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Services Agency

Agence des services
frontaliers du Canada



Evaluation of the CBSA Hearings Program

Internal Audit and
Program Evaluation
Directorate

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Executive Summary

Program Description

The Canada Border Services Agency (CBSA) Hearings Program contributes to the protection of the safety and security of Canada and its citizens. Furthermore, the CBSA works with Immigration, Refugees, and Citizenship Canada (IRCC) to maintain the integrity of Canada's immigration and refugee system. While IRCC develops immigration and refugee policies, the CBSA is responsible for the immigration enforcement program which enforces the *Immigration and Refugee Protection Act* (IRPA) by addressing violations committed by foreign nationals and permanent residents. The enforcement-related activities of the CBSA include: conducting investigations of those believed to be inadmissible to the country, preparing cases for presentation at the Immigration and Refugee Board (IRB), and detaining and or removing individuals from Canada.

The CBSA Hearings Program, which is the focus of the present evaluation, involves the representation of the Minister of Public Safety and Emergency Preparedness (PSEP) or the Minister of IRCC by Hearings Officers (HO) in front of the IRB. The CBSA Hearings Program is managed at National Headquarters (NHQ), in the Programs and Operations Branches, and is delivered by HOs in seven regions, including: Atlantic, Quebec, Northern Ontario, Southern Ontario, Prairie, Greater Toronto Area (GTA), and Pacific.

Evaluation Purpose, Scope and Methodology

The purpose of the evaluation is to assess the relevance, effectiveness, and efficiency of the CBSA Hearings Program between Fiscal Year (FY) 2012-2013 and FY 2016-2017. To date, the Program has not been evaluated. The evaluation was included in the CBSA Five-Year Audit and Evaluation Plan, with scheduled completion in 2018, and fulfills the requirements of the Treasury Board's *Policy on Results* (2016).

The evaluation, conducted in FY 2017-2018, examined the Hearings Program's activities and outputs and assessed the extent to which they have led to the achievement of program outcomes. The evaluation employed both quantitative and qualitative research methods and included interviews with CBSA and external stakeholders, the analysis of program performance and financial data, the review of key documentation and media content, the conduct of a case file review, and field research in three CBSA regions (Pacific, Quebec, and Greater Toronto Area) between September and November 2017. In addition, the Hearings Program provided the evaluation with data from a recent, large-scale data collection exercise.

Findings and Recommendations

Relevance

Continued Need for the Program

Between Calendar Years (CY) 2014 and 2016, immigration levels increased, as did the number of visitors to Canada and the number of temporary visas requested yearly. Between CYs 2014 and 2016, the number of protected persons and refugees admitted to Canada grew by 33,000 individuals. Overall, the CBSA Hearings Program continues to address a demonstrable need, given the current immigration

context and the Hearings Program's role in mitigating safety and security concerns and upholding the integrity of the immigration and refugee system.

Alignment with Government Priorities

The stated objectives of the CBSA Hearings Program align with and support the CBSA's strategic outcomes and the priorities of the federal government. The Program aims to actively ensure that Ministers' arguments are upheld at the IRB, that threats are mitigated, and to support the removal of inadmissible persons. Through these efforts, the Program contributes to the government's commitment to increase immigration and maintain the integrity of the immigration system.

Alignment with Roles and Responsibilities

Roles and responsibilities are clearly defined in relevant documentation, including a Memorandum of Understanding (MOU) between IRCC and the CBSA and a trilateral MOU between IRCC, the CBSA, and the IRB. The MOUs include appendices which provide, for example, further details on information-sharing protocols and obligations, detention safety and security requirements, and the coordination of priorities.

Program Performance

Achievement of Expected Outcomes

The Hearings Program has met the immediate outcome of a 70% concurrence rate with IRB decisions and has contributed to the intermediate outcome of denying status or upholding the issuance of removal orders to inadmissible persons. Further work is required to measure and report on the impact of the Program on its ultimate outcome. Given the variations in performance by the Program's lines of business, the current program performance indicators are not adequate for national program management and may not produce a complete understanding of performance and success.

Assessment of Program Effectiveness

Immigration Division

In the Immigration Division, there are two programs: admissibility hearings and detention reviews. Within the Immigration Division, there is no national inventory of cases pending review by the Hearings Program and no systematic prioritization of cases. Specifically, with regards to admissibility hearings, the Hearings Program does not track case inventory.

The number of detention reviews has decreased by 48% between FY 2012-2013 and FY 2016-2017. While the exact reason for this decline is unclear, the recent introduction of the Alternatives to Detention initiative may be a contributing factor. Further analysis by the Program would be required to fully explain the decline. If this trend continues, there may also be a need for the Hearings Program to review the allocation of resources in the Immigration Division.

Immigration Appeal Division

Sponsorship and residency obligation appeals comprise the largest portion of the CBSA's Immigration Appeal Division hearings, while the CBSA represents the Minister of IRCC in these instances. The CBSA has limited influence on the original IRCC decisions, and associated policies, which the CBSA is

accountable to uphold in these hearings to meet the standard concurrence target (of 70%). Nonetheless, the current work arrangements between the two organizations are generally found to be appropriate, based on the CBSA's enforcement mandate and investigative authorities.

Refugee Protection Division

Triage screens cases, based on pre-determined triggers, for possible Ministerial intervention at the Refugee Protection Division. This process, which systematically assigns cases to either the CBSA or IRCC plays a key role in attributing workload and is a responsibility shared by both organizations. However, it is difficult to determine the effectiveness of the triage process as triage decisions are not systematically tracked. Additionally, different approaches are used by Triage Centres across Canada, with no internal or inter-organizational consistency.

The existing triage and file referral process may be resulting in a duplication of efforts, particularly with regards to the CBSA's security checks. Prior to the referral of a file to an HO, several CBSA groups may be involved in the security screening. Duplication in the research efforts of CBSA staff at the FB-02, FB-04, and FB-05 levels in the refugee process, as well as screening activities conducted at the National Security Screening Division and the Triage Centres, was highlighted and may warrant further analysis to reduce redundancy in security screening processes.

The IRB is required, in accordance with the IRB rules, to notify the Minister of PSEP or IRCC that intervention in a Refugee Protection Division case, wherein neither organization had originally intervened, may be warranted. This mechanism is referred to as a "red letter," and will result in the postponement of a hearing. The national volume of red letters has increased over time. The increase in the number of red letters may be the result of a variety of factors, and requires additional analysis, as it could also be a reflection of an overall increase in workload in the Refugee Protection Division, over time.

Refugee Appeal Division

Refugee Appeal Division hearings represent 1% of total CBSA hearings. The evaluation found that there has been a decline, over time, in concurrence in refugee appeals initiated by the Minister (in contrast with consistent success in appeals initiated by refugee claimants). Also, without a RAD hearing strategy, HOs could not articulate the policy rationale on when and why the CBSA would appeal an IRB decision. As such, there may be a need to develop a hearings strategy in Minister-initiated appeals at the Refugee Appeal Division, and to improve guidance to HOs as to when to initiate an appeal, in order to enhance program effectiveness.

Across Lines of Business – Stakeholders

Internal Stakeholders

A number of internal stakeholders contribute directly to the achievement of the expected outcomes of the Hearings Program. The evaluation found that, a lack of understanding of immigration and hearings processes amongst internal stakeholders, in addition to employee turnover and a loss of corporate memory, may have an impact on Hearings Program performance. For example, in the regions, CBSA Inland Enforcement officers are a key source of information for the CBSA HO. However, HOs spend significant time gathering additional evidence, across the Hearings Program's lines of business, due to incomplete files and missing information (for additional details, refer to Section 3.2.2.5).

The evaluation also found that working groups were used to facilitate communication internally at the management level. However, there may be a need to improve internal, cross-regional information sharing at the working-level to reduce the duplication of efforts of HO's (such as, research efforts) and to discuss best practices.

External Stakeholders

Working relationship between the CBSA and IRCC

Overall, there is a positive working relationship between IRCC and the CBSA and communication between the two organizations is generally effective. Despite this, there is inconsistency in the timely sharing of information between certain visa offices and embassies and the CBSA. Further consultation and collaboration between the two organizations was encouraged, so as to continue to enhance the working relationship of IRCC and the CBSA and to ensure the concerns of the two organizations are addressed.

Working relationship between the CBSA and the IRB

The CBSA is satisfied with its interactions with the IRB and with the effectiveness of the communication between the two organizations. The IRB and the CBSA currently engage in management level meetings to discuss relevant issues and exchange feedback. Furthermore, mechanisms to facilitate communication and information sharing are outlined in the trilateral MOU (IRB, IRCC, and CBSA). The IRB also recognized the professionalism of CBSA Hearings Program staff, while the link between level of experience and HO preparedness in front of the IRB was noted.

In order to mitigate backlog, the IRB has implemented an early resolution process in an attempt to reduce the number of Immigration Appeal Division hearings. The process may provide long-term benefits to the CBSA in reducing the total number of cases heard in front of the IRB. Nonetheless, given the existing demands on an HO's time, the requirement to participate in the early resolution process may represent additional resource requirements for the Hearings Program.

Across Lines of Business – Training

The job functions of an HO are highly specialized and require strong technical and legal knowledge with which to prepare cases and arguments for presentation in front of the IRB. Furthermore, the various feeder groups which support the staffing of the HO position represent a wide range of backgrounds and levels of experience within the immigration and legal streams. While National Training Standards for HOs exist, the delivery and timing of the training provided by the CBSA to Hearings Program staff does not align with the need for specialized training and the unique requirements of these various feeder groups.

Demonstration of Efficiency and Economy

Program inputs and outputs

Overall program spending and FTEs have increased between FY 2012-2013 and FY 2016-2017, while the number of cases finalized has declined. Nonetheless, cases finalized does not provide a complete

representation of the workload demands in the Hearings Program, as a significant portion of the workload involved in the intervention in and preparation for a hearing is not fully taken into account.

Resource requirements by division

Some Hearing's Program business lines are more complex than others and each one demands a certain level of effort in the preparation for cases. There are significant variances in regional resource allocation and utilization, as reflected in the number of cases per officer, cost per case, and the number of IRB members as compared to the number of HOs. However, the Hearings Program does not yet systematically track all of the factors that contribute to its workload and output.

Recommendations

The evaluation made the following five recommendations:

1. The Vice-President of Programs in cooperation with the Vice-President of Operations (or the proposed Vice-President of Enforcement and Intelligence as part of CBSA Renewal) should improve national program management through the development of a risk-based hearings strategy, which includes performance indicators unique to the Program's lines of business and regular program performance reporting.
2. The Vice-President of Operations Branch and the Vice-President of Programs Branch (or the proposed Vice-President of Enforcement and Intelligence as part of CBSA Renewal) should, in consultation with IRCC, explore options to optimize the national consistency and effectiveness of the delivery of the triage function.
3. The Vice-President of Programs Branch (or the proposed Vice-President of Enforcement and Intelligence as part of CBSA Renewal) should review the roles and responsibilities of the CBSA and IRCC within the hearings process, as outlined in the existing MOU, to optimize resource utilization between the two organizations and maximize program effectiveness.
4. The Vice-President of the Human Resources Branch should, in consultation with the Vice-President of Programs Branch and the Vice-President of the Operations Branch (or the proposed Vice-President of Enforcement and Intelligence as part of CBSA Renewal), examine the existing recruitment strategies for Hearings Program staff, as well as the effectiveness of the current training model and the consistency of its delivery, to account for the specialized and technical job functions of Hearings Officers and to improve training outcomes.
5. The Vice-President of Programs Branch should, with support from the Vice-President of Operations Branch (or the proposed Vice-President of Enforcement and Intelligence as part of CBSA Renewal), complete an analysis of national resource allocation and utilization, including Hearings Advisors, which takes into account the volumes in each line of business and region, to optimize service delivery and achievement of outcomes.

1. Introduction

Established in 2003, the Canada Border Services Agency (CBSA) is an organization that is part of the Canadian federal government's Public Safety portfolio. The CBSA's role is to ensure that international trade and travel is facilitated across Canada's borders and that Canada's population is protected from border-related risk. The CBSA Hearings Program (hereafter referred to as the "Hearings Program") contributes, in turn, to the protection of the safety and security of Canada and its citizens. Furthermore, the CBSA works with Immigration, Refugees, and Citizenship Canada (IRCC) to maintain the integrity of Canada's immigration and refugee system.

While IRCC develops immigration and refugee policies, the CBSA is responsible for the immigration enforcement program which enforces the Immigration and Refugee Protection Act (IRPA) by addressing violations committed by foreign nationals and permanent residents. The enforcement-related activities of the CBSA include: conducting investigations into those believed to be inadmissible to the country, preparing cases for presentation at the Immigration and Refugee Board (IRB), and detaining and or removing individuals from Canada. The CBSA Hearings Program, which is the focus of the present evaluation, involves the representation of the Minister of Public Safety and Emergency Preparedness (PSEP) or the Minister of IRCC by Hearings Officers (HO) in front of the IRB.

1.1. Evaluation Purpose and Scope

The purpose of the evaluation is to assess the relevance, effectiveness, and efficiency of the CBSA's Hearings Program between Fiscal Year (FY) 2012-2013 and FY 2016-2017. To date, the Hearings Program has not been evaluated. The evaluation was included in the CBSA Five-Year Audit and Evaluation Plan with scheduled completion in 2018, and fulfills the requirements of the Treasury Board's Policy on Results (2016). The evaluation examined the Hearings Program's activities and outputs and assessed the extent to which they have led to the achievement of program outcomes.

1.2. Program Description and Objectives

The CBSA Hearings Program is managed at National Headquarters (NHQ), in the Programs and Operations Branches, and is delivered by HOs in seven regions, including: Atlantic, Quebec, Northern Ontario, Southern Ontario, Prairie, Greater Toronto Area (GTA), and Pacific.

The Programs Branch is responsible for the development, implementation, and management of national strategies, program policies, and processes related to the Hearings function. It is also responsible for developing performance measures, training materials, and information sharing agreements and Memoranda of Understanding (MOU) with external stakeholders, such as IRCC and the IRB. In addition, it provides functional direction to the Operations Branch. The Operation Branch supports the regions on operational issues, manages, tracks and reports on high profile cases, and provides advice and acts as a liaison between the Department of Justice and the CBSA's program areas.

The IRB is an independent administrative tribunal that is responsible for making binding rulings on immigration and refugee matters. The IRB has four divisions (further described in sections 1.2.1 through 1.2.4 of this report). The CBSA HOs participate in proceedings related to the admissibility of foreign nationals and permanent residents into Canada, detention reviews related to the detention of individuals in immigration holding centers and provincial facilities, determinations of refugee status for

refugee claimants, and appeals of Immigration Division and Refugee Protection Division decisions, as well as appeals of removal orders, decisions in which a permanent resident's failure to meet their residency obligation was identified, and denied sponsorship applications.

1.2.1 Immigration Division

Within the Immigration Division (ID), HOs represent the Minister of PSEP at the IRB in the admissibility hearings of foreign nationals or permanent residents. Individuals believed to be inadmissible under one or more of the relevant sections of IRPA may be subject to an admissibility hearing, which could result in a removal order or a determination that an individual is admissible to Canada. Possible grounds for inadmissibility include, but are not limited to: security concerns; involvement in serious or organized crime; or non-compliance with the IRPA. Information from a CBSA port of entry, from the police, and or through tips from the public, can lead to an investigation for possible inadmissibility. If there is a risk that an individual may not appear for removal, a person may be detained until a removal order is carried out.

A detention occurs when a Permanent Resident or Foreign National is considered to be a flight risk and there is reasonable grounds to believe that they may not appear for an examination, admissibility hearing, removal from Canada, or a proceeding that could lead to the creation of a removal order or if the CBSA cannot establish the identity of the individual as they have no identity or travel documents. There are specific legislated timelines pertaining to detentions. Detainees must have their case heard before the IRB (i.e. detention review hearing) within 48 hours of detention. If a ruling to continue detention is made, there must be a subsequent IRB hearing seven days later and, again, after 30 days, if detention is continued. Following the first 30 days, subsequent hearings are held at 30 day intervals thereafter. Detainees can request an early review of detention. This requires the presentation of new facts. Additionally, a CBSA officer may decide that an alternative to detention should be utilized before the first 48-hour detention review and may release the detainee. For example, an alternative to detention may include regular reporting to a CBSA officer.

A detention review ruling can result in continued detention, conditional release, or unconditional release. Individuals who are on immigration hold are most commonly detained in an Immigration Holding Centre (located in Montréal, Vancouver, and Toronto). Based on a risk-based framework, a detainee may be held in a correctional facility in cases where the Immigration Holding Centre is deemed to be inappropriate because of the circumstances for detention.

1.2.2 Immigration Appeal Division

In the Immigration Appeal Division (IAD), HOs represent the Minister of IRCC at IRB proceedings related to sponsorship appeals and residency obligation appeals. Conversely, HOs represent the Minister of PSEP in removal order appeals. The HO, on behalf of the Minister of PSEP, can also appeal a decision made by the IRB ID, wherein the decision was made not to issue a removal order. These are considered Minister's appeals. In all instances, with the exception of Minister's appeals, the individual subject to the removal order triggers the process. According to the IRPA, after considering the appeal of a decision, the IAD will either allow the appeal, stay a previously issued removal order, or dismiss the appeal. If the IAD allows the appeal, it will set aside the original decision and substitute a determination that, in its opinion, should have been made. This may include, for example, the making of a removal order. The IAD may also, if it has allowed the appeal, refer the matter to the appropriate decision-maker for reconsideration.

Sponsorship appeals can be initiated by sponsors when appealing the decision of an IRCC visa officer to refuse a sponsorship application. When a permanent resident is notified that they have not fulfilled their residency obligations, they are given 60 days to appeal the decision. If they choose to appeal, this is considered a residency obligation appeal. In cases where the appeal is upheld, the individual will keep their permanent residency status. If an appeal is dismissed, residency status is revoked and, if the individual is residing in Canada, a removal order is issued.

Some removal orders, which include departure, exclusion, and deportation orders, can also be appealed. A permanent resident or a protected person may appeal to the IAD against a decision to make a removal order against them. Individuals do not have the right to appeal if they have been found inadmissible based on: security grounds; violating human or international rights; serious criminality outside Canada; organized criminality; and having been convicted in Canada for serious criminality which resulted in imprisonment for at least six months. Individuals with a right to appeal have 30 days upon the receipt of a removal order to appeal the decision. If the IAD decides to allow the appeal, the individual may remain in Canada or the matter may be referred to the appropriate decision-maker for reconsideration. If the appeal is dismissed, the removal order is upheld. Where the appeal is dismissed and the removal order is upheld, the IAD member may also consider a stay of the removal order, in which the order will not immediately be carried out. Judicial review from either party can be requested in all outcome types.

Minister's appeals pertain to cases in which the Minister has chosen to appeal a decision made by the IRB ID, as the Minister disagrees with the original decision rendered. If the appeal is allowed, the IAD will, as with other appeal types, set aside the original decision and substitute a determination that, in these instances, may include the making of a removal order.

Cases can be subject to an early resolution process in which appeal evidence is submitted to IRB resolution officers. The early resolution process, which includes the Alternative Dispute Resolution (ADR), is a negotiation process in which appeals are resolved through mediation sessions. The role of the mediator is held by an IRB Dispute Resolution Officer. The HO, acting as the Minister's representative, has the authority to consent to the appeal, when warranted. An appeal may be withdrawn by the appellant or there may be no resolution. In instances where there is no resolution or withdrawal of the appeal, the case will proceed to a full appeals hearing.

1.2.3 Refugee Protection Division

When a refugee claim is made by an individual at a CBSA port of entry or inland at a CBSA or IRCC office, the individual attends an IRB Refugee Protection Division (RPD) hearing where the refugee claim is heard. If the CBSA Hearings Program identifies criminality, safety, security, or other relevant concerns, an HO will intervene on behalf of the Minister PSEP and will present facts as to why an individual should not be granted refugee status.¹ IRCC Senior Immigration Officers may also intervene on behalf of the Minister of IRCC in matters of credibility and integrity (of the claimant) wherein the acceptance of the application may affect the integrity of the immigration and refugee system (e.g. a claim was made in another country). If a claim includes concerns related to both organizations' mandates (herein referred to as, a hybrid case), CBSA HOs will present the case in front of the IRB. If it is determined that the

¹ Please refer to articles 1E and 1F of the UNHCR Refugee Convention for additional details on the areas of intervention for both the CBSA Hearings Program and IRCC. Article 1F is exclusion to CBSA Hearings Program intervention.

Minister's participation is not warranted, neither organization will intervene and the refugee claim will proceed without the Minister's intervention.

If a refugee claim is accepted, the claimant may remain in Canada and apply for permanent residency. If a refugee claim is rejected, the previously issued removal order will come into force following the expiration of the appeal period. Both the Minister and the claimant may appeal IRB decisions through the IRB Refugee Appeal Division (RAD) within 15 days of the RPD outcome. In some instances, claims are withdrawn or abandoned. There are certain exceptions, wherein appeals to the RAD are not permitted.²

The CBSA Hearings Program and IRCC Reviews and Interventions Unit share the triage process, which determines if there are indications of inadmissibility, including criminality, safety, security or credibility concerns, which warrant the Minister's participation in a claim. After a CBSA or IRCC refugee intake officer at a port of entry or at a CBSA or IRCC inland office collects information from a refugee claimant, all files are transferred to one of three Triage Offices: Montréal, Vancouver, or Toronto. The triage offices then assess the files and refer them to the appropriate organization (the CBSA or IRCC) based on specific criteria/triggers.³

CBSA HOs also engage in:

- 1) Vacations, whereby the Minister of PSEP applies to have a claim vacated, as the claimant is thought to have misrepresented or withheld information; and/or
- 2) Cessations, in which the Minister of IRCC has reason to believe that the claimant no longer requires protection as, for example, the individual has acquired third country citizenship or has re-availed themselves of the protection of their country.

1.2.4 Refugee Appeal Division

Hearings Officers (HO), as representatives of the Minister, may intervene in appeals brought forward by failed claimants against decisions rendered by the IRB RPD. They may also bring forward an appeal on behalf of the Minister. Cases are typically presented in writing, which includes a written exchange of positions. Appeals may result in: the upholding of the original RPD decision; the substitution of an RPD decision; or the referral of a case back to the RPD for redetermination. Both parties can request judicial reviews of all RAD decision.

1.3. Program Resources

Between FY 2012-2013 and FY 2016-2017, the cumulative total expenditures for the Hearings Program was approximately \$101 million, or an average of \$20.2M annually.⁴ In FY 2016-2017, there were a total of 162 FTEs in all seven regions, the majority of which are in the GTA, Quebec, and Pacific.⁵

² Government of Canada. Section 110, IRPA (S.C. 2001, c. 27).

³ "Triggers" are defined herein as an indicator of concern relevant to either the CBSA or IRCC, which are identified via a checklist used as part of the triaging process.

⁴ Source: CBSA internal document.

⁵ Source: CBSA internal document.

2. Evaluation Methodology

The evaluation was conducted in FY 2017-2018 and included both quantitative and qualitative research methods (refer to Appendix B). The evaluation team conducted interviews with CBSA and external stakeholders, analyzed program performance and financial data, reviewed key documentation and media content, conducted a case file review, and undertook field research in three CBSA regions (Pacific, Quebec, and GTA) between September and November 2017. In addition, the Hearings Program provided the evaluation with data from their recent large-scale data collection exercise.

For this evaluation, the following limitations should be considered:

- Due to the sample size of the case file review (affected, in part, by respondent burden), the evaluation did not attempt to generalize with regards to causation. Most respondents also opted to retrieve recent files (as opposed to older ones);
- The evaluation methodology initially included a survey of HOs. However, as an internal survey of HOs had recently been conducted by the Hearings Program, a decision was made to mitigate the burden on HOs and not conduct a survey as part of this evaluation; and
- Data retrieved from the Global Case Management System (GCMS) and the National Case Management System (NCMS) may be limited by data integrity concerns, including: inconsistency in data entry, the absence of a quality assurance process, and a lack of sufficient data granularity. For example, the NCMS data information system requires some manual data entry, potentially resulting in data errors and duplication of efforts. The evaluation found that the NCMS is generally perceived to be “outdated,” and that modernization is needed to enhance the interoperability with the other data systems used (i.e. GCMS). The GCMS is owned by IRCC and may also require upgrades to further align the system with the existing needs of the Hearings Program. Any changes made to GCMS would require the approval of IRCC. The evaluation has mitigated data limitations by making use of other lines of evidence to substantiate or provide further information on the data captured. In addition, Program staff at NHQ conducted a systematic, large-scale data collection exercise which provided clear and accurate information on many areas within the Hearings Program.

3. Findings and Recommendations

3.1. Program Relevance

3.1.1 Continued Need for the Program

Key Finding: The CBSA Hearings Program continues to address a demonstrable need, given the current immigration context and the Hearings Program’s role in mitigating safety and security concerns and upholding the integrity of the immigration and refugee system.

The number of visitors to Canada, temporary resident visas issued, immigrants and refugee claims made all have an impact on the Hearings Program. Between Calendar Years (CY) 2014 and 2016, immigration levels increased by a total of 35,942 admitted individuals. Study permits is one such area wherein immigration levels have increased. For example, there was a 6.4% increase in applications between CYs

2014 and 2015 and, by CY 2016, 266,000 individuals held study permits.⁶ Furthermore, the number of visitors to Canada continues to increase, as does the number of temporary visas requested yearly. Increases in immigration also influence the number of sponsorship and permanent residency appeals. Intensification in these areas indicates a continued need for Ministerial representation at the ID and the IAD of the IRB. Between CYs 2014 and 2016, the number of protected persons and refugees admitted to Canada grew by 33,000 individuals.

Overall growth in the number of visitors and temporary visas requests, as well as increases in immigration levels and refugee claims, illustrates a demonstrable need to continue Program activities carried out in all four CBSA lines of business. Further, it is anticipated that levels will continue to rise based on current trends and that the demand for hearings will continue to increase.

3.1.2 Alignment with Government Priorities

Key Finding: The stated objectives of the CBSA Hearings Program align with and support the CBSA's strategic outcomes and the priorities of the federal government.

The Hearings Program supports and is aligned with the priorities of the federal government, as put forth in the Speech from the Throne, the federal budget, and the PSEP mandate letter. The Program also contributes to the Treasury Board Secretariat whole-of-government framework social affairs outcome for a "safe and secure" Canada.

Both Budget 2017 and the Speech from the Throne (2016) emphasize immigration and refugee protection as priorities. The Hearings Program's mitigation of threats to the public and efforts to ensure "Canadians continue to be kept safe and their rights protected," support the PSEP's security and opportunity priorities, as highlighted in the CBSA's mandate letter. This is also directly linked to the CBSA's strategic priority of "securing the border strategically."

Overall, the Hearings Program aims to actively ensure that Ministers' arguments are upheld at the IRB and threats are mitigated, and to support the removal of inadmissible persons. Through these efforts and others, the Hearings Program further contributes to the government's commitment to maintaining the integrity of the immigration system.

3.1.3 Alignment with Roles and Responsibilities

Key Finding: The CBSA, IRB, and IRCC roles and responsibilities are clearly outlined in relevant documents.

Section 95 of the Constitution Act allocates concurrent powers of legislation to the provinces and the federal government in matters related to immigration. The federal government has responsibility for legislation, policy and enforcement. The roles and responsibilities of the federal government are found in the IRPA and are carried out jointly by the CBSA and IRCC. The provinces and territories have agreements with IRCC delineating the manner in which immigration responsibilities will be shared between the jurisdictions. Provinces can also enact legislation but it should not contravene federal legislation. They are also involved in immigrant selection and settlement. The IRB's jurisdiction to hear

⁶ Source: Government of Canada. 2017 Annual Report to Parliament on Immigration, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/annual-report-parliament-immigration-2017.html>.

and render decisions on matters related to immigration and refugee claims is also provided through the IRPA.

Section 4 of the IRPA articulates the responsibilities of the Minister of PSEP and the Minister of IRCC. Both Ministers have, in turn, developed written instruments to further delegate and define the roles and responsibilities of employees of the CBSA and IRCC. Roles and responsibilities pertaining to the delivery of immigration and refugee claim programs are further outlined in the MOU between IRCC and the CBSA. In a trilateral MOU between IRCC, the CBSA, and the IRB, roles and responsibilities specific to each organization are further elaborated upon. The MOU includes appendices that provide additional detail on information-sharing protocols and obligations, detention safety and security requirements, and the coordination of priorities.

In support of the MOUs between the organizations, there are additional documents that expand upon specific areas and are specific to individual organizations and processes. Standard Operating Procedures (SOPs) between the CBSA and IRCC detail the roles and responsibilities of each organization, including the triage process, which distributes case files to either organization based on specific criteria (triggers). The IRB's divisional rules provide details regarding roles and responsibilities, processes, and guidance tailored to each of the four IRB lines of business. These include those applicable to the Minister's representative, the claimant/appellant/person concerned and their counsel, IRB Members, and the IRB registry. With regards to the CBSA, Enforcement Manuals provide HOs with additional guidance and instruction on the hearings and IRB processes.

3.2 Program Performance

In order to explore the effectiveness of the Hearings Program, it is important to first understand the tools employed by HOs in the preparation of a case for IRB decision. There are a number of factors which contribute to the development of a well-informed argument to be presented in front of the IRB. The evaluation made use of these factors to examine the extent to which a well-informed argument affected the outcome of a case.

It is important to note that there is a wide range of variables that influence the outcome of a case, many of which are outside of the control of the CBSA (such as, humanitarian and compassionate considerations and *de novo*⁷ evidence). Therefore, the evaluation could not establish a causal relationship between well-informed arguments and IRB decisions.

HOs identified the following as the most important factors in the preparation of a well-informed argument:

- Evidence (i.e. having good, clear information on file and sufficient evidence to meet legal tests);
- Awareness of relevant case law;
- Full understanding of the interpretation and application of the legal tests;
- Argument preparation (i.e. questioning witnesses); and
- Time (i.e. to develop a theory of the case/argument, gather additional evidence, conduct research, develop a draft submission, and compile case law).

⁷ "De novo evidence" is defined herein as new evidence introduced at the time of a hearing.

While common across the lines of business, the emphasis placed on certain factors differs by IRB line of business. For example, it was suggested that case law is most important in the IAD, RPD, and RAD. Factors such as legal tests and having time to prepare are most important in the Refugee divisions. Additionally, the evaluation found that having sufficient and quality evidence was emphasized most often in the ID and IAD.

Further to these factors, the important contribution of due diligence and the preparation of a thorough submission to a well-informed argument was noted. Persuasiveness and a summary of facts were also highlighted as key to HO's success in front of the IRB.

The evaluation identified notable challenges in the preparation of an argument. These included: a lack of sufficient evidence; a lack of up-to-date case law; and a lack of sufficient time to prepare for a hearing.

An understanding of the factors that contribute to the preparation of a well-informed argument in each line of business provides an opportunity to further enhance program effectiveness, as it better accounts for the tools needed by HO's and the challenges that they face in making well-informed arguments.

3.2.1 Achievement of Expected Outcomes

The expected outcomes of the Hearings Program, as indicated in the Program's logic model, include:

- Immediate outcome: Minister's arguments are upheld at the IRB. The indicator for this outcome is a 70% concurrence rate with IRB decisions. This outcome was the focus of the evaluation.
- Intermediate outcome: Inadmissible persons or those denied status are ordered removed from Canada.
- Ultimate outcome: The Hearings Program supports the mitigation of threats to Canadian society and the integrity of Canada's immigration and refugee system

Immediate outcome: Ministers' arguments are upheld at the IRB

Key Finding: The concurrence rate between Ministers' arguments (as represented by HO's) and IRB decisions consistently met or exceeded the 70% concurrence rate target. The current program performance indicators are not adequate for national program management and may produce an incomplete understanding of performance and success.

The Hearings Program has one success indicator: a 70% national target for concurrence rates with IRB decisions, across all four lines of business.⁸ When the IRB rules in favour of an argument put forward by an HO, this is considered a concurrence. Between FY 2012-2013 and FY 2016-2017, the average overall concurrence rate was consistently high and met or surpassed the 70% target.⁹ More specifically, the average concurrence rate for the IAD and RPD met the 70% target (70% and 71%, respectively), while the average concurrence rate in ID and RAD surpassed the 70% target (82% 81%, respectively).¹⁰ This variation demonstrates that one target rate, applied to all four of the Hearings Program's lines of business, may not provide adequate information and may not accurately reflect program success.

⁸ Source: CBSA internal document.

⁹ An early CBSA intervention often provides a deterrent effect for applicants or those appealing. For this reason, concurrence rate throughout this report includes applications and appeals that were withdrawn.

¹⁰ Source: CBSA internal document.

The differences in concurrence rates between lines of business are likely related to unique drivers and complexities. Factors which may contribute to variability in concurrence rates may include: case volume; legal or factual case complexity; experience of HOs; and mandated timelines. Nonetheless, further analysis is required to determine causation.

Complexities in measuring results in the lines of business often relate to individual case types. Considerations include, among others: the effects of the Alternatives to Detention policy where “continued detention” may not be the most appropriate measure of success; the number of successive decisions (48 hours, 7 days, 30 days) for one individual/case; and the need to factor how early resolution outcomes in the IAD affect success indicators.

Examples of the variability in concurrence rates between case types include: a low concurrence rate in early resolution ADR (in the IAD) (an average of 46% between FY 2012-13 and FY 2016-17); an increasing concurrence rate in IAD Removal Order Appeals with a low of 68% in FY 2012-2013 to a high of 80% in FY 2016-2017; and, within the RPD, variable case volume which appears to have led to high concurrence rates, particularly in FY 2016-2017, wherein concurrence was 100% for Refugee Vacation cases and 100% for Refugee Cessation cases.¹¹

As demonstrated, the reason behind the differing levels of concurrence is complex and warrants further exploration. A separate concurrence indicator for each line of business, taking into account current concurrence rates, future goals, and the complexities of each, may be beneficial for internal management of the Hearings Program. To provide increased data granularity, further consideration may also be warranted in specifying a performance indicator for certain case types. This work can build upon the 2018-2019 CBSA Departmental Plan, which identified a unique indicator for immigration and refugee protection, respectively.

Key Finding: Regional concurrence rates vary substantially and the reason for these disparities is likely dependent on a variety of factors and should be investigated.

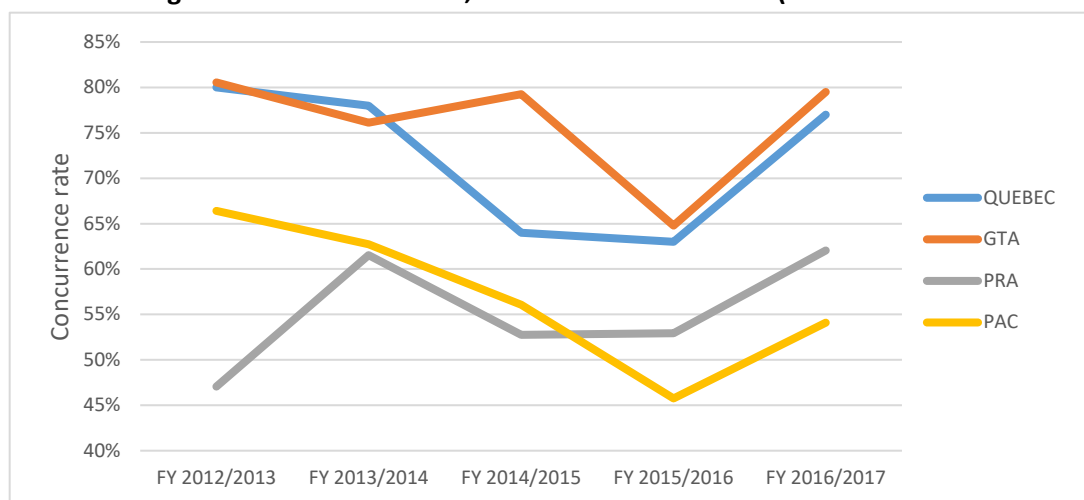
There is also a large degree of variability in the concurrence rates of some regions. These disparities could be a result of a variety of factors, including: differences in in-coming population; case complexity; location of office; staffing levels; HOs experience; etc.

Of particular note (Exhibit 1), across all lines of business, the GTA region has had a consistently high concurrence rate. Conversely, the Pacific region has consistently maintained the lowest concurrence rate.¹²

¹¹ Source: CBSA internal document.

¹² Source: CBSA internal document.

Exhibit 1: Regional Concurrence Rate, Across Lines of Business (FY 2012-13 to FY 2016-17)



Source: CBSA internal document.¹³

Further analysis of regional differences in concurrence rates and the impacts of concurrence rates in each of the Program's lines of business may be warranted.

Intermediate outcome: Inadmissible persons or those denied status are ordered removed from Canada

Admissibility hearings result in a number of possible outcomes. One such outcome is the issuance of a removal order by the IRB. Once a removal order comes into force, the case becomes the responsibility of the Removals team within CBSA and no longer requires the involvement of the Hearings Program, unless an appeal is filed at the IAD. The work of the Hearings Program supports the work of the CBSA Removals Team, by presenting information to the IRB to support removal orders. The number of removal orders issued has remained relatively stable over FY 2014-2015 (1,310 issued) to FY 2016-2017 (1,385 issued).¹⁴

The Hearings Program also helps to maintain the inventory of removal orders through the removal order appeal process. Subsequent to the issuance of a removal order, an applicant may appeal the decision made by the IRB, referred to as a removal order appeal. The evaluation found that the concurrence rate for removal order appeals has increased steadily between FY 2012-2013 (68%) to FY 2016-2017 (80%). This indicates that, over a five year period, HOs were increasingly successful in defending the issuance of a removal order.

Ultimate outcome: The Hearings Program supports the mitigation of threats to Canadian Society and the integrity of Canada's immigration and refugee system

Key Finding: The Hearings Program does not systematically track whether it supports the mitigation of threats to Canadian society and/or the integrity of Canada's immigration and refugee system.

¹³ Concurrence rates across the lines of business does not apply to Atlantic, Northern Ontario, and Southern Ontario regions, as these regions work only on Immigration Division cases.

¹⁴ Source: CBSA internal document.

At present, the Hearings Program does not systematically track their ultimate outcome. Tracking case type by IRPA grounds may enable the Hearings Program to determine the number of cases that mitigate threats to Canadian society and uphold the integrity of the immigration and refugee system. In addition, the development of two outcomes (one each for mitigating threats and upholding integrity) may clarify tracking needs and enhance business line-specific measurements.

In summary, the Hearings Program has met the immediate outcome of a 70% concurrence rate with IRB decisions and has contributed to the intermediate outcome of denying status or upholding the issuance of removal orders to inadmissible persons. Further work is required to measure and report on the impact of the Program on its ultimate outcome. Increased tracking of indicators related to all outcomes could benefit the Hearings Program.

RECOMMENDATION 1:

The Vice-President of Programs in cooperation with the Vice-President of Operations (or the proposed Vice-President of Enforcement and Intelligence as part of CBSA Renewal) should improve national program management through the development of a risk-based hearings strategy, which includes performance indicators unique to the Program's lines of business and regular program performance reporting.

3.2.2 Assessment of Program Effectiveness

3.2.2.1 Immigration Division

Key Finding: There is no national inventory of cases pending review by the Hearings Program. Due to the lack of systems tracking in place, there are no national guidelines or systematic approaches for case prioritization.

There are two programs within the ID: admissibility hearings and detentions reviews. An individual is subject to an admissibility hearing if they are thought to be inadmissible under one of the sections of IRPA. Admissibility hearings represent an average of 10% (from FY 2012-2013 to FY 2016-2017) of all CBSA hearings (in person and in writing).¹⁵ This equates to approximately 1800 cases completed annually.

Admissibility

Inventory Tracking

Nationally, the Hearings Program does not track case inventory within the ID's Admissibility Program. Nonetheless, the GTA region maintains a stand-alone record, which highlights a large inventory of cases (Exhibit 2).

¹⁵ Source: CBSA internal document.

Exhibit 2: GTA Admissibility Hearings – Active Cases (April 2014 to April 2017)

Active Cases (inventory) ¹⁶	Apr-14	% of total	Apr-15	% of total	Apr-16	% of total	Apr-17	% of total
Cases Pending Review by Hearings Program (not yet referred to ID-IRB)	269	55%	359	77%	445	70%	292	57%
Total	485		469		636		515	

Source: CBSA internal document (GTA specific).

Admissibility hearings are not subject to legislated timelines. In the GTA and Quebec regions, the evaluation found that a large inventory had impacted the length of time that a case is “pending review.” In Pacific, for example, there is a 6 to 8 month delay from when a case is first sent to the IRB and when it is scheduled for an ID hearing by the IRB. Despite these delays, there are no national guidelines or systematic approaches for case prioritization and it is not clear how cases are selected to be referred to the IRB. This makes national program management difficult. In addition, HOs’ decision to refer cases to IRB are not systematically reviewed or quality controlled by their managers. Despite these challenges, HOs tend to prioritize criminality (IRPA sections 34-37), over other concerns, as it aligns most with the CBSA mandate.

At present, it is difficult for the Hearings Program to prioritize cases, as there is no systematic tracking system in place. HOs therefore cannot prioritize cases in which applicants pose the greatest potential risk to Canada or anticipate and adapt to emerging needs and trends. The best practices of other organizations, such as the IRB, in which cases/hearings are tracked based on sections of the IRPA (by allegation), may be of benefit to the Hearings Program and may warrant further exploration.

Detention Reviews

Key Finding: The number of detention reviews has decreased by 48% between FY 2012-2013 and FY 2016-2017. Although the reasons for this decline are unclear, the need for fewer detention reviews may impact future resource allocation within the Hearings Program.

Individuals who are or may be inadmissible, whose identity may be in question, are a flight risk, or are a danger to the public may be detained by the CBSA and brought before the IRB for a detention review. The decision to detain is subsequently reviewed by the IRB at regular intervals. Detention reviews represent an average of 52% of all CBSA hearings from FY 2012-2013 to FY 2016-2017. While the volume of detention reviews is high due to legislated timelines, which require that a hearing be scheduled within 48 hours, 7 days, and 30 days, as well as every 30 day period thereafter, they have declined steadily over the same five-year period.

While the reason for this decline is unclear, the introduction of the Alternatives to Detention initiative may be a contributing factor. Further analysis by the Hearings Program may be required in order to fully explain the decline. To provide greater clarity, there may also be a need to track instances where the IRB is in agreement with HOs on Alternatives to Detention. It may also be useful for the Alternatives to Detention Program to further track outcomes at 48-hour, 7-day and 30-day reviews, as the success rate at each affects the workload of HOs. The new CBSA Departmental Results Framework (DRF) highlights

¹⁶ This data is representative of the GTA only.

that the “CBSA detention decisions are risk-based and detention is used as a measure of last resort.” Therefore, tracking and reporting can link to the new performance indicator in the DRF.

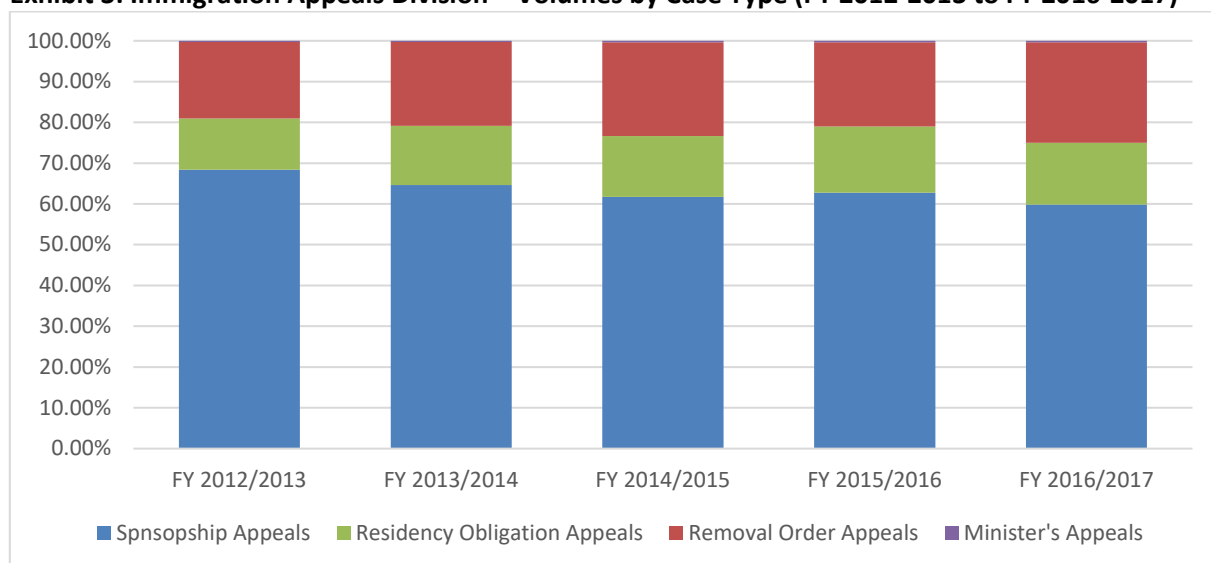
Moving forward, the decline in the number of detention reviews may also have an impact on the re-allocation of resources (i.e. FTEs required for detention reviews or alternatives proposed), should the volume of cases be considered in the development of a resource allocation model.

3.2.2.2 Immigration Appeals Division

Key Finding: While the CBSA’s representation of the Minister of IRCC comprises a significant portion of the Hearings Program workload, the current work arrangements between the two organizations are generally found to be appropriate, based on the CBSA’s enforcement mandate and investigative authorities.

The IAD, as a whole, represents an average of 28% of the total number of CBSA hearings between FY 2012-2013 and FY 2016-2017. Within the IAD, the CBSA supports the maintenance of the integrity of Canada’s immigration and refugee system through its representation of the Minister of IRCC, in front of the IRB, in sponsorship appeals and residency obligation appeals.¹⁷ Sponsorship and residency obligation appeals comprise approximately 68% and 13% of IAD appeals, respectively (refer to Exhibit 3). The CBSA also represents the Minister of PSEP at the IAD in removal order appeals and Minister’s appeals, which represent the remaining portion.

Exhibit 3: Immigration Appeals Division – Volumes by Case Type (FY 2012-2013 to FY 2016-2017)



Source: CBSA internal document.

In the IAD, instances in which CBSA HOs represent the Minister of IRCC comprise a large portion of the Hearings Program’s IAD business line. In these areas, the CBSA is accountable to meet the concurrence target (of 70%) with limited influence on the original IRCC decision, its associated policies, and the timeliness and quality of the evidence that is provided by external stakeholders (such as from Visa

¹⁷ In Sponsorship Appeals, the CBSA HO represents the Minister of IRCC in front of the IRB when IRCC denies a sponsorship application for permanent residency; in Residency Obligation Appeals, the CBSA HO represents the Minister of IRCC when IRCC removes the status of a permanent resident that has not met their residency obligations.

Offices and embassies). Based on case file review and interview responses, HO's emphasized the importance of evidence in the IAD, and revealed that anticipating and developing responses to possible counsel arguments and developing questions or areas to question contributed to 87% of cases (65 of 75). Nonetheless, the Hearings Program in front of the IAD met the concurrence target, with an average of 71% concurrence between FY 2012-2013 and FY 2016-2017.

While some employees noted the increased case load resulting from the representation of the IRCC Minister, the majority of employees from both the CBSA and IRCC expressed that the current arrangement was appropriate and were in agreement that the workload was linked to the added value of the CBSA's enforcement mandate and investigative authorities.

3.2.2.3 Refugee Protection Division

Key Finding: It is difficult to determine the effectiveness of the triage process as triage decisions are not systematically tracked.

A checklist of triggers is used to establish to which organization (IRCC or the CBSA) a refugee claim should be referred for possible intervention by either organization. This process is referred to as triage. Triage assessments include: ineligibility screening due to admissibility concerns; security checks (including police checks); validation of the claimant's Basis of Claim (BOC); integrity and credibility checks; immigration trends analysis; and an analysis of past Canadian immigration history. Once complete, the claimant's information is entered into the GCMS and the NCMS. If no triggers are identified, the Minister will not intervene in the refugee hearing. The IRB must also issue notice to the Minister (herein referred to as a red letter¹⁸), if issues are raised in a claim (exclusion, integrity, inadmissibility, or ineligibility) that may require the Minister's attention.

The IRCC Reviews and Interventions Unit is responsible for triage in the GTA region and the CBSA is responsible for triage in the Pacific and Quebec regions. National SOPs (developed jointly by the CBSA and IRCC) provide guidance on case review and establish the triggers based on which a file is forwarded to either organization. Cases containing triggers related to criminality, safety, security, and or other relevant concerns are forwarded to the CBSA Hearings Program and those that contain solely integrity and or credibility-related concerns are referred to IRCC.¹⁹ Hybrid cases, which contain triggers related to both the CBSA and IRCC mandates, are always referred to the Hearings Program. Workload is, therefore, partially dictated by the triage process. It is also affected by the volume of refugee claimants and legislated timelines for the scheduling of hearings.

It is difficult to ascertain the effectiveness of the existing triage process, as decisions are not universally or consistently tracked by the CBSA Hearings Program. As such, there may be a need to track: the number of triage cases referred to each of the CBSA and IRCC; those reviewed by the Hearings Program; those in the inventory of each organization; hybrid cases (for which the CBSA is responsible); and the proportion of cases related only to the IRCC mandate. In turn, the tracking of these areas may also allow for future analysis of the extent to which the triage process contributes to the Hearings Program workload, across the regions.

¹⁸ A "red letter" is defined herein as a mechanism employed by the IRB, in accordance with the IRB rules, to notify the Minister of PSEP or IRCC that intervention in a RPD case, wherein neither organization had originally intervened, may be warranted.

¹⁹ Please refer to articles 1E and 1F of the UNHCR Refugee Convention for additional details. Article 1F is exclusion to CBSA Hearings Program intervention.

Key Finding: Different approaches are used by Triage Centres across Canada, with no internal or inter-organizational consistency.

Despite national SOPs, the triage process varies across the three regions in which it is undertaken. In Quebec and GTA, the triage team reviews all cases and refers only those with CBSA or IRCC triggers to the respective organization. From FY 2015-2016 to FY 2016-2017, the number of cases reviewed by the Quebec Triage Centre (Montréal) increased by 62% (from 3,781 to 6,122). The evaluation found that an inventory of cases pending triage has resulted in a change in the triage process. To reduce this inventory, the Quebec Triage Centre now refers cases to either IRCC or the CBSA based on the first trigger identified, rather than conducting a full review of all triggers prior to referral. This may have resulted in a transfer of workload. For example, if a case is sent to IRCC and is later found to contain triggers related to the CBSA Hearings Program mandate, the case will be returned to the CBSA as a hybrid case. Nationally, when a hybrid case is referred to the CBSA, and CBSA triggers are later discounted, the CBSA cannot return the case to IRCC. Conversely, in Pacific, triage acts as a “sorting facility,” in which all cases are reviewed and 100% of cases are referred to IRCC or the CBSA and, therefore, necessitates further review at subsequent stages of the hearings process.

From FY 2015-2016 to FY 2016-2017, there was a 41% increase in the number of claims heard by the IRB (from 16,592 to 23,350). Between FY 2012-2013 and FY 2016-2017, the percentage referred to HOs increased from 17% to 37%. It is anticipated that the volume and subsequent impact on the CBSA’s workload may continue to increase.

RECOMMENDATION 2:

The Vice-President of Operations Branch and the Vice-President of Programs Branch (or the proposed Vice-President of Enforcement and Intelligence as part of CBSA Renewal) should, in consultation with IRCC, explore options to optimize the national consistency and effectiveness of the delivery of the triage function.

Key Finding: The existing triage and file referral process may be resulting in a duplication of efforts, particularly with regards to the CBSA’s security checks.

Prior to the referral of a file to a HO, several CBSA groups may be involved in the security screening. In the Refugee stream, security checks are conducted upon intake by Refugee Intake Officers. The Triage Officer then conducts additional checks to determine the proper organization to which to forward a file. The evaluation found that, in Pacific, the Minister’s Delegate (FB-03) and Triage Officers will both conduct screening activities, resulting in further overlap. Neither group appeared to be aware of the screening conducted by the other. In addition, cases are also referred to the CBSA’s National Security Screening Division (NSSD) which screens 100% of refugee claims (in which claimants are over the age of 18). The NSSD then provides security assessments for those cases where a serious inadmissibility concern has been identified.²⁰

Duplication in the research efforts of CBSA staff at the FB-02, FB-04, and FB-05 levels in the refugee process, as well as screening activities conducted at the NSSD and the Triage Centres, was also highlighted in a series of reports developed as part of the CBSA’s ongoing Business Enhancement

²⁰ “Serious inadmissibility concerns” herein refers to reasonable grounds to believe that an applicant is inadmissible under sections 34, 35, and or 37 of the IRPA.

Initiative. For example, the NSSD and the regions both conduct intake document analysis, systems/database checks, and open source searches. In terms of segregated activities, the NSSD has access to classified sources and additional databases, while the regions have access to, for example, fingerprint analysis, additional liaison partners, and the claimants themselves. Overall, the reports emphasized the need to enhance existing processes, SOPs, and roles, with recognition for overlapping activities within the regions and between the NSSD and the regions, in order to reduce duplication and create a clearer division between tasks.

Key Finding: The national volume of red letters has increased over time resulting in an increase in the workload of the CBSA Hearings Program.

The IRB is required, in accordance with the IRB rules, to notify the Minister of PSEP or IRCC that intervention in an RPD case, wherein neither organization had originally intervened, may be warranted. This mechanism is referred to as a “red letter,” and will result in the postponement of a hearing.

Exhibit 4: Level of CBSA and IRCC Intervention in Red Letter Cases (CY 2013 to 2017)

CY	Total Red Letters (#)	CBSA Intervention in Red Letter Cases (%)	IRCC Intervention in Red Letter Cases (%)	No Intervention in Red Letter Cases (%)
2013	634	21.6	9.0	69.4
2014	725	32.4	11.6	56.0
2015	758	30.5	12.0	57.5
2016	1031	19.2	9.5	71.3
2017	1627	12.1	11.6	76.3
TOTAL²¹	4775	23.2	10.7	66.1

Source: IRB Statistics, 2018.

The number of red letters increased steadily between CY 2013 and 2017. It appears that a small portion of red letters were addressed by either the CBSA or IRCC during this period (refer to Exhibit 4). Additionally, between CY 2014 and CY 2017, there was a steady decrease in CBSA intervention. It was noted that the CBSA oftentimes does not communicate to IRB its intention to intervene in cases flagged by the red letter process. As such, there may be a need for the Hearings Program to track the final decision to intervene in red letter cases, and to communicate this information to the IRB and IRCC, to further enhance the working relationship between the organizations, as well as overall program effectiveness.

In the CBSA Refugee Protection Division, triage is typically the primary source for determining HO caseload. The evaluation found that, in the GTA region, due to the volume of “red letters” and its current staffing level, the CBSA RPD focuses on assessing the cases referred by the IRB, while not working on cases referred through the CBSA triage process. Nonetheless, Central Region (of which the GTA is a part) maintains the lowest level of intervention in red letter cases, relative to other IRB regions. As a result, it is also important to examine the increase in the number of red letters, over time, between CY 2013 and CY 2017. This increase reflects an increased workload for the CBSA and IRCC, regardless of the decision to intervene, as an assessment is nonetheless required as to whether to intervene or not intervene. The increase in the number of red letters may be the result of a variety of factors, and

²¹ Percentage totals (of the total number of red letters) reflect an average of the percentages identified from CY 2013 through CY 2017.

requires additional analysis, as it could also be a reflection of an overall increase in workload in the RPD, over time.

3.2.2.4 Refugee Appeals Division

Key Finding: There is no national RAD hearings strategy and HOs are not receiving the necessary guidance as to when the CBSA will initiate an appeal to RAD. The lack of a strategy may be resulting in a low success rate for Minister-initiated appeals.

In the RAD, an appeal can be initiated by the refugee claimant or an HO on behalf of the Minister, should either party identify that the IRB erred in law, fact, or both. As such, the use of up-to-date jurisprudence is greatly emphasized in this line of business. IRB interviewees commented that there does not appear to be an established hearings strategy guiding the CBSA's intervention in RAD cases. Case file review and interview results also pointed to a lack of guidance from NHQ Operations (Litigation) Branch to HOs regarding whether or not to initiate appeal. This perceived lack of national direction may also be linked to regional disparities in concurrence rates.

While RAD hearings represent only 1% of total CBSA hearings, between FY 2014-2015 and FY 2016-2017 (i.e. following Refugee Reform), the volume of refugee appeals initiated by the Minister grew from 25 to 42. Over the same period, the concurrence rate declined from 80% to 50%, below the 70% target.²² Conversely, in refugee appeals cases initiated by the claimant, the Minister has had consistent success (above 80%).²³ This may reflect a need to develop a hearings strategy in Minister-initiated appeals, and to improve guidance to HOs as to when the CBSA would initiate an appeal, to enhance program effectiveness in the RAD.

3.2.2.5 Across Lines of Business – Stakeholders

Internal Stakeholders

Key Finding: A lack of understanding of immigration and hearings processes amongst internal stakeholders, in addition to employee turnover and a loss of corporate memory, may have an impact on Hearings Program performance.

A number of internal stakeholders contribute directly to the achievement of the expected outcomes of the Hearings Program. These stakeholders are often represented at the front-end of the hearings process and the extent of their involvement is often dependent on case type. The evaluation found that, amongst these internal stakeholders, there was a lack of clarity surrounding the nuanced functions of the Hearings Program, the extensive demands on Hearings Program staff, and job performance requirements. For example, in the GTA region, a loss of corporate memory due to employee turnover and a lack of immigration experience at the manager level may have had an impact on the understanding of the Hearings Program and the unique job requirements of employees.

Case file review results and interview responses suggested that a lack of understanding of the Hearings Program, internally, may have impacted information sharing. Challenges were reported in the receipt of timely, complete, and good quality information and case files from frontline personnel (e.g. at ports of

²² Source: CBSA internal document.

²³ Source: CBSA internal document.

entry and inland). In ID, for example, CBSA Inland Enforcement Investigations are a key source for determining the workload of HOs. As outlined in the Evaluation of the Immigration Investigations Program (2015), persons that arrive through irregular migration, or that were initially found admissible, may become non-compliant with the IRPA. These cases are referred to the CBSA Inland Enforcement Division for investigation. This investigation may result in an inadmissibility report, which is subsequently presented by the HO in front of the IRB to argue for the issuance of a removal order. In turn, the information provided by Inland Enforcement Investigators to HOs is key to the development of a case. Due to insufficient communication and knowledge sharing between program areas, HOs spend significant time gathering additional evidence across the Hearings Program's lines of business. This may be the result of a misunderstanding of the breadth of information required by an HO in the presentation of a case. Ensuring that front-end screening, research, investigative work, and evidence gathering is thorough and complete could help ameliorate this misalignment of workload and allow HOs additional time to prepare their arguments.

While the evaluation found that working groups were used to facilitate communication internally at the management level, there is a need to improve internal, cross-regional information sharing at the working-level to reduce the duplication of efforts of HOs (i.e. research) and to discuss best practices.

External Stakeholders

In addition to a number of internal stakeholders, the Hearings Program engages with two key external stakeholders: the IRB and IRCC. The IRB is responsible for rendering well-reasoned decisions on immigration and refugee matters with efficiency, fairness, and in accordance with the law. IRCC facilitates immigration, establish immigration and refugee policies, and offers programming to support new Canadians. IRCC also grants citizenship and issues travel documents to Canadians. In working with these stakeholders, the Hearings Program contributes to the protection of the safety and security of Canada and its citizens. Both the CBSA and IRCC also have a role to maintain the integrity of Canada's immigration and refugee system. In turn, the CBSA and IRCC have the shared responsibility to undertake a number of aspects of the hearings process, including triage and hearings. This is most visible in the RPD, wherein IRCC is responsible for GTA triage and intervention in certain case types, and in the IAD, wherein the CBSA often represents the Minister of IRCC to uphold an IRCC decision.

Working relationship between the CBSA and IRCC

Key Finding: Overall, the evaluation found that there is a positive working relationship between IRCC and the CBSA and communication between the two organizations is generally effective. At the same time, there is inconsistency in the timely sharing of information between certain visa offices and embassies and the CBSA.

The evaluation found that interactions between the CBSA Hearings Program and IRCC were generally positive and the information received by the CBSA from IRCC is timely, complete, and of good quality. The information exchange between the two organizations is also effective. Amongst NHQ interviewees, for example, the value of existing working groups and senior management committees, in which both organizations participate, was noted. Further consultation and collaboration between the two organizations was also encouraged, so as to continue to enhance the working relationship of IRCC and the CBSA and to ensure the concerns of the two organizations are addressed.

Regionally, there is a positive working relationship between the CBSA and IRCC at the triage level. In IAD, the working relationship between IRCC and the CBSA includes the sharing of information and evidence for the purposes of case file development. In these instances, Visa Officers (as well as, embassies) provide the CBSA with invaluable information in the development of well-informed arguments. Interviewees referenced delays in the receipt of information from certain Visa Officers (required by the Hearings Program to compile an appeal record) and embassies (assists the Hearings Program in obtaining supplementary information/evidence), which creates challenges in the IAD.

Further intricacies related to the IRCC-CBSA working relationship have been highlighted earlier in the report, in reference to the workload and resource implications of the RPD triage process and the CBSA's representation of the Minister of IRCC, at the IAD, in sponsorship and residency obligation appeals cases (refer Section 3.2.2.3 – RPD and Section 3.2.2.2 – IAD for additional details). In these areas, it is further emphasized that both organizations are reliant on the functioning of this working relationship to ensure the effective processing of immigration and refugee cases.

RECOMMENDATION 3:

The Vice-President of Programs Branch (or the proposed Vice-President of Enforcement and Intelligence as part of CBSA Renewal) should review the roles and responsibilities of the CBSA and IRCC within the hearings process, as outlined in the existing MOU, to optimize resource utilization between the two organizations and maximize program effectiveness.

Working relationship between the CBSA and the IRB

Key Finding: Overall, the IRB recognizes the professionalism of CBSA Hearings Program staff, while the link between level of experience and HO preparedness in front of the IRB was noted.

The IRB and the CBSA currently engage in management level meetings to discuss relevant issues and exchange feedback. Furthermore, mechanisms to facilitate communication and information sharing are outlined in the trilateral MOU (three Parties: IRB, IRCC, and CBSA).²⁴ The evaluation found that the CBSA is satisfied with its interactions with the IRB overall, and with the effectiveness of communication between the two organizations. The professionalism and effectiveness of HOs was also highlighted, with cognisance that the level of an HO's experience may be linked to their preparedness in front of the IRB.

While the working relationship between the two organizations is mostly positive, regional variation was highlighted with regards to timeliness in disclosure and scheduling. It was noted by the IRB that the CBSA did not consistently meet timelines in providing disclosure information to the IRB. The IRB establishes the schedule for refugee hearings based on legislated timelines and requirements. Oftentimes, hearings are re-scheduled, due to claimants' requests or other administrative reasons. Conversely, postponements initiated by the PSEP Minister were primarily associated with late disclosure and comprised a small percentage of all delays between 2013 and 2017.²⁵

²⁴ Source: Government of Canada documentation.

²⁵ Source: IRB Statistics, 2018.

Key Finding: In order to mitigate backlog, the IRB has implemented an early resolution process in an attempt to reduce the number of IAD hearings. This may have created a new resource demand on the CBSA and may require additional consultation between the CBSA, the IRB and IRCC to enhance the management and implementation of existing MOUs.

In its discussion of communication and consultation, the trilateral MOU between the IRB, IRCC, and the CBSA emphasizes the need for each organization to notify the others of possible changes to resource requirements, as related to issues of mutual interest and where an organization is unable to meet workload demands. Further to this, the MOU suggested that major initiatives (i.e. legislative and regulatory proposals, proposed rule changes, policy proposals, or new administrative procedures) also warrant inter-organizational communication and consultation in instances where the changes may have a meaningful impact on the administrative functioning or operations of these organizations.

The early resolution process (which includes the ADR) is a key initiative being implemented by the IRB to reduce the overall appeals inventory. The evaluation found that, between FY 2013-2014 and FY 2017-2018, 47.54% of outcomes were positive. Instances where an ADR resulted in no settlement, and therefore required a subsequent, full hearing, comprised approximately 52.46% of total ADRs from FY 2013-2014 to FY 2017-2018. Nonetheless, no settlement outcomes declined by approximately 12% between FY 2015-2016 and FY 2017-2018. Therefore, there has been an increase in the percentage of positive outcomes at the ADR (Exhibit 5).

A positive outcome is not always characterized by whether or not a settlement was reached at the ADR. Outcomes of “agreement of factors” or “disagreement of facts” may result in a full hearing and are considered positive. These instances comprise a small percentage of total ADRs. However, they may improve the efficiency of a full appeals hearing as, once held, the facts of the case will have already been discussed in detail. At the same time, Program representatives noted that the timeliness of the scheduling of a hearing following the ADR is important to ensure the benefit of the process (for example, to ensure that the facts of the case remain the same as discussed at the ADR). Further analysis of ADR outcomes may provide a better understanding of the long-term effects of the early resolution process.

Exhibit 5: Early Resolution – Alternative Dispute Resolution Outcomes (FY 2013-2014 to FY 2017-2018)

FY	Minister's Consent (%)	Appeal Withdrawn (%)	Agreement of Facts (%)	Disagreement of Facts (%)	No Settlement (%)	Total ADRs (#) ²⁶
2013-2014	35.4	8.5	1.1	3.4	51.6	1027
2014-2015	36.8	5.7	0.7	1.3	55.6	1220
2015-2016	36.1	5.1	0.3	1.3	57.3	1167
2016-2017	40.3	7.2	0.3	1.3	50.9	1130
2017-2018 ²⁷	42.1	3.6	0.9	7.9	45.3	961
TOTAL²⁸	38.1	6.0	0.7	3.0	52.1	5505

Source: CBSA internal document. Positive outcomes in green, negative outcomes in red.

²⁶ The total number of ADR cases represented in this table is not a full representation of ADR workload. There are additional cases which, based on a variety of factors, have been adjourned, postponed, or at which one of the participants did not attend.

²⁷ This does not represent a complete fiscal year.

²⁸ Percentage totals (of the total number of ADRs) reflect an average of the percentages identified from FY 2014-2015 through FY 2017-2018.

Participation in the ADR is inconsistent across the regions due to competing workload and priorities. The evaluation found that the process may provide long-term benefits to the CBSA in reducing the total number of cases heard in front of the IRB. Nonetheless, given the existing demands on an HO's time, the requirement to participate in the early resolution process may represent additional resource requirements for the Hearings Program. While the CBSA is participating in the ADR in the Pacific and Quebec regions, in the GTA region, the CBSA is prioritizing full hearings over the ADR, due to resource limitations. This previously resulted in a temporary cancellation of the process. While the IRB is increasing the number of officers to accommodate the early resolution process, the CBSA currently cannot support an equivalent increase in Hearings Program staff.

The evaluation found that there were mechanisms in place to facilitate communication and consultation between the IRB and the CBSA. However, there may be a need to examine options to strengthen the management and implementation of these mechanisms, such as the existing Trilateral MOU, to ensure that regional differences in the CBSA-IRB working relationship and emerging workload demands are considered.

3.2.2.6 Across Lines of Business – Training

Key Finding: National Training Standards for HOs exist. However, the delivery and timing of the training provided by the CBSA to Hearings Program staff does not align with the need for specialized training (such as, the preparation of legal arguments) and the unique requirements of the various feeder groups.

The job functions of an HO are highly specialized and require strong technical and legal knowledge with which to prepare cases and arguments for presentation in front of the IRB. Furthermore, the various feeder groups which support the staffing of the HO position represent a wide range of backgrounds and levels of experience within the immigration and legal streams. In turn, the training needs of Hearings Program staff may vary greatly, based on an employee's type and level of experience.

The existing National Training Standards for HOs were developed by the CBSA's Training and Development Directorate and were last updated in December 2015. Core and function-specific training seeks to provide officers with the knowledge to carry out their key tasks. Core training is available via five e-learning courses, including: navigating NCMS and GCMS; and roles and responsibilities related to the IRPA. There are also six function-specific courses that are mostly classroom based, including: admissibility; detention review; and appeals. Self-study and job shadowing opportunities are specifically allocated for the ADR component of function-specific training.

**Exhibit 6: In-Class Function-Specific Training Sessions, Offered by Region
(FY 2012-2013 to FY 2016-2017)**

FY	GTA	Quebec	Prairie	Pacific	Total Sessions Offered
2012-2013	1	2	0	1	4
2013-2014	0	0	1	0	1
2014-2015	2	0	2	0	4
2015-2016	0	1	5	0	6
2016-2017	0	1	0	0	1
TOTAL	3	4	8	1	16
% TOTAL	18.8%	25%	50%	6.2%	100%

Source: CBSA internal document.

Between FY 2012-2013 and FY 2016-2017, the three, in-class, function-specific training courses were delivered to 130 employees, the majority of whom were FB-05s. During this period, approximately 49% of participants attended the training courses in the Prairie region. This is mirrored in the number of training sessions offered, as 50% of sessions were held in Prairie region (refer to Exhibit 6).²⁹ No such training was offered in GTA between FY 2015-2016 and FY 2016-2017, despite high staff turnover.

The evaluation found that, despite the training standards in place, training was provided on an irregular basis and was often delivered after employees have occupied their position for a number of years. According to the case file review, most HOs reported having received some basic training and some specialized training, while no HOs with less than two years of experience had completed all of their specialized training. Additionally, in most cases (81-84%), HOs with over two years of experience found the provided training useful, while nearly half (42%) of HOs with less than two years of experience found the training useful.

It is important to note that the definition of “training” was broadly applied in the case file review, and therefore included on-the-job training, as well as formal training. On-the-job training was reported to be the most common source of training, across all lines of business. While some interviewees raised concerns over the emphasis placed on on-the-job training (i.e. perpetuating “bad habits”), the value of peer information sharing was discussed. Furthermore, this form of knowledge transfer was found to be of greater benefit than the guidance provided by NHQ, which was found lacking in certain areas, such as, litigation management. In regions with fewer officers, amongst whom a variety of cases are handled and the opportunity to develop expertise in any one area may be limited, knowledge sharing and peer mentorship were found to be less prominent. Additionally, in the Pacific region, employees relied on supplementary, external training for additional support.

The Hearings Program currently recruits HOs from within the CBSA and public service, as it is recognized that HOs can benefit from different education background, such as in law, and other working experience, to support their work in analyzing case files and presenting them in front of the IRB. When and how to recruit HOs, when HOs face challenging workload and the program experiences attrition issues, is a key management concern.

²⁹ The region in which an employee participates in training may not always be the region in which the employee works. Training data did not account for the employee’s region of work.

When viewed in conjunction with performance data, such as concurrence rates, interview and case file review information could not prove that training, on its own, has had a positive impact on performance. For example, the Prairie region has comparatively low overall concurrence rates, despite having received the most formal, function-specific training. In contrast, the GTA region maintains relatively high concurrence rates, despite a lack of function-specific training. Furthermore, case file review and interview responses suggest that the current process for the delivery of formal training, as well as its format, may not meet the unique needs of Program employees, who have since come to rely on peer mentorship and colleague knowledge sharing as a dominant source of support and training.

At present, a number of actions are being taken to advance the development and adjustment of formal training. The Training and Learning Solution Division is proactively moving forward with the design of the HO Fundamentals course. This blended learning solution consists of a 2-hour online and a 2 day in-class component with an anticipated launch in FY 2018-19. In addition, a National Training Standard (NTS) for Hearings Advisors is being developed and the Hearings Officer training program will be entering its maintenance cycle in FY 2018-19. These developments may help the consistency of training delivery.

RECOMMENDATION 4:

The Vice-President of the Human Resources Branch should, in consultation with the Vice-President of Programs Branch and the Vice-President of the Operations Branch (or the proposed Vice-President of Enforcement and Intelligence as part of CBSA Renewal), examine the existing recruitment strategies for Hearings Program staff, as well as the effectiveness of the current training model and the consistency of its delivery, to account for the specialized and technical job functions of Hearings Officers and to improve training outcomes.

3.3 Demonstration of Efficiency and Economy

3.3.1. Program Inputs and Outputs

Key Finding: Overall program spending and FTEs have increased between FY 2012-2013 and FY 2016-2017, while the number of cases finalized has declined.

Hearings Program spending is small relative to the scope and complexity of the Hearings Program's mandate. The proportion of CBSA spending that has been allocated to the program between FY 2012-2013 and FY 2016-2017 has remained relatively stable, with slight fluctuations (Exhibit 7).

Exhibit 7: Hearings Program Spending (FY 2012-2013 to FY 2016-2017)

Fiscal Year	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017
Total Hearings Program Expenditures	\$17,721,798M	\$21,310,317M	\$20,894,814M	\$19,963,575M	\$20,993,038M
Proportion of total CBSA budget (%)	1.0	1.2	1.0	1.1	1.2

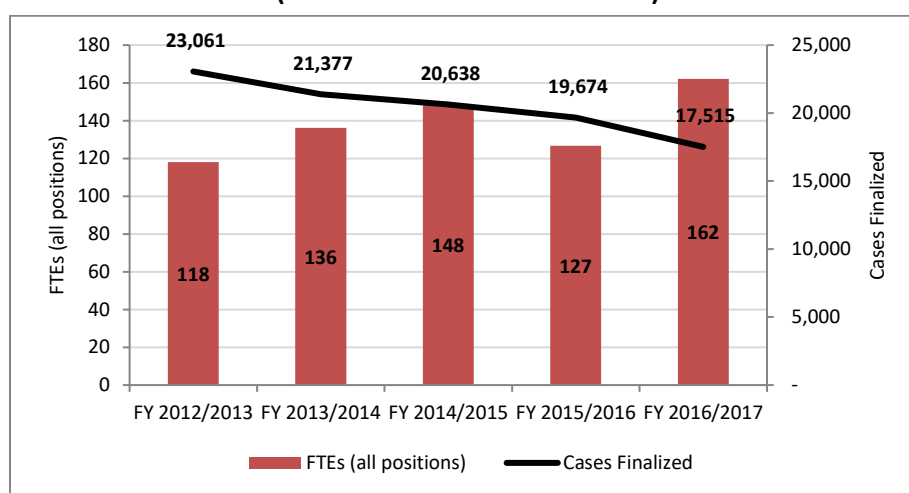
Source: CBSA internal document.

Although program expenditures have been stable over time, the total number of cases finalized has declined by 24% (Exhibit 8)³⁰. Total cases finalized includes all cases in which IRB has rendered decisions, such as in a hearing, submissions made by writing, and cases abandoned and withdrawn. All regions experienced a decline, with the exception of the Atlantic region, which had a slight increase. The GTA and Southern Ontario regions experienced the steepest declines (47% and 37% respectively), with the other regions experiencing more moderate declines.

Over the same period, the number of full-time equivalents (FTEs) in the regions increased by 37%, from 118 in FY 2012-2013 to 162 in FY 2016-2017 (Exhibit 8). The majority are located in the GTA, Quebec, and Pacific regions.

The number of cases finalized is a key indicator of the output of the Hearings Program. While program spending and the number of FTEs has increased, the number of cases finalized decrease, overall.

Exhibit 8: National Totals of Cases Finalized (all lines of business) and Number of FTEs (all positions) (FY 2012-2013 to FY 2016-2017)



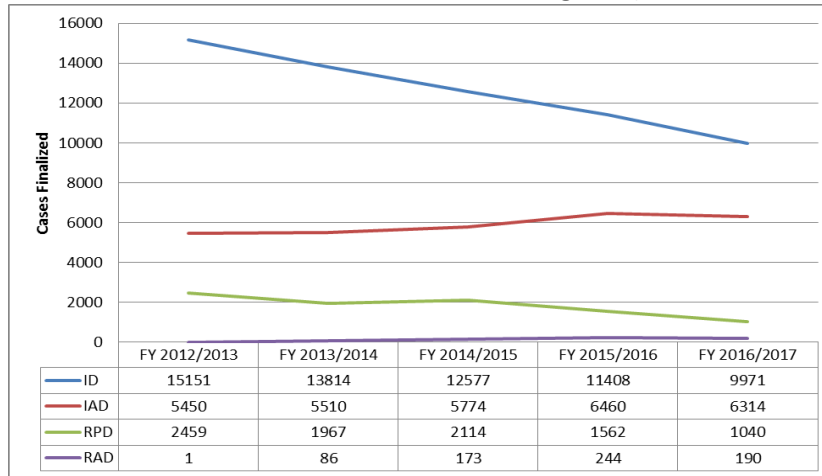
Source: CBSA internal document.

Not all cases reach the hearings stage. Hearings Advisors and HOs still undertake the preparation work required until such time as they are notified that a case has been withdrawn or abandoned. Therefore, these types of cases have an associated cost, despite not being heard before the IRB. The rate of withdrawn or abandoned cases varies between the Hearings Program's lines of business. In FY 2016-2017, sponsorship appeals had the highest percentage of cases withdrawn at 27% of cases and removal order appeals had the highest percentage of cases abandoned at 19% of cases.

Between FY 2012-2013 to FY 2016-2017, the number of ID cases declined nationally by over 33% (Exhibit 9). Over the same period, the number of RPD cases also declined nationally, by nearly 60%, and presents the largest variation. In addition, the national number of IAD cases has increased steadily over time.

³⁰ In this section of the report, all figures, tables, and graphs referencing cases finalized are based on CBSA NHQ Program Data. The exception is in the RAD, wherein cases finalized are based on region-reported numbers. All figures, tables, and graphs referencing FTEs and Salary are based on data from the CBSA NHQ Human Resources Branch. FTEs refer only to regional FTEs at the FB-05 and FB-03 level. FTEs also refer to direct FTEs and exclude vacation and overtime. CBSA Comptrollership data was used solely and specifically to display program expenditures. Total cases finalized includes all cases in which IRB has rendered decisions, such as in a hearing, submissions made in writing, and cases abandoned and withdrawn.

Exhibit 9: Total Number of Cases Finalized, Across All Regions (FY 2012-2013 to FY 2016-2017)



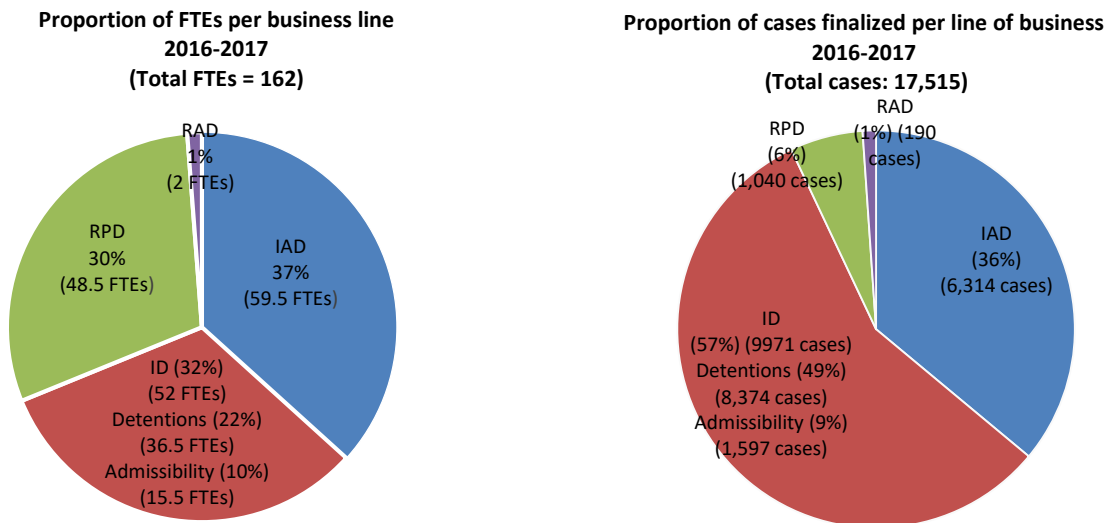
Source: CBSA internal document.

The number of cases finalized does not provide a complete picture of the workload in the Hearings Program. For example, the increase in the number of refugee claims between FY 2012-2013 and FY 2016-2017 means that the RPD staff, such as Hearing Advisors and HOs, were required to spend more time investigating, gathering evidence, and analyzing cases to assess whether or not to intervene in a refugee hearing. As a significant portion of the workload involved in the intervention in and preparation for a hearing is not reflected by the number of cases finalized, program managers may need to consider the incoming workload, related to case volumes, as a factor in resource allocation.

3.3.2 Resource Requirements by Lines of Business

Some Hearing's Program lines of business are more complex than others. Each demands a certain level of effort in the preparation for cases, including evidence gathering, and requires knowledge of case law and the application of legal tests. In addition, the duration spent in a hearing varies by line of business. For example, 6% of total cases finalized in FY 2016-2017 were in the RPD, while FTEs allocated to the Hearings Program's RPD comprised 30% of total Hearings Program FTEs. This may be an indication of greater case complexity and FTE level of effort (Exhibit 10). In the same year, 49% of total cases finalized were in detention reviews in the ID, which comprised 22% of total Hearings Program FTEs. This may be an indication of more straightforward cases.

Exhibit 10: Proportion of FTEs and Cases Finalized by Line of Business (FY 2016-2017)



Source: CBSA internal document.

In the absence of a national resource allocation model, the evaluation looked at the planning assumptions used in the GTA region (refer to Appendix B). These give some indication of the time and resources required to complete cases in different lines of business. This is also an example of the knowledge required to build a resource allocation model, which could assist with business planning.

The use of resources also differs across the regions and may contribute to each region's overall efficiency. For example, Hearings Advisors (FB-03), as a key support to HOs and the Hearings Program, are utilized inconsistently across the regions. In the Pacific region, the FB-03 role is one of a Minister's Delegate and in the GTA and Quebec regions, Hearings Advisors support the hearings process in various ways, including the preparation of written submissions for specific case types. The preparation of written submissions was reported to require significant effort and time, despite the intention to increase overall efficiency.

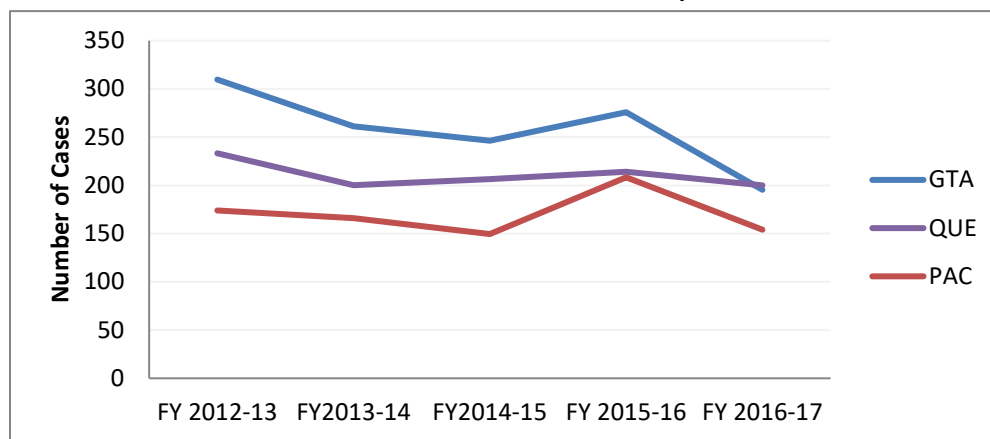
Historically, in the Quebec and GTA regions, in-person "summary sessions" were used, wherein Hearing Officers presented multiple cases (s.36.1.a serious criminality) to IRB members during a single session. Both CBSA and IRB interviewees noted that these in-person summary sessions may have been a more efficient means to process certain case types, rather than the written submissions currently prepared by Hearing Advisors. Tracking the number of written and in-person submissions nationally could provide useful information with regards to the most efficient allocation of time and resources. Furthermore, a review of the consistent application of the roles and responsibilities of Hearing Advisors may contribute to a more efficient operation.

3.3.2.1 Regional Variations

Key Finding: There are significant variances in regional resource allocation and utilization to account for workload levels, as reflected in the number of cases per officer, cost per case, and the number of IRB members as compared to the number of HOs.

The workload, as measured by the number of hearings cases, varies significantly across regions. Taking into account case volumes, levels of expertise, and the size of operations, the Pacific, GTA and Quebec are the most comparable. Amongst these three regions, the number of cases completed per FTE and the cost per case indicate a lack of consistency in resource utilization.

**Exhibit 11: Cases per Hearings Officer, Across the GTA, Quebec, and Pacific Regions
FY 2012-2013 to FY 2016-2017)³¹**



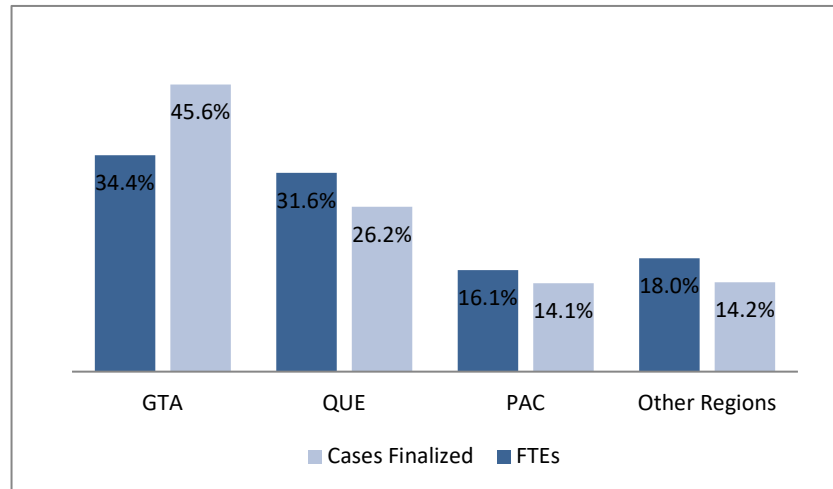
Source: CBSA internal document.

The ratio of cases to HO varies by region (Exhibit 11). For example, in the GTA region, the total number of cases completed by an HO is, on average, 258 per year. In contrast, an average of 211 cases per year, per HO, are completed in Quebec Region and an average of 170 cases per year, per HO, are completed in the Pacific region. All three regions experienced a decline in this ratio between FY 2012-2013 and FY 2016-2017.

With regards to the percentage of total cases and total FTEs across the regions, this measurement does not take into account the number of cases in each of the Hearings Program's lines of business. While the GTA region has the highest number of FTEs, it also has the highest proportion of national cases (Exhibit 12). Specifically, 34.4% of the national FTEs are responsible for 45.6% of the national caseload. Although this may be an indicator of efficiency, this may also lead to concerns related to the well-being and stress levels of staff. During field research in the GTA region, most interviewees discussed a lack of human resources (HOs and Support Staff) and its impact on overall workload and employee morale.

³¹ The small number of cases in Northern Ontario, Southern Ontario, and Atlantic skewed the results and were therefore excluded from this analysis.

Exhibit 12: Percentage of Cases and FTEs, per Region, Across Lines of Business (FY 2016-2017)



Source: CBSA internal document.

*"Other Regions" represents the Northern Ontario, Southern Ontario, and Atlantic regions. These were combined due to the small volume of cases and FTEs.

There are also regional variations in the cost per case in the GTA, Quebec, and Pacific regions (Exhibit 13).³² These variations are largely due to varying case numbers and or FTE counts.

Exhibit 13: Regional Variation in Cost per Case (FY 2016-2017)

	GTA	Quebec	Pacific
Immigration Division	\$319 per case	\$376 per case	\$369 per case
Immigration Appeal Division	\$607 per case	\$680 per case	\$821 per case
Refugee Protection Division	\$2,834 per case	\$3,802 per case	\$2,776 per case

*Due to the small number of cases in RAD, the cost per case analysis did not render useful information and was therefore removed from this chart.

Key Finding: The regional ratio of IRB Members and CBSA HOs is inconsistent across regions and lines of business, placing higher workload pressures on HOs in some lines of business.

The ratio of IRB member to HO is a good indicator of workload. When there are more IRB members available to hear cases, more HOs are required to support the hearings.³³ Across the lines of business, the IRB Western region is best supported by the CBSA, as indicated by the number of CBSA HOs to IRB members (Exhibit 14). Conversely, in the Central region, there are fewer CBSA HOs to IRB members. As referenced above, this corresponds to the results of evaluation field research visits in the GTA and Quebec regions, in which interviewees discussed the impacts of the lack of human resources (HOs and Support Staff). There is no programmatic rationale to explain the variances in HO to IRB member ratios.

³² The small number of cases in Northern Ontario, Southern Ontario, and Atlantic skewed the results and were therefore excluded from this analysis.

³³ While IRB has 3 regions (Central, Eastern and Western), the CBSA has 7 regions (all of which fall into the IRB's 3 regional categories)

Exhibit 14: Ratio of IRB Members to CBSA Hearings Officers (FY 2016-2017)³⁴

Ratio of IRB Members to Hearing Officers	ID		IAD		RPD	
	IRB Member	HO	IRB Member	HO	IRB Member	HO
Eastern Region (Atlantic, Quebec, Northern Ontario)	1	1.5	1	0.9	5.3	1
Central Region (GTA, Southern Ontario)	1	0.9	1	1	11.8	1
Western Region (Prairie, Pacific)	1	1.4	1	4.4	2.6	1

Source: CBSA internal document and IRB website member data.

In summary, the Hearings Program does not yet systematically track all of the factors that contribute to its workload and outputs. As such, there may be a need to conduct further analysis of the resource requirements specific to each line of business, which takes into account variances in workload, best practices in effective and efficient resource use (such as, Hearing Advisors), and considers opportunities for process efficiency (such as, written submission vs summary sessions).

RECOMMENDATION 5:

The Vice-President of Programs Branch with support from the Vice-President of Operations Branch (or the proposed Vice-President of Enforcement and Intelligence as part of CBSA Renewal), complete an analysis of national resource allocation and utilization, including Hearings Advisors, which takes into account the volumes in each line of business and region, to optimize service delivery and achievement of outcomes.

³⁴ Please note that the number of IRB members in the RPD contribute to the hearing of all RPD cases, not just in cases of CBSA intervention.

Appendix A – Management Response

OVERALL MANAGEMENT RESPONSE

Generally, the evaluation is fair and accurately reflects the state of the program. There are a number of program improvements that have been underway over the course of the past year that directly address some of the recommendations in the evaluation. EIPD, in consultation with EIOD, is currently developing a hearings program strategy which will address most of the key findings in the report. Overall, the program is well positioned to respond to this evaluation.

RECOMMENDATION 1

The Vice-President of Programs in cooperation with the Vice-President of Operations (or the proposed Vice-President of Enforcement and Intelligence as part of CBSA Renewal) should improve national program management through the development of a risk-based hearings strategy, which includes performance indicators unique to the Program's lines of business and regular program performance reporting.

Management Response	
The Vice-President Programs and Vice-President Operations agree with this recommendation. While the Key Performance Indicators outlined in the logic model are adequate for reporting purposes to the Treasury Board, they should be strengthened to provide sufficient granularity for efficient functional program management by the program lead in order to make evidence-based and risk-based decisions relating to work priorities.	
Management Action Plan	Completion Date
<ul style="list-style-type: none"> Programs, in consultation with Operations HQ and Regional Operations, will develop internal performance indicators for key outputs and outcomes, based on existing reporting capacity, for hearings before all four divisions of the Immigration and Refugee Board. 	September 2018
<ul style="list-style-type: none"> Programs, in consultation with Operations HQ and Regions and taking into consideration any emerging policy considerations, will develop a risk-based hearings strategy which will include the strategic direction of the program for 2019–2020 through 2022–2023. 	March 2019
<ul style="list-style-type: none"> Programs will develop a reporting tool for regional hearings management on key output and outcome indicators to support enhanced program management. 	April 2019
<ul style="list-style-type: none"> Programs and Operations will identify and seek approval of any additional system changes required to support enhanced reporting, specifically by case type. 	October 2019

RECOMMENDATION 2

The Vice-President of Operations Branch and the Vice-President of Programs Branch (or the proposed Vice-President of Enforcement and Intelligence as part of CBSA Renewal) should, in consultation with IRCC, explore options to optimize the national consistency and effectiveness of the delivery of the triage function.

Management Response

The Vice-President of Programs Branch and Vice-President of Operations Branch agrees with this recommendation. The CBSA is committed to revisiting the current inter-departmental agreement relating to the triage function in order to better align activities to core Agency mandates.	
Management Action Plan	Completion Date
<ul style="list-style-type: none"> Programs will continue to support the development of alternative delivery options for the triage function and seek approval of final recommendation. Direction for this program will need to reflect emerging business needs. 	March 2019

RECOMMENDATION 3

The Vice-President of Programs Branch (or the proposed Vice-President of Enforcement and Intelligence as part of CBSA Renewal) should review the roles and responsibilities of the CBSA and IRCC within the hearings process, as outlined in the existing MOU, to optimize resource utilization between the two organizations and maximize program effectiveness.

Management Response	
The Vice-President of Programs Branch and Vice-President of Operations Branch agree with this recommendation. Work is currently underway to assess many of these components, including roles and responsibilities, as part of the Asylum System Review. It should be noted that our work to address the items contained in the management action plan is dependent upon a variety of factors including the legislative agenda of the Government.	
Management Action Plan	Completion Date
<ul style="list-style-type: none"> Operations HQ, in consultation with Comptrollership and Programs, will undertake an analysis of FTE usage and activity coding to assess actual baseline FTE count dedicated to hearings program activities. Programs, in consultation with Operations HQ and Regions, will develop hearings priorities that fully consider the CBSA's core mandate and the current service model with Immigration, Refugees and Citizenship Canada as it relates to CBSA Hearings Officers representing their Department. 	<p>October 2018</p> <p>April 2019</p>

RECOMMENDATION 4

The Vice-President of the Human Resources Branch should, in consultation with the Vice-President of Programs Branch and the Vice-President of the Operations Branch (or the proposed Vice-President of Enforcement and Intelligence as part of CBSA Renewal), examine the existing recruitment strategies for Hearings Program staff, as well as the effectiveness of the current training model and the consistency of its delivery, to account for the specialized and technical job functions of Hearings Officers and to improve training outcomes.

Management Response	
The Vice-Presidents of the Human Resources Branch, Programs Branch and Operations Branch agree with this recommendation.	
Management Action Plan	Completion Date

<ul style="list-style-type: none"> Operations Branch to provide an operational plan, including projected planned hires (Hearings Officers) over the next 3 years, as well as their locations. 	September 2018
<ul style="list-style-type: none"> HRB to develop a tailored training delivery plan and calendar, based on Operations Branch capacity and funding, to ensure core function training is delivered in a timely manner, including the potential for inter-regional participation 	July 2019
<ul style="list-style-type: none"> HRB to realign existing and proposed recruitment strategies to fulfill priority hearing officers positions, based on Operations Branch capacity and funding. 	July 2019
<ul style="list-style-type: none"> HRB, in consultation with Programs Branch, will evaluate and make recommendations, through governance, on the development of a 'hearings officer induction training program' to ensure officers have basic training prior to representing the Minister in a hearing room. 	October 2019
<ul style="list-style-type: none"> Within the context of the current classification review, Human Resources Branch, in consultation with Programs and Operations Branch, to undertake a review of the hearings officer position work description. 	March 2020

RECOMMENDATION 5

The Vice-President of Programs Branch with support from the Vice-President of Operations Branch (or the proposed Vice-President of Enforcement and Intelligence as part of CBSA Renewal), complete an analysis of national resource allocation and utilization, including Hearings Advisors, which takes into account the volumes in each line of business and region, to optimize service delivery and achievement of outcomes.

Management Response	
The Vice-President Programs and Vice-President Operations Branch agree with this recommendation.	
Management Action Plan	Completion Date
<ul style="list-style-type: none"> The Programs Branch, in consultation with Operations and Comptrollership Branch, will analyse current and projected workloads based on historical trends by region. 	January 2019
<ul style="list-style-type: none"> The Program Branch will support the Comptrollership Branch led initiative to pilot the functional management model within the hearings program. 	April 2019

Appendix B – Greater Toronto Region Hearings Program Planning Assumptions

GTA Region Planning Assumptions	
Immigration Division	
<ul style="list-style-type: none"> • Detention Review hearings can take from 10 minutes to multiple days. • Complex cases (IRPA sections 34, 35 and 37) can take multiple days in a hearing room and the officer must remain on a case, once it is started. 	
Immigration Appeals Division	
<ul style="list-style-type: none"> • 2 days for case preparation and 3 days in the hearing room <ul style="list-style-type: none"> – Each officer has 3-4 cases over the course of the 3 days in hearings. • Ideally, preparation starts 4 weeks ahead of the hearing. • On average, one hearing is scheduled for half of a day. <ul style="list-style-type: none"> – Removal orders, Marriages of convenience, misrepresentation, medical, and returns from Federal court are scheduled as <u>full-day</u> hearings. • Early Resolution Unit: most cases take between 1 hour to a full day, with Sponsorship cases with document submission non-compliance often delayed while documents are retrieved from Visa Office or elsewhere. <ul style="list-style-type: none"> – ADR: 1 – 1.5 hours in the discussion room, with additional time required for follow-up. 	
Refugee Protection Division	
<ul style="list-style-type: none"> • RPD hearings are scheduled for a half-day and, like IAD, adjournments are scheduled based on Officer, Member, and Counsel availability, typically 2 months later. • Newer officers would likely be unable to complete their submission and argument with fewer than 30 days. 	

Appendix C – Evaluation Methodology

The evaluation of the Hearings Program employed the following methodologies:

Document Review

The document review consisted of a targeted review of documents related to the CBSA Hearings Program, as well as past evaluations done by Immigration Refugees and Citizenship Canada (IRCC). SOPs and Memoranda of Understanding (MOU) between the CBSA and the IRB and IRCC were also reviewed to provide background and contextual information needed to understand the Hearings Program.

Quantitative Data

Quantitative data from NHQ and the regions were gathered to allow for an assessment of program performance and a measurement of efficiency and economy. Data from the Hearings Program was also used to assess program performance. A time series of five years of financial data from Comptrollership was analyzed alongside budget and expenditure data provided by the regions. Additionally, Human Resources figures on staffing were used in conjunction with regional statistics to establish the workforce engaged in the Hearings Program and its associated expenditures. Finally, statistics were provided by the regions related to the cases finalized and their outcomes to examine the performance of the Hearings Program. In all cases, the quantitative data was disaggregated to the regional level based on a recognition of the significant differences in the volume of cases and staffing across the country.

As noted in the Methodology limitations section (refer to page 6), there are some limitations within the internal data tracking systems (i.e. NCMS, GCMS) which affects the Hearings Program's ability to accurately track information.

Field Research

The evaluation team visited three regions (GTA, Quebec, and Pacific), selected based on their co-location with key stakeholders, the presence of triage centers, and their work across all four lines of business. During these site visits, the evaluation team observed several hearings and met with all levels of staff in the Hearings Program, including clerical and administrative workers, HOs, and management. The evaluation team also met with employees of IRCC and the IRB.

Interviews with Key Stakeholders

The evaluation team conducted 58 in-person interviews with approximately 144 interviewees, including CBSA internal stakeholders (regional Hearings Program employees, program management, NHQ senior management) and CBSA external stakeholders (IRCC and the IRB).

Case File Review

A questionnaire was developed to provide details on a sample of cases. The objective of the case file review was to examine the case preparation process, key sources of evidence, and the CBSA's relationships with other stakeholders/partners, as well as factors affecting argument development. For Detention Review cases, the questionnaire emphasized the mitigation of threats and the availability/quality of evidence over examining the concurrence rate, as statistics for these types of cases revealed an exceptionally high level of success.

Targets for sampling files were set for each of Pacific, GTA, and Quebec regions based on their respective volumes of cases heard in front of the IRB in each of the four lines of business. National level

statistics on cases finalized in each of the last three years (2014-2015; 2015-2016; 2016-2017) were averaged for each division. The average distribution of cases across the three regions, in the same 3 years, was then used to generate the target sample for each region and each type of case. The number of Detention Reviews heard in a year is extremely high due to the mandated timeline for those hearings (48 hours, 7 days and 30 days) and the figure potentially included multiple hearings for the same individual. As such, an equal distribution of hearings at each time interval were selected for a sample of 21 cases in each region. For all types of cases, HOs were instructed to choose cases from the past 3 fiscal years. The select cases were required to have a decision from the IRB. HOs were also suggested to select the cases on which they had worked. In total, 238 cases were examined.

Media Content Analysis

The media content analysis provided a summary of key themes written, shared, and discussed in Canadian news media over the course of 2017. The information referenced was compiled from print and broadcast media sources and was found through web sites and social media platforms (e.g. Twitter). Sources included The Globe and Mail, The Toronto Star, The National Post, the CBC, and Global News. The analysis was conducted using online search functions using a variety of keywords.

Appendix D – Acronyms and Abbreviations

ADR	Alternative Dispute Resolution
BOC	Basis of Claim
CBSA	Canada Border Services Agency
CY	Calendar Year
FY	Fiscal Year
GCMS	Global Case Management System
GTA	Greater Toronto Area
HO	Hearings Officers
IAD	Immigration Appeal Division
ID	Immigration Division
IRB	Immigration and Refugee Board
IRCC	Immigration, Refugees, and Citizenship Canada
IRPA	Immigration and Refugee Protection Act
MOU	Memorandum of Understanding
NCMS	National Case Management System
NHQ	National Headquarters
NSSD	National Security Screening Division
PSEP	Public Safety and Emergency Preparedness
RAD	Refugee Appeal Division
RPD	Refugee Protection Division
SOP	Standard Operating Procedures