



THE CANADIAN
BAR ASSOCIATION
L'ASSOCIATION DU
BARREAU CANADIEN

February 02, 2024

Via email: Engagement@irb-cisr.gc.ca

Christian Laverdure
Director General
Operations and Regional Services
Immigration and Refugee Board of Canada

Dear Christian Laverdure:

Re: Designated Representative Quality Assurance Framework

I am writing on behalf of the Immigration Law Section of the Canadian Bar Association (the CBA Section) to comment on the Immigration and Refugee Board's consultation on the Designated Representative (DR) Quality Assurance framework.

The CBA is a national association of 37, 000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Section has approximately 1,100 members across Canada practicing in all areas of immigration and refugee law.

The CBA Section is grateful for the invitation to comment on the Board's complaint process with respect to DRs. The proposed framework, paired with adequate training and continued education, is essential to protect the rights of the most vulnerable individuals before the IRB, namely minors and those who are unable to appreciate the nature of proceedings.

THE COMPLAINT FORM

User-friendliness of the draft framework

As drafted, the complaint process appears intimidating for a complainant who is not a lawyer or other professional. This is especially true in circumstances where the complainant is the person for whom a DR has been appointed and where a power imbalance is perceivable. The CBA Section recommends a plain-language approach to ensure the process is accessible for self-represented complainants without legal training.

The Complaint Form uses language that is overly formal and repeatedly refers or hyperlinks to the *Code of Conduct for Designated Representatives* (the Code). Few complainants are familiar with the

Code, making the document intimidating and confusing. For example, page 1 of the Complaint Form asks the complainant disclose the “Date(s) on which you believe that the designated representative has not respected the standards of conduct and other obligations that govern their responsibilities, as set out in the Code of Conduct for Designated Representatives.” The CBA Section recommends that the reference to the Code be replaced with a plain language summary of the expected responsibilities of a DR and standards of conduct. This will enable complainants to frame their concerns and highlight relevant information in the complaint.

We have similar concerns with the wording of question 2. We appreciate the use of headings and checkboxes, which guide complainants in identifying the types of conducts deemed problematic. However, requiring complainants to identify the breached sections of the *Code of Conduct* detracts from the user-friendliness. For an individual whose first language is neither English nor French, or who has little or no legal knowledge, this requirement will create unnecessary hardships. The CBA Section suggests that question 2 be amended and simplify the language of the Code. For example, under the heading of “Conduct of Designated Representatives” in question 2, we recommend simplifying this text:

Conduct of Designated Representatives

- 6. Designated representatives are expected at all times to act honestly and in good faith. They must act in a professional and ethical manner in their dealings with the subjects they represent as well as IRB personnel and other participants in IRB proceedings.
- 7. Upon acceptance of a contract to be a designated representative or upon designation by the IRB, designated representatives are expected to meet with the subject as soon as possible, remain in regular contact with them throughout the term of their designation, and come prepared to all proceedings.

replacing it with:

Conduct of Designated Representatives

- Did the designated representative act in an honest and truthful way? Were they professional and ethical when interacting with others in regards to the IRB process?
- After the designated representative was appointed to help the subject in the IRB process, did they meet with them as soon as possible? Did they stay in regular contact, either by email, phone or in person, after this and did they come prepared to meetings and at the hearing?

The attached Complaint Form proposes plain language wording throughout.

The CBA Section also suggests that the Complaint Form be amended to include a question or area to suggest remedies (e.g. a new hearing with a new DR or an adjournment of scheduled proceedings).

THE DRAFT FRAMEWORK

Timeliness of the complaint process

Section 6.3 of the framework indicates that complaints will be dealt with “as quickly as thoroughness permits.” To increase fairness in proceedings, the CBA Section recommends that the IRB adopt firm timelines and reference them throughout the process. For example, when a

disclosure deadline or hearing is scheduled, it is too late for the DR internal review to be finalized after these deadlines as this would compromise fairness of the proceedings.

Additional clarification and detail required for elements of the DR complaint process

The framework offers insufficient detail on the DR complaint process. For example, it is unclear how the complaint is investigated, including who conducts the internal review, who is notified of the complaint, and who can disclose information or a response. Section 4.2 of the framework contemplates a role for the Registrars in managing the complaints, but it is unclear who conducts the internal review itself. The CBA Section recommends that this be clarified in the framework.

We worry that registry officers may not have the legal knowledge and experience required to assess or appropriately investigate a complaint.

The framework is silent on the issue of notification of a complaint. The CBA Section recommends adding information on whether the subject and counsel will be notified (when they are not the complainants) and on their ability to respond to the complaint. The framework is also silent on notification and response in cases where systemic issues have been identified about a particular DR. Disclosure and the opportunity to respond are important facets of procedural fairness. This obligation is heightened in light of the substantive and procedural rights at stake for subjects in IRB proceedings.

The framework is also silent on the impact of filing a complaint on the guarantee of fairness in the IRB proceeding. For example, would the IRB process and hearing be suspended while the investigation is ongoing? The CBA Section believes it would be inappropriate to proceed in cases where a DR is alleged to not be fulfilling their responsibilities or acting inconsistently with the *Code of Conduct*. We recommend that this be clarified with section 5: Components of the Quality Assurance framework.

We would be pleased to discuss our recommendations, offer additional insights and assist with any further development or feedback.

Yours truly,

(original letter signed by Véronique Morissette for Gabriela Ramo)

Gabriela Ramo
Chair, Immigration Law Section

cc. Salim Saikaley (email: Salim.Saikaley@irb-cisr.gc.ca)