

CANADIAN COUNCIL FOR REFUGEES



The Experience of Refugee Claimants at Refugee Hearings at the Immigration and Refugee Board

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A) EXECUTIVE SUMMARY

In 2011 the Canadian Council for Refugees (CCR) conducted research on refugee claimants' experiences of their refugee hearings. The research was designed to explore the perspective of refugee claimants as they went through their hearings, including their positive and negative impressions of the process and the people within it, their psychological and emotional state of being during the hearing, and how these matters affected an overall feeling of fairness.

Seventy refugee claimants were interviewed in eleven cities across Canada. Most claimants had undergone their hearings less than six months previously. Efforts were made to ensure a diversity of experiences were reflected, by interviewing claimants who did and did not use interpretation, LGBT claimants, survivors of torture, claimants with disabilities, and claimants with varying outcomes (refused, accepted and awaiting a decision). Nevertheless, the sample of claimants is not representative, and it would be inappropriate to attempt to draw any statistical conclusions based on the distribution of answers.

Claimants interviewed were asked broad, open-ended questions about the hearing. They were encouraged to describe both the positive and negative aspects of their experience. The present report collects comments from the interviews, to reflect the diverse subjective experiences and perceptions of refugees.

Before the Hearing

Some claimants spoke about the stress of waiting for the hearing, living in a state of anxiety for the future, with limited rights. Claimants approached the hearing with varying expectations, some imagining a courtroom as seen in the movies, others with fears based on horror stories based on other claimants. Those with lawyers recounted more or less elaborate preparations, including mock hearings and tips for how to respond to questioning. Many claimants focused on reviewing their Personal Information Form to ready themselves for the hearing. Debilitating feelings of anxiety immediately before the hearing were common.

The Hearing

Claimants had various reactions to the physical setting of the hearing, including the comment from some that it didn't make much impact on them. Some appreciated the layout, and were glad it didn't look like a formal courtroom. Others found that it did remind them of a courtroom. The seating layout worked less well for families, since not all family members could sit together.

The initial introductions were important to many claimants, reassuring and relaxing some. Others reported that the hearing started in an abrupt and unfriendly manner. Hearings were typically described as "well-organized". Where there were issues with procedures, they were mostly described in terms of a conflict with the Board Member.

Claimants appreciated the presence of supportive observers. The situation of children was quite complex. Parents with young children generally expected that they needed to plan for someone to look after the children after the beginning of the hearing, but some claimants with older children were unprepared for their ejection, and a few resented their not being able to participate.

There were a wide range of perceptions of interpreters, from those felt to perform their role expertly and sensitively, to those who were considered careless and incompetent. Some claimants had a good capacity in an official language, but had an interpreter as a back-up: sometimes this worked well, but in other cases claimants felt that there was insufficient flexibility to allow them to communicate as effectively as possible.

Few claimants reported the presence of a Tribunal Officer at their hearing, and they do not appear to have had a meaningful impact when present.

Not surprisingly, many claimants described the hearing as an intense emotional experience. Some were so nervous that they could not answer even simple questions. Talking about traumatic experiences often brought out painful emotions. For the most part, breaks were welcome, as answering questions was exhausting, especially given the emotional charge. Some claimants felt that they could not – or should not – ask for breaks.

Many refugee claimants described their hearing experiences using the language of courtrooms and adversarial processes.

The Refugee's Perceptions and Interactions with the Board Member

For the vast majority of claimants, comments about the fairness and appropriateness of the hearing were almost always framed in terms of the behaviour of the Board Member. Reports ranged from respectful praise to scathing critiques.

Claimants often commented on whether the Board Member appeared to have prepared, by familiarizing themselves with their file and being knowledgeable about the country conditions.

Several claimants commented that their Board Member was understanding about the emotional aspects of their experience, and helped them to get through the process. Other claimants experienced their Board Member as impatient or unsympathetic.

A crucial aspect for many was the questioning style used by the Board Member. Claimants had difficulty with some techniques, such as repetitive questions, questions requiring yes or no, or fact-specific answers. Practices appreciated by claimants including allowing them to state their claim in their own words and asking questions that are open ended, clear and objective, in a chronological order. Claimants also wanted to see the Board Member show that they were interested in their responses, and demonstrate a concern for their well-being.

Some claimants complained that their hearings were negatively impacted by irrelevant or inappropriate questions. Others were deeply concerned that their Board Members failed to ask them about key aspects of their claim.

Many claimants perceived their Board Members as fair and open-minded. Others described behaviour or comments that led claimants to feel that their Board Member was not interested in listening to them or had already made up their minds about the case.

B) INTRODUCTION

Most refugees seeking protection in Canada have their claim decided by a member of the Immigration and Refugee Board (IRB) at a hearing. The member determines whether the claimant is a Convention refugee or is otherwise in need of protection, as defined by the Immigration and Refugee Protection Act. A successful claimant can apply for permanent residence, and thereafter for Canadian citizenship. An unsuccessful claimant is likely to face deportation from Canada.

In order to promote a fair, effective and efficient system of refugee status determination, refugee claimants should be given the best possible opportunity to explain at the hearing why they believe they need protection. Whatever the outcome, it is important that they feel that they have been fully heard and fairly treated throughout the process.

The perspective of the refugee claimants themselves is of course essential to any assessment of how far these objectives are being met. Refugee claimants can tell us what helps or hinders them in participating effectively and openly in their own hearings. Moreover, an awareness of refugees' perspectives may help government officials to shape their policies and practices in ways that lead to claimants feeling that they have been treated fairly.

There is currently no systematic process for soliciting feedback from claimants on their perceptions of the refugee hearing. Research in this area is quite limited. While the record of an individual hearing may be examined through judicial review at the Federal Court, there is no opportunity in that forum to present the claimant's perception of the hearing.

In June 2012, significant changes to the refugee determination system are to be introduced, including a new team of civil servant decision makers conducting refugee hearings at the IRB. Additional information about how refugees experience the hearing might be helpful in the training of the new members and in preparations for the new system.

In light of the above factors, the Canadian Council for Refugees (CCR) decided in early 2011 to conduct research on refugee claimants' experiences of their refugee hearings.

The research was designed to explore the perspective of refugee claimants as they went through their hearings, including their positive and negative impressions of the process and the people within it, their psychological and emotional state of being during the hearing, and how these matters affected an overall feeling of fairness.

It was also expected that the research might uncover useful information on communication barriers and misunderstandings, how claimants perceive the interpreters and Board Members, why they might have difficulties describing their situation and providing information, and how they might respond to certain behaviours or procedures.

To achieve this, the CCR decided to conduct a series of personal interviews to gather the first-hand accounts of claimants who had recently undergone a refugee hearing at the IRB.

C) RESEARCH AND METHODOLOGY

The research was conducted in the summer of 2011 through a series of interviews.

1. Claimants Interviewed

In total, 70 refugee claimants were interviewed about their refugee hearing experiences. The interviews took place in eleven cities across Canada.¹ Most claimants had undergone their hearings less than six months prior to being interviewed.

Of the claimants interviewed, 33 were female, 35 were male, and 2 did not identify their gender. Children were brought to 19 of the hearings described, although the extent to which the children were present or participated in the hearings varied.

Four sets of spouses were interviewed together.

In terms of regions of origin, 36 individuals came from the Americas, 20 from Africa, 11 from Asia, 2 from Europe, and 1 did not specify.

Special efforts were made to include in the research claimants who are disabled or survivors of torture, individuals who are lesbian, gay, bisexual, transgender or transsexual (LGBT), and claimants who do not speak English or French.

Where possible, we sought to interview claimants who had not yet received a decision on their claim, although we found that claimants were often reluctant to participate while waiting for the outcome of the hearing. At the time of drafting this report, 31 of the interview claimants had been accepted, 24 were rejected, and 15 were awaiting their decisions or another hearing.

No attempt was made to ensure that claimants interviewed were proportional to or fully representative of everyone who has had a refugee hearing. In addition, it should be acknowledged that there may be some bias in regard to which claimants participated in this study. Claimants were mostly recruited by refugee-serving organizations, meaning that there is likely to be an over-representation of claimants who are among the most connected – and perhaps therefore better prepared and supported. Among those claimants invited to participate, there is likely to be a bias in who would agree to be interviewed. For example, those who received negative decisions or experienced especially traumatic hearings might be disinclined to participate in this research. Conversely, claimants who felt that they had been treated unfairly might be more motivated to give feedback on the hearing than those whose experience was satisfactory. Many people who had not yet received a decision on their claim were fearful that an affiliation with the project would somehow influence their status in Canada, and some expressed extreme distrust of the government, fearing they might be deported or face other retribution if they spoke about their hearings.

¹ Toronto, Montreal, Hamilton, Edmonton, Fort Erie, Halifax, London, Vancouver, Windsor, Ottawa and Cambridge.

All refugee claimants interviewed were assured of complete anonymity, including country of origin and any other potentially identifying information.

2. Interviews

A questionnaire was developed in consultation with CCR members and a Steering Committee, which included lawyers, academic researchers, refugee support workers and refugee advocates.

Interviewing was semi-structured, meaning that participants followed a common questionnaire, but claimants were encouraged to elaborate as they saw fit. The purpose was to obtain as far as possible a comprehensive and unbiased account of refugee hearing experiences.

Claimants were asked broad, open-ended questions to encourage them to describe their perceptions and feelings throughout the hearing. Within the context of these broad questions, they were asked to touch on various features of the hearing such as the role of interpreters and Tribunal Officers, their perceptions of the Board Member and the physical setup of the hearing. Claimants were encouraged to describe both the positive and negative aspects of their experience.

The interviews were not designed to seek claimants' comments on their lawyers. While there would be significant value in researching this question, it was felt to be both outside the scope and beyond the capacity of this small research project.

Claimants were not asked to describe the nature or content of their refugee claim.

3. Results

This research was designed to draw out accounts of the experiences of refugee claimants at their hearings.

Since no attempt was made to achieve a representative sample of claimants, it would be inappropriate to attempt to draw any statistical conclusions based on the distribution of answers.

Individual incidents that are mentioned in the report are not alleged to be representative of all or most experiences.

The report reflects the subjective experiences and perceptions of refugees: others present during the hearings or the recording of the hearing might give different versions.²

No information was gathered nor analysis conducted on the content of the refugee claims themselves.

² There had been an early hope that it might be possible to compare claimants' accounts with the recordings of the hearing, within the scope of this project, or in a second phase. However, this proved impracticable.

Relevant portions of the interviews are presented below, organized by theme, with a view to reflecting the diversity of experiences and reactions of those interviewed. Quotations from the interviews have been lightly edited for readability. Pseudonyms have been used throughout.

Cumulatively, the perspectives of seventy claimants offer credible and up-to-date insights into the conduct of refugee hearings and may be useful for identifying areas where training or policy changes might be warranted.

D) THE REFUGEE HEARING AT THE IRB: THE PROCESS

A person who is in Canada (or at the border) can apply for refugee protection under the Immigration and Refugee Protection Act. Eligible claims are referred to the Refugee Protection Division of the Immigration and Refugee Board which is responsible for deciding whether the person qualifies as a Convention refugee or as a person in need of protection.

A Convention refugee is a person who has a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group. A person in need of protection is defined as someone whose removal to their home country would subject them to a danger of torture, a risk to their life, or a risk of cruel and unusual treatment or punishment. Although the refugee determination process is usually non-adversarial, the claimant has the burden of proving that they meet one or other of these definitions.

The IRB will decide whether to consider the claim through a fast-track expedited process or a full hearing. Most refugee claims are decided through a full hearing, which is the only type examined in this project.

Once a claim has been determined to be eligible, the claimant must complete and submit to the IRB a Personal Information Form (PIF), in which they explain the grounds on which they seek refugee protection.

When the IRB is ready to schedule the refugee hearing, they will notify the claimant. It can take anywhere from two months or several years to schedule a hearing.

Claimants must send all of their supporting documents to the Board at least 20 days before the hearing date. These may include personal documents, as well as reports describing conditions in the claimant's country of origin which may substantiate their story.

Hearings take place in a small room designed for the purpose, less formal than a traditional courtroom. They can last anywhere from 20 minutes to several days. Where hearings span several days, the sessions may be scheduled several weeks apart. Hearings may be conducted through videoconferencing. Some claimants travel several hours for in-person hearings.

The format of the hearing is generally left to the discretion of the presiding Board Member, who determines who will speak when, and whether observers (typically family members, friends or support workers) will be permitted to attend the hearing. Often, families apply for refugee status together and participate together at the same hearing. Most claimants (but certainly not all) have legal representation.

Typically the Board Member will begin with an introduction and explain how she will organize the hearing. She will begin with questions for the claimant based on the information provided in the PIF and supporting documents. The content and style of the questions are up to the discretion of the Board Member, and will vary from case to case.

The claimant's lawyer will then have the opportunity to ask the claimant questions, and to make oral submissions to review and address the issues raised in the hearing. Because the claimant has the burden of proving their claim, the lawyer will try to establish the claimant's subjective fear, the objective basis for that fear, the ineffectiveness of protection offered in their home country, and the impossibility of an "internal flight alternative" in their home country.

In some hearings, a Tribunal Officer may be present, and may ask the claimant questions instead of, or as well as, the Board Member. A few claimants will also have present at their hearing a representative of the Minister of Public Safety – this occurs when the Canada Border Services Agency wishes to argue that the claimant should not receive refugee protection.

In many cases, the claimant's risk of persecution cannot be fully established through documentary evidence, and the claimant's own testimony is crucial for substantiating the claim. The Board Member will therefore often need to test the claimant's credibility, by looking for possible contradictions in the oral evidence and considering the general plausibility of the account, in light of documentary evidence.

At the end of the hearing, the Board Member will often summarize the issues and key points of the claim. Sometimes the Member gives the decision immediately, but more often the decision is mailed to the claimant several weeks later.

An unsuccessful claimant may file an application for judicial review at the Federal Court. If the Federal Court overturns the first decision, the claimant will have another hearing with a different Board Member.

E) THE REFUGEE HEARING EXPERIENCE

What is a refugee hearing like from the perspective of a refugee claimant? This section, based on the accounts of refugees themselves, asks the reader to step inside the shoes of refugee claimants who are about to have their status in Canada determined.

Every refugee's claim is unique, and so are their hearings, but the following descriptions touch on many points echoed in the testimonies of other claimants who participated in this research.

Kessie's Experience:

My hearing was very short, it was about an hour. I remember after the hearing I was talking to my lawyer and I said it was ten minutes, and he said, "Nooo it was about an hour!"

I had a positive experience, in the beginning I was kind of nervous – very normal. Very anxious, I was nervous, I was worried. My social worker and lawyer were there.

So I was waiting and my social worker was trying to calm me down, trying to talk about other things. But I got emotional and everything, the whole thing was just like... I cried before my hearing for ten minutes. I was just overwhelmed. I didn't know how the place was, what the room was like, how comfortable I was going to be, who is going to be the Board Member, if I was going to be able to come out well, if I was going to be intimidated by the person. I wasn't sure what to expect.

My lawyer told me some of the Board Members are nice and listen to you. Some will make you feel like they don't believe you so you might get nervous and so you might react. So he gave me different issues, possibilities of what to expect. I was so nervous I didn't know what to expect, and I didn't have breakfast. My social worker had oranges in her bag and she gave them to me and I cried.

My lawyer was gathering information for my story and he did some research and investigation on my home country. He had a lot of information that could support my hearing. [But the information was not sent because of the Christmas holidays.]

So the first thing at the hearing when [the Board Member] introduced herself and everyone introduced themselves, she was like, "I am not going to accept this document, I haven't seen it, I didn't even get time to read this because it came outside the deadline, I'm sorry." I'm like, "Oh my God!" She wasn't nice about it, she was very strict, like you have to accept the rules.

My lawyer was like, "It's not my claimant's fault, it is my responsibility. I gave it to my secretary to send it and for some reason she couldn't send it." She was like, "Give me five minutes." Everyone was so quiet, it was very tense. You want so much evidence to help your case so if some is not being considered it's maybe not the best thing.

After five minutes she said, "I'm going to read through it quickly. If I find that it's relevant I'm going to use it, if it's not, no." So she gave us a chance. She read through it. I kind of had a feeling that she might have read it, but she wanted us to see that you can't work this way, you have to do the right thing [and follow the rules].

She said, "This is how it's going to go. I'm going to ask the questions. The social worker isn't allowed to talk but your lawyer is allowed to talk at some point if he has more questions or anything to clarify." So she gave a general description. You'd definitely wonder what was happening [without that], wondering how it's going to be like. She also said you can take a break any time, you can go on to use the washroom, you have a break at any time if you need a drink: you just need to ask.

So the hearing started, and then she started asking me questions, and then in the first ten minutes I started crying. But she was very nice, because she was very patient. It's probably lucky I got a nice one. She accepted my evidence and she thought I needed a break, so she gave me ten minutes break. We went outside and then we came back. When we came back, she asked me a few more questions.

I just got emotional and she offered [a break] because instead of answering questions I was just crying, so obviously she didn't get anything from me and she wasn't upset over it or saying, "Okay, if you're going to cry then weren't not going to have this anymore. We're going to set another day because you're crying." No. I was trying to answer my questions, I was trying to suppress the emotion, but I was thinking, "What if she just gets so mad that she thinks, 'okay, I don't need you to cry.'" You know, that's what I thought! So I was trying to still talk, it was so funny. And she was like, "You don't have to answer anything if you're emotional." She said, "I think your client needs a break." So I was like, "Oh my God, thank you!"

She was very strict with her questions. When you don't give a straight answer, she's like, "No, I need a straight answer."

Then she asked me a few more questions, then she said it was okay and she didn't have any more questions. That's when I realized that it was very, very fast and straightforward. Then she asked [my lawyer] if he had something to say, and then he asked some more questions, and then she asked some questions again. Then my lawyer said he had nothing more to say, and then she made her judgement.

In the beginning I was all stressed, but at the end it turned out well. It was short, and my lawyer said I have a genuine case, I have a good case so he wasn't surprised that it didn't last for that long. So it was a good experience. It was stressful, but in the end it was okay.

I think naturally you'd be stressed. The fact that you're going through a hearing and a decision is going to be made about your situation, you don't know, if you are rejected, what you are going to do, what your next steps are. That alone makes you stressed. And my stress added up because of her reaction – the Board Member's reaction, her being very strict and everything. After I was thinking, "Oh my God, this probably is not a person that will listen to me." But it turned out differently. She was probably just doing her job.

Indira's Experience:

On the day of my hearing I went with my lawyer to the address given in Toronto. There was an interpreter present with a Board Member in the large room. As soon as we entered the room and sat down, the Board Member started explaining that the purpose of the meeting today is to find out if the claim is legitimate or not. She introduced every one present in the room to me. The interpreter started speaking in my language which I understood completely. I had to stand up and take the oath to

say that my PIF records are correct and true. She also asked me if I understood the interpreter okay and then she asked the lawyer if she had any questions to ask me before she begins. My lawyer said she didn't have any questions.

The Board Member said that she will ask me questions about my PIF and some additional questions she prepared herself.

When I was replying to the questions, I had to look at my interpreter and then the interpreter looks at the Board Member while giving my answers. I thought that was good. Also the seating arrangement was convenient as myself and the interpreter had to face the Board Member while my lawyer sits by the side around the table. The room felt rather large. It helped that the Board Member is sitting at the same level as us at the table.

Naturally, I was nervous because it was an interview where the questions were investigative based on my claim. Even though everything I was saying was true, still I haven't experienced a formal interview setting like this before in my life. The Board Member seemed to have prepared well enough since she understood my answers and asked relevant questions about my background and claim. She also seemed to be asking questions according to the order in my PIF. From her response and conduct, she looked very neutral where she didn't seem either supportive or hostile. Overall she asked me about 20 to 30 questions and it felt like it took about 45 minutes in all.

Then, she explained that it is over and also said that based on my answers, she will be providing a decision letter after her vacation is over. She also said that she is satisfied with my answers and evidence provided and that the decision will be positive. That relieved me from worrying further as I have waited so many months feeling anxious about my claim as a refugee.

Overall, my feeling about the hearing is positive because it seems well organized throughout the refugee claimant process. Also, because I got very good support from my lawyer, which helped a lot. The difficult parts were the claim applications where there were many forms to be filled out and without a lawyer and interpreters to support through the process, it would be a nightmare just applying as a refugee. Also the wait period was pretty long where one has to live in fear. Other than that the hearing process I went through was very well organized and managed and I am thankful and happy that a fair hearing system exists in Toronto/Canada.

1. Before the Hearing

It is clear from the interviews that claimants' feelings as they walk into their refugee hearing are affected by their experiences leading up to the hearing.

1.1 The Wait

Several claimants mentioned the long wait between the time they made their refugee claim and the hearing. Some had waited as long as three years, while others had their hearing after only two months. The average period between the submission of a claim and a refugee hearing was about eighteen months.

Many claimants characterized this period as extremely stressful. One couple remembered: “We were under a great deal of pressure, it was very stressful when we were waiting. For fifteen months it was a very difficult and stressful time.”

Aware that others were waiting much longer, Kessie still found a wait of “only” a year and a half difficult:

Even for me I kind of felt like I waited for a while because you are not comfortable, you are not settled, you don't have anything. You are not secure, you always want to work so hard. You're always nervous, you're always stressed, you are not comfortable because you're still not part of anything. You're not part of your country anymore because you cannot go back there, and you're not part of where you are. If you go out looking for a job and you have a refugee document, it's very difficult; they think you're a criminal. You're stereotyped, so even finding a job was difficult. So there are a lot of things that you go through as a refugee claimant which is very tough. I remember days and nights that I cried and cried and cried.

David explained that “being a refugee is not easy because it's always uncertain what's going to happen in your future and you have to wait.” Another man recalled, “The waiting period was very stressful because it took me two years to get my hearing. I didn't sleep at night. Sometimes I would go to bed early and just have ten minutes of sleep.”

Dora found the wait so stressful that she had to see a doctor. They told her it was normal to feel this way. She said it felt like she was awaiting a sentence, and it was a rather unnerving situation to be in for so long. It wasn't only the wait, but the recurring thought that she might not be accepted. Every single day that she was waiting she thought about having to go back and continuing to run and hide.

Sofia reported that the longer they waited, the less prepared she and her husband felt. She explained, “I felt that time was against us. Because of the long wait after the claim, there were details of the story that weren't so fresh in our minds anymore.”

1.2 Expectations

During the fifteen months they waited for their hearing, Kamran and Fatima tried to find out what it would be like, asking their psychologist as well as their doctor. They were worried because they imagined “it would be like a court and we would be standing there, and it would be a jury [deciding our case].”

Many claimants reported being told stories of other hearings that were traumatic, unfair or draconian by other refugee claimants, lawyers or support workers. These stories and rumours contributed to feelings of nervousness and fear, and led many claimants to initially distrust their Board Member.

Some of the claimants interviewed mentioned that they passed on stories of their own hearing experiences. For example, Elsa who had some problems with translation and having her evidence accepted said, “For me it was a very important day and from the moment the hearing was over I started retelling it for friends and family. I must have told my experience more than twenty or thirty times, because everybody wants to know, to have the details. People who knew of the problems... wanted to know it all.”

Dora, who waited two years for her hearing, felt that talking to other refugees about bad experiences at their hearings sunk her “deeper and deeper”. She remembered hearing women say that the Board Members would “yell at them, wouldn’t let them finish explaining or that the Board Members were generally really hard on them.”

Happily, Dora’s hearing turned out differently than she feared, and she described her Board Member as “a wonderful person and a great man.” She felt she was very lucky.

Other claimants also described similar experiences, where negative stories created significant apprehension beforehand, but they themselves had positive hearings. Tesfay explained:

When I heard about some people being rejected I got a little nervous. I didn’t know if we were going to get justice. What you hear before the interview, and what you see are completely different. People used to tell us the [Board Members] try to cheat, to deceive. For example, you say something, they ask you questions related to it – difficult ones. They make you stressed and cheat you. But we didn’t have any problems.

Similarly, Ramirez remembered, “On the street you hear all kinds of things... Some people say that the Board Member’s stare is very sharp, but I didn’t find this, maybe because I was feeling confident.” Ultimately, Ramirez “found the process very friendly and intimate.”

In a small number of cases, refugees reported learning about the rates at which their specific Board Member rejected claimants from their country, causing perceptions of unfairness and futility before the hearing has even begun.

In the case of Honza and Micaela, family members had been rejected by the same Board Member before. They said that they “knew before that they will be sent home” too.

1.3 Preparation

The level of preparation made a significant difference to claimants’ perceptions of the refugee hearing. About half of the claimants interviewed said that they felt well-prepared for their hearing.

Most of the refugees interviewed had legal representation, although the range of time spent and help received from lawyers varied significantly. Some barely spoke with their lawyers while others had multiple mock hearings to prepare.

Several claimants reported receiving help from refugee serving organizations such as support groups, settlement organizations, community centres and shelters. Only two people indicated that they had found guidelines on the internet.

While some claimants anticipated that the hearing would only involve them telling their story, others expected it would be very demanding or legalistic and prepared accordingly.

The confidence level of the claimants seemed to vary without correlation to the types and quality of the preparation.

Some claimants felt confident going into their hearings after having undertaken a relatively small amount of preparation. Chantal, an African woman in her 30s, said, "I felt confident because it was my own case and my own experience." Felix, a Latin American man of the same age, explained that he did not feel well prepared from a legal perspective, but he felt that it was fine because he was "just telling his story".

In one case, a woman's lawyer briefed her on the questions she might be asked, but she indicated that she "already knew what she would say about her experience". A man also said, "I was well prepared since the day I came here."

At the other end of the spectrum is Pat, who after much study and consultation still did not feel confident: "I read and read and read my PIF. A friend helped me to review my PIF. I met with my lawyer five times. No, I did not feel well prepared."

Like Pat, many claimants put the most emphasis on studying their PIFs. David, a teenager from South America, was anxious about his PIF and focused on its details. He read and reread his story, trying to memorize dates and addresses, and generally trying to make sure he remembered how everything happened. He said he still didn't feel prepared for the hearing. His lawyer told him there was no way of knowing the questions that the Board Member might ask.

Some families would practise going over their story together. Sofia and her husband practised reading it and asking each other questions. They also had families from their home country read the story and ask possible questions.

However, other families avoided studying their PIFs together. Ramirez, who was accompanied by his wife and four children, explained this strategy:

What we did was try not to talk about it at all while we were at home... We tried to forget about it so that we didn't get too nervous, just wait for the day of the hearing and say what we had to say... We didn't want to talk about it too much because different people talk about different experiences, and that can only bring confusion.

Kamran and Fatima were told that they would be asked indirect questions about their story, so their strategy was to “memorize and understand” their story as much as possible. They were curious about the proceedings and asked the people around them about it.

Saron, an African woman in her 30s, also concentrated on memorizing details, on her lawyer’s advice. She recalled, “I was told to say [my story] exactly like what I had written on the documents.” Ruben received similar advice – he learned about the proceedings from his friends, since he didn’t have a lawyer.

Many claimants also described the importance of gathering and submitting evidence to support their claim.

Claimants’ perceptions were also affected by preparations for the hearing experience itself.

Generally, claimants who had practised answering questions with their lawyer felt well-prepared. Many had lawyers who described the hearing process in detail beforehand so they would not be caught off guard.

Esma’s lawyer explained what the hearing would be like: “They explained to me how it will go, and I had two or three mock courts. They showed me how it was going to be during the hearing.”

A client of a refugee legal clinic felt he benefitted from his pre-hearing preparation:

I didn’t know how to do it. I didn’t know nothing. The [clinic] helped me with everything. I had my case and they were concerned with what was more important to show, and [that] helped me. We did some mock hearings before, like the way it’s going to be and that helped me. It gave me a little bit of an idea of how it’s going to be.

Stephen, a young African man in his 20s, described the thorough way his lawyer prepared him:

After telling me about what it’s going to look like, and giving me an idea of who was going to be there, how many people, the setting and everything, she described it for me with a drawing. Where I would sit, where she would sit, all of that. So that really gave me an insight as to what to expect. Otherwise I would have been caught unaware and then get nervous. So she described everything: who was going to ask the first question, who was going to answer, and all that, everything was known in advance.

There were so many things that she told me. After she started [a] kind of mock trial, so she became the judge and then she was asking me all the questions, most of which the judge eventually asked anyway.

I remember there was a time she asked one question and I got angry at her. She said she wanted to test my level of patience and that I have to be controlled and to not get angry with the judge – otherwise you’re going to infuriate him and then the judge is

not likely to be in your favour. All of those things she corrected so then I knew that no matter what the judge says I'm not going to get angry and be very patient. And it was a good thing too because he was asking some ridiculous questions, questions I had answered before, he would come back again. I was very patient about it... I thought, 'I said this before' – but I didn't say that. I would go over it again and again!

Among other types of preparation, Yusef's lawyer helped him understand that the way he conveyed himself would have an impact on the Board Member and the hearing:

He told me not to be scared or shy, to stand up straight and look directly at the judge. He told me that your ideas should be very transparent, to feel comfortable and be confident. So my lawyer did help me a lot.

Several other claimants also said that they were told to look directly into the eyes of the Board Member.

1.4 Emotional State in advance of the Hearing

Many claimants described debilitating feelings of anxiety in the period immediately before their hearing.

One man recalled, "I could not eat and sleep for the two days before the hearing. I was so anxious." Another remembered that it was a difficult time and he didn't sleep for a week before the hearing. He kept thinking about his hearing at his job and at school, and he was very nervous.

2. The Hearing

2.1 First Impressions: The Physical Setting

Refugee claimants were affected by the physical setting of the hearing in different ways.

Most claimants said the setting was fine and did not make much of an impression on them. Some had heard their lawyers describe the room in preparation so they knew what to expect. For others, like Devan, "the room itself was of very little importance because it wasn't the time to be paying attention to that sort of thing." Or as another man expressed it:

You're thinking about if you're going to get landed or you're going to be returned to your country to persecution or stuff like that. So all that is going through your mind, so for me personally, the size of the room or the condition of the room, it wasn't even... like you were in the room but you weren't there in the room.

Some claimants reported that the physical environment set a positive tone for their hearings. Yvonne, a woman in her 40s joined by two adult children, appreciated the comfortable chairs, good air, temperature and appropriate light. She felt that "the atmosphere was formal, respectful and calming." Stephen and Kessie both appreciated that the room was private and intimate.

Halle, an African woman in her 30s, agreed that it was formal. Although she also remarked that “the room was very beautiful,” she felt it was “a little bit intimidating,” especially since she didn’t know how many people would be there.

Many claimants appreciated the layout of the hearing room. Felix described it as “a circle,” where “in front of you is the judge... on the right is your lawyer and the translator is to the left.” Several found the arrangement comfortable and said it made communicating with the Board Member through an interpreter more convenient. Selam felt that “the arrangement of the furniture of the room made me feel comfortable and not intimidated”, although she felt the environment was formal and tense.

However, the set up wasn’t felt to be ideal in hearings for families. Adolfo reported that because of the physical set up “my wife felt excluded because they sat her in the back seats.”

A woman with her family reported that the room was good, although she still found that the set up was intimidating. She reported being distressed that the seating arrangement deprived her of her husband’s support: “I hated the idea that my husband wasn’t allowed to sit beside me.”

Some claimants felt the room was too big or that they were seated too far away from the Board Member to be properly heard. Pat said, “They kept telling me I wasn’t speaking loud enough and yet it seemed as if I was yelling.”

Tarek, a man in his mid-20s, said the set up was good, and didn’t “make you feel like you are in a court or something.” He liked that it was “just [like] a friendly conversation, it was good at a table.”

Ramirez was also relieved to find that the room wasn’t as “court like” as he expected:

I went with the idea of what you see in the movies – that there is a judge and a prosecutor asking you questions. So the process was less formal than what I imagined and that helped relieve some of the tension. In the end it was just a regular room and it was more of a conversation, when I was imagining something totally different.

However, others perceived the room in opposite terms and thought that it was a court setting. Reactions to this association were varied.

Many claimants, such as Tesfay, remarked that they had never been in a court room before. He explained, “For me, when I saw it, it looked like a court room. I’ve never been to a court room before in my life. It makes the case more serious, but I didn’t feel uncomfortable.”

Others were negatively affected by the perception that they were in a court-like environment.

Claudia, who was accompanied by her disabled son and brother for part of the hearing, found the environment very stressful. She said, “You feel like a criminal sitting on the accused’s bench.”

Devan thought that the room lighting had the potential to be very upsetting, although he said that he himself was not troubled:

When I went in, what I noticed was that the lights seemed to focus more on the person seeking refugee [status], and that can be very intimidating because it's almost as if you are in a high court room and you're ready to be sentenced. For those of us who have never been into a court room or never experienced what a trial is like, that could be devastating.

Several claimants had strong reactions to the presence of a camera in the hearing room. One young African man said, "The camera bothered me, it made me nervous." For others, the camera incited intense feelings of fear. One claimant (who was accepted) said:

When I saw the camera, I felt scared and fear grew inside me that the judge would send for the police who would handcuff me right away.

2.2 Getting to Know You: Introductions

The start of the hearing had an impact on many of the claimants interviewed, shaping their perceptions of the process and the Board Member.

In some cases, meeting the Board Member and making introductions helped alleviate refugees' anxieties and set the tone for very positive hearing experiences. Friendly introductions were a way of humanizing the process and building trust between the claimant and the Board Member.

Aaron, a young man from Central America, was relieved when he met his Board Member:

I was a little bit nervous because I didn't know what was going to happen. After entering the hearing room and meeting the judge and [seeing] the way he introduced himself, it made me feel more relaxed and more confident, because of his personality.

Indeed, many claimants found that their Board Members presented themselves in reassuring ways. Jose recalled that even though the hearing was an unfamiliar experience, "I felt very comfortable from the beginning. The Board Member entered the room showing a very calm and friendly personality."

Andrea, a woman who commented that her hearing was carried out professionally and respectfully, said she felt a "sense of calm and assurance" at the beginning when the Board Member said "there was nothing to worry about." This made a very strong impression and gave her confidence.

When Kessie had her hearing, she was taken aback and worried when the Board Member jumped into an administrative problem at the very beginning. On the other hand, she was thankful that the Board Member took the time to make introductions and gave a general description of what was going to happen and what the basic rules were.

Some of those interviewed described abrupt beginnings that adversely affected them.

One man said the Board Member “didn’t smile, he didn’t say ‘Hi’, nothing”. This led his wife and him to develop a negative impression of their Board Member right away.

In another case, Ricardo wasn’t even sure who the Board Member was, “as he came in without any protocol. He just started asking questions. The interpreter had to ask whether the session had started, and the judge said yes.” Ricardo sensed that this was done on purpose, in order to catch him “a little off balance.” He said, “They are used to doing this kind of work, they know what people expect so they do something different.”

A man, who described the whole experience as “horrible”, said that his hearing started with a hostile remark from the Board Member. The moment he entered the room, the Board Member said, “Don’t try to gesticulate or move your hands, because there are no cameras to record all those.” The claimant explained that “this came to me like a shock! ... The lawyer said ... that I should not worry, even when this judge had started attacking me without even having asked my name.”

Claimants appreciated being told how the hearing would proceed. Fatima, who felt very stressed on the day of the hearing, remembered with appreciation that the Board Member took a minute to explain how the hearing would play out. Her husband noted that the Board Member was “clear in his communication.”

According to Selam, “the environment was quite comfortable and the Board Member was open with what she was looking for and how she would go about it.” She said that her hearing then “proceeded smoothly.”

But for Esma, a woman in her 30s, the tone and brevity of the introductory remarks contributed to her impression that the Board Member “wasn’t interested” or was bored, and this made her feel uncomfortable. She said, “It started quickly. We came, we took our seats and the judge started to talk to my lawyer first, and then after he introduced himself, he said, ‘Now I am going to ask you a few questions,’ and he started.” Like many others, Esma relied on an interpreter for her hearing, and so couldn’t understand the conversations between her lawyer and the Board Member.

A few claimants described how they were thrown off guard by unexpected rules announced at the beginning of the hearing. Stephen, who had multiple mock hearings with his lawyer, is one example:

I came with a file that had all my documents and all that, it was in front of me. So before we started [the Board Member] said that I’m not allowed to have any documents in front of me... It threw me a little because I didn’t expect it, I thought I would be allowed to get some facts from what I had in my file.

In summary, when mentioning introductions, claimants raised concerns with the following issues:

- Abrupt beginnings
- Lack of introductions
- Opening with a negative comment or an administrative matter
- Discussions with the lawyer that are not interpreted

The following practices by the Board Member made claimants feel more relaxed and positive about the hearing:

- Friendly introductions
- Calm demeanour
- Explanation of how the hearing will proceed
- Comments to reassure the claimant

2.3 Procedures and Protocol

In the vast majority of cases, the procedures and format of the hearing made no special impression upon the claimants interviewed. Hearings were typically described as “well-organized” and reports of delayed proceedings were rare.

One woman’s description was typical: “The hearing was organized. Everything was prepared. They guided us to the room and everything was in perfect order.”

Some claimants complained that their hearings were too long. Many anticipated that they would be hours shorter and had to rush to find child care or call into work.

Claimants with concerns over the format or procedures of their hearings usually described them in terms of a personal conflicts or faults with the Board Member.

2.4 Supportive Observers

Board Members have discretion over whether family members, friends or support workers will be permitted to attend a claimant’s hearing. For many of the claimants interviewed, the decision to allow or exclude the presence of observers was a significant aspect of their hearing experience.

At Kessie’s hearing, her social worker was there to help relieve her anxieties. In addition to comforting her before the hearing began and bringing her a breakfast (since Kessie was too nervous and distracted to remember to eat), the social worker was able to silently support her during the tensest moments of the process. Although she wasn’t permitted to talk, Kessie remembers that her social worker tapped her shoulders and gently pulled her back onto her chair when she was so nervous that she was sitting on the edge of it without realizing.

One claimant explained simply that “having my friends as observers had me feel at ease [...] I do not know what I would have done if my two friends were not there. I turned around once and they just moved their hands to tell me to calm down.”

Several claimants were tremendously thankful for the presence of a woman who had counselled them in a support group for survivors of sexual violence. One of these claimants, Dora, said that this woman helped her through the whole hearing experience and gave her a lot of courage.

For Honza and Micaela, a young family from Central Europe, the exclusion of their family member and two professional observers strongly affected their perceptions of the Board Member and the openness of the refugee determination system. They said they didn’t feel good that everyone was kicked out of the hearing before it began. Honza and Micaela suspected that this showed that the Board Member had already made up his mind and didn’t want others listening to how he talked with them. (They reported that the Board Member stated that he never allows observers.)

2.5 Children

Many claimants have children who are also making refugee claims and must therefore also be present at the hearing.

In most cases, younger children only attended the first few minutes of the hearing.

Dora explained: “I started with my two kids. They asked their names, their age and about school, and about how life is here in Canada.” She remembered that the hearing was with the whole family “for about twenty minutes maybe, and then I started alone.” Ramirez had a similar experience. His three children were excused “after the Board Member saw them.”

Teresa appreciated that her younger sister was asked to leave the hearing after introducing herself, because she and her mother had to talk about very sensitive and traumatic events. She said, “I think it was a good thing because I didn’t want my sister thinking about what was going on, although she knows what went on before and why we’re here in Canada... I don’t know how she would feel if she heard everything.”

Claudia also preferred that her intellectually disabled son not be present. “At the beginning of the hearing I asked the judge to not request the presence of [my son] because, with his limitations, he doesn’t understand what was going on and he would be over stressed. There are issues I do not mention before him. The judge accepted this, and on the whole he was not bad.”

Isabel remembers being put off by the way the way her children were treated:

I brought my children as secondary claimants to the hearing, but the Board Member, just as she walked in and before saying “Good morning” or anything ordered us to send the kids out. Luckily we had someone there to take care of them outside for the few hours it took.

She felt that the IRB should try harder to “treat us like fellow human beings,” and said of the Board Member, “I understand that it’s her job, but I think she definitely could have been nicer.”

Some claimants with children expressed their disappointment that the facilities were lacking in space or care for ejected children. Those with young children usually arrived knowing that they needed to have someone ready to watch them during the hearing, while some claimants with older children may have assumed that they would be allowed to stay.

Adolfo and his wife brought their six year old to their hearing, and she was not asked to leave the hearing room. Instead, Adolfo remembered, “I have a child with me and they didn’t do anything – my wife had to make her go to sleep.”

Halle’s pre-teen daughter waited in the reception room. “She did not have children’s services, I do not know if they would be there if I needed them.” Daniel had a similar experience with his teenaged daughter: “They didn’t allow my daughter to sit inside. She sat in the office with the secretary.” His hearing was three hours long.

Sarah, an African woman in her early twenties, relied on a volunteer from a refugee shelter to hold her baby in the hallway during her hour-long hearing. Others brought family members to watch small children.

Some claimants were strongly affected when their children weren’t permitted to stay with them. Miranda, whose hearing took place through videoconferencing, wanted her children with her in the room. She remembers, “But they said, ‘out’”. It became a problem because the children were young and there was no child care. Miranda was upset because her kids “count for a lot” and it was important for her to have the children beside her.

Honza and Micaela were also dismayed when their school-aged daughter was separated from them after they requested that she be allowed to stay. They felt that sending their daughter away showed that the Board Member had an “iron heart” or “no heart at all.”

2.6 Interpretation

Nearly all of the claimants interviewed requested interpreters for their hearings. Many were fully reliant on an interpreter to communicate with their Board Member, while in other cases the interpreter was available to help if necessary with certain words.

Three claimants reported that their interpreters participated by telephone, but that there were no major issues because of it. Jose indicated that “the telephone reception was clear and we were able to communicate with the interpreter without any problem.” He also felt confidence because she translated correctly and “assumed her role as an interpreter very professionally.”

Only one couple reported that they requested an interpreter who didn’t show up. They were given the option of postponing a few weeks or conducting their hearing without the aid of an interpreter. After waiting over a year for their hearing, they chose to have it right away.

Most of the claimants interviewed felt that their interpreters were professional, polite and did a good job. Some, however, reported that the interpretation was less than perfect or negatively impacted their hearing.

A few claimants recalled that their interpreter translated their words with technical precision. One man reported “He was translating exactly as I was saying. I think the interpreter was good, and he understood everything.” He felt the interpreter was helpful, as did Saron whose interpreter “was saying exactly what I was saying to the judge.” Zemar’s interpreter had a similar style, which helped him to feel that he was heard.

Guadalupe and her lawyer were both very impressed with the interpreter who translated simultaneously, word by word. Guadalupe found it to be a comical experience, and it lightened the mood a bit when the interpreter “was just going off on her own,” interpreting every single word while she was thinking of what to say.

Aaron, a young man from South America felt confident in his interpreter and her ability to convey every aspect of his story: “I understood the interpreter and she understood me. She was nice and well-prepared. She transmitted what I wanted to have heard, even my emotions.”

Some refugees described their interpreters as kind or helpful. Dora described her interpreter as a very kind woman who took her time to translate for her and gave her pauses to think about the questions. She appreciated that she didn’t feel rushed or pressured by the interpreter.

Another woman also described her interpreter as a positive and supportive presence throughout her hearing and indicated that this was very helpful:

The interpreter was very gentle and kind, allowing time for me to overcome my emotions. She also made sure when my children spoke in English that I would be able to understand their statements. She was very patient and supportive of my need to control my emotions. She gave me signals to take my time; the lawyer and the Board Member nodded in approval.

Elsa felt that her interpreter did a very good job, and reported, “I noticed she spoke in a quiet tone, never louder than us, so our tone and intention would be clear.”

In the case of Felix, who perceived his Board Member as very hostile, the interpreter seemed to be an ally in the proceedings. He explained, “She would try to explain to the judge better, because she could see the judge couldn’t really hear.” He felt that “She could see what was happening” when the Board Member made hostile gestures.

One claimant emphasized that there was clear communication between her and the interpreter and that it was important that they were comfortable telling each other if something wasn’t clear. She asked him to tell her if he didn’t understand anything, and he did the same. She said, “He told me if there was something I didn’t understand that I could ask him.” The Board Member never asked for anything to be repeated so she felt confident that the interpreter “was passing the message on to the officer clearly.”

Most of the claimants who reported having an interpreter “on-call” in case they needed them were very appreciative. At Mebrahtu’s hearing, he preferred to answer most of the questions himself, and used the interpreter “only sometimes when there were some words I couldn’t understand.”

For some claimants like Omar, an on-call interpreter had no bearing on the hearing. For him, “there was no influence at all because of my ability to communicate fluently in English. He was sitting next to me and listening to the conversation I had with the Member of the Board.”

Others with on-call interpreters found that their English or French wasn’t good enough for the formal proceeding, or that the stress of the hearing made it difficult for them to communicate in a second language. This was the case for Halle:

From the beginning I was a bit confused, because it was hard to understand the English of the judge. Thankfully I was able to use a translator. I found that being able to speak in my language, I was more comfortable. It could have been because of fear that I couldn’t understand his English at the beginning.

However, not all claimants had positive impressions of their interpreters. Several questioned the competence of the interpreters, and others were negatively affected by the interpreting process itself.

Cecilia, a woman in her 40s, said that she walked into her hearing with complete confidence that the interpreter would do a good job, but it did not turn out well. She reported that the Board Member said that there were various things he did not understand because of the translation. Cecilia felt that the interpreter didn’t have the qualifications or level of English necessary for what was required in a hearing.

One woman felt the interpreter was nice but was bothered by the quality of the translation. She explained:

I understood for the most part, but he seemed to have trouble as he translated oddly or incompletely. My lawyer spoke Spanish and clarified what he could. The interpreter was kind and gentle, and seemed to understand me as a person. I don’t think he influenced much, even in spite of the repeated translation issues we had. Overall he turned my Spanish into English.

Many others also reported that their translators needed to be corrected, but rarely shared the belief that it did not influence the hearing in some way.

Honza and Micaela had a lawyer from their home country who had to interrupt many times to correct the translation of both questions and answers. They remembered that they only exchanged “Hi” with the interpreter before the hearing began, so when the Board Member asked if they understood her they indicated that they did. However, when the hearing began they immediately felt she wasn’t a good interpreter. They believed that they would be denied if they asked for another interpreter.

Paula and her husband felt insecure because they couldn't know if the interpreter was doing a good job, since they are still learning English. Rebecca was sure that her translator was doing a poor job because he relied on a dictionary.

Diego also reported that his interpreter looked for words in a dictionary and did not know how to translate what he was saying. He was also upset that "the interpreter was in a hurry and affected the development of the hearing."

The lawyer intervened at one hearing when the interpreter wasn't interpreting accurately. The claimant indicated that while the interpreter spoke the right language it was not the proper dialect. He explained, "He was from Spain and we are from Mexico, so some of our language is used differently."

Rebecca also complained that her interpreter spoke a different dialect, and that she and her husband had a very difficult time communicating with him. This left her frustrated:

Seventy percent of the hearing is dependent on the interpreter because he acts like the ear for the judge, and if he can't interpret correctly the judge will not understand clearly, therefore the judgement will be questionable.

Another man reported that his interpreter made a lot of mistakes and didn't translate what he said accurately. However, in his case, he possessed enough English to correct the interpreter himself.

In some cases the interpreter was able to communicate clearly with the claimant, but not with the Board Member. One woman gave an example of how her lawyer had to intervene:

The interpreter and I understood each other in our language, but the interpreter didn't seem to speak English well. For example, I take the bus to get around. The interpreter told the Board Member, "She takes a big car." The lawyer then corrected the interpreter, but it was unclear how much was correct in English for the rest of the hearing. The lawyer said he knew the interpreter from other hearings, and that the interpreter wasn't good. I don't know if this influenced the negative decision, but I decided to study English more, and the bad interpreter made me feel bad.

Fiyori had similar concerns about her interpreter's English and resented that his inabilities prevented her from being fully heard in such an important situation:

I understood the interpreter, but his English wasn't as good as I wanted it to be. He didn't answer the way I wanted him to. I could have done better than him, but allowing him to translate gave me more time to think of how to say what I wanted to say, but then he didn't say it the way I wanted him to, because of his lack of English. I was scared that he would have a negative influence on the hearing, but then I felt better that the hearing was recorded in my language so that if it went wrong, the interview could be reviewed and someone could see that his English was bad.

The interpreter answered the questions but not very well, so he didn't help me that much to be heard. He made me mad! He's an interpreter and this is such a serious

matter. I could have done it better and had a clearer understanding. They should have better interpreters since the matter is so serious.

David regretted using an interpreter, feeling that at times he could have expressed himself better. Like Honza and Micaela, he was under the impression that once the hearing started he wasn't allowed to change the interpretation arrangements, even to speak for himself. He explained:

I think [there were] some words I should have said in English because [in English] it's actually the way you want to express. And when you say them in Spanish and she translates them into English, but in a kind of way that doesn't sound like what you wanted... I felt sometimes I should have said that one in English but they didn't let me speak in English because we already started in Spanish. So everything I had to say in Spanish.

Some said they tried to inform the Board Member that the translation was problematic. In Daniel's case, he felt the Board Member understood that something was being lost in the interpretation, although the hearing proceeded. He described his frustrations:

I tried my best to tell the judge if there was any miscommunication or clarification she needed to let me know, I tried to tell her. If the interpreter is not good, everything will be messed up, the interpreter is very important. I tried in between if the interpreter was saying something wrong to get the judge to see that.

Adolfo and his wife tried to report the inadequacy of the interpretation to the Board Member: "We tried many times and she asked us not to speak. The interpreter is very important and he negatively impacted the hearing because he created doubt and misunderstanding over all. He was not helpful because he might have changed the whole content of what I said."

For Daniel, the difficulty with the interpreter was twofold: the interpreter's language skills were lacking, and his style prevented Daniel from telling his whole story.

He told me to say everything one by one. But if you talk one by one, your idea will evaporate, I can't concentrate because it doesn't come together.

Claudia found using an interpreter prevented her from expressing herself completely: "It was not easy for me to have him talk in my place. The interpreter bothered me because I had to do short phrases for him to be able to translate everything. This limited me in what I wanted and could have said in order to explain the situation to the judge. I wanted to talk more but they gave me no space."

Felipe, a South American man in his 30s who was joined by his partner, also expressed that his interpreter limited him in telling his story:

One of my big concerns was the interpreter since at the beginning of the hearing he ... said: 'When you are asked just answer yes or no, not give long answers.' Since [as] refugee claimants [we] belong to LGBTQ plus group, [it] is not [a] yes or no case. [It] is not something we just did, saw, or were in the wrong place, it is just the way that we were born.

Liliana had a similar experience:

The interpreter told me to answer just yes or no only. I tried to explain the situation, but she told me, ‘You just answer yes or no.’ This situation did not help me to be heard during the hearing since I could not explain my case openly.

One man spoke about what gets lost in translation:

... there is nothing like being able to tell my story and transmit my emotion directly to someone who is understanding in my language [...] I think if people could evoke their sentiment and passion directly, they would have better chances of success. It’s like watching a movie with subtitles – some of the context gets lost.

Teresa and her family have English as their first language, but they use a very different dialect from that spoken in Canada. The Board Member’s form of English was difficult for Teresa’s mother to understand. Teresa was frustrated at being forbidden to ‘translate’ for her mother:

[The Board Member] was a bit harsh on my mom because my mom didn’t understand what she was saying because some of the words that she was using, my mom doesn’t know them because she has never went to secondary school or finished elementary school. So my mom didn’t know ... and I could not help my mom, and put it in my own words as to what it means. It was hard for my mom.

If you use a certain word like ‘appropriate’, if you use appropriate as me and you would use it, my mom wouldn’t be able to understand it to a certain extent. You have to break it down for her as to what it means.

Teresa was left with the impression that the Board Member treated her sister and herself differently from their mother.

Because I went to high school and I went to college and I could explain myself, so they didn’t have a problem with me. All of my questions were asked properly and answered properly. For my mom, she didn’t really know what she was saying, that’s how I feel. I think they treated us differently because we had different education levels.

In summary, the following practices by interpreters were appreciated by claimants:

- Giving the claimant time and allowing pauses
- Interpreting all exchanges, even when the claimant is not directly involved
- Speaking at the same volume and in the same tone as the claimant

In addition to concerns about the alleged poor quality of some interpretation, the following practices were problematic for claimants:

- Rushed interpretation.
- Having the flow of communication disrupted by interpretation.
- Being told by interpreters to answer only yes or no.

- Being prevented from making some interventions in English or French when that helps them communicate most clearly.
- Being discouraged from intervening if they feel that the interpretation is not accurate.
- Lack of willingness to facilitate clarification when people are speaking different dialects of the same language.

2.7 Tribunal Officers

Only a minority of claimants reported that a Tribunal Officer was present in their hearing.

In some cases, claimants appeared to be confused over the role. One claimant described the Tribunal Officer conducting the hearing and giving the decision, in the absence of a Board Member: presumably the claimant mistook the Board Member for a Tribunal Officer. Another claimant spontaneously identified the Tribunal Officer as a “police officer”. A third said that there were two government officials present, one from the border and one from immigration: it is likely one was the Minister’s Representative and the other a Tribunal Officer. This claimant noted that he was questioned by four people: the two “government officials”, the Board Member and his lawyer. He didn’t have a problem with this, but thought they could have asked shorter questions.

The interviews do not convey any meaningful feedback on the role of the Tribunal Officer as perceived by the claimants. In some cases, they do not appear to have been active (the “police officer” reportedly said nothing throughout the hearing).

2.8 The Emotional Experience

Not surprisingly, many claimants reported that the refugee hearing was a very emotional process. Complicated feelings of being sad and overwhelmed were common, and some claimants experienced debilitating emotional breakdowns during the process.

Most claimants described being very nervous at the beginning of their hearings. Henry’s description was common when he said, “I was nervous but I faced it, I had no choice.” In his case, he felt better once the hearing began: “I didn’t feel nervous after it started.”

Teresa described how nerves made her mother lose her ability to answer even basic questions:

My mom, she was really, really nervous, because [when] the judge asked her her children’s names she didn’t seem to remember our names, our dates of birth, where we were living. She didn’t remember anything because she was too nervous.

Diego described how his nerves affected the hearing, and he worried that his inability to answer questions well in the beginning skewed the Board Member’s perceptions of him throughout the rest of the hearing:

The hearing started with a lot of pressure because there were questions that I could not answer well because of my nerves. The IRB pressed a lot. The IRB began with

something unexpected... I missed the job position name with which I started working in [an organization]. I continued feeling very nervous.

Pat similarly worried that nerves made it difficult to sound convincing:

It was very emotional for me, I was very nervous. Sometimes I could not remember the exact date and I felt that the judge was beginning to doubt my story in that it was hard to convince her of its truth. I just wish that I had more time to tell my story. I felt like I was confused at times; it was just going so fast.

Ramirez's daughter became physically distressed when asked if she wanted to speak during the hearing. He remembered:

She started feeling very bad, she was feeling sick from the whole process, physically and psychologically. I had to carry her home. Her blood pressure went down and she felt bad for the rest of the day.

He was anxious about how his daughter's state would influence the hearing, and considered that the Board Member handled the situation respectfully:

I could tell my daughter wasn't feeling well but I didn't want to draw attention to it because I didn't want it to affect the hearing. But I know the Board Member took notice because it was reflected in the written decision. She saw it, which is why I think she respected her decision not to speak. She mentioned in her decision that my daughter was visibly upset, and this was part of the credibility of her story.

Conversely, one claimant wondered whether the fact that she was now feeling relatively secure would make her account sound less convincing:

The thing for me was how to tell them that the person I was at that moment was different than the one I'm right now, that my way of thinking was different. Being inserted in a life full of stress makes you react in a certain way. Presently, I don't feel all this in the same way I felt when I was in [my home country] ... Maybe I feel safe right now but there's a big distance in time and space from the moment everything happened. When I was just arrived I was still deeply shocked and nervous, now I'm quite at peace...

While some got over their nerves after a while, others did not. For some, such as Rebecca, the hearing is intense because of its weight: "It is very stressful, scary, because you give answers for your life – all your life will depend on this answer."

The hearing requires claimants to reflect upon some of the most traumatic and difficult moments of their lives, and retell them to an unfamiliar government official.

Dora remembered that she wasn't nervous about the hearing and its legal aspects, but she was worried about having to think back about her experiences. For her, reliving the past was the hardest part of the hearing.

Similar feelings were described by Pat:

I found that it was hard to remember. I felt that I was getting caught up in all of the memories and the feelings. The questions were taking me right back to the situation that I had lived. At the end of the hearing, I felt my feelings were raw. It was like I was going through everything all over again.

Leo, a Central American in his 20s, remembered having to persevere through strong emotions:

There were times when you just have to relive a lot of the stuff that happened to you back in your home country that bring tears to your eyes... it hurts to go back. Some of it you just want to forget. Some of it you have forgotten. But you have to relive it in order to get through this whole process.

For some, especially women, the process of reflecting upon their story during the hearing led to deep feelings of shame and self-blame. Yvonne, who had experienced sexual abuse, explained what she was feeling during the hearing:

I felt foolish seeing my life before me, decisions I made or did not make. I felt great sadness and wanted to cry. My emotions were overwhelming. I wanted to cooperate with the process, but I could not control my emotions... I was my worst enemy in there. I was judging myself. I felt most of my responses to the questions sounded illogical, but they were the truth in the world where I lived without choices.

Like other women, Yvonne indicated that she understood and respected the process. Although the hearing led to feelings of sadness, she said, "I felt good about the questions from the Board Member, and I do not resent them. I understand why we need to do this."

2.9 The Impact of Breaks

Long and emotional hearings are of course tiring, making breaks necessary and appreciated.

A young man, David found the hearing to be an exhausting experience. He said, "It was a little bit tiring because it was four hours, even though we had a break for about 20 minutes. But still, it was a bit tiring because it was question after question and it's only me who they're asking."

Breaks allowed refugees to regain their composure.

For example, Pat was thankful to receive three breaks because, "I was able to calm down and review my PIF, and to remember the facts all over again – to let go of some of the emotions that I was beginning to experience."

Another person commented:

To have a break was very important. It gave me time to deal with some of my emotions. I could think of my whole case and not just all of my feelings that were running around inside of me. During that break I was able to think about my PIF, to slow down, and to remind myself, ‘Just tell the truth, the truth will set me free.’

Others were appreciative of breaks because it gave them time to fully develop answers to the questions they were asked. For one woman, this was important because nervousness prevented her from thinking and remembering clearly:

[The Board Member] gave me breaks so I could think further on the questions and she encouraged me to give detailed answers to my questions. I would forget the acronyms of the organizations in [my home country] because I was so nervous and she let me pause to try to remember them.

Her three breaks were so helpful that she suggested that they be longer:

If I could suggest anything or wish for anything to be different, it would be more time to gather yourself during the breaks. Ten minutes is not enough – the interview seemed to last forever but the breaks seemed to go too quickly.

Breaks also served the important function of signalling to a distressed claimant that the Board Member was engaged in their story and concerned about their well-being. This was the case for an Asian woman in her 40s who remembered, “When I was crying the Board Member asked me if I needed to take a break, and in that moment I felt so warm to know I was valued.”

Guadalupe also reported that her Board Member seemed to notice when she was uncomfortable speaking about certain topics, and would make them go on breaks so Guadalupe could get comfortable again.

Elsa had mixed feelings about the fifteen minute break during her two and a half hour hearing, but ultimately she found it helpful. She explained:

This break, I felt awkward at the beginning. It took me away from my “mood” because I was concentrated in my story and the judge announced we were having a break. But in the end it was for the best because we went to the restroom and after the lawyer took us all to a small room and told us everything was going well and he looked confident on the final issue.

Only one person reported not appreciating a break during her hearing. In Halle’s case, the break was called for administrative matters, and not for her benefit. This caused her extra stress. She admitted, “To be honest, having the break was the only thing I did not enjoy because I just wanted to finish it. During the break I was wondering, ‘What are they saying, what is going on?’”

In other instances, claimants turned down breaks. Ramirez explained:

On several occasions, especially in the most tense moments when my daughter and wife were crying, she asked us if we wanted to take a break. In [my country] we have

the custom that when we feel bad we don't want to draw attention to it, we just keep going, so that's what we did.

One man in his teens reported that he wanted a break but wasn't offered one. He didn't feel comfortable requesting one because he had waited so long for the hearing and didn't want to interrupt it. There was a break eventually, but only because the interpreter asked for one.

2.10 Perceptions of Adversarial or Court Proceedings

Many refugee claimants described their hearing experiences using the language of courtrooms and adversarial processes. Claimants often referred to Board Members as “judges” and to the hearing as “being judged”.

For some claimants the perception of the IRB as a court underlined the seriousness of the situation. This was the case for Selam, who said, “When I walked into the IRB I knew I was at a court and I knew I had to answer every question they would ask – I was there to win. As human beings, when you hear ‘court’ you're scared. I was nervous.”

Ricardo emphasized that he had never been in a court or hearing before, and “now everything was at stake.” Like others, his idea of the process is that it is not necessarily based on facts, but on the perceived worthiness of the person: “You know your behaviour is being studied. They are there to analyze your attitude and catch you off balance, and then make a decision.”

For one man, perceptions of a court setting and a judicial figure imbued the procedure with more fairness. He explained, “She was not an executioner but a real judge, just there to listen and then to decide, not to come in with her mind already made up.”

For others, these perceptions were exacerbated by the sense that they were being put on trial by one person who was both prosecutor and judge. This would sometimes lead to intense feelings of “being the accused” or being treated like a criminal, undermining the possibility of fairness.

One woman explained her frustrations: “I understand I have to prove my case, but I don't understand why she has to make me feel as if I am a liar. My life is based on honesty and I stand on what I believe, but I felt violated [by the hearing].”

Another woman felt that while her Board Member was just and professional, she found it unfortunate that there was a lot of emphasis on “trying to prove that you are guilty of something or that you are lying.”

F) The Refugee's Perceptions and Interactions with the Board Member

1. Overall Impressions

When asked about their experience, the vast majority of claimants focused their answer on their personal impressions of the Board Member conducting their hearing. Answers about the fairness and appropriateness of the hearing were almost always framed in terms of the behaviour of the Board Member. Reports ranged from respectful praise to scathing critiques.

At her hearing, Kessie's Board Member appeared aggressive and used a harsh tone of voice, which made Kessie feel tense.

And naturally when someone talks like that... you're like, 'Maybe I have a very strict Board Member and she might not be so considerate,' you know? So I got more tense and I was like, okay, you need to calm down. And I remember my social worker was tapping me, and I was tense naturally, even my lawyer was tense. My lawyer was like, they do that all the time, just to make you... it happens. She said, "I know you lawyers always say it's not my claimant's fault, they always try to take the fault off the claimant, but I'm tired of hearing this!"

Later, however, she softened her image and appeared neutral. Kessie described her Board Member as someone who was doing her job, not someone who was kind or nice.

She was neutral, she wasn't supporting. She was just listening and asking questions to clarify. She wasn't hostile when she was asking questions. She kind of was at the beginning, but during the questions she wasn't hostile, she was just neutral...

Felix, a man in his 30s, had two hearing dates with two different Board Members, whom he found had different approaches.

In the first hearing, logically it's intimidating, but I was fine. I know that they need to ask me why I'm here and everything, and I'm okay. The first Board Member was really clear. He asked me questions that were really good and fair, when I could actually explain what had happened to me, what I had gone through. It was good.

In the second hearing, when it started, I felt really intimidated because it felt like a circus; it felt like everything was a show, like everything was prepared. The judge said everything in the past was past, was cancelled, and I had to make sure to convince the judge. The questions that she would ask me weren't direct about what happened in the case and the problem, or why I was here. In the second hearing, I felt like everything was a show, like everything was planned.

Many claimants reported very positive impressions of their Board Member. They were often described as calm, professional, diplomatic, nice, kind and "a good person". Some remarked that the Board Member was "easy to talk to" or very well-educated. Others described their Board Members as absent-minded, hostile, attacking, sceptical, aggressive or closed-minded. Some felt extremely intimidated or attacked and some did not. A few perceived their Board Members to be tired and "just wanting to get going."

One person was extremely thankful for the support of her Board Member. She said, "I felt that God sent this woman to be my judge... I feel she believed and respected me." Another was suspicious of her Board Member because, "even if he didn't attack me... he was not necessarily open with me."

Yet another man perceived his Board Member as communicative. He reported that his hearing was not just a one-sided interrogation: “I also had the chance to ask questions to her, that was a big thing for me.”

Andrea described her Board Member as prudent, cordial and respectful. Another woman said that her Board Member was “nice” and good, and that she seemed to take a personal interest in her. She said, “I liked the way she asked me about nice things,” like the Church. She appreciated that “she seemed to listen and look at me, and paid attention.”

Guadalupe, who appreciated that her Board Member noticed when she needed breaks, described her as “very stern,” professional and impartial. She noted that she didn’t act friendly at any point, but understood that it was her job to be like that. Guadalupe said, “She was a very good Board Member. She made the whole experience calmer. She understood in a way how I was feeling and dealt with it accordingly.” She explained the neutral balance of the Board Member as “in her impartiality, she understood,” and gave Guadalupe the impression that the hearing was very fair.

A few claimants described how impressed they were with their Board Member’s intelligence and experience. Stephen said, “I think he’s a nice person, and he’s very experienced at it.... If I didn’t know what I was saying he would figure it out, because this guy is so fast! ... I think that if you don’t know your story very well you’re going to run into trouble with that kind of person because he’s so knowledgeable about it, he knows how to ask questions, knows how to put on pressure, knows how to be interrogative, all of that. One has to prepare very well to be in front of that kind of person. You know he has to do his job. He has to be fair. To me he was doing his job... I think in a way he was nice because he knew what he was doing... He was professional. Being professional doesn’t mean you have to smile and [accept everyone].”

Some claimants were surprised at how neutral their Board Member was, but many appreciated the professionalism. Kamran and his wife Fatima remarked, “He was 100% neutral the whole time. He was a person with very controlled gestures and expressions. I have never seen a lot of people like this, very few people in my lifetime.”

Omar described how his Board Member achieved a professional balance of neutrality. He described her as “positive, cold, straightforward, acting in a professional way [and] taking no position.” He said she was neither hostile nor supportive but “neutral”, simultaneously cold and straightforward.

Other claimants felt good simply because their Board Member did not try to scare them. For example, a woman from Central Africa remarked, “It was not bad. The Board Member was not scaring me and was talking nicely, politely.” She appreciated that the Board Member asked questions in a way that didn’t make her nervous. One man noted that his Board Member “wasn’t out to terrorize me.”

Many claimants had complex feelings about their Board Members, appreciating some of their characteristics, while criticizing others. This was the case for Felipe:

The Board Member was calm, receptive, but at the same time he showed some face of doubts and tried to confuse us. Even that he was open-minded and he demonstrated that he knew about the LGBTQ Plus community situation in [my country] but my impression ... was he never read it before that day.

Isabel, a woman in her 20s from Central America, also had mixed feelings about her Board Member: “I was somewhat nervous when the Board Member was hostile or aggressive toward me and my story. I understand that it’s her job, but I think she definitely could have been nicer. She repeated the same questions and wasn’t very friendly.” She remembered, “The Board Member made me feel bad even though I was just trying tell my story. I felt she was trying to confuse me deliberately.”

Some claimants remarked that their Board Members seemed hostile but hid it well by acting formal or detached. This was the case for Ruben who explained, “I believe she was hostile in a polite way. She is an educated person, never lifted her voice. I did not like her tendentious way when questions were made. I felt like I was in a court and I was the accused.” He thought that her body language and facial expressions revealed that she was “contemptuous”. He “felt a negative vibe” from her and believed that he was not fully heard.

Pat’s story shows how affected a claimant can be when they perceive a Board Member negatively: “At first I was not keen about the judge. I feel that she was looking at me as if I was not telling the truth. I was scared. I knew that my whole life was in the hands of this one woman. Does she believe me? If she didn’t, would I be thrown in prison like I was back home? I was really, really scared.”

David perceived his Board Member as angry and mistrustful and described him as “strict and intimidating”:

He was staring at me all the time, but he seemed very angry, like he’s attacking you... He tries to intimidate you. He stares at you all the time and he suspects everything. He said if you take too long to answer it means you are lying, so you don’t have much time to think.

Esteban, a highly-educated man in his forties, had an overwhelmingly negative impression of his Board Member and described their interaction as very hostile. He described an incident that shook him:

In front of me I found a small piece of paper with a pen around. I didn’t bring anything to the hearing itself but I found in front of me a piece of paper and a pen, so when the Member of the Board was speaking, I was trying to keep my concentration, keep focus, just making check marks, and this person was literally upset because I was writing and probably she was mad. She was like literally screaming at me, ‘You can’t write here!’ ...Yeah, okay, sorry. I didn’t know, firstly, and the second, if that’s the problem, that’s no [big] deal. I put apart the paper. But the action itself was aggressive.

He also felt that he wasn't given a fair chance to state his case:

When I was trying to explain she was interrupting me at the same time. Literally it was aggressive. The environment made me feel, it was literally like a war. It's not the sense of aggression itself, it's the sense of you can't talk in front of that person. Literally, she was trying to demonstrate or trying to show that she was in charge in the room...

She was trying to, like an animal, trying to define her territory. Trying to push me... 'You can be everything that you can think, but I am the boss here. You have to be my subordinate...'

This claimant had studied the IRB documentation in advance of the hearing and so thought he knew how things would proceed. But the hearing didn't seem to him to follow the established standard and he had the impression that the Board Member was using her own private guidelines.

A common perception was that Board Members were insensitive and cold. According to Juan, "the judge did not understand at any time the human side of the situation."

2. Preparedness

In some cases, the level to which the Board Member was informed with regard to the individual claim and to general country conditions was a key contributor to claimants' overall perceptions of their Board Member and the refugee determination process.

Some claimants reported that they knew their Board Members had thoroughly read their claim and supporting documents because they could see physical evidence of the preparation. Elsa noticed that her Board Member's files were covered in notes and post-its. It was also telling that most of the questions at the hearing sought to clarify points that were in the submissions.

Halle said her Board Member appeared very familiar with her file, and his questions showed that he had studied it. Similarly, Anne said she knew the Board Member was good because he had taken the time to read the PIF and formulate questions based on it.

Devan indicated that he believed that his hearing was fair because the Board Member mentioned that she found his file to be well documented. To Devan, this meant that she had reviewed his materials ahead of time.

Fatima described how her Board Member was extremely familiar with her and her husband's claim to such an extent that it was almost unnerving:

It seems that he studied our case very deeply... there was a time when I thought, 'He knows everything about us!' ... I was thinking that maybe it was not good during the hearing, it was scary. I was thinking that if I will say something and it's not the same, if I forget something... he will know.

Stephen also noted that his Board Member knew his case incredibly well. Because of this, and because of how he conducted himself, Stephen felt his Board Member was very educated, “brilliant” and very good at his job.

On the other hand, Rebecca felt that her Board Member wasn’t prepared because she seemed confused, was looking through papers, and repeated questions over and over. She described her Board Member as careless. Pat also felt that the Board Member didn’t know the file because she asked so many questions.

Diego doubted that his Board Member had looked at his evidence and said, “He did not have real knowledge of what happens in our country.”

Chantal had the impression that her Board Member only looked at her case on the day of the hearing because of the type of questions and the structure of the questions she asked. Sofia had the impression that the first time the Board Member looked at her case or heard her story was when she was sitting in the hearing.

Yana had similar misapprehensions because her Board Member asked her “Why didn’t you mention this in your story?” when that point was included in her submissions.

One woman felt that her Board Member’s lack of preparation impacted the whole hearing. The woman explained, “She seemed not at all familiar with the file, got incredibly confused about elementary, irrelevant things... She seemed prepared to do a hearing but not necessarily mine which resulted in her conducting the hearing in a weird way that put me on edge.”

While Selam reported that her Board Member had done a lot of research and “knew enough about my country to understand the situation,” others were frustrated that a lack of training or research on the part of the IRB was a hindrance to their claim.

Adolfo remarked about his Board Member: “She was new, no experience about [my country’s] cases.” He reported that she confused the paramilitary and corrupt police in his home country, and only compared them with Canadian police.

Another woman’s story seems to point to an insensitivity about realities outside Canada. Although her Board Member was friendlier than Adolfo’s, and tried to relate to the woman and her family, his attempts to sympathize with what he didn’t fully understand were ultimately off-putting. She remembered:

He couldn’t understand the kind of everyday life we had. A small example: we lived in a ‘company town’ ... without a telephone for thirteen years. Having a phone would have used a great part of [my husband’s] salary, nobody had a phone and if you did you hid the fact because people would use it and never pay for their calls, or make long distance calls.

I know the Board Member was trying to empathize with us but his comment was, ‘I could not live without a phone, I would be isolated. I could not contact my friends to play hockey.’

In fact, we were not isolated from the other families or other mothers and children. We met daily on the street and spent time together.

Henry was very disappointed about the lack of knowledge about the situation in his home country: “the Judge who is sitting there, they should really understand when they make a decision, about the country and what is happening to this particular community.” Henry spoke about the actions and statements the United Nations has made about the war in his country and was very frustrated that his Board Member refused to recognize it.

3. Responding to claimant’s emotional response

Several claimants commented that their Board Member was understanding about the emotional aspects of their experience, and helped them to get through the process. One man indicated that he felt it was “safe” talking to the Board Member about his claim. Another explained:

It brought back all the memories and the trauma that I had lived. It was a very emotional day for me. I felt the judge really listened and encouraged me to speak.

Fatima remembered crying during her hearing when she had to talk about family members that she had lost, and that the Board Member accommodated her. “It was really heavy for me,” she said. “The Board Member kept quiet and he gave me time to overcome my feelings.”

Dora also said the Board Member was understanding and “didn’t dig too much into the story.” There was a moment during her hearing where her emotions “exploded and [she] got very upset”. The Board Member stopped the hearing and waited for her “to get back together.” She felt that he was a very compassionate man.

Aaron explained how his Board Member helped him recall his past in a constructive way:

The way he held the hearing helped me to stay calm and he focused on what he wanted to know. That also helped me bring back the memories in a different way – I didn’t feel forced to remember what happened. It made me feel like I wanted to tell him what had happened.

Other claimants experienced their Board Member as impatient or unsympathetic. This was the perception of Teresa, a woman referred by an organization that serves victims of sexual violence:

[The Board Member] asked my mom what threat she was facing in [our home country] and my mom was trying to explain it but the Board Member did not understand... My mom kept saying that because she had the experience back home [of violence and abuse] she cannot put it into words... After that it was difficult for her to explain and she started crying and the judge started getting harsh... She kept going over the same thing over and over and then the judge said, ‘You just said that,

you don't need to say it again.' But it was because she didn't know how to explain it any more. She started getting upset and she started crying.

4. Questioning Style

The Board Member's style of questioning the claimant was, perhaps, the aspect of the hearing that most shaped refugees' perceptions of the experience as a whole.

Aaron appreciated his Board Member's questioning style, which gave him the opportunity to go over his whole case. He explained:

He said, 'Can you tell me your story and I will ask you questions as we go along.' That was helpful because it gives you the opportunity to be heard and not just based on what he read – hearing the story from me, not just my file. He gave me the opportunity to tell him what I wanted him to know – he never stopped me from saying anything. I felt like I had a fair hearing.

One man also said that his experience wasn't one of "regimented questioning" and that his experience was "smooth sailing". Another man reported, "I was getting enough time to talk, so I said everything that was inside of me and they were ready to listen."

Jose's Board Member also made a very good impression by promoting an environment where the claimant could tell his story. Jose said, "I liked the way he inspired me with confidence. He gave me space, opportunity and time to express myself. He never interrupted me. The way he questioned me – very direct and objective questions, and the questions were made only once." Another man, Stephen, was impressed by his Board Member's style of questioning. He described the practices that made the experience of being questioned a positive and productive one, even if it was nerve-wracking:

There was no single yes or no question! They were open questions where you really have to start talking and talking... If you're not careful you get nervous because if you're just talking and talking and someone is listening, you don't know their state of mind, you don't know if what you're saying makes sense or not.

By body language I knew that... he was satisfied with some of the questions. By his body language, you know that sometimes when he nods his head it's okay. It helps actually.

I had all the time in the world to say whatever I wanted to say... From the beginning they gave me time to say everything I wanted to say. Even when I had to go back again he allowed me all the time to do that, there was no limit. There was no 'Don't say anything'.

Most claimants described a question-answer format at their hearings, with mixed results. For some claimants, this model was not ideal because it gave the Board Member control over their

narrative, and sometimes prevented them from saying what was important to them. It also risks overly focusing on fact-specific details like dates and addresses, thereby fragmenting and depersonalizing their story. This format was also susceptible to seemingly repetitive questioning and answers being cut off.

Based on his experience, Felix offered his critique of the question-answer model:

The problem is you can't talk in the hearing, you can't explain anything. You can't explain anything to the judge because automatically she says, 'I'm just asking you something. You have to answer what I ask you, and nothing else!' You can't give an explanation, you can't talk, nothing! You feel like you were a criminal. They just ask you one thing, that's it.

Rebecca also felt like she was prevented from explaining her answers: "They didn't give me time to speak, I mean enough time to explain. They don't let you explain."

Ricardo felt that the Board Member was not interested in hearing his story because he just asked him questions based on his PIF.

Many claimants appreciated questions that were asked in a clear and straightforward manner. Kamran, who was impressed by the neutrality of his Board Member, also remarked upon how clear everything was. He said, "He was very clear in his communication – not too fast or too slow. He explained all of the questions and he was making his questions in a way that we can understand."

On the other hand, Teresa, whose unschooled mother had difficulties understanding the sophisticated English of the Board Member, was critical of the Board Member's lack of clarity and pace. She said, "She was speaking too fast... and even though we asked for her to slow down a little bit so that my mom could hear her, she did it for a little while but then continued speaking fast, which was hard for my mom... Speaking fast in that case is not a very nice thing. It's important that [my mom] understands what the person is saying so that she can explain what she wants to say to them."

Ricardo found that his Board Member asked questions in a very clear manner: "He had my PIF in his hand, he just asked me about those things that needed clarifying. He didn't pressure me in any way, he gave me lots of time to answer. The questions were not confusing in any way... Everything was very transparent."

One man who was satisfied with his Board Member's style of questioning described how it helped him to keep focus and made him feel he was being heard: "His questions were made only once. When I answered the questions, he nodded in agreement. The member's questions were made in sequence and I was able to focus on each question."

One woman appreciated that her Board Member encouraged her to give full answers. She said, "I liked the fact that she wanted me to go into detail to make sure that I was telling the truth." She said her Board Member listened to her well and "wanted to go to my core and squeeze everything out. She just wanted the truth, she was making sure of everything." The claimant

noted that the Board Member's questions revolved around her PIF. Selam also noted that the Board Member "made sure that I felt calm and said that she wasn't there to torture me, but that she wanted to make sure that what I claimed in my PIF was true."

Omar liked the structure of the Board Member's questions, which helped him to state his whole case. However, he was affected by the content of the questions: "She was trying to focus on the specific details of my case – that made me feel overwhelmed. I felt that I had to overstate my words to convince her."

Many claimants reported that questions were repeated throughout their hearings, leading to feelings of frustration and perceptions that the hearing was not fair. Some felt that this was done purposefully to waste time or to attack and confuse them.

When asked if the Board Member prevented him from making his case, Ruben explained that "She made the same question several times," leading him to feel like the hearing was not fair. The repeated questions gave him that perception "because it looks like she had her negative decision before I was heard."

Another claimant remembered that the questions became so repetitive that the lawyer was forced to respectfully intervene on many occasions. She felt she was being "attacked with questions," which made her very upset and disturbed as she tried to tell her story.

For several refugees, the reactions of the Board Member to their answers made very deep impressions.

When Kessie was answering questions at her hearing, she noted that the Board Member never indicated what she thought. This gave her the impression that the Board Member was a very severe person, which made her stressed:

She didn't give me any clue. I just answered my question and she asked the next question, just like that. 'Did I say the right thing? Did I miss something? Did I explain myself well enough? Did she believe me?' I had that all the time. That nervousness, that stress was in me throughout the question period. When I'm talking with [my lawyer]... I get a reaction.

Esma was unnerved that her Board Member ignored her when she was speaking to him, and this undermined her faith in him and the process:

I felt uncomfortable because of the reaction of the judge. When I answered his questions he didn't look at me, and sometimes he made his face like he didn't believe me. I felt very nervous because of this and uncomfortable. When I was answering my questions he didn't look at me and he was doing something, like drawings or [scrunching] with the papers, and he didn't look at me. It seemed like he wasn't interested, or he didn't believe, or he's bored. Maybe it's just his style, I don't know, but I felt uncomfortable because of this.

She wondered if he was tired or her hearing was the last one of the day, and went on to say, “I can say that I feel like I am not satisfied. I don’t feel like I said everything, like everything was clear for him.”

Honza and Micaela also reported that their Board Member would look away when they answered his questions, and seemed uninterested in the problems that they faced. They said that he told them to answer with “yes or no” and would interrupt them and tell them, “Stop, next question,” if they tried to explain further.

Sofia developed a very poor impression of her Board Member based on her questioning style and reactions. She found that the format was inconsistent and confusing. Sofia shared her experience:

At the beginning the Board Member looks nice and friendly, but later on turned into someone like a persecutor. I think she is very smart and finds our case a good one to make her look good... meaning she gets a better reputation.

The member’s body language suggested derision of some of my responses, which conveys a non-belief of what she was hearing. She made a lot of facial expressions meaning ‘I don’t believe you’. She did the same with... my lawyer and the interpreter, very ironic.

On the first day she wanted me to elaborate and provide more arguments with my answers. However, on the second day she wanted yes or no answers – [it] was confusing! She was mocking and sarcastic throughout the hearing.

Overall, when describing the questioning styles used at their hearings, claimants raised concerns with the following issues:

- Repetitive questions
- Questions which limit claimant to yes or no, or fact-specific answers
- Interrupting or cutting off answers
- Failing to acknowledge answers or to otherwise give the impression that the Board Member is listening, attentive and interested
- Focusing on details that seem irrelevant to the claimant without explanation
- Limiting questions to details which require clarification without giving the claimant the opportunity to state their case in person
- Purposefully asking questions with wrong facts to “trick” the claimant

The following practices seemed to help claimants tell their stories and feel that they were fairly treated:

- Allowing claimants to state their claim in their own words
- Asking clear and objective questions
- Asking questions in a chronological order
- Asking open ended questions
- Allowing the claimant to explain their answers with adequate time and without interruptions
- Demonstrating a listening-interest in the claimant’s responses through eye contact, oral cues, body language and taking notes
- Asking questions which demonstrate a concern for the claimant’s well-being
- Exhibiting discretion and sensitivity when asking questions about particularly delicate matters
- When difficult questions must be asked, including “easier” questions as well

5. Content of Questions

Some claimants complained that their hearings were negatively impacted by irrelevant or inappropriate questions, which led them to question the motives and character of their Board Members. Others were deeply concerned that their Board Members failed to ask them about key aspects of their claim.

Fatima was satisfied by the content of her hearing, which she attributed to the preparedness of the Board Member. She said, “It was very much on track and I felt strongly that he really studied the case and he knows the things... There are two or three main things in my story and he touched on both... He didn’t ask me irrelevant or other things.”

One man was upset that the Board Member failed to discuss what he saw as the main event in his claim. He explained, “The judge only partially asked about my kidnapping in the last half hour of the second hearing.”

Another man said that his Board Member did not take the time to understand the important context of his claim. He explained:

I didn’t like [that] he asked me questions about my case but never asked me about ... the tradition or culture back home, because it’s connected with my case. He never was really concerned on culture – that I didn’t like.

The man explained that his lawyer later asked him about those things so he had the opportunity to explain them to the Board Member.

Unfortunately, another couple didn’t have the chance to supplement their hearing when their Board Member focused on the addresses where they lived, and did not ask what happened there or what it was like to live with the intense racism and attacks there.

One woman felt that the Board Member’s peculiar focus revealed that she was biased. She explained, “She seemed to have a pre-determined opinion for the case. She focused on odd points in my story, particularly those I could never know anything about.”

Another man reported that his Board Member asked unnecessarily specific questions about papers that he did not have access to. A woman was frustrated by the Board Member’s insistence on details, which made her feel like she “wanted me to prove as if I was a lawyer or a human rights specialist.”

Another woman was unhappy that the Board Member didn’t ask in detail about the things that happened in her home country. She was upset that her Board Member seemed only to ask why she didn’t just pay bribes and remain there, and asked “Do you still have your house in [your country], because you can go back to [your country]?”

Another man reported that his Board Member focused on seemingly irrelevant questions, including dates decades before he was born, about when a company started. He said, “I think he just made some questions out of nothing.”

One woman reported that her Board Member insisted that she reveal what she considered private information:

At one point she asked me who I voted for during the election, and I said ‘I don’t want to answer that question, it’s my right not to answer that.’ But she got so mad and she threw the pen and said with an angry voice, ‘I am here to help you, but if you won’t tell me, I can’t help you.’ I gave her my answer.

One man from the LGBTQ community reported that his Board Member inappropriately asked him about his personal sexual practices and how many partners he has had.

6. Open-Mindedness

Many claimants perceived their Board Members as fair and open-minded. Others described behaviour or comments that led claimants to feel that their Board Member was not interested in listening to them or had made up their mind about the case before the hearing. These perceptions led to feelings of frustration, resentment and futility.

Many claimants described practices that signalled to them that their Board Member was actively listening and engaged in their case. Note-taking, eye contact, verbal responses and questions based on answers (as opposed to pre-prepared) were all important indicators.

One woman reported she knew her Board Member was listening to her because he made eye contact with her, took interest in her responses and repeated important aspects of her case to her:

I like his attitude, he takes my case seriously and he observes me during the hearing. He encourages me to tell my whole case with eye contact, or sometimes just told me to continue. When he summed up, he gave me his opinion and I felt like I was given a fair hearing, and he mentioned all of the details I had given him.

One man got the impression that his Board Member was open-minded “because he was curious and wanted to know more details about the situation.”

On the other hand, another man described his hearing as worse than an interrogation:

Because an interrogation is where you’re willing to think about what the person is telling you. But in this case, the judge would ask and I would answer and the judge would laugh. She made faces like she didn’t believe me.

One woman concluded, based on mistakes by the Member and the focus of the hearing, that her Board Member wasn’t open-minded about her claim:

I don't think that she was listening to what we were saying. I think that she had made up her mind from the beginning when we stepped in that we were not going to get accepted that day.

Pat felt that the Board Member's agenda was revealed by her questions: "There were just so many questions over and over and over again. It seemed as if the same questions were repeated as if she was trying to trap me."

Indeed, many other claimants felt very strongly that their Board Members were trying to trick, trap or purposefully confuse them. Consequently these claimants had very strong misgivings about the fairness of the process, and expressed feelings of anger, resentment or disappointment. For example, Ruben remembered:

Every answer I gave her, she refuted it or she asked me to explain again and again, even though there was only one answer. She asked about six or seven times the same question. I certainly believe I was not fully heard because when the Member made a question, she only waited for an answer and since she asked the same question again and again I lost focus. I felt her intention was to distract me.

One woman also thought her Board Member "was trying to confuse me deliberately." She said the member "would twist my words and the order I said them in as an attempt to trick me." She felt that the outcome of the claim was determined before the hearing.

On the other hand, some refugees were confident that their Board Member was open-minded and ready to listen. Ramirez's Board Member demonstrated this at his hearing by never interrupting and allowing him to elaborate. His perception was that "she didn't arrive thinking 'These people are lying and I am going to make them reveal this'. Instead she arrived with an open mind, just ready to listen."

Other refugees felt their Board Members were closed-minded in a complete and hopeless way. Some felt that their Board Members didn't listen to their realities and substituted them with preconceived or convenient alternatives. One woman articulated her frustration as follows: "As a judge, you should try to better understand the person in front of you and not simply disregard what the person says."

One couple felt hopeless when their Board Member did not believe letters from medical specialists documenting relevant health problems and accused the woman of lying about it.

One claimant felt that her Board Member "didn't care" and was just going through the motions. When the woman was describing the murder of a family member she had the sense that for the Board Member it was "just questions and answers".

Several others reported similar concerns. Paula felt that she and her husband were not heard. She described her hearing as "just a process. People in charge go through the motions, and they know the answer already, it's preprepared."

G) CONCLUSION

The interviews with the 70 claimants provide us with some insight into how the refugee hearings are perceived by the claimants themselves, and in particular how they perceive the conduct of the Board Member in their hearing.

Needless to say, the hearing is an intense experience for claimants. Aspects that may seem minor to other participants sometimes assume great importance for those whose lives depend on the outcome of the hearing. At the same time, many of those interviewed recognized that the Board Members have a job to do, and understood that this must constrain their actions. Within those constraints, interviewees repeatedly pointed to ways in which Board Members could humanize the process for claimants, making them feel that they were being heard and respected.

Some of the ways in which claimants' experiences can be helped or hurt have been highlighted in the text. It should also be noted that claimants varied in their responses to certain aspects of the hearing, suggesting that we should hesitate to rely on rigid guidelines. From the interviews, we also see a recognition that Board Members' personalities differ, so that strategies that work well for one may be less successful for another. In general, however, those interviewed were hoping that their Board Member would show attentiveness to the claimant as a human being going through a stressful and life-determining experience.

A particular challenge is making the hearing seem fair for claimants who are ultimately rejected. It is to be expected that those who are refused will be much sensitive to perceived flaws or unfairness in the process, than those who have been accepted. This makes it all the more important that every effort is made to show the claimants that they are being heard.

This research is clearly limited in many ways, including in terms of the sample. Further research projects might usefully pursue issues more deeply, or explore related areas. For example, a study might be designed to examine what aspects helped refused claimants to feel that they had been fairly heard, despite the rejection of their claim. Another area for research might be the role of lawyers, and how they are perceived by their clients. This might help lawyers understand how they can best prepare and support claimants. The particular experiences of unrepresented claimants might be another useful topic for study.

It is hoped that the findings of this research project will make a useful contribution towards our collective understanding of what makes a fair and effective refugee hearing, and they will give food for thought for all those concerned for refugee claimants, whether it be individual Board Members, policy makers, trainers, interpreters, lawyers, NGO representatives who support claimants through the process, or refugee claimants themselves.

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- Action Réfugiés Montréal, Montreal
- Appeal for Compassion and Mercy for Refugees in Canada (ACMRC) Group, London
- Association multiethnique pour l'intégration des personnes handicapées, Montreal
- Becoming Neighbours, Joint Apostolic Ministry, Toronto
- Catholic Social Services, Edmonton
- CLASP Legal Clinic, Toronto
- Downtown Legal Services, Toronto
- Eritrean Canadian Community Centre, Toronto
- Haidar House, Montreal City Mission, Montreal
- Halifax Legal Clinic, Halifax
- Harbour Light Ministry, Salvation Army, Toronto
- Hispanic Fraternity Association, Hamilton
- Matthew House, Fort Erie
- Matthew House, Toronto
- Mennonite Coalition for Refugee Support, Kitchener
- Micah House, Hamilton
- Mouvement contre le viol et l'inceste (MCVI), Montreal
- Neighbourhood Link Support Services, Toronto
- RIVO, Montreal
- Roma Centre, Hamilton
- Sherbourne Health Centre, Toronto
- SOS, Vancouver
- South Asian Women's Community Centre, Montreal
- The 519 Church Street Community Centre, Toronto
- Thorncliffe Community Centre, Toronto
- YMCA Cambridge
- YMCA Windsor

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I) APPENDIX

The following chart provides some basic data about the claimants interviewed in this study.

Pseudonym	Hearing Location	Age	Gender	Area of Origin	Result
Aaron	Toronto	20s	Male	C. America	awaiting
Abu	Toronto	20s	Male	-	awaiting
Ajani	Toronto	30s	Male	C. Asia	accepted
Alejandro	London	40s	Male	S. America	rejected
Alicia	Montreal	-	Female	N. America	rejected
Anan	Toronto	40s	-	C. Africa	accepted
Andrea	Toronto	40s	Female	S. America	accepted
Andres	London	50s	Male	S. America	rejected
Angelica	Montreal	-	Female	N. America	pending
Anne	Toronto	40s	Female	W. Africa	accepted
Antonie	Montreal	30s	Male	W. Africa	rejected
Catherine	Toronto	30s	Female	S. America	rejected
Cecilia	Toronto	40s	Female	S. America	rejected
Chan	Vancouver	40s	Female	E. Asia	accepted
Chantal	Toronto	30s	Female	C. Africa	awaiting
Claudia	Montreal	-	Female	S. America	rejected
Daniel	Toronto	40s	Male	N. Africa	awaiting
Daniela	London	50s	Female	S. America	rejected
David	Toronto	under 20	Male	S. America	awaiting
Devan	Toronto	50s	Male	C. America	accepted
Diego	London	40s	Male	S. America	rejected
Dora	Montreal	40s	Female	N. America	accepted
Eden	Toronto	20s	Female	N. Africa	accepted
Elsa	Montreal	20s	Female	N. America	accepted
Esma	Halifax	30s	Female	E. Europe	awaiting
Esteban	Halifax	40s	Male	C. America	awaiting
Felipe	London	30s	Male	S. America	accepted
Felix	Ottawa	30s	Male	N. America	rejected
Fiyori	Toronto	20s	Female	N. Africa	accepted
Francisco	Toronto	40s	Male	S. America	rejected
Guadalupe	Montreal	20s	Female	N. America	accepted
Halle	Toronto	30s	Female	W. Africa	awaiting
Henry	Montreal	40s	Male	S. Asia	rejected
Honza & Micaela	Toronto	20s	Male & Female	E. Asia	awaiting
Indira	Toronto	30s	Male	Asia	accepted
Isabel	Toronto	20s	Female	C. America	awaiting
Ivonne	Edmonton	40s	Female	N. America	awaiting

Pseudonym	Hearing Location	Age	Gender	Area of Origin	Result
Jose	Vancouver	50s	Male	C. America	accepted
Juan	Montreal	-	Male	S. America	rejected
Kamran & Fatima	Montreal	40s	Male & Female	S. Asia	accepted
Kelile	Toronto	20s	Male	N. Africa	accepted
Kessie	Montreal	20s	Female	W. Africa	accepted
Leo	Toronto	20s	Male	C. America	accepted
Liliana	London	30s	Female	S. America	rejected
Luke	Toronto	20s	Male	S. Africa	rejected
Mebrahtu	Toronto	30s	Male	N. Africa	accepted
Miranda	St. Albert	30s	Female	N. America	rejected
Omar	Toronto	under 20	Male	W. Asia	accepted
Pat	Toronto	20s	-	E. Africa	accepted
Paula	Toronto	30s	Female	S. America	rejected
Ramirez	Toronto	40s	Male	N. America	rejected
Rebecca	Toronto	30s	Female	N. America	rejected
Ricardo	Toronto	30s	Male	C. America	awaiting
Ruben	Vancouver	30s	Male	N. America	rejected
Saron	Toronto	30s	Female	N. Africa	accepted
Sarah	Toronto	20s	Female	N. Africa	rejected
Selam	Toronto	40s	Female	N. Africa	accepted
Sofia	Toronto	30s	Female	C. America	awaiting
Stephen	Montreal	20s	Male	W. Africa	accepted
Tarek	Halifax	20s	Male	E. Europe	awaiting
Teresa	Montreal	under 20	Female	C. America	rejected
Tesfay & Almaz	Toronto	30s & 20s	Male & Female	N. Africa	accepted
Victor	Toronto	30s	Male	N. America	rejected
Yasir	Toronto	50s	Male	C. Asia	accepted
Yusef	Toronto	40s	Male	N. Africa	accepted
Yvonne	Vancouver	40s	Female	N. America	rejected
Zemar	Toronto	under 20	Male	C. Asia	accepted
Adolfo & Elisa	Toronto	30s & 40s	Male & Female	S. America	rejected

IRB Hearings Research Project Questionnaire

(questionnaire used to guide interviews)

a) Factual Questions:

Applicant's Name: _____

Gender: _____ City _____

Phone number: _____ e-mail: _____

(The above is confidential and for contact purposes only.)

Country in claim: _____

Age: 20 and under _____ 21-30 _____ 31-40 _____ 41-50 _____ 51-60 _____ 61+ _____

Refugee Decision: Accepted _____ Rejected _____ No decision yet _____

1. When was your hearing?
2. Where was your hearing (which city)?
3. Was the hearing in person or by video conference?
4. Was the hearing just for you or were you with family members? If not alone, which family members were with you? Please give ages, if there were children.
5. Do you have the transcript of your hearing or the CD? Are you willing to share them with us (or help us get one or both)?
6. How long did you wait for your hearing (in months) from the time you made your refugee claim?
7. How long did the hearing last?
8. Who was present at the hearing? (lawyer or immigration consultant, interpreter, tribunal officer, observer, etc, etc) - (not names, just roles. If not sure, no need to worry!)
9. What did you do to prepare for your hearing and who was helping you? Did you feel well-prepared?

b) Perceptions of Hearing:

Give the interviewee the opportunity to describe their experience of the hearing. Indicate that it is not necessary to tell us about their claim, and that we are interested in how the hearing went and what they felt helped or didn't help them to present their case.

- Can you describe your experience of the hearing from start to finish? What was your impression of the hearing? What was good about it and what was bad about it? Do you feel you were fully heard? Include any details you would like to tell us about.

Don't interrupt but try to ask for about the following important issues. Not all questions will be relevant in each case, and the following list is intended as guidance only:

- Interpretation
 - Was there an interpreter?
 - Did you understand the interpreter and vice versa?
 - How did you feel about the interpreter? In your view, how did the interpreter influence the hearing?
 - How did the interpreter help or not help you to be heard?
- Board Member Conduct
 - What was your impression of the board member conducting your hearing?
 - How was your interaction with the member? Was the member supportive or hostile?
 - Overall, what did you like or not like about how the Member ran the hearing?
 - How did he or she help you or prevent you from telling your whole case?
 - How did he or she help you or not help you to feel you were given a fair hearing?
 - In your opinion, did the member appear to be open minded about your case?
- Board Member Preparedness
 - Did the member appear to be familiar with your file and submissions of evidence? Did he or she appear to be well prepared?
- Tribunal Officer
 - If there was one, how did you feel about the role played by the tribunal officer?
 - How did the officer help or not help you to be heard?
- Procedures and Formal Aspects
 - What did you think about the physical set-up of the hearing?
 - Did anything about the format or procedures of the hearing make an impact on you? Describe what they were and what you thought about them.
 - Did you need any accommodations for a special situation during your hearing, and were these provided to you?
(e.g. disabilities, health issues, having young children there, etc.)