



Immigration and
Refugee Board of Canada

Commission de l'immigration
et du statut de réfugié du Canada

Immigration and Refugee Board of Canada

2021 Annual report of member complaints

This is an annual report on the member complaints process under the Immigration and Refugee Board of Canada's [*Procedures for Making a Complaint About a Member*](#) (the Procedures).

Aussi disponible en français sous le titre : [*Rapport annuel de 2021 sur les plaintes visant les commissaires*](#)

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Executive summary

This is the fourth annual report on the member complaints process under the Immigration and Refugee Board of Canada's (IRB) [*Procedures for Making a Complaint About a Member*](#) (the Procedures). This annual report is unique in that it covers a 15-month reporting period from January 1, 2021, to March 31, 2022, as the reporting period transitions from a calendar year timeframe (January to December) to a fiscal year timeframe (April to March). As such, next year's annual report will address member complaints and related information covering the period from April 1, 2022, to March 31, 2023.

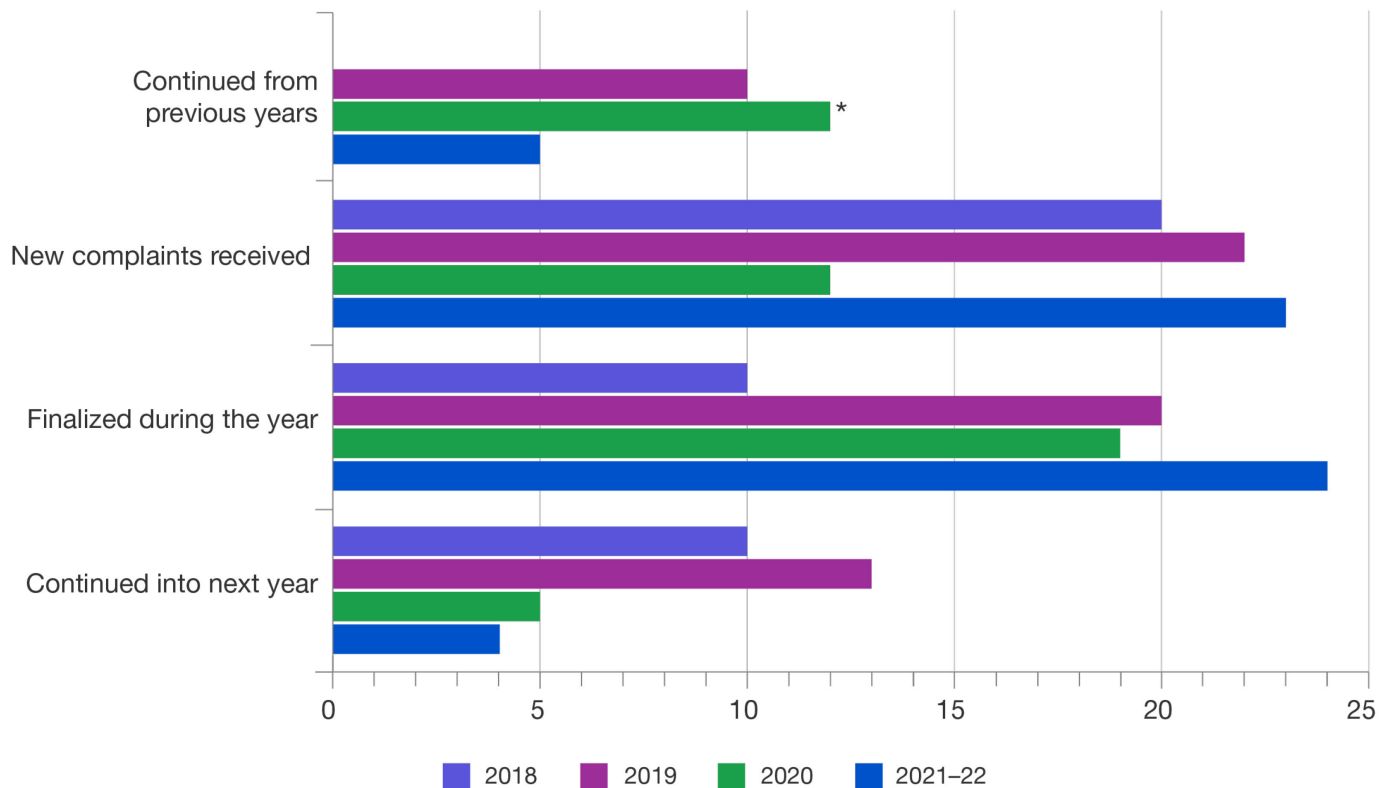
This report contains information about complaints received and finalized, as well as other actions taken related to the member complaints process.

A significant focus during this past reporting period was implementing the Management Response and Action Plan (MRAP) developed in response to the recommendations from the [*Evaluation of the IRB Process for making a complaint about a member*](#) (March 2021). The primary outcome from this was a revision to the Procedures that incorporated issues raised in the evaluation as well as other process improvements.

Summary of complaints received and finalized

During the 15-month reporting period (January 2021-March 2022), 23 new complaints were received by the Office of the Ombudsperson. The Office of the Ombudsperson carried forward 5 complaints in 2021–2022 from the previous year. Of these, 24 files were finalized before March 31, 2022, including the 5 which were carried over from 2020. At the end of the reporting period (March 31, 2022), 4 files that were received, were carried over into 2022-23. 1 complaint was on hold as the proceedings before the member was not finalized and the remaining 3 complaints were at various stages of investigation as of March 31, 2022.

Figure 1: Complaints by calendar year



Note:

* In the Second Annual Report on Complaints, one complaint was mistakenly reported as having been received in 2019; however, the complaint was officially received in 2020.

This reporting period saw the highest number of complaints received (23) and finalized (24) since reporting on complaints began in 2018. This reporting period also had the fewest number of complaints carried over (4) into the next reporting period.

Complaints finalized in 2021-22 were:

- acknowledged within an average of 10.8 calendar days screened
 - within an average of 52.5 calendar days
 - Finalized within an average of 209 calendar days
- (Note: the averages do not include the periods of time during which complaints were put on hold temporarily because the proceedings before the member were not yet finalized.)

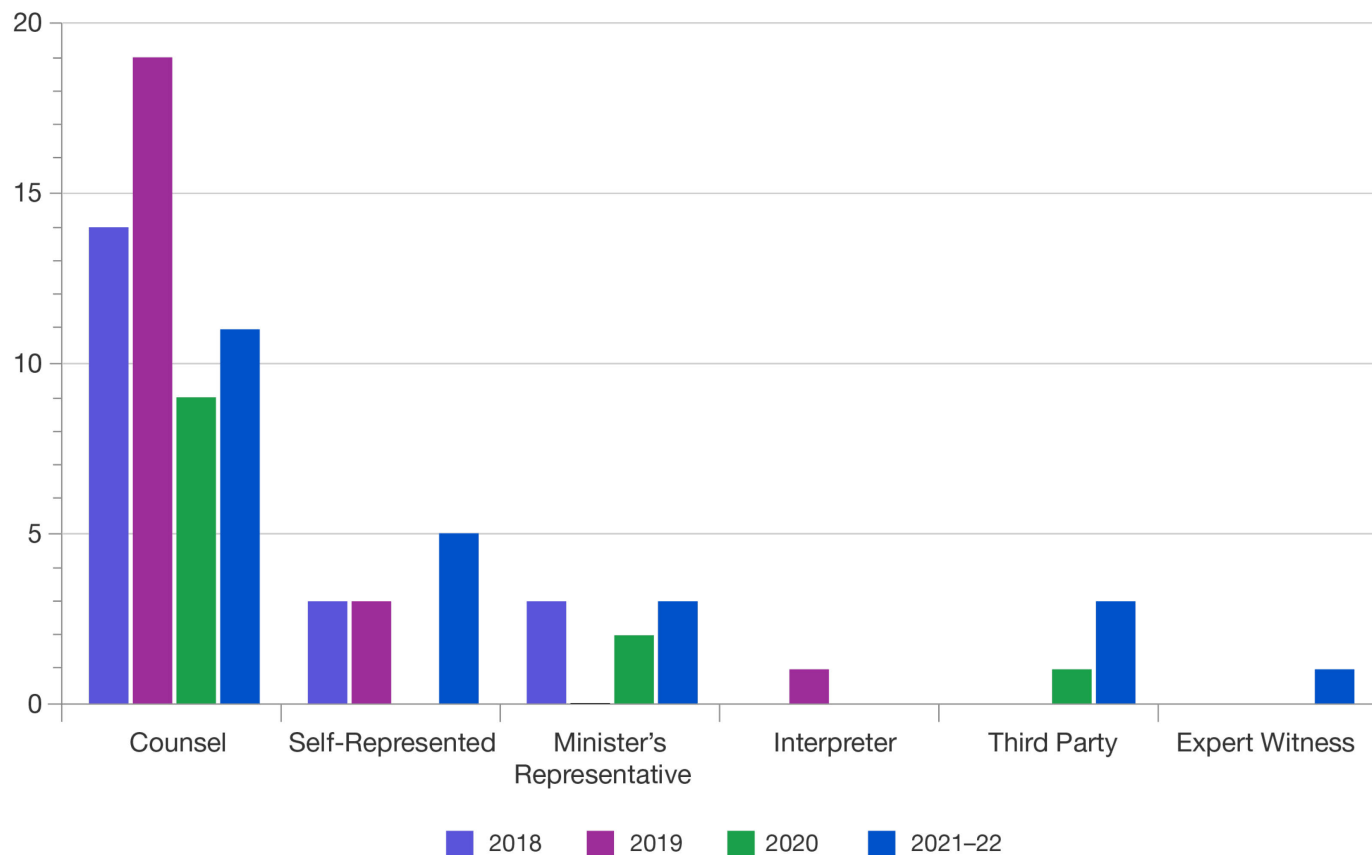
These timelines were consistent with the previous reporting period which was the first year this data was monitored.

Members and total decisions

Year	Members who made a decision	Total decisions made by members	One complaint received per number of decisions
2021-22	691	87,325	3,797
2020	542	44,482	3,707
2019	400	72,500	3,295
2018	368	47,914	2,396

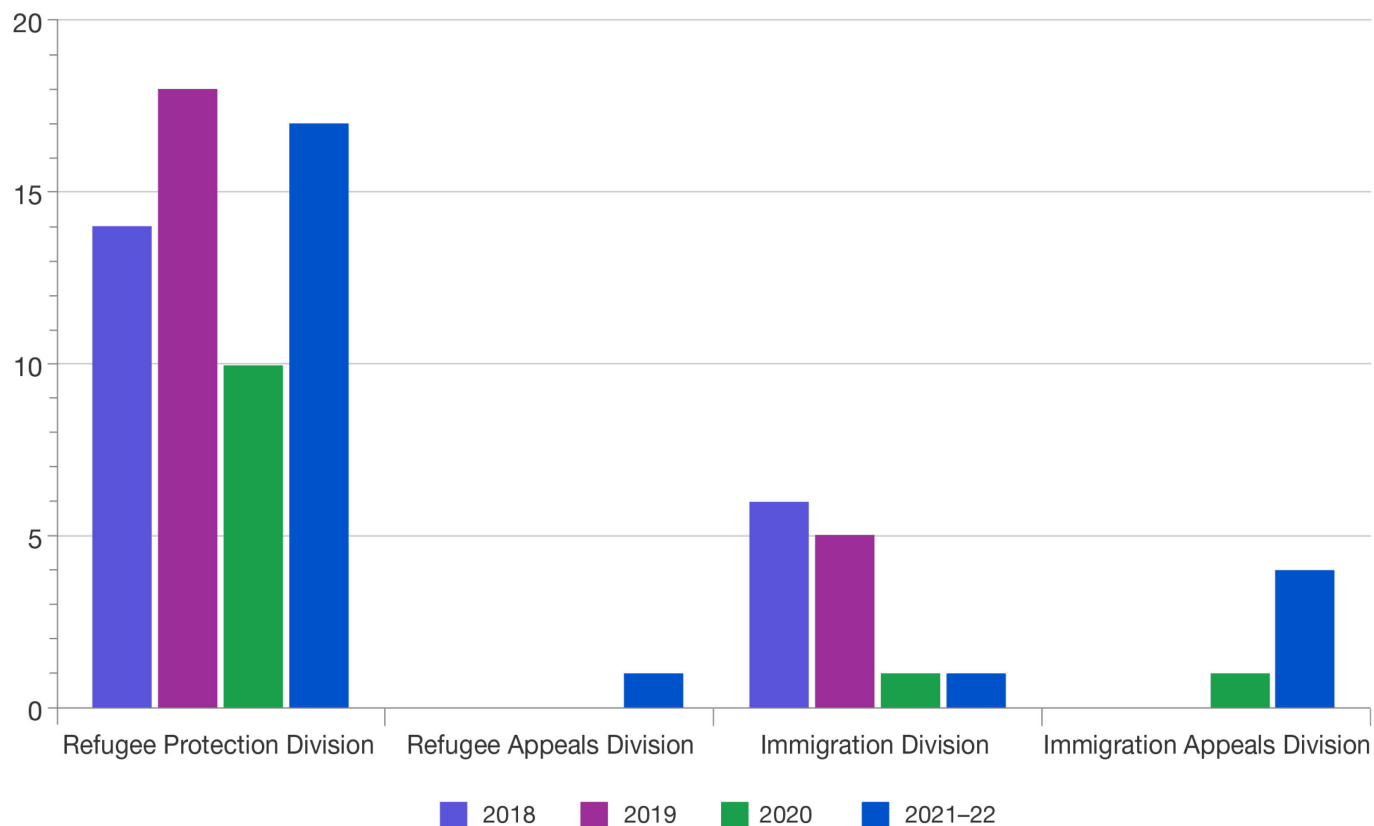
For this reporting period, 23 complaints were received from the 87,325 decisions made by members. This is equivalent to approximately 1 complaint for every 3,797 decisions. Historically this is a positive trend as more decisions are made for each complaint received.

Figure 2: Complainant by type 2018 to 2021



Most complaints continue to be filed by Counsel. This reporting period saw increases in self-represented and third party complainants and the first complaint received from an Expert Witness.

Figure 3: Complaints by division 2018 to 2021

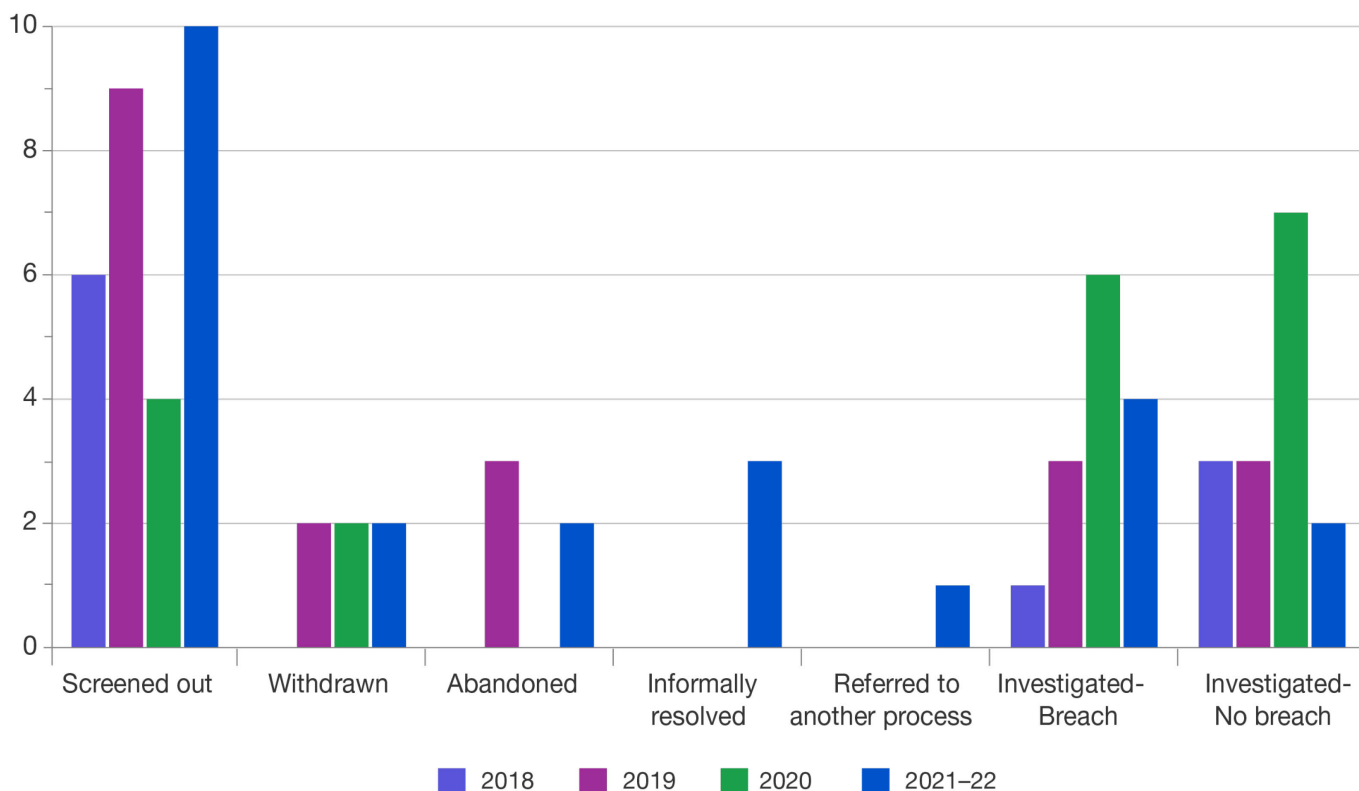


Most complaints continue to focus on the RPD, the largest tribunal with the highest number of members and decisions made at the IRB. This reporting period saw the first complaint about a RAD member, as well as the highest number of complaints (4) about the IAD.

Complaints outcomes

Figure 4: Complaints by outcome 2018 to 2021

Please refer to the [case summaries](#) for a breakdown of complaints received and finalized for this reporting period.



Screened out

During the reporting period:

- 10 complaints were screened out as they did not pertain to conduct but rather to adjudicative matters

This reporting period saw a higher number of complaints screened out from the last reporting period (10 compared to 4). Complaints are dismissed if they fall outside the scope of the procedures. This means that complaints are not referred for investigation if they do not relate to member conduct but rather to a member's decision or the exercise of adjudicative discretion. This approach is based on the legal requirement that members' adjudicative independence cannot be fettered.

Withdrawn

During the reporting year:

- 2 complaints were withdrawn
 - 1 complaint was withdrawn because the complainant no longer wanted to pursue the complaint, and
 - 1 complaint was withdrawn by the complainant after their claim was accepted

This reporting period saw the same number of complaints withdrawn (2) as the previous two reporting periods. A withdrawn complaint is one where the complainant informs the Office of the Ombudsperson that they have decided not to pursue the matter.

Abandoned

During the reporting period:

- 2 complaints were deemed abandoned

Abandoned complaints are those where a complaint is filed and acknowledged by the Office of the Ombudsperson, but at some stage of the process, the complainant stops responding to correspondence. They are advised that if they do not state their intentions by a certain date, the matter will be closed by the Office.

Informally resolved

During this reporting period:

- 3 complaints were resolved informally

This year was the first year in which attempts at informal resolution for complaints were successful. A complaint is considered informally resolved when the office uses alternate dispute resolution to the satisfaction of the parties involved.

Referred to another process

During the reporting period:

- 1 complaint was referred to another process

This reporting period is the first time this metric is being counted in the annual report. In 2019 saw the first instance of the Chairperson referring a complaint to another process. A complaint is referred to another process when the Chairperson refuses to deal with the complaint as it would be better addressed through another process (for example, referred to a Deputy Chairperson for action).

Complaints investigated and finalized

During the reporting period:

- 4 out of 6 complaints investigated (67%), resulted in founded breaches. This is the highest percentage since reporting on complaints began in 2018
- There were no specific patterns that emerged regarding the types of allegations that were investigated. The allegations investigated included courtesy and respect, discrimination based on gender and sexual orientation, and conflict of interest

In 4 instances, the Chairperson found there was **a breach** of the *Code of Conduct*:

- One complaint involved counsel who appeared before a member for a refugee hearing. The complaint alleged that the member was not courteous or professional and did not ensure that the

hearing was fair. See case summary 19-019 for more information on this complaint • A second complaint involved a claimant who alleged to be a victim of gender-based violence and who had been identified as a “vulnerable person” under the IRB's [Chairperson's Guideline 8: Procedures With Respect to Vulnerable Persons Appearing Before the IRB](#). The complaint alleged that the member made unnecessary and insensitive comments regarding the outcome of a rape reported by the complainant and did not allow the complainant to describe an incident of sexual harassment in their country of origin. There were also several allegations relating to the way the member decided to adjudicate the case that were dismissed as they did not relate to the member's conduct. See case summary 21-005 for more information on this complaint

- A third complaint involved a refugee claimant whose claim was before the member. The complaint alleged that the member's decision relied on homophobic stereotypes and subsequently alleged the member ignored the realities of conversion therapies. See case summary 21-006 for more information on this complaint
- A fourth complaint related to information about a member on the web site of the member's former immigration consultant firm, which is now owned by the member's adult child. See case summary 21-013 for more information on this complaint

In the other 2 instances, the Chairperson found there was **no breach** of the *Code of Conduct*:

- One complaint involved a complainant who appeared before the member as Minister's Counsel at an admissibility hearing. The complaint alleged that the member began shouting and spoke to the complaint with a dismissive tone. Allegations regarding the member making a new decision and the member's appearance of bias were dismissed as not being conduct related. See case summary 21-010 for more information on this complaint
- A second complaint involved a complainant appeared before the member as counsel for a refugee appellant. The complaint alleged that the member made offensive remarks in their decision which imply that the complainant is racist. The allegation that the member may not have properly assessed the evidence and may not have made proper findings was dismissed as it did not relate to the member's conduct. See case summary 21-011 for more information on this complaint

Summaries of all complaints finalized in 2021-22 is available on the IRB website at the following link - [Case Summaries 2020-21](#).

Responding to the evaluation of the member complaints process

The *Evaluation of the IRB Process for making a complaint about a member* (May 2021) looked at the 2017 Complaints procedures and examined the

- design
- implementation
- credibility
- impartiality
- procedural
- fairness

Overall, the evaluation was generally positive. It found that those 2017 Complaints Procedures were more streamlined and had more clearly articulated steps than the previous version. The complaints process was more transparent regarding communication with complainants and in terms of its annual reporting of statistics and complaint summaries. When comparing the IRB's annual reporting to that of similar adjudicative bodies, the evaluation found the IRB's reporting to be the most comprehensive.

A Management Response and Action Plan (MRAP) was developed for each of the evaluation's 8 recommendations. The MRAP focused on revising the Complaints procedures and clarifying processes

in consultation with external stakeholders and IRB members. Commentary boxes were added to the procedures to provide more information regarding the intent and interpretation of various sections of the procedures. Timeliness of the complaints process was addressed by establishing service standards effective April 1, 2022, for three key phases of the process – acknowledgement letter sent to the complainant, screening decision letter sent to the parties, and the final decision letter following an investigation sent to the parties.

A total of 5 consultation sessions were held internally on the proposed revisions to the procedures as well as minor revisions to the Code of Conduct for Members of the IRB. External stakeholders were also given the opportunity to provide written and verbal comments on the proposed revisions. We also sought input from stakeholders on how we could communicate better and create more awareness about the complaints process.

Conclusion and looking forward

This annual report marks a change in the reporting period for annual reports on member complaints as it shifts from a calendar year reporting to a fiscal year reporting period. As such, this report covers a transition year of 15 months from January 1, 2021, to March 31, 2022, as opposed to the usual 12-month period.

During this reporting period, 691 members made 87,325 decisions, with 23 complaints received.

This is approximately equivalent to receiving one complaint for every 3,797 decisions made. Historically, this is showing a positive trend, meaning that more decisions are made before a complaint is received.

The number of complaints received has remained relatively consistent over the years. Most complaints are received from counsel representing clients in the Refugee Protection Division. Most complaints were submitted by Counsel, but some were also received from new complainant categories such as 3rd party organizations. While the majority of complaints are about members from the Refugee Protection Division, the largest tribunal with the most members and decisions made at the IRB, all other divisions received complaints this reporting period. It is notable that this reporting period saw the first complaint received for the Refugee Appeals Division as well as the highest number of complaints (4) received for the Immigration Appeals Division. This could indicate that there is an increasing awareness and confidence regarding the member complaints process. With the changes to the complaints procedures and the processes resulting from the implementation of the evaluation recommendations, more efforts are planned for 2022-23 to further promote awareness and confidence in the process.

While no particular trends emerged regarding allegations about members in the complaints received, the complaints did cover a range of issues such as courtesy and respect, discrimination, gender-related violence, and conflict of interest. This reinforces the need to continue to emphasize the importance of respecting the standards of conduct within *the Code of Conduct for Members of the IRB* and that these standards need to remain at the forefront in all members' proceedings.

The IRB also has several initiatives underway to enhance the quality and consistency in decisionmaking, many of which will continue into 2022-23. It is important for the Board to fully implement these initiatives to support members and have a long-term impact on the decision-making. These initiatives include:

- completing the training of the [*Chairperson's Guideline 4—Women Refugee Claimants Fearing Gender-Related Persecution*](#) and associated training, tools and guides
- completing the training of the [*Chairperson's Guideline 9—Proceedings Before the IRB Involving Sexual Orientation and Gender Identity and Expression and Sex Characteristics*](#)

with the development of associated training and tools for adjudicators, interpreters and registry staff

- completing the review and implementing the recommendations of the [Chairperson's Guideline 3 - Child Refugee Claimants: Procedural and Evidentiary Issues](#)
- completing the review and implementing the recommendations of the [Chairperson's Guideline 8 - Concerning Procedures with Respect to Vulnerable Persons Appearing Before the Immigration and Refugee Board of Canada](#)
- leveraging the [Gender-Related Task Force](#), the dedicated team of decision-makers specifically trained in trauma-informed practice, at the Refugee Protection Division, to ensure claims are given the special attention and sensitivity needed