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# Standing Committee on Citizenship and Immigration

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EVIDENCE

**Tuesday, March 27, 2018**

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**Chair**

**Mr. Robert Oliphant**



## Standing Committee on Citizenship and Immigration

Tuesday, March 27, 2018

• (1100)

[English]

**The Chair (Mr. Robert Oliphant (Don Valley West, Lib.)):** I call to order this 103rd meeting of the Standing Committee on Citizenship and Immigration.

Thank you to our witnesses. As you've probably been told, we are expecting that a vote is going to happen. Bells should start ringing around 11:15. What I would like to propose to the committee is that we hear the witnesses and try to get the 21 minutes of witness testimony in. The clerk has asked for a bus to be available to take us after that, so we could go. We still have lots of time, because it's a 30-minute bell.

I also wonder about the witnesses. We have a second panel beginning at 12:00 when we return. I'd like to hear from the second panel of witnesses but then have questions for all six witnesses, if you're able to stay for that second hour from 12:00 to 1:00. We'll play that by ear as we go. We're not quite sure what will go on in the House, but we'll give this a try.

I'm going to suggest that we begin with Mr. Rehaag. Could you speak for seven minutes? Then we're going to go to Mr. Powell for seven minutes, and then to Mr. Tomlinson and Ms. Jordan. They will be sharing seven minutes.

Go ahead, Mr. Rehaag.

**Dr. Sean Rehaag (Associate Professor, Osgoode Hall Law School, York University, As an Individual):** Thank you.

I'm a law professor. I teach at Osgoode Hall Law School at York University. My area of specialization is refugee law. I focus on empirical studies of refugee law, trying to understand what explains outcomes in the refugee determination process.

I've been working with data about refugee decision-making that I've obtained from the Immigration and Refugee Board through access to information requests. I've made that information publicly available over the last 10 years. I've undertaken a statistical analysis on that data and have published articles about factors that explain outcomes in refugee adjudication, including extra-legal factors such as who the lawyer is, what the claimant demographics are, and who the decision-maker is.

Today I'm going to focus on refugee adjudication because of the stakes that are involved in these types of decisions, but one can make similar kinds of arguments about other areas of immigration decision-making. Just as a reminder, as you all know, if we get

refugee decisions wrong, people can be sent back to countries where they face persecution, torture, or even death, so the stakes are incredibly weighty.

The basic problem I want to talk to you about is inconsistent decision-making at the refugee protection division, and I want to give you an extreme example.

There was a decision-maker, David McBean, who from 2008 to 2010 decided 174 cases at the refugee protection division. He denied every single claim that he heard during this period, even though the average recognition rate at the Immigration and Refugee Board during the period was 50%. I did an access to information request to get all of his reasons for his decisions and I had a law student go through those and code various data points. It turned out that the decision-maker denied most of the claims on the basis of credibility—that is, he just didn't believe the claimants. In fact, in only one out of the 174 cases did the decision-maker explicitly say that he believed the claimant, and in that case he was actually sitting on a panel with two other decision-makers. He regularly used the phrase “I simply do not believe that any of the significant alleged events actually happened”, and therefore the claim failed.

The question I wanted to talk to you about today is this: what do we do if there's a refugee adjudicator at the RPD who simply does not believe refugee claimants? This is an extreme example, and it's a few years old now, but the problem of inconsistent decision-making continues. Based on data I obtained for 2017, just to give you an example, there's one decision-maker, Wittenberg, who granted claims 19% of the time, and another decision-maker, Bousfield, who granted claims 97% of the time. That's 20% on the one hand and 97% on the other hand. Those are huge variations. There are a variety of reasons that might explain this—country of origin and other factors—but when I do the analysis on the data, even when I account for those factors, massive variations persist.

One can make the same point about the refugee appeal division. Again, according to the data that I obtained for 2017, one decision-maker, Bebbington, granted appeals of refugee decisions 8.2% of the time; another decision-maker, Côté, granted appeals 61% of the time. That 8% versus 61% is, again, a huge variation. I could run through similar statistics at the Federal Court level.

We see here that there is a problem. The problem is subjectivity in decision-making in refugee adjudication. Essentially, outcomes and claims hinge in part on the luck of the draw.

What do we do? Well, I want to say three things that we shouldn't do. One is we should not remove decision-making from the RPD and move that to another location internal to the department, for example. Subjectivity can't be fixed that way. My data shows that across institutional contexts, subjectivity persists. I think it's really important that inconsistent decision-making not be used as a reason for moving decision-making from the IRB to other bodies.

Second, I don't think it's time to revise the complaints system right now. I'm not sure the complaints system can actually deal with the subjectivity. More importantly, the complaints system is actually quite new. It was brought into place in December. I think we need to give that system a bit of time to run its course before we make further changes.

• (1105)

The third thing we should avoid doing is replacing political appointees, specifically at the refugee appeal division, with political appointees of another stripe. When a government comes in that is focused on getting tough on border security, you get one type of appointee, who doesn't believe claimants; then another government comes in that is more generous towards refugees, and you get a different type of political appointee. What we need to do is depoliticize the process.

That's what we shouldn't do. What should we do? First, depoliticize the process. Make appointments merit-based, not based on political patronage. My studies have shown that decision-making improved at the RPD when we got rid of the Governor in Council appointees. That's not because civil servants are better than Governor in Council appointees; it's because the politics was largely taken out of the RPD appointment process.

The second thing that I think we ought to do, and I'm going to end with this, is provide more guidelines and better training for decision-makers. Specifically, we should provide better training on the issue of credibility. Credibility adjudication in refugee decision-making is incredibly difficult. Credibility assessments are unreliable. People overestimate their ability to reliably detect whether people are telling the truth. What we really need to do is encourage decision-makers to approach credibility assessments with some level of caution. The question should not be, "Do I believe the claimant?" The question should be, "Could any of my colleagues reasonably believe the claimant?" If yes, the claimant should be believed.

My recommendation is guidelines and training to discourage decision-makers from making negative credibility assessments and to encourage them to give claimants the benefit of the doubt.

Thank you very much.

• (1110)

**The Chair:** I need to end you there. I'm going to be a tough chair today.

Go ahead, Mr. Powell.

**Mr. Kimahli Powell (Executive Director, Rainbow Railroad):** Good morning.

Sorry, I'm currently in Geneva, so my time's a little skewed. I'm actually here in Geneva as a member of the International Lesbian and Gay Association. Members of the community all across the world

gather here to deal with issues related to the LGBTQI community, and we just received a briefing on the crisis situation affecting persecuted LGBTQI people in Egypt. I'll speak to that in a second.

My name is Kimahli Powell and I'm the Executive Director of Rainbow Railroad. Founded in 2006, Rainbow Railroad is an international-focused charity based in Toronto, Canada, with a mandate to help LGBTQI people get to safety. We respond to urgent requests for help all around the world from individuals who have experienced, or who have been threatened with, physical or sexual violence due to their sexual orientation or gender identity.

I know many of you at the committee know this, but I do need to remind you that approximately 72 countries around the world have anti-homosexuality laws and many more have laws that discriminate on the basis of sexual orientation or gender identity. In too many countries around the world, LGBTQI people are routinely arrested, denied basic rights, tortured, and even murdered. While we know there are individuals in these countries trying to provide a safe haven and environment where people can survive, for others who are facing ongoing daily persecution, access to life somewhere else can be the difference between life and death.

That's where Rainbow Railroad comes in. We provide support to LGBTQI individuals seeking safe haven from state-sponsored violence. This includes airfare, financial support, and travel costs. Outside of that, we provide information on how people can make a claim through the UNHCR resettlement process or through an asylum claim.

Since our founding in 2006, we've helped fund travel for over 400 people. We helped 200 people in 2017 alone. This included support and resettlement for nearly 60 individuals last year who escaped state-sponsored violence in Chechnya. While we're proud of those numbers, the number of requests continues to increase. There were nearly 1,200 requests in 2017, and the number is increasing every day.

I mention this in the wake of this testimony, because these requests come on an alarming spike of mass detention and persecution of LGBTQI persons in various countries. In 2017 alone we received detailed reports on the ground about torture in Azerbaijan, flogging and raids in Indonesia, arrests in Tanzania, and disturbing targeting of LGBTQI people in Egypt following an act of solidarity at a concert, as I just mentioned.

We stay connected to these news stories while receiving the requests daily. Our work involves an extensive process of identifying and reviewing cases of individuals who seek our help, including working with many volunteers on the ground and dedicating staff resources.

In sponsoring individuals to the Rainbow Refugee assistance program, Rainbow Railroad and other allies across the country have gained significant experience in understanding the issues concerning LGBTQI refugees. It is this understanding that informs this testimony around the Immigration and Refugee Board's appointment processes and training for board members.

What is consistent about the people we help is that they have fled horrific persecution and spent many years hiding. As facilitators to their journey to safety, we've had to guide them through the fear and trauma of leaving their families and communities, many of whom are the actual perpetrators of this violence. We also try to provide support to guide individuals through their application process.

In Canada these individuals deserve to have their claim heard by decision-makers who not only respect their identity but who can ensure a level of openness for them to speak about their past trauma. As such, there's an added layer of sensitivity that is required in adjudicating these claims. However, an increasing number of accounts from individuals who have been refused asylum claims demonstrate some systematic problems with the IRB's adjudication process.

There's a long history of decision-making that draws upon problematic stereotypes to make such decisions, especially in determining whether claimants are "really gay". This includes assumptions about looking and acting like members of the LGBT community, evidence of self-identification, and over-zealous attempts to reject applicants in the guise of protecting against fraudulent claims, although we know that the number of claims that are actually found not to be credible based on SOGIE stats is quite low.

• (1115)

We applaud the first-ever SOGIE guidelines that help board members make informed decisions. However, there's still more work to be done. In consultation with our allies, we want to present a few recommendations to the standing committee.

We need multi-day regular training for IRB members that involves individuals with lived experience as refugees and newcomers. We demonstrated in consultations with IRCC that civil society has a role to play and we want IRB to continue to partner with civil society members, agencies, lawyers, and particularly newcomers who have especially developed expertise to further establish clear guidelines and best practices.

We want to make sure that the IRB focuses on opportunities for evaluation of feedback and make sure that they dedicate adequate resources to training and development. Our organization helps provide a pathway to safety and has hundreds of volunteers facing persecution, and there's much at stake for them as their fate lies in the hands of members of the IRB board.

As my colleague mentioned earlier, special minority refugee claims are some of the most sensitive and difficult cases that people look at. We need to make sure that IRB members have the tools to make properly informed decisions that are empathetic and informed on the unique experiences of LGBTQI members of the community.

Thank you.

**The Chair:** Thank you.

Next are Mr. Tomlinson and Ms. Jordan. Would Mr. Tomlinson like to go first? You have 10 minutes.

**Mr. Maurice Tomlinson (Senior Policy Analyst, Canadian HIV/AIDS Legal Network):** I am a new immigrant to Canada and I lead the Canadian HIV/AIDS Legal Network's LGBTQI initiative. I'm privileged when compared to many other LGBT migrants and refugees to this country. Coincidentally, tomorrow I sit my Canadian citizenship test here in Ottawa. I am a gay Jamaican, and the path to this glorious day was possible because of my Canadian marriage to my husband, Tom.

While our marriage led to multiple death threats upon my return to Jamaica, forcing me to flee to Canada, I did not have to endure the challenges of an Immigration and Refugee Board hearing, which so many already traumatized individuals find dehumanizing and unjust.

Approximately 400 million LGBT persons live under the threat of criminal imprisonment, violence, or even death. The IRB faces thousands of refugee claimants each year who are trying to escape persecution in their home country simply because of who they are or who they love. While strides have been made to improve the cultural sensitivity of IRB members, more could be done to improve their cultural competence.

LGBT claimants report that the IRB still requires—

**The Chair:** I'm afraid I need to interrupt you for one moment. We have bells ringing, and I need unanimous consent from the committee to continue for six minutes while we hear the rest of the testimony, and then we'll break. That gives us 24 minutes.

Are we all agreed?

Okay. Thank you.

**Mr. Maurice Tomlinson:** LGBT claimants report that IRB still requires excessive evidence of self-identification. For example, in one case, the IRB spontaneously asked to examine a claimant's cellphone for proof of communication on a gay relationship mobile app. In another case, social media pictures with opposite-sex individuals were seen as disproving a claim on gay sexuality.

These experiences are both humiliating and wrong-headed. In countries that still criminalize non-heteronormative sexualities and gender expression, it is often too risky to self-identify, and having an opposite-sex partner is often a mask, or a perceived cure, for homosexuality.

IRB members have also requested police records as proof of homophobic attacks. However, LGBT people in many countries distrust the police. When they do report homophobic attacks, they can be implicated in illegal same-sex activity.

There's also the unfounded belief that Canada's LGBT refugee process is the easiest way to get asylum and is therefore being abused—that is, if you say you're gay, you get to stay. However, to date the IRB has only found 3% of LGBT refugee claims to lack credibility. This is hardly an epidemic of abuse.

To ensure that IRB officers improve their cultural competency and fairly assess LGBT refugee claimants, we therefore recommend three things.

The first is multi-day LGBT sensitivity training for IRB members that engages individuals from refugee-sourced countries who have lived experience. The second is meaningful dialogue between the IRB and agencies and lawyers serving LGBT refugees to establish clearer guidelines and expectations. The third is an opportunity for claimants and/or counsel to provide post-hearing feedback that can improve IRB members' questioning and not adversely affect claims.

Canada cannot and must not compound the worldwide discrimination against LGBTQI people while simultaneously touting our human rights track record. The time is now for meaningful IRB reflection and reform.

Thank you.

• (1120)

**The Chair:** Thank you.

Welcome back, Ms. Rempel. You've been missed.

**Hon. Michelle Rempel (Calgary Nose Hill, CPC):** Oh, I'm not so sure about that, but thank you.

**The Chair:** Ms. Jordan, go ahead.

**Dr. Sharalyn Jordan (Board Chair, Rainbow Refugee):** I'm Sharalyn Jordan, Rainbow Refugee chair and assistant professor in counselling psychology at Simon Fraser University.

In a world where violent homophobic and transphobic hate persist and may be on the rise, Canada must live up to its promise to be a place of protection. For 17 years Rainbow Refugee has supported refugees who face persecution of their sexual orientation, gender identity, or expression. We applaud the commitment to LGBTQ refugee protection demonstrated by members of this standing committee from all three parties in its June report "LGBTQ+ At Risk Abroad: Canada's Call to Action" and by undertaking this study.

All refugee hearings are complex, but SOGIE decisions present distinct challenges for both refugees and adjudicators. Claimants who have spent their lives hiding to survive, and containing memories, are required to prove a highly stigmatized identity and to recount memories steeped in shame and trauma. Adjudicators report that these are some of the hardest decisions they face.

For over a decade, I've been observing hearings. I've witnessed a wide range of approaches, some sensitive and skilful, some brusque and bureaucratic, and a few deeply problematic. As a psychologist, I know that respect matters, not just because it's what Canadians expect from their government officials but also because respect helps trauma survivors stay clear-minded and present enough to give accurate testimony. I've been pleased to see significant improve-

ments in the respect and fairness of proceedings over the years. There's still work to be done.

Last May, Rainbow Refugee enthusiastically welcomed the release and implementation of the SOGIE guidelines. Legal scholar Nicole LaViolette had called for these back in 1996. We had been asking for them since 2001. We were very proud to contribute to several rounds of consultations, and I was honoured to design and deliver training alongside lawyer Nicholas Hersh.

Anecdotally, I can tell you that this work is already making a difference. The SOGIE guidelines specifically direct adjudicators not to rely on western stereotypes, to think intersectionally, and to consider impacts of stigma and trauma. I'm seeing board members use the language and concepts of guideline 9 in the hearing room. This is promising, but there are further steps needed to ensure that respect and fairness are consistent.

Follow-up training is needed. Board members need to hear from people with direct experience. They need practice and feedback on how to question; the language they use; their analysis, particularly their credibility analysis; and their ability to recognize impacts of trauma. The IRB needs to evaluate how SOGIE guideline 9 is being operationalized, and its relationship with guideline 8 on vulnerability, as well as guideline 4 on gender and women.

In terms of selection, it's critical that new hires be screened for their ability to be both fair-minded and interpersonally respectful with women and LGBTQ claimants.

Lastly, I want to highlight a problem that undermines fairness and respect in the hearing process, a problem that may be just on the edge of the scope of this study.

In the western region, minister's representatives intervene in 30% to 40% of hearings, a much higher rate than in the rest of the country. These interventions change the tone dramatically, from neutral and respectful to adversarial. I've seen representatives present highly questionable forms of evidence and use belittling questions. At a minimum, minister's representatives should be trained on SOGIE guideline 9 and held to the same standards of respect as the IRB. I urge the committee to recommend, as part of this study or a future study, an examination of the role and conduct of the minister's representatives in IRB proceedings.

In summary, significant strides toward fairness and respect for LGBTQ refugee claimants have been made in recent years, but to fulfill Canada's commitment it's critical that the IRB be resourced to meet this high standard of consistent respect.

Thank you.

• (1125)

**The Chair:** Thank you, Ms. Jordan.

We're going to suspend the meeting now. We have almost 23 minutes to get to the vote. There are two buses waiting for members down at the door on Wellington Street. We will resume the meeting as quickly as possible, please.

On coming back, we will begin with the 12 o'clock panel. We'll ask any of the witnesses from the 11 o'clock panel to stay, and we'll attempt to ask questions to anybody at that point.

The meeting is suspended.

- \_\_\_\_\_ (Pause) \_\_\_\_\_
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- (1205)

**The Chair:** Could I have members take their seats, please? We're going to recommence.

Looking at the clock, I note that we are going to have time for the three seven-minute presentations. I had looked at the possibility of doing five-minute rounds, but that won't help. I think we're going to keep to the seven-minute rounds so that the opposition has their full amount of time. We'll see how we're doing right at one o'clock. If the committee wants a couple of two-minute rounds to get in any follow-up questions, we might entertain that for about three or four minutes afterwards.

We thank the witnesses who have remained with us, especially those in Geneva and Vancouver.

We're going to our panel. We'll begin with Ms. Sapru.

- (1210)

**Ms. Preevanda Sapru (Lawyer, As an Individual):** Thank you for inviting me.

My name is Preevanda Sapru.

I have listened to the presentations made by Ms. Roushan, Ms. Hirji, Ms. Desloges, and Mr. Boulakia. I fully agree with the recommendations made by my colleagues.

First of all, it is essential to have a well-functioning, fair, and formal administrative tribunal that evaluates and determines refugee claims. We are not advocating for the dismantling of the IRB at all. It would be a denial of fundamental justice to deprive refugees of the right to have an oral hearing. Despite a serious critique of the RPD as an organization, it is paramount to have an administrative quasi-judicial body that determines refugee status. To dismantle this organization would be a waste of close to 30 years of rich legal jurisprudence that is the envy of the international human rights community, as Canada has been and continues to be one of the leaders in protecting the most vulnerable people who are fleeing persecution based on one of the convention grounds. To change the nature of the quasi-judicial or administrative tribunal to that of a paper review such as a pre-removal risk assessment or a humanitarian and compassionate consideration would take away the cornerstone of the right to a fair hearing.

I've been practising as an immigration and refugee lawyer for the last 20 years before the IRB and the Federal Court of Canada. More than 30% of my clients are victims of gender violence, while others faced persecution based on sexual orientation. I also represented a number of unaccompanied minors. I have seen the culture of the RPD change from being a more open, honest, compassionate administrative body to one that systemically creates trauma, stress, anxiety, and depression for the most vulnerable refugees. In doing so, the RPD ignores its own rules, procedures, and guidelines.

Besides the problems that have already been enunciated about the particular board members and the hiring process and the complaints process, IRB as an institution is systemically creating barriers to justice by routinely denying refugees their procedural rights, such as the right to interpretation. Even when there are apparent problems with interpretation, the members plough through the hearings, forcing people to go to the refugee appeal division and Federal Court. There are long delays in processing. In addition, there are problems with the cost.

The board has been creating policies that severely limit claimants' procedural rights, such as a limitation on timelines to file evidence and a limit on the disclosure. This is a huge issue for the claimants, as it impacts their right to procedural fairness.

The other thing the board has been doing routinely is violating rules of fundamental justice when they fail to designate vulnerable persons and they fail to provide adequate accommodation to the vulnerable people. Ms. Hirji and Ms. Roushan both talked about their clients and how the rules of fundamental justice in their particular cases were violated.

In addition, the board routinely violates its own rules and procedures by hiring inexperienced and sometimes incompetent board members who have no background in refugee law, which forces refugees to proceed with expensive and time-consuming appeals to the RAD and the Federal Court. They also fail to properly evaluate the performance of problematic board members and fail to create a transparent hiring policy.

There is much that needs to be done by the IRB to meet its own objectives. The most important is to meet its international commitment to the refugees that the RPD is mandated to protect.

Besides the recommendation of previous speakers, I would go a step further and ask this committee to look at the IRB as an institution, and not just at the decision-makers. Unless the culture of the organization changes, hiring a few decision-makers would not have any impact to make IRB a functional organization.

This committee needs to look at the organizational structure. I ask this committee to look at the makeup of the organization and who's running it in March 2018. All the major players and the administrators at the IRB are white, privileged men. In my opinion and the opinion of those who appear before them on a regular basis, these are people who are absolutely out of touch with the reality of what happens in a refugee hearing.

- (1215)

They are the ones who hire, create policies, and make major administrative decisions. This committee needs to ask the minister to tell them the last time a woman or a man of colour led this organization. I believe it was in 1999. Interestingly, some of the most progressive IRB policies were created at that time; since then it has become a stagnant organization.

The IRB deals with people fleeing hundreds of countries of different cultures, of different norms and ways of being and behaving. There needs to be an equal representation of different cultures—at the organizational level, not just among the board members—so that there is an understanding and empathy to deal with the people they are dealing with on an ongoing basis.

This committee needs to look at whether the administrators, not just the board members, have an expertise in international human rights and in administrative and refugee law, because they are the ones who eventually will create policies that individual members have to follow. Administrators' knowledge and skill would percolate to the RPD members, as administrators would be sure to hire decision-makers who fully reflect the value of the IRB. Their knowledge and understanding of such concepts will lead to policies that are beneficial to the claimants and make it easier and less traumatic for the refugees to testify.

Right now the board is in the process of creating new policies limiting the disclosure rights of refugee claimants and for providing disclosure. The IRB administrators need to understand where these people are coming from, whether they would have access to documents, and whether they would be able to get the documents in time. To put limits on the procedural rights of the claimants in such matters is a subject that needs to be looked at by this committee.

**The Chair:** I need you to draw to a close.

**Ms. Preevanda Sapru:** I would ask the members of this committee to question RPD members past and present, as well as the staff of the RPD, to understand how the board functions, the reason decision-makers such as Cassano, Sterlin, McBean, and others—terrible decision-makers—continue to be retained by the board year after year, despite serious complaints against these outliers.

**The Chair:** I need to cut you off. Thank you.

Go ahead, Mr. Brouwer.

**Mr. Andrew Brouwer (Vice-President, Canadian Association of Refugee Lawyers):** Thanks very much.

Thank you for the opportunity to speak with you today about this important study.

I'm here for the Canadian Association of Refugee Lawyers, which is a voluntary association of about 300 refugee lawyers, academics, and law students across Canada.

I'd like to start by acknowledging and thanking my colleagues from the private bar, who have already appeared before you and brought this issue to national attention. It takes an awful lot of work to bring forward a complaint before the board, especially under the old system, and it was their work that has really raised the profile and inspired all of you to sit together to look at how we can solve some of the problems with the board.

There are three issues that I'd like to touch on briefly in my opening remarks.

First, while there are certainly valid concerns about aspects of the way the IRB functions, as we've just heard from my colleague, and while the board can certainly be improved, we do need to be very, very careful not to throw the baby out with the bathwater.

Second, the IRB has a brand new complaints process. Again, while it can certainly be improved, it has not yet been tested. In that respect, the timing of this study is less than great, and I would recommend that you reconvene in a year to look at what has happened. I'll talk about that in a moment.

Third, the appointments process is connected to the question of training and to complaints. The appointments process could certainly be improved, and we have a number of suggestions.

On the first issue, the IRB enjoys a global reputation as a model of refugee determination. The central quality that's led to that reputation is its expertise and its independence from government. As an expert quasi-judicial tribunal, the IRB manages in large measure, though not completely, to avoid the numerous political traps and pitfalls inherent in refugee determination. After all, a core element of refugee determination is determining whether other states are persecuting their own citizenry, and it also involves frequently condemning the actions of other states in their human rights violations. By leaving this determination to an independent tribunal on a case-by-case basis, for the most part we avoid turning refugees into political footballs to be kicked around or protected, depending on the proclivities of the government of the day. Also, we avoid a situation in which other countries raise diplomatic concerns that the Canadian government is interfering in their domestic affairs by denouncing their human rights violations. Therefore, the independence of the tribunal protects both refugees and the Canadian government.

On the complaints process, there have been serious and very long-standing problems with the way the board has dealt or not dealt with board members whose conduct falls below the standard that we'd expect of people holding the fate of vulnerable people in their hands. It's because of this problem that CARL and others, such as the Canadian Council for Refugees, have been calling for a new complaints procedure. The IRB heard our call and did develop a new process. We are not saying it is perfect, as it's certainly not, but it is new and it is much better than what we had before.

We do believe that there are some critical tweaks that could be implemented to make it more transparent and independent. For example, we could make it mandatory to report annually on the nature of the complaints, the steps taken, and the outcome of the complaint, obviously without disclosing identifying information.

Also, we could improve independence by amending section 5.5 of the policy to give the director of integrity more power, including the power to refuse, refer, or accept a complaint, while retaining the chair's power to accept and to refer to an external investigator where the chair thinks there is a valid complaint that the integrity director didn't think was valid.

There also needs to be a range of clear consequences for bad behaviour, from training through to removal from any hearing or decision-making role to outright termination.

However, the new complaints procedure does represent a very significant step forward for the board, and it's one that needs to be tried before being rejected outright, in our view. It's also a process that was within the board's jurisdiction to create and that avoids undue interference with the independence of decision-makers.



Other models that have been discussed here are well worth investigating, and I'm hopeful we'll have at least a couple of minutes to talk about some of them. However, for the most part, we would note that some of the other models that have been discussed here would require legislative change or amendment, as well as having significant budget implications. Neither of those was within the jurisdiction of the IRB itself to implement.

• (1220)

However, as we all know from the cases in the media, this is not an issue that either the board or anybody else can afford to put off for legislative amendment. Action is needed—was needed and is needed—and it's needed right now.

In our view, it's important at this point to give the new process a chance to prove itself, and we would commend this committee to come back in early 2019 to assess the outcome.

Finally, on the issue of appointments and training, we think there is certainly more that can be done and must be done to protect the vulnerable people who end up before the board. For appellate bodies of the RAD—the IAD as well as the immigration division—given that the majority of people who appear there do not have a right of appeal to the IAD, it's important that members of those divisions have legal expertise and subject matter expertise.

In addition, candidates should be screened for their understanding of discriminatory conduct, including their understanding of appropriate behaviour in the hearing room, and conduct related to sex, race, culture, sexual orientation, gender identity, and gender expression.

Training and complaints are critical, but they only go so far. Who gets appointed and how we deal with bad conduct are critical components to make this board function the way it needs to.

An idea that we think should also be explored is partnering with academics for ongoing training, roughly similar to that which is provided to judges through the National Judicial Institute, and again, CARL. We have many academic members who are experts in refugee law who would be very happy to work with this committee to develop protocol.

That's it. I'm hoping for an opportunity to discuss some of these options with you during the Q and A.

Thank you.

• (1225)

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

Go ahead, Mr. Tutthill.

**Mr. Michael Tutthill (Executive Director, Rainbow Resource Centre):** Good afternoon, members of committee.

Rainbow Resource Centre has a 45-year history in our community. We've been engaged in education for better equity and inclusion for lesbian, gay, bisexual, transgender, two-spirit, and queer people in business, education, and social and government services for most of our existence.

We've been seeing newcomers access our counselling program for the last dozen or so years, and in the last nine months we've seen 97

unique clients who are refugee claimants or who require settlement services.

All of us—those in this room, members of the IRB, and everyone in the world—has a gender identity. This is how we see ourselves—as male, female, both, neither, gender queer, two-spirit, or something else entirely—and each of us has a sexual orientation, be we straight, gay, lesbian, two-spirit, pansexual, queer, or again something else entirely. Are we confused yet?

This is why training is so important when working with gender and sexual minority people. Our identities and experiences are as unique as each individual.

Each of us also finds ourselves in a geographical, social, and political context that celebrates some gender identities and sexual orientations and marginalizes others. How we understand our gender and sexual identity is unique and personal to each of us, but shaped by the family, community, and society we find ourselves in. My experience growing up as a gay man in Brandon—Souris in the 1980s and 1990s will be quite different from that of a south Asian gay man growing up in Vancouver East today, or that of a lesbian woman recently arrived from Nigeria with her children. In many cultures worldwide, including here in Canada, there are sexual and gender minority identities that do not fit our western ideas of being LGBTQ. I ask you to consider this, because it may not be something that you have thought about. I also ask you to consider your own sexual orientation and gender identity within your own context, because this is where good adult education starts: with the learners' experience.

I would encourage IRB to follow sound principles of adult education when training members. The need for training around sexual orientation and gender identity and expression is clear. Chairperson's guideline 9 is a great foundation to understanding the complexities of SOGIE realities. I would encourage the department to consider training that is more than one day and is ongoing.

The realities in communities of LGBT2SQ+ Canadians are dynamic and constantly changing. This is also the case with SOGIE minorities around the world. I would encourage training for IRB members that considers the realities of refugee SOGIE minorities but also the reality of Canada's LGBT2SQ+ communities and how they are the same or different internationally. It is not uncommon in our experience for IRB members to ask why a lesbian has children or is married to a man; well, it's for the same reason that a lesbian in Canada may have children or that a gay man is married to a woman.

Many of our transnational realities are similar, yet many are different. Much of what the IRB is looking for in SOGIE cases is someone to prove their identity as LGBTQ, yet if one's behaviour is the reason for persecution, we need to be looking at the persecution faced by the individual regardless of their identity.

Often in SOGIE cases IRB members are looking for inconsistencies in statements. Inconsistencies of SOGIE claimants occur as a result of people feeling unsafe. Most in our communities are constantly assessing our safety and deciding who to come out to based on a sense of safety and relevance to the discussion at hand. Imagine being held in a U.S. detention centre, often with the general inmate population, and asked to state your basis of claim in public. Would you be comfortable disclosing that you are LGBTQ+ in such an environment?

I was fortunate to have the opportunity to speak with a community member whose hearing took place just before the IRB SOGIE guidelines were released. As a community supporting this person, we were horrified by the invasiveness and inappropriateness of the questions asked. The claimant said to me that some questions are triggering and bring back sudden sadness, thoughts, and flashback memories. These can lead to loss of focus, memory loss, mental imbalance, and so on. She said that at this point the claimant is likely to be perceived as not telling the truth.

We ask for IRB training to be trauma-informed and to consider how the hearing process itself can be retraumatizing for claimants. It is essential that IRB members understand that the chairperson's guidelines on SOGIE claimants, gender-related persecution, and vulnerable persons are interrelated and may all apply to an individual case.

While the committee will hear from experts, we strongly encourage you to engage those who are experts in SOGIE claims, those who are seeking Canada as a refuge due to persecution based on their sexual orientation and gender identity and expression. It is integral that these voices be heard by this committee, and even more important that they be engaged in the development, delivery, and evaluation of IRB training related to sexual orientation and gender identity and expression.

• (1230)

Thank you.

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

I invite Mr. Tomlinson and Mr. Rehaag to come to the table as well.

We now have time for one round of questioning. We're going to begin with Ms. Alleslev for seven minutes.

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

You've all made comments on how critically important the training process is. I'm wondering whether you've had an opportunity to review the training and if you could give three key recommendations on what needs to be improved in the training to ensure that we have more comprehensive training. I think someone mentioned that we probably want follow-on training as well, so that it's not a "train at the beginning and forget" situation but a "come back to it afterwards" situation.

Just give me briefly what you think those recommendations should look like so that we'll be better informed to determine whether or not the process is working.

**Mr. Maurice Tomlinson:** I have spoken with IRB members, and they've described the training. I have not seen the material. I was advised that it is a three-hour session and that they're given some material and are given a lecture.

My challenge is that I police LGBT sensitivity training in the Caribbean with my husband. We know that the culture shift we're asking some persons to make is not necessarily malicious, but we're asking them to make a culture shift, and that can't happen in three hours.

Just as an example, in the training we do when we train in the Caribbean, on the first day we don't touch on the subject of LGBT. We literally, as a gay couple, are teaching this course, but we don't tell them that we're a gay couple. He teaches policing, and I teach the human rights aspects.

Then on the second day, after they've spent a day eating with us, getting to know us, etc., we do the big reveal. That's when we get the questions: "Why don't you have the same last name?" or "Who is the top, who is the bottom?" We get those kinds of invasive questions, which are very inappropriate. We give them the space to ask because we know that for many people this is the first time they are getting that opportunity.

It's not so much for me the content, which I'm sure can be very quickly put together—you know, LGBT 101—but you have to hear from the persons who are experiencing the trauma why it can be like that.

**Ms. Leona Alleslev:** Do you go back afterwards, six months or a year later, to re-evaluate?

**Mr. Maurice Tomlinson:** Yes, we do. We have follow-up training. We've done this in seven countries so far and, funding permitting, we're hoping to do it in more.

**Ms. Leona Alleslev:** That's fantastic.

Does anyone else...? Mr. Powell, you briefly mentioned it as well. Can you give us some aspects of your training? Clearly this is something you have to deal with on a regular basis just to determine who would get funding.

**Mr. Kimahli Powell:** Yes, but I'm going to suggest that my colleague Sharalyn go first, because they're live before many more cases and have seen some shifts recently. I'll ask Sharalyn to go first, then, and I can comment afterwards.

**Dr. Sharalyn Jordan:** I was one of the people who designed and delivered the training. I requested a longer period of time than they were able to offer. Three hours is clearly not enough. What it does allow is to give people who are inclined to be sensitive the concrete tools to be competent about it. What it doesn't do is address the needed shift in attitude or values. Achieving that requires far more sustained training.

The elements I would add in future are far more participatory elements that would give board members an opportunity to practise formulating questions and conducting an analysis and getting immediate feedback.

**Ms. Leona Alleslev:** You mean essentially, then, case study-type, live-practice training?

**Dr. Sharalyn Jordan:** Yes.

**Ms. Leona Alleslev:** That's outstanding. Thank you.

I'm sharing my time with my colleague because we don't have a lot of time with you all.

**Mr. Marwan Tabbara (Kitchener South—Hespeler, Lib.):** My question is along the same lines as Ms. Alleslev's. She talked about the training process, but do we have a checkup on claims?

My first question will be to Mr. Rehaag.

You wrote about certain approvals and denials and certain judges having a higher rate of usage of the term “non-credible basis”. Do we have a checkup in the system of the judges who are making these claims?

•(1235)

**Dr. Sean Rehaag:** There's a challenge internally at the Immigration and Refugee Board in terms of responding to variations in recognition rates or in “no credible basis” declaration rates. That challenge is the one Mr. Brouwer raised, which is the importance of preserving the independence of decision-makers. One would not want to say that decision-makers have to hit a particular quota, such as being between 30% and 50%, right? You don't want to do that. You want cases to be decided on an individual basis.

I don't think it would be appropriate to have that kind of direct oversight. What you can do is the kind of training we're talking about in the SOGIE context, but you can do that in any number of contexts. I would suggest, for example, that the most urgent need is training and guidelines on credibility assessments, because that's where—in the SOGIE context, but also in all contexts—the decision-making is going wrong. That's the source of the really massive variations I talked about.

**Mr. Marwan Tabbara:** You talked in your testimony about part of the appointment process being to ensure that there are no political ties, no partisanship. As governments change, there may be different appointments, and you may need a system that's more neutral. Can you elaborate on that part of your testimony?

**Dr. Sean Rehaag:** Yes.

You don't want to have one government that has a particular view of refugee claimants appointing decision-makers who share that particular view, and then have a change in government that brings a whole different view on refugee issues and results in very different adjudicators being appointed. That creates unfairness, because outcomes in refugee applications should turn on the facts and on the law, not on who happens to be appointed as an adjudicator. You can look at models in which there is more deference accorded to experts and less of a role for political actors in appointment processes.

**The Chair:** Thank you.

Ms. Rempel is next, for seven minutes.

**Hon. Michelle Rempel:** Thank you, Mr. Chair, and thank you all for your testimony today. I found it really informative.

The challenges of the IRB are numerous right now. It's a system that's under a lot of strain and pressure for the reasons that we discussed today, but also because of the demand on the system. For us as legislators, right now the goal is to ensure that the question of humanitarian immigration writ large in Canada is one of how, not if, and getting the questions and the issues that you've raised today right is part of that.

Because of the vote, we don't have a lot of time today, so I'm going to just ask a series of questions. What I would hope is that you would provide written responses to the committee, just to save time.

When I review the testimony at this committee, the percentage approval rate comes up often as one of the key metrics we look at when deciding whether a judge is fair. It's “Well, they've approved so many from here or from there.” I find that a bit of a false metric that could be spun one way or the other. It seems to me that the metric we need to be looking at is whether we have a clear and transparent framework that can adequately address the situation of persecution of a person in the context of their national situation at any given time, and then how we ensure that the framework is kept relevant and fresh, given that a national situation might change over time. From there, we need an audit process to see whether the system is consistently looking at that process in the right way.

I agree with the problem of political appointments, but it's not confined just to this particular committee. You could argue that it's the Supreme Court or any judicial body. What I would like to go forward from, hopefully from a non-partisan perspective, is knowing if we have that framework right. Do we have the criteria by which people are making decisions set out in such a way that we can audit it, and then are we feeding in the information that we might get from Global Affairs or other stakeholder groups, or even who those stakeholder groups should be, in constantly looking at the national context?

We have members of the LGBTQI community here who have looked at that particular issue, and I couldn't agree more. In the previous study we did, we asked the question, “How gay is gay enough in these hearings?” Frankly, that's just completely inappropriate. I loved the comment about how we need to be looking at situations in terms of personal persecution in the national context. My question to you is this: how do we do that? It's oversimplified to say that if we don't make political appointments, maybe that is a solution. I don't know, but I still think what we're missing is a broader, more structured framework that we can audit and evaluate.

In the process of that audit, is it parliamentarians who should look at that? Is that something that happens internally? What's the role for civil society groups? How does sensitivity training, be it SOGIE, gender, or whatever, feed into that process?

In terms of the appointments and the training processes, if you were writing the job description of some of the appointments in this process, what does that job description look like? If you want to even submit a job description for us to look at, I think that would be important too. If you were writing a performance evaluation framework, if you were assessing that person's job, what would those criteria be, and why?

I really don't have a position on this issue right now. I don't know the answer to a lot of these questions. For me, this isn't a political activity. How can we put together a process that fundamentally respects human rights and the rights of refugees but also instills public confidence that we're getting it right?

I have two competing news articles on my desk. I have many that talk about the instances that you have brought up with regard to members of the LGBTQI community being completely inappropriately treated in some of these hearings, and then I have an article that says, "Similarities in Nigerian asylum claims based on sexual orientation have Legal Aid Ontario asking questions".

● (1240)

It shouldn't be a political wedge issue. We shouldn't be making politics out of this; we should be asking whether the system is working. Right now I don't have confidence as a legislator that we have an appropriate framework to make those decisions.

Typically, I don't make speeches at committee meetings. I like to ask questions.

I would really hope that in addition to the comments you've made here today, you would submit a written brief to our committee that has those functional elements attached to it. That's really what we're missing here. Much of the testimony thus far has raised the issue, but we don't have much of where the rubber hits the road" by way of recommendations.

To colleagues who have been working with members of the LGBTQI community, that's really what we need at this point, I think: the way in which the best practice that you have translates into some of this.

I would also like, if you can cite it in your feedback, any international best practice in determination processes for LGBTQI refugees, as well as international best practice on how national governments are feeding country-of-origin political assessments into the refugee determination process.

An example we heard in the last study was of a woman who would consider herself straight but who had engaged in sex acts that would suggest her sexuality was otherwise. This was why she was claiming status, but she was found to not be gay. How, to address Mr. Tutthill's comments, do we get these individual experiences contextualized more in a situation of evaluating level of persecution than of making it about someone's sexual orientation or gender or where they live?

**The Chair:** Thank you, Ms. Rempel.

I saw you all furiously writing. The clerk will make the transcript from this meeting available to you so that you can get the essence of the points.

Let me just add that you should put them in the context, which I think we're also struggling with, of a quasi-judicial body that is based on individual determination rather than group or class determination. I think that is our issue. It's not a judicial body with the degree of rigour that goes with that, nor is it a regulatory body; it's a quasi-judicial body. I think that adds an element of mystery to our body concerning the way to do this. If you could, put it in that context.

Ms. Kwan is next.

● (1245)

**Ms. Jenny Kwan (Vancouver East, NDP):** Thank you very much, Mr. Chair. Thank you to all of the witnesses for your presentations.

First off, it is important to know that we're all in agreement at this committee, I think, that the IRB is doing a good job on the whole and that it is a valuable and effective system.

That said, I don't mean to say that there isn't room for improvement. Many of the problems the IRB is faced with have to do with resources, or more specifically the lack thereof. For example, even in this budget the IRB was allocated an additional \$74 million. This is for two years. With this, they only process 18,000 cases per year, at a time when we have more than 40,000 cases in the backlog, with an accumulation of an additional 2,100 cases per month. It thus doesn't even deal with half of the backlog that is there. That is the reality.

That said, I'd like to get on to the issue at hand. First I'd like to get into the complaints process issue.

Mr. Rehaag, if you don't have this at this moment but can present it to the committee, I think it would be valuable and give us a glimpse into the situation: from year to year, in the data available to you, how many of the cases are found to be not credible and are denied on that basis? How many of those cases are of groups from the LGBTQI2 community, and what is the country of origin breakdown? I think that will give us a glimpse into the reality of some of the issues that my other colleagues mentioned.

I would love to see in that data as well how many of the cases that were rejected ultimately went to Federal Court and were overturned. That will also give us a sense of the lay of the land, in terms of the competence and the level of work being done. If we can have year-to-year comparisons, that knowledge would be tremendous.

I know it's a lot of work. It's as though you're a research team for us; I deeply appreciate that.

I wonder whether I can get a quick comment on the record with respect to this request.

**Dr. Sean Rehaag:** I would be pleased to try to provide some of that information. Thank you for the homework.

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

I'd like to turn to the training aspect of the issue. A number of you—Mr. Tomlinson, Mr. Powell, and Sharalyn—have made the suggestion that there should be, for example, multi-day training. Could those of you who have commented on this expand on it more specifically? When we're talking about multi-day training, are we talking about two days, three days, four days? What are we talking about?

Also, the suggestion was that it should be expanded to the minister's representative as well. Does everybody agree? I'd just like to get that on the record.

We'll start with you, Mr. Tomlinson.

**Mr. Maurice Tomlinson:** I certainly think “multi-day” at a minimum should be two days, with the first day discussing theory—with, as was suggested by Sharalyn, case studies. We have found this to be very effective in the work we do in the Caribbean, for example.

On the second day we must have, in addition to case studies, persons from the affected communities there to interact with the IRB members who are being trained. It won't be a comprehensive exposure, but it at least gives them some better sensitivity.

That's what I recommend. There must be case studies and there must be interaction with the persons who are affected.

I don't know whether Sharalyn wants to add.

**Dr. Sharalyn Jordan:** To expand on that, absolutely people need an initial opportunity to use the concepts and understand them. Then I would recommend actual video-recorded practice sessions so that people have an opportunity to observe themselves working and get immediate feedback on how they're asking questions or conducting an analysis. These are methods regularly used in counselling and clinical psychology training, and I think in judicial training as well. People need in vivo feedback based on their actual performance, not just didactic exposure to concepts.

I would also agree with involving people who are directly impacted in the early sensitivity training.

• (1250)

**Ms. Jenny Kwan:** Do the other witnesses have anything else to add to what has been offered?

**Mr. Michael Tutthill:** I think the only other piece I brought up in my presentation, which I think is important, is to also be trauma-informed at some level to understand how this process can re-traumatize victims—not only SOGIE claimants, but anyone who is appearing before the IRB.

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

I have less than a minute and a half and I want to get to the complaints process.

Mr. Powell, do you have anything quickly to add to this?

**Mr. Kimahli Powell:** Yes. Section 3, “Understanding the challenges faced by individuals”, needs to be given space to be reviewed in depth. I think part of the problem with short training is that it doesn't give enough time for members to really dive into that section of the guidelines.

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

I'm going to get into the complaints process. I understand that there's a new process in place, but when the IRB engaged in the consultation, one of the key issues recommended by, I think, pretty well all the stakeholders was that it ought to be a completely independent process, yet it isn't. It's partway there, but should it not be a completely independent process? Also, should the chair of the IRB not be in the situation of making determinations with respect to complaints?

My second question is related to that. For those complaints that are outstanding at the moment just because a board member has left—and those complaints are effectively abandoned—should the IRB not find a way to move forward to complete those complaints and not just let them be abandoned?

I'm going to go to Ms. Sapru and then Mr. Brouwer.

**Ms. Preevanda Sapru:** I believe the complaints process should be independent and should not be left to the IRB, because the chairperson is in conflict deciding the cases of his or her own board members. It's absolutely—

**The Chair:** Thank you.

I need to end that there. I'm sorry.

We're going to Mr. Anandasangaree.

**Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.):** Thank you, Mr. Chair, and thank you, panel, for being here.

I'm going to be asking a very pointed question, and I'm looking for “yes” and “no” answers only, because I'm sharing time with Mr. Sarai.

The first question is with respect to the new complaints process that has been introduced. Is it important that we try it out for a period of time before a new system comes in, or do we start fresh?

Ms. Sapru can go first, and then we'll go around.

**Ms. Preevanda Sapru:** It should not be. There should be a new process.

**Mr. Andrew Brouwer:** CARL's position is that it should be tried out. I really hate to disagree with my colleague.

**Mr. Michael Tutthill:** I have no knowledge of the complaints process to date.

**Dr. Sean Rehaag:** We should give it some time.

**Mr. Maurice Tomlinson:** Give it some time.

**Dr. Sharalyn Jordan:** Having something workable now is important.

**Mr. Gary Anandasangaree:** Thank you for that.

Second, with respect to background of adjudicators, again if you're not able to answer it, don't feel the compulsion to do so. From what Mr. Brouwer said, they need to have legal knowledge and subject matter expertise. Are we talking about refugee lawyers exclusively, or are we talking about different backgrounds of education?

**Mr. Andrew Brouwer:** Certainly from our perspective we're not saying they need to be refugee lawyers, but having a significant complement of refugee lawyers on the board is important, people with the legal training. They might not have practised in refugee law, but they have the training in order to understand the concepts and to understand how to run a hearing. That would also be adequate in the circumstance.

**Mr. Gary Anandasangaree:** How do you balance the order in council appointments, which are usually two to three years, with the fact that a practising lawyer would have to give up their practice in order to take on that role and then potentially go back to the bar?

**Mr. Andrew Brouwer:** It's a tough one, but I know many refugee lawyers who have done that, who've decided that it's worth making that commitment for a few years. It's very difficult, but I do think term limits on GIC appointments are important.

• (1255)

**Mr. Gary Anandasangaree:** Thank you.

I'll pass my time to Mr. Sarai.

**Mr. Randeep Sarai (Surrey Centre, Lib.):** Thank you all for coming. There are a lot of you, so I'll try to see where I can point my questions.

It seems apparent that there are several kinds of issues that have come up. One is assessing credibility of witnesses. The judges or IRB members don't seem to have a consistent level of how they address credibility.

The second is sensitivity on how they deal with victims of violence or victims of discrimination, especially if they're from the LGBTQ community, and then lack of training. Training seems to be an issue. Most are saying it's one day of training. Some say the previous course was really hard and there's a high failure rate, and then we have new training that was designed to help you get qualified as an IRB judge more easily. Is that the appropriate mechanism?

A third problem we're noticing is the complaints process. Although there is a new system, some people are not comfortable with that, as it is the same body doing the same complaint mechanism. Others are saying that we need to test it out before we throw it out.

None of you is stating that the IRB should be dismantled. That's pretty consistent.

Ms. Sapru, perhaps I'll start with you. My question is on consistency. If you know you have a judge who, as we heard earlier from Mr. Rehaag who has studied this, has zero per cent of approval of any refugee claimant, what do you say to your client when you get allotted that person?

**Ms. Preevanda Sapru:** I wouldn't want to traumatize her by telling her about his zero acceptance rate. That just wouldn't be fair. It would put her in a more anxious state. I wouldn't want that.

**Mr. Randeep Sarai:** I'm a lawyer. I've never practised immigration law, but in a defence law situation or in any other, you'll have biases from a judge who is heavier on punitive damages or heavier on penalties. However, you never have a 100% refusal rate versus a zero per cent approval rate.

I'm just trying to imagine how your clients actually perceive that. Maybe I can ask Rainbow Refugee what their reaction is when they have a case that they're bringing before a judge who has a zero per cent acceptance rate—what they tell their clients, or what they themselves feel.

**Dr. Sharalyn Jordan:** [*Inaudible—Editor*] testimony as accurately as possible, and obviously that is harmed by insensitive questions. I would never tell someone ahead of time that they're going into a hearing with somebody who always says no. That doesn't help them. However, what we have to do then is advocate for them to have access to due process, and this includes the RAD and judicial review. It becomes a long, difficult, and expensive process.

Effective first decisions, sensitive decision-making and questioning, saves everyone. It protects everyone. It protects refugees, protects the system, and protects Canadians.

**Mr. Randeep Sarai:** Mr. Brouwer, as the head of an organization that deals with this, perhaps you can tell me what you think the appropriate measures to deal with such a judge should be when you see a pattern that is very highly skewed in one direction. Should there be an internal review? Should there be an external one? Should there be training? What's the appropriate measure?

**Mr. Andrew Brouwer:** I'm going to defer this question to Professor Rehaag. He's done a fair bit of research on this area. We talked about this issue, and I really liked his answers.

**Dr. Sean Rehaag:** There are a couple of things. One is that you need to prevent the problem by having a good appointments process—by de-politicizing the appointments process—and then by having good training and good guidelines. I think that's one set of answers.

Another set of answers, though, to which you've alluded, is that there's a certain level of subjectivity inherent in all legal processes. What's really important in the refugee law process is that the stakes involved are incredibly high. Lives are literally at stake. When you combine those two things, subjectivity and really high stakes, the answer is adequate oversight, making sure that everyone gets access to the appeal and that the appeals and judicial review process is functional.

The second thing the committee should think about is this. In other areas of law with really high stakes, we create asymmetric processes. Think of criminal law, for example, in which we decide that we're more concerned about false convictions than about false acquittals. I think it's time to have a conversation in Canada about a similar kind of preference in the area of refugee law, and specifically about presumptions that would favour refugee claimants, just because of the level of subjectivity—

• (1300)

**The Chair:** I need to cut you off, sir. Thank you very much.

We rarely get two people from Brandon—Souris at the table at the same time. Mr. Maguire, you have two minutes.

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

I appreciate Mr. Tutthill's being here today and bringing his views. I know that one thing you've been dealing with is the chairperson's guidelines. You made comments on that. It was put together, as you know, to promote greater understanding in cases involving sexual orientation, gender identity, and a number of areas.

Can you expand on your thoughts on this? In your experience, do the IRB members follow the guidelines? Are they being applied consistently? Also, are there any appeal processes?

**Mr. Michael Tutthill:** In our experience, they have not been applied consistently, and this is something that as an organization we need to start tracking and reporting on more consistently.

I still think that the guidelines themselves are quite good. The problem comes in when they are delivered or trained on as simply a policy that must be followed rather than a matter to be understood, as to how they're written, why they're written down the way they are, and what's included in them.

We would say that the guidelines are useful for us for training not just for immigration and refugee matters, but across the work we're doing, because they are so comprehensive. It's a question of getting beyond what's written down in the paper as policy and looking into what's written there and into why those things are included. As I mentioned in my presentation, it's also a question of looking at the interrelationship between what's there and the realities for Canadians, as well as for people who are persecuted overseas.

**Mr. Larry Maguire:** Thank you.

Mr. Chair, thank you.

**The Chair:** I don't want the members to move for a minute. There are a couple of things I want to let you know.

I'll let you know that we have requested a summary of evidence for the committee members on everything we've heard thus far on the IRB study. The analysts hope to have it available on April 12. That will be available on April 12, as well as the comparative study looking at other similar bodies.

That said, what I would like to have from the committee by the end of the day on Monday, April 16, is an indication to me and the clerk as to whether you're going to want some more witnesses, based on any gaps you might see when you look at the summary.

At the end of the day on the 16th, then, indicate whether you want more witnesses. You don't need to tell us who they are; just give an indication of whether you're satisfied with the testimony we've had or whether you want more.

I'm leaving the 17th and the 19th available for the study. The 17th is for witnesses we've already booked whom we're not having this week. There's no meeting on Thursday.

We'll have witnesses scheduled on the 17th, then, and on the 19th we will give instructions to the analysts, but if you want more witnesses, we may need to bring someone in on the 19th as well.

That's the goal. This will all be in the minutes, so you can double-check my math there.

The other thing is that this would mean we would start with our study of settlement services on April 24, meaning that I need witness

lists from the three parties. I'm going to suggest that we have them by Monday, April 9, at the end of the day. You've had some time to think about this and hopefully you've been doing some work. This will give the clerk time to get that going for the 24th.

Make it a prioritized list. Your numbers for it would be 22 Liberal witnesses, 11 Conservative witnesses, and four NDP witnesses.

Go ahead, Ms. Rempel.

**Hon. Michelle Rempel:** That timeline sounds fine. For witnesses who were here today who wanted to present follow-up written briefs, what would the timing be?

**The Chair:** To have helpful information from them, I would like it by April 12 as well. That puts some pressure on people.

You're not under law to do this, but if it's done by April 12, we could combine it with the summary of evidence and have it available for April 16 to have a real review of whether or not we need more time on this.

Go ahead, Ms. Kwan.

● (1305)

**Ms. Jenny Kwan:** Mr. Chair, I want to make sure that the responses to the questions we put to officials are also returned to us prior to our making a decision about whether we need additional witnesses.

**The Chair:** Some of the responses from IRB have come in. I saw them this week. Some more are still outstanding, so the clerk will send a note. We'll try to get them by April 12 as well.

Go ahead, Mr. Maguire.

**Mr. Larry Maguire:** I noticed that you're giving us until April 16 to have the last witnesses. Can we find out who the witnesses are who are coming on April 17?

**The Chair:** Yes. I think we have three whose invitations have already been submitted. The clerk will let you know who those are. Then we can look at what holes are left.

**Mr. Larry Maguire:** Okay.

**The Chair:** One thing I'd like to know is whether the law societies of Canada provide the kind of training that the lawyers are expecting the IRB to have. I have lawyers in my office quite regularly who are quite ill-informed about the issues of gender identity. They may have a model, or they may have a need to hear that.

I need a motion passed. It reads:

That, in relation to the study on settlement services, members submit their lists of prioritized witnesses, including their contact information, to the Clerk of the Committee no later than Monday, April 9, 2018.

Do I have a mover for that?

It is moved by Ms. Alleslev.

(Motion agreed to)

**The Chair:** Is there any other business?

The meeting is adjourned.

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