decisions do result in applications for leave for a judicial review or a judicial review, the legal aid costs associated with the RAD decision would be incurred on top of the existing cost structure.

- *Pre-Removal Risk Assessment (PRRA)* – Under the *IRPA*, PRRA applications replace PDRCC applications. PDRCC applications are only covered by legal aid in British Columbia and Alberta but there is a sense among respondents that contentious PRRA applications will require representation by a lawyer because the process is more encompassing. If legal aid plan coverage is expanded to cover PRRA applications, then the cost of service provision will increase significantly.

In the short term, it is also likely that the PRRA’s consolidation of protection grounds will result in an increase in legal arguments around the definition of the “grounds”. This would increase legal aid costs because cases would be more complex and there could be a greater number of judicial review applications. This increase in costs would continue until a common understanding of the meaning of “consolidated grounds” is achieved.

- *Judicial Reviews* – The implementation of the *IRPA* could result in a short-term increase in legal aid costs as aspects of the legislation are clarified through the judicial review process.

### **5.3 Lack of Understanding of the Process**

Most refugee claimants do not have a very good understanding of the refugee determination process in Canada and their knowledge of the system comes from friends and relatives who are also likely to be under- or mis-informed. Often, they arrive in Canada expecting an early hearing and have the impression that they will be able to represent themselves. Once they are involved in the process, however, they find they require some form of assistance<sup>16</sup>. The lower the overall level of understanding of the immigration and refugee process among refugee claimants and their rights and obligations under Canadian law, the greater the demand for and cost of providing legal aid services.

### **5.4 Interpretation and Translation**

Most legal aid plans compensate lawyers for the costs they incur for interpretation and translation. Interpretation and translation costs make up a significant part of the budget for legal aid in most provinces. For example, in British Columbia and Ontario these costs accounted for more than 16% of total immigration and refugee legal aid expenditures in 2001/02.

Many respondents noted that the formal requirements of the IRB drive the need for interpretation and translation. Interaction with a claimant in the early stages of the refugee determination

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<sup>16</sup> There are always a few examples of very knowledgeable fraudulent claimants and detainees who quickly gain information about the system from counsel and other detainees. These exceptional cases sometimes lead people to believe that the need for legal information or legal aid services among refugees is less than it actually is.

process (before the hearing) and the preparation of their case documents depend heavily on the availability of interpretation and translation services to ensure open and clear communication. Translation and interpretation costs are also a factor during hearings and at later stages in the process. (However, the IRB does fund hearing room interpreters and the translation of certain key documents during the RPD stage.)

In addition to paying for interpretation and translation, legal aid can be involved in coordinating language and translation services in some circumstances, which can increase the burden on legal aid staff. The exception is in Manitoba, where these services are coordinated by a supervised paralegal at an NGO. Most plans report there are problems in obtaining and coordinating qualified, low-cost interpreters and translators.

## 5.5 Judicial Reviews

Although judicial reviews are only granted in a small number of cases, leave for judicial review applications and judicial reviews combined account for a significant portion of overall legal aid costs. For example, they account for 17.5% of expenditures in Ontario in the 2000-2001 fiscal year.

## 5.6 Potential Future Cost Drivers

There are also a number of other factors that may affect the cost of service provision in the future, including:

- *Special needs cases* – At present special needs cases do not add significantly to the cost of providing legal aid services because there are few of them, there are limitations on preparation time for lawyers, and work related to referrals or guardianship is done free of charge. However, if any of these factors were to change (for example, because of the protocols and guidelines being developed by the CIC, IRB, and the provinces), special needs cases could become a cost driver.
- *Trends in eligibility interviews* – Some respondents indicated that eligibility interviews at ports-of-entry have become more thorough and in-depth, especially since September 11<sup>th</sup>. They feel that these interviews can often go beyond administrative concerns and into substantive issues, either deliberately or due to an inability to differentiate between the two on the part of the interviewer. These respondents felt that, if this trend continues, it may result in longer refugee determination hearings because confirming, clarifying and rebutting statements in the interview notes will take more time and counsel will become more likely to dispute the admissibility of interview notes. In jurisdictions using hourly rates to compensate counsel, longer hearings would result in higher costs. In other jurisdictions, the increase in length and complexity of the hearings would result in pressure to increase the tariff for hearings. If the tariff were increased, that would also result in higher costs.
- *Increased application of rigorous enforcement mechanisms* – If CIC policy were to shift toward the increased application of rigorous enforcement mechanisms, it might lead to an



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increase in the number of detentions<sup>17</sup>. This would raise the cost of providing legal aid for those jurisdictions that cover detention hearings.

- *CIC's "rapid referral" policy* - CIC has implemented a policy of 'rapid referral' of claims to the Refugee Protection Division (RPD) of the IRB. All claims must now be referred within three working days. As a result, the determination process can be completed more quickly, but a claimant's eligibility to make a claim may be revoked after the process has begun. In such a case, legal aid may already have been provided and costs incurred before a claimant is deemed ineligible. If the current rate of denial of eligibility (less than 1% of claims under the CRDD process) is maintained, then the rapid referral policy is not likely to become a cost driver. However, if the rate of denial increases, then these costs may become more significant. It is also possible that, as a result of the speeding up of referrals to the IRB, legal aid plans may experience administrative pressure to process certificates and arrange counsel more quickly, resulting in increased costs.

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<sup>17</sup> It should be noted that, as detentions are very costly, CIC's current policy is to apply detentions in very limited circumstances.





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## 6.0 Looking Forward

This section discusses potential innovations for providing immigration and refugee legal services that may improve the quality of service<sup>18</sup> or increase cost-effectiveness.

The research identified two potential innovations in service delivery:

- The use of paralegals
- The use of community organizations

### 6.1 Paralegals

There was consensus among the respondents that well-trained, supervised paralegals could be used to increase the quality of representation available to refugee claimants. Paralegals have experience with a wide variety of different clients and issues and solid connections with NGOs offering settlement services. Therefore, they are often able to offer a broader range of services to clients and the quality of the services they can offer is very high. Paralegals could provide assistance and representation to claimants in many parts of the refugee determination process. The best-qualified paralegals could provide full service representation at pre-hearing stages and at some of the less complex enquiries, detention reviews, and CRDD hearings<sup>19</sup>. Paralegals could also prepare high quality Personal Information Forms (PIFs), the document that is the basis for the refugee determination hearing.

The use of paralegals would likely increase the quality of service provided, but is unlikely to reduce the cost of providing legal aid services if the amount of legal aid provided by lawyers remains at today's levels.

### 6.2 Community Organizations

NGOs are capable of providing effective, high-quality legal services to immigrants and refugees if they are properly staffed, funded, and connected to networks of expertise. NGOs could prepare PIFs and other forms, prepare for hearings, support claimants in the post-determination stages, and provide language and interpretation assistance. NGOs could also be an important source of referrals to other agencies in health, social services, and settlement services.

Many of the NGOs working with refugee claimants across Canada currently offer some of these services. However, the extent of service provision by NGOs also varies considerably across the country. Those organizations in provinces where immigrant and refugee legal aid is not covered, or is less well funded in comparison to other provinces, tend to offer the most comprehensive and extensive range of services.

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<sup>18</sup> It should be noted that the question of “quality of service” was not initially the focus of the research projects. However, respondents repeatedly raised the issue when discussing need for service and alternatives for service provision.

<sup>19</sup> Representation by lawyers would still be required at complex CRDD hearings and appeals.

Some respondents raised concerns with respect to relying on NGOs to provide these services. Most NGOs are not funded, and therefore not equipped, to provide assistance to asylum refugees. As a result, NGOs rely extensively on volunteers to assist them. However, some volunteers at NGOs lack training, and may misinform immigrants and refugee claimants thereby creating unrealistic expectations.

In light of these concerns, respondents felt that, if NGOs are to carry out a more formal role in providing legal services to immigrants and refugees, they must be adequately funded and their volunteers must receive proper training in order to ensure that the quality of service provision does not suffer. Paralegals could be located at NGOs.



## 7.0 Conclusions

Immigration and refugee legal aid services are provided by legal aid plans in six provinces in Canada: British Columbia, Alberta, Manitoba, Ontario, Quebec, and Newfoundland. Under these plans, the vast majority of legal aid is provided to refugees (as opposed to immigrants). All six legal aid plans provide full legal aid services at hearings and appeals – the points in the process where the risk to a claimant’s “security of the person” is highest. Legal aid services provided during other stages in the process vary from province to province.

NGOs are another important source of legal services for immigrants and refugees. In general, NGOs tend to provide these services along with other, non-legal, settlement-related services (for example, health or housing related services). NGOs generally seek to provide services not offered by the provincial or territorial legal aid plan. Therefore, in provinces with extensive legal aid coverage, NGOs provide fewer legal services, whereas in provinces with little or no legal aid coverage, they provide a wide range of legal services. NGOs face two key constraints in providing services to refugees. The first is that many are not mandated to address the needs of asylum refugee claimants and the second is an overall lack of funding for their activities.

The research indicates that most refugee claimants will require some assistance at all stages of the immigration and refugee determination process. However, assistance does not necessarily imply representation by a lawyer. In general, respondents believed that the need for representation by a lawyer was directly related to the complexity of the legal issues involved and the potential for impact on a claimant’s “security of the person”. Other options put forward by respondents were to provide some legal services through supervised paralegals or through NGOs. With respect to service provision by NGOs, respondents pointed out that effective service provision would require better funding and the establishment of improved linkages between NGOs and legal aid plans.

A number of factors were identified that affect the cost of providing refugee legal aid services, including the number of refugee claims, the impact of the *IRPA*, lack of understanding of the process among refugees, interpretation and translation, and the number of leave for judicial review applications. Legal aid plans have little control over most of these cost drivers. Therefore, reducing the cost of service provision would require either reducing the level of services provided or making use of alternative service delivery mechanisms.







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## Appendix A: Annotated Bibliography of Research

Andrea Long (Social Planning and Research Council of British Columbia), *Immigration and Refugee Law Services in Canada*, Department of Justice Canada, 2002.

This study provides a descriptive profile of the legal services available to refugees and immigrants in each of the Canadian provinces. Information on services provided by legal aid plans was collected from legal aid plan documents and other relevant literature, but mainly through telephone interviews with key provincial informants and an extensive questionnaire distributed to legal aid plans. Information on services provided by refugee and immigrant serving community organizations was collected from a sample of key informant interviews conducted mainly by telephone and questionnaires designed to collect quantitative information, which were distributed to community organizations.

John Frecker (Legistec Inc.), *A Study of Representation for Refugee Claimants and Immigrants*, Department of Justice Canada, 2002.

The data for this research was collected in an extensive literature review and by means of in-person interviews conducted in all provinces. Approximately 150 semi-structured interviews were conducted with refugee claimants and immigrants involved in official proceedings, senior managers and personnel at the Immigration and Refugee Board (IRB) and Citizenship and Immigration Canada (CIC), legal aid staff lawyers, immigration consultants, paralegals working for legal aid plans and non-governmental organizations (NGO's) and personnel from a number of NGOs that provide support services to refugees and immigrants.

John Frecker (Legistec Inc.), *Immigration and Refugee Legal Aid Cost Drivers*, Department of Justice Canada, 2002.

This study identifies factors that impact on the demand and level of legal aid service provided to refugee claimants and immigrants in Canada, and outlines how they influence the costs of these legal aid services to governments. Data for this research was collected from an extensive literature review, an analysis of quantitative data from legal aid plans in all ten provinces and the Immigration and Refugee Board (IRB), as well as in-person interviews with a sample of key informants in all provinces.





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## Appendix B: Glossary of Terms

### **Admissibility interview**

When seeking to enter Canada people who are not Canadian citizens, status Indians or permanent residents must appear for an examination to determine whether they have a right to enter Canada or are, or may become, authorized to enter and remain in Canada. This examination is also referred to as an admissibility interview. An admissibility interview may be conducted by CIC at a port-of-entry or at an inland office. (See article 18(1) of the *IRPA*, for more information.)

### **Admissibility hearing**

Also referred to as an “immigration inquiry”. If, after an admissibility interview, a person is deemed inadmissible, an admissibility hearing is held at the request of a CIC officer. The CIC officer must provide a report with reasons as to why he or she believes that the person should not be admitted or allowed to stay in Canada to the CIC Minister. If the Minister believes the reasons are well founded, the Minister will then refer the report to the IRB for an admissibility hearing. Reasons may include: security considerations, human or international rights violations, serious criminality, organized crime, danger to public health, financial considerations, misrepresentation, non-compliance with the Act and inadmissible family member. (See articles 34 to 37 of the *IRPA*, for details.) Admissibility hearings occur at the Immigration Division (formerly Adjudication Division) of the IRB.

### **Asylum Refugee**

Also called a “Convention Refugee”. All refugees who seek protection on the basis of Convention grounds are seeking ‘asylum’. Strictly speaking, a person who has been judged to meet the criteria set out in the United Nations’ Convention relating to the Status of Refugees (1951) and its Protocol (1967). Section 96 of the *IRPA* defines a Convention Refugee as “a person who is outside his/her country of nationality or habitual residence; has a well-founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group or political opinion; and is unable or unwilling to avail himself/herself of the protection of that country, or to return there, for fear of persecution”. In the present study, this term is used to distinguish persons determined to be Convention refugees from abroad (i.e. resettled refugees) from those who seek to be determined as Convention refugees from within Canada (i.e. asylum refugees).

### **Attrition**

The loss of active bar members taking legal aid certificates. This may be caused by more people leaving this kind of practice (through retirement, economic pressures, cynicism) than are entering it (because of student debt, a lack of interest, a lack of a *pro bono* ethic).

### **Citizenship and Immigration Canada**

This federal government department is responsible for admitting immigrants, foreign students, visitors and temporary workers; resettling, protecting and providing a safe haven for refugees and persons in need of protection; helping newcomers adapt to Canadian society and become Canadian citizens; and, managing access to Canada to protect the security and health of

## **Canadians and the integrity of Canadian laws**

Citizenship and Immigration is working with the Department of Justice to provide interim funding for immigration and refugee legal aid.

### **Convention Refugee Determination Division hearing**

A refugee determination hearing is a hearing where a Member of the CRDD determines whether a person who seeks refugee status is a bone fide refugee. Whereas refugee determination hearings took place at the Convention Refugee Determination Division of the IRB under the *Immigration Act*, under *IRPA* they now take place in what is called the Refugee Protection Division of the IRB. The IRB has the sole authority to determine refugee protection status of persons making a refugee protection claim within Canada.

### **Danger Opinion**

Also called a “ministerial danger opinion”. Ministerial danger opinions are used to deny access to the refugee program or remove from Canada those who are considered in the Minister's opinion, to be a danger to the public. A CIC officer may have reasonable grounds to believe that a person is a danger to the public. Under Section 55 of the *IRPA*, a CIC officer may detain a person on this basis and request that the CIC Minister agree that an immigration inquiry be held at the Immigration Division of the IRB (formerly Adjudication) in order to determine if there are reasonable grounds to do so. If reasons are well founded, a report will be provided to the Immigration Division explaining why, in the Minister's opinion, a person is believed to be a danger to the public.

In the past, some people have associated danger opinions to Sections 70 (appeals on removal orders) and 71 (appeals by the Minister on Adjudication decisions) of the *Immigration Act*. These appeals are heard at the Immigration Appeals Division of the IRB. Under *IRPA*, danger opinions clearly refer to applications of section A101(2)(b) of the *IRPA* - prior to an admissibility hearing and 115(2) - after the issuance of a removal order, based on inadmissibility grounds.

### **Detention**

A CIC officer may arrest and detain a person for three principal reasons: they have failed to establish their identity, they are considered a flight risk and will likely not to appear for a subsequent examination, admissibility hearing or removal from Canada, or they are deemed to be a danger to the public. On entry into Canada, a CIC officer may also detain a person for the purpose of completing an examination, if there are security grounds or violations of human or international rights. (See section 55 of the *IRPA*, for more detail.)

### **Detention hearing**

CIC must notify the Immigration Division of the IRB immediately and within 48 hours after a person is taken into detention, or without delay afterward. The Immigration Division must review the reasons for detention and determine whether to continue the detention or release the person being detained. (See section 57(1) of the *IRPA*, for details.)



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## **Detention review**

If a person is not released after the initial detention hearing, the Immigration Division must review the reasons within 7 days to determine if detention should be continued, and every 30 consecutive days afterwards. Legal aid plans often make a distinction between a ‘detention hearing’ (an initial hearing following detention) and subsequent ‘detention reviews’ (reviews which are held on the 7<sup>th</sup> day following the initial detention and every 30 days thereafter). A detained person may request a review of detention at any time, if a valid reason can be demonstrated (e.g. new evidence suggesting the person is admissible to enter Canada or eligible to be referred to the IRB for a refugee protection hearing).

## **Eligibility**

CIC conducts interviews with prospective refugee claimants to determine whether the claim is eligible to be referred to the IRB for a refugee protection hearing. The burden of proof rests on claimants to show that their claims are eligible to be referred to the IRB and to answer truthfully to all questions put to them. Under a new provision in the *IRPA*, a claim must be referred to the IRB within three working days. (See article 101 of *IRPA* for more details.) Claims that are ineligible include those where refugee protection has already been granted in another country or refused in Canada; a claimant came directly or indirectly to Canada from a country designated "safe third country" where refugee protection could have been claimed; or a claimant has been determined to be a significant threat to security, a violator of human or international rights, a serious criminal or member of an organized organization.

## **General Advice or Assistance**

This kind of advice or assistance contrasts with the types of specific legal counsel often provided by lawyers, it covers such activities as providing basic legal information, information about immigration or refugee processing, information about the rights and responsibilities of individuals and organizations in Canada, as well as possible referral to outside resources.

## **Geneva Convention**

In this paper the term refers to the United Nations’ *Convention relating to the Status of Refugees* (1951) and/or its *Protocol* (1967).

## **Humanitarian and Compassionate Applications**

Any foreign national, including refugee protection claimants who are found by the Immigration and Refugee Board not to be a protected person, may apply to remain in Canada on humanitarian or compassionate grounds. For instance, they may be married to a permanent resident and have children born in Canada.

The purpose of humanitarian and compassionate application discretion is to allow flexibility to approve deserving cases not anticipated in the legislation. A person, who has submitted a claim for refugee protection or a legal challenge to a negative decision by the IRB’s Refugee Protection Division, may make an humanitarian and compassionate application at the same time. For the purpose of assessing a humanitarian and compassionate application, the applicant's written submissions may contain the information an officer needs to make a decision. Humanitarian and compassionate applications for consideration where a risk of return has been raised will be referred to a PRRA decision-maker (who is a departmental expert in matters of risk).

## **Immigration Act**

The old legislation, replaced by the *Immigration and Refugee Protection Act* on June 28, 2002, governs such issues as immigration to Canada and making a refugee protection claim in Canada.

## **Immigration and Refugee Board**

The Immigration and Refugee Board (IRB) is an independent, quasi-judicial, administrative tribunal with branch offices in five regions across Canada. Its mission is to make well-reasoned decisions on immigration and refugee matters, efficiently, fairly, and in accordance with the law. The IRB is currently composed of four divisions: an Immigration Division (ID), a Refugee Protection Division (RPD), a Refugee Appeal Division (RAD), and a Immigration Appeal Division (IAD).

## **Immigration and Refugee Protection Act**

The *Immigration and Refugee Protection Act (IRPA)* was proclaimed in force on June 28, 2002 to replace the old *Immigration Act*. At the time of writing, some of the new provisions of the *IRPA* have not yet been implemented (such as the Refugee Appeal Division).

## **Immigration Appeal**

The Immigration Appeal Division (IAD) of the IRB makes decisions on sponsorship appeals, removal order appeals, residency obligation appeals, and Minister's appeals. The IAD may allow an appeal and set aside an original decision based on the grounds of an error in law or fact, or of a breach of a principle of natural justice.

## **Immigration Consultant**

In common usage, an immigration consultant is a paralegal who are self-employed or in practice with others to provide advice and assistance to immigrants and refugees as a for-profit, fee-based services. The field is currently unregulated. (See the definition of "Paralegal" for more details.)

## **Immigration Inquiry**

If someone is found likely by CIC to be detained, or is likely to be deemed inadmissible or ineligible, he or she is required to appear for an immigration inquiry before the Immigration Division (formerly the Adjudication Division) of the IRB. A member determines if the reasons reported by CIC are well-founded to continue the detention of a person or order their release, or whether they are admissible to enter Canada or eligible to be referred to the RPD of the Board. (See "detention hearing" for more information.)

## **Inland claim**

A refugee claim made to an immigration officer, not at a port-of-entry location but at an inland office, after having been in the country as a visitor, worker, student, etc.

## **International Tribunals**

In this context, international tribunals refers to cases being brought to supra-national quasi-judicial bodies, often at the United Nations, such as the Committee Against Torture, the Human Rights Committee, the Inter-American Committee on Human Rights, and Committee on the Rights of the Child. Cases may be taken to these bodies when all Canadian remedies have been exhausted.



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## **Judicial review**

Both a claimant and CIC may ask the Federal Court of Canada for leave (permission) to apply for judicial review of any decisions made by members of the divisions of the IRB, or any decision made by a federal public servant. In the case of an unsuccessful refugee protection claim where permission is granted and the judicial review is allowed, the appeal may be upheld and the claim may be returned to the Refugee Protection Division of the IRB for a re-hearing. Judicial reviews are usually decided based on procedural arguments, not ones based on the merit of the case. Eventually, appeals may also reach the Federal Court of Appeal or the Supreme Court of Canada.

## **Justice Canada, Department of**

The mission of the federal Department of Justice is to work to ensure that Canada is a just and law-abiding society with an accessible, efficient and fair system of justice; provide high-quality legal services and counsel to the government and to client departments and agencies; and promote respect for rights and freedoms, the law and the Constitution.

## **Legal aid plan**

In Canada there are twelve legal aid plans, one in each of the ten provinces and three territories. Each of the legal aid plans operates independently, reflecting the fact that Canada is a federal state in which the provinces have responsibility for the administration of justice under the Constitution. Legal aid plans are usually established as independent societies by provincial legislation, and often have a close relationship with both the provincial government and the provincial bar. A legal aid plan is responsible for the provision of all legal aid in their province.

## **Member**

The people at the IRB who make decisions on cases are called members. They are appointed by the Governor in Council.

## **Paralegal**

Someone who acts in a legal capacity - providing information, advice, counsel and/or representation - but is not a member of the bar. Paralegals do not necessarily need to work with a lawyer. They also do not necessarily need to have any legal training. (Many of the paralegals responding to this study were not trained in law, but received on the job training through experience.) The field is currently unregulated.

Legislation in Canada only allows paralegals to provide advice, counsel and/or representation in certain types of cases. The *IRPA* allows for their practice at any proceeding before the Divisions of the IRB.

Practical usage of the term in the immigration and refugee law area also makes a distinction between immigration consultants (who may be paralegals and do similar work, but are self-employed for profit) and paralegals (who act on behalf of lawyers or whose work is on behalf of an organization and is not-for-profit).

## **Personal Information Form**

Before the refugee hearing a claimant is required to complete a Personal Information Form (PIF) detailing the nature and facts of their claim for refugee protection. The PIF can often be over 30 pages long. In all parts of Canada it is the basis for the refugee determination hearing. The form

must meet certain standards of legibility, it must be completed in English or French, and it is the basis for the refugee determination hearing.

### **Port of entry claim**

A refugee protection claim made to a CIC immigration officer when a claimant first arrives in Canada – at certain designated airports, land borders and sea borders.

### **Post Determination Refugee Claimant in Canada Class**

Under the *Immigration Act*, if claimants received a negative decision from the IRB, but still felt they would be at risk if they returned to their country of origin, they could apply for a determination of whether they are members of the Post-Determination Refugee Claimants in Canada Class (PDRCC). This administrative recourse is now extended to all unsuccessful refugee protection claimants and persons in need of protection as part of the Pre-removal Risk Assessment.

### **Pre-removal Risk Assessment**

The acronym is PRRA. To ensure that people are not sent back to a country where they would be in danger or face risk of persecution people who are placed under a removal order can apply to stay in Canada based on a written application. The basis for the application is on “consolidated protection grounds”, thus along with the *Geneva Convention*, danger of torture and risk to life or risk of cruel and unusual treatment or punishment are also reviewed. (Please refer to sections 112 to 116 of the *IRPA* for more detail.)

### **Refugee Appeal Division**

Under *IRPA*, the Refugee Appeal Division (RAD) has been established to decide appeals from decisions made by the Refugee Protection Division. The implementation of the Refugee Appeal Division has been delayed.

### **Refugee protection claimant**

Once someone makes a claim to seek refugee protection status they become a ‘refugee protection claimant’, informally known as a ‘refugee claimant’. Once the IRB has determined a claim is successful, then a person is called a Convention refugee or a protected person, and sometimes is informally referred to as a ‘refugee’.

### **Refugee determination hearing**

This is the main stage of the refugee determination process where a(n) IRB member(s) make a ‘positive’ or ‘negative determination’ on the refugee protection claim. Under the old process this was a Convention Refugee Determination Division hearing and under the new process it is a Refugee Protection Division hearing.

### **Refugee Protection Division**

Eligible refugee protection claims are sent to this Division of the IRB to be heard at an independent tribunal. Members of the Refugee Protection Division (RPD) of the IRB hear these cases.





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## Refugee Protection Division hearing

A hearing at the RPD of the IRB where a refugee protection claim is determined. The hearing is generally considered to be non-adversarial. The *expedited process* is used when a claim appears to be “manifestly well founded”. In this process, a claimant is interviewed by a refugee protection officer at the IRB, who makes a recommendation about the claim. If favourable, the claim is forwarded to a member who will decide if it should be accepted without a hearing. A full hearing is held if a claimant is not granted refugee protection at the expedited interview.

*Full hearings* follow the general tribunal process. The process is usually non-adversarial; becoming more adversarial when a representative of CIC participates in the case to argue against the claim. A refugee protection officer assists the member to ensure that credible and relevant evidence is presented. Representatives of the United Nations High Commissioner for Refugees may observe any hearing. Individuals whose claims for refugee protection are accepted by the IRB may apply to become permanent residents of Canada.

## Representation

The term “representation” can be defined in a number of different ways. In the legal context it is often used to refer to counsel by a member of the bar. However, common usage in the area of immigration and refugee law, as well as the *Immigration and Refugee Protection Act (IRPA)*, uses a broader definition. *IRPA* 167(1) holds that “Both a person who is the subject of Board proceedings and the Minister may, at their own expense, be represented by a barrister or solicitor or other counsel.” “Other counsel” could be a person such as a paralegal, immigration consultant, family member, representative of a refugee organization (e.g. UNHCR), settlement worker, social worker, or even a religious advisor.

## Safe Third Country

When a refugee claimant travels from the country of persecution to the country in which they claim asylum they sometimes travel through countries where they would face no persecution and could reasonably have made a refugee claim. The first country where a refugee claimant could have made a refugee claim is referred to as a first country of asylum or a country of first instance of asylum. Subsequent countries where a refugee claimant may make a refugee claim are referred to as safe third countries. A ‘safe third’ country agreement is one where states agree to accept the return of refugee claimants to the first country of asylum for a determination of their claim and to protect them from return to the location of their persecution.

## Settlement

This is the process and activities that a newcomer to Canada (either an immigrant or refugee) undertakes to join Canadian society. It can include, learning an official language, training and/or obtaining employment, obtaining shelter, learning how to use financial and government services, learning about law and society in Canada, etc. Non-profit and non-governmental organizations exist throughout Canada to assist in this process; they are commonly called ‘settlement organizations’, many of which receive significant government funding.

## Sponsored refugees

A refugee claimant whose case has been selected and processed while they still reside outside of Canada is a “resettled refugee”. There are several classes of resettled refugees from abroad.

Refugees who are sponsored by private organizations and individuals or are assisted by the Canadian government are referred to as "sponsored refugees".

### **Supervised**

The word “supervised” in this paper is mainly used to describe the monitoring, review and/or management of the work of paralegals. Supervision might involve everything from a periodic review of policy and practice to direction on components of individual cases, depending on what has been arranged in individual supervisory agreements. There could even be a combination of supervisory activities. For example, a paralegal working at a community organization might have their caseload, office policies and practices periodically reviewed by an administrator at a legal aid plan, while private bar lawyers might also review some individual cases at the paralegal’s request.

### **Undocumented**

A refugee claimant who does not possess full, authentic documentation indicating identity, nationality and/or travel route is referred to as ‘undocumented’. A claimant can be undocumented for many reasons; they may have had documents stolen, never had access to official documentation, or they may be trying to conceal nationality, identity or route of travel in order to protect themselves from persecution while escaping or to support a fraudulent claim.