



Canadian Association of
Professional Immigration Consultants

L'Association Canadienne des
Conseillers Professionnels en Immigration

COVID-19 Remote Hearings Pilot Project

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About CAPIC

The Canadian Association of Professional Immigration Consultants (CAPIC) is the professional organization representing the interests of Canadian Immigration Consultants. The organization advocates for competency, ethical conduct, and consumer protection in the immigration consulting industry.

CAPIC's mission is to lead, connect, protect, and develop the profession, serving the best interests of its members. It is the only association recognized by the Government of Canada as the voice of Canadian immigration and citizenship consultants.

CAPIC is a major stakeholder consulting with federal and provincial governments and their respective departments (IRCC, CBSA, IRB, ESDC) on legislation, policy, and program improvements and changes.

Preamble

Due to the COVID-19 pandemic, the Refugee Protection Division's (RPD) hearing rooms are temporarily closed to parties, including the Board's Members. The RPD has committed to providing access to justice during these exceptional times and has advised its stakeholders that it is planning to conduct hearings remotely by video, likely using the Microsoft Teams platform. Since holding video hearings remotely in this way is a new experience for the Division, they are planning to launch a small-scale hearing pilot project this summer and CAPIC has been asked to provide input on this matter. CAPIC supports virtual hearings as a temporary measure due to COVID-19. However, knowing the constraints and other difficult stations that impact clients during the process of their claims, CAPIC strongly recommends this measure remains temporary until the Government of Canada confirms a return to normal processing and delivery.

Following the structure that has been requested in terms of this discussion by the RPD, our position paper is focused on three areas:

- 1) The principles and values that should guide this project
- 2) Appropriate pre-hearing and scheduling considerations
- 3) Appropriate processes for communicating with the Board

1) Guiding Principles

The principles that should guide this project are procedural fairness and equal opportunities for those who are most vulnerable; security and privacy issues during virtual hearings; credibility assessment and ability for the members to verify original documents; accessibility for all parties, including considerations based on technical abilities and equipment affordability; and recommended specifications for the IT equipment to be used.

- Issues that may challenge procedural fairness and access to justice in a virtual setting could be issues related to technology, internet speed, and computer literacy of the claimants and other parties involved. Consider preparing a checklist with criteria on what

would be the minimum required internet speed and providing opportunities for equipment testing ahead of hearings.

We propose that the virtual hearing location, particularly for the claimant, be provided by the RPD. The counsellor may share the same location as the claimant or attend from their own location and the Board Member has the option to be physically present at the same location or in their own office. Virtual Hearings have taken place within some divisions; however, the setting is in an environment controlled by the RPD.

- Remote interpretation is a challenging issue. The interpreters must speak in first person during the hearing, this is often very confusing even during the in-person hearings. Some interpreters are using their phones for remote interpretation and this may bring potential for serious security breaches if the interpreters are not in a controlled setting environment.

The solution is the same as our first proposal to provide dedicated IRB Rooms for virtual hearings. It should also be noted that along with security breaches, there are concerns about bias. We recommend that interpreters remain in a controlled setting.

- A delay due to slow connection may alter the manner/turns in which parties take during the hearings. Careful protocol must be prepared and maintained to ensure all parties understand the process and can participate equally.

Summary:

In addition to the points addressed above, we emphasise that only low-risk cases should be considered for virtual hearings and the process should be conducted in a controlled environment. RPD needs to ensure that the right equipment and technology is available to facilitate and allow for fair and transparent hearing. If the Member is participating remotely, consider having the counsel and claimant in the same room, preferably with the interpreter at the same location, provided by RPD.

We also recommend that these *virtual hearings* should be optional, for the claimant, rather than mandatory.

Another issue may be whether other video platforms have been considered, and how effective the MS Teams platform would work with other operating systems such as Mac OS. The video platform must be compatible to accommodate all technology options. What is the number of cases and criteria for the files to be chosen for these pilot hearings? What would be the proposed performance measurement tools?

2) Appropriate Pre-Hearing and Scheduling Considerations

Because of serious security concerns involved in this pilot, we recommend that the pilot project proceeds "only" with cases that do not require interpreters if this issue is not solved. However, an alternative might be to have the interpreters joining the same location provided by the IRB to claimant.

Moreover, vulnerable groups should not be deemed suitable for virtual hearings. Remote locations where they will be sitting might not be safe from third party involvement or from a security breach with their computers. Not everyone can financially afford the equipment and necessary software to protect from potential breach.

Another important consideration should be for the pre-Hearing and the opportunity to narrow down the issues within a reasonable timeframe prior to the scheduled hearing. A list of issues that are of interest for the Member will be helpful to address those concerns early on.

Summary:

In addition to the stakeholders' feedback, we suggest collecting the feedback from counsel and claimant after their hearing session. This will help Members identifying any issues in the process.

Another recommendation is to have a feedback form mandatory for all cases heard under the pilot project and the IRB considers publishing a claimant guide and counsellor guide essential to ensure success of this project.

3) Appropriate Procedures for Conducting the Hearings

It is imperative that consistent procedures are put in place to ensure a fair and impartial hearing, in appropriate settings. Virtual hearings can give rise to situations where impartiality or fairness can be breached.

- *We have raised several procedural fairness concerns that may arise regarding such hearings in this position. The concerns surrounding those type of hearings will be related mostly to interpretation and technological challenges and this can open the door for potential appeals, which will over-burden the system even further.*
- *We agree that pre-hearing conferences or forms to identify the issues should be available and considered. Identifying the issues by way of checklist and identifying the documents that need to be verified with the originals is a crucial step on the process for preparation and ensuring consistency. This may save time during the actual hearing. Consider how the claimant and/or counsel will be able to "visually produce" these documents and show them to the Member. Would the platform allow for some type of "blackboard" where the document in question could be visually displayed to all parties?*
- *Technical requirements may include high speed internet, a sufficiently private home/office environment, access to a telephone, the ability of counsel to send documents through fax or ePost, and sufficient technology to participate (e.g. a tablet or computer). What tools and resources are available for counsel and clients to meaningfully and fully participate in a remote hearing?*

It is critical for counsel and their client to be able to connect during breaks or recess, in a safe and independent manner. We agree that a "breakout room" is a reasonable solution for the client-solicitor conversations, however the claimants may still be left with the

anxiety and concern on whether these ‘breakout rooms’ are being “monitored” and how safe they could feel to engage in conversation with their counsel.

On February 25, 2020, during the last in-person IRBCC meeting of the East Region, the IRB staff informed the stakeholders that, as of March 2020, they will be moving the hearing rooms to a new location at Rene Levesque Street, close to their offices at the Complex Guy Favreau. This new location has seven new equipped hearing rooms. It is suggested that these rooms may be able to accommodate physical distances and/or be used as virtual settings.

Please consider these recommendations in light of the proposed pilot project of the RPD in the coming weeks.