

CAPIC Submission on SGM & IAD Rules

CAPIC SUBMISSION ON IRB CHAIRPERSON'S GUIDELINES ON
SEXUAL ORIENTATION AND GENDER MINORITY INDIVIDUALS &
IMMIGRATION APPEAL DIVISION RULES



Contents

| | |
|--|----|
| Introduction | 2 |
| Preamble | 2 |
| Opinion/Input on SGM and IAD Rules | 2 |
| Recommendations for consideration: | 3 |
| Chairperson's Guidelines 9: Proceedings before the Immigration and Refugee Board of Canada Involving on Sexual Orientation and Gender Minority Individuals..... | 3 |
| Immigration Appeal Division Rules | 10 |
| Rewriting the Rules in Plain Language | 10 |
| Comprehensive definition of Early Informal Resolution Processes and the role of the ERO | 11 |
| Active Adjudication | 12 |
| Applications..... | 12 |
| Additional Suggestions..... | 12 |
| Conclusion..... | 13 |

CAPIC-ACCPI



Introduction

The Canadian Association of Professional Immigration Consultants (CAPIC) is the national advocacy group for Regulated Canadian Immigration Consultants (RCIC), 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 begun launching 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 *Immigration Appeal Division (IAD) Rules*, and the *Chairperson's Guideline on Sexual Orientation and Gender Minority Individuals (SGM)*, *Chairperson's Guideline on Detention*, and the *Immigration Division Rules (ID)*. The consultations directly reflect the importance that the Immigration Refugee Board places on stakeholders in contributing and developing the policy process. The Canadian Association of Professional Immigration Consultants will be focusing on the *Immigration Appeal Division Rules* and the *Chairperson's Guideline on Sexual Orientation and Gender Minority Individuals*.

The Immigration Appeal Division Rules were last updated in June 2002 when the Immigration and Refugee Protection Act (IRPA) came into force. The consultations being undertaken are meant to confront and tackle the significant amount of backlog of appeals. It has led to unforeseen consequences of Appellants and their families facing long wait times, and the credibility of the immigration system is henceforth jeopardized by not having appeals dealt with in a timely manner.

In order for the IRB to ensure that the IAD Rules define the structure of the immigration appeal process and maintain its mandate to assist in reducing backlog and avoiding future ones, resolving more appeals without oral hearings, and strengthening access to justice; and ensuring the equality and safety of individuals as outlined in the *Chairperson's Guideline on Sexual Orientation and Gender Minority Individuals*, the Canadian Association has prepared the following submission with key recommendations how to ensure the safety, equality, and efficiency of both the SGM and IAD Rules.

Opinion/Input on SGM and IAD Rules

The Canadian Association of Professional Immigration Consultants having reviewed both the *Chairperson's Guidelines on Sexual Orientation and Gender Minority Individuals (SGM)* and the *Immigration Appeal Division Rules (IAD)* commends IRB for the proactive initiatives it is undertaking in ensuring and adapting policies to ensure both reflect the dignity of persons and the integrity of the immigration system.

CAPIC fully supports the consultation and review process respectfully request that 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 and highly efficient adjudicative system.



Recommendations for consideration:

Chairperson's Guidelines 9: Proceedings before the Immigration and Refugee Board of Canada Involving on Sexual Orientation and Gender Minority Individuals

2.4 There is no standard terminology that adequately captures the diversity within and between the evolving concepts of sexual orientation, gender identity and gender expression across different cultures and societies.

Recommendation: Have a manual that acts as a guideline for the IRB and the practitioners to keep uniformity in dealing with these diversities.

2.5 While the following terms and definitions are commonly-used, this list is not exhaustive and may change **over time**. Persons appearing in proceedings before the IRB may not be familiar with or identify with these terms. Individuals may identify with terms other than those listed below.

Recommendation: To allow a provision which clearly states the time line of how often the Guidelines are to be reviewed.

3.1 In proceedings before the Immigration and Refugee Board of Canada (IRB), decision-makers and other IRB personnel are to use appropriate language when addressing sexual and gender minority (SGM) individuals. Appropriate language is defined as language that is respectful to the individual, reflects that person's self-identification and avoids negative connotations. Individuals should be addressed and referred to by their preferred terminology and **pronouns**.

Recommendation: In order to identify what is "preferred" by the Applicant – suggest adding check-mark boxes on the Form where they can select the most appropriate self-declared option to identify themselves.

3.2 Terminology used in various countries to refer to SGM individuals may have negative connotations, the use of which may create difficulties for the person concerned during the proceeding. It is important for decision-makers to **be aware of, and sensitive to**, the cultural nuances in terminology employed in the proceeding.

Recommendation: Having the sentence revised with the inclusion of the word "alert." Recommend to have a manual that acts as a guideline for the IRB and the practitioners to keep uniformity in dealing with these diversities with a glossary of terminology.

3.3 In addition to providing objective and impartial interpretation services, interpreters have a responsibility to be respectful of all hearing room participants. This includes using the preferred terminology, names, or pronouns requested by the individual concerned. Decision-makers should address any misunderstandings about the use of **appropriate language and terminology** or the interpreters' expected conduct as soon as they arise.

Recommendation: To consider developing specific terminology glossaries and have it translated in different languages. Where no exact matching word is available in the corresponding language, provide



description of the meaning, so Board Member could be aware if there is potential negative impact stemming from the used translation.

4.1 While proceedings before the Refugee Protection Division (RPD) and Refugee Appeal Division (RAD) are private, proceedings at the Immigration Division (ID) and the Immigration Appeal Division (IAD) are generally public and sensitive information concerning an individual's sexual orientation and gender identity could be accessed by the public. Additionally, even though proceedings before the RPD and RAD are private, if a case is before the Federal Court for judicial review, the **information in the Federal Court file pertaining to the case becomes publicly accessible.**

Recommendation: To have the Disclaimer added on the Form where the Applicant check-marks that he/she is aware of such a possibility.

4.2 As a result, additional safeguards for the protection of sensitive information may be considered, upon request by the parties or on the initiative of a decision-maker, to limit public dissemination of this information. Decision-makers have the authority to order that particularly sensitive information be treated as confidential. In such cases, a decision-maker may **make a confidentiality order** to further protect the information in question.

Recommendation: Having the sentence revised with the inclusion of the following: 'or obtain prior consent.'

5.1 Depending on factors like culture, religion, social class, education, and family background, sexual and gender minority (SGM) individuals recognize and act on their sexual orientation and gender identity differently. An individual's self-awareness and **self-acceptance** of their sexual orientation or gender identity as an SGM individual may present as a gradual or non-linear process. There is no standard set of criteria that can be relied upon to establish an individual's identification as an SGM individual.

Recommendation: Having the sentence revised to replace "self-acceptance" with "self-identification."

5.2 An individual's testimony may be the only evidence of their sexual orientation or gender identity. Corroborative or additional evidence may not be **reasonably** available in a given case.

Recommendation: Clearly define what is meant by 'reasonably'? How is this clause justified? While the understanding is that it would be discretionary, some clarification on this might be useful.

5.3 Many SGM individuals conceal their sexual orientation or gender identity in their country of reference out of mistrust or fear of repercussion by state and non-state actors. These circumstances **may manifest themselves as an individual being reluctant to, or having difficulty in, discussing their sexual orientation** or gender identity with a decision-maker, particularly where intolerance of SGM individuals is sanctioned by state officials in the individual's country of reference.

Recommendation: Applicant can be made aware by the decision maker that the reluctance to discuss their sexual orientation /gender identity may hinder the decision making process.

5.6 SGM individuals may face a heightened risk of experiencing mental health challenges, often stemming from a history of prolonged isolation, mistreatment and a lack of social support in their countries of reference. SGM individuals may experience internalized homophobia; **sexual** stigma or



oppression; or suffer from post-traumatic stress disorder (PTSD) relating to past physical or sexual violence, depression, anxiety, suicidal tendencies, dissociation, decreased capacity for trust, and other trauma based on their sexual orientation or gender identity . These issues may manifest themselves in a variety of ways and can have an impact on an individual's ability to testify in a proceeding before the IRB.

Recommendation: Having the sentence revised to replace the word “sexual” with ‘social.’

5.9 The need for **procedural** accommodations, pursuant to the Chairperson's Guideline 8: Procedures with Respect to Vulnerable Persons Appearing before the IRB, may arise. Some SGM individuals may be particularly vulnerable due to mental health issues or traumatic circumstances experienced due to their sexual orientation or gender identity. Accommodations under Guideline 8 should be considered by the decision-maker, whether requested by a party or of its own initiative, **wherever appropriate to do so.**

Recommendation: To include specific examples for the purpose of greater clarification.

6.1 Decision-makers may not rely on stereotypes or inappropriate assumptions in adjudicating cases involving sexual orientation or gender identity as they derogate from the essential human dignity of a sexual and gender minority (SGM) individual. Examples of stereotypes include:

- SGM individuals have feminized or masculinized **appearances or mannerisms;**

Recommendation: Having the sentence revised to include the following: ‘body language’ and ‘gestures.’

- An individual knew **they were** an SGM individual at a young age, or became sexually active at a young age;

Recommendation: To have the sentence revised to replace “they were” with ‘to be.’

- SGM individuals are promiscuous or sexually active and do not engage in exclusive relationships;

Recommendation: Having the sentence revised to replace “active” with ‘versatile.’

7.2.1 While in **certain circumstances**, it may be reasonable to expect corroborating evidence from family or friends, this type of evidence may not reasonably be available in many cases involving sexual orientation or gender identity. In particular, where the subject of the proceeding has hidden their sexual orientation or gender identity because of perceived stigma, corroboration may not be possible.

Recommendation: Please elaborate and clarify under which circumstances.

7.2.3 SGM individuals should not be expected to establish their sexual orientation or gender identity through their participation in LGBTI culture, organizations or events. However, this **evidence may be presented** by the individual for the decision-maker to consider.

Recommendation: Clearly define what is considered plausible evidence, for example, within the context of what is “attributable to a particular social group.”



7.3.2 Decision-makers should be **sensitive to the fact that questioning** an individual about their sexual orientation or gender identity can feel intrusive and may be difficult. Decision-makers should be non-confrontational and employ open-ended questioning techniques where appropriate.

Recommendation: Perhaps consider a Training Guide for members with sample questions and scenarios of what is deemed appropriate.

7.3.4 The following avenues of inquiry may assist decision-makers in ascertaining the credibility of an individual's sexual orientation or gender identity. These lines of questioning explore the **personal history and experience** of the individual in understanding their sexual orientation or gender identity:

- **Self-perception and experience:** Explore the individual's own perception as an SGM individual and their experience of their sexual orientation and gender identity, taking into account the individual's cultural, economic, family, political, religious, and social environment. This line of inquiry can include for example, any childhood experiences of being an SGM individual, the process of how an individual came to realize their sexual orientation or gender identity, experiences with other SGM individuals in their country of reference, instances where they may have tried to conceal or change their sexual orientation or gender identity, any psychological challenges that may have developed due to their self-perception and experiences, as well as any decisions or steps taken to use **medical treatment** to change their outward appearance;

Recommendation: To have the sentence revised to include 'and cosmetic.'

- **Relationships:** Explore whether the individual has had any **recent or past** same-sex and heterosexual relationships, being mindful that an individual may not have had significant, if any, romantic or sexual relationships as an SGM individual;

Recommendation: To have the sentence revised to include 'or lack of any.'

- **Knowledge of the situation of SGM individuals in country of reference:** **Explore what knowledge the individual has about** the existence of discriminatory laws, and the severity of penalties against SGM individuals in their country of reference; how their behaviour in their country of reference corresponds to documented evidence about the situation of SGM individuals in that country; and

Recommendation: To consider and be mindful that not each individual has the same level of understanding in the legal context.

- **The future:** Explore **how the individual envisions their life going forward**, particularly **what life as an SGM individual in Canada means to them** and what kind of lifestyle they will lead.

Recommendation: To revise the sentence to the following: 'how they have identified Canada s their preferred country of destination for such a purpose.'

7.6.1 Testimony about same-sex relationships **that is vague** and lacking in detail may support a negative credibility inference, however caution must be exercised to ensure that there are no cultural, psychological or **other barriers** that may explain the manner in which the testimony is delivered. When



making a vagueness finding, a decision-maker must provide specific reasons to support a finding that the testimony is not comprehensive or fulsome.

Recommendation: To revise the sentence to include 'other reasonable barriers' instead.

8.1 These Guidelines address the following issues that decision-makers face when determining claims based on sexual orientation and gender identity:

1. To what extent can sexual and gender minority (SGM) individuals successfully rely on any one, or a combination, of the five enumerated grounds of the Convention refugee definition?

Recommendation: To have the five grounds listed and clarified.

2. Is the type of treatment to which an SGM individual may be subjected a serious interference with a basic human right, such that it gives rise to a well-founded fear of persecution in the particular circumstances of a case?

Recommendation: To have the sentence revised to replace "give rise to" with 'such that it give reason to/potential to.' By utilizing the word "rise" there is a need to have a quantitative measurement to compare and/or estimate on what it may be.

8.2.1 In *Ward*, the Supreme Court of Canada recognized that sexual orientation can be characterized as membership in a particular social group by placing sexual orientation under the first of three categories: "a group defined by an innate or unchangeable characteristic". We now understand that gender identity and sexual orientation may be fluid and evolving and not an "unchangeable characteristic." Gender identity and sexual orientation are innate characteristics that may manifest themselves differently at various times in an individual's life.

Recommendation: Please consider the following with regard to the term "fluid" as opposed to an 'innate or unchangeable characteristic:' While many SGM would testify that being gay men or lesbians is something innate and unchangeable, although due to persecution in some circumstances their sexual orientation had to be hidden. It is understood that SGM might go via the coming out process and self-identifying in different stages, however, it is important that this definition cannot change the underlying understanding that sexual orientation is an 'innate and unchangeable characteristic' in the minds of SGM. Out of an abundance of caution, it is hoped that the IRB panel members do not inadvertently conclude that a gay man can change his sexual orientation and can act or become a heterosexual thus to be returned to his home country. Thus, the SGM may fail the 'forward-looking legal test.'" We have seen some RPD members suggesting or inquiring whether the refugee claimant could act as a heterosexual or deny his sexual identity to avoid persecution. We believe that the language with regards to "fluid" must be further defined to avoid potential unfortunate conclusions in SGM refugee claims.

8.3.1 Individuals may also be subject to persecution due to their perceived or imputed sexual orientation or gender identity. Examples may include:



- Partners who remain with SGM individuals through, for example, gender reassignment **surgeries**, may be perceived as being an SGM individual.

Recommendation: To have the sentence revised to replace “surgeries” with ‘medical/cosmetic procedures.’

8.4.1 SGM individuals may also have a nexus to one or more of the other Convention grounds such as race, religion, nationality or political opinion, in addition to their membership in a particular social group. Examples may include:

- Political opinion: Political activism by an SGM individual to promote SGM rights may put that individual at increased risk of persecution in addition to their **status** as an SGM individual;

Recommendation: To have the sentence revised to replace “status” with ‘customs.’

- Religion: An individual may face persecution based on religion if their sexual orientation or gender identity is viewed as diverging from the **teachings** of that particular religion ; or...

Recommendation: To have the sentence revised to replace “teachings” with ‘adopted traditions.’

8.5.1 SGM individuals comprise a non-homogenous group. Some individuals who identify as an SGM may face differential risk due to additional factors such as gender, race, disability, age, socio-economic status, **HIV status**, or education, which make them particularly **vulnerable to harm**.

Recommendation: To have the sentence revised to replace “HIV status” with ‘STD status’ and “vulnerable to harm” with ‘vulnerable to violence and abuse.’

8.5.2.2 Decision-makers should take into account the overlap or complementing relationship that gender, sexual orientation and gender identity share, and should consequently consider the application of both these Guidelines and the Chairperson’s Guidelines 4 – Women Refugee Claimants Fearing Gender-Related Persecution where appropriate. For instance, a Trans woman may be vulnerable to **risk as a woman and as a trans individual**.

Recommendation: To have the sentence revised to include the word ‘both’ to the following: “risk as both a woman and as a trans individual.”

8.5.4.1 Trans and intersex individuals may be particularly vulnerable to systemic discrimination and acts of violence due to their non-conformity to societal expectations on gender. Trans and intersex individuals may face additional risks because of the lack of **legal recognition** of their gender identity or status in many countries.

Recommendation: To have the sentence revised to replace “recognition” with ‘identification.’

8.5.4.2 Trans and intersex individuals may face elevated risks of physical and sexual violence, and may experience discrimination in employment, **access to health care and medical treatment, and in the**



receipt of social services. Additionally, a lack of employment opportunities and social services may force Trans individuals into sex work, thereby exposing these individuals to further risk of violence.

Recommendation: To have the first sentence revised to include ‘access to leisure activities.’ The latter sentence to be revised to include ‘undesired sex work.’

8.5.5.1 A minor who identifies as an SGM individual may be particularly vulnerable to sexual and physical violence. Examples of harm which may amount to persecution in the particular circumstances of a case include forced medical procedures such as surgery, hormonal therapy, or sexual orientation conversion interventions. Examples of discriminatory treatment experienced by a minor which may cumulatively amount to persecution in the particular circumstances of a case include sustained family rejection, social ostracism, difficulties in school and bullying.

Recommendation: To revise “medical procedures” to include ‘and/or cosmetic procedures.’ To revise the last sentence to include ‘family withdrawal and social isolation.’

8.5.8.2 The absence of laws allowing same-sex marriage or spousal economic benefits does not, on its own amount to a serious violation of a fundamental human right that would constitute persecution.

Recommendation: To maintain consistency, revise “serious violation” with ‘serious interference.’

8.5.9.1 SGM individuals may be forced to undergo medical treatment including “corrective” sexual violence, non-consensual medical and scientific experimentation, forced sex-reassignment or “corrective” surgery, forced traditional cleansing rituals or religious exorcisms, forced institutionalization, forced electroshock therapy, and forced drug injection and hormonal therapy. Such treatment violates the SGM individual’s security of person and is persecutory.

Recommendation: To include ‘unwanted cosmetic procedures’ after “undergo medical treatment.” Revise the last sentence to include ‘or puts an individual’s wellbeing into jeopardy’ after “security.”

8.5.10.1 SGM individuals may also face instances of harassment or discrimination that cumulatively amount to a well-founded fear of persecution. The following non-exhaustive scenarios could, in particular circumstances, constitute persecution:

- Serious restrictions on access to employment , education, healthcare , housing and social services;

Recommendation: To revise the sentence to include ‘leisure activities.’

- Systematic harassment from police; and

Recommendation: To revise the sentence and include at the end ‘and/or from government officials.’

8.6.1 In considering whether state protection is available to an SGM individual, decision-makers focus on the personal circumstances of the claimant, in conjunction with a fact-based analysis of the operational adequacy and effectiveness of state protection in the country of reference.



Recommendation: To revise the sentence and replace “personal” with ‘individual.’

8.7.1 In determining whether an internal flight alternative (IFA) is reasonable and would not cause the SGM individual undue hardship in the particular circumstances of a case, decision-makers should consider whether the individual will have access to:

Recommendation: To revise the sentence and replace the word “reasonable” with ‘reasonably available.’

Immigration Appeal Division Rules

Rewriting the Rules in Plain Language

CAPIC is deeply concerned with the figure provided by the IRB for self-represented appellants or the operational year 2015-2016 at 44%. This is a common issue faced by Canadian courts, especially with self-represented clients posing delays, missing deadlines, non-compliance of court rules, and judges having to explain the rules and facilitate clients due to their unfamiliarity with the process, and legal issues involved in particular cases that are brought forward before the court. All of these scenarios prevent the IRB IAD from functioning as efficiently as it can.

Recommendation: The creation of a resources service for the member public, unrepresented before the IAD, to have the opportunity to ask questions that are not legal-related, rather procedural, thus, unrepresented persons can attain a foundation of knowledge as pertaining to the IAD process which hitherto, may be more effective in addressing the access to justice.

Additionally, we recommend that the court appoint one or more duty counsel where clients are not represented to counsel and consult with appellants at scheduling conferences or prior to appeal hearings. This should help case flow more smoothly

Enabling Electronic Communication

CAPIC strongly supports making electronic communication vis-à-vis email the primary method of communication with the Division and between parties.

Recommendation: CAPIC would respectfully suggest that the Client’s signed Notice of Appeal and scanned documents be accepted by the IAD Registrar. Moreover the initial Notice of Appeal should have incorporate for communication preference as mailing the documents cannot be completely eliminated. Lastly, create an online portal tool similar to the MyCIC Portal to be utilized by Authorized Representatives and Counsel for filing documents.

Getting More Information Earlier in the Process

- a. Require an Expanded Notice of Appeal

CAPIC fully supports the Expanded Notice of Appeal as long as the Expanded Notice of Appeal would clearly state if the Appellant is interested in ADR or Early Resolution by paper process.



Recommendation: IRB decision maker should elaborate on the reasons why a refusal letter was issued clearly stating and identifying the reasons to which the decision was rendered conclusive. This may aide the appellant towards providing an expanded Notice of Appeal.

b. Shorten the Time for Filing Appeal Records

Recommendation: CAPIC strongly encourages Appellants Disclosure at an earlier stage, specifically 30 days. The timeline is based on the ATIP requests IRCC has provided within 30 days that includes the CMCS notes and the scanned Applications from Overseas Offices.

c. Require Disclosure from the Appellant in a period following receipt of the Appeal Record

Recommendation: CAPIC supports a 60 day timeline after receiving the IAD record book. However, CAPICs main concern is that if the Appellant has not provided sufficient evidence in the form of documentation for both IRCC and CBSA, then it may take a longer time for the Appellants counsel to gather all the required documentation and submit the disclosure. Otherwise CAPIC believes that 60 days is sufficient. It is not pragmatic if it is going to sit on file and cases are not heard for more than a year, but if we are serious about early resolutions, we kindly submit they be read and responded by the minister. Also, as mentioned, by the time the hearing is scheduled, there may be much more disclosure since appeals are hearings de novo.

d. Disclosure as the doorway to ADR

Recommendation: CAPIC strongly supports disclosure as a pre-condition for the ADR. We respectfully suggest individual assessment and not type of cases on the Appellants disclosure for ADR. In the Notice of Appeal forms, the Appellants should check if they want to be considered for Meditation – with thorough instructions – via ADR or Early Resolution by paper and be expected to provide the disclosure package within 60 days of receiving the Record of Appeal Book from CBSA. Moreover, An ERO should have final say on early resolutions and ADRs. The final decision to allow or go to full hearing rests solely with the CBSA officer rather, the ERO should however decide on the merits for trying to resolve case without a full hearing.

Comprehensive definition of Early Informal Resolution Processes and the role of the ERO

Recommendation: CAPIC recommends that IRB clearly defines the roles of ERO. CAPIC strongly supports that ERO would be tasked with making their own assessment of the credibility of witnesses and the relative strengths and weaknesses of each party's case. Additionally, the Appellant should have an opportunity to respond to ERO's evaluation at the conference or ADR meeting. CAPIC would welcome the Minister's counsel notifying the ERO and the Appellant in writing or via conference that the Minister's counsel consents if the Minister's evidence was weak or Disclosure of Documents overcome any concerns of the Appeal case. Finally, if tangible and clear assessment criteria were provided to ensure that all parties understand the process it would greatly reduce backlogs.

There should be provisions for an Agreed Statement of Facts (ASF) to help decide if a case is suitable for early resolution including ADR and to shorten appeal hearings. The statement can be based on the record and disclosure submitted.



While ADRs resolve many cases, the minister must be prepared to resolve appeals at the ADR. A number of cases are not resolved as the minister refuses due to a need to hear from the applicant from the outset.

In some cases the minister clearly has not read the submissions and disclosure prepared prior to the ADR. This is obvious from the questions and issues raised.

The perception of bias and fairness is important at both appeals and ADRs. Often the type of questions and number of questions members or EROs is interpreted as bias.

At ADRs the common procedure of meeting with the minister and not including counsel has the appearance of unfairness.

During appeal proceedings, we should be mindful of members or mediators taking on too aggressive role and how it is perceived. While some degree of clarification of testimony is important, members must be mindful that the degree of involvement and type of questions may take away from the perception of fairness.

While narrowing the scope of hearings and issues not in dispute is good, allowing time for examining and cross examining witnesses, and determining and directing the order of issues to be considered and determined, some members, especially in the western region take the approach of limiting the length of examination so cases can be concluded in a timely manner. This forces both parties to focus more.

Active Adjudication

Recommendation: CAPIC does not object to members being somewhat active but not the point where participation in examination does not evoke a perception of bias. CAPIC would respectfully submit to see duty counsel appointed where appellants are not represented. There is no objection to other suggestions in active adjudication, such as order of evidence, limiting the issues, etc.

Applications

CAPIC fully supports the SMART form, however, an online platform should not be entirely disregarded, and rather it should too be considered as a possibility.

Additional Suggestions

Recommendations: CAPIC would like to respectfully suggest that IAD provide a white paper or guidance on the evidence rules, affidavits, documentary submissions beyond the timelines posted in IAD rules. An agreed statement of facts, especially prior to full appeal hearings would be a useful way to more efficient hearings.



Conclusion

CAPIC-ACCPI commends 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 that IRB will give due consideration for incorporating in the final policy on both the *Chairperson's Guidelines 9: Proceedings before the Immigration and Refugee Board of Canada Involving on Sexual Orientation and Gender Minority Individuals* and *Immigration Appeal Division Rules*.

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' adjudicative process and program integrity.

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

Respectfully Submitted,

A handwritten signature in blue ink, appearing to be 'Donald Igbokwe'.

Donald Igbokwe
President
CAPIC – ACCPI