



IRB NEWS

The goal of *IRB News* is 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 Chairperson's Action Plan for the Refugee Protection Division 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.

RPD Guidelines: Practical Tips

In the last issue of *IRB News* we highlighted the release of three Chairperson's Guidelines for the Refugee Protection Division (RPD). The issue focussed on the context in which the Guidelines were issued, as well as providing a brief summary of the purpose of each guideline.

In this issue we would like to provide practical tips to counsel and their claimants about meeting the requirements of the Guidelines when

preparing and presenting claims to the RPD. The Guidelines are aimed at achieving focused and streamlined preparation and conduct of hearings. This will support the Board's efforts and resources to be directed more towards determining the merits of claims and less on procedural steps leading to the hearing of claims. Parties and counsel have a vital role to play in contributing to a more focussed and streamlined protection determination process.

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

Points to note:

- The 28 day time limit runs from the time the claimant receives the PIF. In most cases the claimant is handed the PIF kit in person. In those rare cases where the PIF is mailed by CIC, a deemed service period of 7 days is added to the 28 days. Note that under the

RPD Rules (ss.6(2), 35(1)), the PIF must be received by the RPD before the close of business on the date it is due.

- If counsel is concerned that the deadline cannot be met, an extension should be applied for at the earliest opportunity. If the application for an extension is not made within the 28 days, an abandonment hearing will automatically be scheduled and the application for an extension will be dealt with at the hearing.
- Where an abandonment hearing is scheduled, providing the PIF to the RPD in the interim is not a substitute for attending. The claimant must attend or risk having the claim declared abandoned.

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

This 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 Guideline also provides members with criteria to consider when dealing with applications to change the date or time of a scheduled claim.

Points to note:

- RPD will attempt to work with counsel and accommodate counsel availability, but if counsel cannot provide dates within the time frames that the RPD needs in order to give reasonable notice of a hearing, then the RPD may schedule regardless of whether counsel is available. The best way to avoid this is for counsel to respond to requests for hearing dates from RPD scheduling clerks as promptly as possible and with maximum flexibility.
- Where a claimant seeks to retain counsel and already has a date scheduled, we suggest that counsel accept the retainer for the proceeding only if counsel is available and ready to proceed on that date. Alternatively, if counsel is not available, but is prepared to apply to change the scheduled date on behalf of the claimant, it assists the RPD if counsel specifies that s/he is retained only for the limited purpose of making the application to change the date. Counsel should instruct the claimant to seek alternate counsel as soon as possible.
- The party making an application to change the date of a hearing has the onus of showing why it should be changed, and thus applications must be supported by evidence if the onus is to be met. The application process is not formal – it is generally not necessary to provide a statutory declaration – but the information in support of the application must be sufficiently detailed, precise and reliable as to meet the standard of credible and trustworthy evidence. Applications which are lacking in detail or corroborative information which would normally be available are more likely to be refused than ones which are clear and supported by relevant information.

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 from the point of receipt of a claim, through its preparation for hearing and in the course of the hearing itself.

Points to note:

- The RPD continues to have concerns about disclosure that is not timely, is not limited to relevant issues or does not follow the form required by the Rules. The Guidelines now indicate that members will not admit irrelevant documents into evidence. The best way for counsel to ensure that the documents are considered by the panel is to limit them to relevant issues and provide them on time. In addition, each party must provide a single, comprehensive list of numbered documents, as members will not spend time in hearings writing out lists of the documents provided by the parties. The RPD can provide a form for this purpose.
- There are a number of measures in the Guidelines to make more efficient use of hearing time:
 - ⇒ Counsel and their clients should arrive well in advance of the hearing in order to enable hearings to start on time. If a party or counsel does not appear within 15 minutes of the scheduled start time, the RPD may commence abandonment proceedings.
 - ⇒ In advance of the hearing, Board interpreters will speak with claimants in order to ensure that they understand one another, as well as to explain the role of the interpreter in the hearing process. Interpreters will use a standard script which, amongst other things, advises claimants to speak slowly and ask questions if they are confused.
 - ⇒ The script also explains that the role of the interpreter is neither that of an advocate nor a decision-maker.
 - ⇒ Ordinarily the RPD will administer a solemn affirmation to a claimant or other witness. If a claimant or witness wishes to swear an oath on a holy book, they have the responsibility of bringing a holy book to the hearing.
- Changes to the order of questioning (where the RPD will lead the questioning) will be phased in. From December 1, 2003 to May 31, 2004 the approach set out in the Guideline will not be mandatory – counsel will be asked if they consent to this approach. From June 1, 2004 the order of questioning will be as it is set out in the Guideline. This six month phasing-in period is not a pilot project. Rather, it provides an opportunity for everyone – counsel, RPOs and RPD members – to adjust to changes. We strongly suggest that counsel take advantage of the opportunity to get used to the future approach to hearings by consenting to the Guidelines approach and refining preparation and hearing skills in light of a different way of hearing a claim.

The comments above only cover some of the areas of practice that are affected by the release of the Guidelines. To get the full scope of the Guidelines, please refer to the Guidelines themselves.