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Via email: [iepu-upeli@cbsa-asfc.gc.ca](mailto:iepu-upeli@cbsa-asfc.gc.ca)

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To whom it may concern:

**Re: CBSA Gender-Based Violence (GBV) Guiding Principles and Commitments**

I am writing on behalf of the Canadian Bar Association Immigration Law Section (CBA Section) in response to the Canada Border Services Agency's consultation<sup>1</sup> on **Gender-Based Violence (GBV) Guiding Principles and Commitments** (the Guidelines).<sup>2</sup>

The CBA is a national association of 37,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Section is comprised of over 1,000 lawyers, practicing all aspects of immigration law and delivering professional advice and representation on the Canadian immigration system to clients in Canada and abroad.

**Overview**

The CBA Section supports CBSA's initiative to develop victim-centered and trauma-informed practices for dealing with victims of GBV. This initiative brings the agency into better alignment with its partner agencies. Immigration, Refugees and Citizenship Canada (IRCC) adopted the **Trauma and Violence-Informed Approaches to Policy and Practice** in 2018,<sup>3</sup> and has launched parallel initiatives, including the **Immigration Options for Family Violence**<sup>4</sup> program and the *Temporary Resident Permit (TRP) for Victims of Human Trafficking*.<sup>5</sup> Similarly, the Immigration and Refugee Board of Canada (IRB) launched the **Chairperson's Guideline 4: Gender Considerations in Proceedings Before the IRB (Guideline 4)**<sup>6</sup> in 2022 and recently updated that guidance after

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<sup>1</sup> CBSA, Consulting you on CBSA's guiding principles and commitments on gender-based violence, [online](#).  
<sup>2</sup> CBSA, Gender-based violence guiding principles and commitments, [online](#).  
<sup>3</sup> Public Health Agency of Canada, Trauma and Violence-Informed Approaches to Policy and Practice, [online](#).  
<sup>4</sup> IRCC, Immigration options for victims of family violence, [online](#).  
<sup>5</sup> IRCC, Temporary resident permits (TRPs): Considerations specific to victims of trafficking in persons, [online](#).  
<sup>6</sup> IRB, Chairperson's Guideline 4: Gender Considerations in Proceedings Before the Immigration and Refugee Board, [online](#).

extensive consultation with experts in the field. They have also undertaken significant initiatives to train members at all divisions of the board.

We offer recommendations on steps that CBSA should undertake for effective implementation of these Guidelines. We believe a culture shift will be required for the Guidelines to properly mitigate the re-traumatization of victims of GBV caught in the enforcement scheme.

We use “GBV victims” in this letter as an umbrella term which includes women, men, two-spirit, trans, non-binary and other gender-diverse persons.

### **Operational Efficiency vs. Risk of Re-traumatization: helping victims and survivors to avoid further trauma or exploitation**

Enforcement is a necessary part of the immigration apparatus. That said, we are keenly aware as advocates and practitioners that GBV victims frequently fail to report violence committed against them – either because of the shame that they experience, fear of retribution by their abuser, or fear that they will be re-victimized by the enforcement scheme.<sup>7</sup> Expertise in trauma-informed practice is still in its early stages, and victims of GBV often end up in the enforcement scheme because they were not represented or not represented *adequately* at earlier stages in their immigration journey. We appreciate the complexity of the journey ahead of CBSA, as the legal professions is also in the process of learning about trauma-informed practicing.

CBA Section members report situations where GBV victims end up in the enforcement scheme but still have a viable TRP or Humanitarian and Compassionate (H&C) application to make and would likely qualify for a judicial stay given the severe risk that they or their children would face on removal. That said, they face severe re-traumatization if forced to initiate an emergency stay proceeding – especially if they are still fleeing abuse, if they lack the funds to finance litigation, or if custody of their children is being contested. For these reasons, it is vital that CBSA enforcement officers be willing to collaborate with counsel when they seek a short deferral of removals to advance another legal proceeding. We seek concrete and predictable mechanisms to approach enforcement officers on a less adversarial basis to effectively seek policy stays. These mechanisms are especially important because of the Pre-Removal Risk Assessment (PRRA) bars and H&C bars, and the often harsh and restrictive option of filing a motion for stay of removal in Federal Court.

The CBA Section believes that collaboration between officers and members of the bar has suffered since the change in CBSA’s removals mandate, which went from requiring CBSA officers to execute removal “as soon as reasonably practicable” to “as soon as possible.” CBA Section members report that enforcement officers seemingly sympathetic to their cause say they *would* allow a short policy stay (for example, to allow counsel to get a refugee claim reopened, or to get a TRP or H&C approval), but that “their hands are tied” by the mandate to remove as soon as possible. This current CBSA approach toward active enforcement is inconsistent with and undermines the Family Violence – TRP/H&C polices that were created to support victims of GBV.

For these reasons, we recommend that the CBSA removals mandate revert to “as soon as reasonably practicable,” and that regulations be put into place to give officers discretion to grant short administrative stays or deferral of removals in line with R248, to allow decisions on underlying applications or other legal proceedings where immediate enforcement would cause unintended harm to a GBV victim.

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<sup>7</sup> As further documented in the 2022 [CBA Access to Justice for Trans People Report](#).

### **Trauma-Informed Training to create more positive interactions with CBSA officers**

The second barrier to effective implementation of the Guidelines is that officers are not yet adequately trained on trauma-based interviewing techniques. Over the last several years, IRCC and the IRB have gradually shifted away from interrogative interview techniques for and are gradually updating their approach to fundamental principles involving credibility findings based on the neuroscience of trauma. In particular, the IRB has come to realize that a person's inability to set out a cogent narrative of their experience is not necessarily evidence of unreliability. It may instead be indicia of severe trauma. See, for example, sections 5.1.2 and 5.2.3 of the IRB's Guideline 4.

The IRB's Guideline 4 lists myths, stereotypes and incorrect assumptions:

4.4 Examples of myths, stereotypes, and incorrect assumptions relating to survivors of gender-based violence and trauma discussed in the caselaw include:

- Survivors of sexual assault can be expected to behave in a particular manner, such as resisting the perpetrator, and pursuing a criminal complaint.
- "Genuine" victims of sexual assault report the incident at the earliest opportunity and a person's credibility is negatively affected by their delay in disclosure, whether in Canada or in the country of origin.
- A person in an abusive relationship will seek to leave at the first opportunity, will not return to the abuser, and will not associate with the perpetrator after a traumatic event.
- Once in Canada, a person who has experienced gender-based violence will automatically seek out counselling or assistance in overcoming trauma.
- "Genuine" sexual assaults are perpetrated by strangers.
- False allegations of sexual assault occur more commonly than false allegations of other offenses.
- Survivors would discuss abuse with family members or acquaintances, and trusted individuals, such as parents or teachers, would notice the signs of abuse.
- Well-educated women, women with well-paying jobs or professional designations, or women who show a capacity for self-sufficiency or the capacity to independently care for children, are less likely to experience gender-based violence.
- Evidence of a person's prior sexual experiences, including experiences of sexual exploitation such as forced prostitution, or engaging in consensual adult sex work, can be used to draw a negative inference in respect of their credibility.
- Sexual assault would result in pregnancy, or a woman would seek an abortion if impregnated due to an assault.
- A person who has experienced gender-based violence would not use their social media to post photos, with or without their abuser, in which they appear happy and free from harm.
- A person who is a victim of gender-based violence will necessarily know before they arrive in Canada that they possess basic human rights, that what is happening is an infringement of those rights, and that there may be avenues of recourse available to them.

We believe that these assumptions are still routinely adopted by CBSA officers in the enforcement scheme. Robust training on the impacts of trauma on memory and recall is required to ensure that

CBSA officers do not fall prey to these myths. Considerable neuroscience research illustrates how memory and the ability to recall details are adversely impacted by trauma. Neural pathways in the brain filter out “peripheral details” when someone has a traumatic experience as the brain is focused on survival. As a result, individuals are not able to offer a coherent account of what happened to them and victims risk being mis-attributed with credibility concerns when in fact the underlying issue is severe trauma and avoidance recall.<sup>8</sup>

The CBA Section recommends that CBSA officers receive intensive onboarding training and routine refresher training on trauma-informed practice, led by experts in the field. This type of training was held at the IRB, and it had an immediate and far-reaching positive impact on the work of the Board. We also recommend that the training include trans-specific trauma, and that the training be led and informed by trans people themselves.

CBSA officers should be offered mentorship as well as classroom style training, understanding that it takes time and practice for officers to develop the practical skills required to work with GBV victims. Performance evaluations should measure officers’ compliance with the GBV guidelines, and there should be a mechanism to retrain those who are not meeting training milestones.

Often, the agent of persecution is male. For this reason, female CBSA officers should be assigned to carry out interviews (or, at least, be assigned to canvass with the victim their level of comfort to have the examination conducted by a male officer). Allowing for a female CBSA officer would be consistent with refugee proceedings where accommodations are made to have female members preside over hearings involving GBV.

### **Additional guiding principles and commitments: Better Support Mechanisms**

As indicated above, GBV victims often refuse to report crimes committed against them, particularly those who have been subject to especially cruel or egregious abuse. They may appear at a port of entry displaying obvious signs of anxiety, which can be (and often is) misinterpreted as untrustworthiness. In situations like this, the current process is to conduct a more detailed interview at secondary inspection.

CBA Section members report that these interviews often cause severe re-traumatization, particularly by those (to list a few examples):

- who are actively fleeing abusive situations;
- who have fled regimes where law-enforcement officials are not trustworthy;
- who have been brainwashed by their abuser into thinking that they have done something wrong or will be taken into custody;
- who have been misled by unscrupulous advisors;
- who have children in their sole custody that they fear being separated from.

For those who are then subjected to an in-depth and arduous interview without the benefit of support or representation, this interaction with CBSA often leads to a serious damage to their mental health and can jeopardize their ability to obtain permanent resident status in Canada or pursue other immigration options available to them.

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<sup>8</sup> Hilary Evans Cameron, “Refugee Status Determinations and the Limits of Memory”, International Journal of Refugee Law, [online](#).

## **Other situations in the immigration enforcement continuum where CBSA should apply these principles and commitments**

We believe that CBSA must take proactive steps to identify GBV victims and suspected GBV victims at Ports of Entry, to ensure that they receive appropriate support. Ideally, this would require collaboration with legal aid providers or law societies to ensure the individual has access to legal advice before or during their interview, and support from a social worker or counsellor if they are in obvious distress. This also applies to those in detention, where support is not already in place.

### **Summary**

The CBA Section's recommendations for effective implementation of GBV Guidelines are:

1. The CBSA removals mandate reverts to "as soon as reasonably practicable" and regulations put in place confirming that officers have discretion to grant short stays or deferral of removals to allow decisions to be made on underlying applications or other legal proceedings where immediate enforcement would cause unintended harm to a GBV victim.
2. CBSA officers receive intensive onboarding training, led by experts in the field, on GBV and what it means to engage in a trauma-informed practice. Training should include trans-specific trauma, and the training module should be led and informed by trans people themselves. Officers should receive routine refresher training on these fundamentals.
3. CBSA officers be offered mentorship as well as classroom style training to develop and acquire the practical skills required to work with GBV victims. Officers' knowledge of the GBV guidelines should be assessed during performance evaluations, and there should be a mechanism to retrain those who are not meeting training milestones.
4. The CBSA must take proactive steps to identify GBV victims and suspected victims at the POEs, and to ensure that they have social support and access to legal advice. These also applies to those in detention, where support is not already in place.

### **Conclusion**

Given the short consultation period, we have kept our comments at a high level. The CBA Section appreciates the opportunity to comment on these proposed Guidelines, and would welcome the opportunity to engage in further discussion and to review working drafts confidentially.

Please let us know if you have any questions about our recommendations.

Yours truly,

*(original letter signed by Véronique Morissette for Gabriela Ramo)*

Gabriela Ramo  
Chair, CBA Immigration Law Section