



Submission to the Standing Committee on Citizenship and Immigration for their study on the Immigration and Refugee Board's Appointment, Training and Complaint Processes

This written submission is provided to the House of Commons' Standing Committee on Citizenship and Immigration Committee in the context of the study the Committee decided to undertake in February 2018 of the Immigration and Refugee Board's (IRB) appointments processes, training for board members, particularly as those processes relate to the cultural sensitivity, sexual orientation, gender identity and gender expression sensitivity, and complaints processes.

1. Importance of the IRB as a quasi-judicial tribunal

The Canadian Council for Refugees recognizes that Canada is fortunate to have an independent expert quasi-judicial tribunal, such as the Immigration and Refugee Board, responsible for refugee determination.

A quasi-judicial tribunal is the minimum level of institutional structure appropriate to hear refugee claimants, given the gravity of the rights issues at stake. The IRB has particular expertise in refugee determination, which involves complex issues of law and facts, and where a wrong decision can cost a person their life.

The IRB has earned a reputation around the world as a model for refugee determination. Many other countries turn to Canada's IRB to improve their own refugee determination systems.

We welcome the IRB's ground-breaking work on improving refugee determination, notably through its Chairperson's guidelines on gender and sexual orientation and gender identity and expression (SOGIE). The IRB's 1993 Gender Guidelines, addressing the situation of refugee women fleeing gender-based discrimination, were the first such guidelines in the world, and inspired many other countries. More recently, the IRB Chairperson issued SOGIE guidelines in 2017, an important innovation that CCR had been recommending for decades. The guidelines help to contribute towards making Canada's refugee determination system fairer and more sensitive to diverse refugee claimants.

The CCR is deeply concerned about suggestions that Canada's refugee determination system might be changed in order to take all or some of the decision-making role away from the IRB. Like any institution, the IRB has shortcomings and needs to improve many aspects. Identification of these shortcomings must not be used as a rationale for undermining the crucial role of the IRB in ensuring Canada protects refugees.

2. Addressing shortcomings in individual decision-makers

The IRB must contend with members whose behaviour is problematic, on occasion or more systematically. This is a challenge that is not unique to the IRB. The CCR acknowledges the difficulty for any tribunal to deal effectively and appropriately with problematic behaviour, while respecting the independence of decision-makers.

The CCR welcomes the recent reform of the IRB's complaint process. The CCR had for many years raised concerns about the lack of effectiveness and lack of transparency in the previous complaints process, as well as

the reluctance of the IRB to publicize prominently the possibility of submitting complaints. Lack of confidence in the complaints process as well as potential negative consequences of complaining discouraged CCR members from bringing forward concerns themselves or encouraging affected persons to submit complaints.

The revised complaints process only came into effect in December 2017. It is too early to comment meaningfully on the new process and we suggest that the committee might defer judgment until there is some experience with this process.

3. Restitution measures for those affected

The CCR urges that priority be given to measures of restitution for people who may have been negatively affected by inappropriate conduct of Board members before whom they appeared. Where it is concluded that conduct was wrong, action must be taken with regard to those who have been wronged, including proactive measures to uncover other likely victims.

The new IRB Procedures for Making a Complaint about a Member refer to the Chairperson taking appropriate “follow-up actions” following the conclusion of the investigation, but there is nothing specifically indicating the IRB will follow up as appropriate with respect to injured parties, whether through an apology, or through more substantive measures.

4. Need for complaints mechanisms and training at IRCC and the CBSA

The CCR notes that the IRB is ahead of both IRCC and the CBSA with regards to complaints mechanisms. Neither agency has a clear and meaningful process to complain about misconduct. Both these agencies regularly interact with extremely vulnerable clients, including individuals dealing with mental health issues.

The CCR has long been calling for an independent complaint mechanism for the CBSA.¹

IRCC officials at visa offices around the world meet with and make crucial decisions affecting applicants' lives. These decisions include refugee determinations. Unlike refugee claimants appearing before the IRB, most applicants at visa offices are not represented by counsel, and in most cases there is no third party present who could support an applicant in raising the alarm about inappropriate conduct. Many overseas refugee applicants are not only unrepresented but are also dealing with mental health issues, including Post-Traumatic Stress Disorder (PTSD), contributing to their vulnerability. Within Canada, IRCC officials also make refugee determinations in the Pre-Removal Risk Assessment process. There is no transparent process through which a complaint can be made about an IRCC official.

IRCC and the CBSA would also benefit from following the IRB's lead in adopting SOGIE policies. The CCR calls on them to adopt comprehensive internal policies that promote fair, just and equitable treatment related to sexual orientation, gender identity and gender expression, and provide ongoing education on these policies.

More generally, CBSA and IRCC officials would benefit from increased training to ensure appropriate sensitivity to diverse individuals, including those dealing with mental health issues.

¹ See “Model for CBSA accountability mechanism recommended”, 17 March 2016, ccrweb.ca/en/release-model-cbsa-accountability-mechanism

5. Conclusion

The CCR is concerned to minimize the mistreatment of refugees and other vulnerable migrants in their dealings with the Canadian government, whether through the IRB, the CBSA or IRCC. Transparent, independent and effective complaints mechanisms and effective training are crucial measures in this regard. The IRB has taken some positive steps, which need to be reinforced and monitored. The CCR is conscious that refugees who are far from the public eye and unrepresented are at their most vulnerable. This includes individuals interacting with the CBSA and IRCC. We urge the Committee to consider the situation not only of refugees and others who have lawyers to speak up on their behalf, but also of those within Canada or overseas who are alone in their interviews with government officials.

