



# Refugee Hearings

This is a resource to help Refugee Claimants and service-providers prepare for hearings before the Refugee Protection Division (“RPD”) of the Immigration and Refugee Board (“IRB”). Use this information after you have:

1. Submitted your Basis of Claim (“BOC”) form; and
2. Received your Notice to Appear for a hearing.

**Disclaimer:** This document does not contain legal advice. Pro Bono Students Canada is a student organization. This document was prepared with the assistance of PBSC law student volunteers. PBSC students are not lawyers and they are not authorized to provide legal advice. This document contains general discussion of certain legal and related issues only. If you require legal advice, please consult with a lawyer.





## What do I need to prove at my hearing and how can I do this?

There are generally 3 things that you need to prove:

1. **Your identity** — Who you are and where you are from
2. **Your refugee story** — What happened to you in your country and why you are in danger
3. **The conditions of your country** — How people in your “identity group” are treated in your country and why you would be in danger if you returned

### How can I prove this?

The types of evidence you can use are:

1. **Your personal testimony** — What you say at your refugee hearing
2. **Documents**
3. **Witnesses** — People who can speak about important parts of your story, either:
  - a. In person at your refugee hearing;
  - b. By telephone at your refugee hearing; or,
  - c. In writing in a Sworn Declaration or letter.

**Note:** A Sworn Declaration is a written statement by a witness who has sworn in front of a notary, lawyer, or commissioner of oaths that the information in the statement is true. It should be as brief as possible and must only contain information that the witness personally knows to be true. A Sworn Declaration is stronger evidence than a letter.<sup>1</sup>

### I need to prove my identity. How?

The best way is by using **government-issued personal identity documents**<sup>2</sup> such as a:

- Passport
- Birth certificate
- National identity card
- Residence card
- Driver’s license

<sup>1</sup> Hearing Preparation Kit - University of Ottawa Refugee Assistance Program (UORAP)

<sup>2</sup> Claimant’s Guide – Immigration, Refugees, and Citizenship Canada (IRCC)

You could also use a:

- School certificate
- Baptismal certificate
- Military service document
- Professional or religious membership card

**Note:** You must only submit genuine documents. You need to send the RPD **copies** of documents before your hearing and then bring the **originals** on the day of your hearing.<sup>3</sup>

### **What if I do not have any genuine documents?**

(for example, because my passport was stolen after I left my country)

If the danger or threats you are facing **are not** coming from your government (or a government-related agent), you should try to get another passport. You can do this after you have arrived in Canada by applying at the embassy of your country.

If the danger or threats you are facing **are** coming from your government, you may not want to apply for a new passport.

### **What if I cannot get any genuine documents?**

(for example, because it is too dangerous to get these documents)

Be ready to explain to the Board Member (the person who will decide your refugee claim) at your hearing why you could not get them and show them that you did try.<sup>4</sup> It is important to keep track of every action you took to get the documents (for example, every phone call, email, fax, letter, or any other attempt) and the replies received. Keep evidence of these actions to show at your hearing.<sup>5</sup>

You can also use witness evidence, like:

- A family member or someone who knew you and your family back in your country
- Someone who can confirm your nationality, ethnicity, tribe, clan, or region because of the language/dialect you speak or your knowledge of details of a specific region<sup>6</sup>

3 Claimant's Guide - IRCC

4 Claimant's Guide - IRCC

5 Refugee Rights – Community Legal Education Ontario (CLEO)

6 Hearing Preparation Kit - UORAP

## I need to prove my refugee story. How?

There are 2 things you need to prove:

1. That you are a member of a particular "Identity Group" (for example, your ethnicity, religion, sexual orientation, political affiliation); and,
2. That you are in danger in your country because you are a part of that Identity Group.

## How do I prove my Identity Group?<sup>7</sup>

| If you are a....               | You could use a...  |
|--------------------------------|---|
| Member of a union              | <ul style="list-style-type: none"> <li>• Union card or letter from the union</li> </ul>   |
| Member of a political party    | <ul style="list-style-type: none"> <li>• Membership card or letter from the party</li> </ul>  |
| Member of a certain profession | <ul style="list-style-type: none"> <li>• Business card</li> <li>• Diploma</li> <li>• University degree</li> </ul>                                   |
| Member of a student group      | <ul style="list-style-type: none"> <li>• Diplomas and transcripts;</li> <li>• Letters from the school confirming your attendance</li> </ul>         |
| Member of a religious faith    | <ul style="list-style-type: none"> <li>• Letter from the leader of your church, mosque, synagogue, etc.</li> <li>• Baptismal certificate</li> </ul> |

## How do I prove I am in danger because of my Identity Group?

Think of any documents you have or can get that can help prove that you are in danger because of your Identity Group. For example:

|   |   |
|---|---|
| Did you go to the police or another government agency for help? | Get a copy of the police report or other proof of your visit.       |
| Were you arrested?  | Get a copy of the police report and any court reports or decisions. |

|  |  |
|--|--|
| <p>Did you get medical help in your country or in Canada for any injuries related to the danger you faced?</p> | <p>Get a copy of any important medical records, doctor reports, or hospital receipts. These could be for physical injuries or psychological injuries (e.g. trauma). These could be from doctors in your country or doctors that you saw in Canada.</p> <p>If you have relevant injuries or scars, you could also provide photographs of these injuries/scars.</p>  |
| <p>Did you receive threats?</p>  | <p>Give copies of any messages (written or recordings) you received that contained threats of violence against you.</p>  |
| <p>Did you have to travel from/escape your country?</p>  | <p>Give copies of travel documents like visas or bus/plane/train tickets that show how and when you traveled.</p>  |
| <p>Were there any big events that were covered by media?</p>   | <p>Find any news coverage (newspaper articles, social media posts, etc.) of important events in your story.</p>  |
| <p>Are there any witnesses you could contact?</p>  | <p>Think of anyone who could confirm parts of your refugee story. For example:</p> <ul style="list-style-type: none"> <li>• Are there people who witnessed what happened to you?</li> <li>• Are there people you know in your same Identity Group who faced similar dangers?</li> </ul>  |
| <p>There may be other documents specific to your story that could be important.</p>                            | <p>Think hard about the key parts of your story and what documents might exist that can help prove what you are saying is true. For example:</p> <ul style="list-style-type: none"> <li>• Business records</li> <li>• Marriage certificates</li> <li>• Death certificates</li> <li>• Proof of living with your spouse</li> <li>• Property documents like a lease or deed, proving where you lived</li> <li>• Any other relevant photographs, letters, videos, emails, or other documents that show the problems you faced</li> </ul> |

NOTE: If you are seeking refugee protection because:

- You are a **woman**; or,
- Of your **gender identity or sexual orientation** (e.g. you are gay, lesbian, transgender, etc.)

You should read the relevant **Chairperson's Guidelines** (Guideline 4 for women; Guideline 9 for people fearing persecution because of gender identity or sexual orientation). These can be found on the IRB website.

### **I need to prove the conditions in my home country. How?**

You need to give evidence to show that the conditions of your country would not allow you to live there safely because of your Identity Group (for example, because you are part of a minority ethnic group that is targeted in your country). **Ask yourself:** What information about my country will help me prove that I would be in danger if I returned home?<sup>8</sup>

| You can use:                            | How?  |
|---|---|
| National Documentation Package          | This is a collection of information about the conditions of every country, including political, cultural, social, economic, and human rights conditions. The Board might consider this information at your hearing. Look for the Package for your country on the IRB Website.   |
| Reports from Human Rights Organizations | Human Rights organizations may have written reports on the human rights condition of your country. Some online resources are: Amnesty International, Human Rights Watch, and RefWorld.  |
| Newspaper Articles                      | Look for newspaper and online articles about specific events or recent developments in your country. Try to find information from well-known and trusted news sources.  |
| Witnesses                               | <p>There may be witnesses who can explain conditions in your country that have not been reported, or who can add important details to what the documents report. For example:</p> <ul style="list-style-type: none"> <li>• A university professor or journalist may be an expert on conditions in your country;</li> <li>• If you are a woman fleeing domestic violence in your country, a witness might be another woman who fled domestic violence in your country and can speak to how she called the police several times but they always refused to help.</li> </ul> |

## How do I decide who should be a witness and how they should give their information?

- It can be helpful to have a very clear and knowledgeable witness speak at your hearing, especially one that knows English or French well.<sup>9</sup>
- If you think someone would be a good witness but they cannot come to the hearing, they could give their information over the telephone (during the hearing) or in a sworn declaration (given to the RPD before the hearing).

A good witness is someone who:

- WILL know what they are talking about
- DOES have a background that shows they are a responsible, honest person
- WILL understand the Board Member's questions
- Will NOT contradict (say something different than) the information in your story
- Will NOT exaggerate or add to your story<sup>10</sup>



## What if I made an asylum claim in the United States that was refused?

If you made an asylum claim in the United States and it was rejected, you need to provide those application documents. The documents you need to provide include:

- Application forms;
- Notice of decision; and,
- Reasons for refusal (for your first application and, if you appealed that decision, for your appeal).

If you do not have these documents anymore, you can get them through the U.S. Freedom of Information Act system. This takes time, so you should start trying to get these documents as soon as you make your claim in Canada.

If you do not provide these documents, the Board Member may get them through the U.S. Freedom of Information Act system and consider them in your hearing.

<sup>9</sup> Hearing Preparation Kit - UORAP

<sup>10</sup> Hearing Preparation Kit - UORAP





## What if I need to change something on my BOC?

One of the most important things you should do to prepare for your hearing is to carefully read all of the information that the Board Member will consider in your hearing, including:

- Your BOC form;
- All documentary evidence you have provided;
- Witness statements; and,
- Statements you might have made to a CBSA (Canada Border Service Agency) agent when you crossed the border.

This is important because there should not be any differences in your story. What you have written in your forms should match the answers you give during your hearing. **If there are differences, your claim may be denied.**

If you realize that **something in your BOC form is wrong or incomplete** (for example, you find a mistake or you receive new information), it is **VERY IMPORTANT** that you make formal changes to your BOC as soon as possible.

**You should make all changes at least ten (10) days before your hearing.** To do this, you should:

- Underline the information you changed or added;
- Sign and date the changed pages;
- Send the original and one copy of of the pages that have been changed to the RPD;
- Provide a declaration stating that all of the information in the BOC form, together with the changes you made, is complete, true, and correct and that you understand that the declaration has the same force as an oath.<sup>11</sup>

If you need to make a change **within** ten (10) days of your hearing, you need to:

- Make changes to your BOC following the same steps as above;
- Make an application in writing to the RPD **asking** them to accept the changes you have made.

If you need to make a change on the day of your hearing, you will need to make that change orally at your hearing. This should **only** be done if you could not make changes earlier.

**Remember: It is always best to make all changes at least ten (10) days before your hearing.** The worst thing you can do is notice a mistake in your BOC and keep that incorrect version.



## How can I prepare for my hearing?

Here are some things you should do to prepare for your hearing:

- Read over your BOC form, any other statements you made (e.g. to a CBSA agent at the border), and any other forms.
  - Make sure you are confident in your story and that you remember important dates and details.
  - If you find any mistakes, make changes to those documents at least **ten (10)** days before your hearing (*\*see Part C above*).
- Have someone write out questions that the Board Member might ask you. Have them **ask you those questions and practice answering**, so you feel comfortable telling your story.

### **If I have a witness who will testify at my hearing, what can I do to help them prepare?**<sup>12</sup>

1. Have the witness write out a summary of what they are going to say from the oldest events to the most recent events;
2. Compare the story the witness writes down to your own story to make sure nothing is different, like:
  - a. Dates and time of day of the events
  - b. How many people were there
  - c. The order the events happened
  - d. If you did or did not get medical treatment
  - e. If the police were or were not contacted
3. Compare what the witness writes to the information you provided in your BOC form, other statements you have made (for example, in any interviews with the IRCC (Immigration, Refugees, and Citizenship Canada) or CBSA, and any other documents you are submitting (like news reports or birth certificates);
4. Review the evidence with the witness and talk about any differences. **If there are important differences** between you and your witness, and the witness does not agree with your version of events, it might be better **not** to have the witness speak at your hearing;
5. Write out questions that the Board Member might ask the witness. Practice asking those questions to the witness and have them answer, so they feel comfortable telling their story.



## What will happen on the day of my hearing?

### Where will the hearing be?

The Notice to Appear (telling you the date and time of your hearing) will tell you the location of your hearing.

### When should I arrive at the hearing?

You should arrive **15-30 minutes** before your hearing, so you have enough time to use the washroom, meet with your interpreter, and speak with your lawyer. If you know you are going to be late, call reception. Your witnesses (and anyone else you are bring with you) should also come **15-30 minutes** before your hearing.<sup>13</sup>

### What should I bring with me to the hearing?

- All of your original documents (including envelopes you received them in)
- All documents sent to you by the Canadian government
- A holy book if you would like to swear your oath on one
- Any medication you might need
- Snacks, meals and water
- The contact information for any witnesses who will be giving evidence by telephone
- Prepaid phone card to use for long distance calls if you have a witness giving evidence by telephone
- If your children will be attending the hearing, bring someone who can watch them for you<sup>14</sup>

### What should I wear?

You should wear something that is neat, comfortable, and clean.<sup>15</sup>

### What does a hearing actually look like?

The hearing usually takes place in a boardroom-like setting. The people who will be in the room are:

- The Board Member: The person from the IRB who will make the decision about your claim. Call them “sir” or “madam.”  
**Note:** They may attend via video conference.
- You and any family members who are a part of your claim.
- Your lawyer.

<sup>13</sup> Refugee Hearing Preparation Guide – RefugeeClaim.ca

<sup>14</sup> Claimant's Guide - IRCC

<sup>15</sup> Refugee Hearing Preparation

Other people who might be in the room are:

- Minister's Counsel: A lawyer from IRCC and/or CBSA might be there, usually to argue against your claim.<sup>16</sup> You will know ahead of time if they will be attending, because you will get a Notice of Intervention.
- Your interpreter (if you need one).
- Any family or friends who come to watch the hearing. They are only there to watch; they cannot talk (however, if they see that the interpreter is making a serious error, they should tell your lawyer).

## What will happen at the hearing?<sup>17</sup>

### 1. The Introduction

The hearing will start with the Board Member entering the room (unless the Board Member is attending through video conference). You should stand when they enter. The Member must turn on the recording device before the hearing begins. Then, the Board Member will introduce everyone in the room and explain what will happen. If you have an interpreter, the Board Member will ask you if you and your interpreter understand each other. If you do not understand each other, tell the Board Member.

### 2. Exhibit List

Then, the Board Member will list all of the documents that they received. If there is anything missing, tell them.

The Board Member will ask you to confirm your BOC. You should tell the Board Member if you did not receive a complete translation of the entire BOC or if there are any mistakes.

**Remember:** You need to carefully read the BOC **before** the hearing and find any mistakes early, so you can make changes at least **ten (10)** days before the hearing.

### 3. Questioning

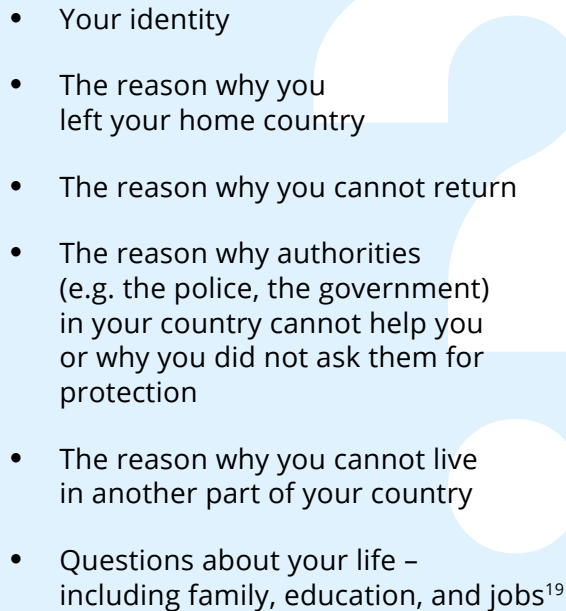
Then, you will be asked to take an oath to tell the truth. After the oath, you will be asked questions about your refugee claim. First, if Minister's Counsel from CBSA is present, they will ask you questions. Second, the Board Member will ask you questions. Third, if Minister's Counsel from IRCC is present, they will ask you questions. Last, your lawyer will ask you questions.<sup>18</sup>

16 Hearing Preparation Kit - UORAPGuide – RefugeeClaim.ca

17 Refugee Hearing Preparation Guide – RefugeeClaim.ca

18 Hearing Preparation Kit - UORAP

The Board Member will likely ask you questions about your identity and your BOC form to determine whether your story is truthful. They may ask you questions about:

- 
- Your identity
  - The reason why you left your home country
  - The reason why you cannot return
  - The reason why authorities (e.g. the police, the government) in your country cannot help you or why you did not ask them for protection
  - The reason why you cannot live in another part of your country
  - Questions about your life – including family, education, and jobs<sup>19</sup>

After all of the questions have been asked, you can tell the Board Member anything else that you think is important they know.

#### **4. Witnesses**

Then, your witnesses will be asked questions in the same order as you.

## 5. Oral Representations

An oral representation is a spoken argument you make at the hearing. This is where you (or your counsel) can summarize your claim and explain why you should be given refugee status.

You should:

- Highlight any important evidence that has been mentioned in the hearing (e.g. specific sections of documents)
- Talk about why you are afraid to return to your country and what evidence/information you have that proves this
- Talk about why the authorities in your country cannot or will not protect you
- If the Board Member mentioned a different place (e.g. country, region) you could have gone to be safe, you should tell them why that was not possible
- If you are claiming to be a “person in need of protection,” you should explain how the danger you are facing is specific to you and is not generally faced by anyone in your country
- If Minister’s Counsel is there, you should respond to points they made<sup>20</sup>

The Board Member may also say that no oral representations are needed. This usually means that your claim is going to be accepted, so they do not need more information.

## 6. Decision

The Board Member will either give you their decision orally at the end of the hearing or will send you a letter after the hearing.

### How should I answer the questions?

The **MOST** important thing is to **tell the truth** – do not add extra information and do not exaggerate!

Other things to remember:

- Always look at the Board Member when answering.
- Speak slowly and in short sentences so that the interpreter has time to interpret everything and the Board Member has time to take notes.
- If possible, talk about evidence that supports your answer (e.g. a particular document).
- Only answer the specific question that they asked - nothing more!
- If you do not understand the question, tell the Board Member and ask them to repeat or explain it.
- If you need more time to answer the question, say so!

- If someone asks about a document, ask them to point out to you what part they are talking about and take the time to read it before answering.
- Remember, the Board Member will expect you to know the dates of major events in your BOC. If you cannot remember, tell them why you cannot remember the exact date and try to answer as best you can.<sup>21</sup>

### What else should I know about the hearing?

- Make sure everything is “on the record.”
  - If you need more time to answer the question? Say so.
  - If you think there is an interpretation problem? Tell the Board Member or your counsel.
- If you need a break, ask for one.
- If there is new evidence presented that you have not seen before, tell the Board Member. You or your lawyer could ask to have the hearing stopped and moved to a different date so you can look at this new evidence.
- Do not interrupt!

### Is the hearing confidential?

Yes. No one in the room can share the information.



### Are there any other helpful resources I can use?

**Yes!** Here are some other helpful resources:

- “Refugee Hearing Preparation: A Guide for Refugee Claimants” — You can find this guide at [www.refugeeclaim.ca](http://www.refugeeclaim.ca). They have a guide that is specific to Winnipeg and it comes in different languages.
- Ready Tours — You can take a tour of a refugee hearing room and see what will happen on the day of your hearing. You can register for a tour by going to [www.refugeeclaim.ca](http://www.refugeeclaim.ca) and selecting “Ready Tours.”





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Welcome Place 521 Bannatyne Avenue, Winnipeg, MB R3A 0E4

Phone: (204) 977-1000 Fax: (204) 956-7548

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