

April 18, 2019

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AND TO:

Shereen Benzvy Miller
Deputy Chairperson, Refugee Protection Division
Immigration and Refugee Board, Government of Canada
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Dear Mr. Cousineau and Ms. Benzvy Miller:

We are writing to you to express concern over instances where the Refugee Protection Division (RPD) has denied requests for postponement of a hearing based on counsel's ill-health or injury. The RLA is deeply concerned that in such cases, the Tribunal has not accommodated the counsel's health or injury-related postponement requests. Many lawyers from our bar work as sole-practitioners or in small firms. As such, in most cases it is not reasonably possible for a lawyer to transfer the file to other counsel if they fall ill, are injured, or have a medical emergency.

Fairness dictates that if counsel on a given refugee file cannot attend a hearing because they are ill, injured, or have a medical emergency, they would be accommodated by the tribunal in their postponement request. Discrimination based on disability is specifically prohibited by the *Canadian Human Rights Act*.¹ The definition of disability is not limited to a long-term impairment, and may include sudden illnesses. Members of the Immigration and Refugee Board not only have a duty to comply with natural justice and procedural fairness requirements, but they must also ensure equality and accommodation *to all participants* in carrying out their duties.² Section 25 of the Code of Conduct for Members of the Immigration and Refugee Board of Canada states:

¹ R.S.C., 1985, c. H-6, s. 3(1).

² *Code of Conduct for Members of the Immigration and Refugee Board of Canada*, ss. 23 and 25.

Equality and Accommodation

25. Members shall exercise their duties without discrimination. Members must take reasonable measures to accommodate all participants so that they may participate effectively in a proceeding. Members are expected to take into account social and cultural differences and to respect human rights.³

In addition to failing to accommodate counsel and requesting that they (or the claimant) appear in person to speak to the issue, the RLA has learned of multiple instances involving one co-ordinating Member on the Legacy Task Force who has initiated the abandonment process after a postponement was not granted and counsel could not attend on the day of the scheduled hearing due to counsel's illness, injury, personal or medical emergency. These have been "Legacy" cases where claimants have been waiting years to have their claims heard, only to have them ultimately declared abandoned at no fault of their own nor their counsel. We are troubled by the impact this may have on refugee claimants, who may feel compelled to choose between having counsel or having their refugee claim heard. Refugee claimants who are before the RPD have a right to be represented by counsel.⁴ Instances where counsel are ill, injured, have a medical or personal emergency and cannot attend a scheduled hearing should not be used to initiate the abandonment process in refugee proceedings, particularly where counsel or the claimant(s) have sought to postpone the hearing as soon as reasonably possible.

We are urging you to please look into this matter and ensure that Members of the RPD, including the Legacy task force, receive proper training on the requirement to reasonably accommodate all participants in a proceeding.

The RLA Executive Committee has reviewed and approved this submission.

Sincerely,

Members of the Executive, Refugee Lawyers Association of Ontario

³ *Ibid* at s. 25.

⁴ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s. 167.