

Making a refugee claim

This fact sheet is for people who work with refugee claimants. It has information about making a refugee claim at a Canadian border or airport, or after coming into Canada. Throughout the fact sheet, “you” refers to refugee claimants. This is meant to make it easier to pass the information on to those who need it.

You can make a refugee claim at a Canadian border or airport, or from within Canada.

Anyone who is thinking about making a refugee claim should try to get legal help. There is information about how to get legal help on [pages 10 and 11](#).

Who can get refugee protection

To get refugee protection, you must meet the definition of a **Convention refugee** or a **person in need of protection**.

Convention refugee: To be a **Convention refugee**, you must have a well-founded fear of being persecuted in your home country because of your:

- race,
- religion,
- nationality,
- political opinion, or
- membership in a particular social group. (This can be a group that you chose to join, such as a labour union, or that you belong to because of who

you are, such as a family. If you fear persecution because of your gender or sexual orientation, your claim is based on membership in a particular social group.)

You must also be unable or unwilling to return to your country because of your fear and the conditions there.

Refugee claims can be based on persecution by government authorities or others. For claims based on persecution by others, you must show that the government in your home country is unable or unwilling to protect you.

Person in need of protection: To be a **person in need of protection**, you must be someone who, if you had to return to your home country, would more likely than not face:

- torture,
- a risk to your life, or
- a risk of cruel and unusual treatment or punishment.

If you face a risk to your life, or a risk of cruel and unusual treatment or punishment, you must show all of the following:

- You are not able to get protection from the government in your country.
- The risk affects you personally and is not faced generally by other people in your country. For example, the risk is not the result of a famine or civil war.

- The risk is not the result of government laws, such as punishment for committing a crime, unless these laws violate international standards.
- The risk is not caused by the fact that you cannot get adequate medical care in your country unless this is because of persecution or discrimination.

To be either a Convention refugee or a person in need of protection, you also need to show that there is no place in your country that you could safely reach where you would be safe from persecution or from the risk that you face and where it would be reasonable to expect you to live.

The refugee claim process

To get refugee protection in Canada, you must go through the refugee claim process. In this process, the Refugee Protection Division of the Immigration and Refugee Board (IRB) decides whether you are a **protected person**. That is a **Convention refugee** or a **person in need of protection**.

The IRB is not part of Citizenship and Immigration Canada (CIC) or the Canada Border Services Agency (CBSA).

It is up to you to convince the IRB that you are a Convention refugee or a person in need of protection. You do this by telling your story to the IRB and providing any documents that support your case. For example, you might provide identity documents, police reports, medical records, or other documents that help show that your story is true. You might also provide

documents, such as human rights reports or newspapers, that show what is happening in your country.

It is important to get legal advice about how you might fit into the legal definition of a protected person, based on your fear or the risk that you face.

There is an overview of the refugee claim process on [page 12](#).

Starting a claim

It is best to make a claim when you arrive at a Canadian border or airport, or as soon as possible after you arrive. The longer you have been in Canada before making a claim, the harder it can be to prove that you are afraid to return to your country. And, it is too late to make a refugee claim if there is already a removal order against you. This is an order to remove you from Canada to another country.

If you are at an airport or border, you can start your claim by telling a CBSA officer that you want to make a refugee claim.

If you are already in Canada, you can contact CIC to start your claim. In the Toronto area, you can go to the CIC office at 5343 Dundas Street West. If you are somewhere else in Ontario, you can go to the local CIC office. To find the CIC office in your area, phone the CIC Call Centre at **1-888-242-2100**.

You have the right to make your claim in English or in French, and you do not have to pay a fee to CBSA, CIC, or the IRB.

If you have broken an immigration rule in Canada, such as being caught without status or being convicted of a criminal offence, you could be ordered removed. If you want to make a refugee claim, you must say that you are making a claim before a removal order is made.

Coming from the United States

If you make your claim at a border crossing along the land border with the United States, the “safe third country” rule will apply. This rule does not apply at an airport or if you make your claim *after* entering Canada. The rule prevents people who claim refugee status at a Canada-United States border crossing from having their claim heard in Canada. The rule is meant to force refugee claimants who can seek protection in the United States to do so.

However, there are exceptions to the rule. If you can show that you fall within one of the exceptions, then the rule will not apply to you.

Here are some examples of exceptions that might apply:

- You have a **family member** in Canada who is:
 - your spouse or common-law partner (same or opposite sex),
 - your parent or legal guardian,
 - your child or your grandchild,
 - your grandparent,
 - your brother or sister,
 - your uncle, aunt, nephew, or niece.

This family member must have one of the following types of status in Canada:

- Canadian citizen or permanent resident,
 - protected person,
 - someone who applied for permanent resident status based on humanitarian and compassionate (H&C) grounds which were found to exist, does not have a decision yet on the application, and has a removal order that has been stayed until the decision is made,
 - refugee claimant whose claim is still pending or, in certain circumstances, holder of a valid study permit or work permit. If your family member is a refugee claimant or permit holder, they must be 18 years of age or older.
- You are under 18 years of age, do not have a spouse or common-law partner, and do not have a parent or legal guardian in Canada or the United States.
 - You have a visa (other than a transit visa) or other document that authorizes you to enter Canada, even for a temporary purpose.
 - You have a criminal charge or conviction against you for which you could face the death penalty in the United States or another country.

If you make a claim at a border crossing, the CBSA officer should ask you questions to find out if one of the exceptions to the “safe third country” rule might apply to you. If you have a family member in Canada, the officer might try to contact CIC or the family member to find out more about their status here.

It is helpful if you can provide contact information for the family member. If you have any documents to help show your relationship to the family member or that person's immigration status in Canada, you should bring the documents with you.

If no exception applies to you, your refugee claim will not be heard in Canada and you will be returned to the United States where you might be detained.

Arriving without identity documents

If you arrive in Canada without proper identity documents, you may be detained, which means that you will be held in a CBSA detention centre or a jail.

If you do not have a valid passport, you may be able to prove your identity with other documents, such as your birth certificate or driver's licence. If you have no documents at all, your family or friends who are already in Canada may be able to prove your identity.

If you are detained, call Legal Aid Ontario. They may be able to help you get a lawyer. There is information about how to contact Legal Aid Ontario starting on [page 10](#). You can also call Legal Aid Ontario's Refugee Law Office at **416-977-8111** or **1-800-668-8258**. They accept collect calls from people in detention.

What happens once a claim is started

Once you have started your claim, you will have an interview to find out if you are eligible for a hearing at the IRB. The interview could take place on the day you first make your claim or you might get an appointment to have the interview later.

You will also have to fill out forms either before or during the interview. Make sure you keep a copy of the completed forms. If your lawyer or other representative submits forms on your behalf, make sure you keep copies of those as well.

During the interview, you will be asked about:

- your identity, including when you were born, who your family members are, and whether or not you are married,
- what identity documents you have or can get,
- the route you took to Canada, whether anyone helped you get here, and what travel documents you used,
- whether you are associated with any groups or organizations,
- whether you have been charged with or convicted of a criminal offence in any country,
- whether you or any family member has ever made a refugee claim in Canada or in any other country, and
- whether you fear returning to your country, and what and whom you fear.

You may also be questioned in greater detail about your background and the reasons for your refugee claim.

After your interview, a decision about whether or not you are eligible to have your claim heard at the IRB must be made within three working days. If a decision is not made within those three days, your claim is automatically referred to the IRB for a hearing.

Who is not eligible for a hearing at the IRB

Listed below are the reasons why you might not be eligible to have your refugee claim heard.

1. The “safe third country” rule applies to you. See *Coming from the United States* starting on page 3 for more information.
2. You were found to be a Convention refugee in another country and you can return to that country.
3. You have already made a refugee claim in Canada and it was rejected by the IRB, you withdrew or abandoned it, or you were not eligible to have your claim heard. If you have been outside Canada at least six months since the final decision on that earlier claim, you can apply for a Pre-Removal Risk Assessment. There is more information about this process in CLEO’s fact sheet called *Pre-Removal Risk Assessment (PRRA)*. To order a copy or read it online, please see our contact information at the bottom of [page 16](#).
4. You have a serious criminal record or you are considered to be a security risk because it is suspected that you were involved in terrorism, organized crime, espionage, or human rights violations.

The fourth reason does not often apply to refugee claimants. It will apply only if the Immigration Division of the IRB decides that you are “inadmissible” (cannot be admitted) to Canada for one or more of the reasons listed in number 4. If the reason is a serious criminal record, the IRB will find you inadmissible if:

- you have been convicted of a serious crime in Canada for which you received a sentence of at least two years in prison, or
- you were convicted of a serious crime outside Canada and the Minister of Citizenship and Immigration believes that you are a danger to the public in Canada.

If you are found not eligible to have your claim heard, you can ask the Federal Court if they will agree to review that decision. This is called an “application for leave”. You will need a lawyer if you are making an application to the Federal Court. You must act quickly because there is a deadline of 15 days for applying to the Federal Court.

Even if the Federal Court agrees to review the decision, if there is a removal order against you, you can still be removed from Canada before the Court decides your case.

If you are about to be removed, your lawyer will have to apply for a “stay of removal”. A stay of removal means that you are allowed to stay in Canada until the Court decides your case.

What happens if a claim is eligible for a hearing at the IRB

If you are eligible to have your refugee claim heard, your case will be referred to the IRB. As well, a conditional removal order is made against you. If the IRB accepts your refugee claim, this order never comes into effect.

If the IRB rejects your claim, the removal order becomes effective.

For more information about what you can do if the IRB rejects your claim, see *What happens if the IRB rejects a claim* starting on [page 9](#).

Even after CIC or CBSA refers your claim to the IRB, they can still change their decision and say that you are not eligible, or they can stop the process you are going through with the IRB.

This could happen if CIC or CBSA:

- believes that you gave false information or that there was important information that you did not give, or
- gets new information that would cause them to make a different decision about your eligibility.

If this happens to you, you need to get legal help.

Filling out the Personal Information Form

After you are found eligible to have your claim heard at the IRB, you will get a Personal Information Form (PIF) to fill out. The PIF is available in English or in French.

There are strict deadlines for getting the completed PIF to the IRB. If you were given the PIF, you must file the original and two copies with the IRB within 28 days. If it was mailed to you, you have 35 days from the mailing date to get your PIF to the IRB.

It is important to meet the deadline. You can ask for an extension but you must do this **before** the deadline. You should explain why you cannot meet the deadline. If you do not get your PIF in on time, the IRB will make you go to an abandonment hearing to explain why it was late.

If the IRB is not satisfied with your explanation at the abandonment hearing, it may decide that you have abandoned your refugee claim even if you are now ready to go ahead with it. This can lead to you being removed from Canada.

In the PIF, you must give detailed information about your claim. There are questions about:

- your family members,
- where you worked and went to school,
- your military service, and
- how you came to Canada.

Most importantly, you must give a detailed account of the events and reasons that led to your claim, in the order in which they happened. This is called your “narrative”.

You must state which authorities or people you fear, why you are afraid of them, and what type of persecution, torture, or cruel and unusual treatment or punishment you believe you will suffer if you return to your country. Describe when you began to fear for your safety. Explain what happened and what you did. Describe the occasions when you were threatened, hurt, or placed in danger. If nothing bad happened to you personally, describe what happened to relatives or people in your situation and how their experiences affect you. If you fear persecution from someone other than government authorities, for example, from an abusive spouse, revolutionary group, or criminal organization, explain why your government cannot or will not protect you.

The statements that you make in your PIF could be compared to statements made at your eligibility interview. If there are any differences, you will need to explain why.

The PIF asks whether you want to have your hearing in English or French.

The PIF also asks whether you need an interpreter at your hearing. The IRB must provide an interpreter, free of charge, if you tell them at least 20 days before the hearing that you want one.

The PIF is a crucial part of your refugee claim. It is best to fill it out with help from the lawyer who will represent you at your hearing, or with someone who understands the refugee process.

Preparing for a hearing with the IRB

You will get a written notice telling you when and where your refugee hearing will be held.

It is important to present all relevant and helpful information at your hearing. This may include documents or witnesses who can testify about conditions in your country.

If you have documents that describe conditions in your country or that support the details of your claim, give them to your lawyer as soon as you can. These documents could be ones that show your membership or what position you held in an organization or political party, identity documents, police reports, medical records, or any other documents that help to show the truth of your story. You might also have newspapers, or reports from Amnesty International or other human rights groups.

At least 20 days before your hearing, you must give the IRB copies of any documents you will use at the hearing. This includes any identity or travel documents. You should bring your original documents to the hearing. If you do not have any identity documents, you will have to explain to the IRB why you do not have them and what you have done to try and get them.

If you have documents that are in other languages, you must have them translated into English or French.

At least 20 days before your hearing, you must also give the IRB the names of witnesses who will testify at the hearing and information about each witness including information about what the witness will say.

What happens at an IRB hearing

An IRB member is in charge of the hearing. You have the right to have counsel represent you. Counsel who is paid to represent you must be a lawyer who is allowed to practise law in Canada or a registered immigration consultant. You may be able to get help through Legal Aid Ontario to pay for a lawyer. (See [pages 10 and 11](#) for information about getting legal help.) A Tribunal Officer may also attend the hearing. The Tribunal Officer's job is to help the IRB member at the hearing. An interpreter will also be there, if you asked for one.

Your PIF will be considered as evidence at your hearing. You will be asked to swear that what you said in the PIF is true. You will also be asked questions about your claim by your counsel, the Tribunal Officer, and the IRB member. You will have to swear to tell the truth in your answers to those questions.

In some cases, a hearings officer, who is sometimes called the Minister's representative, will take part in the hearing. This is uncommon and only happens if CIC or CBSA is opposing your claim. They will notify you before the hearing and tell you why they are doing this. You will need to get legal help.

You will get a decision on your claim at the end of your hearing or later by mail.

The Expedited Process

As well as the regular hearing process, there is an "expedited" (fast track) process. In this quicker process, claims can be accepted without a full hearing. In deciding whether your case will be expedited, a Tribunal Officer will consider:

- the particular circumstances of your claim, and
- the conditions in the country you are fleeing.

If your claim is selected for this expedited process, you must go to an interview with a Tribunal Officer who will ask questions about your claim. You have the right to bring your counsel with you to this interview.

The Tribunal Officer may decide that your case is convincing and recommend that your claim be accepted without a full hearing. If so, an IRB member will read both your file and the Tribunal Officer's report. If the IRB member agrees with the Tribunal Officer's recommendation, your claim will be accepted. If the IRB member does not agree, you will have to go to a full hearing.

If the Tribunal Officer recommends that your case not be accepted at this stage, you must go to a full hearing, which will take place later.

What happens if the IRB accepts a claim

If the IRB finds that you are a protected person, you can apply for permanent resident status within 180 days of when you get the IRB decision in writing. You will have to pay a fee to make this application.

Before you can get permanent resident status, you must have a valid passport, travel document, or some other identification that CIC will accept. If you do not have any identity documents, you may still be able to prove your identity to CIC. You will need to make a “statutory declaration” (a sworn statement of fact) as to your identity. You will also need a statutory declaration from someone who knew either you or a member of your family before you came to Canada, or from an official of an organization that represents people from your country.

On the application for permanent resident status, you must:

- list your spouse or common-law partner and any dependent children, and
- choose whether or not you are including them in your application.

You must list them even if you are not including them in your application for permanent resident status. If you are including them, their applications can be processed with yours whether they are inside or outside Canada. If you included them and they are outside Canada, they can still be processed as part of your application if they go to a visa office within a year of the day you become a permanent resident.

If you do not submit your application for permanent residence within the 180 days, you can still apply but some of the rules are different. For this reason, it is important to apply within the 180 days. If you did not do this, you may want to get legal advice.

What happens if the IRB rejects a claim

Applying to Federal Court

If the IRB does not accept your claim, you can ask the Federal Court if they will agree to review the IRB’s decision. This is called an “application for leave”. You will need to contact a lawyer as soon as you find out that the IRB did not accept your claim.

You must file your application for leave in Federal Court within 15 days of the date that you received the IRB decision. You will usually be allowed to stay in Canada until the Federal Court decides your case.

If the Federal Court agrees to review the IRB’s decision, you will get a “judicial review” hearing. This means that a judge will decide whether to overturn the IRB’s decision. If the judge does overturn the decision, you will get a new hearing at the IRB.

Federal Court cases can be presented in English or in French.

Asking for a Pre-Removal Risk Assessment (PRRA)

Most claimants whose refugee protection claims are not successful can apply for a Pre-Removal Risk Assessment (PRRA). You do not have to pay a fee to CIC for a PRRA application.

A PRRA officer assesses the risk you will face if you are sent back to your country and, in most cases, decides whether you are a Convention refugee or a person in need of protection.

You must use the PRRA application form when you apply for the PRRA. The application form will be given or mailed to you when you are considered to be “removal ready”. Removal ready means that you have a valid passport or travel document, or immigration authorities believe you can easily get one, and the removal order against you can be enforced. If you have applied to the Federal Court, the removal order may not yet be enforceable.

There is more information about this process in CLEO’s fact sheet called *Pre-Removal Risk Assessment (PRRA)*. To order a copy or read it online, please see our contact information at the bottom of [page 16](#).

Other options for applying to stay in Canada

There may be other ways to stay in Canada legally. For example, it is possible for anyone who is in Canada to apply to remain permanently on humanitarian and compassionate (H&C) grounds. There is a fee for this. If your H&C application is successful, you can apply for permanent resident status.

It is always best to get advice from a lawyer or a community legal clinic about other ways to stay in Canada legally, including making an H&C application.

If the refugee protection process is finished and you were unsuccessful, making an H&C application will not stop your removal from Canada. If you are waiting for a decision on your H&C application and are asked to report for removal, you should get legal advice immediately.

How to get legal help

For legal advice and representation, you can contact a lawyer or a community legal clinic.

If you cannot afford a lawyer, you may be able to get a certificate from Legal Aid Ontario to help pay for a lawyer. To apply for a legal aid certificate, you need to contact Legal Aid Ontario. There is information on the next page about how to contact Legal Aid Ontario.

If you are in the Toronto area and you have a legal aid certificate, the Refugee Law Office (RLO) may be able to help you with your refugee claim. You can phone the RLO at **416-977-8111** or **1-800-668-8258** for more information.

Community legal clinics give free legal advice to people with low incomes, but not all clinics deal with immigration and refugee issues. You do not need a legal aid certificate to go to a community legal clinic. You can check with the community legal clinic in your area to see if they can help you. Or, they may be able to refer you to someone who can.

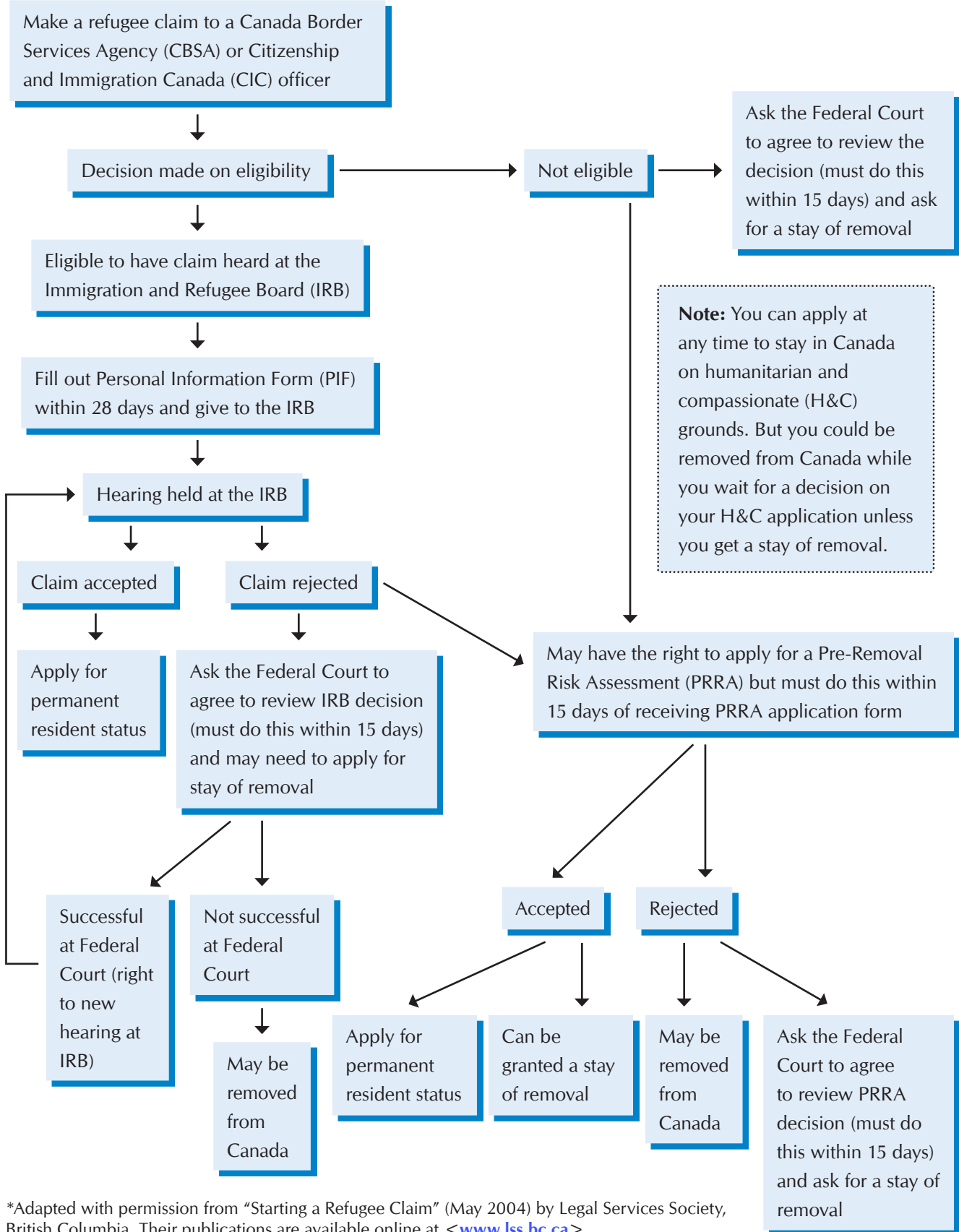
To find the community legal clinic in your area, you can phone Legal Aid Ontario or check their web site at www.legalaid.on.ca.

You can phone Legal Aid Ontario at the following numbers:

- Toll-free outside Toronto ... **1-800-668-8258**
- In Toronto **416-979-1446**
- Toll-free TTY **1-866-641-8867**
- TTY in Toronto..... **416-598-8867**

CLEO has a fact sheet called *Hiring a lawyer to help with a refugee claim* that includes information about working with your lawyer. To order a copy or read it online, please see our contact information at the bottom of [page 16](#).

Overview of the refugee claim process*



*Adapted with permission from "Starting a Refugee Claim" (May 2004) by Legal Services Society, British Columbia. Their publications are available online at <www.lss.bc.ca>.

Notes

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Notes

This publication contains general information for people in Ontario. It is not a substitute for getting legal advice about your particular situation.

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