



March 31, 2010

Colleen Mahoney
Communications Directorate
Immigration and Refugee Board of Canada
344 Slater Street
Ottawa, ON K1A 0K1

Dear Ms. Mahoney,

Re: Designated Representatives at the Immigration and Refugee Board

On behalf of the Citizenship and Immigration Section of the Canadian Bar Association (CBA Section), I am writing in response to your February 15, 2010 email request for feedback regarding the use of Designated Representatives (DRs) at the Immigration and Refugee Board. Thank you for the opportunity to provide our comments. We agree that the issues raised by the other stakeholders are the appropriate ones to be addressed by the IRB in its examination of this topic, namely:

- DRs do not always understand their role and responsibilities;
- the timing of the appointment of the DR is problematic;
- the same DR is not always appointed to represent an individual through all processes before the Board;
- there are inconsistencies in the DRs' required qualifications.

We provide further details explaining our concerns and specific examples below.

Background

Subsection 167(2) of the *Immigration and Refugee Protection Act* provides for the appointment of a representative for:

- Persons under 18 years of age;
- Persons unable to appreciate the nature of the proceedings.¹

¹ *Guide to Proceeding before the Immigration Division* (August 2005): www.irb-cisr.gc.ca/eng/brdcom/references/legjur/idsi/guide/Pages/idguide07.aspx

Chapter 7 of the IRB procedural guide addresses the role of the DR and appointment procedure for each category of person for which a DR may be appointed.

CBA Section Commentary

Chapter 7 is an important resource for clarifying the role of the DR. However, the issues raised by our members are consistent with those raised by other stakeholders. The role and responsibilities of DRs may not always be clear, particularly where minors and their parents are all before the Refugee Protection Division. Appointing the parents as a minor's DR is a formality at the beginning of the hearing and the child's best interests are usually omitted from the discussion by all parties. We recommend that RPD protocol should require that the tribunal officer or member ask parents at the end of questioning, "As DRs for the children, is there anything you wish to add concerning the physical or emotional harm the children would face if returned to country X?" This would ensure that the children's interests are given some separate consideration in the hearing.

Regarding the timing of the DR's appointment, Chapter 7, section 7.3.1 notes:

Rules 3(o) and 8(1)(m) provide that the Minister must inform the Immigration Division if he or she believes that a person who is to be the subject of an admissibility hearing or a detention review is less than 18 years of age or is unable to appreciate the nature of the proceedings.

We believe the appointment of a DR for refugee claimants should also take place at the eligibility interview stage, be it an inland or a port of entry claim. This would avoid creating unjust ineligibility decisions because of lack of understanding of the claimant's situation. When the appointment is not made at an early point, it becomes difficult to ensure that DRs assist refugee claimants with preparing the Personal Information Form that outlines their circumstances and their fear of persecution.

Rule 19 of the Immigration Division Rules sets out the qualifications for a person to be designated as a representative. The person must:

- be 18 years of age or older;
- understand the nature of the proceedings;
- be willing and able to act in the best interests of the permanent resident or foreign national;
- not have interests that conflict with those of the permanent resident or foreign national.

The CBA Section is concerned that these requirements are too minimal and that unaccompanied minors in particular may not always be provided with qualified DRs. Clearly, every DR must possess the experience and expertise required to fulfill their mandate. For instance, Quebec benefits from a publicly funded provincial agency with the mandate for providing DRs. The IRB and the other parties systematically refer cases to this agency to designate a social worker. This system works well, as it relies on professional social workers

who develop an expertise that enables them to participate effectively. This commendable program could serve as a model for other provinces. In all cases, DRs should be provided sufficient government support and training to fulfill their role.

Again, thank you for the opportunity to provide our views. We hope they are helpful to the working group, and we would be pleased to provide further input as it continues work on this important subject.

Sincerely,

(original signed by Kerri Froc for Stephen Green)

Stephen Green
Chair, National Citizenship and Immigration Law Section