

Checklist

Legal Aid Ontario

PANEL STANDARDS REVIEW CHECKLIST: REFUGEE APPELLATE PANEL

Instructions

1. Please answer each question on this checklist to the best of your ability. It was created from the Legal Aid Ontario [Best Practices Guide](#).
2. For each answer, please indicate whether the file review raises concerns and/or if more information is required. If the file review does not raise concerns and no information is required, you can leave the answer blank.
3. If you are external to LAO, please submit the completed checklist, via:
 - Email: refugeestandards@lao.on.ca
 - Mail: Attention: Refugee and Immigration Panel Services
20 Dundas Street West, Suite 201
Toronto, Ontario
M5G2C2
 - Fax: 416-642-2273

Case information

Reviewer's name:

Lawyer's name or panel
application #:

Date:

Documents reviewed:

(Provide the certificate number, or other identifier, for each matter reviewed; the type of matter; and a list of the documents reviewed.)

Lawyer assessment

1. Reasonable efforts should be made to accommodate clients with special needs, including those who require interpreters and those with literacy or mental health issues.

Were there any indications that client(s) were people with special needs, and any indication as to whether the lawyer made reasonable accommodations for the client(s)?

Raise concerns

More information is required

2. Lawyers shall endeavor to act professionally with civility and decorum, avoid unreasonable delays, provide the client with the information necessary to make informed decisions, respecting their representation and respond promptly to reasonable inquiries from the client.

From the materials submitted, is there any indication of the following:

- Poor representation?
- Unprofessional conduct?
- Unreasonable delays?
- The lawyer's poor communication with the client?

Raise concerns

More information is required

3. Lawyers should act reasonably and refrain from pursuing issues that have no real prospect of success and that fail to advance the client's interests.

Did the lawyer pursue issues that failed to advance the client's interests or had no real prospect of success?

Raise concerns

More information is required

4. Lawyers should have knowledge of, and familiarity with, relevant legislation, including:

- IRPA and regulations,
- RAD, RPD, ID and IAD rules,
- Documents such as the *Charter of Rights and Freedoms*, *Federal Courts Act*, Federal Court Rules, and international conventions like the Refugee Convention Against Torture (CAT).

Did submissions or other aspects of their work indicate insufficient knowledge of relevant legislation, case law or resources?

Raise concerns

More information is required

Was there a failure to refer to significant relevant case law where appropriate?

Raise concerns

More information is required

Was there a failure to follow relevant rules and procedural requirements (e.g. RAD rules or Federal Court Rules)?

Raise concerns

More information is required

Do written submissions refer to the appropriate authorities?

Raise concerns

More information is required

5. Please provide comments or specific examples that support the decisions above in questions 1 to 4.

6. The lawyer (or person acting under the lawyer's direct supervision) should in most cases meet with the client at the first opportunity. They should explain the legal process, obtain the record and any available and permissible new evidence, and explore possible issues for argument.

Does it appear that the lawyer did not meet with the client?

Raise concerns

More information is required

Is there any indication the complete record was not obtained by the lawyer?

Raise concerns

More information is required

Is there any indication efforts were made to obtain new evidence?

Raise concerns

More information is required

In the case of a stay, is the necessary evidence, including with respect to irreparable harm, attached to the affidavit?

Raise concerns

More information is required

7. The lawyer and anyone acting under her or his supervision should be alert to potential linguistic, cultural or mental health issues that could affect the giving of instructions and/or the preparation or substance of the case. The lawyer should make reasonable accommodations or take reasonable steps, such as providing an interpreter, or providing appropriate referrals to medical or mental health practitioners and/or other relevant community resources.

Were there any medical or psychological reports, or other evidence of the client's particular status obtained and referred to in submissions?

Raise concerns

More information is required

Did the appellate arguments relate to the improper consideration of the client's particular status and if so was adequate evidence obtained (e.g. gender guidelines not considered by Board member)?

Raise concerns

More information is required

Are there any other indications from the materials submitted that accommodations were made for the client's particular status?

Raise concerns

More information is required

8. Ensure that the client understands the procedures, role and powers of the relevant tribunal or court, and is provided with a realistic assessment of likelihood of success and possible legal alternatives and/or recourses.

Is there any indication from any affidavits filed, written submissions or other materials that the lawyer explained the appellate process to the client and gave them choices, if available and appropriate?

Raise concerns

More information is required

Is there anything to suggest that the particular application (e.g. JR/RAD appeal) was not the appropriate remedy for the client?

Raise concerns

More information is required

9. It is important to remain alert to potential and actual conflicts of interest that would result in an inability to represent the client.

Is there anything in the record that raises a potential conflict of interest?

Raise concerns

More information is required

Are there any references to potential/actual conflicts of interest anywhere in the record/submissions?

Raise concerns

More information is required

If yes, is there any indication that counsel dealt with that issue appropriately?

Raise concerns

More information is required

10. Seek relevant disclosure as soon as possible from previous counsel and from the first instance tribunal, and may also, in appropriate circumstances, seek disclosure under the *Privacy Act* or the client's file from the IRB, CIC, CBSA and/or CSIS.

Is the decision under review/appeal included in the application record?

Raise concerns

More information is required

Do the indices reveal that sufficient evidence was submitted to support the arguments?

Raise concerns

More information is required

Is there any indication that the lawyer made requests to obtain the client's file from the previous counsel, or that they requested disclosure from IRB, CIC etc.?

Raise concerns

More information is required

11. Make every effort to meet statutory and/or court-imposed deadlines. If a deadline is missed through no fault of the client, one must make the best effort to protect the client's rights and one must accept responsibility before the tribunal or court when appropriate.

Is there any indication from the record that a deadline was missed?

Raise concerns

More information is required

If so, did the lawyer file the appropriate motions to extend these deadlines?

Raise concerns

More information is required

Did the lawyer take responsibility, where appropriate?

Raise concerns

More information is required

12. Please provide comments or specific examples that support decisions related to questions 6 to 11.

13. Prior to finalizing a record, one should develop a sensible and coherent theory of the case, and should prepare clear and effective written submissions that support the matter and address the relevant legal, factual and evidentiary issues raised by the application, relying on appropriate jurisprudence.

Do the written submissions reflect a coherent theory of the case?

Raise concerns

More information is required

Memorandum of argument/facts

Are the facts clearly presented?

Raise concerns

More information is required

Do the facts focus on issues relevant to the argument presented?

Raise concerns

More information is required

If new evidence is provided, do the facts properly outline those surrounding the receipt of that evidence by the applicant and/or their counsel?

Raise concerns

More information is required

In the case of judicial review, do the facts address only matters that were before the decision maker?

Raise concerns

More information is required

Issue identification

Have the most cogent issues been identified? (e.g. legal errors, procedural fairness issues, new evidence availability)

Raise concerns

More information is required

Have the issues been persuasively framed?

Raise concerns

More information is required

Argument

Have the issues been persuasively argued?

Raise concerns

More information is required

Do the arguments display accurate knowledge of the law on the applicable issues?

Raise concerns

More information is required

Has case law been cited in support of the arguments raised?

Raise concerns

More information is required

Does the case law cited support the arguments raised?

Raise concerns

More information is required

Are the cases cited still good law, or have they been overturned?

Raise concerns

More information is required

Where appropriate, has reference been made to leading authorities?

Raise concerns

More information is required

Where appropriate, has reference been made to the record including both documentation and oral testimony?

Raise concerns

More information is required

Affidavits and attachments

Have the required affidavits and attachments been submitted to support the application?

Raise concerns

More information is required

Are the affidavits clearly written?

Raise concerns

More information is required

Are the affidavits sworn by the applicant when appropriate?

Raise concerns

More information is required

Have the affidavits and their attachments been appropriately tailored to address the issues relevant to the application? For instance:

Raise concerns

More information is required

- if new evidence is attached, an explanation of why the evidence was not reasonably available at the time of the RPD
- If there is reference to oral testimony given before the RPD, an excerpt from the transcript is attached or the appropriate time reference to the hearing recording is provided

Do the affidavits inappropriately contain new evidence that was not before the decision maker?

Raise concerns

More information is required

Have affidavits of interpretation been submitted where the applicant's language is not English?

Raise concerns

More information is required

In the case of judicial review, did the lawyer seek to certify questions of general importance, where appropriate?

Raise concerns

More information is required

Is the writing sufficiently clear, with appropriate headings and subheadings, and free of grammar and syntax errors to ensure maximum effectiveness?

Raise concerns

More information is required

14. Evidence and written submissions should be disclosed in a timely manner.

Is there any indication that evidence was not obtained in a timely manner?

Raise concerns

More information is required

Does any of the evidence undermine the client's argument?

Raise concerns

More information is required

Were any affidavits provided to support the arguments or attached documents to be relied on in the appeal/JR as exhibits?

Raise concerns

More information is required

15. In both written arguments and at any hearing, the lawyer is expected to represent the client's interest fearlessly and competently, including by:

- bringing forward relevant motions
- raising objections where necessary or appropriate
- fully questioning witnesses, and
- providing fulsome but appropriate submissions addressing all the "live issues" at stake.

If an oral hearing was held:

Raise concerns

- is there anything to suggest that the appellant was not properly prepared to testify?
- is there anything on the record to suggest that counsel was inadequately prepared and/or provided insufficient oral submissions when these were required

More information is required

Do the submissions, oral and/or written, indicate that the lawyer adequately addressed all the "live issues" at stake?

Raise concerns

More information is required

16. As a general matter, lawyers should take advantage of statutory opportunities to file submissions in reply.

Were reply submissions filed, if appropriate?

Raise concerns

More information is required

Do the reply submissions appear to respond to arguments raised by the respondent or do they merely repeat what was in the applicant's original factum?

Raise concerns

More information is required

17. The client should be kept apprised of any significant developments in the case.

Is there any indication from materials filed that the client was not kept informed of developments in the case?

Raise concerns

More information is required

18. One should advise the client of the outcome of the case, explaining it where necessary, and should advise of the availability of further procedures.

Is there any indication that the client was not advised of the outcome of the case or availability of further procedures?

Raise concerns

More information is required

19. Please provide comments or specific examples that support the decisions above in questions 13 to 18.

20. Overall comments:

Recommendation based on the overall review:

Meets panel standards

Does not meet panel standards

More information is required

Personal information in this form is collected under the authority of section 84 of the *Legal Aid Services Act* and is used in the general administration of the payment of lawyers accounts including: case management, application of block fees and tariff, discretion, reviews, disbursement authorization, expedite requests, late billing, hard cap, and recoveries; and, is used in the panel management of lawyers including investigations, panel suspension, and panel removal. Questions about this collection should be directed to the FIPPA coordinator, 40 Dundas Street West, Suite 200, Toronto, ON, M5G 2H1, 416-979-1446 or 1-800-668-8258.