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Office of the Executive Director

September 12, 2011

Reform Office  
Immigration and Refugee Board of Canada  
Room 13-027, 344 Slater Street  
Ottawa, Ontario K1A 0K1  
Email: [Paula.Thompson@irb-cisr.gc.ca](mailto:Paula.Thompson@irb-cisr.gc.ca)

**VIA EMAIL**

**Attention: Paula Thompson, Director, Business Process Design**

Dear Ms. Thompson,

**RE: Rules—Pre-Removal Risk Assessment**

The Legal Services Society of BC (LSS) welcomes the opportunity to provide recommendations for the development of Immigration and Refugee Board of Canada (IRB) Rules regarding Pre-Removal Risk Assessment (PRRA) applications.

LSS provides legal aid services, which range from legal information to advice and representation, to people with low incomes in British Columbia. Our mandate is to help people resolve their legal problems and facilitate access to justice.

Clients may receive one or more services to help them resolve their legal problems. Our legal aid services include:

- legal information provided by front line staff and legal information outreach workers, and through print materials and materials on the Web;
- legal advice and limited representation services provided by duty counsel, including criminal, family, and immigration duty counsel;
- telephone advice services for people arrested, detained and under investigation, and for people with family law problems; and
- legal representation referrals to private bar lawyers for criminal, immigration, and family cases.<sup>1</sup>

LSS funds some representation referrals for a number of applicants submitting PRRA applications each year. All applications for legal aid funding of PRRA applications are merit screened and the budget permits LSS to fund only a small number of applications each year. In addition LSS funds some Federal Court judicial review applications of PRRA decisions.

LSS submits its comments from the perspective of a provider of legal services to people with low incomes in British Columbia. Our refugee clients face multiple challenges. Many are vulnerable individuals who speak limited if any English or French; belong to a cultural minority; are traumatized due to persecution, domestic violence, or torture; and face housing and financial challenges upon arrival in Canada with limited access to settlement services. These clients are often unfamiliar with Canadian principles of fairness and justice, have little education, and low levels of literacy. They need a refugee determination process and a PRRA process that is understandable, accessible, sensitive to the reality of their circumstances, flexible and fair.

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<sup>1</sup> Financial eligibility for legal representation is assessed through an intake process; some advice services are also subject to a financial eligibility test.

## **GENERAL COMMENTS**

Given that the Rules have yet to be drafted, the recommendations below are of a very general nature. LSS looks forward to seeing the draft Rules and providing more detailed comments at that time.

### **a) Plain language**

As a general guiding principle, LSS supports IRB Rules that are simple, written in plain language, and recognize that many applicants will be unrepresented and navigating the process without the assistance of counsel.

### **b) Service of documents**

Rules should provide a process for service of PRRA notification documents to ensure eligible applicants receive notification.

### **c) Extension of time to file application**

Since the application process for legal aid funding involves an in-depth merit screening of the case, short deadlines always present a problem for legal aid clients.

We recommend that the Rules provide an accessible process for applying for an extension of time to file a PRRA application that recognizes that the time required by LSS to merit-screen and then refer approved clients to a lawyer may lead to delays in applying for PRRA or providing submissions.

### **d) Process to apply for an oral hearing**

An issue that is frequently a matter of federal court litigation is whether a PRRA officer erred in not conducting an oral hearing.

We recommend that the Rules provide accessible process for an applicant to apply for an oral hearing. In addition there should be a process by which the Minister must notify the applicant that credibility is an issue, which would trigger the process to determine whether an oral hearing is required.

### **e) Process to determine in advance of a decision whether the evidence submitted on the PRRA application is admissible**

Again, the issue of whether a piece of evidence is considered admissible is often the subject of federal court litigation. This can be avoided by having a process to determine (in advance of a decision on the PRRA) whether the evidence submitted in the application is admissible. If the PRRA officer thinks the evidence is not admissible, there should be a simple process to notify the applicant of this concern and to provide the applicant an opportunity to make submissions on the issue of admissibility.

**f) Process to notify applicant of adverse information in the possession of the Minister that is provided to the PRRA officer**

As a matter of procedural fairness the applicant should be provided with all information provided to the PRRA officer by the Minister so that the applicant knows the case to be met and has a meaningful opportunity to respond.

**g) Process to notify the applicant of all evidence the PRRA officer is considering in making a decision**

All evidence being considered by the PRRA officer, other than the material submitted in the application and the material submitted at the refugee hearing, should be disclosed to the applicant.

**h) Process for submitting additional evidence up to the date of the PRRA decision**

Currently the Courts have held that evidence submitted in advance of a decision must be considered by the PRRA officer. We believe there are good policy reasons to maintain this practice. Given the short time limitations in filing PRRA applications, lawyers are often unable to obtain all the evidence by the time the submissions are due. A process for submitting additional evidence up to the date of the decision would allow all relevant evidence to be considered.

**i) Abandonment**

The Rules should provide the Applicant with notice of possible abandonment of a PRRA application if, for example, the applicant fails to attend a hearing. The applicant should be given an opportunity to appear to provide submissions on why the application should not be abandoned. Personal appearance is preferable to written submissions since many applicants are unable to write in one of the official languages or express themselves clearly in writing.

**j) Vacation**

The Rules should provide a process for declaring an application vacated.

**k) Translation of documents**

Translation of new evidence is a significant disbursement cost for LSS and for applicants with low incomes. Applicants often feel it is necessary to translate a large number of new documents.

A process to resolve what documents are necessary to translate in advance of filing all the material would help minimize unnecessary translation costs. This may be accomplished through a pre-decision conference where the relevance and admissibility of the evidence is determined.

**CONCLUSION**

As stated above these submissions are of a general nature to inform an initial draft of the Rules. LSS looks forward to the opportunity to review and comment on draft Rules and thanks you for seeking our input in this process.

Yours truly,

A handwritten signature in black ink, appearing to read 'Mark Benton', followed by a period.

Mark Benton, QC  
Executive Director  
Legal Services Society of BC