The Representation of Cultural Minorities on Administrative Tribunals: the Importance of Diversity

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I am pleased to have this opportunity to address the need for increasing the representation of members of cultural minorities on administrative tribunals in Canada and to reflect on my personal experiences as a member of the Immigration Appeal Board (the former Board) and as Deputy Chairman of the Immigration Appeal Division of the Immigration and Refugee Board (IRB) and soon to be Chair of the IRB.

Drawing on my experiences with the former Board and with the IRB, I will explore how cultural differences can make themselves apparent and just how critical these differences can be in the adjudication of both refugee and immigration appeal cases. From these explorations, the importance of cultural minority representation on administrative tribunals will become readily apparent. Before I proceed to discuss the IRB, however, I wish to comment generally on the nature of administrative tribunals and the increasingly important role that we see them playing.

The increased presence of members of cultural minorities on administrative tribunals contributes significantly to promoting cultural diversity and to empowering cultural minorities in Canada. Representation by members of cultural minorities ensures that the base of citizen involvement on administrative tribunals is expanded to accurately reflect the changing cultural configuration of Canadian society. I note that the current constitutional proposals address many of the issues raised by our aboriginal people, who feel that they have been disenfranchised generally and that their cultural traditions have been ignored in the past by the mainstream of the Canadian body politic. Their demands include the wish to have institutions and courts reflect their cultural traditions and bring to their dealings a heightened degree of sensitivity and understanding. Simply put, they are seeking the expression of their cultural diversity in their daily activities of schooling, government and commerce.

The promotion of cultural diversity is not a novel or unusual idea. We must remember that section 27 of the *Canadian Charter of Rights and Freedoms*[1] guarantees that the Charter must be interpreted in a manner consistent with the recognition and preservation of the multicultural heritage of Canada.

I would like to highlight several reasons why the membership of Canadian administrative tribunals should reflect the multicultural nature of our country. They are:

1. To sensitize other board members and participants in the decision-making process to the discriminatory treatment and stereotyping experienced by minority groups;

2. To ensure that the principle of fairness is truly embodied in decisions affecting individuals of different cultural backgrounds when they appear before administrative tribunals;

3. To validate the experiences of members of cultural minorities by having the opportunity to be heard by panels on which members of their own or other cultural minorities are represented. Legitimacy is given to the process when individuals perceive that they are judged by their peers;

4. To develop carefully reasoned decisions reflecting a sensitivity to and an understanding of cross-cultural issues.

I cannot overstate the importance that we at the IRB give to this issue because, quite simply, we feel that it is interwoven into the fabric of fairness which clothes our hearing processes.

I. ADMINISTRATIVE TRIBUNALS: THEIR NATURE AND THEIR PURPOSE

Since World War II, Canadian society has witnessed a tremendous growth in the number of administrative tribunals bearing responsibility for the regulation of a vast number of our activities. Robert W. Macauley, in *Practice and Procedure Before Administrative Tribunals,* made this observation:

> *Administrative agencies answered needs and filled the growing gap in the post-World War II period. Canadian society was rapidly becoming more sophisticated and a coordinated effort to better organize society's resources was desired. It cannot be overemphasized that since the sixties, Canadians have placed increasingly heavy demands on all levels of government to administer and guarantee a successful society from a social and economic perspective.*[2]

Administrative tribunals often adjudicate on issues that can be of far greater importance for many Canadians than many of the issues confronting our courts.[3] The Canadian Bar Association, in its study, *The Independence of Federal Administrative Tribunals and Agencies in Canada,* acknowledged that:

> *[D]ecision-making by administrative tribunals and agencies has expanded to the point where it directly affects many more citizens than do decisions of the courts.*[4]

Administrative tribunals are intended to be independent, accessible, expert and efficient decision-makers. For many individuals, their only encounter with the justice system during their lifetimes is with administrative tribunals.

Administrative tribunals are efficient in dealing with recurring problems of a certain kind. Members of the tribunal develop high levels of expertise in dealing with these problems. As some authors have commented, expertise can be broadly construed so that gender, ethnic or regional representation can be considered as constituting elements of expertise.[5]

In many instances, there can be a general mistrust of government departments by immigrants. Administrative tribunals, composed of members of different cultural minorities, can help in conferring legitimacy to the process of government regulation. By this I mean that regulation, if culturally representative, will be seen as regulation, "by the people, for the people". For many individuals, as well, appearances before administrative tribunals can be viewed as less intimidating than court appearances.

Perhaps one of the greatest difference between the traditional courts and administrative tribunals is the role played by public policy. We therefore see tribunals adjudicating on, or overseeing the implementation of public policy, be it with a workers' compensation board or international trade, copyright, or immigration and refugee policy. While administrative tribunals administer and implement public policy with their decision- making, the role of the courts, by contrast, "is exclusively limited to adjudicating in accordance with legal rules and adversarial proceedings in which there are winners and losers."[6] At the same time, governments can avoid making decisions on contentious issues by giving this decision-making power to administrative tribunals. This distance from the decision-making process is healthy, as the public can witness justice being done on matters beyond the influence of the executive. Public cynicism being what it is today requires that adjudicative decisions be taken by administrative agencies which are not connected to the mysterious world of politics and its influences. In that sense, we on administrative tribunals are guardians of an enormous public trust - to hear and decide cases which involve public policy issues in a fair and impartial manner.

While under an obligation to act fairly, technical rules such as the rules of evidence are not applied in a tribunal's proceedings as they are in the courts. Tribunal members may exercise the discretion they have been granted, to consider all credible and trustworthy evidence which may touch upon the case:

> *Courts function on the basis of formal rules. The administrative setting is generally informal - sometimes with rules and sometimes without.* [7]

Owing to the widescale reach and importance of administrative agencies in Canadian society, cultural minorities are increasingly recognizing the necessity for securing their representation on administrative tribunals. In Ontario, for example, a Standing Committee on Government Agencies reported in 1986 that "there was a general consensus of the representatives of the groups that appeared before the Committee that appointments in the public sector should reflect the multicultural diversity of Ontario."[8]

As we will see later, the federal government has embodied this spirit in the appointments made to the IRB.

II. THE ROLE OF CULTURAL MINORITIES AND THE IMPORTANCE OF CROSS-CULTURAL SENSITIVITY IN THE DECISION-MAKING PROCESS: THE IMMIGRATION AND REFUGEE BOARD AS A CASE STUDY

The Immigration and Refugee Board of Canada (IRB) may well serve as a model for other administrative tribunals and also for Canadian courts in demonstrating the importance of involving members of differing cultural backgrounds in the decision-making process.

Created in 1989, the goal of the IRB was to provide efficient and expert decision-making, mindful of Canada's commitment to the protection of refugees and to the humanitarian adjudication of immigration appeals and to appoint members with relevant expertise and experience and with "human sensitivity".[9]

Consequently, when the IRB was first created, its Chairman Gordon Fairweather set several goals, including the following:[10]

- *The membership of the Board should be widely representative of the cultural plurality of Canada.* […]

- *The Board should not consist only of lawyers, as a wider variety of life experiences would provide a more broadly-based and less legalistic approach.*

As a result, members of both the Immigration Appeal Division (IAD) and the Convention Refugee Determination Division (CRDD) of the Immigration and Refugee Board (IRB), are "selected to represent the broad spectrum of Canada's cultural and ethnic composition."[11] Members are appointed not only for their knowledge and interest in refugee and immigration

issues, but also for their "sensitivity to circumstances affecting refugee, administrative laws and procedures or Canadian jurisprudence".[12] At present, 42% of IRB members are women; 26% of its members belong to visible minorities; and 2% are physically challenged.[13]

Since Immigration and Refugee Board members represent a diversity of cultural backgrounds, they perform a significant role in engendering an increasing awareness of, and sensitivity to, linguistic and socio-cultural differences of claimants and appellants. This is reflected not only in the hearing room setting but also in the decisions rendered by the Board. The nature of the decisions made by the Board is of profound importance as they affect the very lives of the people who appear before the Board. As "it is [the panel member] who is at the heart of the determination process",[14] it is crucial that Board members possess a requisite degree of expertise in order to render fair and credible decisions.

It is also essential, as stated by the Law Reform Commission of Canada, that Board members have "the ability to empathize with claimants" who come from "diverse linguistic and cultural backgrounds."[15] In this respect, the presence of IRB members of different cultural minorities is important in sensitizing other members and participants in the decision-making process to discriminatory treatment and stereotyping of minority groups. The presence of these members assists in the recognition and avoidance of ethnocentrism in decision-making. As an American study concluded, immigration judges "tended to project their own experiences and understandings of political and cultural reality onto the [refugee] applicant".[16] In reviewing the refugee determination process, the Law Reform Commission of Canada concluded that "refugee determination is inescapably a cross-cultural process to which Canada's multicultural society ought to be well attuned" and that attention must be paid to the difference in cultures "with a view both to encouraging understanding of different world views and contributing to the assessment of credibility."[17]

The large majority of refugee claimants who reach Canada are from Asia or Africa. They are in vulnerable positions, not only as people fleeing from persecution and danger, but also as

people entering a foreign culture and at the mercy of a foreign legal system. Understanding of this vulnerability is essential and, arguably, "insights into vulnerability lead to appreciation of the role of equity and mercy in any system of justice"[18] and "those with similar life experiences, or the potential for similar life experiences will understand each other's narrative better."[19]

Cultural diversity of Board members, then, is important for a number of reasons:

1. The ability of members to understand and relate to the claimants before them;

2. The importance of a multi-ethnic composition to the credibility of the Board in the eyes of the public;

3. The need to have diverse voices participate in the dialogue of the Board's jurisprudence;[20]

4. Members from different groups serve as role models for their communities.[21]

The IRB was reminded of the need to bring, to the decision-making process, an understanding of the cultural and social background of refugee claimants. Recently in *Ye, Zhi Bing* v. *M.E.I.*,[22] the Federal Court of Appeal acknowledged that:

> *We may well wonder whether this judgment does not involve the imposition of Western concepts on a subtle oriental totalitarianism, and whether it is correct to interpret Chinese law enforcement in the light of the more linear Western model, when the social control exercise by the Chinese State is omnipresent, though (sic) the co-opting of the vigilance of its citizens generally.*[23]

This judgment underscores the importance of ongoing cross-cultural training of IRB members and staff in order to aid in the recognition and avoidance of ethnocentrism and discriminatory treatment of particular minority groups and the particular circumstances affecting refugee women claimants.

A. Refugee Determination in Canada

In the context of refugee determination, the need for cross-cultural communication becomes of critical importance in assessing the credibility of refugee claimants. Cross-cultural misunderstandings between Convention Refugee Determination Division (CRDD) members and claimants "can seriously hinder the accurate assessment of credibility during the assylum hearing."[24] One commentator has stated that:

> *[T]he believability of the applicant becomes the deciding fact, since the applicant's testimony and his/her demeanour while testifying may be the only available grounds for deciding the case.*[25]

As a result, CRDD members require an awareness of the circumstances in which such misunderstandings arise. As one commentator has noted, in an effort to avoid misunderstandings, members "may require sensitivity in the manner of questioning or a willingness to admit evidence of cultural differences so that the `truth' can be fully `ascertained'."[26]

Cross-cultural misunderstandings can also arise where a refugee claimant is judged against the standard of a "reasonable person". The "reasonable person" standard can be problematic because it does not answer the further question of the country to which it refers. CRDD members may not have an understanding of the claimant's or appellant's background and may, instead, use their own frame of reference which may be quite unrelated to the individual appearing before them.

Misunderstandings can arise also when "common sense" from a Canadian perspective is used as a guide in making credibility determinations.[27] What might appear at first glance to be an implausible story on the part of the refugee claimant may well make greater sense when the panel hearing the claim obtains more information about a claimant's country of origin. Denial of refugee status is:

> *frequently based on culturally biased notions of reality and the false assumption that reality is universal. Before an applicant's story is dismissed as false on the grounds that it `does not make sense' it should be examined in light of what makes sense in its own peculiar environment.*[28]

While it might appear as an affront to common sense that a refugee woman claimant may not have told her husband about her sexual assault at the hands of the police, it makes far more sense when one has an understanding of the condition of women in her country of origin and what sexual assault means for her within her society. As one author has commented:

> *'Common sense' may be useful for functioning and interpretation within a particular society but it is not an effective means for judging the possibility and probability of events in societies different from one's own, and the official's common sense is of limited value for understanding many of the realities in the asylum seeker's country of origin.*[29]

As a member of a cultural minority or with knowledge of the socio-cultural background of appellants and refugee claimants, Board members can better understand why claimants or appellants have made certain choices and why they exhibit certain behaviours. At the very best, they are cautious about measuring matters before them against the traditional Canadian standards.

During the hearing of a refugee claim, Board members must be aware not only of the content of what is said but of the manner in which it is expressed. It has been said that:

> *The credibility of a person's statements depends not only on their content but also on how they are expressed. There is ample evidence that the manner of speaking affects the credibility of persons involved in legal procedures.*[30]

Questions can arise, however, over the content of what is said by a refugee claimant. Members must be aware that certain words, ideas or concepts have different meanings in different cultures. In Somalia, for example, ethnic Somalis are not given family names; rather they are given many names arrived at through consensus on the part of their families or family friends. This allows for the tracing back of names through previous generations. In addition, Somalis may use different names at school than those used at home.[31] Therefore, in questioning Somali claimants regarding family members, claimants may appear confused over names when in fact, it is just because they have a series of names or because they might refer to the same person by other names. One commentator states that:

> *It is not only more abstract philosophical or religious notions that lack universal meaning but often also seemingly unproblematic words of everyday language. Words like `me', `self ', `country' or `politics', for instance, embody completely different concepts and significations.*[32]

Awareness of such cultural differences is important because, where appellants or claimants fail to be convincing in their testimony, it might be presumed that they are lacking in credibility.

Demeanour is also an important factor that is taken into consideration when determining the credibility of an appellant or refugee claimant.[33] An appellant or claimant may appear to be evasive upon questioning or may refuse to make eye contact with the members hearing the appeal or claim. This is not necessarily a sign of deceitfulness; in some cultures, it is a sign of respect for authority while in others, it is a reflection of a cultural norm according to which one does not go to the heart of the matter. In other cultures, refugee claimants may be mistrustful of authority based on their experiences and the culture in their country of origin. One author has submitted that:

> *In addition to general secrecy and uncooperativeness, an applicant's mistrust may take the form of reluctance to talk about particular topics. An applicant may also be quick to answer questions affirmatively in order to avoid contradicting an authority figure, no matter how damaging or inconsistent such an answer may be. It becomes important, therefore, to identify the reasons for such mistrust and to distinguish mistrustful from untruthful behavior.*[34]

There are occasions when refugee claimants may appear vague in their responses because of their use of the third person plural in the tradition of the collectivity. For example, it has been reported that Salvadoran claimants will answer in the third person plural, as "specificity is dangerous in Salvadoran society."[35] An understanding of the claimant's background and a recognition of the factors important in the claimant's culture might shed a different light on the claimant's testimony. One author has noted too, that "some of the very circumstances that are the cause of an applicant's fear of persecution may create habits of secrecy and mistrust that render him/her unable or afraid to discuss these circumstances."[36]

The United Nations High Commissioner for Refugees (UNHCR) *Handbook on Procedures and Criteria for Determining Refugee Status* recognizes that decision-makers must be cognizant of the fact that refugee claimants may have difficulty relating their testimony owing to past incidents:

> *A person who, because of his experiences, was in fear of the authorities in his own country may still feel apprehensive vis-à-vis any authority. He may therefore be afraid to speak freely and give a full and accurate account of his case.*[37]

Women refugee claimants may be found to lack credibility when testifying on behalf of male family members or when corroborating their evidence. Board members who belong to the

culture of the refugee woman or who have an understanding of the woman's culture can better perceive what the demeanour and the testimony of the woman claimant means.

In Canada, recognition of the special circumstances pertaining to women refugee claimants has led to the creation of a CRDD Working Group on Refugee Women Claimants. The Working Group has held a series of workshops on refugee women's issues. These have included sessions focusing on the socio-cultural background to refugee claims made by women and on refugee protection and determination. Several excellent presentations and papers from these workshops along with videotapes are available from the IRB Documentation, Information and Research Branch.

It should be noted, too, that the UNHCR recently released a series of guidelines on refugee women, where it was acknowledged that problems can arise when women are interviewed about the refugee claims of their male family members because they may not know the details of the claimant's experiences.[38] As the UNHCR stated, "a woman's entire experience may be discounted as lacking in credibility. Yet, in many cultures, husbands do not share many details about military or political activities with their wives."[39] In a recent CRDD decision finding the Somali woman claimant to be a Convention refugee, the panel stated that:

> *Part of her inability to provide detailed information on issues such as her father's involvement in the SNM may be explained by her young age. Furthermore, for cultural reasons, as a young girl in Somalia, it is not unreasonable to assume that she would have not been privy to this kind of information.*[40]

Women refugee claimants also experience difficulty in making their claims to refugee status because they may be reluctant to tell their stories. As the UNHCR has noted, women refugee claimants who have been sexually assaulted in their countries of origin, "obviously may be reluctant or find it very difficult to speak about it, particularly to a male interviewer":

> *Rape, even in the context of torture, is seen in some cultures as a failure on the part of the woman to preserve her virginity or marital dignity. She may be shunned by her family and isolated from other members of the community. Discussing her experience becomes a further source of alienation.*

The UNHCR also cautions that when making an assessment of credibility of women refugee claimants, "do not judge it on the basis of such Western cultural values as the ability to maintain eye contact."[41] Further, the UNHCR counsels that women who have been victims of sexual abuse frequently exhibit behaviour associated with Rape Trauma Syndrome, and such behaviour "will influence how a woman applicant responds during the interview. If misunderstood, they may be seen wrongly as discrediting her testimony."[42]

Problems in assessing credibility can also be aggravated by the presence of interpreters in the hearing room. In an effort to minimize the problems created by the presence of interpreters, the Board provides for training, monitoring and evaluation of interpreters on a continuing basis. Further, the Board has an accreditation programme to "provide an objective and uniform means of ensuring that interpreters meet an established standard as a prerequisite to providing interpretation service".[43]

The importance of avoiding cross-cultural misunderstandings in assessing credibility was well articulated by Kalin:

> *The resulting frequency of misunderstandings means that without giving them the benefit of the doubt genuine refugees will be denied asylum and this consequence is among the most serious in the legal system: These persons may be eventually deported to a country where they will be detained, tortured or killed for reasons of their race, religion, nationality, membership of a particular social group or political opinion.*[44]

B. The Experience of the Immigration Appeal Division

Cross-cultural sensitivity is of similar importance in the hearing of immigration appeals by Immigration Appeal Division (IAD) members. IAD members are required to hear appeals from removal orders, from refusals of sponsored applications for permanent residence made by a member of the family class and from removal orders against persons who have been determined to be Convention refugees but who have not been granted permanent resident status.[45]

In deciding on such matters, IAD members are called upon to assess, for example, whether arranged marriages are genuine marriages, whether adoptions have taken place according to the law of foreign jurisdictions, and whether based on all the circumstances of the case, appellants should be allowed to remain in Canada.

In making such determinations, IAD members must bring to the process an understanding of the cultural backgrounds of those appearing before them. In fact, IAD members have developed considerable expertise in specific aspects of foreign law. The *Hindu Adoptions and Maintenance Act, 1956*, for example, calls upon members to analyze certain ceremonies in India in order to determine whether or not the alleged adoption was in fact properly and fully completed.

From time to time, for example, cases come before the Appeal Division where parents living abroad will allow one of their children to be adopted by a close relative, such as a brother, in Canada. It would be facile to ask yourself, if your vision of such practices were filtered through traditional Canadian lenses, how such an arrangement could be made. It may offend the traditional notion of the nuclear family. However, the concept of family is much broader in many cultures. The interconnectedness of familial obligations and expectations is such that having an uncle raise a niece or nephew is a natural and logical concept. Once viewed through these lenses, these practices, assuming they conform to the applicable laws, are not at all incredulous and should not be viewed as an attempt to circumvent Canadian law or public policy.

An understanding of different cultural traditions and laws is essential for IAD members assessing whether or not an adoption has taken place when hearing appeals from refusals to approve sponsored applications for permanent residence. The IAD is regularly called upon to consider whether an adoption conforms with the law of the jurisdiction in which it took place, thus necessitating an interpretation or application of foreign law and an understanding of the cultural traditions of the country. In *Alkana, Robin* v. *M.E.I.*,[46] the IAD found that an adoption did not exist as adoptions in Pakistan are not governed by any statutory law and are contrary to Muslim law. However, the former Immigration Appeal Board found that an adoption had taken place in *Chen, Tsai-Ying* v. *M.E.I.*,[47] relying on the expert opinion of a Taiwanese lawyer respecting the requirements of Taiwanese adoptions.

The IAD often makes determinations regarding the genuineness of alleged marriages of convenience when they involve arranged marriages. In *Rai, Lakhbir Singh* v. *M.E.I,*[48] the IAD found that an arranged marriage was genuine. The Board considered testimony from the main matchmaker of the marriage and found that it "*would appear to be a traditional arranged marriage according to Sikh custom and tradition. The practice in the two families involved is for the couples to meet for the first time at the actual wedding ceremony.*"[49]

In *Sandhu, Daljit* v. *M.E.I.*[50] the IAD had occasion to deal with arranged marriages and found that the practice is acceptable if they are customary in both parties' culture.

However, in deciding these cases, members may see videotapes, picture albums and recordings of ceremonies involving practices very different from traditional Canadian ones. Members must look at this evidence with broadmindedness and sensitivity and attempt to apply a legal standard before making a decision. The challenges are considerable, as you can see.

In hearing appeals from refusals of sponsored applications for permanent residence, IAD members are called upon, in certain cases, to decide whether sufficient humanitarian and compassionate circumstances exist to warrant allowing the appeal. In assessing humanitarian and

compassionate circumstances, members examine the obligations the appellant has toward the sponsored party based on different cultural values.

The IAD, in considering all the circumstances of the case, allowed the appeal and quashed a deportation order in *Batraki, Madlin* v. *M.E.I.*[51]. In this decision, the IAD considered among other factors, that the claimant "would face a life alone in Syria because as she has had a boyfriend in America, she is no longer considered marriageable in Syria."

When considering appeals for permanent residents who face deportation because they have been convicted of crimes in Canada, the IAD attempts to balance fairness to the appellant with the protection of Canadian society. In performing this balancing act, the IAD examines the equities of the cases including the "hardship" that would result to the appellant if deported. In determining what constitutes "hardship", IAD members look at a variety of factors, including:[52]

1. The seriousness of the offence leading to the deportation order;

2. The possibility of rehabilitation;

3. The length of time spent in Canada and the degree to which the appellant is established here;

4. The family in Canada and the dislocation to the family that deportation would cause;

5. The degree of hardship that would be caused to the appellant by his or her return to his or her country of nationality.

In considering the dislocation that deportation would cause to the appellant's family in Canada, the IAD must often examine what constitutes a "family" for the appellant. In some cases, the appellant's family will be an extended one, including grandparents, aunts, uncles and cousins in addition to the immediate family.

CONCLUSION

Decisions that reflect sensitivity to cross-cultural differences are the result, in part, of the representation on panels of members of cultural minorities. Decisions of this nature foster a perception of legitimacy particularly when parties are themselves members of such minorities. As I have attempted to demonstrate, multi-cultural panels hearing refugee claims and appeals bring a different perspective to, and offer different insights into, the process. It is hoped that the experience of the Immigration and Refugee Board will be followed by other boards and tribunals throughout Canada.

FOOTNOTES

1. *Canadian Charter of Rights and Freedoms,* Part I of the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

2. R.W. Macaulay, *Practice and Procedure Before Administrative Tribunals,* vol. 1 (Toronto: Carswell Legal Publications, 1988) at 1-4.

3. B. M. Rogers, "Access to Administrative Tribunals" in N.R. Finkelstein & B.M. Rogers, eds., *Recent Developments in Administrative Law* (Toronto: Carswell Legal Publications, 1987) 195 at 196.

4. *The Independence of Federal Administrative Tribunals and Agencies in Canada* (Ottawa: Canadian Bar Association, 1990) at 4.

5. *Supra* note 2 at 4-10.

6. *Ibid.* at 1-6.

7. *Ibid.* at 1-7.

8. In the Government of Ontario publication, *A Guide: Agencies, Boards and Commissions* (Toronto: Publications Ontario, 1991) it is stated that:

   "All agencies require representation from a broad cross-section of the community, including seniors, disabled people, francophone Ontarians, visible minorities, aboriginal and native Canadians, labour and management groups."

9. W.G. Plaut, *Refugee Determination in Canada: Proposals for a New System* (Ottawa: Supply and Services Canada, 1985).

10. Canada, House of Commons, Standing Committee on Labour, Employment and Immigration, *Minutes of Proceedings,* Issue No. 13, 2 June 1991, at 13:4.

11. Immigration and Refugee Board, *Annual Report* (Ottawa: Immigration and Refugee Board, 1992) at 31.

12. *Ibid.*

13. *Supra* note 10 at 13:6.

14. *Supra* note 9 at 132.

15. Law Reform Commission of Canada, *The Determination of Refugee Status in Canada: A Review of the Procedure* (Ottawa, 1992) at 143.

16. D.E. Anker, "Determining Asylum Claims in the United States: An Empirical Case Study. The Implementation of Legal Norms in an Unstructured Adjudicatory Environment" (1991 19) Journal of Law and Social Change.

17. *Supra* note 15 at 145.

18. E.P. Mendes, "Promoting Heterogeneity of the Judicial Mind: Minority and Gender Representation in the Canadian Judiciary" 91 at 97.

19. *Ibid.* at 99.

20. *Ibid.* at 96.

21. *Ibid.* at 106.

22. *Ye, Zhi Bing* v. *M.E.I.* no. A-711-90 (F.C.A.) JJ. Stone, MacGuigan and Henry).

23. *Ibid.* at 3.

24. W. Kalin, "Troubled Communication: Cross-Cultural Misunderstandings in the Asylum Hearing" (1986) 20 Int'l Migration Rev. 230 at 237.

25. *Infra* note 28 at 12.

26. *Ibid.* at 19.

27. See *L.E.Q.*, [1991] C.R.D.D. No. 73, V90-00182, where the IRB members suggest that common sense and a knowledge of human nature are also valuable tools when examining the credibility of the claimant.

28. V. Kot, *The Impact of Cultural Factors on Credibility in the Asylum Context* (San Francisco: Immigrant Legal Resource Center, 1988) at 19.

29. *Supra* note 24 at 236.

30. *Ibid.* at 231.

31. Immigration and Refugee Board Documentation Centre, "Somalia: Information on the Naming of Children" Response to Information Request, 9 April 1991.

32. *Supra* note 24 at 234.

33. In *L.E.Q.*, *supra* note 27 the Refugee Division noted that in assessing the claimant`s demeanour, "it is very important to be cognizant of cross-cultural differences" (Angus, Paetkau),

34. *Supra* note 28 at 5.

35. *Supra* note 16 at 102.

36. *Supra* note 28 at 1. The UNHCR, for example, has noted in an *Information Note*, *infra*, note 38 at 25, that "[w]omen face special problems in making their case to the authorities, particularly when they have had experiences which are difficult and painful to describe."

37. Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva, 1988) para. 198.

38. UNHCR Executive Committee of the High Commissioner's Programme *Information Note on UNHCR Guidelines on the Protection of Refugee Women* (Geneva, 1991) UNHCR, EC.SCP. at 67.

39. *Ibid*. at 24.

40. *N.E.F.* CRDD T90-01590, Liebich, Clarke, (March 7, 1991).

41. *Supra* note 38 at 27.

42. *Ibid.*

43. *Supra* note 11 at 32.

44. *Supra* note 24 at 239.

45. The Appeal Division has the sole and exclusive jurisdiction to hear appeals made pursuant to sections 70, 71 and 77 of the *Immigration Act* and to determine all questions of law and fact including questions of jurisdiction, that may arise in relation to these appeals.

46. (IAD W89-00261), Goodspeed, Arpin, Rayburn, November 16, 1985.

47. (IAB 81-6057), Hlady, Campbell, Howard, September 8, 1982.

48. (IAD V91-00214), Wlodyka, Chambers, Gillanders, August 19, 1991.

49. *Ibid.*

50. (IAB 87-6347), Mawani, October 20, 1987. See also *Bhangal, Baljit Singh* v. *M.E.I.* (IAD W90-00173), Goodspeed, December 6, 1991, where the Appeal Division found that the applicant's lack of knowledge regarding the appellant's family was consistent with an arranged marriage in the Sikh tradition.

51. (IAD W90-00103), Goodspeed, Arpin, Gillanders, February 27, 1991. In *Aujila, Kulwant Kaur* v. *M.E.I.* (F.C.A., no. A-520-89), JJ. Mahoney, MacGuigan, Décary, March 4, 1991, the Federal Court of Appeal found that the Appeal Division had failed to take into account all of the relevant circumstances of the case, including the social stigma that would attach to the appellant if she were to return to India.

52. The former Immigration Appeal Board considered what constitutes "hardship" in *Ribic, Marida* v. *M.E.I.* (IAB 84-9623), Davey, Benedetti, Petryshyn, August 20, 1985.