



CHANGES TO THE REFUGEE SYSTEM – WHAT C-11 MEANS

September 2010

WHAT HAS ALREADY CHANGED?

- Most of the changes to the Act will not be implemented until 2011 or even 2012. But changes affecting **humanitarian and compassionate (H&C) applications** already apply.

H&C CHANGES

- The key change is that officers studying H&C applications:
 - may not consider the factors relating to a refugee claim¹, but
 - must consider elements related to the hardships that affect the applicant.
- This change affects H&C applications made on or after 29 June 2010. H&C applications made before 29 June 2010 will be processed according to the old rules.

What does this mean? In explaining why a person should be accepted on H&C grounds, we must not argue that the person meets the definition of a refugee or a person in need of protection. On the other hand, **hardships** that the person may face if obliged to leave Canada are absolutely relevant.

What is unclear? How will H&C officers deal with evidence that shows a person does meet the definition of a refugee or a person in need of protection? Will they simply treat it as evidence of “hardship” or will they refuse to consider the evidence, and possibly refuse the application if there is insufficient evidence of other hardships?

Other information: CIC is working on a priority basis on updating manuals and preparing Operational Bulletins.

Also note:

- The Minister can accept a person on H&C grounds without an application having been submitted, or a fee being paid. It is not known what type of cases might be accepted, or how they will be processed.

¹ The exact wording is “factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1).” (97(1) covers danger of torture, risk to life or risk of cruel and unusual treatment or punishment.)

CHANGES TO THE REFUGEE DETERMINATION SYSTEM

- The changes to the refugee determination system have not yet been implemented. The law says they must take effect no later than 29 June 2012. The Minister has said implementation will be in 12 to 18 months (i.e. somewhere between July 2011 and January 2012).
- A lot of the details of the process still need to be decided (through rules, regulations and policies). These decisions will be made over the coming months.

Key changes

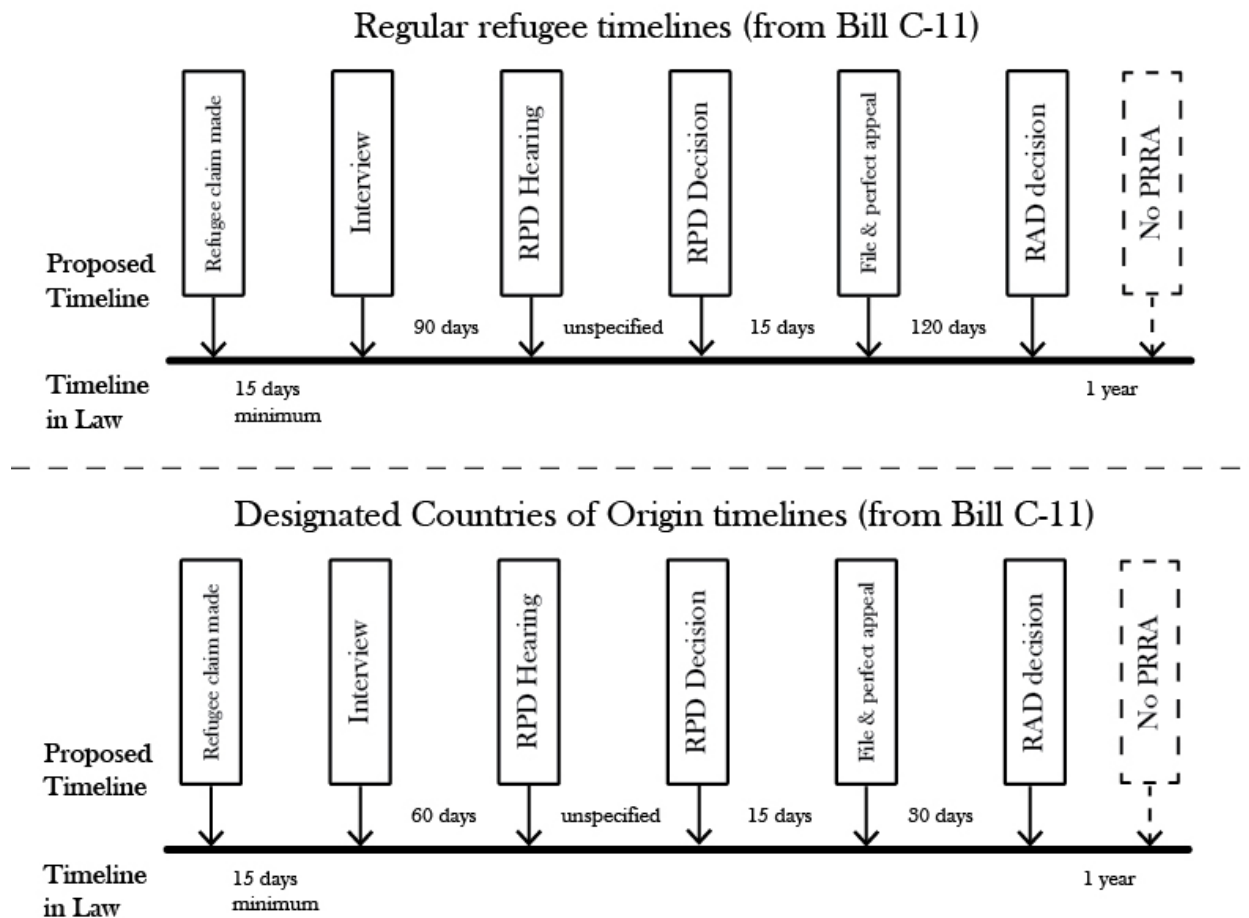
- **Interview:** Refugee claimants will have to attend an interview with an official (not a decision-maker) of the Immigration and Refugee Board (IRB). The interview will be 15 days or more after the claim is referred. The claimant has a right to counsel at the interview. The date of the hearing will be scheduled at the interview.
- **Members of the Refugee Protection Division:** The person deciding a refugee claim will no longer be appointed by Cabinet, but will instead be a civil servant. The decision makers will continue to be members of the Refugee Protection Division of the IRB.
- **Appeal:** Refused claimants will be able to appeal a negative decision to the Refugee Appeal Division. In addition to arguing that the first decision was wrong, claimants can submit new evidence at the appeal (but only evidence not available at initial hearing). In most cases, submissions will be entirely in writing, but in some cases the Refugee Appeal Division can hold a hearing. The Minister can also appeal a positive refugee determination.
- **Designated country of origin:** Claimants who come from a country designated by the Minister will face different (shorter) timelines for their initial hearing and for the appeal.
- **Manifestly unfounded:** If the Refugee Protection Division thinks that a claim is “clearly fraudulent” it may declare it “manifestly unfounded”. Such claimants will face the same shorter timelines in the appeal as claimants from designated countries of origin.
- **Pre-Removal Risk Assessment (PRRA):**
 - The PRRA will be decided by the Refugee Protection Division of the IRB, rather than CIC.² However, the transfer of PRRA to IRB will take place one year after the implementation of the other provisions.
 - Claimants removed within 12 months following rejection, withdrawal or abandonment of the claim will not be given a PRRA. However, the Minister may grant the PRRA to nationals of a specific country, or a subset of nationals of a country, within the 12 month period.

² In the case of claimants who are inadmissible on grounds of serious criminality or security, or excluded from refugee protection by the IRB (IRPA 112(3)), CIC will continue to decide the PRRA.

TIMELINES

Below line = established in law

Above line = proposed, may be changed.



Key questions still to be decided

Many crucial questions about the new law are still to be decided, although Minister Kenney has announced certain intentions. Some questions will be determined through *Regulations* (prepared by Citizenship and Immigration Canada); other questions will be part of the Immigration and Refugee Board *Rules*. Instructions and training will also influence implementation.

NB: nationals of designated countries of origin = DCO

<i>Issue</i>	<i>Government proposals</i>	<i>Advocacy points</i>
Interview	Will be 15 days after referral or soon after; won't postpone for counsel. Focus of interview will be claimant's "story" (i.e. what makes the person a refugee). There may be a summary (not decided). Interview will be recorded and copy given to claimant). Interview will also be used to give claimant information about the refugee claim process in Canada.	Major concerns about the difficulties for many vulnerable claimants³, especially LGBT, women, children, torture survivors, etc. (see Anti-Oppression (A/O) Considerations below). Process will need to: • Allow postponements for vulnerable claimants. • Take into account that important elements of the claim will not surface in the interview. The interview could support vulnerable claimants by: • Designating representatives early. • Identifying vulnerable claimants (Guideline 8) • Giving claimants information about the process. Interviewers will need to be well-trained and very sensitive.
PIF (Personal Information Form)	May consider some kind of form, but not expecting to maintain PIF.	For many claimants (see A/O), working with counsel to present information in writing is best.
Hearing date (to be fixed at interview)	90 days after interview for most claimants 60 days after interview for nationals of designated countries of origin (DCO)	Will be too short for many claimants to prepare themselves and gather documentation (see A/O). Postponements must be granted where necessary to be fair, especially to vulnerable claimants. Decision makers must reduce their expectations of supporting documentation, (which are currently very high) given shortened timelines.
Hiring RPD members (civil servants)	Grade of position not yet decided. Will have two selection processes: internal (for IRB employees) and external (everyone else).	Critical that position be ranked senior enough that decision makers are highly qualified and independent. Selection process must allow broad recruitment and selection on basis of merit.

³ "Vulnerable" in the broad sense, not only those designated as vulnerable under IRB Guideline 8.

<i>Issue</i>	<i>Government proposals</i>	<i>Advocacy points</i>
Designated countries of origin		
Process	Interministerial committee with 2 external human rights experts. Will consult with UNHCR.	NB CCR is completely opposed on principle to discriminatory treatment based on country of origin.
Periodic review	Unclear: the list “would be reviewed periodically by the panel of experts.”	Important to have a clear schedule for review.
Criteria (NB some criteria are in Act)	Quantitative: 1% of claims in 1 of the preceding 3 years; 15% or less of which are accepted.	Extremely broad quantitative criteria. Qualitative criteria should take account of rights of oppressed groups (e.g. LGBT, women, ethnic minorities).
Timelines for Refugee Appeal Division		
Filing and perfecting an application	15 days	This timeline is completely unworkable. In most cases, it would be <u>impossible</u> to complete a meaningful application within 15 days, especially for vulnerable claimants (see A/O). Timelines must be at least those for judicial review: 15 days to file the application, 30 days to perfect (complete) it.
Decision by the RAD	120 days regular; 30 days DCO and manifestly unfounded	Interesting idea of deadline for making a decision – this could be used in other immigration decisions, e.g. family reunification, H&C. Important that quality of decision-making not be made to suffer if Cabinet doesn’t appoint enough RAD members.
RAD members	Existing RPD and Immigration Appeal Division (IAD) members can put their names forward.	RAD members must be adequately qualified to review and correct RPD decisions.

ANTI-OPPRESSION CONSIDERATIONS

Gender

- Speaking to authority figures
- Speaking openly about experiences (esp. sexual violence)
- Availability of documentation of human rights violations
- Persecuted in apparently “safe countries”
- Tendency to focus on male family member’s story

LGBT (lesbian, gay, bisexual, transgender/transsexual)

- Speaking openly about experiences (esp. sexual violence)
- Availability of documentation of human rights violations
- Persecuted in apparently “safe countries”

Children

- Speaking to authority figures
- Tendency to focus on adult family members’ story

Poor

- Getting good legal representation (especially quickly)

Survivors of torture

- Speaking to authority figures

People with psychiatric illnesses

- Understanding and negotiating legal process

Claimants in detention

- Getting good legal representation (especially quickly)
- Access to advice and documentation

Claimants outside major centres

- Getting good legal representation (especially quickly)
- Access to advice and documentation