



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

# Standing Committee on Citizenship and Immigration

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CIMM • NUMBER 101 • 1st SESSION • 42nd PARLIAMENT

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EVIDENCE

**Tuesday, March 20, 2018**

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**Chair**

**Mr. Robert Oliphant**



## Standing Committee on Citizenship and Immigration

Tuesday, March 20, 2018

• (1105)

[*English*]

**The Chair (Mr. Robert Oliphant (Don Valley West, Lib.)):** Good morning, everyone. I call to order the 101st meeting of the Standing Committee on Citizenship and Immigration. This is our second meeting studying the issue of the Immigration and Refugee Board's appointment, training, and complaint processes.

We thank our witnesses for returning. I want to thank you for your responses to some of the questions, which have now arrived in writing. I would just let you know that the committee has not yet seen them because they arrived just before the meeting. They will be distributed this afternoon. The committee should be aware that questions were asked the last time, but not assume that we have them.

You made your statement in the last meeting. If you want to take a couple of minutes to say anything now, you're welcome to do it, and then we would go right to questioning.

**Mr. Paul Aterman (Acting Chairperson, Immigration and Refugee Board):** Thank you.

As I indicated at my previous appearance on February 27, I've been the acting chair since the start of January.

Having worked at a number of administrative tribunals over the course of my career, I believe that the quality of the board members at the IRB is excellent. They are dedicated, they're hardworking, and they are proud to serve Canada.

As the committee continues to examine the appointments, training and the complaints processes, there are two critical points I would like to make about the context in which members at the IRB work.

My first point is that the kinds of issues we ask members to deal with are very serious. When a refugee claimant says they fear persecution, or even death, based on their sexual orientation, the member hearing that case often has to ask very difficult personal questions. They can't shy away from that task if they are to do their job properly. We want that member to get at the truth because we want Canada to give protection to those who need it, and we don't want Canada to give protection to those who don't.

Similarly, when a member dealing with an immigration appeal has to ask deeply personal questions in order to decide whether a marriage is real or was simply entered into to get into Canada, we want that member to get at the truth. We don't want to keep spouses

apart; we want to reunite families, but we only want to do so when the marriage is genuine.

If we care about getting at the truth, then those members do have to ask tough questions. I would simply ask that the committee bear that fundamental fact in mind when considering the issue of complaints. It's all about how members do that job, how they ask those tough questions.

The members adhere to a strict code of conduct grounded in the principles of good faith, fairness, accountability, dignity, respect, transparency, openness, discretion, cultural sensitivity, and loyalty. The vast majority of members uphold that code, day in and day out, as they deal with the pressure of an unceasing and ever-growing flow of cases.

Thus, my second point is that I'd like to situate the issue of complaints in the broader context of the work of the board. Since 2009 there have been approximately 490 members who have worked or are working at the board as decision-makers, and since 2009 they have made a total of 425,144 decisions. In that time period there have been 170 complaints—so 170 complaints over 425,000 decisions. Twenty-one of those complaints were founded, and those founded complaints pertained to 14 members among 490 members who have passed through the doors of the board.

Let me be clear, we take every one of those complaints seriously.

• (1110)

[*Translation*]

In the past, in certain cases, we have not examined these issues as effectively or as rigorously as we should have. Following consultations with our stakeholders, we have noted that a more comprehensive complaint mechanism was needed.

The new procedure transforms a process that was muddled and complicated so as to make it clearer, more effective and more sensitive to the complainants.

The key element of this new procedure is the director of the Office of Integrity, who will report directly to the chair and is responsible for examining all of the complaints filed against members of the board.

[*English*]

This new complaint mechanism and the continued hard work of our members will make the board stronger and better able to serve those who appear before it.

Thank you.

**The Chair:** Thank you very much.

We're going to our first round of questioning. Mr. Sarai will begin with a seven-minute round.

**Mr. Randeep Sarai (Surrey Centre, Lib.):** Thank you for coming. I apologize for not being here at the last meeting when you guys appeared before us. So you may have answered some questions that I may ask you, but if so please let us know. I know you can't get into the details of particular cases and that IRB is obviously a judicial or quasi-judicial body whose purpose is to identify those who are genuine refugees versus those who are not. I want to know if there's any sensitivity training or other training given to somebody prior to their being appointed as an IRB judge, or if once it's decided and they are appointed, there's any formal training.

**Mr. Paul Aterman:** The nature of that training is such that we have four lines of business in four divisions, and the training curriculum is tailored to the basic lines of business of each of those four divisions. What's common to all of them is a recognition that the people who are appearing in front of the IRB are immigrants and refugees who come from different backgrounds. A great deal of emphasis is placed on the question of recognition of cultural difference, appreciation of diversity, and understanding that the decision-maker's own experience may not be that of the person who appears in front of them.

A lot of the training in that regard is woven into the curriculum specifically in areas dealing with things like credibility assessment. We attune members to how they assess the credibility of someone who comes from a different background from them. We attune them to the fact that many of the people who appear before them have been persecuted and tortured, and suffer psychological trauma as a result.

One point I would like to highlight is that we issued guidelines in May 2017 involving sexual orientation and gender identity and expression. These guidelines were specifically aimed at setting out standards by which board members can deal with refugee claims mostly, but also other types of cases, when an issue before the board member concerns a different sexual orientation or the manner in which a person expresses their gender identity. If you look at those guidelines—and I think we've undertaken to provide them to the committee—they outline some of the ways in which members should ask those very difficult questions while doing so in a respectful manner. Every decision-maker on the board was trained on that issue. We had two separate half-day sessions in the summer of 2017, one dealing with the legal component, and the other dealing with the practical skills of questioning and how you deal with people in certain situations.

• (1115)

**Mr. Randeep Sarai:** Do you think that's adequate? We've seen some troubling reports in newspapers. An IRB member, David McBean I think, has rejected all of his asylum cases since his 2007 appointment—62 in 2010, 72 in 2009, and 35 in 2008—and almost all of them were because the claimant was not considered to be credible. I find it hard to believe that if sensitivity training or training to identify the credibility of someone from different cultures was given, some judges find no credibility whatsoever in every claim they come across.

Similar claims against IRB members Sterlin and Cassano have emerged, and I'm wondering how the IRB determined their reappointment, or if there was any further training. Is there a process to identify those who do not see any credibility in claimants, and does the chair or anyone sit down with them and ask why their decisions are inconsistent with the average decisions seen everywhere else?

**Mr. Paul Aterman:** We do look at that issue. All members are subject to an annual performance appraisal. The manner in which we conduct that appraisal has to be very careful, because we can't tell decision-makers how to decide cases. Once you start doing that, it undermines the rule of law. That said, if there are stark anomalies, like some of the ones you have pointed to, they do have to be addressed.

We try to do that through the appointment process by finding the people who we think are best suited for the job. It's not a perfect process. It's like any selection process: you set criteria and you evaluate people against those criteria. Most of the time you're right, but sometimes you're wrong. Sometimes someone is appointed to the position who is not a fit for the job. That happens at the board, and it happens in any organization.

What are we doing about it? I think there's a rigour in the appointment process that has helped greatly in that regard, and I think the training does address those things. We have to balance our obligations as an institution to ensure consistency with the fact that we can't tell individual members that they have to decide a case this way or that way.

**Mr. Randeep Sarai:** I agree that you can't tell them, but I think you can see patterns from judges that might show an inability on some of their part to determine credibility, and that somebody, therefore, needs to review their decisions or that decision-maker's ability, and perhaps they need further training.

In 2012, the IRB made changes so that short-term appointees were made public servants. I think that changed a lot of your ability to do what you just said, which is to determine their terms afterwards. Do you think that was a good decision? Have the changes in the appointment process improved your ability to keep the IRB more in check in that regard?

**Mr. Paul Aterman:** There used to be one stream of appointments for decision-makers at the IRB. These were Governor in Council appointments, apart from the immigration division, where there were public servants historically. They'd been public servants as part of the immigration department before they came to the board.

Now we have two divisions made up of public servants, and two divisions of GIC appointees. These are separate employment regimes. As you know, GICs are appointed for a term. A term comes to an end, and a decision is made about whether or not to reappoint them. Public servants have a longer tenure and a different employment regime.

If you're asking me to pronounce on the wisdom of choosing one regime over the other, that's a policy decision that is not ours to make. It's not the board's position, I think, to comment on which choice the government of the day—

**The Chair:** I'm afraid I need to cut you off there. Thank you.

Mr. Tilson, you'll have seven and a half minutes, just to equalize.

**Mr. David Tilson (Dufferin—Caledon, CPC):** Thank you, Mr. Chairman.

I'd like to return to the article we referred to last week, which I'm sure the board would rather we not refer to. It's by Brian Hill and Andrew Russell at Global News. In it, some comments were made about a couple of people. The first one was board member Michael Sterlin. With respect to a matter that was before him, a woman who was before him, according to this article, he “asked to see nude photos of the woman to prove her identity”, and “he asked her to reveal where she received the abortion and why she didn't go to the police.”

The MeToo movement would just go ballistic if that were said today. This was before that movement, but they would absolutely go ballistic about that today.

I'd like you to comment on one of my concerns. I don't mean to cast aspersions on you. As I understand it, there's an investigation, an integrity person who investigates it. These are complaints about the conduct of members. He or she makes a report to you as the chairman. Then you make a decision. The concern I have with this process is that you may or may not like that board member. The question is whether you are independent enough to make such a decision about that person. I say this with all due respect to you or any other chairman.

This board member was required to undergo gender training because of the complaint. That may or may not have been a good decision. The article certainly doesn't think it was. I am willing to bet that those involved with the MeToo movement would think it's a terrible decision. The question I have is whether you have a recommendation to change that procedure.

As you know, the maxim is “justice must be done and justice must appear to be done”. Justice may have been done, but it may well be that justice did not appear to have been done.

My question is whether you would make a recommendation to the committee that a similar process be set up to what goes on with the law society—and you're a lawyer with the Ontario Bar—with its proceedings authorization committee, which has six appointees, or benchers. There's one member of the public, a lay person, who's on it. They make the decisions about the inappropriate conduct of lawyers, or any other complaint about lawyers. That seems to be working. Similarly, with the Judicial Council, when complaints are made about judges, one person doesn't make the decision; a group of people makes the decision.

Could you comment on that, and would you recommend to the committee that perhaps a similar system be set up? Again, I don't mean to insult you, but when you look at the phrase “justice must appear to be done”, you'd see why, if I were a board member and I knew you didn't like me, I'd be worried, but if I were a board

member and we saw each other socially, well, I'd figure I was home-free.

● (1120)

**Mr. Paul Aterman:** Let me make a couple of points in relation to that.

First, the case you're referring to was dealt with under the board's previous process. The process—

**Mr. David Tilson:** I understand that. Under both the old system and the current system, the system is that you make the decision. You alone make the decision as to whether a board member has conducted himself or herself appropriately. You make the decision. My question is whether justice appears to have been done. I don't think it has.

**Mr. Paul Aterman:** I understand that. Under the previous system, it was actually the member's manager who made the initial decision, not the chairperson—

**Mr. David Tilson:** That's even worse.

**Mr. Paul Aterman:** —which is why we changed it.

I guess what I would say to this committee is that the chairperson is paid and is expected to protect the reputation of the tribunal, and is paid and is expected to uphold the integrity of the adjudicative process and to know where to draw the line when it comes to interfering with a member's decision, but also to know where to take action when the member falls short in their conduct—

● (1125)

**Mr. David Tilson:** Sir, I would submit that you might be biased, and that if you had three or four other people making the decision, perhaps board members or perhaps lay people, the accusation that you're biased or not would not be made.

**Mr. Paul Aterman:** In terms of the issue of the perception of justice being seen to be done, there are a number of steps in the new process that speak directly to that. The publication of clear reasons for a decision as to whether a complaint is founded or not founded is a departure from the previous system. The fact that you have an arm's-length integrity officer who is reporting directly to the chair is a departure from the previous system.

**Mr. David Tilson:** I understand all that, sir. That person is independent, and he or she reports to you, not to anyone else, but to you. You alone make the decision and, quite frankly, I think that's inappropriate. I think you need more than one person. In the case of the woman I referred to, I assume that the facts presented by Mr. Hill and Mr. Russell have never been challenged as inaccurate, because I assume there's a transcript, so Mr. Sterlin must have said it. If he did say it, the decision that he needed sensitivity training was inadequate. I'm not competent enough to say what a decision should have been, but that appearance...

I say to you that I don't think one person should make those decisions. The public requires a fair decision, and because you may or may not like the board member, it could be alleged that you're biased. Again, I don't mean to insult you—

**Mr. Paul Aterman:** No, I think you're talking about the office, not the person.

**Mr. David Tilson:** Yes, I am indeed, sir.

**Mr. Paul Aterman:** I appreciate that, and I take no offence whatsoever.

I understand the question. My response to that would be—

**The Chair:** I'm sorry. I'm going to have to cut you off. That was seven and a half minutes.

We have seven and a half minutes for you as well, Jenny.

**Ms. Jenny Kwan (Vancouver East, NDP):** Thank you very much, Mr. Chair, and thank you again to our witnesses today.

I want to start off acknowledging, of course, that you're right in the sense that I think on the whole the IRB does a great job. The IRB members are important gatekeepers and ensure that the integrity of our system is effective. Notwithstanding that, you're faced with a major budget crunch. Even with budget 2018 and a lift of \$74 million for the IRB, it still means that there's going to be a huge impact with respect to legacy cases.

We learned yesterday from the minister's office that this budget only deals with about 18,000 cases a year, that you're accumulating 2,100 cases per month, and that you have an existing backlog of over 40,000 cases, so it doesn't even deal with half the backlog that's there. But that's not what we're here to study today, because that's not what this study is about, even though it would have been good if we'd had a chance to get into those issues.

That said, on the complaint issue, I am still wondering why it is that the IRB, in your remaking of the process, given the problems that surfaced with the complaint process, opted not to go all the way with a completely independent process. The truth of the matter is that you have an office of integrity. That is true, and it is at arm's length, but all of those decisions still have to go back to the chair. On the issues of whether a complaint is investigated, the findings are accepted, and what disciplinary actions are accepted and taken, all of that still has to go back to the chair of the IRB.

This was one key recommendation that stakeholders, through the consultation process, told you needed to be done. Why did that not become an accepted recommendation and a practice?

**Mr. Paul Aterman:** The board is responsible for managing its own people, and fundamentally it's the chair's obligation to do that. The chair is paid and is expected to act in the interest of the institution.

What we've set up is a new process. It's not yet been tested. There are significant structural differences in that new process. What I indicated to this committee last time is that at the conclusion of a year of that process working, we would have an external party come in and evaluate it, not the board evaluate it. We would have someone else look at it from the outside and pass judgment on it.

• (1130)

**Ms. Jenny Kwan:** I will offer that precisely because the chair has to ensure that the process and inner workings of the IRB are effective, you need an independent person to look at complaints. Otherwise, he or she, the chair, would be in conflict. You're conflicted in saying, "I am now going to have to investigate somebody within my organization and take action and make that determination." Whatever action you decide as the chair will have an implication on the operation of the IRB on the whole. That puts you

in an automatic conflict. Therefore, to put it as an arm's-length environment would mean that those decisions would be open, accountable, and transparent. It would absolutely be above reproach.

I would urge the board to consider and to rethink this, because I don't think you're doing the IRB a service by not going all the way. Granted, you have now sort of implemented this process and it will be evaluated again, but people are already concerned that this is a situation where this is an issue of conflict.

The other issue I want to bring up is this. A decision has been made about a particular appointment, and the individual is now gone from the IRB. No information is provided as to what has happened there. More importantly, for the people who have outstanding complaints, with that particular appointment, there's been no explanation given to them. It is as though somehow their complaints have been resolved when in fact they have not been. They have been told that the case has now been closed.

How is that justice? As other members have said, justice has to be served, but justice also has to be seen to be served. How is it that when you have an outstanding complaint that the person who filed it feels is valid, all of a sudden that complainant can be told that the complaint is no longer open because the person is now gone?

Their complaint has not been resolved. Would you not agree with that?

**Mr. Paul Aterman:** I can understand that perspective.

However, the member is no longer an employee. That's why the issue is determined to be closed.

**Ms. Jenny Kwan:** Sorry, I'm going to interject there. Just because the person is no longer an employee does not mean that the investigation of the existing complaint should not be completed. The finding of the complaint at the time of the issue, and of the case when it happened, should still have an outcome. When a person leaves, that means the disciplinary action that may follow may not be applicable, but it doesn't mean that the complaint is not a valid complaint and not worthy of investigation.

**Mr. Paul Aterman:** Could I just explain that any fair investigation involves a neutral party talking to both sides. When one side is no longer there, you can't conclude the investigation.

**Ms. Jenny Kwan:** You're saying that you cannot complete the investigation because the person has left and you have no capacity to investigate the matter.

**Mr. Paul Aterman:** He is no longer an employee. In terms of a fair investigation, we don't hear both sides of the story.

**Ms. Jenny Kwan:** The IRB has no capacity to investigate outstanding complaints. Even under this new process, you're saying that if the person who received the complaint is now gone, you have no capacity to follow through.

If that's the case, shouldn't that be addressed in this new complaint process, because that is not serving justice?

**Mr. Paul Aterman:** I'm not sure I understand the question.

I think in any instance, as I said, a neutral investigation involves a neutral investigator talking to both sides who are involved in that particular issue. If one side is no longer there, is no longer available to provide their account, you can't conclude the investigation, unless you have a power of summons or something like that.

**Ms. Jenny Kwan:** That leaves the question of whether there is an ability to ensure that when you're an employee at the time that a complaint has been lodged that therefore you need to be available for that complaint to be completed. You can't say in the middle of the investigation, or after the complaint has been lodged, "Okay I don't want to do this anymore. I'm going to quit."

• (1135)

**The Chair:** I'm afraid I need to cut you off there. Sorry about that.

Mr. Whalen, for seven minutes. We'll go back to our regular amount of time.

**Mr. Nick Whalen (St. John's East, Lib.):** Thanks, Mr. Chair.

Mr. Aterman, I appreciate that you came into a situation where there was a very bad process for adjudicating complaints. You proposed a change. I believe Mr. Tilson and Ms. Kwan are correct in noting that the change doesn't measure up to what we would normally feel to be the best practice or the normal standard for adjudicating a judicial role. Typically, when you look at what happens elsewhere in the country, even if there's an investigative role that happens internally, the complaints are reviewed by a panel that includes lay people, which is to ensure that the public has confidence in the system.

If we are being independent reviewers of your system, I think from our perspective there are more steps that need to be taken to see it improved further. As to whether your decision would be correct in terms of whether or not to convene the review panel, some of the processes we've seen include that role.

However, there were 170 complaints, and you said only 21 were founded. That seems to be saying that 85% of complaints that are being brought are unfounded.

Are these often brought by the counsel? How does this break down, this 85% of unfounded cases?

**Mr. Paul Aterman:** I would say largely they are brought by people who are represented. Some of them are brought by people who are unrepresented. The spectrum of complaints ranges very widely. Some of them have absolutely nothing to do with a member's conduct. They will style it as a complaint under the code of conduct, and it will be something such as the board's practice in scheduling cases, which is an administrative matter.

**Mr. Nick Whalen:** There are only 170 complaints, so it would be great if you could provide a breakdown of those. I think that would provide comfort to the public as to why they are not moving forward.

**Mr. Paul Aterman:** Yes.

**Mr. Nick Whalen:** With respect to the 21 founded cases, what happens to the IRB member whose conduct is to the point where the complaint is worthy of an investigation? Are they sidelined? Is a wholesale review done of all their cases to date to ensure that justice has been served? What happens in the review practice with respect to

the decisions made by those 14 members who were subject to founded complaints?

**Mr. Paul Aterman:** The response varies with the nature of the complaints. Some of them have been instances where a member who's otherwise a fine performer has a bad day and loses their temper in the hearing room and says something that was ill-considered. In instances like that, we've had the member, for example, write an apology, or the board has addressed the issue by sitting down with the member and discussing it. Some of them have been more serious, and we've had to sit down with a member and say, look—

**Mr. Nick Whalen:** How many of the 14 were more serious, to the point where you've had to do a review of the practices of the adjudicator?

**Mr. Paul Aterman:** This is an undertaking that I believe you'll receive this afternoon.

**Mr. Nick Whalen:** Oh, okay.

**Mr. Paul Aterman:** Typically, the member's manager would sit down and have a discussion with them. They may be directed to do some training. There was an instance where we removed the person from the hearing schedule altogether. There have been instances where they've written letters of apology. It's really a function of the nature of the complaint and the corresponding answer to it.

**Mr. Nick Whalen:** How many go to the decision-making ability of the IRB member? They're adjudicating 1,000 cases each year, so that's a lot of people whose lives are prejudiced by poor decision-making. Of those 14 members, for how many have you had to go back and review the case history to make sure they were fair to all the other people who were subject to—

**Mr. Paul Aterman:** We're dealing with a complaint that arises in a particular instance. We're not necessarily going back and looking at all of the past decisions—

**Mr. Nick Whalen:** In the cases of Ms. Cassano and Mr. Sterlin, who have been the subject of Global News investigations and reports, even as recently as last week, that said Ms. Cassano has left, the types of complaints that were made go to the very character of the IRB professional and whether or not they are good decision-makers in this context. If you look at the average of 1,000 cases a year, even for those two, there are maybe as many as 18,000 cases to be reviewed.

Have they been reviewed?

• (1140)

**Mr. Paul Aterman:** They're not doing 1,000 cases each. They're doing in the order of a few hundred in the course of a year, or maybe 150.

**Mr. Nick Whalen:** Okay.

**Mr. Paul Aterman:** Those are not the numbers. In each case—

**Mr. Nick Whalen:** Sorry, those 425,000 decisions were over the whole 10-year span.

**Mr. Paul Aterman:** That's since 2009.

**Mr. Nick Whalen:** Okay.

**Mr. Paul Aterman:** Since 2009, 490 members have worked at the board in that period.

**Mr. Nick Whalen:** Fine. When was Ms. Cassano appointed?

**Mr. Paul Aterman:** In 2012, I believe.

**Mr. Nick Whalen:** Six years.

Mr. Sterlin?

**Mr. Paul Aterman:** If you bear with me...

**Mr. Greg Kipling (Director General, Policy, Planning and Corporate Affairs Branch, Immigration and Refugee Board):** It's about 10 years he's been with the IRB, so 2008-09.

**Mr. Paul Aterman:** He was appointed in June 2008 to June 2011, June 2011 to June 2014, and then June 2014 to June 2017.

**Mr. Nick Whalen:** These were appointments. He wasn't—

**Mr. Paul Aterman:** He was a GIC. That's right. Those were three, three-year terms.

**Mr. Nick Whalen:** We're looking at maybe 1,600 cases between those two particular employees.

What has the department done to ensure that in the scope of those decisions there wasn't systemic bias that affected the potential refugees?

**Mr. Paul Aterman:** In each of those cases they decided, there was always an option for their decision to be challenged in the Federal Court.

**Mr. Nick Whalen:** Subject to the financial means of the refugees....

**Mr. Paul Aterman:** That's correct, yes.

**Mr. Nick Whalen:** Was there really an opportunity for those 1,600 people to make a challenge in the Federal Court?

**Mr. Paul Aterman:** I'm not sure—

**Mr. Nick Whalen:** You're throwing it out there as a legitimate option for somebody. Where are they going to come up with the tens of thousands of dollars to bring their appeal?

**Mr. Paul Aterman:** It's not necessarily an option for all of them, but they were represented—

**The Chair:** I'm afraid I need to end it at that.

As chair, I'd just like you to clarify this for the committee. Are you saying that if a complaint process ends with a person being removed from the board because of a complaint in one instance, perhaps, of inappropriate behaviour, there's no review of all the decisions that person made, especially the negated decisions of that judge.

**Mr. Paul Aterman:** That's correct.

**The Chair:** Thank you.

We have Mr. Tilson for five minutes.

**Mr. David Tilson:** Yes, Mr. Chairman.

How many complaints have there been in the last year against public servants versus the Governor in Council appointees?

**Mr. Greg Kipling:** We'd have to get back to you with that breakdown. We have the number of complaints that were made, but we don't have readily at hand the breakdown between GIC appointees versus public servants.

**Mr. David Tilson:** If you could send that to the clerk, we'd appreciate it.

**Mr. Greg Kipling:** Sure.

**Mr. David Tilson:** Yesterday we had the minister appear before us on the estimates. He kept saying that you, the IRB, are finding efficiencies to process claims that are in the backlog.

Can you give us some examples of these new-found efficiencies in processing asylum seekers?

**Mr. Paul Aterman:** Certainly. We have an expedited process for certain claimants from certain countries. The number of countries where we've moved those to a fast-track where a paper review is used has expanded. I think, off the top of my head, we finalized about 2,200 claims through that process. We've instituted a short hearing process now, because we are not able to function according to the regulated timelines. We have flexibility to identify cases and to case-manage more effectively. We were able to identify cases that are going through the short hearing process because we're now controlling when the cases are put on the schedule.

The refugee appeal division has issued three jurisprudential guides.

**Mr. David Tilson:** How many vacancies are there?

**Mr. Paul Aterman:** On the GIC side, I believe it's 24 at the moment. On the public service side, we don't have any vacancies.

**Mr. David Tilson:** The legislation calls for hearings within 60 days, and you're clearly well beyond that now.

• (1145)

**Mr. Paul Aterman:** Yes.

**Mr. David Tilson:** You're talking about how you're going to try to improve that. How do you square your responsibility under the law with your current predicament?

**Mr. Paul Aterman:** The regulations prescribe the timelines. They also have a safety valve or a clause in there that enables the board to derogate from that where operational requirements demand it.

**Mr. David Tilson:** Yes.

**Mr. Paul Aterman:** That's what we've had to resort to, because of the volume of clients.

**Mr. David Tilson:** Well, we have a problem.

The minister talked about monies in the budget that will go to solve some of these issues. What portion of the money in the budget was it? I I can't remember. Was it \$70 million?

**Mr. Paul Aterman:** The board got \$73.7 million.

**Mr. David Tilson:** What portion of that will be used to fill the vacancies, or is that a problem? Is money a problem?

**Mr. Paul Aterman:** I would say the bigger challenge we have with that money is to be able to find and hire competent decision-makers who are willing to come to the board for a short term.

**Mr. David Tilson:** I don't understand that. Isn't there a set number of board members?

**Mr. Paul Aterman:** No.

**Mr. David Tilson:** There's not?



**Mr. Paul Aterman:** No, there's not.

**Mr. David Tilson:** So why are we talking about vacancies? I don't understand that.

**Mr. Paul Aterman:** Well, when you talk about vacancies, you're talking about the Governor in Council side.

**Mr. David Tilson:** Yes.

**Mr. Paul Aterman:** The public servants, on the public service side—

**Mr. David Tilson:** There are no vacancies there. We're talking about the Governor in Council side.

**Mr. Paul Aterman:** Right.

**Mr. David Tilson:** There are 24 vacancies.

**Mr. Paul Aterman:** Yes.

**Mr. David Tilson:** So how can we speed that up? What can we do to do that? That's clearly one of the reasons the decisions aren't being made within 60 days, because you don't have enough bodies to deal with them.

**Mr. Paul Aterman:** The Governor in Council appointees are appointed to the refugee appeal division, not the refugee protection division. The refugee appeal division, that's where those vacancies are. We have 12 that were announced a couple of days ago. They haven't started work yet. So 12 of the 24 have been identified.

In addition to that, with budget 2018, we got money for additional Governor in Council appointees, and when we obtain that money, subject to a Treasury Board submission, then we'll have to fill a further 16 Governor in Council positions.

**The Chair:** Thank you.

Mr. Tabbara.

**Mr. Marwan Tabbara (Kitchener South—Hespeler, Lib.):** Thank you both for being here, and I understand that the department has a difficult task ahead dealing with a lot of cases, including sensitive cases. You mentioned in your testimony that a lot of these individuals are trying to find out the truth. Individuals might be facing persecution or even death, and they must be asked tough questions, as you rightly pointed out.

My question is about the appointments. I'm trying to get at the root cause, and why we're seeing these allegations, and why we're seeing this in the news. Is there something you can provide to the committee? With these appointments, are we maybe overlooking something? Maybe in the old system we weren't looking at the credentials as closely as we wanted to. What are some of the recommendations you would give to the committee with regard to what we did previously and how we looked at these appointments, and how we looked at their credentials and their experiences?

**Mr. Paul Aterman:** I would say the appointments process is a rigorous one at the moment. The people who apply on the GIC side, first, they're subject to a paper screen, and then they write a written test that is five hours long, divided into two parts. Then they're subject to an interview to look at behavioural competencies, and that includes things like cultural sensitivity and judgment, and finally, if they pass the interview, they're subject to reference checks.

On the GIC side, for every 10 applicants, one qualifies, and then the number who are appointed from within that pool is yet smaller. On the public service side, I would say it's an equally rigorous process at the moment, and the ratio of qualifications there is about the same. So roughly speaking, for every 10 applicants, there's one who makes it through.

• (1150)

**Mr. Marwan Tabbara:** You're talking about the current process.

**Mr. Paul Aterman:** Yes.

**Mr. Marwan Tabbara:** Is this different from previous processes? You talked about the interview specifically.

**Mr. Paul Aterman:** There have been changes over the years in the—

**Mr. Marwan Tabbara:** I want you to elaborate on those changes.

**Mr. Paul Aterman:** I know that we've had a test on the GIC side for a number of years. The test has become a bit more rigorous. It's now a longer test and looks at people to see whether they're suited to work in the first-level decision-making, or as an appellant decision-maker. That wasn't there before.

**Mr. Marwan Tabbara:** I'm not sure if you can give me timelines of when the tests were—

**Mr. Paul Aterman:** I'd have to get back to you on when those things were modified. I had no involvement with the public service side of recruitment in the past.

**Mr. Marwan Tabbara:** Since these changes have taken place, are you seeing a positive outcome now, or maybe fewer allegations against some of these judges? The ones that have been newly appointed, not...

**Mr. Paul Aterman:** I think you'll be able to see for yourself. We will be providing you—or we have provided you, as you'll see this afternoon, I think—a breakdown of the number of complaints by year. At one point in 2010 there were 39 complaints, whereas in 2015 there were 11; in 2016, 11; in 2017, 13. So the number of complaints has gone down, relative to that particular time.

The composition of the membership has changed, and we can provide you with information on the demographics and—

**The Chair:** I'm afraid I need to end it there. Thank you very much.

Mr. Tilson, you have five minutes.

**Mr. David Tilson:** When complaints occur, are they reviewed in such a way that training can be adjusted to correct the subject of the complaint in the future?

**Mr. Paul Aterman:** Yes. When training is prescribed, it's for the individual.

**Mr. David Tilson:** If someone makes a complaint against a particular board member, others can learn from that complaint.

Does the training or education that's provided deal so all members can take advantage of that complaint and perhaps correct the ways in which they're dealing with asylum seekers.

**Mr. Paul Aterman:** I think if a complaint is made against an individual, it doesn't necessarily follow that the other 150 or 200 decision-makers are making the same mistake.

That said—

**Mr. David Tilson:** Do the others know about that complaint?

**Mr. Paul Aterman:** No.

**Mr. David Tilson:** Why not?

**Mr. Paul Aterman:** That's not necessarily a matter that affects their own performance.

For example, the SOGIE guidelines we issued are given to all members. They're aimed at addressing the issues of how you question people in a respectful manner.

**Mr. David Tilson:** I can't agree with that. But you've given your answer.

How does the training evolve over time to address trends that arise out of the complaints process?

• (1155)

**Mr. Greg Kipling:** One consideration I think that responds to your question, relates to systemic—

**Mr. David Tilson:** Essentially, I've asked the same question twice.

**Mr. Greg Kipling:** Right.

**Mr. David Tilson:** It's the way I do this.

**Mr. Greg Kipling:** In addition to the individual inquiries that might be made with respect to any individual complaint, we are undertaking systemic reviews of the quality of decision-making and the process generally on a regular basis. They are produced for each division, and are used for management purposes, including potential tweaks to procedures and to training.

I think we are responsive to trends, is my point.

**Mr. David Tilson:** Are IRB members staffed individually or are they supported through a pool of support staff or is it a mix?

**Mr. Paul Aterman:** There is support staff who assist them with things like case preparation, so that's the function of the registry. There is support staff who assist them with respect to the production of decision-making, be it the clerical and administrative side of that. Then they have legal advisers who they can consult on questions of law in their decisions.

**Mr. David Tilson:** Does the IRB currently have enough support staff to adequately support a full complement of IRB members, if and when all the vacancies are filled?

**Mr. Paul Aterman:** Yes.

**Mr. David Tilson:** How many are there?

**Mr. Paul Aterman:** How many support staff?

**Mr. David Tilson:** Yes.

**Mr. Paul Aterman:** I don't have a number off the top of my head.

**Mr. David Tilson:** Well maybe you can give that to the clerk, too.

The 2018-19 interim estimates flagged \$118.9 million for the IRB, and that's more or less the same amount that was in last year's main estimates for the same time period. Considering the backlog that you've had, why are you not seeking more monies? I know you're talking about the \$70-some-odd million in the budget, but you didn't ask for it in the estimates. It was the same last year as this year, so if

there is a problem, unless there is no money problem.... Can you explain why that happened?

**Mr. Greg Kipling:** We identified a need for additional funding that resulted in the decision in budget 2018, and we will be able to access those funds to increase our decision-making capacity.

There is always a question around what the future intake is going to be, and—

**Mr. David Tilson:** Well, I ask that because there is clearly a problem, and yet nothing was asked for.

**Mr. Greg Kipling:** Certainly the intake and the capacity of the board are issues that we are constantly monitoring and are sharing with our partners in the department.

**The Chair:** Thank you, Mr. Kipling.

To finish this round, I would like to ask if Ms. Alleslev would just take three minutes now so that I could have Ms. Kwan have three minutes to close. Would that be okay?

**Ms. Leona Alleslev (Aurora—Oak Ridges—Richmond Hill, Lib.):** Anything for you, Mr. Chair.

**The Chair:** Well, thank you. Then we can complete our whole round. Thank you.

**Ms. Leona Alleslev:** A lot of the questions have been tap dancing around two central themes. One is around the structural, systemic process, not only from the personnel evaluation review, but to the complaints process. Then there are the individual specifics of how we address complaints and how that process comes back.

Around the structural process, the complaint is the last line of defence. We know that people don't always make complaints, and we know that's not a reflection of how well the system is doing because of all the reasons people don't come forward with complaints.

How are you ensuring that managers and the managers of managers are reviewing all of those individuals so that, if there is a pattern of behaviour, we catch it even if there isn't a complaint?

**Mr. Paul Aterman:** In the performance appraisal process—to speak specifically to the points that you've raised—there are elements of it where a manager will do a random audit of a member's hearings. For example, in the immigration appeal division, when you do a performance appraisal, the member's manager is expected to take a minimum of three hearings, selected at random, and listen to them.

• (1200)

**Ms. Leona Alleslev:** Do they do that for all of the people under their responsibility each year?

**Mr. Paul Aterman:** Yes.

**Ms. Leona Alleslev:** So they review every person, at least three random cases of theirs, to get a sense.

**Mr. Paul Aterman:** Yes, they have the option of observing the hearings, but more typically what they will do is listen to the recordings. They will also take a random selection of the member's recent—

**Ms. Leona Alleslev:** Does that manager's manager double-check to make sure that the manager has, in fact, conducted that level of review?

**Mr. Paul Aterman:** Yes.

**Ms. Leona Alleslev:** Okay.

Then, to the complaints process, once someone has been found to have erred in judgment—and here I go back to the comments that my colleague Mr. Tilson was making—how do we ensure that it goes into annual, recurrent-type training?

In airworthiness we look at accident investigations or incidents, and all pilots, as an example, are briefed annually on the incidents—not specifically on who or what aircraft were involved, as it's sanitized—and given feedback on incidents that have arisen.

Is there a similar type of opportunity to bring that kind of complaints outcome process to all of the people involved in the decision-making?

**Mr. Paul Aterman:** We haven't done that at the board. I think that's the kind of thing we could certainly look at.

**Ms. Leona Alleslev:** Thank you.

**The Chair:** Ms. Kwan.

**Ms. Jenny Kwan:** Thank you very much.

I have two areas I'd like to cover. One is the short-term appointments. Given that a large number of board members still need to be appointed, why are these short-term appointments?

In light of the fact that you have a huge backlog with a large number of claims being made, for my second question I'd like to go back to the issue of summons. In fact, in 2016 the Federal Public Sector Labour Relations and Employment Board made a decision entitled *Kalonji v. Deputy Head (Immigration and Refugee Board of Canada)* regarding grievous termination.

In that case, the decision was that a summons can be issued. My question for you is why the IRB is not using this as an avenue to follow through on complaints. I think it is very important for outstanding complaints to be completed and not to be abandoned in the middle because the person involved has disappeared or has left.

**Mr. Paul Aterman:** In relation to the first question on why there are short-term appointments, it's because the funding is limited for two years.

**Ms. Jenny Kwan:** So it's an issue of funding again.

**Mr. Paul Aterman:** Yes.

**Ms. Jenny Kwan:** Okay, on my next question, then, on the issue around summons—

**Mr. Paul Aterman:** I'm not familiar with the case. The board has the power to issue summonses with respect to its own hearing process, but not, as far as I know, with respect to any labour relations matters.

**Ms. Jenny Kwan:** Well, the IRB is under the Federal Public Sector Labour Relations and Employment Board because the IRB and its employees, among whom are board members, are subject to this federal sanction. If the IRB is subject to this federal sanction, then you have the authority to summon. Maybe you can clarify that and send the answer to us. I'd be very interested to see whether or not the IRB has exhausted all its avenues to ensure that these cases are properly investigated and concluded, and not abandoned as they are right now.

**Mr. Paul Aterman:** Okay.

**Ms. Jenny Kwan:** Also, when the board decides that these cases are closed because the person has left, as in the case of Cassano, the former board member, why is the complainant offered the choice of continuing with their hearing based on the findings of the board member who has left? Why are they even given that choice?

If you want to ensure that the applicant has a fair hearing, given that there's an outstanding complaint for that case and given the findings of that case and the work that has been done for that case, why would you even consider continuing with a new board member?

**The Chair:** Be very quick.

● (1205)

**Mr. Paul Aterman:** Those deal with cases, as I understand it, that the member was seized with at the time she left the board's employment. The particular claimant and the particular claimant's counsel may not want to have a new hearing start in front of a different member. They may have been satisfied with the way that hearing proceeded. These are not necessarily cases where there was a complaint made about that member, so they're given the option. They can choose which one they prefer, and the board will respect their choice.

**The Chair:** Thank you, Mr. Aterman. I'm afraid we need to end there because we have another panel coming in. Thank you very much for this time with us.

I'm just going to ask that we move quite quickly now to our next witnesses. Thank you.

If we could have Ms. McClymont and Ms. Thorne, come now.

● (1205)

\_\_\_\_\_ (Pause) \_\_\_\_\_

● (1205)

**The Chair:** We're going to call the meeting back to order. First of all, I want to thank both Ms. Thorne and Ms. McClymont for joining us today. I understand Ms. McClymont has opening remarks and then you will both be available for answering questions.

Take it away.

**Ms. Donnalyn McClymont (Assistant Secretary to the Cabinet, Senior Personnel Secretariat, Privy Council Office):** Great. Mr. Chairman and members of the committee, thank you for the opportunity to appear before you today to discuss the government's approach to Governor in Council appointments, the roles and responsibilities of various decision-makers in the appointments process, and how this approach applies to the Immigration and Refugee Board, the IRB.

Governor in Council appointees, or GICs, play an important role in Canada's democracy by serving on commissions, boards, crown corporations, agencies and tribunals across the country. Their responsibilities are diverse, ranging from adjudicative decision-making to providing advice and recommendations to the management of large, diversified corporations.

•(1210)

[*Translation*]

On February 25, 2016, the government announced a new approach to Governor in Council appointments, which is based on open, transparent and merit-based selection processes to support ministers in making appointment recommendations.

A key objective is to appoint high-quality candidates who reflect Canada's diversity. The most significant shift in how the government manages selection processes is that part-time positions are part of the open, transparent, and merit-based approach.

[*English*]

Communication with the public about GIC opportunities is a central element in the government's approach to appointments. Notices of opportunities are advertised online on our GIC website—Canada.ca—and interested candidates are invited to submit their applications online. Opportunities are also advertised on the website of the organization filling the position and listed in the *Canada Gazette*.

To ensure that those interested are made aware of opportunities, outreach may include engaging an executive search firm, typically for leadership positions, or developing a comprehensive outreach strategy. Efforts may also involve targeted outreach to communities of interest, such as professional associations and stakeholders.

Since the new approach was announced, there have been close to 22,000 applications through the online portal for appointment opportunities in close to 200 federal organizations.

Another central element of the appointment process is merit. The selection process is rigorous, with established selection criteria that are publicly advertised. These qualifications and criteria reflect the organization's mandate and take into account the mandate of the minister and government priorities. Candidates are evaluated by the selection committee against these publicly available selection criteria.

The government has also committed to making appointments that achieve gender parity and are reflective of Canada's diversity. The Prime Minister has asked each minister, in their mandate letter, to do their part to fulfill the government's commitment to transparent, merit-based appointments and to help ensure gender parity and that indigenous peoples and minority groups are better reflected in positions of leadership.

To support this objective, when candidates submit their applications online, they are asked to provide demographic information. This includes self-identification regarding their membership in an employment equity group, such as women, indigenous peoples, visible minorities, persons with disabilities, and as members of ethnic/cultural groups or the LGBTQ2 community, as well as their second official language proficiency.

To date, over 650 appointments have been made following an open selection process. Of those incumbents, over 50% have self-identified as women, 12% as visible minorities, 9% as indigenous, and 4% as persons with a disability.

The roles and responsibilities of decision-makers in the appointments process are outlined in “Open and Accountable Government”, the guide provided to ministers from the Prime Minister to assist them in fulfilling their full range of ministerial responsibilities. Ministers, supported by their officials, are responsible for managing appointment recommendations within their portfolios.

We at the senior personnel secretariat within PCO, where I am the assistant secretary, provide advice and support to the Prime Minister and the Clerk of the Privy Council on Governor in Council appointments. This includes establishing policies and services that promote high-quality GIC appointments; facilitate the recruitment and retention of senior personnel; plan for future public service leadership needs; and, ensure the leadership development of senior public servants, such as deputy ministers and heads of federal agencies.

Our role in the GIC appointments process also includes: working with departments and organizations to support them in planning for managing the vacancies in their organizations; providing policy advice to ministers and departments related to GIC positions; fixing the terms and conditions of employment for most GIC appointments; performing due diligence prior to appointments; tracking statistics related to appointees; and, providing advice and guidance to the GIC on the management of appointees throughout the duration of their appointment.

[*Translation*]

Throughout the selection and appointment processes, the Privy Council Office works closely with our partners. We provide guidance, information, and tools to departments and organizations, and have provided information sessions to staff involved in the appointments process. Our secretariat also works in collaboration with the Canada School of Public Service to provide mandatory orientation and training for heads of administrative tribunals.

•(1215)

[English]

Currently, PCO manages or participates in all selection processes to ensure there is a consistent application of the principles behind the new approach. For each selection process, a selection committee is established, comprising representatives of key decision-makers in filling the appointments. The committees generally include representatives from PCO, the Prime Minister's Office, the minister's office, and in some cases the organization, as well as the department. The selection committee reviews all applications to ensure that they meet the established criteria. It then selects a short list of candidates for further assessment through a written test, as is the case for administrative tribunals like the IRB, followed by interviews. Candidates considered by the selection committee to be highly qualified for appointment also undergo formal reference checks to further assess their personal suitability. The committee presents formal advice to the responsible minister on the most qualified candidates, which the minister then uses to formalize his or her recommendations to the GIC.

As public office holders, GIC appointees must uphold the highest ethical standards so that public confidence and trust in our institutions are conserved and enhanced. Through the notice of opportunity, all candidates are made aware of their obligations under the Conflict of Interest Act and the ethical and the political activity guidelines for public office holders. As a pre-condition of employment, appointees must attest their compliance. These requirements, as well as general information regarding the approach to GIC appointments, are available on the website. Making this information readily available helps to ensure that applicants have a clear sense of the steps involved in the process, as well as their legislative obligations as GIC appointees.

Since the implementation of the new approach, over 70 appointments have been made to the refugee appeal division and the immigration appeal division of the IRB following a competitive selection process. The immigration division and the refugee protection division, as our colleagues explained, are staffed by public servants, and they are therefore not GIC appointees.

As terms have expired, GIC incumbents have had to reapply for appointment under the new process. Candidates who have successfully gone through a selection process may be considered by the minister at any point in a two-year period. Candidates who are unsuccessful cannot reapply for two years.

Representation of employment equity groups at the IRB is, for the most part, quite positive. Women represent close to 60% of GIC incumbents, and visible minorities make up about 20% of GIC incumbents at the IRB.

[Translation]

In closing, the approach announced in February 2016 has provided Canadians with an opportunity to be considered to serve in our democratic institutions that are fundamental to the decisions and programs that directly affect individual Canadians. The new approach has also contributed to increasing the diversity of the GIC community.

[English]

I would be pleased to answer any questions you may have on the GIC appointment process.

**The Chair:** Thank you.

Before we begin that, may I ask if you were sent the scope of this study?

**Ms. Donnalyn McClymont:** Yes.

As we explained to your colleagues, our role is really with regard to the appointments process more generally. I'm happy to take questions on specifics to the IRB, but we are very much about supporting the entire government system—

**The Chair:** Our committee is responsible for oversight of the IRB, and we only received about a paragraph on the IRB in your opening statement.

**Ms. Donnalyn McClymont:** I'm happy to take questions as much as we can—

**The Chair:** The committee's time is very valuable. Thank you.

We're going to begin with Mr. Anandasangaree.

**Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.):** Thank you, Mr. Chair.

Welcome to the panel this morning.

With respect to one particular appointment, that of Michael Sterlin, are you familiar with that appointment?

**Ms. Donnalyn McClymont:** As much as I've read in the news clippings and from what your colleagues have explained.

**Mr. Gary Anandasangaree:** My understanding is that the individual was appointed for a period of 10 years.

**Ms. Donnalyn McClymont:** Yes. That's what I understand as well.

**Mr. Gary Anandasangaree:** Could you maybe give a rational answer as to why that length of term would have been chosen for the appointment?

**Ms. Donnalyn McClymont:** In terms of the process, ultimately it is ministers who make a recommendation to the Governor in Council regarding the length of a term. There are limits in some legislation. In the IRB there is a limit, as I understand it, of seven years for a full-term appointment. You can be reappointed in your position.

I wouldn't be able to speak to the specifics of that individual case, but ultimately it would be a decision made by the GIC on the recommendation of the minister.

•(1220)

**Mr. Gary Anandasangaree:** You can't justify where the 10 years would come from, right?

**Ms. Donnalyn McClymont:** It would really depend on a number of variables that would have been taken into consideration at the time of the appointment. It's quite important for these organizations to have continuity, and I do know as well that, in our circumstances, performance is also taken into account as a consideration. Again, I couldn't speak to that particular set of circumstances. It well predates me, and I wouldn't be able to talk about individual cases.

**Mr. Gary Anandasangaree:** Can you indicate to us the process of appointment that existed previous to October 2015?

**Ms. Donnalyn McClymont:** What I could tell you is that, previous to the government's new approach, it was really left to tribunals, in particular. I'll speak to those. They actually ran their own—

**Mr. Gary Anandasangaree:** Just to be very clear, can you home down on just the IRB for our purpose—

**Ms. Donnalyn McClymont:** Sure.

**Mr. Gary Anandasangaree:** —because I do think that, while I recognize you have a much broader role, we're specifically discussing the IRB, so could you narrow down to how the IRB decisions were made with respect to appointments?

**Ms. Donnalyn McClymont:** To be honest, I wouldn't be able to speak to much of what was done because our role at that point in time would have really been around accepting the recommendations from the minister of who they wanted to appoint from the processes they would have undertaken. We would have conducted due diligence at that point in time, as I mentioned in my remarks. That would include doing security checks with our partner security colleagues within the Privy Council Office to make sure there was nothing in the individual's background that would be of concern. They would have also been required to adhere to legislation, as I pointed out, such as the Conflict of Interest Act, as well as—

**Mr. Gary Anandasangaree:** How about competency? Is that something that you would have....

**Ms. Donnalyn McClymont:** At that point in time, as I said, in terms of assessing the competencies and running a full competitive process, that was all handled by the IRB before this new approach that the government has put into place.

**Mr. Gary Anandasangaree:** Of the 70 appointments to the IRB since the new approach was adopted.... And this is not to the protection division; this is the appeals division, right?

**Ms. Donnalyn McClymont:** Exactly. It's to the two appeal divisions, and it's the chair's discretion where those individuals will be placed.

**Mr. Gary Anandasangaree:** Of the 70 new appointments, what is your sense of their competency relating to IRPA, as well as their experience in being adjudicators?

**Ms. Donnalyn McClymont:** What I would say again is that there is quite a rigorous process. There's a notice of opportunity that's posted on our website. I would encourage you to have a look at that. It sets out exactly what the IRB requires. Again, we work in partnership with organizations to set the notices of opportunity. They would certainly outline the kind of criteria they want to see for the needs of the organization. All of that is clearly laid out.

We have what we call an ongoing intake model for the Immigration and Refugee Board, so that notice of opportunity is up there all the time. People can apply all the time for positions, full-time or part-time, as GIC-appointed members at the IRB. That is how they're basing the kind of intake they're looking for.

In terms of the assessment tools, in terms of the exam, I would say I did have a look at the exam. I wouldn't divulge all the details of what's in there, obviously, to protect the integrity, but I wouldn't be

able to pass that exam. It is a very tough, demanding exam in terms of making sure individuals are able to do a very rigorous assessment of a complicated issue and write up a very solid adjudicative decision that is then marked by experts at the IRB.

**Mr. Gary Anandasangaree:** Of the 24 vacancies—I believe that's the current number of vacancies in the IRB—what is your turnaround time for filling these positions?

**Ms. Donnalyn McClymont:** Our goal is to fill them as quickly as possible. I will be honest with you, though, that it can take anywhere from five to seven months to fill a spot on an adjudicative tribunal. That's why we have a constant intake model to try to expedite that as much as possible, being very cognizant of the needs of the IRB currently.

**Mr. Gary Anandasangaree:** Looking at the number of vacancies, 24, in relation to the 70 that have been appointed, would you not say that's a number that's quite high in terms of vacancies, or is that normal in terms of inventory of vacancies in the last, say, three to five years?

● (1225)

**Ms. Donnalyn McClymont:** The one thing I would say to the committee in terms of the vacancies, and I think Mr. Aterman was beginning to explain this a bit to Mr. Tilson, is that there is nothing specific in the legislation in terms of the number of positions that have to be filled. The vacancies you see, that 24 is really our working number that we've come to with the IRB in terms of what we understand are positions that remain open, if you will. We send them a monthly report and we do a quarterly update with them to determine what their actual needs are at that moment in time. I would suspect, given the pressures that they're under and the influx of new resources, that we will be revising that number to reflect that need.

We are quite determined to try to fill as many spots as possible to support them as best we can.

**The Chair:** Thank you.

Mr. Tilson.

**Mr. David Tilson:** Thank you, Mr. Chairman.

I'd like, again, to proceed with this piece that was written for Global News by Messrs Hill and Russell. I outlined the conduct of board member Sterlin, and I'm not going to repeat it. Quite frankly, I think he should have been fired. I think his conduct was terrible.

My question to you is, how bad does the behaviour have to be to get fired?

**Ms. Donnalyn McClymont:** I would point to two sections in the Immigration and Refugee Protection Act that deal specifically with termination of members, and I can speak only to the Governor in Council appointees, because we do not work with the IRB in terms of public servants.

What I would say, Madame Chair, is that termination with cause—because they are good-behaviour appointees.... I don't want to get too technical, but for those of you who are aware of how appointments are made, the large majority of GIC appointees serve at pleasure, which means—

**Mr. David Tilson:** How bad does the conduct have to be to get fired?

**Ms. Donnalyn McClymont:** Right. These appointees at the Immigration and Refugee Board serve at good behaviour, and to be quite frank, the only way they can be removed is for cause. So you have to assess, and when I say assess, I mean an investigation has to be conducted to make a determination—

**Mr. David Tilson:** Do you have guidelines for cause?

**Ms. Donnalyn McClymont:** The bar would have to be that they had done something that went well beyond the terms and conditions of appointment, or that was not consistent with the manner in which we expect GIC appointees to conduct themselves. We would look to the minister to provide the GIC appointee with a recommendation after, quite frankly, doing a formal investigation to assess whether or not the bar of cause had been met.

**Mr. David Tilson:** What's involved in removing a GIC appointment?

**Ms. Donnalyn McClymont:** It's quite in-depth, as I said, particularly for those who serve at good behaviour. We would be expected to make a clear determination of cause, and in order to do so, we would have to do an investigation, and again, it would be triggered by the minister making a recommendation to the Governor in Council.

**Mr. David Tilson:** We've heard complaints or concerns about appointments, both Conservative appointments and Liberal appointments, and that most of the IRB appointments are essentially political favours to those who support whichever government. Both governments have been criticized for that.

What process is in place to ensure that these are not simply appointments done as favours?

**Ms. Donnalyn McClymont:** Mr. Chair, I do believe, and I would emphasize with the committee, that, as I mentioned, I know you're focused on the IRB, but we've had over 20—

**Mr. David Tilson:** Well, that's what we're talking about, so if you could stick to comments about the IRB.... I don't really care about other things right now.

**Ms. Donnalyn McClymont:** Absolutely, yes. For sure.

**Mr. David Tilson:** The IRB is what we're interested in.

**Ms. Donnalyn McClymont:** Sure. In terms of appointments, I would just say we've had tremendous interest from Canadians across the country with regard to the appointments we've had. I couldn't get into specifics. I could say, in orders of magnitude, there have been well over 500 applications for the IRB. So there's a lot of interest from people across the country who've applied.

I do think, as I mentioned in my comments, that we have quite a rigorous process. The selection committee looks at every single applicant to determine if they meet the selection criteria set out in the public notice of opportunity. We conduct exams, and as I said, the exam that the IRB has in place right now is pretty tough. Then we do interviews.

• (1230)

**Mr. David Tilson:** Can the minister of whichever government is in power overrule that and say, "This is a good guy," or "This is a good gal. I want this person to be an IRB hearing officer"?

**Ms. Donnalyn McClymont:** Advice is provided to the minister in terms of the various people who the committee deems qualified for

the opportunities. If the minister chooses to go off of that letter and make a recommendation that is not provided to the committee, the minister has to provide a justification to the Prime Minister as to why they would do that. I've never seen that happen.

**Mr. David Tilson:** Right.

What has led to the high vacancy rate at the IRB?

**Ms. Donnalyn McClymont:** Mr. Chair, as I explained to colleagues, we work with the IRB to determine their needs. We're in a constant process of doing that. As Mr. Aterman just mentioned, we just made some appointments, 12 last week. We're constantly working to try to make appointments.

**Mr. David Tilson:** Is the Privy Council Office acting as a bottleneck?

**Ms. Donnalyn McClymont:** I would certainly hope not.

**Mr. David Tilson:** I would too—

**Ms. Donnalyn McClymont:** We do everything—

**Mr. David Tilson:** —but I'm asking you the question.

**Ms. Donnalyn McClymont:** To be very frank with the committee, when we started the new process, we had a lot of work to do. We had to set up a whole new system across the government. We're two years in and I like to think that we've hit our stride. We have a good relationship with departments. Organizations like the IRB, which had a system in place before the system that we now have, are actually some of our best partners. We've learned a lot from them in terms of how to institute rigorous processes, undertake complicated exams, and do interviews for high, high volumes of candidates.

I think that we've improved our processes. Could we do better? Absolutely. Will we do better? Absolutely, and we'll continue to work with the IRB to help them. I'm quite seized by the fact that they just received \$70-some-odd million.

**Mr. David Tilson:** What efforts are being made to speed up the hiring through the appointment process by the Privy Council Office?

**Ms. Donnalyn McClymont:** One of the things I would point to specifically for the IRB is that we're looking at where their acute needs are and we're going through applicants with a view to trying to triage and focus on certain needs. For example, bilingual candidates

**Mr. David Tilson:** There are vacancies.

**Ms. Donnalyn McClymont:** Absolutely.

**Mr. David Tilson:** That's what the needs are. What are you doing to solve that?

**Ms. Donnalyn McClymont:** As I mentioned, we're working very closely with them to try to figure out where we should target out of the hundreds and hundreds of applicants, what regions have the greatest need, and what types of candidates they're looking for.

**Mr. David Tilson:** Why are the chair and members of the two appeal divisions appointed by the Governor in Council, whereas all other members are appointed in accordance with the Public Service Employment Act?

**Ms. Donnalyn McClymont:** There's a division in the legislation in terms of which organizations or which mechanisms are used to appoint, and that's how it's set out in the legislation.

**Mr. David Tilson:** I understand that. Is there a flaw in that?

**Ms. Donnalyn McClymont:** I don't believe so. I wouldn't really be in a position to comment on a policy decision.

**Mr. David Tilson:** Except one has no vacancies and one has, I don't know, 70? It has a bunch of vacancies.

**Ms. Donnalyn McClymont:** So—

**The Chair:** I'm afraid I need to end that there.

Ms. Kwan.

**Ms. Jenny Kwan:** Thank you very much.

I'm just looking at the website to which you referred, and I see that the posting lists the deadline for applications for the IRB as June 29, 2018. Can you tell me when this was posted?

**Ms. Donnalyn McClymont:** Honestly, I couldn't say the date off the top of my head. As I said, it's a constant intake model. We could check and get back to you with the exact date we posted it. We do often put a date in there. There's nothing like a deadline to focus the mind, so we often put a deadline in there, but we don't actually close it out. We constantly review applicants.

**Ms. Jenny Kwan:** Okay. If you could check the date on which that was posted, and the date of the posting prior to that, that would be great.

**Ms. Donnalyn McClymont:** Certainly.

**Ms. Jenny Kwan:** In some ways, if you say that this is a rolling posting, but you have a deadline there, after the deadline, people are not going to apply. So it's strange, because it would make no sense to people that you're still taking applications. That has to be figured out. Otherwise, you can't say that this is a rolling posting.

**Ms. Donnalyn McClymont:** Fair enough.

**Ms. Jenny Kwan:** The other issue is this. I see that on the vacancies for the IRB for Calgary, the vacancy date is 2,929 days; that's over eight years. How is it that that position is not filled after eight years, under whichever government at any point in time?

• (1235)

**Ms. Donnalyn McClymont:** I understand your question.

Mr. Chair, I'll go back to my earlier comments about the vacancies on our website. This is something we work on constantly with our colleagues at the IRB to determine where their needs are. There is no set number of positions or positions listed across the country. It is according to the needs of the organization at the time to fill the obligations of the board. We really look to the IRB to help us determine what the needs are in the various regions.

It is a good question and it is something we will look at addressing going forward, but we depend entirely on them to identify what their needs are.

**Ms. Jenny Kwan:** On average, when you look at the vacancy rates, when this was last presented to us, there were about 26 vacancies in Ottawa, Vancouver, Calgary, Toronto, and Montreal. If you look at the Vancouver vacancy rates, it's around 200 days; in Toronto, the low is at 55 and the high is, in fact, 687 days. On average, it clusters around 250 to 300 days. In Montreal, again, the low is 133 and the high is 300. These are long times in waiting.

One of the issues that Mr. Aterman just raised, in terms of the IRB appointments, is related to money, because they don't have the resources to fill these positions. Has that been part of the problem with delaying the appointments?

**Ms. Donnalyn McClymont:** To be honest, from where I sit, we really take our direction from the IRB in terms of what their needs are and what they are resourced to fill. We would really be totally dependent on them giving us advice in terms of what they need and how quickly we can help them fill those positions.

**Ms. Jenny Kwan:** In terms of applicants who submitted their applications, maybe not through this round but in previous rounds, are there individuals who are qualified and for whom recommendations have been made but who have not been selected to fill the position or the GIC appointment has not been made?

**Ms. Donnalyn McClymont:** I wouldn't really be able to divulge that, because it would be considered advice to the minister from the selection committee.

**Ms. Jenny Kwan:** Currently, how many individuals, if any, are outstanding in terms of being submitted to the government for recommendation for the appointments? Are there any for the IRB?

**Ms. Donnalyn McClymont:** Again, unfortunately I wouldn't be able to give that detail of information because it would be considered advice to ministers.

**Ms. Jenny Kwan:** All right.

On the question around reappointment, then, do you take into consideration complaint issues related to the performance of a board member in the reappointment? Or is that completely out of your hands as well?

**Ms. Donnalyn McClymont:** I would say that every single incumbent would have to reapply for their position and would have to go through the whole process.

As I mentioned, for the organization, the IRB in this case, my experience to date has been that the chair sits on the selection committee with us, and we would expect them to give their perspectives and their feedback. As Mr. Aterman mentioned to your colleague, they do a rigorous performance assessment. Our expectation would certainly be that the IRB would bring that to the table in the context of making a determination of which candidates we would recommend to the minister.

**Ms. Jenny Kwan:** It is the chair, then, who sits at this table with you. It is the chair who determines whether or not a complaint would proceed, whether or not the findings of the complaints will be taken, and what action will be followed through with. Also, it is the chair who will also provide significant input into a reappointment of an individual. Do I have a good understanding of all of this?

**Ms. Donnalyn McClymont:** I think that's fair. I think the only point I would add is that it's really up to the organization who they want to have sit in on the selection committee. To date, our experience has been that it's the chair, but we really work with the Prime Minister's Office, the minister's office, often the portfolio lead department, and the organization to determine who will sit on the selection committee. To date, it has been the chair, but it's not set in stone, I would say.



**Ms. Jenny Kwan:** Has there ever been a time when it's not the chair?

**Ms. Donnalyn McClymont:** Not, in my understanding, with the IRB, but certainly with other organizations we do—

**Ms. Jenny Kwan:** I'm sorry. I'm just interested in the IRB because this is what we're dealing with. Thank you.

With respect to appointments, then, to come back to the appointments, how long will it take after the deadline is completed on June 29 for you to go through the process of making that selection and then going into a recommendation mode to say “these are the individuals who we think should be filling these positions”?

• (1240)

**The Chair:** Very briefly.

**Ms. Donnalyn McClymont:** I don't want to give you a set period of time because we do it as quickly as we can with the resources we have with our colleagues at the IRB. I would say very quickly for you that I would focus on the assessment, because I think that's quite important in making sure that we have very solid candidates. We would do a review of—

**Ms. Jenny Kwan:** I'm sorry, but can you quickly give us a time frame?

**The Chair:** I'm afraid I can't....

**Ms. Jenny Kwan:** That's what I'm looking for.

**The Chair:** Mr. Sarai, you have seven minutes. You will be the last questioner.

**Mr. Randeep Sarai:** Mr. Chair, I will give my time to Leona Alleslev.

**Ms. Leona Alleslev:** Thank you very much.

If the chair doesn't sit on the review committee, do you still get all of the performance evaluations if you are looking to reappoint someone who has already been there?

**Ms. Donnalyn McClymont:** Our expectation, Mr. Chair, would certainly be that the IRB was there to represent the perspectives of the organization. That would be the expectation: that they would bring that information to the table.

**Ms. Leona Alleslev:** But it's not a requirement.

**Ms. Donnalyn McClymont:** It's not set in any kind of requirement, but it is certainly the expectation that we would have that—

**Ms. Leona Alleslev:** So it is possible to have a reappointment without reviewing past performance.

**Ms. Donnalyn McClymont:** I would say that it is technically possible, but I would also say that we do solid reference checks. We also have, as I said, our four-corner check that we do with our colleagues in security operations. That also includes media scans. We try to get a pretty good sense of the individual more generally.

**Ms. Leona Alleslev:** Thank you.

It also says that you are looking at the management of appointees during the appointment process. Does that mean that you're also advised if, in fact, there is disciplinary action, or if you do need to look at consequences for that individual?

**Ms. Donnalyn McClymont:** Absolutely. That was a bit coded. You're absolutely right. The expectation there, as I was explaining to Mr. Tilson, is that if the minister felt quite strongly there was reason to remove someone for cause, they would bring that to the GIC's attention, as the GIC is the one who would have hired—

**Ms. Leona Alleslev:** It would be discussed.

**Ms. Donnalyn McClymont:** —but only the minister would bring it. You wouldn't get it through a regular feedback process from the annual performance reviews within the IRB.

The IRB may come forward to us to say, “We think we've hit the bar of cause” in terms of what's happening with a particular GIC appointee, and we would certainly work with the organization, but ultimately, yes, the expectation would be that the minister would make any formal recommendations to the GIC.

**Ms. Leona Alleslev:** Are there any disciplinary actions other than removal, or is it basically that we've come to the point where it's no longer good behaviour, so it's firing, or are there other avenues open?

**Ms. Donnalyn McClymont:** Yes. I would point to the legislation, the Immigration and Refugee Protection Act. You may be aware of section 178, which gives the minister the authority to assess, if the chair comes forward for remedial or disciplinary actions. There is quite a formal provision in the legislation that provides for that. That ultimately can trigger a judicial inquiry under the Minister of Justice, which can lead to either disciplinary action or to a recommendation of removal, but that's quite clearly laid out in section 178.

**Ms. Leona Alleslev:** Okay.

I'm not completely clear on this, because what we heard from the chair was that there is an annual review process and that managers are expected to audit three decisions and all of that, so they would be looking for a pattern of behaviour in there.

Then, if there is a pattern of behaviour that needs to be addressed, how does it make it from there to you?

**Ms. Donnalyn McClymont:** I would say, as I mentioned to Mr. Tilson, it's a pretty high bar for removal for somebody, a good behaviour appointee, and it has—

**Ms. Leona Alleslev:** But again, I am not referring to removal, but remedial action.

**Ms. Donnalyn McClymont:** Right, for disciplinary action, yes.

Again, I wouldn't want to comment on what the IRB has done in terms of administrative tribunal, but the legislation does give very clear powers for the chair to set out the structure of how he or she wants to manage the organization, and they have obviously chosen a performance framework and an accountability framework.

What I would say is—

**Ms. Leona Alleslev:** So the management of appointees during the process is really limited to removal—

**Ms. Donnalyn McClymont:** It's got the removal in terms—

**Ms. Leona Alleslev:** —at your level.

**Ms. Donnalyn McClymont:** Exactly. The bar for us is pretty high in terms of the removal and the cause around the good behaviour, and then there is also the provision in the legislation for this judicial inquiry. Those are really our two levers.

•(1245)

**Ms. Leona Alleslev:** Would you happen to know on how many occasions over the last 10 years there has been a removal from the IRB?

**Ms. Donnalyn McClymont:** Yes, my understanding is that it's been extremely rare, and I think there may be a handful of cases at best over the past 10 years, and maybe one or two that I might be aware of.

**Ms. Leona Alleslev:** When you get recommendations for orders in council, how many of those recommendations have you challenged or recommended against, on average?

**Ms. Donnalyn McClymont:** The only tool that we would really have to make a recommendation, once it's come from a minister, would be if there were an issue that arises in the context of due diligence. I wouldn't really be able to divulge to the committee the number of occasions that we've done that.

**Ms. Leona Alleslev:** Thank you very much.

**Mr. Nick Whalen:** Is there any time left, Mr. Chair?

**The Chair:** Two minutes.

**Mr. Nick Whalen:** Thanks.

Ms. McClymont, on page 6 of your presentation material, there were some stats. It would be great if we could have some elaboration of them, so maybe you can table before the clerk some additional information.

In terms of reappointments in particular, the process applies, so how many existing appointees have reapplied, how many haven't, how many of those have made it from reappointment through the process and been recommended for re-selection by the minister, and how many weren't?

You've provided some gender breakdown, but I'd like additional gender breakdown information on how many men and women have applied, both old applicants reapplying and new ones, how many passed the test, and how many were selected, so we have a sense of the flow through the process for selections. That's so we can determine a rate of application for men and women. It would be helpful.

It seems that for the other, the visible minorities, it balances out, but you didn't provide information on indigenous people, so I'm just wondering, at least for the IRB, what the indigenous breakdown is.

**Ms. Donnalyn McClymont:** It's a little over 5%. It's quite comparable to what we are seeing in the general GIC community. I would say it's a little bit lower for persons with disabilities.

**Mr. Nick Whalen:** Okay.

In terms of the appointments—I'm trying to squeeze in one last question—you weren't able to tell us how many are currently available for selection by the minister, and I appreciate that. But Mr. Aterman mentioned the success rate to that stage is only about 10%. You said you've only had about 500 applicants for 70 selections. Perhaps a lot of those are reappointments, but just so we can reconcile that with what Mr. Aterman said, I want to get a sense of whether the level of rigour from application to proposed selection is still in the 10% range or whether it has become less rigorous, maybe 20% or 25%.

Those are all my questions for tabling.

**Ms. Donnalyn McClymont:** Sure, we can provide you those stats. I should just clarify, though, the number around the applications. I was speaking specifically about the most recent, and it's well over 500. We could look at giving you the total of applicants we've had on the IRB side since the new process.

**The Chair:** Thank you very much.

**Ms. Donnalyn McClymont:** I would hazard it's over 1,000.

**The Chair:** I'm sorry to cut you off.

We'll end this part of the meeting. I'm looking for a very quick turnaround as we move in camera to do about 10 minutes of committee business.

I'll suspend the meeting for one minute while we make sure the appropriate people are in the room for an in camera meeting.

*[Proceedings continue in camera]*







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