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Chair

Mr. Robert Oliphant

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• (1140)

[*Translation*]

The Chair (Mr. Robert Oliphant (Don Valley West, Lib.)): Welcome, everyone.

The meeting will now begin. I see a quorum.

I first want to welcome Ms. Alleslev.

[*English*]

Ms. Alleslev is joining our committee.

Mr. Godin and Ms. Nassif, on their part, will be here shortly.

We welcome our guests, our witnesses from the IRB.

Thank you for coming as we commence our study on the appointment, training, and complaints processes at the IRB. It's a limited study. However, we are very glad that you're here.

Because of our late start, we'll play it by ear. We'll still end our meeting at one o'clock today. It's a busy day on the Hill today. I will test the pulse of the group at the end of the committee. My suspicion is that you will want to have the full two-hour meeting with the officials, so we will invite them to come back. However, if the committee is satisfied with a question at the end, we may not need to do that. I'm just giving our witnesses a heads-up that they might be back.

Thank you for coming.

We'll begin with a 10-minute statement.

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

My name is Paul Aterman. Since January of this year, I have been the acting chairperson of the Immigration and Refugee Board.

Last year, the four divisions of the board—the refugee protection division or RPD, the refugee appeal division or RAD, the immigration division, and the immigration appeal division—made a total of 43,153 decisions. Those decisions were rendered by the IRB's 224 members. Those members, whether they're appointed by the Governor in Council, in the case of the IAD or the RAD, or hired as public servants, as is the case for the RPD and the immigration division, are expected to behave professionally, fairly, and with integrity.

I'd like to emphasize that their job is not an easy one; it is stressful. The pressure to produce fair decisions quickly is unrelenting for all

four divisions. On the refugee side, that pressure is only growing. This year we received 47,000 refugee claims, more than double what we received last year.

Most of the decisions that these members make can have life-altering consequences for the people who are at the centre of those cases. Members need to know the law inside out. They have to demonstrate sensitivity, empathy, stamina, and self-control. I can tell you that the vast majority of the members at the board conduct themselves with the utmost professionalism. That said, as part of a broader and ongoing effort to make the board more accountable, in 2017 we revised our member complaints procedure.

Before I elaborate on the changes to that process, let me first address the board's recruitment, selection, training, and performance management programs.

[*Translation*]

There is a rigorous selection process in place for members. Candidates are first evaluated based on their experience. Their skills as adjudicators are assessed through a written exam, an interview, a reference check and a security clearance validation.

As an example, in a competition for members of the Refugee Protection Division, the RPD, in 2015, 484 candidates applied and only 51 of them, or 10%, qualified for appointment.

All new members must undergo a period of in-depth training—including full training on substantive issues and on effective communication with stakeholders—before they can rule on cases.

Part of the training can vary by division depending on specific issues covered in the cases heard. Other parts of the training are common to all the divisions. For instance, members receive training to raise their awareness of problems faced by the members of the lesbian, gay, bisexual and transgender community.

All members, both new and experienced, regularly participate in professional development workshops to keep abreast of the important and relevant issues, including updates on federal court cases.

[*English*]

In addition to the training that they receive as members to do their jobs, all members are required to take certain training, training that is mandatory for all board employees, for example, training on values and ethics, and on the creation of a respectful and harassment-free workplace.

I'd like to now turn to the oversight of member conduct. The board has a detailed code of conduct and it applies to all members. In other words, all members need to adhere to the principles of good faith, fairness, accountability, dignity, respect, transparency, openness, discretion, cultural sensitivity, and loyalty to the organization. We monitor compliance with the code as part of a member's annual performance appraisal.

When we conduct performance appraisals, managers will often observe hearings or they will conduct an ad hoc review of the audio recording of a hearing that a member has done. They do this, amongst other reasons, in order to assess how members treat the people who appear before them. They also read decisions issued by members, and again, one of the reasons that they do this is to ensure that the decisions are clear and accessible, and that they're also respectful to the parties who presented their case. Managers also look at statistical indicators of performance, such as the number of cases that were finalized and how quickly they were done.

• (1145)

In assessing the performance of members, the board has to respect their decision-making independence. In other words, nobody at the board will tell a member how to decide in an individual case. That would be contrary to the law. At any point, if a person feels that a member has not respected the code of conduct in the way in which they managed the case, that person can file a complaint under the board's complaints process.

I'd like to stress that the purpose of the code of conduct is to set standards for how a member conducts him or herself. The code and the complaints process are not there to deal with what the member decided, in other words, whether the decision was right or wrong in law. That's a matter for the Federal Court to decide, not for the board.

Now, stakeholders have criticized the complaints process. They've said that the process lacked transparency, was too complicated, it didn't provide for enough oversight, and it was difficult to access. The board agreed that there was a need to improve the process. In 2016, the previous chair, Mario Dion, now the Ethics Commissioner, decided to review our existing complaints mechanism. In 2017, we consulted with stakeholders. We sought their input. Some of that input is reflected in a revised member complaints procedure that was developed to ensure a more centralized, simple, objective, and accessible process. That process has been in place for two months now. It came into effect in December of 2017.

With regard to what has changed, first, the complaints process is centralized in the IRB's Office of Integrity rather than dealing with complaints in each of the regional offices. The purpose behind that is to ensure greater consistency in how complaints are dealt with.

Second, it's a much simpler process. The complaints go directly to the director of integrity. The director of integrity reports directly to the chairperson. The management of complaints is no longer diffused and delegated to regional managers, and there are no longer multiple levels of review. Responsibility for complaints resides immediately with the chairperson, and it's the chairperson who decides on all complaints.

Third, the Office of Integrity, which is the investigative arm of the chairperson, is independent from the divisions. The director of

integrity investigates the allegations and the complaint and prepares a report. The report contains findings of fact, analysis, and suggested conclusions. The report goes directly to the chair. The chair decides whether or not to accept those conclusions, and decides whether or not there was a breach of the code. The chair also has the discretion to have a qualified outside party investigate a complaint in exceptional circumstances.

Fourth, this process is now much more accessible and transparent. Anybody, whether they are a participant in the hearing room or not, can file a complaint against a member where they believe there has been a breach of the code. To that end, we've made the complaint form much more easy to access on our website. We've taken such measures as asking CBSA to post information in immigration detention centres and jails, so people who are detained under the act also know what their rights are under the complaints process.

Fifth, the process requires the chairperson to provide the member, the complainant, and the member's manager with detailed reasons as to why a complaint is founded or not.

Sixth, the public reporting on the process will be more transparent. The Office of Integrity will post an annual report on the board's website. It will be sufficiently detailed to list all the complaints and their outcomes, in such a manner that the reader can look at the report and understand the issue, the complaint, and what the board did about it. That's as opposed to simply saying whether the complaint was founded or not founded.

In order to protect privacy, the report will omit any information that could identify specific individuals. As part of our regular monitoring and evaluation of our policies, we will undertake a review of the complaints process after a full year of its implementation. I'd like to emphasize that it's not a review which will be conducted by the board. We will go outside the organization to hire a third party who has expertise in administrative law and how tribunals work in order to obtain that evaluation.

I can indicate that the board would be happy to return here in 2019 to report on that. My view is that this new process will allow the board to deal more transparently and more effectively with complaints under the code.

Thank you. I'd welcome your questions.

• (1150)

The Chair: Thank you very much.

We begin the first round with Mr. Whalen for seven minutes.

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

With respect to the complaints process instituted in 2017, what process did you go through to develop that complaints procedure?

Mr. Paul Aterman: I can turn to Greg Kipling to supplement what I'm going to tell you. We have a standing stakeholder table, consisting of the principal stakeholders of the board, including the Canadian Bar Association; the Canadian Association of Refugee Lawyers; the Refugee Lawyers Association, which is in Toronto; AQAADI, the Quebec immigration lawyers association; CAPIC, the organization representing immigration consultants; and CCR, the Canadian Council for Refugees. I believe Legal Aid Ontario may have been consulted on this as well. Whenever we do any policy, we go out to those stakeholders.

As far as I'm aware, we also looked at other complaint systems to see how we would amend the process.

Do you want to supplement that?

Mr. Greg Kipling (Director General, Policy, Planning and Corporate Affairs Branch, Immigration and Refugee Board): Yes. I would just add that we received a lot of feedback from our stakeholders. They were very much engaged in the process, in having the best possible complaints procedure. We took on board many of their comments. Not all of them, but I would say most of them we were able to take on and integrate into the new procedure.

Mr. Nick Whalen: Is there anything in particular that you said you did not incorporate that the committee here should be aware of, something that was contentious? You said you didn't adopt all the recommendations, so is there anything in particular that we should be aware of?

Mr. Paul Aterman: They took the position that all the complaints needed to be dealt with by someone outside of the organization, an independent third party. We have a director of integrity. The Office of Integrity has been in place since the beginning of 2016. That office deals with complaints to do with harassment that is not necessarily specific to board members—it can be any employee—values and ethics issues, conflict of interest issues.

The person who occupies that function, as I indicated, reports directly to the chair. That person is really at arm's length from the rest of the management team. In fact, the individual who occupies that position leads a somewhat lonely life because he's not invited to management meetings. He's not part of the regular management team. The reason we do that is to keep him insulated from everyone else so that he's not co-opted and he brings an independent perspective to these matters. In our view, that was an appropriate way to address the whole question of having someone at arm's length do it.

Mr. Nick Whalen: In any event, the reports that come out of complaints are written reports that people can examine, although people's names are kept confidential. They're open for scrutiny, so they're transparent in that respect, even if they're not 100% independent.

Mr. Paul Aterman: It's the reasons that are open to the parties—the complainant and the member and the member's manager. What will actually happen when we're instituting this process is that the chairperson will get a report. The investigation report will form the basis of the chair's decision, and then the chair will issue a set of reasons that say, "Allegation number one: this is what was alleged. These are the findings that I'm making. This is or is not a breach of the code. Allegation number two:...", and so on and so forth.

• (1155)

Mr. Nick Whalen: Mr. Aterman, our study was really instituted by some fairly high-profile media complaints regarding actions and decisions and conduct of members of I guess it's the refugee protection division—

Mr. Paul Aterman: At that time, yes.

Mr. Nick Whalen: How were those members at the time, the people who were sitting, appointed to the board? Did they go through the same selection, experience, examination, interviews, security clearance process that is currently in place, or did they go through a different process?

Mr. Paul Aterman: Each government has changed the process slightly when it comes to the appointment of GICs. In one instance, we were talking about somebody who was appointed as a governor-in-council appointee. In the other instance it was somebody hired under the Public Service Employment Act. The first two divisions, the initial divisions of the board, the refugee protection division and the immigration division, those are public servants appointed under the Public Service Employment Act. The GICs and the public... they're different regimes.

Mr. Nick Whalen: That's one of the differences. At least with respect to one of the individuals the media reports were about. They were appointed under a different process from what now exists. They were Governor in Council appointments, whereas now, those are regular civil service job applications.

Mr. Paul Aterman: That was for the refugee protection division. In one instance, where it involved the GIC, the process at the time was not much different from what we have now. There are some differences in the composition of the selection panel, and the test has been beefed up, but by and large, the fundamentals are the same. You apply. Your application is screened on paper to see whether you meet the experience criteria. You're invited to write a test. If you pass the test, you'll be invited to an interview. Then they do the security screening.

Mr. Nick Whalen: With respect to the current complaints process, does it apply to complaints that existed prior to the process coming into force? If someone had a formalized complaint—

Mr. Paul Aterman: No.

Mr. Nick Whalen: What would be the process for complaints that related to decisions that were made prior to December, 2017?

Mr. Paul Aterman: Typically, what would happen is that a complainant—and it would either be an individual or that individual's counsel—would write to the board, raising a concern in writing. The matter would be referred to the member's immediate manager in the region. The manager would look into the complaint, conduct an investigation, make a determination, and if the person who complained didn't like that outcome, they would request a review by the deputy chairperson. If they didn't like the deputy chairperson's decision, they would request a review by the chairperson.

It was a very layered process. It was diffuse in the sense that there was inconsistency between regions in the way that the complaints were managed. I think, with the benefit of hindsight, that was when the person doing the investigating was a little too close to the person being investigated.

The Chair: I need you to end there. Sorry. Thank you, Mr. Aterman.

Mr. Maguire.

Mr. Larry Maguire (Brandon—Souris, CPC): I want to thank you for your presentation, Mr. Aterman.

I just have a few questions. The IRB's website says that four complaints against the conduct of the IRB board members in 2016-17, I think, remained unresolved at the end of that reporting period. Can you explain just what the nature of those complaints might be?

Mr. Paul Aterman: I wouldn't be able to tell you what the four unresolved ones are. Typically, if they're unresolved it means that the process of investigating may have started late in the year, and then carried over into the following year; in other words, they've not been completed yet. That's usually what happens when they're not resolved.

Sometimes, however, the process can be long, and here is why. If the complaint is laid in the middle of a hearing, typically, we won't advise the member of that. This is true of both the old process and the new process. They won't be apprised of the fact that a complaint has been made against them until after they have concluded the case. The reason we do that is because we don't want the adjudicative process to be distorted by someone trying to put pressure on the member by bringing a complaint forward.

It can go through the refugee protection division, for example, and then it can go to the refugee appeal division. It's only when the board has completed its adjudicative tasks that we will then look at the complaint.

There are some exceptions where we would actually advise the member in the middle of the process and take steps. We have done this. It depends on the gravity of the complaint, but the large majority are ones where we would wait for the process to exhaust itself.

• (1200)

Mr. Larry Maguire: So at the end of 2016-17, there were four outstanding complaints. Is that correct?

Mr. Paul Aterman: Right.

Mr. Larry Maguire: How many of those are still unresolved?

Mr. Paul Aterman: I believe two. I'll have to check. We can get

Mr. Larry Maguire: Thanks, I'll move on.

I just wonder if you could table to the committee, please, a detailed overview of the anti-harassment and gender and sexuality sensitivity training that new IRB members undergo. Could you detail that to us and table that to the committee at some point?

Mr. Paul Aterman: Yes.

Mr. Larry Maguire: How are board members reprimanded? If there's a complaint against them and it's found to be legitimate, how are they reprimanded?

Mr. Paul Aterman: It depends on what the nature of the complaint is. We try to make the response sort of proportionate to the problem, so it can range from things like sitting down with the member and reminding them of their obligations under the code. It

can also consist of doing that in writing, with a formal reprimand. It can involve them being required to undergo training in specific areas. There are instances where we've removed a person from hearing cases until we've been satisfied that they're in a position to go back into the hearing room.

Mr. Larry Maguire: You have I believe 224 members?

Mr. Paul Aterman: That's correct.

Mr. Larry Maguire: Has anyone ever been removed from that position?

Mr. Paul Aterman: We've had instances where the person's employment has ended at the board, yes.

Mr. Larry Maguire: How many would that be? Has it happened very often?

Mr. Paul Aterman: It doesn't happen very often. It depends on the nature of the process. More typically, in the case of governor-in-council appointees, their term comes to an end and they're not recommended for re-appointment. If it's someone under the Public Service Employment Act it's a longer and more cumbersome process.

Mr. Larry Maguire: Thank you.

We've heard of—this may be a bit of a harsh word—Kafkaesque oppression and that sort of thing. We've heard the IRB described like that, but it's not clear how the complaints are investigated. That's what we've heard. Who conducts those investigations? The complainant is not informed of the disciplinary actions taken against members. You've just indicated, perhaps, that it doesn't happen in the middle of the process, of course, but we're finding that they don't know those results at the end of the process either.

How often do you refer complaints to outside third party people for investigation?

Mr. Paul Aterman: We have done it, not particularly frequently. I can tell you, off the top of my head, I can think of four instances, I think, in which we've done it. They've been ones where there's been very serious misconduct, in some instances, criminal behaviour. We had one instance, a few years ago, where it was just a very heated dispute between the member and a counsel and in that instance, actually it was Mario Dion who was hired to conduct an investigation into that particular complaint and he concluded that there was no breach of the code.

Mr. Larry Maguire: One of the concerns raised is that the IRB appointees don't have any legal background. Would you support updating the requirements that ensure that at least some formal legal education is required?

• (1205)

Mr. Paul Aterman: Ultimately, the hiring choices and the criteria when it comes to Governor in Council appointees are a matter right now for the Privy Council Office, because they control that process, but let me just speak to that generally, because the board is an administrative tribunal, and we're supposed to be accessible, and we're supposed to be non-legalistic, and we're supposed to be informal.

We have a number of members who are not lawyers. In my view, it's actually a good thing. The proportion of lawyers is fairly high. I don't have it precisely, but I would say that it's in the order of around 79% who have a legal degree, but in my experience, you can have a law degree and not be very good as a decision-maker. I think the learning curve is long—

Mr. Larry Maguire: I guess where I'm going is, and there are some though.

Mr. Paul Aterman: Yes.

Mr. Larry Maguire: There's still 21% someplace. Do they have any legal background? I'm not saying that they have to be lawyers. It's just the outline of the legal system they may need to go through in the course of the interviews with the complainants. How many of these current IRB decision-makers do not have any legal experience? Is it the full other 21%?

The Chair: I need your answer very quickly.

Mr. Paul Aterman: I can't tell you exactly because there may be some of those who have no formal legal training but have experience as adjudicators in other administrative tribunals.

The Chair: Thank you. Sorry, I have to end you there.

Ms. Kwan, you have seven and a half minutes.

Ms. Jenny Kwan (Vancouver East, NDP): Thank you to the officials.

The interim third-party report by Neil Yeates is said to be comprehensive. I assume, therefore, that it would have addressed issues of training, appointments, and complaints. I wonder if you could table a copy of that report with this committee.

Mr. Paul Aterman: This is a report; it's advice to the minister. It's been shared with the board. To be perfectly frank, I'm not sure whether it's the board's to table.

Ms. Jenny Kwan: I know, but we're at this committee and we're studying the issue of appointments, complaints, and training. If that report touched on those issues, I think it would be very informative for this committee to take a look at it to see what work has been done.

The Chair: I would give you leave to consult with your lawyers.

Mr. Paul Aterman: I will do that.

The Chair: There's been a request for a report. You'll have to consult to decide whether or not you'll respond, whether it's appropriate for you to respond.

Mr. Paul Aterman: Thank you.

Ms. Jenny Kwan: All right.

According to the information on appointments provided to us on the appointments, there are some 26 vacancies. Has the IRB made requests for the government to fill the outstanding order in council appointments? For example, in Calgary there has been a vacancy for 2,929 days, in Toronto for 534 days.

Mr. Paul Aterman: We certainly make our needs known to the government, yes.

Ms. Jenny Kwan: Okay.

How many resources would be required to train them if these appointments were filled? How long would it take until they could begin hearing cases? On average, how many extra cases per year would these 26 new appointees be able to hear? What kinds of resources in total would be required for the appointment, for the training and resourcing of these appointees?

If you don't have that information, you can table it with the committee.

Mr. Paul Aterman: We would have to get back to you on some aspects of those questions. Being able to segregate the institutional costs around training, I wouldn't know what they are, off the top of my head. I can see whether we can get it. Disaggregating it is not that simple.

Getting up to speed takes a minimum of six months from the time of appointment, and even then in the period from six to 12 months, members are not working at optimal output. We really expect them to be fully productive after 12 months. How many cases that translates into is a function of which division they're assigned to.

• (1210)

Mr. Paul Aterman: —a member of the IAD, fully productive, is expected to complete in the order of 150 appeals a year.

Ms. Jenny Kwan: Great. If you can give us some projections, then, in the different areas, that would be appreciated.

Mr. Paul Aterman: Yes.

Ms. Jenny Kwan: How many members with valid complaints on their record have been reappointed?

Mr. Paul Aterman: I would have to get back to you on that. I don't know.

Ms. Jenny Kwan: Okay, that's fine. I know these are detailed questions.

Mr. Paul Aterman: Some of that is a question of how far back we go. Are you talking about current sitting members?

Ms. Jenny Kwan: That's correct.

How many complaints against board members are submitted annually? Does the IRB track how many complaints are made by board members? Can we also get a list of the breakdown of those sanctions for these individuals whose complaints were found to be valid?

Mr. Paul Aterman: The numbers fluctuate fairly considerably. We have numbers going back to 2009. If you average it, it's about 18 a year.

Ms. Jenny Kwan: I can stop you there. Can you give us a list of how many complaints, breaking it down by year, and provide that information to the committee?

Mr. Paul Aterman: Yes. When you go further back some of the record-keeping is not terribly accurate.

Ms. Jenny Kwan: Start with 2009 and go from there.

Are there any processes in place to ensure that a lawyer does not appear before a board member if they currently have a complaint in the system?

Mr. Paul Aterman: No. I can tell you why not. The complaints process has to be reconciled with the integrity of the adjudicative process, and what we don't want to do is turn the complaints process into a vehicle for shopping for members that a particular counsel may like to appear before, and to avoid members that they don't want to appear in front of.

Ms. Jenny Kwan: Can you provide for the committee the information on.... Does the IRB know how often it happens that a person has an active complaint with a member and that they actually have a current case with? Do you track that information and can you provide that information to the committee?

Mr. Paul Aterman: When a complaint is made, very frequently what happens is that the counsel makes a complaint and at the same time they make a bias motion in front of the member in the hearing room. They're under an obligation to do that if they're alleging—

Ms. Jenny Kwan: I understand that process. I'm just wondering whether or not the IRB tracks this information and if you can provide it to the committee.

Mr. Paul Aterman: I don't know if we track it. We will know about any individual case in which a particular counsel has raised a concern about a member, but we would have to look at all of the other cases that this counsel has to see whether that member sat on those.

Ms. Jenny Kwan: So you don't have that information.

Mr. Paul Aterman: No.

Ms. Jenny Kwan: Does the IRB keep stats, then, on the nature of the complaints in categories? If you do, can you provide that information to the committee?

Mr. Paul Aterman: We don't break them down. We would have to go through them individually to give you a sense of what they are.

Ms. Jenny Kwan: Would you be able to do that?

Mr. Paul Aterman: Yes.

Ms. Jenny Kwan: Thank you.

Earlier there was a question about the consultation. Can you provide a full list of who was consulted for the review process?

Mr. Paul Aterman: Yes.

Ms. Jenny Kwan: Can you also provide the committee with a list of the recommendations that were not implemented? You highlighted one specifically, which is around the independence issue. I would argue, of course, on the independence issue, that while the office of integrity is somewhat independent, all of those decisions get put forward to the chair, who is not independent. Why not go all the way and make sure that every single decision sits with an independent authority with respect to complaints so that you have full transparency—

The Chair: I'm afraid I need to end you there. You'll get another chance.

Mr. Anandasangaree for seven minutes. We're going to go back to our seven minutes. Each of the parties had seven and a half minutes on the first round.

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

This is our first meeting back, and I'll share that Salma Zahid is taking a leave and that all of our thoughts and prayers are with her in this most difficult time for her and her family.

I do want to first thank both of you for being here. I know the IRB has been the subject of a number of developments recently, and I want to start specifically with the appointments process. I know that's being revamped.

How many appointees do you have that predate 2015, the current process you put in place?

• (1215)

Mr. Paul Aterman: I don't have the specific number. I can tell you that there have been, I believe, 89 appointments made under this government.

Mr. Gary Anandasangaree: Are you confident that all of the appointees, including the current appointees right now, are competent to serve in the role of IRB adjudicator? Depending on the division, do you feel they're competent and meet the standards that you as chair would expect of your colleagues?

Mr. Paul Aterman: Yes.

Mr. Gary Anandasangaree: You are.

I have heard from counsel, in a number of different cases, that if a particular applicant is from a particular country, then there's a track record of an IRB adjudicator consistently turning down those applications. Do you have any tracking or any sense of that type of trend? Do you track those trends?

Second, have any of those complaints come to you? I know that they've been the subject of some Federal Court interventions.

Mr. Paul Aterman: We don't track those trends because we don't want to interfere with the independence of the individual decision-makers. The recourse there is properly with the Federal Court. Members will adjudicate differently based on their appreciation of the facts and the law. That may lead to different results. By and large, however, I think what drives those outcomes is more the country conditions than the proclivities of individual members.

Mr. Gary Anandasangaree: I can appreciate that, but certainly I do think that many of the lawyers have commented on perhaps biases of individual adjudicators. In that circumstance, would there not be a need for a basic standard of understanding on country conditions? IRB does packets of country conditions—

Mr. Paul Aterman: Right.

Mr. Gary Anandasangaree: —and I think they should be sure they're consistent across the board.

If there's a particular viewpoint there that's not reflected in the decision-making, then would that not be a cause for concern for you?

Mr. Paul Aterman: In an ideal world, we would have 100% consistency, but it's a process that is adjudicated by humans. Any adjudicative system—the boards or any other one—will have variances in decision-making.

The check on that, though, is not the complaints process, I would argue. I think the check on that is the process of judicial review and seeing whether or not the decision is sustainable.

Mr. Gary Anandasangaree: If I may just clarify, in the process of judicial review, it is really up to the federal court to grant leave or not. It's not an automatic right to an appeal. It's more of a—

Mr. Paul Aterman: Absolutely, and it's absolutely a fair comment to say that there are a number of other variables that come into play, like can you afford to go to federal court? If you can afford to go to federal court, do you get leave?

The one thing that we have in place right now is the RAD, and the RAD doesn't cost anything. You get an appeal as a right to the RAD with certain exceptions, and that's an appeal within the board. The RAD is there, at least on the refugee side, to look at what the RPD did and decide whether or not they agree with it. That feature is baked into the process.

Mr. Gary Anandasangaree: Coming back to two individual cases, I don't know if you're in a position to comment on them, but they're Sterlin and Cassano. I believe they're adjudicators, and they've been the subject of a number of reports.

Are you able to advise us as to why action wasn't taken earlier? Are you able to disclose that information here?

• (1220)

Mr. Paul Aterman: I feel a little bit uncomfortable talking about the appraisal process that took place in the past for a couple of reasons. Some of it involves personal information. The other one is I can't get into the mind of the people who made those decisions.

Mr. Gary Anandasangaree: Maybe in general terms, do you believe that in the last two years, your process of complaints met the standard that you as a chair would want to have across the board in the IRB?

Mr. Paul Aterman: I would say no, and that's why we've revamped it. I think what we have is a much stronger process now, because the chair's ultimately accountable for the reputation of the organization. The chair is ultimately the person who has the responsibility of ensuring that the integrity of the decision-making process is respected and that the integrity of the board's reputation is also respected.

The buck stops there. I think, with the benefit of hindsight, the process in the past was multi-layered and a bit bureaucratic.

Mr. Gary Anandasangaree: Thank you.

I do want to take a moment to thank Mr. Kipling, who was here last time and was very helpful in providing some information to us, so thank you for that.

The Chair: Thank you.

Mr. Tilson for five minutes.

Mr. David Tilson (Dufferin—Caledon, CPC): I want to echo comments made by Gary on Salma, and we on this side obviously wish her well and a speedy recovery.

Mr. Chairman, one of the reasons this study is taking place, at least for some of us, is this media piece from *Global News* by Messieurs Hill and Russell, with the heading “Lawyers allege ‘sexist,’ ‘aggressive’ behaviour by powerful immigration, refugee judges”.

I'm sure the board had a fit when they saw that.

Could you comment on this, because it's not very...? The whole issue we're talking about is building confidence in the board, just like the public wants to have confidence in the judicial process and make sure that the Judicial Council makes decisions, which they have done, and that the law society makes decisions.

Can you comment on this piece? It's very devastating about the decisions that have been made—and these aren't decisions on the merits of the case; these are comments that have been made about the conduct of hearing officers. If this piece is right, they were all dismissed, maybe for good cause.

Mr. Paul Aterman: First of all, as you've indicated, it wasn't something that the board was pleased to read about at all. The reputation of other decision-makers gets dragged down by single incidents like that.

The one thing I can tell you with the benefit of hindsight is there's an area that I think the new process will have corrected, and it's this. Typically what happens is we don't have difficulty dealing with instances where there's a blatant and obvious disrespectful comment. Those are the easy cases to deal with.

The difficult ones are ones where the member is in the hearing room and they feel that they have to pursue a line of questioning that is very personal and delves into the personal details of a claimant, and that's what happens when we deal with cases involving things like sexual orientation or domestic violence. The counsel will say this is a disrespectful and inappropriate line of questioning. The member's perspective on that is I have to do my job, I'm asking some tough questions. There's an overlap there.

Mr. David Tilson: The questions that *Global News* mentioned were really inappropriate. I assume there's a transcript made of these hearings and that you or someone would have had an opportunity to look at the transcript. I'm sure you would agree with me. I don't want to read them because they're inappropriate. I'm sure you found them inappropriate.

Mr. Paul Aterman: Absolutely.

Mr. David Tilson: What happened to this hearing officer? How was he reprimanded for these comments that he made to this person?

Mr. Paul Aterman: In that instance, he was given specific training on the board's gender guidelines after the complaint.

• (1225)

Mr. David Tilson: That's what the article said.

Then I return to the piece that's in here—and you've mentioned it in your opening remarks—about the integrity person. Is that a person or is it a group of people?

Mr. Paul Aterman: It's a person, and that person has some support.

Mr. David Tilson: It's a person. That person investigates allegations such as were made in this piece and then the integrity person reports to the chair.

Mr. Paul Aterman: Under the new process.

Mr. David Tilson: The chair makes the decision.

Mr. Paul Aterman: Correct, under the new process. That's been in place in the last two months.

The cases you're referring to were dealt with under the old process.

Mr. David Tilson: I understand that.

You're a member of the Ontario Bar. The Ontario Bar hears all kinds of complaints from people against their lawyers, such as they charge too much or something. Many of them are frivolous cases, but the serious ones comes to light and the public hears about those things.

I don't think we're hearing about those serious cases in the board.

Mr. Paul Aterman: I think that's a valid criticism, which is why what we're doing under the new process is publicizing the reasons for a decision where a determination is that the code was breached or that it wasn't breached.

Mr. David Tilson: I read some of these thing and they're like four lines long. They don't say much. Are you going to improve on that and how?

Mr. Paul Aterman: Yes, by providing detailed reasons that set out what the allegation is and what determinations were made as to whether or not the complaint was founded.

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

Thank you very much.

Mr. Tabbara.

Mr. Marwan Tabbara (Kitchener South—Hespeler, Lib.): I want to continue on the line of questioning of my colleague, Mr. Anandasangaree.

Can you tell us what kind of training programs currently exist for training board members on cultural sensitivity and gender identity, because when you were answering the question by my colleague, you said that the process now is much stronger after being revamped.

Can you tell us what that process is? What has been revamped?

Mr. Paul Aterman: What's been changed is the complaints process, and the complaints process has been changed in the following ways. The chairperson has direct accountability for the complaints now through the director of integrity. Complaints made today go to the director of integrity, and the director of integrity advises the chairperson right away. The director of integrity is the one who investigates the complaint. No longer do we have the complaints investigated by regional managers. It's the person in the chairperson's office who does the investigation. The chairperson is the one who ultimately makes the determination as to whether a complaint is founded or not. We don't any longer have multiple levels of review in the process, which should make it faster.

It will be more transparent accounting. What we've done in the past is to provide on the board's website a very cursory description of the number of complaints made and whether they were founded or not. There is no explanation of what the nature of the complaint was and the reasoning behind the board's determination as to whether it was founded or not. Now, we will produce the reasons. They will be anonymized, because we need to protect the privacy of all of the individuals involved. However, any reader will be able to look at that and see that the board received a complaint on this date, this is what

it was about, this is how it was adjudicated, this is how it was decided.

Mr. Marwan Tabbara: How is that different from the previous system? If you had multiple levels of review, that sounds like a good thing.

Mr. Paul Aterman: With the benefit of hindsight, it is not necessarily because essentially what would happen is one decision would just confirm the other one, and the more decisions that were there, the less reluctance of the organization to examine those and take a harder look at them.

If it goes directly to the chairperson—the chairperson is accountable to the public, to Parliament and the buck stops there. That's a significant difference.

Mr. Marwan Tabbara: My next question is about decision-makers.

I've been reading an article that I have here, and there are certain decision-makers for whom 54% of all claims have had no credible basis. Then there are other decision-makers for whom 28.6% of claims have had no credible basis.

Is there an oversight body that looks at these cases and takes a certain percentage of the decision-maker's cases to see if they're in line, or does this go on for many years? Do they maybe need to look at other training to see if the decision-makers have close percentages?

• (1230)

Mr. Paul Aterman: As I indicated before, the vehicle for providing a check on that is the Federal Court.

The issue of whether there is no credible basis to a claim is a legal and factual question. The integrity of the decision-making process can be undermined if the board is saying to individual decision-makers that you're deciding "yes" too much, or you're deciding "no" too much. Then there is a hidden pressure on them, which undermines their decision-making independence.

That's something that the Federal Court is there for. There are aspects of a board member's behaviour that have nothing to do with their independence and where we need to be more accountable. Adjudicative independence is not a licence to be disrespectful in the hearing room. It's not a licence to make insensitive comments. Those are the kinds of things where I think the organization can do better in the complaints process.

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

I was checking the parties' thoughts about holding another meeting, and there has been an indication from the parties that we would like more time with you.

I want to let members know that they don't need to rush their questioning. They will get a bit more time after the two-week break that we have.

Mr. Tilson, for five minutes.

Mr. David Tilson: The 2018-19 interim estimates flag about \$119 million for the IRB.

Could you elaborate on the uses to which this funding will be put?

The Chair: I just want to caution the member to make sure that we stay within the scope of the study.

Mr. David Tilson: I don't know, sir. That's why I'm asking whether these monies are being spent on training, the whole slew of things we have talked about.

The Chair: I'll allow it. We're trying to—

Mr. David Tilson: We'll let them answer. Give them a chance, Mr. Chairman.

The Chair: Good.

Mr. Greg Kipling: In 2017-18 we have.... The budget of the IRB is divided among different program areas. The program areas focus on the decision-making function of the board, and then there's a portion allocated to internal services.

Mr. David Tilson: I don't know what that means.

Mr. Greg Kipling: I'll try to explain.

The total budget allocated to the IRB in 2017-18 was about \$135 million. Of that money, all but \$38 million went to support the decision-making function—the refugee determination process, the refugee appeal determination process, the immigration division, and the immigration appeal division. So \$38 million of that was for internal services, which would include all manners of support for the decision-making function, such as training, legal support, communications, etc.

In relation to the training, which I know is of interest to the committee, it would come from that budget. We have a unit within the IRB that is responsible for learning and professional development, which is not allocated 100% just to supporting the decision-maker training, but a lot of that unit's work is focused on decision-maker training, along with our legal services unit.

Mr. David Tilson: About a year ago there was a report in the *National Post* about a wide discrepancy in the rates of release by various board members conducting detention hearings. It was stated that there was no complaints process to address these variances.

I'd like you to comment as to whether you agree with that or don't agree with that. And if so, has this been addressed, and is this a result of training, or are there other factors involved?

• (1235)

Mr. Paul Aterman: The complaints process about member conduct applies to all members of the board. It applies to the members of the immigration division who conduct detention reviews.

The question you're putting is about variances, I believe, between regions in release rates. There are discrepancies in decision-making there. There are a number of factors that go into that. Partly it's the decisions made by individual members, but it's also a function of the way the cases are presented to them in the region. It's a function of the extent to which CBSA opposes or agrees to release. That has an impact on it as well.

I can advise you that one of the concerns the previous chair had was the approach to long-term detention, because the board was—

Mr. David Tilson: I guess my question, sir, is the fact that there are discrepancies, and if there are discrepancies, it goes back to the

issue I referred to in my earlier question, namely confidence in the board. We need to have confidence. If there are wide discrepancies, there won't be confidence. I think you've agreed with that. Therefore my question is, how is this being rectified?

Mr. Paul Aterman: It needs to be addressed through training, training that goes across each region where that particular division is operating, so that we narrow those down. That's an ongoing process.

It comes back to an issue that has been raised before. There's a problem if the board directs outcomes to individual decision-makers. The integrity—

Mr. David Tilson: I concur with that. I guess my question is that you want to make sure that the decisions being made in Quebec are the same as the decisions being made in Alberta, without referring to those cases. This report won't correct these discrepancies.

The Chair: I'm afraid I need to cut you off, Mr. Former Chair. Thank you. Good questioning.

Perhaps I could ask one question, and that is with respect to the complaints process. I might have missed this. Am I right in understanding that only direct actors can do a complaint? Can a third party do a complaint?

Mr. Paul Aterman: Anyone can bring forward a complaint.

The Chair: So you could do a class complaint comparing judgements. That would be a complaint or is it only a complaint about an individual case?

Mr. Paul Aterman: I think this goes back to a critical point that I'd just like to underscore. 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. Discussion among members about inconsistencies is actually the most effective way to reduce those inconsistencies. That's not the same as malfeasance or bad behaviour in the hearing room, or treating someone without sufficient respect.

The Chair: Thank you.

Ms. Alleslev.

Ms. Leona Alleslev (Aurora—Oak Ridges—Richmond Hill, Lib.): I would like to leverage a bit more of that conversation around decisions. I recognize that you're talking about the independence of the decision-maker. However, at the same time, earlier in the conversation you talked about how managers review those transcripts to be able to do annual personnel evaluations. Is there a mechanism, not necessarily even around personnel evaluations, but to audit and to get a feel for whether those decisions are with bias or within a certain scope of framework as a second set of eyes, so that the only mechanism of reflecting on inconsistencies among decisions is not the judicial review board?

• (1240)

Mr. Paul Aterman: There are other means to get at some of those issues. There is the individual performance appraisal. It might be helpful for the committee to actually see what those forms look like to see what we're evaluating there. It's important there. When I do an evaluation of a member, I'm looking at how they do their job. I'm not telling them the shouldn't have said yes somewhere and they should have said no somewhere else. I'm looking at whether they're respectful, whether they make the process accessible to people, whether they're efficient, I'm looking at how they participate in things like professional development. I'm not saying to them they were wrong when they said yes to one person or they were wrong when they said no to another person. There's that.

There are instances—and we have an instance going on at the moment—where on a systemic level there's a concern. For example, the immigration division was criticized very heavily in a few judgements, both in the federal court and in superior court on our treatment of long-term detention. In that instance, the former chair decided to do an audit of how we're doing long-term detention decisions. It's being done by a third-party, someone external to the organization. It's an extraordinary measure. We've never done that before. It's a tool that's also available to the organization.

Ms. Leona Alleslev: In light of that, then, would you consider it not being only an extraordinary but considering it as a more regular, random audit to ensure the integrity of the decision-making process?

Mr. Paul Aterman: There's one other piece which I should mention to you, which we do on a cyclical basis. We have someone from outside the board conduct a scan of how a division does its work. It's a quality measurement initiative.

For example, we could share this with the committee. We did one recently on the refugee appeal division where we had an external party come in and look at how the process is being run. There were a number of variables that were being assessed there.

Do you want to elaborate on those?

Mr. Greg Kipling: Sure. It's a initiative that's been in place for several years. As Mr. Aterman indicated, we do it cyclically on each of the divisions of the IRB, looking at essentially breaking down the process into three parts—pre-proceeding, the proceeding itself, and then post-proceeding—to examine whether the decision was well rendered in a sense that it was easy to understand, whether the files were well prepared in advance of the hearing, etc.

It's looking at systemic issues; it's not looking at individual performance. In a number of cases it has identified specific areas where we can improve. We've acted in several cases on different issues that have been identified.

Ms. Leona Alleslev: Then is there a feedback loop into the appointment process, so as you become more aware of challenges or whatever, you feed that back into the appointment process and the training process?

Mr. Paul Aterman: I'll give you a specific example. You can look at the report that was prepared on the refugee appeal division. There were comments in there from an external third party who was saying that the reasons given are too long and complicated and are difficult to understand. That was one of the criticisms.

Our training subsequent to that has been focusing on simplifying the way the reasons are written. That's a concrete example of where that feedback loop actually operates. That's not on an individual level. This is on a systemic level. Individual decision-makers are having their performance assessed, but we do look at how the system works too.

Ms. Leona Alleslev: Perfect.

And then if I could go—

The Chair: I am afraid I need to end you there, sorry.

Ms. Kwan.

Ms. Jenny Kwan: To follow up on the question that Mr. Tilson asked with respect to the breakdown of the budget, I wonder if you could table that information for the committee so we can take a careful look at that.

In terms of the audit you just referenced, Mr. Aterman, could we have a copy of that audit? Can we take a look at it?

Mr. Paul Aterman: It's not complete yet.

Ms. Jenny Kwan: It's not complete. When do you anticipate it will be completed?

Mr. Paul Aterman: I think it will be completed in June.

Ms. Jenny Kwan: In June.

Mr. Paul Aterman: I can advise you that it will be made public.

Ms. Jenny Kwan: Okay, great.

Mr. Paul Aterman: There is an obvious concern there, and the organization has to respond to it.

• (1245)

Ms. Jenny Kwan: Just to get back to the issue around the complaints process, when a member is found to have a valid complaint against him or her, is there a follow-up process after the sanctions have been levied? In the case of Mr. Sterlin, it sounds like he was made to go through some training. What steps are taken after that training to ensure that in fact the training has been effective?

Mr. Paul Aterman: The annual performance appraisal is the vehicle whereby that is assessed. Essentially, that person's manager would have been aware of what training they had to undergo, and that person's manager would have been on the lookout for whether or not that training was effective.

Ms. Jenny Kwan: So that's done through an annual review at the end of...?

Mr. Paul Aterman: Yes.

Ms. Jenny Kwan: Okay.

On the judicial review issue, I know that in the complaint process or within the IRB you want to ensure that the members operate independently, and I'm not questioning that. You mentioned the process that people can go through if they feel that a decision is wrong, for whatever reason, but if a decision is found to be based on no credibility, the courts can overturn that, because they do not look at that question.

I want to table that because that's just a statement of fact. I want to then ask a series of questions, because I think these things are interlinked.

Did I hear correctly that the IRB does not keep statistics on the acceptance rate for each board member?

Mr. Paul Aterman: That information is available to us, but we don't track it. No, we don't. We don't look at member X and say that they have an 80% acceptance rate while member Y has a 40% acceptance rate. We don't do that.

Ms. Jenny Kwan: But that information is available to you...?

Mr. Paul Aterman: It's available because it exists in the database, but just because the information exists doesn't mean that we track it. It would be inappropriate for us to do that.

Ms. Jenny Kwan: Do you take a look at the information...? Or do you look at the information on the basis of those cases that are rejected, which then go to the Federal Court and are overturned by it? Do you track that information?

Mr. Paul Aterman: We certainly use the return rate from the Federal Court as an indicator of whether or not there should be some concern about a member's performance. It's an important distinction, because we will look at the member's performance.... I'll take information from any source, but I will make an independent determination as to whether or not the member is performing.

They may have had their case overturned by the Federal Court, and it may be because they dealt with a novel point of law and there was nothing wrong with their decision. Or they may have gotten hammered by the Federal Court. If they got hammered by the Federal Court, I'll read those reasons, and I may have my concerns about those.

The integrity of the process depends upon the individual manager making their own determination about whether or not the member is performing appropriately.

Ms. Jenny Kwan: I think this is related to the other information on appointments that would be useful, and so on. For example, suppose you have a member who consistently rejects a claimant's application—they refuse that application. It goes to the Federal Court and consistently gets overturned, or a substantive number of those get overturned, then I think there is some relevance.

If you couple that with an individual who may well have a series of complaints against them for misconduct, and those misconducts are found to be valid, then there is a correlation between these numbers.

It would be very useful for us, as we do the study, to have that information, to get a sense of what that looks like. Can you provide that information to us?

Mr. Paul Aterman: First of all, I would agree with you. If a member keeps making the same mistake and doesn't get the message, and if the court is telling them that, then, yes, there's a problem that needs to be addressed.

However, there's a question of looking at why the member's decision was overturned in any given instance. If there's a pattern there, then that's something that is obviously of concern.

I'm not sure what information you would want from the board in that regard.

● (1250)

The Chair: We're way over time on your side, but I will give you time to finish that. Just before you do, I'm going to suggest to the committee that we've come to the end of that full round.

Rather than starting with Liberals for seven minutes and then cutting off the Conservatives, I'm going to suggest that we end after Ms. Kwan, begin a fresh round at the beginning of the next meeting, and have a full hour at that time. Is that okay with everybody?

Some hon. members: Agreed.

The Chair: We have guests coming from France, from the French Parliament. Those of you who can stay, can stay.

We're way over time, but I will let you finish that thought.

Ms. Jenny Kwan: I will just clarify the request. Thank you, Mr. Chair, for allowing me to do that.

The information I'm looking for would be the acceptance rates or the rejection rates of each of the members and the Federal Court decisions on those rejected cases that have been accepted by the Federal Court. Then, I would also like a list of numbers associated with the complaints made against that member and the number of those complaints that are in fact valid complaints.

That will give us a full picture of these appointments and the lay of the land on how things are going.

The Chair: Thank you very much.

Just as a reminder, we propose having the minister here for supplementary estimates (C) on Monday, March 19. You will be getting a notice.

We will be extending an invitation to our witnesses to come back on Tuesday, March 20, for an hour. There will be no more statements, but we will have a full round of questioning then. We'll have our other witnesses come in for the second hour.

The next day, we will probably need another half meeting just to give you a heads up, because we have witnesses whom we have already started to look at. We have a full roster of witnesses as well.

We will see you. As for those of you who can stay to meet the delegation from the French Parliament, it will be great to have you here.

Thank you to our witnesses.

Now you know what to look forward to in a couple of weeks.

This meeting is adjourned.

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