



# IRB NEWS

IRB News is the latest newsletter at the IRB.

Its goal will be to keep our partners, including counsel who appear before the Board, up-to-date on developments at the Board which have a national impact.

Over the last year, the IRB has communicated information about the Chair's Action Plan for the RPD through regional and national editions of *Lexchange*. With the introduction of *IRB News*, *Lexchange* will return to its focus on regional issues affecting Toronto, Vancouver and Calgary.

If you have any questions about *IRB News*, please contact the Communications Directorate at (613) 947-2965.

## Chairperson's New Policy

In our April 2003 issue of *Lexchange*, we informed you of two new policies related to other tools for institutional decision-making, the jurisprudential guides: the *Policy on the use of jurisprudential guides* and the *Policy on Higher Court Interventions*.

On October 27, 2003, the Chairperson issued the *Policy on the use of Chairperson's Guidelines*. This new policy sets out the framework that guides in which circumstances the exercise of the Chairperson's authority may be carried out and the process for deciding to issue guidelines.

## Chairperson Issues Three Guidelines for Refugee Protection Division

On October 30, 2003 the Chairperson of the IRB issued three Guidelines to assist members of the Refugee Protection Division (RPD) in carrying out their duties under the *Immigration and Refugee Protection Act (IRPA)*. The power of the Chairperson to issue Guidelines pursuant to s.159(1)(h) is a vital tool for the IRB to promote its vision of simple, quick and fair justice in deciding claims for Canada's protection. In a recent decision<sup>1</sup> the Supreme Court of Canada affirmed the value of guidelines in shaping the decision-making process of administrative tribunals. Members are expected to apply Guidelines unless there are compelling or exceptional reasons to depart from them<sup>2</sup>.

The release of these Guidelines is significant for the Board. In issuing Guidelines, the Chairperson is providing a clear statement about the objectives and direction of the Board. Since the Board's creation in 1989, Guidelines have been released by the Chairperson on four previous occasions. For what is now the RPD, Guidelines were issued in relation to gender-related persecution; procedural and evidentiary questions in relation to claims involving children; and civilian non-combatants in civil war situations<sup>3</sup>.

## Chairperson issues 3 Guidelines... Continued from page 1

For what is now the Immigration Division, Guidelines on detention<sup>4</sup> were issued.

The decision to issue the current Guidelines arises out of a need to affirm the values of the RPD as an administrative tribunal, as opposed to a court, committed to fairness, less formality and the fulfilment of its inquisitorial mandate. These values are at the core of the Chairperson's Action Plan for the RPD, which we have outlined in previous editions of *Lexchange*. Accordingly, the issuing of Guidelines is an essential step in the implementation of the Action Plan. In addition to affirming tribunal values, the Guidelines also express the objective of the RPD to devote more of its limited resources to dealing with the substantive merits of claims for protection, rather than on the pro-

cedural measures leading up to a hearing of a claim. It is for this reason that the Guidelines provide clear direction on procedural questions.

The Guidelines were created with extensive internal and external consultation. National and regional stakeholder groups were provided with opportunities to make comments. Many comments were received and the comments were taken into account in the drafting of the Guidelines. Many stakeholders suggested that the Guidelines should address the needs of unrepresented claimants and otherwise vulnerable claimants more explicitly. This suggestion to take these two groups into account has been recognized in the final version.

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<sup>1</sup>*Bell Canada v. Canadian Telephone Employees Association*, 2003 SCC 36

<sup>2</sup>*Fouchong v. SSC.*, (F.C.T.D., no. IMM-7603-93), MacKay, November 18, 1994

<sup>3</sup>*Women Refugee Claimants Fearing Gender-Related Persecution*, March 1993 (updated November 1996). *Civilian Non-Combatants Fearing Persecution in Civil War Situations*, March 1996. *Child Refugee Claimants: Procedural and Evidentiary Issues*, September 1996.

<sup>4</sup>*Guidelines on Detention*, March 1998

## Guideline 5: Providing the PIF and No PIF Abandonment in the Refugee Protection Division

This Guideline assists members in ensuring the timely receipt of the Personal Information Form (PIF). The RPD cannot examine a claim until it has received the corresponding PIF. When PIFs are not provided on time, the RPD has to devote resources to obtaining the PIF which would be better directed to dealing with the substantive merits of the claim. The Guide-

line provides members with criteria to consider when dealing with applications to extend time to provide the PIF.

**This Guideline takes effect on October 30, 2003.**

## Guideline 6: Scheduling and Changing the Date or Time of a Proceeding in the Refugee Protection Division

In order to best focus its efforts on dealing with the merits of claims for protection, the RPD has to be able to retain effective control over the hearings schedule. The Guideline assists members in proceeding with scheduled hearings by outlining the mechanism to ensure that the RPD both respects the right to counsel and schedules claims for hearing as and when the RPD is ready to proceed with the hearing. The RPD will continue its collaborative approach with counsel in scheduling hearings. However,

where counsel do not work with the RPD, or take on so many clients as to impede the efforts of the RPD to work efficiently, the RPD may schedule claims without seeking the agreement of counsel. The Guideline also provides members with criteria to consider when dealing with applications to change the date or time of a scheduled claim.

**This Guideline takes effect on December 1, 2003.**

## Guideline 7: Preparation and Conduct of a Hearing in the Refugee Protection Division

This Guideline ensures that the inquisitorial mandate of the RPD is realised as soon as the claim is received, through its preparation for hearing and in the course of the hearing itself. As soon as a PIF is received, a claim is screened and a preliminary identification of the key issues is made. Research is conducted where appropriate and the Screening Form and disclosure are provided to the parties. The Guideline creates a seamless process which then culminates in the RPD leading the inquiry in the hearing room. The purpose of the RPD in changing the order of questioning is to allow the RPD to make the best use of its expertise as a specialist tribunal by focusing on the issues which it has identified as determinative.

The role of counsel changes with the Guideline. However, counsel continues to play a vital role in this process by preparing the claimant for hearing, questioning on areas which may

clarify topics already covered by the Refugee Protection Officer or member in their questions, and by making focused representations on how the evidence is to be interpreted by the member.

As a result of the process of consultation with stakeholders, the Chairperson has decided that this Guideline will take effect in phases. **On December 1, 2003 paragraphs 1-18 and 24 -27 take effect. The paragraphs which govern the order of questioning (paragraphs 19-23) do not take effect until June 1, 2004.** What this means is that from December 1, 2003 until May 31, 2004 members will suggest to the parties that the order of questioning set out in the Guideline be followed in the hearing. When parties consent, the order of questioning outlined in paragraphs 19-23 will be followed.

***Guideline 7... continued from page 3***

If a party does not consent, then counsel for the claimant will commence questioning. This 6-month phase-in period provides an opportunity for members, RPOs and counsel to get used to this change in the approach to conducting hearings, and to adjust their prepara-

tion and questioning accordingly. As of June 1, 2004, the consent of parties will no longer be sought and the order of questioning outlined in the Guideline will be followed.

The implementation of these Guidelines and policy is an important step forward for the RPD in its efforts, on behalf of Canadians, to improve the quality and efficiency of the protection determination system in Canada.

**The Guidelines and related policy can be viewed at [www.irb.gc.ca](http://www.irb.gc.ca) under “What’s New.”**