



March 15, 2019

Via email: richard.wex@irb-cisr.gc.ca

Richard Wex
Chairperson, Immigration and Refugee Board of Canada
Minto Place, Canada Building
344 Slater Street, 12th Floor
Ottawa, ON, K1A 0K1

Dear Mr. Wex:

Re: Less Complex Claims: The Short-hearing Process

I write on behalf of the Immigration Law Section of the Canadian Bar Association (the CBA Section) to comment on the Immigration and Refugee Board's (IRB) new short-hearing process for claims at the Refugee Protection Division.¹

The CBA is a national association of 36,000 members, including lawyers, notaries, academics and law students, with a mandate to seek improvements in the law and the administration of justice. The CBA Section has approximately 1,000 members practicing in all areas of immigration law. Our members deliver professional advice and representation on the Canadian immigration system to clients in Canada and abroad.

The CBA Section commends the IRB for implementing a plan to reduce its backlog and enhance the efficiency of its refugee decision-making process including by streamlining certain cases for acceptance based on a file-review process instead of a hearing.

While we appreciate the need for efficient hearings, we have concerns about the short-hearing process. This process involves a "focused hearing," generally completed within two hours, for cases with "one or two issues which appear to be determinative of the claim."² Because short hearings can lead to negative outcomes, procedural fairness safeguards must be in place, including:

- Disclosure of the criteria used to select the case for a short hearing;
- Disclosure to the claimant of the one or two issues of focus in advance of the hearing; and,
- Flexibility to change a short hearing to a full hearing if at any time before or during the hearing it becomes apparent the case is complex and additional time is needed to consider it fully and fairly.

¹ IRB, "Less Complex Claims: The Short-hearing and file-review processes," [online](#).

² *Ibid.*

Disclosure of Selection Criteria

We recommend that the IRB disclose any criteria used to select a case for a short hearing, so claimants can understand the rationale for selecting their case. The IRB's current procedures on the streamlining of less complex cases are ambiguous. They state: "the list of countries and claim types" considered appropriate for the short-hearing process is "a guide only, as a claim that does not match a country or claim type that is on the list may be chosen for a short hearing or vice-versa."³ Greater transparency is needed to ensure the IRB is not inappropriately predisposed to selecting certain cases from particular countries for this process.

Disclosure of Issues of Focus

Since claimants will only have a limited time to make their case, the CBA Section recommends that the procedure require the IRB to notify claimants of the one or two issues their short hearing will focus on in advance. By allowing claimants to prepare arguments on the relevant issues, this disclosure would improve the efficiency and fairness of these hearings.

Flexibility to Convert a Short Hearing to a Full Hearing

The CBA Section also believes that Board Members must allow a case initially selected for a short hearing to be converted to a full hearing if at any time it becomes apparent the case cannot be adjudicated fairly and fully in a short hearing. Currently, the IRB requires claimants to "immediately make an application to change the hearing time" if they are of the opinion that a claim cannot be completed within two hours.⁴ Counsel may be able to make this determination before the hearing in some cases. In others, a determinative issue may arise at the hearing itself based, for example, on the claimant's testimony. Conversion to a full hearing must be allowed in these cases if it is justified considering all circumstances.

The CBA Section urges the IRB to add safeguards to its short-hearing process to ensure every refugee claimant's constitutional right to a fair hearing is protected. We will be monitoring this process closely and may offer additional feedback in the future based on our observations.

Yours truly,

(original letter signed by Nadia Sayed for Marina Sedai)

Marina Sedai
Chair, Immigration Law Section

³ IRB, "Procedures for Implementing the Instructions Governing the Streamlining of Less Complex Claims at the RPD," p. 2, [online](#).

⁴ *Ibid.*