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# **Standing Committee on Citizenship and Immigration**

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**EVIDENCE**

**Thursday, March 22, 2018**

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**Chair**

**Mr. Robert Oliphant**



## Standing Committee on Citizenship and Immigration

Thursday, March 22, 2018

• (1100)

[English]

**The Chair (Mr. Robert Oliphant (Don Valley West, Lib.)):** I call to order meeting 102 on the study of the Immigration and Refugee Board's appointment, training, and complaint processes. This is our third meeting on this relatively short study.

I thank our witnesses for coming today. We have two panels. In the first hour, two individuals are coming from the bar, and they are going to offer their comments as practitioners in the field. Also scheduled to be with us was Barbara Findlay—we were to have three—but unfortunately she is ill and we're trying to reschedule her for another time.

We are going to begin with you. You have seven minutes each. Who would like to go first?

**Ms. Nastaran Roushan (Lawyer, As an Individual):** I'll go first.

**The Chair:** Ms. Roushan, thank you. Take it away.

**Ms. Nastaran Roushan:** My name is Nastaran Roushan. I thank you for inviting me here today.

I'm mostly going to be talking about the complaint process to you, and in so doing, I will be making recommendations. I will also be countering some of the statements made by Mr. Aterman before you on February 27.

In understanding why we're here and the problem that we have with the complaint system, I'm going to go back to the 1985 case of *Singh v. Minister of Employment and Immigration*, which is when the Supreme Court of Canada said that it is not in accordance with the principles of fundamental justice under the charter not to have an oral hearing where there are serious issues of credibility.

In that same year, fundamental justice was defined in the Supreme Court of Canada decision "Re B.C. Motor Vehicle Act" as being more than just due process. This is where, in his testimony on February 27, Mr. Aterman did not understand what we were speaking about.

What we expect of board members in accordance with fundamental justice is for a hearing to be procedurally fair. That goes without saying. We also expect board members to be competent, and that requires knowledge of the law, knowledge of country conditions, and knowledge of the facts of the case before them. When this does not happen, which happens quite a bit, the only remedy we have is through the complaint system. This complaint

system is not independent, it is not transparent, and it is not responsive to our needs.

What I am suggesting today is that the complaint system actually be composed of a three-member panel selected from a roster of individuals who have already been pre-selected. This roster of individuals and the three-member panel would be separate from the IRB and separate from the minister's office. Their job would be to investigate the complaint and refer the member to discipline where required. Their recommendations must be binding on the chairperson. There must not be any discretion, and they must be bound by timelines, which we don't currently have in the complaint policy.

You cannot dress up an office within the IRB as independent, regardless of where it is located or regardless of how "isolated" it is. You cannot dress up a complaint system as independent when the chair has ultimate discretion over whether or not to even look at a complaint.

Mr. Aterman also told you that usually the board waits until a decision has been rendered before stepping in and that it is very rare for them to step in during the process. This is not in accordance with the principles of fundamental justice. Unless a complaint is frivolous, vexatious, or an abusive process, the charter rights at stake require the board to conduct an investigation into the complaint.

It is not just about charter rights in this scenario. It is also inefficient for the board to use its judicial resources to first have rights infringed and then run up the IRB's budget by sending the matter to the RAD or to the Federal Court, only to be sent back for redetermination. The complaints and the hearings must be responsive, not just to procedural fairness concerns but to principles of fundamental justice, which include the competency already talked about.

This is also a requirement in the code of conduct of members. Mr. Aterman told you:

The code is about how members conduct themselves, their behaviour in the hearing room. It's not about the merits of individual decisions. Concerns about inconsistencies in outcomes are properly a matter addressed through the judicial review process, as well as internally through processes like training members on issues.

This is false. At section 13 of the code of conduct, members are required to have knowledge of the law. At section 14, members are required to be consistent in their decision-making, and at section 20, members are required to have a high level of expertise and professional competence.

It is not the job of the Federal Court to teach refugee law to members. It is not the job of the Federal Court to ensure that the code of conduct is being implemented. This is the job of each individual member, and where they fail, it is the job of the IRB management.

•(1105)

It is certainly not the job of the Federal Court to ensure that a member understands that a breach of the charter has taken place after it has already been infringed. The RAD and the Federal Court should be the route for arguable decisions—decisions on which reasonable, intelligent individuals may actually differ in the results. The RAD and the Federal Court should not be the route to challenge principles of law that have repeatedly been affirmed by the Federal Court and the Supreme Court of Canada, and this happens quite a bit.

The RAD and the Federal Court should not be the route to challenge country conditions that are so atrocious that the colleagues of the member whose decision is under review are accepting almost all credible claims before them.

I've said this before in the media piece, and I'll say it again: the accordance of a refugee claimant's charter rights should not depend on who walks in through that door. The IRB must ensure that the right to security of the person in accordance with the principles of fundamental justice is accorded to each individual claimant.

Thank you.

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

Go ahead, Ms. Hirji.

**Ms. Asiya Jennifer Hirji (Barrister and Solicitor, As an Individual):** Thank you for taking the time to investigate what we also think is a very important issue.

At the outset, I would like to say that I and I believe many other members of the immigration bar applaud the efforts of the IRB to investigate the complaints process, to modify it, and to try to make sure that there's more transparency and fairness in the refugee determination process and in IRB determinations more broadly. We certainly recognize the tremendous caseload the IRB handles and that they're tasked with making very serious decisions every day.

Many members at the IRB—the majority, I would say—deal with clients in a professional and respectful manner and are able to apply the Immigration and Refugee Protection Act in a meaningful and robust manner; however, there are a select few who continue to fail to meet this threshold, and I'm concerned that the new process being implemented by the IRB is not mindful of the past mistakes that were made and that it risks repeating them.

As you may know, I was counsel for a woman who was trafficked to Canada. She escaped her traffickers, and her claim was ultimately refused. Based on the conduct of the member who we appeared in front of, I filed a complaint. I'll just briefly read a few excerpts from the complaint so that the committee is aware of the type of behaviour that took place.

In my complaint to the board I say:

In connection with her refugee claim, we provided the IRB with a variety of evidence including proof that [the claimant] had contracted an STI, had had an abortion, that the Toronto Police were aware of her traffickers and were investigating her case, a psychological report and we also provided black and

white printouts of the web pages where [the claimant] had been advertised as an Eastern European escort. In many of the photographs, [the claimant] was nude and her genitals were exposed. In all her face was at least partially obscured but her body was prominently displayed.

At the commencement of the hearing..., [the member] advised me that he wanted to see colour photographs of the web pages so that he could compare them with the way that [the claimant] appeared in person to the way she looked [in the photos]. This in spite of the fact that [the member] had before him corroborating proof from the Toronto Police that [this claimant] was in fact a victim of human trafficking.

My complaint went on to state:

[He] was abrasive and rude to [the claimant] throughout the hearing.

[The member] openly berated [the claimant] for not having sought assistance from the police in Toronto earlier. This in spite of evidence on the record that her traffickers had informed her numerous times that the police in Canada were, much as they are in [her home country], on side with the traffickers.

At one point the member referred to the individuals who had trafficked her as her friends, and in reply to evidence that through a forced sexual experience the claimant had become pregnant and was forced to have an abortion by her traffickers, the member asked, "I'm just curious. Where do you get abortions in Toronto? No, just tell me, not that it matters. Just tell me."

This complaint was filed on the heels of another complaint that this same member had exhibited very similar behaviour. I filed my complaint in October of 2014. During that time, this member continued to hear and decide refugee protection matters, and he continued to hear and decide gender-based claims. He was transferred from the RPD to the IAD, another arm of the Immigration and Refugee Board. I myself continued to appear in front of him.

My complaint took 10 months to be decided, and a decision was only rendered after numerous attempts by me and the other complaining lawyer to prompt a decision. Ultimately my complaint was dismissed, and it was determined that the behaviour did not violate the code of ethics and did not rise to the level of impropriety required.

This particular member has continued to make decisions in what I would say is a similarly offensive manner, and as recently as December 2017, a case that he decided at the IAD was returned for what the Federal Court deemed insensitivity.

While I know there are positive changes in the new complaints process, I think there's a failure to be mindful of experiences similar to mine. I'm concerned that there's no new guideline for conduct. I feel that the existing code deals with behaviours in the most general and vaguest of terms, and it is the same code against which this member's behaviour was found permissible.

•(1110)

I'm concerned that there's no fully independent decision-maker, and I would urge the IRB to ensure that the individual or individuals who are reviewing these complaints are completely at arm's length from the IRB, that they do not interact with these members, and that they do not work out of the same office or see them on a day-to-day basis.

I would also urge that timelines be imposed, because, as Mr. Aterman testified, lawyers are still expected to appear in front of these same members, and these individuals are allowed to continue hearing sensitive matters while the complaints are pending.

I would also urge that there be an initial vetting of a complaint once filed, to determine its well-foundedness. In my view, if a complaint is well founded, then that member should stop hearing whatever particular type of case it is, whether it's sexual orientation, domestic violence, or gender-based claims.

Further, I am concerned that nothing appears to be done by the board on their own initiative to intervene in members' conduct, and I believe strongly that the IRB should be using the data that's available to them to ensure the integrity of their system and their members. I think it is an error to rely exclusively on the immigration bar and individuals themselves to file complaints.

There are a number of statistics that are published by the CCR, the Canadian Council for Refugees, in partnership with a professor at Osgoode Hall, and we know that year after year the same members are issuing the lowest grant rates. In many cases, this can be indicia of a problem.

For instance, the statistics of the member against whom I filed a complaint show that he heard 40 more claims than any other sitting member, so that's 20% more claims than any other immigration member of the RPD. His overall approval rate was less than 23% of the average variance, and that takes into account the country he's receiving a claim from. More specifically, there are a number of countries for which his statistics, in my view, are particularly troubling. For instance, his rates for Afghan claimants are around 61% less than the average.

•(1115)

**The Chair:** You have about half a minute.

**Ms. Asiya Jennifer Hirji:** Sure.

Zimbabwe was 55%, Sudan was less than 64%.

I question the reluctance of the IRB to use this statistical information, at least to further investigate.

I'll close with an analogy. If there was a hospital where doctors were performing surgeries and the overall survival rate was 50%, and you had doctors for whom only 2% or 3% of their patients were living, surely that would be a cause for concern and for that hospital to at least look into the conduct and what's happening.

**The Chair:** Thank you both for your testimony today and also for your advocacy in every sense of that word.

Mr. Anandasangaree will begin the seven-minute round.

**Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.):** Thank you, Mr. Chair, and I appreciate both of you for coming forward and giving your constructive suggestions with respect to reforming the IRB.

I wondered, Ms. Hirji, if you could elaborate on the nature of the complaint. Were you ever contacted by the IRB for your version, or was it a paper-based complaint? Were you or your client interviewed, and do you know if the member was notified that he was under investigation and that you were representing the subject, the complainant?

**Ms. Asiya Jennifer Hirji:** No, the client was not contacted. I was not contacted. All RPD hearings are recorded, but I'm not aware whether or not the CD of this hearing was listened to by the reviewing individual. This particular member was not aware that the complaint was filed, because while it was pending, I was convoked to appear in front of him before the IAD and I raised the issue of bias. I informed him that I had a complaint pending against him, to which he responded that this was the first he'd heard of it.

**Mr. Gary Anandasangaree:** Did he recuse himself when it was brought up?

**Ms. Asiya Jennifer Hirji:** He did not. He refused to.

**Mr. Gary Anandasangaree:** Did you continue the case at bar at that point, or did you—

**Ms. Asiya Jennifer Hirji:** We were successful in that appeal, and we had a consent from—

**Mr. Gary Anandasangaree:** That in itself causes some concern too, right? Apart from the merit of the case, you don't know if that's the result of his perhaps thinking that there's a complaint against him and he doesn't want to....

•(1120)

**Ms. Asiya Jennifer Hirji:** It's certainly possible.

**Mr. Gary Anandasangaree:** I know you indicated that while a complaint is ongoing, and let's say it's relating to harassment or sexual harassment, that person should not be hearing cases of gender-based violence or what have you.

Do you think it's appropriate to limit it to that, or would you recommend a broader limitation on hearings? Should there be a de facto suspension or reprieve for the hearings?

**Ms. Asiya Jennifer Hirji:** This is why I think there should be an initial vetting. I think if the behaviour is particularly egregious, then remove that member from hearing all cases altogether. If there's a particular issue with the lack of sensitivity only when it comes to gender-based claims, that would be sufficient, in my view.

**Mr. Gary Anandasangaree:** What do you think is an appropriate timeline?

**Ms. Asiya Jennifer Hirji:** I can't imagine why these would take more than two or three months, especially if they're just paper-based.

**Mr. Gary Anandasangaree:** Do you think paper-based is sufficient, or at the very minimum should there be an interview process of the parties involved?

**Ms. Asiya Jennifer Hirji:** I think the Office of the Integrity Commissioner, or whoever it is, should be reviewing the CD, because I think that most, not all, of the information should be on there and available.

**Mr. Gary Anandasangaree:** Ms. Roushan, you indicated you're suggesting a three-member panel. Who should that membership be comprised of?

**Ms. Nastaran Roushan:** It would be chosen from a roster of individuals who have already been pre-approved, and the recommendation should come from experts within the immigration and refugee bar, non-governmental experts, similar to what happens with a judicial complaint or even with JPs.

**Mr. Gary Anandasangaree:** Essentially they'll be adjudicators, or would they be a combination of maybe three members, an adjudicator member of the bar and then possibly a civilian or...?

**Ms. Nastaran Roushan:** They'd possibly be a lay person, correct.

**Mr. Gary Anandasangaree:** What's your expectation of a timeline?

**Ms. Nastaran Roushan:** It shouldn't take more than two weeks for them to at least acknowledge that they have a complaint, and I don't see why investigating it should take more than two months, as Asiya mentioned. If it then goes to a disciplinary hearing, again that shouldn't take more than a couple of months.

**Mr. Gary Anandasangaree:** The statistics you indicated here offered acceptance rates. Is that available to all adjudicators, and is that available to all adjudicators in relation to a particular country?

**Ms. Asiya Jennifer Hirji:** It's published, not by the board itself, but by an advocacy group called the CCR. It is available. I know that the board has its own statistics, as Mr. Aterman indicated.

**Mr. Gary Anandasangaree:** The IRB indicated that they don't pay attention to those numbers. Do you think there's merit in having some analysis, at least on an ongoing annual basis, to have that kind of review and perhaps have additional training or additional support for members and to make decisions more public?

**Ms. Asiya Jennifer Hirji:** There's a correlation between matters that are being sent back by the Federal Court in which a member is specifically named, which is quite rare. The Federal Court, we've been informed, will only name particular members once they've seen a number of decisions in which the error is repeated.

There's a relationship between judges outing members and those same members having the lowest approval rate, so something is not right with these members. I certainly think that if the IRB investigated using the statistics on their own initiative, we could avoid many of the complaints and many of the issues that claimants—including, importantly, self-represented claimants—are facing.

**Mr. Gary Anandasangaree:** Ms. Roushan, what do you think?

**Ms. Nastaran Roushan:** I agree with Asiya.

I think Mr. Aterman repeated the words that he doesn't want to interfere with the integrity of the judicial process by looking at those stats. He is interfering with it by not looking at those stats. The focus

shouldn't just be on numbers, but on the administration of justice as a whole, and certainly that includes the rights of claimants.

**Mr. Gary Anandasangaree:** With regard to training, do you think the current roster of IRB adjudicators has appropriate training to do their jobs? That's in general terms, not specifically, based on your experience.

• (1125)

**Ms. Nastaran Roushan:** I would say absolutely not, although I'm not going to paint everybody with the same brush stroke. There are some wonderful members at the IRB, but I can tell you that right now I have an ongoing complaint against an individual who repeatedly blamed and asked my client why she stayed with her abuser. That shows to me that the member has no training in the gender guidelines, or maybe she received one or two days of CLE, continuing legal education, but she obviously doesn't understand the impact of violence on an individual.

**Mr. Gary Anandasangaree:** And review—

**The Chair:** I'm afraid I need to end it there. We'll get more time. You'll get your answer, I'm sure.

Go ahead, Mr. Tilson.

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

I appreciate all your comments. They're excellent, and your suggestions are excellent.

Ms. Roushan, I appreciate your trying to devise or propose a system whereby you have an independent group deciding cases or deciding complaints. What about frivolous complaints, such as not liking the board member's decorum?

**Ms. Nastaran Roushan:** Right.

**Mr. David Tilson:** That is probably a frivolous complaint. Would that be dealt with by the integrity person and the chairman? Surely those frivolous complaints wouldn't go to this group of people that you're recommending.

**Ms. Nastaran Roushan:** The determination of what is frivolous is obviously a discretionary exercise on its own. I agree that those complaints should be weeded out, but I don't want the chairperson to decide if a complaint is frivolous.

**Mr. David Tilson:** That's a good answer.

Is either of you aware of any board member who has been discharged and not just moved off to another area?

**Ms. Nastaran Roushan:** I think there might have been one or two for criminal behaviour. but as far as I know, there have been none for incompetence.

**Mr. David Tilson:** I understand that the process is that the interim chairman makes the decision. In the Sterlin case, for example, he said he should just have sensitivity training. I agree with you that he should have been fired for all those remarks, because they were terrible, but what are we to say? I happen to agree with you 100%. Then if the chairman says he should be discharged, I gather it goes to the minister. Is that what happens next? The chairman doesn't fire the board member; it goes to the minister and probably cabinet.

**Ms. Nastaran Roushan:** I think for the GIC appointments, it would. I don't think that's necessarily true for the public servants. I think that under the Financial Administration Act the board has the power to discipline and, I'm assuming, also fire members. I don't think that necessarily goes to the minister. Then the member would grieve it under the collective agreement, if he could.

**Ms. Asiya Jennifer Hirji:** But I think this is part of the issue: it's not very clear. It's very opaque, this complaints process—

**Mr. David Tilson:** I agree. It should be made clear.

**Ms. Asiya Jennifer Hirji:** —and how and where you end....

**Mr. David Tilson:** You would agree that it should be made clear.

**Voices:** Sure. Of course.

**Mr. David Tilson:** There are probably a whole bunch of sections in the act that need to be rewritten, really.

Turning to reporting, my understanding is that for complaints made by you or anyone else, the reporting doesn't take place until the end of the year.

**Ms. Nastaran Roushan:** I've never seen any reporting on any complaints, and I've scoured the IRB website.

I don't know if you have, and I've missed them.

**Ms. Asiya Jennifer Hirji:** I think there was something recently, but again it was in very vague terms. I think that Global had made an access to information request to try to get that information in terms of the numbers and the outcomes. The last I heard was that a 300-day extension of time had been granted for that information, so it doesn't look as if they're sharing it privately or publicly at all.

**Mr. David Tilson:** Should hearings of serious cases be public?

**Ms. Asiya Jennifer Hirji:** Do you mean disciplinary hearings?

**Mr. David Tilson:** Yes. I'd be interested in hearing what you, as a member of the law society, have to say about that.

**Ms. Asiya Jennifer Hirji:** That's a tough question.

• (1130)

**Ms. Nastaran Roushan:** I would say yes. If there's a two-stage process whereby initially the panel investigates and finds that the conduct is so egregious that it should be referred to a disciplinary hearing, then yes, it should be made public. The public deserves to know who these adjudicators are and what they're doing.

In so doing, though, we obviously have to understand that these are refugee claimants, so any information that could identify refugee claimants would definitely need to be kept confidential.

**Mr. David Tilson:** I think one of you touched on the appointment of board members. Now the Governor in Council appointments come from the minister or cabinet or somebody, and then the public

service ones come from some other source. There lies the rub. The question is whether or not those people are competent.

I guess my question is twofold. I think you, Ms. Roushan, said that they should be appointed by a group of experts in the field. I understand that. Who's watching the watchers, I suppose? Who trusts whom? What sort of training should they have?

**Ms. Nastaran Roushan:** Just to back up a little bit, I just want to clarify also that when they're hired, they don't take a substantive test on refugee and immigration law. That's one of the problems. It's not just training; it's a lack of knowledge for some members about the fundamentals of the law that they're required to apply.

Once they're hired, then definitely the training process should encompass how to deal with vulnerable claimants and how a fair procedure works, and should also include administrative law principles as required by the Federal Court.

**Mr. David Tilson:** What are you recommending? Should they all be lawyers?

**Ms. Nastaran Roushan:** No, I don't think so. I don't think that lawyers necessarily.... I mean, Sterlin and Cassano were lawyers. I don't know how they were hired. They obviously didn't have any testing.

**Mr. David Tilson:** They were appointed by the government. Maybe it was our government. I don't know.

**Ms. Nastaran Roushan:** Right.

**Ms. Asiya Jennifer Hirji:** Sterlin was, but not Cassano, I don't think.

**Ms. Nastaran Roushan:** I think Cassano was a public service appointment. She had been a minister's delegate before. From what I have heard, she was a known entity even then. Rumour has it that other members don't know how she was hired either.

**The Chair:** Ms. Kwan is next.

**Ms. Jenny Kwan (Vancouver East, NDP):** Thank you very much, Mr. Chair.

Thank you to both of the witnesses.

First off, I would like to emphasize the fact that you went public with your complaints. I think that takes a lot of courage. For you to have done that, you really believe in how the system needs to be improved. I want to acknowledge that.

Both of you have given some very good suggestions on how the system should be improved. Can I assume correctly that you both agree with each other on the suggestions that you outlined in your opening statements on how the system would be improved? Would you both support each other's proposals?

**Ms. Asiya Jennifer Hirji:** Yes.

**Ms. Nastaran Roushan:** Yes.

**Ms. Jenny Kwan:** Great. Thank you.

I am just wondering if either one of you was consulted by the IRB when they embarked on the process of bringing in the new complaints system.

**Ms. Asiya Jennifer Hirji:** Not personally, no.

**Ms. Nastaran Roushan:** I know that the IRB does hold regular consultation meetings with certain stakeholders. For example, I know, as a member of the RLA, the Refugee Lawyers Association, that the Refugee Lawyers Association was consulted. What they actually did was give a pre-formed chart to the RLA and say, "This is what we want to do. Give us your comments." It wasn't as if we were building a framework from the beginning with each other. It was, "This is what we're thinking. Give us your comments, and then we can call it consultation."

The RLA specifically said time and time again that the complaint system needed to be independent, that it can't be under the IRB. That was ignored, as I think Mr. Aterman admitted.

**Ms. Jenny Kwan:** Thank you for that.

The reason I ask is that if the IRB is embarking on the consultation process, it would seem to make sense to me to go to the complainants to ask how the process was for you and if you had any suggestions with respect to how to improve on it. I'm hearing from both of you that it was not done.

I did ask the IRB for the list of who they consulted with. We have not yet received it. That's why I asked the question. Thank you for that.

Would you agree that if someone has gone through that system, that process, it would be helpful for them to be consulted and to offer their thoughts on how it could be improved?

• (1135)

**Ms. Asiya Jennifer Hirji:** Yes, I think so. I think also that it's incumbent on the IRB to implement the suggestions. For instance, Nastaran just mentioned having an independent decision-maker. Those suggestions have been ignored.

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

Mr. Aterman told the committee that after the complaint, if the individual complaint was founded and maybe sanctions were imposed, such as having to go through training and such, after the training they don't do any evaluation process to see how effective the training had been. At the end of the year, they do the annual review of the member, and then they will make the determination.

What are your thoughts on that?

**Ms. Asiya Jennifer Hirji:** My concern is that currently the system places far too much emphasis and responsibility on the immigration bar and individuals. I'm not sure if Mr. Aterman was

asked, but I suspect that if you were to ask him how many complaints have been filed by self-represented litigants, the answer would be zero, which means this population, which is an extremely vulnerable population, is being subjected to individuals such as the member whom I complained against. They are not aware they have recourse and they are certainly not exercising that recourse.

Many members of the bar are not filing complaints and are not necessarily aware of the process. I think the IRB's position on this is very troubling.

**Ms. Jenny Kwan:** Do you have anything else to add to that, Ms. Roushan?

**Ms. Nastaran Roushan:** I think the reason, Ms. Kwan, that the IRB doesn't take the results of a complaint and then funnel them back into the training process is that the IRB doesn't want to acknowledge that there is anything wrong with their members. That's really the crux of the problem.

If you're going to ignore that anything wrong has happened, then why would you put it into the training process? What that does is just perpetuate these incompetent board members, and they continue to hear cases.

**Ms. Jenny Kwan:** For example, in a normal workplace, if a person has been found to have breached their professional conduct or to have issues with competency, normally an employer will sit down and talk with them and go through all of that. Depending on the level of that issue, they might go through training and so on, but then they're put on notice, so to speak, on a temporary review notice period.

Do you think something like that should kick in with the IRB board members?

**Ms. Asiya Jennifer Hirji:** I think that's a great idea.

I think also having a lateral move while there are complaints that are well founded.... In the case of this particular member, certainly it was found not to be a breach of the ethics code, but he received sensitivity training, which in my view was an admission that something was amiss. Then during this process he was transferred to the IAD, so I certainly think that behaviour should be stopped.

**Ms. Nastaran Roushan:** I think it's important to remember as well that this is not a regular workplace. The ramification of having somebody who doesn't know how to do their job is having someone removed to a place where they can undergo persecution.

**Ms. Jenny Kwan:** I have one and a half minutes and I do want to get to this issue.

In the case of Ms. Cassano, there were outstanding complaints against her, and then she left the IRB. We don't even know why she left the IRB, and there was no recourse. The complaints were just dropped.

I would like you to comment on that, please.



**Ms. Nastaran Roushan:** That again is an indication that the IRB doesn't really want to address that there is a problem. There had been many complaints about Cassano in the past. They didn't address that.

One of the things that I actually asked the IRB to tell me was how many complaints had been made about her in the past, the nature of the complaints, and why they hadn't done anything about it. Because she is no longer there, they claim that they don't have to give this information over.

**Ms. Jenny Kwan:** Do you think there should be a process in place to ensure that those complaints are completed?

**Ms. Nastaran Roushan:** Of course, yes.

**The Chair:** You have half a minute.

**Ms. Jenny Kwan:** Do you have anything else to add in half a minute?

**Ms. Asiya Jennifer Hirji:** No. I completely agree.

**Ms. Nastaran Roushan:** I would like to add that while these complaints are ongoing... For example, in what happened with Cassano, it took about 10 months for there to be a final decision. Hearings ongoing with her on which she hadn't made a determination, hearings that had been adjourned for another date, were just left standing. There were claimants who, for 10 months, didn't know when their next hearing date would be, and then they had a letter about a year afterward saying, "Well, you can have a *de novo* now with a new member." We can just imagine the ramifications, when they had been so traumatized already, to have to wait during that time.

• (1140)

**The Chair:** Thank you. We need to end it there.

For the committee's information, I was just speaking to the analyst and I think I'm going to be requesting some work from the analysts on other examples of what the complaints processes are in quasi-judicial administrative tribunals and whether or not there are good examples and best practices. Also, because it is quasi-judicial, there may be some examples from the judiciary or justices of the peace, or from the regulatory bodies such as the bar association and those things.

If the committee is in agreement, I'm just going to ask the analyst to come up with a comparative study so that we can see some examples.

**Some hon. members:** Agreed.

**The Chair:** Very good.

Go ahead, Mr. Sarai.

**Mr. Randeep Sarai (Surrey Centre, Lib.):** Thank you both for coming.

I'm a member of the bar. I don't practice in this area, but soon after getting elected, I had an array of immigration lawyers come to me to complain about this. I had never actually realized the severity of this issue for certain members until seeing their cases and cases like the ones you brought up, for over two years.

I might sound like I'm going backwards, so just bear with me. In terms of the interview and complaint process—and you say there

was no interview when you complained—in a normal law society complaint process there's usually, at a bare minimum, an interview with the complainant. I haven't been through it exactly, but I think there then potentially is an interview with the person being complained about, which would be the lawyer in that case.

What that does is at least make it appear to the accused and to the complainant that they are being heard, as opposed to what I've just heard from you, which is that the person being accused never even knows that they are being investigated and that the complainant feels they've just given a paper file that yields nothing back.

Ms. Hirji, what's your opinion? Do you think, as a bare minimum, an interview with the complainant as well as with the accused should be done?

**Ms. Asiya Jennifer Hirji:** I think it depends on the case, because it can be quite traumatic for individuals. Oftentimes the counsel is the complainant who is complaining against the behaviour, and not necessarily the individual.

Refugee claimants oftentimes are very vulnerable. In my instance, she would have refused to go to a hearing. I'm certain of it. In the interim—this is in my complaint to the board—between Sterlin's refusal of her claim, the Federal Court remitting it back, and her redetermination, she was hospitalized. She attempted suicide. She became very addicted to painkillers and so on. This really devastated this woman's life, so the idea that she would have to go back and face questions—

**Mr. Randeep Sarai:** What about yourself? You would be interviewed as to the complainant, to get the gist of it perhaps—

**Ms. Asiya Jennifer Hirji:** Sure.

**Mr. Randeep Sarai:** —and then you could go back to your client and say, "Yes, I was contacted. This is what they asked me. This is what I told them," so that she knows the complaint is being addressed—

**Ms. Asiya Jennifer Hirji:** Absolutely.

**Mr. Randeep Sarai:** —and there is a human contact element in there.

**Ms. Asiya Jennifer Hirji:** Sure. I think that is a great idea.

It's such a rare instance to have an entire hearing that is recorded. It's not a transcript. It's an actual recording, which is available to the reviewing member. If a complaint is well founded, I think it is incumbent upon the decision-maker who is reviewing the complaint to review the CD in its entirety, because you can hear the intonations there and so on.

**Mr. Randeep Sarai:** This one may be for Ms. Roushan.

To some degree my colleague Ms. Kwan has already asked this, but when it was brought, I believe, to the acting chair, Monsieur Aterman said, "We consulted with stakeholders. We sought their input." You have stated that your organization was consulted, but you're stating that perhaps the concerns you had weren't addressed.

Can you elaborate on how the consultations could have been better in terms of gathering information for a newer system or a better complaint system?

**Ms. Nastaran Roushan:** It shouldn't have started with, "This is what we're already probably going to implement. Give us your comments." That's not really consultation. It's a facade of consultation.

If the IRB is going to make these very drastic changes, they need to have a complete discussion with the different groups that represent refugee lawyers.

•(1145)

**Mr. Randeep Sarai:** Do you think what he's doing is a step toward a better system, or do you think it will still be flawed with the current process that they are implementing?

**Ms. Nastaran Roushan:** It is absolutely flawed. The chairperson is in an inherent position of conflict. Why would the chairperson admit that somebody under his or her watch did something wrong? As you said, sir, you're a member of the law society. If I were working for somebody, my employer would never admit to the law society that I was incompetent because then their name is also on the line.

**Mr. Randeep Sarai:** What do you think the next step should be in this regard? We're doing a report, clearly, but what do you suggest the next step should be?

**Ms. Nastaran Roushan:** I don't know if this has to be done through regulation, but we do need an independent panel of individuals for the hiring process, for CLEs and training, and for complaints, because the management is just not doing its job.

**Mr. Randeep Sarai:** Do you think the current method of Governor in Council-appointed IRB members, including public servants, is appropriate? Do you have any suggestions as to what the selection process should be?

**Ms. Nastaran Roushan:** I think our colleagues will have more to say on the hiring process, but certainly members should be required to take a substantive test on refugee immigration law and human rights administrative procedures.

Again this is rumour, because it happened before I started practising in this area, but I believe that they did that when they initially switched from GICs to public servants, and from what I've heard, so many GIC appointments were failing the test that it was embarrassing, so they took away the substantive portion.

**Mr. Randeep Sarai:** Thank you. I'm going to pass the rest of my time to Mr. Tabbara.

**Mr. Marwan Tabbara (Kitchener South—Hespeler, Lib.):** Ms. Hirji, in the last minute of your testimony you talked about wide variances in decision approvals. I have in front of me information that one judge designated 54% of all claims as having no credible basis, and another judge had 28.6% of cases with that designation.

In your opinion, do you think there should be an oversight on this?

**Ms. Asiya Jennifer Hirji:** Yes, "no credible basis" is a very legalistic determination, which I think, as Ms. Kwan discussed in a previous sitting, really limits a claimant's access to the federal courts, access to a stay, etc. Certainly there's no doubt, as Nas suggested, that the test for refugee protection is very legal also, so it ought not to matter to a very significant degree who an individual appears in front of. The same goes for no credible basis. I think variances in statistics are at least cause for concern.

**The Chair:** That's it. Thank you.

It's a five-minute round; I think we'll have time for Mr. Maguire and Mr. Whelan.

**Mr. Larry Maguire (Brandon—Souris, CPC):** Thank you, Mr. Chair.

I want to thank you very much for coming and providing the testimony that you have today.

Ms. Roushan, I wanted to first ask you about the process. I believe in your testimony you indicated that information you wanted was going to be forthcoming from the IRB chairperson for the case that you had, but that decision was changed later on, and no additional information was given in your case, in your situation.

Looking at the Office of the Integrity Commissioner, I see they've got some pretty wide powers in regard to that role, from what I can pick up. They can review these complaints and make recommendations and they can do a lot of things. They can dismiss a complaint. They can refuse to deal with it. They can refer it to the director of the Office of the Integrity Commissioner for investigation, or they can just refer it to another person, including an external investigator.

How often does that happen, that latter one—going to an external investigator?

**Ms. Nastaran Roushan:** This new complaint process just started in December. I think there have only been a handful of complaints filed under the new process, and from what I've heard, none have been referred to an independent external investigator, but again, it's an opaque black box, so I wouldn't know.

**Mr. Larry Maguire:** For one of those areas, it also says that a complaint can be addressed through another process. Can you elaborate on what that process would be?

•(1150)

**Ms. Nastaran Roushan:** I'm assuming they mean some sort of alternative dispute resolution process, and I don't know how relevant, if at all, that sort of process would be in these situations. You don't sit down the decision-maker with a claimant and come to a resolution about how unfair or incompetent they are in your proceeding.

**Mr. Larry Maguire:** Thank you. You were quite explicit, I think, and clear. Often there's a lack of competency in regard to the members who are being appointed, or their work, at least, and they have a responsibility to get up to speed on what's happening, from what I've read.

You've recommended a three-member panel. Can you elaborate on their roles and responsibilities, and how they'd be picked?

**Ms. Nastaran Roushan:** It would be similar to the process for JPs, which is that individuals are picked and put on a roster. The chairperson would be presented with these individuals before they're approved on the roster, but then we don't think that they should be ranked. I know that this was a situation years ago with a certain government. Someone was getting a list of individuals who were ranked, and this individual was not picking the most qualified individual.

Therefore, it wouldn't be a ranked system. It would be a list of people we think would be competent for a potential roster. The chairperson would select, and then this roster would be made up, and then every time there was a complaint or a hiring decision was made, three members would be picked from that roster.

**Mr. Larry Maguire:** Ms. Hirji, I hope I'm pronouncing your name correctly.

**Ms. Asiya Jennifer Hirji:** Yes.

**Mr. Larry Maguire:** You mentioned something—I believe it was in your testimony—about an initial vetting process.

**Ms. Asiya Jennifer Hirji:** Yes.

**Mr. Larry Maguire:** Can you elaborate on that? Is it in agreement with what Ms. Roushan has just indicated?

I'm not asking to put you on the spot. If it isn't, that's fine too.

Are there other suggestions as to how that panel should be set up? What did you mean by "initial vetting"?

**Ms. Asiya Jennifer Hirji:** I hadn't given much thought to whether it should go to one individual or a number of individuals, but I think it's the concern of Mr. Tilson that if there are frivolous complaints, there is no need to bog down an already bogged-down system with frivolous complaints.

I think it's also a quick way to determine if an individual has really committed a grievous action in that hearing. For instance, there was a judge at the Federal Court who was found to lack gender sensitivity, to put it lightly, and a complaint was filed by a number of crown lawyers in Calgary. It was deemed to be well founded by the Federal Court and the supervisors there. He was very quickly removed from hearing any gender-based claims.

It's the idea that justice has both to be done and seen to be done. I think that's the only effective way to do that.

**The Chair:** Thank you.

Mr. Whalen, you have five minutes.

**Mr. Nick Whalen (St. John's East, Lib.):** Thank you very much, Mr. Oliphant.

I'm very intrigued by a number of your recommendations. I want to make sure that we dive a little bit deeper into some of the nuances of the IRB.

The IRB has four panels. The lower two levels are civil servants. The upper two levels are GIC appointments. It's always open to the government not to renew people for whatever reason. I understand Mr. Sterlin wasn't renewed, so he will no longer be hearing IRB appeals. Ms. Cassano, who is at the civil service level of appointments, was terminated.

I want to get a sense from you whether or not you feel there should be the same type of complaints process for all four boards or if there should be different complaints processes, and whether or not you consider the members of either boards to be more or less judicial and whether more or less deference should be shown to their decision-making.

**Ms. Asiya Jennifer Hirji:** In my view, the same complaints process should apply to all of the various arms of the IRB. This committee heard testimony about the concerns, for instance, about long-term detention. I realize it's anecdotal, but very often I or other immigration practitioners who do a lot of detention review work would go to a hearing. You have an individual who is in detention, which is the most fundamental deprivation of your rights. These are not individuals who are facing charges; they are on immigration hold.

If you get a certain member, strategically you don't present your alternative to detention, because you know your chances of release for that individual are literally zero per cent. This individual languishes in detention for another 30 days, and you hope that you get another member.

In my view, given the importance of the work this board is doing, the complaints process should be the same for all the arms.

● (1155)

**Mr. Nick Whalen:** Ms. Roushan, you were nodding, so I'm assuming you don't have anything further to add.

There's another layer of this, and you have addressed it slightly. Mr. Aterman mentioned there were only 170 complaints and that many of them were not related to the conduct of the members themselves. Ultimately, in founded complaints, there were 21 against 14 members.

It doesn't sound like a huge volume over nine years. I'm wondering whether or not something like the Canadian Judicial Council, which Mr. Tilson mentioned in our last meeting, might be a suitable venue for the complaints process. It's already a federal judicial oversight body. It uses five members instead of three. It has lay representatives and professionals on it.

Rather than creating a new entity, I'm wondering if there might be an existing entity within the federal structure that could handle this process.

**Ms. Nastaran Roushan:** It's something I would need to put more thought into, because it might be worthwhile to have individuals hearing complaints who are familiar with the refugee and immigration process in particular. Again, I've never really thought of the Judicial Council looking into it, so I don't think I'm really in a position to give a definitive comment.

**Mr. Nick Whalen:** Ms. Hirji, would you comment?

**Ms. Asiya Jennifer Hirji:** I also hadn't thought about it, but I think it certainly sounds like a good idea.

**Mr. Nick Whalen:** With respect to looking at the members of the board for civil servants, our committee has not really looked at the labour relations impact and how it might affect collective agreements. While the issues related to competence certainly go to issues of cause, I'm sure the collective agreements held by the civil servants already contain complaints procedures.

Are you aware of those in the complaints you have brought against the members? Have those instances been raised? Are there particular things we should get the views of the unions on in order to determine appropriate recommendations on a policy that jells both their judicial function and their privileges under their collective agreements to make sure that works out together?

**Ms. Asiya Jennifer Hirji:** Certainly the unions are important stakeholders for our particular type of appointment. My complaint was against a political appointment.

**Ms. Nastaran Roushan:** It's interesting to me that Mr. Aterman's testimony was so emphatic in protecting board members, given that they have a collective agreement and a union that's already representing their interests. Again, it requires a paradigm shift, right? The board needs to start thinking about its process as including the rights of claimants rather than just those of board members.

**Mr. Nick Whalen:** The last question might be beyond the scope of how deeply you've looked at this. When you take something like a board or a series of adjudicators with almost 500 members and look at the statistical breakdown of the numbers of acceptances and rejections, clearly, as Marwan pointed out, rejecting everybody has to be an outlier that's subject to reproach. However, when you're talking about somebody who's 20% off the norm, it seems to me that in a distribution that counts 500 members, you would expect that a certain number of people—just based on case flow, and assuming the honesty of everybody involved—will be 20% below the norm, some will be 20% above, and there are also instances of bias where the casework is—

**The Chair:** If you would like their comments, you need to wrap up.

**Mr. Nick Whalen:** My question is this: does your statistical analysis, in focusing on the one individual, take that and their skill into account...?

**Ms. Asiya Jennifer Hirji:** It does take that into account.

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

We're going to end the first panel at this point. We'll take a two-minute—

Yes, Ms. Kwan?

**Ms. Jenny Kwan:** Sorry, Mr. Chair.

Before we take a break, I wonder whether I could make this request for the committee to the analysts.

We heard from Ms. Roushan that previously there used to be a fairly robust process for appointments that people had to undergo, but that process was done away with for some reason. It may be because people just could not pass the test. It would be very useful and helpful for the committee to receive that information, if the

analysts can undertake to research that information and provide it to us.

**The Chair:** I think it was contrary to what we heard from the Privy Council Office, which made it sound like there's a more rigorous test now. I would like to have comment from the Privy Council Office on it, as well as for the analysts to look at a change, if that would be okay.

• (1200)

**Ms. Jenny Kwan:** We could see what it was before, and then how it changed. That would be very helpful.

**The Chair:** Go ahead, Mr. Whalen.

**Mr. Nick Whalen:** There are actually three sets of changes. It's what it was before, how it was modified under the Conservative government, how it was modified again by the new PCO policy, and whether or not the types of tests that the reappointees are having to write are the same as those for the new appointees. I think that was the issue that was raised.

**The Chair:** I don't want to flog a dead horse, but I had expected that from the testimony from the Privy Council Office, and I don't think we got it. A request to them to outline that would be very important. It's a bit more from the PCO than from the analysts, but we'll have to ask the analysts to do both. Thank you.

**Ms. Nastaran Roushan:** Sorry; just to clarify, that rigorous test was when the immediate change was made to public service appointments. They initially started testing when they got away from the GICs and started with the public service appointments, and then they retracted it because people were failing.

**The Chair:** Do we need a motion on that? I think there's agreement that we need this information. Do we have that consensus? Very good.

Okay. Let's take one moment, then.

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

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• (1205)

**The Chair:** We're going to recommence. Thank you again, Ms. Desloges and Mr. Boulakia, for doing this.

You each have an opportunity for seven minutes. Who would like to go first?

It's Ms. Desloges. Thank you very much.

**Ms. Chantal Desloges (Lawyer, Desloges Law Group, As an Individual):** Good afternoon, Mr. Chair, and members of the committee.

**The Chair:** Oh, I'm sorry—just before you begin, I see Mr. Bashir Khan as well now in Winnipeg. It's good to see you again.

Actually, I think we're going to begin with Bashir, just because you're sitting right there in front of me. I'd like to begin with you just in case something goes wrong with the teleconference, and then we will be able to reconnect. If all witnesses are ready, we'll start with you. Thank you.

**Mr. Bashir Khan (Lawyer, Refugee Law, As an Individual):**  
Good afternoon.

**The Chair:** Take it away.

**Mr. Bashir Khan:** My name is Bashir Khan, and I'm a Winnipeg refugee law lawyer. I've been doing this since June 2011, since my call to the bar. I have had a chance to deal with a great number of asylum seekers who have entered Manitoba from the United States over the past year.

I'm very honoured to be called before this august committee of the Canadian Parliament dealing with immigration, though I believe there are others who know a lot more than I do. I'm not an intellectual or an academic, but I can speak from a practitioner's perspective.

As I look at the topic of study of this committee, I can say up front that I probably will have no comments to make about the discipline of the board members, but in my brief opening remarks I would like to make some comments on the appointment of board members and training.

I think there's an important question members of the committee should ask themselves. There are four divisions in the Immigration and Refugee Board of Canada: the refugee protection division, the refugee appeal division, the immigration division, and the immigration appeal division. Why are three of the divisions Governor in Council appointments, and why has one of the divisions become subject to civil servant decision-makers? Should we have civil servant judges, as in India, where the judiciary is appointed from a public service commission examination?

My point is obviously not, but the philosophy of the individual adjudicator, just as in the judicial system in Canada, is very important in interpreting the facts that come before him. Unfortunately, I think the amount of talent that the public service offers is limited, compared to the talent offered by a broad range of Canadians in the private and the non-profit sector. We should be going back to the system we had, which the previous government changed, to Governor in Council appointments for the refugee protection division members. The benefit would be that a broad range of Canadians from various backgrounds, and not just career civil servants, would be adjudicating claims.

In honesty and great candour, I have to say that I have great respect for the Immigration and Refugee Board of Canada and specifically the refugee protection division, because I go before them on a weekly basis and I know they are the unsung heroes in the system. I think the Canada Border Services Agency officials who deal with asylum seekers are also the unsung heroes in the system, but the board member is the guardian of the integrity of our justice system when it comes to refugee adjudication. I have a lot of respect for them because I know how they are. I also know some board members who are not so liberal in the interpretation of facts. Those members are going to be there until they retire.

When I look at the system as a whole, we need to have Governor in Council appointments for the refugee protection division members. I think at the end of the day the Government of Canada should be able to decide the judicial philosophy, the personality of the adjudicator, just as the Government of Canada decides who

should be a judge. The philosophy of the person listening to the cases is so important. We have a common law legal system and we need adjudicators who are very receptive and subject to reappointment.

Finally, I studied a maxim in law school that equity varies with the length of the chancellor's foot. In early England, common law was very rigid and had very harsh consequences. The Lord Chancellor of England was a Church of England priest; he thought whatever was fair from his sense of Christian justice should be given to someone, not just what the law says, so the sense of what was equitable varied with the length of the chancellor's foot.

● (1210)

It's the same thing. The board members will interpret the facts as they wish to interpret them. I think we need board members from a broad spectrum and not just civil servant decision-makers. Therefore, we should go back to the Governor in Council appointments.

With respect to training, when I appear before an adjudicated tribunal of the court, I always have to remember professionalism and the wrath of the law society. I'm a regulated professional, and if I act out of turn or if I act improperly or say something improperly, I am accountable for it.

We have the chairperson's guidelines for the Immigration and Refugee Board. They are on the Internet, and members are supposed to know them. Often, especially in the LGBTQ refugee claims and other types of claims where credibility is being assessed, the board members simply ignore them. They're there, but there are no consequences for the board member for simply overlooking those guidelines. We need a greater sense of accountability as well as corrective and, if I may use the word, punitive measures that require a board member to really subscribe to the law and to the guidance that's given to them.

The problem arises from the fact that board members are not... Just because I'm a lawyer doesn't mean lawyers are right. I'm just trying to say that most of the board members are former CBSA officials right now. Most of them do not have a law background. Therefore, the idea of what is natural justice and procedural fairness can't really be ingrained in someone with a mere few months of training. This is someone who hasn't gone through law school, law society examinations, and practice under a lawyer experience.

I'm not saying we should only employ lawyers and people with legal backgrounds on the board. What I'm saying is we need to go back to Governor in Council appointments so the government of the day appoints Canadians who reflect the philosophy of the government, because a government is elected by the people and the people want that.

I think what the Conservatives did...and I'll be honest: the last government hollowed out the system. How did they hollow it out? In my humble opinion, and I have seen it on the ground, they appointed members to the refugee protection division and then they said, "We want the RPD to be free of political influence, so we're going to make these people permanent. That's it. That's all."

In other words, while the Conservatives were in power, they trusted themselves to appoint board members and then they made them permanent. They're not subject to reappointments because they're civil servant decision-makers and a future Government of Canada may not easily be able to undo that. Really, what they were saying was that any other government but the Conservative government would appoint people who would be politically influenced in the refugee hearing, but we Conservatives can appoint someone to the board and make them permanent so they are not subject to reappointment and they'll be free of bias or political opinions.

• (1215)

**The Chair:** Thank you, Mr. Khan. I'll have to end you there.

Thank you very much. That's helpful.

Go ahead, Ms. Desloges.

**Ms. Chantal Desloges:** Good afternoon, Mr. Chair and members of the committee. Thank you for having me here today.

For the record, I'm an immigration and refugee lawyer with over 20 years of experience working with refugees, and for 19 of those years, I've been appearing before what's now known as the refugee protection division. I'm certified by the Law Society of Ontario as a specialist in both immigration and refugee law, and I'm the co-author of a legal textbook on this subject.

Imagine for a moment representing a refugee family with a teenage son who is gay. The hearing finally arrives after almost a year of waiting. You've prepared the family for questions about their credibility, and in particular you've prepared them for questions around the credibility or plausibility that their teenage son is really gay. You've assured them that questions around this subject will be respectful.

To your complete shock, the member embarks on a line of questioning of the teenage son that includes graphic questions about his sexual experiences, including sexual positions—all in front of his parents. You object several times, but you're worried about the increasing hostility in the room with the board member, who continues the line of questioning anyway.

This is something that happened to me a number of years ago, and it's a real experience. It's an extreme example, of course, but smaller kinds of this type of behaviour, unfortunately, still happen all too often. It's a topic of discussion that comes up frequently between refugee lawyers when we meet at conferences or have discussions on our email rings.

In listening to this morning's witnesses, I largely agree with what they've said. The issue not only is about the complaints system, but it's also about carefully selecting and training the right kinds of people to adjudicate refugee claims. Weeding out inappropriate personnel doesn't start at the complaints stage; it starts at the hiring and vetting stage.

The hiring process for board members has improved dramatically over the last few years since the selection process has moved from what was basically a patronage appointment system to a more merit-based system. I agree with my friend Asiya that the board should be commended for always trying to improve, and credit is certainly

deserved for this move in the right direction. That said, it is still fraught with difficulties that allow people without the right knowledge and personality qualities to pass through that vetting system successfully.

With all due respect, I think my friend Bashir is confused about the appointments system. A civil service appointment doesn't mean that only civil servants can apply. Anybody can apply. It's the nature of the appointment system that is civil service, not Governor in Council.

Currently when people compete for board positions, they have to write a general civil service exam, which to my knowledge does not require any understanding of even the most basic refugee law or what it means to work with refugees. That, in my view, is unacceptable, especially when there are so many really well-qualified people out there who do have this knowledge and/or experience. Not only that, but it seems like a pretty routine thing for any job competition to ask for at least a passing knowledge of the subject matter the potential employee will be dealing with every day. Most people, in applying for any kind of job, even if they don't have that requisite knowledge, would prepare themselves by studying the basics before the interview.

Even more important than substantive knowledge, in my opinion, are the personal characteristics of the potential hire. I say this because I have met board members who at the end of the day were really excellent despite the fact that they didn't have prior exposure to the field, and what made them excellent was their personal qualities.

Keep in mind that this decision-maker is going to deal, day in and day out, with people who have been traumatized, often severely. They have trust issues, authority issues, memory issues, and flashbacks, just to name a few of the problems. They will have to be questioned thoroughly yet sensitively, and I cannot emphasize this enough: this is not a job for just anybody.

What qualities are the most important when hiring a board member? First is patience—and lots of it—to deal with people who are having a hard time telling their story. They might be uneducated and unable to express themselves in the way we like to hear, and they might not trust you initially.

Second is empathy, and by this I don't mean sympathy in terms of feeling pity for everyone. What I mean is the ability to really put yourself in someone else's shoes, to forget about your cultural bias, to feel what they must have felt, and to judge someone else not according to what you would have done in that situation, but according to what they did in that situation, taking into account their background and experiences.

Third is balanced personality—in other words, an even temperament. This one is hard to put your finger on, but when someone does or doesn't have it in a hearing room, it becomes pretty obvious pretty fast. We need someone who can keep an even keel in a hearing room when a claimant is having a meltdown or when there's a heated dispute with counsel.

•(1220)

Finally, we need someone who has the ability to learn and adapt quickly. Not every potentially good board member will be an expert in refugee law right away, but if they have excellent personal characteristics and at least a basic understanding of the law, do they have the kind of personality that will allow them to pick up the rest as they go?

By the way, everything that I've just told you about in the last few minutes are things that I as an employer demand in my own hiring process, even if I'm just hiring a receptionist, even if I'm just hiring an assistant. It's not a tall order; it's basic screening that any HR manager learns how to do on day one.

Many big companies nowadays screen for these qualities using personality or aptitude tests that are non-intrusive, fairly reliable, and widely available. To become a police officer in this country, every new recruit has to pass a psychological aptitude test. It's standard. Other employers do this. There's no reason why the board couldn't do it too.

The process for federal judicial appointments, I would say, is something that you should look to if you're looking for a model for an appointment process. It's not perfect, but it is pretty good, and it's better than what we have at the RPD. It's a rigorous process. It involves review by a diverse, independent panel. It changes occasionally, and one of the most important things that they do is, when they call people's references, they always ask that reference, "Who else should I be talking to about this person?" That's very key, because when you self-select your own references, you're only going to choose people who are going to say positive things about you, but you need to cast the net wider. If you really want to understand what this person is genuinely like, they need to be judged by their peers.

Again, none of this is rocket science. Other agencies are already employing these techniques for jobs that are much less sensitive with way lower stakes than life and death, which are the stakes at the refugee protection division.

Thank you.

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

Go ahead, Mr. Boulakia.

**Mr. Raoul Boulakia (Lawyer, As an Individual):** Thank you for inviting me to speak with you.

The first thing I'd say, and which I think all stakeholders would say, is about the importance of the board as an institution. The importance of it having expertise, independence, and quality of judiciousness is not only fundamental for people who rely on the board, but I think it's something that everyone should be concerned with, because really no one benefits from a system if decisions are made poorly or injudiciously.

It's important that stakeholders be able to come forward with constructive suggestions. They need to be able to come forward and speak to how to improve the system with an assurance that we have a political and legal maturity to accept that we need to have an independent and expert tribunal to comply both with our obligations under the charter and under international human rights law, and that there not be a sense that if people advocate there will always be

someone advocating to make the system worse or to replace it with something worse, which is the rumour that we get when we say we need to improve things.

We get that kind of push-back and we're told that people should be timid about speaking, but we're always speaking constructively. We commend the board as an institution and we want it to be reinforced.

There definitely was an improvement in the professionalism in general of the appointment process and of board members once we switched from GIC to the public service process, which, as Chantal says, is not a process of just hiring people who are already civil servants, as you know.

What the appointment process really requires is a combination of expertise and judiciousness. I think a deficiency in the current process is that it omits substantive expertise. The qualifications can be expertise in any type of law. A problem with this is that once you appoint that person, they will have to be trained. They will have to be trained in refugee law or immigration law, whatever division they go to. That really slows down the efficiency of the board. When can people come up to speed to be hearing a full caseload?

We need a combination of substantive requirements. One is that people know the law, that people are able to pass a test for dealing with the law. Right now the testing process has been made neutral so that it doesn't reference substantive law. Also, there's screening for judiciousness. Chantal spoke—quite eloquently, I thought—to the importance of that. Even if a person is very well qualified on paper, it doesn't mean they're going to work out as a decision-maker. One of the people who was the subject of discussion earlier I think would have been qualified on paper, but if in background screening people had done interviews with people who had worked in their profession with them, they would have been told of tendencies that would be more obstructive and problematic if that person were in charge of hearings.

When screening is being done for people who get appointed to the federal judiciary, cold calls are made to people in their profession to ask them about that person's tendencies. I think if that were added to the process, it would help, but judiciousness is the hardest quality to screen for. It is something that requires the capacity for empathy. It requires the ability to step back from your preconceptions, step back from positions that you're militating for. If you act as an advocate when you're a decision-maker, it's very hard to step back. In the hearings now, board members even will sometimes do their own research, so then it's very hard for them to step back from that and take a fair approach.

•(1225)

The screening before hiring is so important. I completely agree that we should have a panel of experts who are involved in the screening process and who ultimately create a list of who is highly recommended, and the chairperson would then select from that list.

I also agree with the complaints process. It should go to an outside committee that would make a decision. It's a conflict of interest for the board to both deal with the complaint and be administering the tribunal. I think even Mr. Aterman expressed that ambiguity and that difficulty. It's inherently problematic to be receiving the complaint when you're supposed to be respecting the independence of the board members.

The process should be transparent. We should have timelines with it so that we would know when a board member was being given this, the process by which they get to respond, and whether they get to respond to what has been said.

Ultimately, any process is only as good as the goodwill, the sincerity behind a commitment to ensure that the best people are appointed to it and that issues are resolved fairly. I think it's important that we all agree to this basic commitment that the board must not only exist as a tribunal but must be supported in ensuring that it can achieve excellence and be as judicious as it can be.

If you combine improving the appointments process with a complaints process that doesn't put the board's administration in a conflict, I think we can avoid a lot of these situations.

● (1230)

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

We're going to begin our questions with Mr. Whalen.

**Mr. Nick Whalen:** Thank you very much, Mr. Chair.

Mr. Boulakia and Ms. Desloges, we've heard previous testimony that the testing that's provided at least to the GIC appointments—and I also thought to the lower-level board members—was a comprehensive five-hour competency-based test with a very low pass rate. It was meant to ensure that people had adequate competencies within immigration law. That was the impression I was left with.

Are you saying that's not the case?

**Mr. Raoul Boulakia:** It's kind of true and kind of not true.

**Mr. Nick Whalen:** Does it contain competencies or not?

**Mr. Raoul Boulakia:** What is true is that they do a rigorous test. I'm told by people who have gone through it recently that it's rigorous. What they did, though, was they removed any substantive refugee or human rights law from it. You're doing a rigorous test, but it's more neutral or abstract in terms of the content. That's the problem.

We've never been given the test, so we don't know what it is. I understand that when they first switched to the public service process, they tried doing testing that included substantive refugee law, and a lot of the GIC appointments failed. Then they dropped that.

**Mr. Nick Whalen:** Thank you very much, Mr. Boulakia.

I think it's an issue similar to what we heard before and I think we're going to ask the PCO for additional information. I think we need to see what the test looks like. Maybe we can add that to the list of asks.

Mr. Khan mentioned that in practice the people getting these appointments, at least in the area where he's practising, are largely

civil servants from a related area of practice, but from an enforcement perspective rather than from an adjudicator perspective, and they may be coming with some inherent bias from their previous profession. You're saying it's an open process and anyone can apply. Do you have any data in practice that discounts what Mr. Khan is saying, which is, in effect, that it might be open to everyone, but it's only the civil servants who get the jobs?

**Mr. Raoul Boulakia:** I wonder whether he might be thinking of the immigration division, because that would definitely be true in the immigration division.

**Mr. Nick Whalen:** But also the refugee division....

**Mr. Raoul Boulakia:** It's definitely not in the RPD.

**Mr. Nick Whalen:** Do you have statistics on that?

**Mr. Raoul Boulakia:** I didn't come with statistics, but, no, I'm confident with the RPD. There are some people who have been appointed from an enforcement background, and sometimes that does carry over into taking an enforcement mentality and decision-making that can lead to unfairness, but there are plenty of people who are from outside—plenty. It's the majority, I think.

**Mr. Nick Whalen:** I'd like to get a sense of the accuracy of that. Maybe we can ask the IRB to provide backgrounds, grouped by previous profession of employment, just to see whether or not.... Clearly our policy goal is to make sure that Canadians are represented on tribunals and that it's not merely pulling from one restricted class of people.

**The Chair:** I think there are going to be several requests for IRB, the Privy Council, and IRCC. We'll hold those, so you don't take your time on that, because we may need a motion and there may be some confidentiality issues around exams and those things, but we'll figure out how we get a request versus an order.

I'll give you extra time now, because we....

**Mr. Nick Whalen:** Okay. I'm sorry about that.

**Ms. Chantal Desloges:** A regional difference is also possible. In the western region there are perhaps more of them, but certainly in the central region there's no big weight of former CBSA people who are sitting as board members. There are some, but definitely not the majority.

**Mr. Nick Whalen:** Mr. Khan, can you speak to the experience of the post-border crossing period and how the composition of the refugee division might have changed in the wake of the raft of border crossings in Manitoba a couple of years ago? I'm wondering if the same thing might be happening in Quebec as they staff up. How are they staffing up?

● (1235)

**Mr. Bashir Khan:** The answer is four board members, two in Vancouver and I believe two in Calgary, if my memory serves. They were appointed to the board, and in the western region many of them come from a CBSA background. Unfortunately, some of these CBSA border officers are sometimes more executive-minded than the executive. Though I praise many of them, in the system as a whole we have an overrepresentation of civil servants.



**Mr. Nick Whalen:** When it comes to the role of the tribunal to act as gatekeeper and also as decision-maker, is it a concern, maybe at least at the appeal division level, that the same professional has too many roles?

**Mr. Raoul Boulakia:** If what you're referencing is the complaints process, then, yes. I wouldn't want to be in that role. I wouldn't want to be the person who, on the one hand, has to be constantly showing that I'm respecting the independence of my board members, and then when I get a complaint, what am I supposed to do with it?

I think that is reflected in some of the strangeness of how these complaints get handled. I file a complaint and nothing happens with it for a really long time. I can't get any transparency on where it's going. Then I get a letter saying the complaint won't be decided because this person's not working here anymore. I don't know what that means—whether they took a lateral transfer to another civil service position, or if they had a contract that wasn't renewed.

That quiet way of dealing with things doesn't give us or the institution any lesson. Was something done wrong or not? If so, can we learn from it and improve? I think that might touch on the problem of how you say you're making a decision on this and you're going to uphold a valid complaint.

**Mr. Nick Whalen:** I think that's similar to what we've heard before.

With regard to the complaints process as well, we've heard different models of what might work in ensuring independence. The previous panel had some specific recommendations, and I'm just wondering if your views are whether an existing judicial oversight body could assume the role or whether something needs to be created.

Also, at the same time, would it be different for the GIC appointments versus the lower board members?

**Mr. Raoul Boulakia:** I think it would be preferable to have something new. I agree with what Ms. Roushan and Asiya commented on, and the proposal of the Refugee Lawyers Association as well, which was that there should be an external expert to deal with the complaint.

**The Chair:** I need to cut you off there. Sorry. You might get your answer in one of the other questions.

Mr. Tilson, you have seven minutes.

**Mr. David Tilson:** Mr. Khan, you talked about mandatory continuing education for board members. What happens if they don't take it?

**Mr. Bashir Khan:** When lawyers do not do mandatory continuing education, they get suspended, so my point is we—

**Mr. David Tilson:** Who suspends them?

**Mr. Bashir Khan:** This is interesting in the case of the RPD members. About 10% of RPD members are required to be members of a bar and continue their membership with the bar while serving on the board. Technically, a complaint could be lodged to their respective law society that they acted in a way a lawyer should not.

**Mr. David Tilson:** Sir, the mandatory continuing education would be by the board, presumably. The law society—at least the Upper

Canada Law Society—to my knowledge has mandatory courses now, but we're talking about the board.

**Mr. Bashir Khan:** Yes, but those members of—

**Mr. David Tilson:** I believe you said there should be mandatory continuing education. What happens if they say, “I don't need that”?

• (1240)

**Mr. Bashir Khan:** That's what I'm trying to say.

The members of the board who are members of the bar and are meant to continue with their law society membership as a condition of their appointment to the board will have to continue the mandatory training, because the law society requires it. If not, they would no longer be members of the bar, and the appointment was based on that criterion.

**Mr. David Tilson:** Sir, you don't have to be a lawyer to be a board member.

**Mr. Bashir Khan:** I agree; the other 90% don't have to be, so I'm saying—

**Mr. David Tilson:** What about that 90%?

**Mr. Bashir Khan:** Well, they need to be educated and they need to have competency tests.

**Mr. David Tilson:** Okay.

Ms. Desloges, what's your overall impression of the professional competency of the board members?

**Ms. Chantal Desloges:** I can say that it has improved a great deal compared to where it used to be.

There are still some problems. You still quite regularly get board members in hearings who don't know basic case law from the Federal Court outlining refugee 101 principles. You also sometimes get board members who don't follow their own guidelines and policies.

What concerns me even more—because you can teach that stuff—are the people who just obviously are not cut out to be in that chair. We've all met people like that. They look good on paper, but when you get them into the position, and they're just not suited.

**Mr. David Tilson:** Just like lawyers.

**Ms. Chantal Desloges:** It could be, yes. I've met lawyers who I wouldn't want to put in front of a court or a client, but they're great to do the paperwork.

**Mr. David Tilson:** Do you feel that the educational requirements for the various divisions of the board are sufficient? I think your comment was that there's an exam, and that's it.

**Ms. Chantal Desloges:** Right. It's not sufficient the way it is now.

**Mr. David Tilson:** What's your recommendation?

**Ms. Chantal Desloges:** The entry exam should include substantive law in it. It should have basic international human rights law and refugee law as a part of it. They should have ongoing training.

The problem is that we know they have some training, but it's very opaque. The public doesn't really know what that training is composed of, so it's hard for me to say it should be this or that when nobody really knows what it is right now. That's a problem.

**Mr. David Tilson:** Do you believe that a law degree should be required to apply for a position on the board for all positions, or just the appeal divisions?

**Ms. Chantal Desloges:** No, I don't think a law degree should be mandatory for any of the divisions. I think it's helpful.

**Mr. David Tilson:** I'm just following along on your comments that the exam is going to have a substantial amount of law in it and that there is an amount of law that a board member is required to have. If they don't have that knowledge, then it's off to the higher court.

**Ms. Chantal Desloges:** Right.

I don't think at the entry level, when they're first sitting the exam, that there needs to be necessarily.... I didn't say "a substantial amount" of law; I said "substantive" law, meaning something that's topical to the refugee area.

**Mr. David Tilson:** Right.

Do you feel that all members of the IRB should be GIC appointments?

**Ms. Chantal Desloges:** No.

**Mr. David Tilson:** What should there be, or do we even need any change from what goes on now?

**Ms. Chantal Desloges:** The process they have now would be optimal with the improvements that we've recommended here today.

**Mr. David Tilson:** Mr. Khan said the majority of them are public servants.

**Ms. Chantal Desloges:** No, I don't agree with that.

Again, it could be a regional difference, but in Toronto it's absolutely not the case that most people are civil servants.

**Mr. David Tilson:** Do we have the correct mix now?

**Ms. Chantal Desloges:** There's a fairly diverse mix, at least in the central region.

**Mr. David Tilson:** Okay, so you're satisfied with that.

There are currently 24 Governor in Council vacancies on the board. That's according to the chair. Do you feel this is a serious concern?

**Ms. Chantal Desloges:** I think vacancies of any kind are a serious concern, because when you don't have a full complement of people who are making decisions, you get backlogs. When you get backlogs, you incentivize people with weak claims to make claims because they get the benefit of staying in Canada for a longer time.

**Mr. David Tilson:** That's one of the reasons we're having these hearings, the backlogs.

Do you have a recommendation?

**Ms. Chantal Desloges:** They should be fully staffed up. There should be enough decision-makers to make these judgments within a reasonable period of time.

**Mr. David Tilson:** Then what's the problem? Isn't there enough money to make these appointments?

**Ms. Chantal Desloges:** To listen to the administration of the IRB, yes, I think that is the problem. It's under-resourcing. As far as I know, with this influx of irregular border-crossers that happened,

which has increased the backlog quite substantially, there hasn't been a commensurate influx of resources into the system to allow it to handle that properly.

• (1245)

**Mr. David Tilson:** We are told that there have been delays in filling up the vacancies of up to 500 days. Do you think that's the case?

**Ms. Chantal Desloges:** I don't know the answer to that.

Do you know, Mr. Boulakia?

**Mr. Raoul Boulakia:** I don't know. Well, we actually heard testimony about that.

**Mr. David Tilson:** Yes, so did I.

**Mr. Raoul Boulakia:** We only know that it's very extensive.

**Mr. David Tilson:** You may not be able to respond to this either, but we'll try you out. The minister pointed out that in the budget there's \$70 million of additional funding. Given the subject matter we're studying, what areas should these monies be put to, in your opinion? Obviously one is vacancies, but is there anything else?

**The Chair:** Be very brief.

**Ms. Chantal Desloges:** I would say a better training and appointment process.

**Mr. Raoul Boulakia:** Also, you can't only fill a vacancy at the board with a board member. You also have to have the support, because one of the problems the board has complained of is that sometimes you get funding to hire a member, but that member needs an office. You need actual support for that member.

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

Ms. Kwan, you have seven minutes.

**Ms. Jenny Kwan:** Thank you very much, Mr. Chair.

To start off, would you agree that on the whole the IRB is doing a good job, that it's actually a good system that we have in place?

I'd like a quick answer from all three of our witnesses.

**Mr. Raoul Boulakia:** Yes, I do agree. I do think that the one outlier would be the immigration division and the problem of perpetual detention, but I do think that overall the board is doing a good job and that there has been an improvement in professionalism.

**Ms. Jenny Kwan:** Ms. Desloges, would you comment?

**Ms. Chantal Desloges:** I agree 100%.

**Ms. Jenny Kwan:** On teleconference, Mr. Khan, what is your opinion?

**Mr. Bashir Khan:** I'm sorry; I didn't hear your question.

**Ms. Jenny Kwan:** It was just a quick question to see whether or not you would agree that overall the IRB is doing a good job, notwithstanding there are some issues that can be improved upon.

**Mr. Bashir Khan:** Absolutely, it is.

**Ms. Jenny Kwan:** Thank you. Is it fair to say, then, that the government should not do away with the IRB?

**Mr. Raoul Boulakia:** Definitely not; I think that would be a completely backward step. It would be completely detrimental to having a proper system.

**Ms. Chantal Desloges:** I agree with my friend.

**Ms. Jenny Kwan:** Mr. Khan, can I just get you quickly on the record on that question?

**Mr. Bashir Khan:** The IRB is a great institution, and it's one of the things that makes Canada great in the world.

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

Now I'd like to turn to the complaints process.

On the issue around complete independence, we've heard from the previous panel that it is lacking even in the new process that has been put in place. Even though the consultation process with the stakeholders recommended that they become completely at arm's length, that is not what the IRB has chosen to do. Would you say that this is the number one issue with respect to the complaints process that needs to be rectified?

Again, I'll just go through the rounds with folks.

**Mr. Raoul Boulakia:** Yes, that's exactly what all the speakers have put forward.

**Ms. Jenny Kwan:** Ms. Desloges, what would you say?

**Ms. Chantal Desloges:** I defer to my friend on that.

**Ms. Jenny Kwan:** Okay.

Mr. Khan, would you comment?

**Mr. Bashir Khan:** I have no comment on the complaints process, as I've never had dealings with it.

**Ms. Jenny Kwan:** I see. You've never dealt with it. Fair enough.

Now I'd like to get into the issue around the process we have in place right now—the old one and the existing one—whereby a complaint has been made and if the board member is no longer with the IRB, for whatever reason, the IRB's process is that it would just simply close the file and say that the complaint is dealt with.

Would you say that is a fair approach in dealing with complaints, or should the IRB institute a process to ensure that the completion of the complaint is carried through?

**Mr. Raoul Boulakia:** Well, it doesn't make sense, because you've got, say, a refugee claimant who is rejected, and the lawyer saying that the refugee was dealt with completely unfairly by a board member who shouldn't have been hearing the case. The injustice just stands, and there's no learning from it. There's no learning for the institution. We want the institution to improve, and part of that is that situations are analyzed so that you can teach the members that this is what is expected or you can teach a complainant that the complaint wasn't valid.

**Ms. Chantal Desloges:** The claimants deserve to know what happened. The claimants deserve a resolution to their complaint. If they've been treated badly, they should get a response to that, a substantive response.

• (1250)

**Ms. Jenny Kwan:** Would you think it appropriate, when there is a complaint lodged against a particular board member, that you, as counsel for your client, could face the same board member at the same time as you're proceeding? Do you think that is the appropriate

approach, or should there be something different in place to deal with that?

**Mr. Raoul Boulakia:** I don't think I should be appearing before that member, but at the same time I think that we should have a complaints process that's efficient enough that you couldn't do that just to stonewall and avoid that member. It should be resolved reasonably promptly.

**Ms. Jenny Kwan:** Fair enough.

Do you have anything else to add to that answer, Ms. Desloges?

**Ms. Chantal Desloges:** I agree with the caveat that as counsel, of course our training is that we should vigorously defend our client, including making a complaint if it's justified, and not be afraid to go in front of that member again, but to the degree that it's possible, I think it's not very optimal.

**Ms. Jenny Kwan:** If a complaint has been founded against a particular board member and the board member has been ordered to undergo some sort of training, etc., from what we understand of the IRB, after that process there is no formal evaluation on how successful the training was. Instead they simply do an annual review as part of the process.

Do you think that's the right approach, or should there be an assessment to determine how well the training went? I'd love to get your thoughts on that.

**Mr. Raoul Boulakia:** That brings us back to the basic problem that when it's the RPD dealing with a complaint, they've got a conflict. That's why it's so opaque. What are they supposed to do? Are they supposed to call this board member in after a few weeks and chastise them or check them out? It's problematic to be both a manager of a tribunal and to deal with a complaint, so it should... If there was an external complaints committee, you could go back to them and bring it back to them.

**Ms. Jenny Kwan:** Do you have anything else to add?

**Ms. Chantal Desloges:** Yes. With any kind of training, you have to see results. I mean, that's just a general principle, not just with the board. I would expect, if I send my staff for training, to see the results of it.

**Ms. Jenny Kwan:** On the issue of conduct and the code of conduct, we've heard testimony from our witnesses previously and also from government officials that it's really hard to get rid of a board member. It almost seems like an impossible task. Do you think that's the right approach? As we're reviewing this exercise, should there be different things put in place to allow for a proper review and, in those cases, an easier path, if necessary, for a board member to be, frankly, fired?

**The Chair:** Be very brief, please.

**Mr. Raoul Boulakia:** I'd say yes, but it has to be fair and transparent. It has to be fair to the board member too, and we can't attract people to become board members if we're not going to be clear about how they're dealt with.

**Ms. Jenny Kwan:** That would be open, transparent, and accountable on all counts—

**Mr. Raoul Boulakia:** Yes.

**Ms. Jenny Kwan:** —for both the board member and for the complainant.

**Mr. Raoul Boulakia:** It does have to respect the confidentiality of the individual, so in terms of a public process it could become problematic, but in terms of an accounting for how the process works and what decisions have been made in the end, that could be public.

**Ms. Chantal Desloges:** Yes. I agree 100%.

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

Mr. Tabbara, you have about two minutes, because I have a motion I need to bring to the committee just before we close.

**Mr. Marwan Tabbara:** Thank you, Mr. Chair. I'll just get right to it.

We had opposition toward the IRB, and from the opposition, we said there wasn't enough money invested in the IRB. We've currently invested, I think, over \$70 million into the IRB, into training processes, changing the old system to a newer system that we have today.

We talked a little bit today about training and a complaints process. With this additional funding, do you think we can see better results through the training processes of IRB judges?

**Mr. Raoul Boulakia:** Training can be good. You can invest in training, but the hiring process in the first place has to be good enough that you're getting people who have a judicious attitude.

A person can sit through training all they want and then, at the end of the day, walk out of training and keep doing the same thing. If we don't improve the hiring process and if we don't have a reasonable complaints process, nothing's stopping people from attending as much training as they're given and not absorbing it.

•(1255)

**Mr. Marwan Tabbara:** You've filed a complaint with the IRB on a particular judge. Did you follow up on what happened to that particular judge?

**Mr. Raoul Boulakia:** I just got a letter that the complaint won't be decided because the board member is no longer with the IRB.

**Mr. Marwan Tabbara:** There was no follow-up on what happened.

**Mr. Raoul Boulakia:** No. It's closed.

**Mr. Marwan Tabbara:** That's what you're saying we need to look at with some of these appointments. They're appointed to a position for a number of years. Maybe there should be some checks on them five or six years down the line. Am I correct?

**Mr. Raoul Boulakia:** If there's a complaint, yes, I think it should be resolved.

**Mr. Marwan Tabbara:** Okay.

**The Chair:** Thank you very much to the witnesses.

I don't want to lose the committee's attention, because I have one little piece of business I need to do today, and it's in respect to our study on Atlantic immigration.

The report that was presented in November had a mistake in it. On page 45, the committee describes a program called the "Talent Beyond Borders Initiative". On February 28, we received a letter

from them saying it's called "Talent Beyond Boundaries". They would like that corrected.

As you know, once we've tabled it, a report becomes the property of the House, so I need a motion passed here to get all-party agreement to change that and to have that in the House. The motion would be:

"That the Chair be instructed to seek the unanimous consent of the House to modify the Fourteenth Report of the Committee presented on Thursday, November 9, 2017, to substitute the name of the organization "Talent Beyond Borders" by "Talent Beyond Boundaries".

(Motion agreed to)

**The Chair:** The second thing is we are about to start....

For this study, I'm just going to tell you that if we're putting in some requests, I'm going to try to do a little thinking about the requests you've asked for. On Tuesday of next week, I'll come back with a list of the requests. There have been a few of them. I want to make sure we get them clarified. Some may require a motion and some may not.

We had hoped to finish this study by next Thursday. I am concerned that if we are asking for this amount of information, we're going to need a little longer. That's just to give you a little heads-up.

**Mr. Gary Anandasangaree:** Is Thursday a sitting day for us?

**The Chair:** I had intended to make Thursday a committee day—yes, I'm a hired taskmaster—because that was the day we were going to finish this study.

We were going to do an hour of the last witnesses and an hour of instructions to the analysts. My sense after today is that you're asking for a bunch of information that may need to go beyond the break week anyway.

I just want to ask the committee if you have a desire to meet next Thursday, which is going to be a Friday schedule, or would you prefer not to have a meeting on Thursday?

Go ahead, Mr. Tilson.

**Mr. David Tilson:** Mr. Chairman, Thursday is a Friday schedule.

**The Chair:** It is.

**Mr. David Tilson:** As well, we would be sitting during question period.

**The Chair:** The whips have suggested we could meet from 12 to 2 if the committee desires to meet.

**Mr. David Tilson:** I have no desire to meet. I think we should meet the following Tuesday.

**The Chair:** We have two weeks of break, but just—

**Mr. David Tilson:** Well, then, whatever.

**The Chair:** —for the committee's awareness, it means that we may not get this study done, then, on the Thursday. Okay?

I'll take that under advisement. You know that it's at the call of the chair, but I am hearing the nodding off of the committee.

**Ms. Jenny Kwan:** I would like to sit.

**The Chair:** You would like to sit.

**Ms. Jenny Kwan:** I'm here anyway. I can't go.

**The Chair:** That makes two of us, but we'll see how we do.

Last, I think right now we have a date of Thursday, March.... I'm actually going to hold off on this last recommendation regarding witnesses for our settlement study, because this may now be a little premature, given that this study is going to take another week.

Just to give you advance notice, we are going to need your witness suggestions within a couple of weeks for the settlement services study, but I think today is premature to give you a date for that, because the other study is going to go a little longer. Stay tuned. I will take into consideration your advice about next Thursday.

Go ahead, Ms. Kwan.

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

Given the wealth of information that we've received and that there's some contradictory information, I wonder if the committee may want to consider at some point—not at this moment—having the officials back at this committee for this particular study. I just want to table that for consideration. I'm not moving it as a motion.

•(1300)

**The Chair:** It's already in my mind.

I think I'm going to sit down with the analysts to go over where we're at. We may even need a summary of evidence.

I think I am going to be asking for a summary of evidence. Does the committee agree with that?

**Some hon. members:** Agreed.

**The Chair:** Maybe after our Tuesday meeting we'll get a summary of evidence so that we can look at those contradictions, and then we can have a better look at what we need to get.

Go ahead, Mr. Anandasangaree.

**Mr. Gary Anandasangaree:** I would say invite the PCO as well.

**The Chair:** Yes. I think we need some IRB and we may need some PCO.

Let's just hold that until we get the summary of evidence. I think those are always helpful because we have it all in one place.

Is there any other business? No?

The meeting is adjourned.

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