

CAPIC Submission on IAD's Procedures for Making a Complaint About a Member

CAPIC SUBMISSION-IRB CHAIRPERSON'S GUIDELINE 2: DETENTION



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Introduction

The Canadian Association of Professional Immigration Consultants (CAPIC) is the national advocacy group for Regulated Canadian Immigration Consultants (RCICs), founded on the pillars of Education, Information, Lobbying and Recognition. CAPIC's mandate includes providing continuing professional education about Canadian immigration matters and programs to their members, ensuring that they are better able to serve their clients and that consumer confidence is maintained. CAPIC Members are offered the best continuing Professional Development Education in the Industry. As the professional association for RCICs, CAPIC leads, connects, protects and develops the profession.

Preamble

The Immigration and Refugee Board of Canada (IRB) has launched consultation on a number of key files as part of its ongoing efforts to engage with stakeholders in a meaningful way on policies, initiatives and operational changes. The key files that are to be reviewed are the draft *Procedures for Making a Complaint about a Member* (the "Procedures") which are an attempt to establish a stated procedure for a complaint against an IRB Member for the contravention of the *Code of Conduct for Members of the Immigration and Refugee Board of Canada*. Currently members' conduct is governed by the IRB's *Protocol Addressing Member Conduct Issues* (last revision December 15, 2012).

The proposed Procedures will be replacing the Protocol once finalized. The consultations directly reflect the importance that the Immigration and Refugee Board places on stakeholders in contributing and developing the policy process. The Canadian Association of Professional Immigration Consultants will be focusing on the *Procedures for Making a Complaint about a Member* and respectfully recommends changing some provisions of the guidelines to be fairer and more transparent process of dealing with complaints about members.

Opinion/Input on Procedures for Making a Complaint about a Member

The Canadian Association of Professional Immigration Consultants having reviewed the *Procedures for Making a Complaint about a Member* commends the IRB for the proactive initiatives the Board is taking in ensuring and adapting policies to ensure both reflect the dignity of the procedures and members, as well as the integrity of the immigration system.

CAPIC fully supports the consultation and review process and respectfully request that the following modifications be taken into consideration when devising the final Guidelines. It is our view that by considering the points below in the final policy, IRB will produce a policy that is very sound, clear in process and fair to all stakeholders in the process while maintaining program integrity.



Recommendations for consideration:

Procedures for Making a Complaint about a Member

Recommendation: That an Office of Integrity is created, and a Director of the Office of Integrity (the “Director”) is appointed under the proposed Procedures, currently a complaint against a Member will have to be made to the “Member Manager” (an Assistant Deputy Chair).

Recommendation: That the creation of the Director directs the complaint away from the existing circle of Members and have the complaint handled by a designated person tasked for the handling of complaints. (I.e. an arm’s length relationship vs. peer-supervisory relationship). The Procedures could only improve the professional and impartial aspects of the complaint process.

Concern: The current complaint process under the Protocol involved the Member Manager (Assistant Deputy Chair, or a person acting as Assistant Deputy Chair); the Member Manager works with the Member being complained against on a daily basis and is located at the same office. Questions may arise as to whether the Member Manager is impartial enough to ensure procedural fairness and impartial decision. The Procedures takes the job of dealing with the complaint away from the Member Manager and places it with a designated person, Director of the Office of Integrity, who presumably is not working daily with the subject Member in the same office, which promotes a perceived impartial and procedurally fair decision of the complaint.

Concern: The Informal Resolution stage of the Protocol is maintained under the proposed Procedures (Para. 22, Procedures), and the Inquiry into Complaint stage of the Protocol is continued under the Procedures (Para. 23, Procedures). The Procedures further provides for a qualified, impartial person outside of the IRB be appointed by the Chair for investigation (Procedures, Para. 28, 29). The Chair may make a final decision in the complaint matter. The Procedures by-pass the involvement of the Member Manager (Assistant Deputy Chair), and the Division Head (Deputy Chair of a Division of the IRB) under the Protocol. Which can only be an improvement of the complaint handling process for the reasons above mentioned.

Application

4. A complaint may be made by any person including counsel, a party to IRB proceedings, IRB personnel or by the public.

Recommendation: CAPIC respectfully recommends including the following at the end of the policy: *‘who conduct business with IRB/who have interaction with IRB.’*

5. A complaint must be about the conduct of a member which is believed to be contrary to the Code of Conduct. A complaint cannot be about a member’s decision.

Recommendation: To add *‘under these Procedures’* between “A complaint” and “cannot be about a member’s decision.”

6. The conduct may have occurred inside or outside the hearing room.



Recommendation: To paraphrase the sentence in a way to state the following: *'The member conduct may have occurred inside or outside the hearing room within the premises of IRB.'*

Timelines

7. *Each step in the complaint process will be dealt with as quickly as fairness and thoroughness will permit.*

Recommendation: In order to maintain the integrity of the process it would be beneficial to add a tangible timeline for the complaint process.

Fairness

8. *The complaint process will be fair and objective to both the complainant and the member who is the subject of the complaint.*

Recommendation: Replace the following "is the" with 'became' to better reflect the meaning of the policy.

Role of the Director, Office of Integrity

10. *The Director is also responsible for administering the complaint process, making recommendations to the Chairperson, preparing public reports and performing other related duties.*

Recommendation: Kindly elaborate on what the "other related duties" are.

12. *The Director will ensure that the member, the complainant and the Assistant Deputy Chairperson and the Deputy Chairperson in the member's division receive copies of all correspondence and all other information related to the complaint at each stage of the process.*

Recommendation: In order to maintain the integrity of the process it would be beneficial to add a tangible timeline for each stage of the process.

Making a Complaint

14. *A complaint should include the complainant's name and contact information, the name of the member about whom the complaint is made, the IRB file number (if any), a description of the conduct and any other information which supports the complaint. It is not necessary to use a special form. An optional complaint form is attached as Annex B for the complainant's convenience.*

Recommendation: We kindly suggest revising the policy to exclude the following sentence: "It is not necessary to use a special form." Additionally, insert the following revision to reflect: *'A sample complaint form is attached as Annex B for the complainant's convenience, but is not mandatory to be used as a special form if the minimum information required as shown on the form is included.'*

15. *A complaint received from an anonymous source will be treated in the same manner as other complaints, to the extent that it is possible to do so, recognizing that anonymity may limit the IRB's ability to deal with a complaint and recognizing that fairness requires that members must be able to respond to a complaint.*



Recommendation: Kindly revise the following “*treated in the same manner*” to ‘*while all efforts will be made to treat it in the same manner.*’

Ongoing Proceedings

16. *A concern related to bias in an ongoing proceeding should be raised at the first reasonable opportunity with the member.*

Recommendation: In order to maintain the integrity of the process it would be beneficial to add a tangible timeline and/or deadline for the concern related to bias to be raised.

17. *Complaints will ordinarily not be dealt with until the proceedings at the IRB, including any appeal at the IRB, have been finalized. The Director, Office of Integrity, will ensure that the complaint is dealt with after the proceedings at the IRB have been finalized.*

Recommendation: In order to maintain the integrity of the process it would be beneficial to add a tangible timeline and/or deadline for the complaint.

18. *In exceptional circumstances, the Chairperson may decide that the complaint will be dealt with immediately, even though the proceedings have not been finalized.*

Recommendation: Kindly elaborate and provide examples of under which exceptional circumstances the Chairperson may decide that the complaint will be dealt with immediately.

Screening

19. *The Chairperson may dismiss a complaint after concluding that it is not serious enough to require attention or that these Procedures do not apply (see paragraph 5). The Chairperson also has the discretion to refuse to deal with complaints that may be better addressed through another process.*

Recommendation: Kindly define what is considered by “*not serious enough.*”

20. *The Chairperson will write to the complainant and the member to inform them that the complaint was dismissed and will explain why it was dismissed.*

Recommendation: Kindly elaborate what would happen if the complaint is anonymous and if there are multiple complaints.

21. *If the complaint was not dismissed under paragraph 19, the Chairperson may decide, after consideration of the gravity of the alleged misconduct and other relevant factors, to refer the complaint to a qualified, impartial person outside the IRB who will conduct an investigation and prepare a report for the Chairperson (see paragraphs 28 to 30). In all other cases, the Chairperson will refer the complaint to the Director, Office of Integrity.*

Recommendation: Kindly elaborate what the qualifications will be in choosing the “*qualified, impartial person.*”

Review and Decision by the Director, Office of the Integrity

26. *If a request was made under paragraph 25, the Chairperson will conduct a final review and will make a final decision on the complaint.*



Recommendation: In order to maintain the integrity of the process it would be beneficial to add a tangible timeline and/or deadline for the review.

Investigation by an Outside Party

28. As explained in paragraph 21, the Chairperson may refer the complaint for an investigation by a qualified, impartial person outside the IRB.

Recommendation: Kindly elaborate what the qualifications will be in choosing the “qualified, impartial person.”

Review and Investigation of Complaints

33. Provided that the principle of procedural fairness is respected, flexibility is permissible in conducting reviews and investigation of complaints. For example, interviews with the complainant and the member may take place but are not required in every case.

Recommendation: Kindly elaborate in defining what is meant by “flexibility is permissible.”



Conclusion

CAPIC-ACCPI commends the IRB's proactive approach of seeking stakeholder input via consultation sessions and the ability to provide submissions. We have recommended slight modifications which we hope the IRB will give due consideration to incorporating in the final policy for *Procedures for Making a Complaint about a Member*.

The Canadian Association of Professional Immigration Consultants (CAPIC-ACCPI) as a stakeholder appreciates IRB's ongoing collaboration and dialogue/consultation with the stakeholders in an effort to collectively address issues and policies for continued effectiveness of the tribunals' process and program integrity.

We thank IRB for the opportunity to provide this input in the drafting of important policy.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to be 'DI' followed by a stylized flourish.

Donald Igbokwe
President
CAPIC – ACCPI