

## THE CANADIAN REFUGEE PROTECTION PROCESS

**Course Summary:** This course provides an in-depth overview of Canada's refugee protection system, encompassing both Convention refugee claims and claims made by persons in need of protection. The eligibility to make a claim will be discussed as well as exclusion provisions. Our instructor will present strategic considerations to keep in mind from the time that a claim is being planned to the when it is made, as well as practical tips involving the preparation of the Basis of Claims, collecting and disclosing evidence, preparing clients and witnesses, as well as attending at the refugee hearing. Various ethical considerations involved in representing refugee claimants will also be discussed.

### **Course Outline:**

1. Introduction and course objectives
2. Eligibility to make a claim
  - Section 101 of the *Immigration and Refugee Protection Act (IRPA)*
  - Previously accepted claimants
  - Prior determination of ineligibility
  - Withdrawn or abandoned claim
  - Safe Third Country Agreement
  - Inadmissibility for security, human rights violations, serious criminality, or organized crime
3. Strategic considerations before making a claim
  - Conditional removal order
  - 1 year bar for Humanitarian & Compassionate application
  - Impact on future travel
  - Provision of Interim Federal Health Care
  - Access to work permit/study permit
  - Ethical considerations involved in advising clients prior to making a claim
    - Refraining from counseling clients on contravening Canadian immigration laws
    - Clients seeking visas to enter Canada to make refugee claims

#### 4. Making a claim at the port of entry

- Procedures at Port of Entry
- Preparation of claim forms
- No right to counsel
- Impact of delay in claiming

#### 5. Making a claim inside Canada

- Where to make a claim
- Procedure
- Preparation of claim forms
- Counsel attendance
- Impact of delay in making claim

#### 6. The legal test for Convention refugees

- Section 96 of *IRPA*
- Outside country of nationality
- Nexus to a Convention ground
- Subjective fear
- Objective fear
- State protection
- Internal flight alternative
- Special considerations with regard to gender-based persecution
- Special considerations with regard to LGBTQ persecution

#### 7. The legal test for protected persons

- Section 97 of *IRPA*
- Convention Against Torture
- Risk to life or risk of cruel and unusual treatment or punishment
- State protection
- Internal flight alternative
- Lawful sanctions
- Medical treatment

#### 8. Exclusion clauses

- Article 1E – rights and obligations in country of residence
- Article 1F(a) – war crimes
- Article 1F(b) – serious non-political crimes
- Article 1F(c) – acts contrary to the principles of the United Nations

## 9. The Basis of Claim form

- Importance of the form
- What to include/exclude
- Best practices for preparation
- Special considerations for gender based claims or LGBTQ claims
- Ethical considerations in preparing the Basis of Claim form
  - The role of the representative in helping draft the client narrative
  - Involvement of family members in preparation of client narrative
    - Attention to age, language barriers and special needs
  - Having family members translate the claim to clients
  - Having the representative translate the claim to clients

## 10. Collecting and disclosing evidence

- Admissibility of evidence
- Which documents to include
- Cross-cultural considerations
- Best practices for document collection
- Special considerations for gender based claims or LGBTQ claims
  - How to address lack of corroborative documents, effective use of psychological reports
- Translation of documents
- Rules for presentation of documents
- Disclosure deadlines
- The National Documentation Package
- Ethical considerations
  - Documents with questionable authenticity
  - Avoiding being a dupe of an unscrupulous client
  - Responding appropriately to client dishonesty or fraud
    - Corroborating the authenticity of documents with third parties while preserving client confidentiality
    - Confronting the client, withdrawal of representation, duty of confidentiality

## 11. Preparing your client and witnesses

- In person preparation
- Describing the hearing proceeding
- Discussion of legal and evidentiary issues
- Anticipating questions

- Advice on answering questions
- Advice on testifying through an interpreter
- Cross-cultural considerations
- Special considerations for eliciting testimony for gender based claims or LGBTQ claims
- Visit to the Refugee Protection Division
- Ethical considerations
  - Preparing vs. coaching a client
  - Changes in client's narrative from Basis of Claim form

## 12. The refugee hearing

- Checking in
- The hearing room
- Recording of proceedings
- Marking of exhibits
- Preliminary issues
- Swearing in of the claimant
- Order of questioning
- Cross cultural considerations
- Requesting special accommodation for vulnerable claimants
  - Gender based claims or LGBTQ claims
- Closing submissions
- Post-hearing evidence and submissions
- Ethical considerations at the refugee hearing
  - Communications with the client while giving evidence
  - Abuse of tribunal process
  - Encouraging respect for legal institutions

## 13. The decision

- Bench decisions
- Reserved decisions
- Appeal availability/restrictions

## 14. Question and answer period