



# Immigration and Refugee Board of Canada 2022–23 Annual report on member complaints

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## Table of contents

Executive summary.....	4
Complaints Process and the Code of Conduct.....	5
Observations, findings and trends:.....	6
Outcomes: Complaints Investigated and Finalized.....	11
Conclusion and Looking Forward.....	12
Annex 1: Member Complaints Process.....	13
Annex 2: Summaries of decisions.....	14
Annex 3: Long description.....	25

## Executive summary

This is the fifth 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](#) (Procedures), covering the period from April 1, 2022 to March 31, 2023.

During the period of this report, the IRB's Office of the Ombudsperson had jurisdiction to receive and investigate complaints with respect to approximately 600 IRB decision-makers (members) who issued over 75,000 decisions across the four Divisions of the Board, which include: the Refugee Protection Division, the Refugee Appeal Division, the Immigration Division and the Immigration Appeal Division. Of this caseload, 24 new complaints were received, with four additional complaints carried forward from the previous year.

Information about complaints received and finalized in fiscal year 2022-23 is contained in this Report, along with detailed case summaries of the complaints finalized, which can be found on the IRB website at the following link - [Case Summaries 2022-23](#).

As outlined in the Procedures, any individual may make a complaint about a member to the Office of the Ombudsperson. A complaint must be about the conduct of a member and not about what a member decides in a case. Once a complaint is received, the complaint is acknowledged and assessed as to whether it is within scope of the Procedures. At this stage, the decision to either screen out or investigate rests with the Chairperson. Complainants are notified that their complaint is acknowledged, screened into or out of the process, and, if the complaint is investigated, informed of the final decision by the Chairperson.

The 608 members of the IRB made just over 75,500 decisions during this reporting period, which equates to one complaint per 3,023 decisions. This number indicates that the vast majority of members conduct themselves appropriately and to the high standard expected of them. At the same time, the low number of complaints received also suggests the continued need to promote awareness and build trust in the complaints process so that stakeholders have confidence that the process is fair and transparent.

The average time to process complaints through the main phases has decreased this reporting period. Service standards, established in April 2022 for the three main phases, strengthen the accountability, transparency and effectiveness of the member complaints process. Complainants know what they can expect and how long it will take when engaged in the process. Two of the service standards related to screening and the issuance of a final decision were exceeded; the third service standard relating to the acknowledgment of a complaint was met 90 percent of the time rather than 100 percent.

In keeping with past reporting periods, the majority of complaints (80 percent) are about members of the Refugee Protection Division, the largest IRB tribunal.

Complaints received do not automatically mean a breach of the [Code of Conduct for Members of the Immigration and Refugee Board](#) of Canada (the Code). Of the 22 complaints finalized, only four (4) were considered appropriate for investigation and one (1) led to a breach of the Code. The majority of complaints were considered out of scope of the Procedures as they were not about the conduct of members but rather about adjudicative matters and/or the members' decisions. This again reinforces the need for continued promotion of the complaints process and the intent of the process which is focused on member conduct.

As in the past, the majority of complaints were about courtesy, respect and professionalism. One important trend observed, was that during this period, there were no complaints about gender-related claims. This is a marked decrease from 2019 and 2020 which each had six complaints of gender-related claims in addition to the two special reviews undertaken at the request of the Chairperson in 2020. This positive trend can, in part, be attributed to the IRB's focus on these issues over the past four years, including establishing the Gender-Related Task Force (2020), mandatory training on gender-related claims, and the updated training, tools and guidance available to members in relation to the implementation of the renewed [Chairperson's Guideline 4: Gender Considerations in Proceedings Before the Immigration and Refugee Board](#) in 2022.

Going forward, the IRB will continue to build on the results of this report. Additional measures to strengthen the accountability, transparency and effectiveness of its complaints process will be undertaken, including focused outreach with stakeholder groups to promote the Procedures and their scope and application. The IRB will continue its efforts to provide support and training to members as this is critical for them to fulfill their responsibilities and conduct themselves in accordance with the high standards expected of them under the Code of Conduct. Two important opportunities to note this year include the member training that will accompany the release of a renewed Guideline 3, Proceedings involving minors at the IRB, and Guideline 8, Vulnerable Persons, both of which reinforce the Board's trauma-informed approach to adjudication and the high expectations of member conduct.

## Complaints Process and the Code of Conduct

The Procedures outline the process of making a complaint about the conduct of a member of the IRB which is believed to be contrary to the Code. The Office of the Ombudsperson, as the centralized organization with jurisdiction over the complaints process, reports directly to the Chairperson and is independent of the four tribunals (Divisions) whose members are the subject of complaints.

Any individual may make a complaint about the conduct of a member of the IRB. The complaint must be in writing and sent to the general email inbox for the Office of the Ombudsperson ([irb.ombudsoffice-bureauombuds.cisr@irb-cisr.gc.ca](mailto:irb.ombudsoffice-bureauombuds.cisr@irb-cisr.gc.ca)) or sent by mail. An updated [complaint form](#) is available to assist with this process, available on the IRB's website.

Complaints cannot be about what a member decides in a case. When there is a concern about a member's decision (such as their reasons for decision on the merits or concerns about a denial of procedural fairness or natural justice), the appropriate approach is to file an appeal with the Refugee Appeal Division or the Immigration Appeal Division, or to seek leave and judicial review with the Federal Court, as appropriate. To allow otherwise could be viewed as fettering the independence of members.

Once a complaint is received, the Office of the Ombudsperson will send an acknowledgement that the complaint has been received and will outline the next steps in the process. See Annex 1 for a high-level process flow of the IRB's Complaint Process.

Revisions to the Procedures became effective June 30, 2022, following consultations with internal and external stakeholders. The revisions focused on clarifying the scope of the procedures, better outlining the steps within the complaints process, and refining the criteria for deciding member complaints. Commentary sections were also added to provide further guidance and clarification of the complaints process.

Minor updates to the Code were made effective April 2022 which focused on clarifying the standards of conduct (sections 9 to 15).

[Service standards for the processing of member complaints](#) were established for complaints received effective April 1, 2022. The service standards support the commitment to provide a fair and transparent service that is timely and professional.

### Observations, findings and trends:

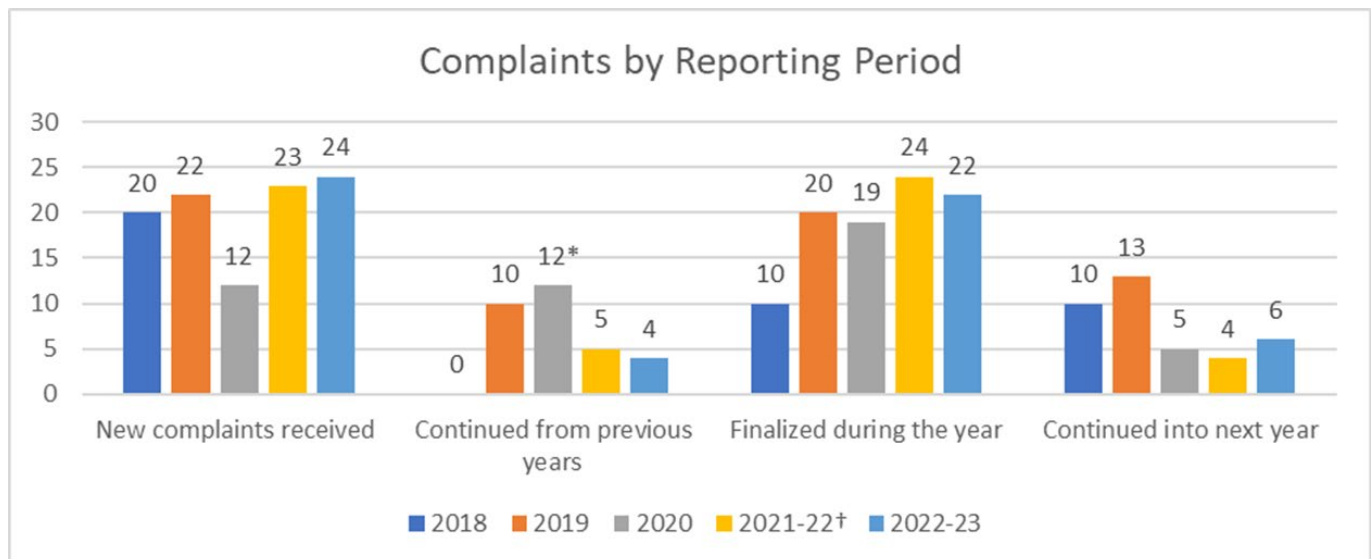
#### The number of complaints received over the past few years has remained fairly stable.

During the reporting period 24 new complaints were received. Four (4) complaints were carried forward from the previous year into this reporting period. Of these 28 complaints, 22 complaints were finalized before March 31, 2023. See Figure 1 below.

Six (6) complaints received were carried forward into the next reporting period: four (4) were on hold as the proceedings before the member were not yet finalized and two (2) complaints remained in the investigation phase.

The data indicates that the number of complaints **received** and **finalized** have remained relatively consistent over the past years – in the mid-20 range (other than 2020 when IRB operations were impacted as a result of COVID). The majority of complaints received continue to be from counsel followed by self-represented individuals. For this reporting period, about 80 percent of complaints received were from counsel and 17 percent from self-represented individuals.

**Figure 1: Summary of complaints by reporting period**



**Notes:**

\* 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.

† 2021-22 was a 15-month reporting period (January 1, 2021 to March 31, 2022) as reporting periods transitioned from calendar year to fiscal year.

## Fewer complaints are being continued into the next reporting year.

As depicted in Figure 1, since 2020, fewer complaints have *continued into the next year*. This trend is an indication of the efforts taken to process complaints in a more timely manner. The complaints process now focuses on initiating the processing of complaints immediately following receipt. Those complaints which are **continued to the next year** are actively being managed; either they are on hold and being monitored for finalization (as the member is still seized with the file), or the complaint is in the screening or investigation phase.

## The average number of days to finalize a complaint has decreased.

Previous annual reports reported on the average number of days to complete files. This data remained relatively consistent over the past years. For example, complaints finalized in 2021-22 were:

- acknowledged within an average of 11 calendar days,
- screened within an average of 52 calendar days, and
- finalized within an average of 209 calendar days.

In 2022-23, however, the average number of days to finalize complaints reduced to:

- acknowledged within an average of 3 calendar days,
- Screened within an average of 44 calendar days, and
- finalized within an average of 129 calendar days.

This positive trend can be attributed to the increased focus to strengthen the accountability, transparency and effectiveness of the member complaints process.

As part of these efforts, timeliness service standards for the main phases of the member complaints process became effective on April 1, 2022 (see Table 1). The service standards provide stakeholders with more information regarding what they can expect when engaged in the process and how long it will take.

The expectation is that these service standards are met under normal, day-to-day operations. The ability to meet these timelines may be impacted by the quality and completeness of the information that is received as well as other factors.

For this reporting period, complaints were:

- **acknowledged** within the established service standard, **90 percent** of the time;
- **screened** within the service standard, **90 percent** of the time; and
- **final decision letters** sent within the service standard **100 percent** of the time.

The screening and final decision letter service standards were both exceeded. The acknowledgment letter service standard, however, was not met. Two of the 24 complaints received were acknowledged within 6 and 8 days rather than within 5 days.

The first year of service standard data demonstrates that the IRB has established an efficient workflow for the complaints process which is supported by consistently applied procedures and

appropriate resources. The Office of the Ombudsperson will continue to process complaints as efficiently as possible and strive to ensure that all service standards are met and/or exceeded.

**Table 1: Service standards results for 2022-23**

Type	Description	Standard	Target %	Result %
<b>Acknowledgment</b>	Acknowledgment letter sent to complainant following receipt of the complaint	<b>5</b> calendar days from receipt of complaint	100	<b>90</b>
<b>Screening</b>	Screening decision letters sent to parties following screening	<b>60</b> calendar days* from receipt of complaint	80	<b>90</b>
<b>Final Decision</b>	Final decision letters sent to parties following investigation	<b>170</b> calendar days* from receipt of complaint	80	<b>100</b>

Note:

\* This does not include the time that passes while a complaint is temporarily placed on-hold and not actively processed such as when the case related to the complaint is still before the member who is the subject of the complaint.

## **The number of complaints received on a per member basis remains very low.**

For this reporting period, 24 new complaints were received out of the 72,552 decisions made by 608 members; or one complaint received per 3,023 decisions, which has remained relatively consistent over reporting periods. This highlights that the IRB receives relatively few complaints despite the tens of thousands of decisions made by the members.

A number of considerations follow from this data. The vast majority of members conduct themselves appropriately in undertaking their responsibilities as members. The low number of complaints received may also indicate a lack of awareness of the complaints process. Continued outreach with stakeholders over time may contribute to increased awareness of the process and perhaps to increased confidence in the transparency and objectivity of the process. This latter issue is often raised in relation to recourse mechanisms such as investigations. Building confidence and trust in a process is often difficult to establish unless individuals feel there is value in going through the process and have confidence that they will be treated fairly.



**Table 2: Members who made decisions and total decisions made by members**

Members and total decisions per complaint			
Year	Members who made decisions	Total decisions made by members	One complaint received per X number of decisions
2022-23	608	72,552	3,023
2021-22*	691	87,325	3,797
2020	542	44,482	3,737
2019	400	72,500	3,295
2018	368	47,914	2,396

Note:

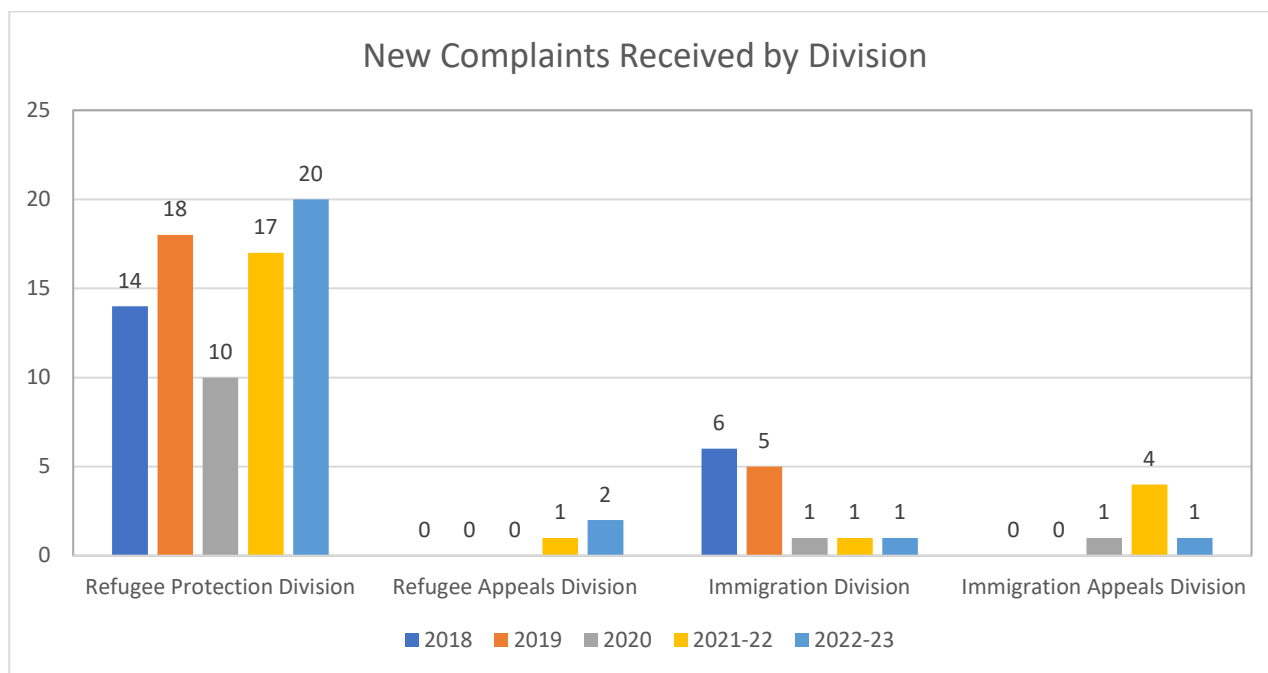
\* 15-month reporting period from January 1, 2021 to March 31, 2022

**The majority of complaints received were about the conduct of an RPD member.**

The RPD is the largest tribunal with the most members and decisions made at the IRB; the RPD was responsible for approximately 65 per cent of the 72,500 decisions during the reporting period and 77% of hearings. As a result, the division continues to receive the most complaints, with 83 percent of all complaints received.

Given the relatively low number of complaints received, it is difficult to draw any meaningful trends from this information. It is important to note, however, that a complaint received does not automatically lead to an investigation and a breach of the Code of Conduct.

**Figure 2 – New complaints received by division**



### More complaints were screened out this year than in previous years.

Twenty-two (22) complaints were finalized during the reporting period which included four (4) complaints carried forward from the previous reporting year. During this reporting year, finalized complaints were either investigated or screened out. No complaints were finalized by other means, including informally resolved (although efforts were made to seek informal resolutions) or withdrawn, for example. Figure 3 shows complaints finalized by outcome.

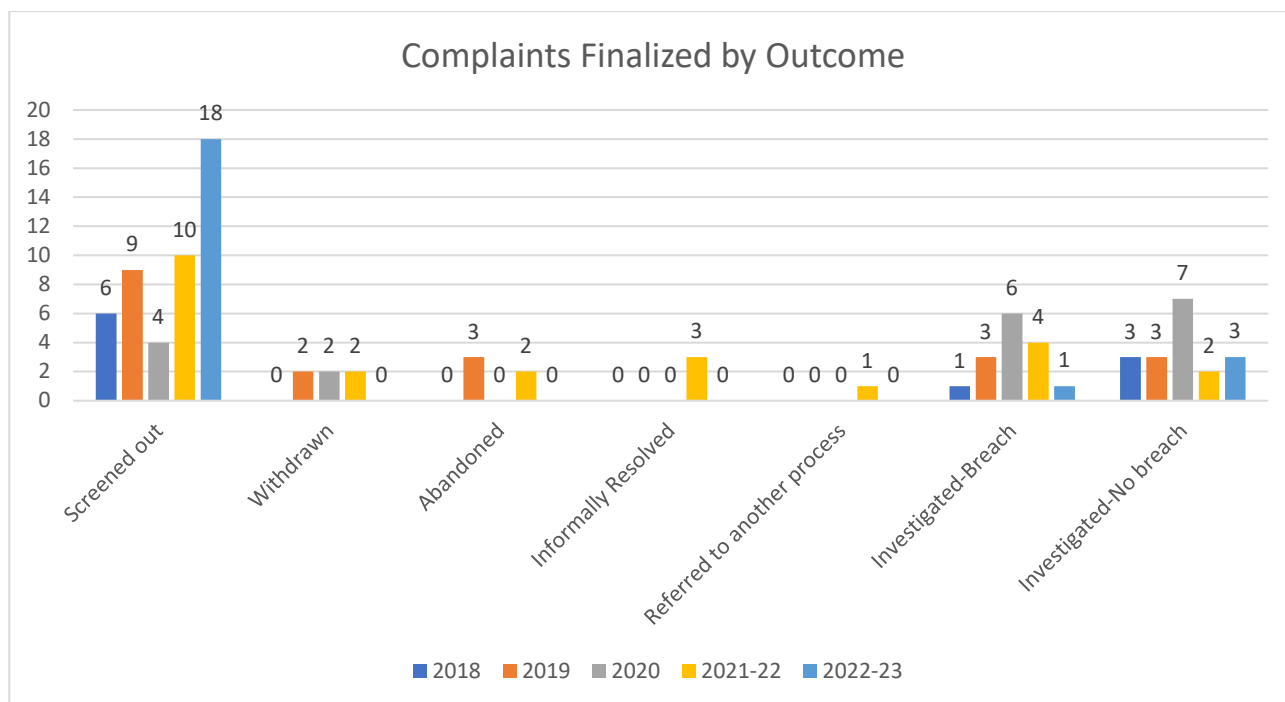
During the reporting period:

- 18 complaints were screened out as they were not within scope of the Procedures.

This reporting period saw a high percentage of complaints screened out (82 percent for 2022-23 compared to 42 percent for 2021-22). Approximately 50 percent of the 18 complaints included allegations that were unclear or vague. In these instances, the complainant was contacted for more precision regarding the nature of the complaint, and, where warranted, the audio recordings of the relevant hearings were reviewed to determine whether the allegations in the complaint were within the scope of the Procedures. If screened out, these complaints were dismissed as they were outside the scope of the Procedures, meaning that they were not referred for investigation by the Chairperson.

This high percentage of screened out complaints in this reporting period (82 percent) reinforced the continuing need for outreach with stakeholders to increase, not only an awareness of the complaints process, but also the intent of the complaints process, which is a focus on member conduct, specifically as it relates to the standards of conduct found in sections 9 to 15 of the Code of Conduct.

**Figure 3 - Complaints finalized by outcome**



## Outcomes: Complaints Investigated and Finalized

During the reporting period:

- Four (4) complaints were investigated by the Office of the Ombudsperson. One of the four investigations resulted in founded breaches of the Code, specifically sections 9, 10, 11 and 12.
- Regarding the type of allegations investigated, one investigation had allegations related to discrimination based on sexual orientation. The other three investigations were based on allegations of lack of courtesy, respect and professionalism.

In one (1) instance, the Chairperson found there was **a breach** of sections 9 and 10 of the Code of Conduct:

- The complaint involved counsel who appeared before a member for a refugee hearing. The complaint alleged that the member made comments that were rude and offensive to the complainant who is a member of the LGBTIQ2 community. It was also alleged that the member was rude and hostile towards counsel and the claimant. See [case summary 21-017](#) for more information on this complaint.

In the other three (3) instances, the Chairperson found there was **no breach** of the Code of Conduct:

- One complaint involved a CBSA Hearings Officer who was before the member for a refugee hearing. The complaint alleged the member behaved in an unacceptable and rude manner during the hearing by using a dry tone that lacked courtesy and professionalism. See [case summary 21-022](#) for more information on this complaint.
- A second complaint involved counsel who was before the member for a refugee hearing. The complaint alleged the member was unprofessional, lacked integrity, was rude, and did not consider social or cultural differences during the hearing. See [case summary 22-017](#) for more information on this complaint.
- A third complaint involved counsel who was before the member for a refugee hearing. The complaint alleged the member became unnecessarily agitated and criticized the complainant's professionalism. See [case summary 22-019](#) for more information on this complaint.

Summaries of all complaints finalized in 2022-23 are available on the IRB website at the following link – [Summaries of decisions](#)

## Observations, findings and trends

While the numbers of screened-in and investigated complaints is too small from which to draw any meaningful trends, of particular interest is the fact that complaints related to gender-based claims has decreased; none were received and/or finalized during this reporting period. In 2019 and 2020, six (6) complaints in each year were related to gender-based claims. In 2020, there were also two (2) special reviews of gender-based claims undertaken at the request of the Chairperson. Finally, in 2021, there was one (1) complaint related to a gender-based claim.

The reduction of complaints based on gender-based claims can be seen as an indicator of a positive impact of the focused efforts undertaken by the IRB to address these files. Specific efforts have included establishing the [Gender Related Task Force](#), ongoing mandatory training on gender violence, and updated training, tools and guidance for members, and renewed Chairperson's guidelines on gender, and sexual orientation and gender identity and expression and sexual orientation.

## Conclusion and Looking Forward

This annual report is the fifth report about member complaints and represents the first fiscal year reporting period, covering April 1, 2022, to March 31, 2023.

The member complaints process continues to be refined through updates to the Procedures and the Code of Conduct to further strengthen the accountability and transparency of the process. Complaints received (24) and finalized (22) this reporting year are in keeping with previous years. While there are tens of thousands of decisions made by IRB members, the number of complaints received remains relatively low. Most complaints are screened out of the process as they are not related to the conduct of the member but rather about adjudicative matters or the member's decision. In total, four (4) complaints led to an investigation with one complaint leading to a breach of the Code of Conduct.

Key observations stemming from this report include the continuing need to engage with IRB stakeholders to promote awareness of the complaints process, a better understanding of the scope of the process, and the need to provide clear information in plain language.

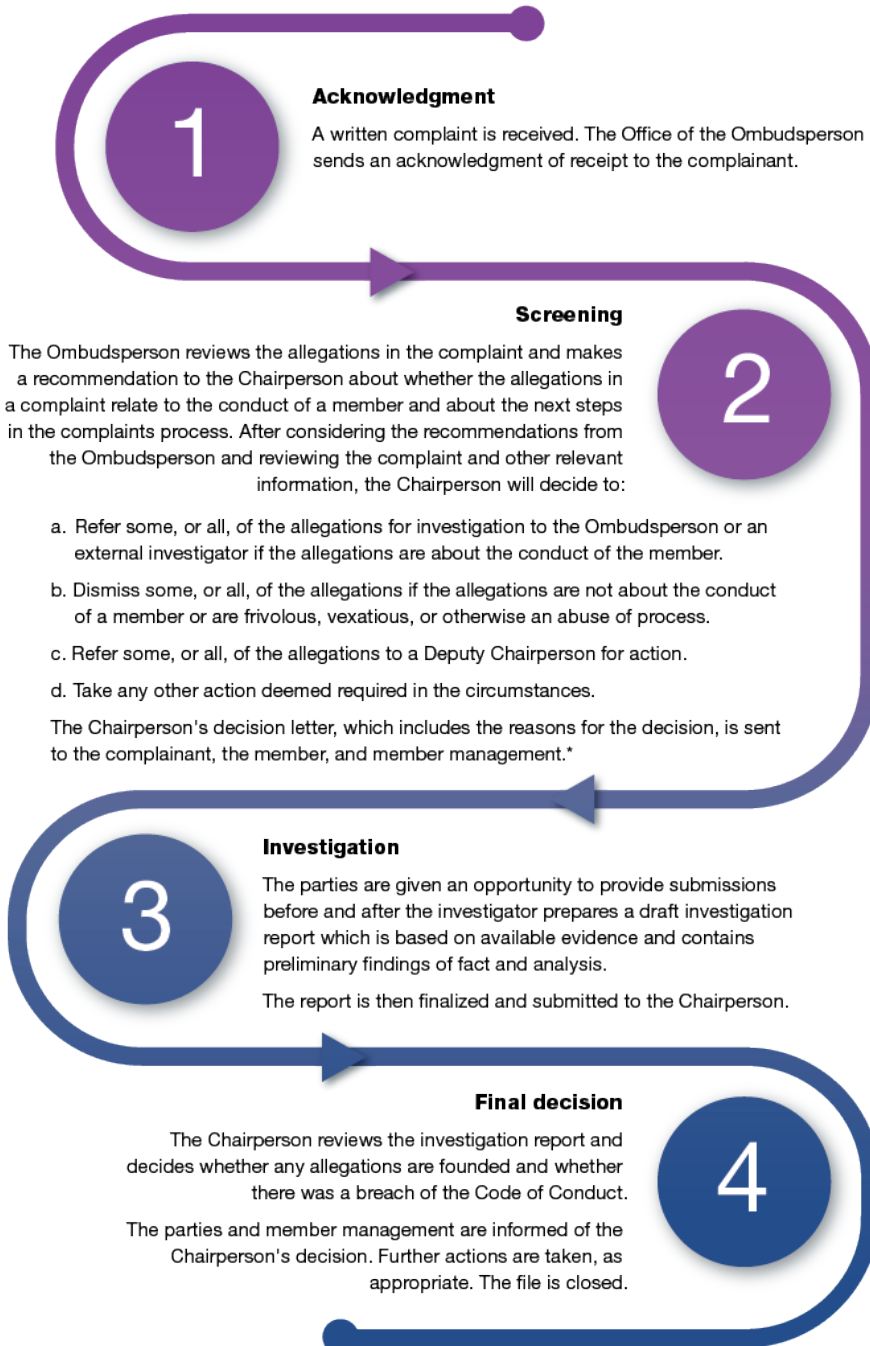
Efforts to strengthen the complaints process have yielded positive results. Complaints are addressed more efficiently, which is demonstrated by having met the established service standards and fewer complaints are carried forward into the next reporting period as a result of more active file management.

Notably, there has been a decrease in complaints associated with gender-related claims over the past years, which points to a positive outcome of the focus on this important issue. Establishing the Gender-Related Task Force, mandatory training as well as updated guidance, training and tools have most likely contributed to a decrease in complaints related to these cases.

Going forward, the IRB will continue to build on the results of this report. Additional measures to strengthen the accountability, transparency and effectiveness of its complaints process will be undertaken, including focused outreach with stakeholder groups to promote the Procedures, their scope and their application. The IRB will continue its efforts to provide support and training to members which is critical for them to fulfill their responsibilities and conduct themselves in accordance with the high standards expected of them in keeping with the Code of Conduct. Two important opportunities to note this year include the member training that will accompany the release of a renewed Guideline 3, Proceedings involving minors at the IRB, and Guideline 8, Vulnerable Persons, both of which will reinforce the Board's trauma-informed approach to adjudication and the high expectations of member conduct.

# Annex 1: Member Complaints Process

Informal resolution can be considered at any stage of the investigative process.



Note:  
\*The member is not notified of the complaint until after the file related to the complaint is no longer before the member.

**Principles that are applied in the process:**

When a complaint is referred for investigation, the process will ensure that:

- the complaint is dealt with as quickly as fairness and thoroughness permit.
- it is procedurally fair to the parties - i.e., the person who made the complaint and the member who is the subject of the complaint.
- the identity of parties will be protected, to the extent possible, and as outlined in the *Privacy Act* and the *Access to Information Act*.
- adjudicative independence of IRB members is respected while members are accountable for their conduct.

**Service standards for processing member complaints:**

- 5 calendar days to acknowledge receipt of complaint.
- 60 calendar days for the screening of the complaint†
- 170 calendar days for the final decision†

Note:

† This service standard does not include the time that passes if the case related to the complaint is still before the member who is the subject of the complaint.

[Long description](#)

## Annex 2: Summaries of decisions

### Case No. 21-014

The complainant was a claimant whose case was heard before a member of the Immigration Appeal Division and was represented by legal counsel.

The complainant alleged that the member caused the complainant emotional stress, did not respect the complainant, and repeatedly asked them the same questions.

The way a member manages the hearing and assesses the matter before them is a matter of adjudicative discretion. As such, these allegations were not within the scope of the [Procedures for Making a Complaint about a Member](#) (the Procedures).

The third allegation in the complaint related to the member repeatedly asking the complainant the same question which was also a matter of the member's adjudicative discretion. However, within this allegation, the complainant also referred to the member's aggressive tone and manner.

Therefore, to determine whether this allegation would fall under the scope of the Procedures, the Office of the Ombudsperson reviewed all audio recordings of the hearings held prior to the complaint being submitted. In these recordings, there were no comments or behaviour on the part of the member which could form the basis of a conduct complaint.

After reviewing the complaint, and consistent with the recommendation of the Ombudsperson, the Chairperson dismissed the complaint under the Procedures because none of the allegations were within scope.

The complaint was dismissed and the file was closed.

### Case no. 21-017

The complainant was a refugee claimant whose case was heard by a member of the Refugee Protection Division and was represented by legal counsel.

The complainant alleged that the member made comments that were rude and offensive to the complainant who was a member of the LGBTIQ2 community.

Pursuant to the [Procedures for Making a Complaint about a Member](#), and consistent with the recommendation of the Ombudsperson, the Chairperson referred the complaint for investigation by the Office of the Ombudsperson.

The final investigation report came to the following conclusions:

- The member was hostile and unprofessional when commenting on a date on one of the complainant's documents. In commenting that a certain notation was the "dumbest practice" one has ever seen, the member established a tone in the hearing room that lacked professionalism. The allegation was founded, and the member's conduct amounts to a breach of section 9 of the [Code of Conduct for Members of the IRB](#) (the Code).
- The member relied on inappropriate stereotypes of SOGIESC individuals to form questions during the hearing. Using a stereotype to assess the credibility of a claim is insensitive. The claim was based on the complainant's sexual orientation and their risk of persecution because of their sexual orientation. Therefore, the member's questions should have been formed with this context in mind to avoid the appearance of relying on harmful stereotypes. The allegations were founded and amount to a breach of section 10 of the Code.

The investigation report was provided to the Chairperson. He was satisfied that the investigation was thorough and fair. The Chairperson accepted the conclusions in the report and found that there were breaches of sections 9 and 10 of the Code.

As the member was no longer an IRB employee, remedial or disciplinary actions were not warranted.

In the Chairperson's decision letter to the complainant, the Chairperson noted that there have been recent updates to the [Chairperson's Guideline 9 – Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics](#), and that extensive training of all adjudicative staff was underway which included the examination of stereotypes, biases, and proper questioning techniques, with a view to eliminating behaviour noted in this investigation report.

The complaint was founded and the file was closed.

## Case no. 21-022

The complainant was a Canada Border Services Agency Hearings Officer who attended a Refugee Protection Division hearing as Minister's Counsel.

The complainant alleged that the member behaved in an unacceptable and rude manner during the hearing. More specifically, the complainant alleged that the member's tone was dry and lacked courtesy and that the member made comments which lacked in professionalism. In addition, the member allegedly required the proceedings to continue from 8:30am to 1:00pm without a health break.

Pursuant to the [Procedures for Making a Complaint about a Member](#), and consistent with the recommendation of the Ombudsperson, the Chairperson referred the complaint for investigation by the Office of the Ombudsperson. The final investigation report came to the following conclusions:

- There was only one isolated instance where there was some evidence of the member using a dry tone, and this finding was based on the member's own admission. This incident was not observed by the Office of the Ombudsperson when reviewing the recording of the hearing. Instead, the member's overall behaviour was courteous and respectful. This allegation was unfounded.
- Beyond the complainant's allegations, there was no evidence of the member lacking courtesy or professionalism or making inappropriate comments to any party at the hearing. This allegation was unfounded.
- Other than the complainant's allegation, there was no evidence that the member did not grant necessary health breaks during the hearing. This allegation was unfounded.
- Other than the complainant's allegation, there was no evidence in the audio recording of the member's behaviour being unacceptable or abusive. This allegation was unfounded.

The investigation report was provided to the Chairperson. He was satisfied that the investigation was thorough and fair. The Chairperson accepted the conclusions in the report and found that there were no breaches of the [Code of Conduct for Members of the IRB](#).

The complaint was unfounded and the file was closed.



## Case No. 21-023

The complainant was counsel for an appellant who attended a pre-hearing conference before a member of the Immigration Appeal Division.

The complainant alleged that the member had prejudged the matter before them and did not handle the hearing professionally. More specifically, it was alleged that the member was critical of how the complainant handled certain matters, and that the member was not neutral, as evidenced by the fact that the member did not agree to provide the complainant with the pre-hearing conference recording.

The decision of how the member handled the proceedings before them, as well as whether to provide a pre-hearing conference recording, was part of the member's adjudicative discretion, and therefore, was not within scope of the [Procedures for Making a Complaint about a Member](#) (the Procedures).

The Office of the Ombudsperson reviewed the audio recording of the hearing and determined that there were no comments or behaviour on the part of the member which could form the basis of a conduct complaint.

After reviewing the complaint, and consistent with the recommendation of the Ombudsperson, the Chairperson dismissed the complaint under the Procedures because none of the allegations were within scope.

The complaint was dismissed and the file was closed.

## Case No. 22-004

The complainant was counsel for a refugee claimant whose case was heard by a member of the Refugee Protection Division.

The complainant alleged that the member was disrespectful and discriminated against them. More specifically, it was alleged that the member did not allow a break early in the hearing and the member denied a recusal request.

The way the member scheduled breaks as well as their decision to recuse themselves was part of the member's adjudicative discretion. The way the member came to their decision was also a matter of adjudicative discretion, and therefore, was not within scope of the [Procedures for Making a Complaint about a Member](#) (the Procedures).

The Office of the Ombudsperson reviewed the audio and video recording of the hearing and determined that there were no comments or behaviour on the part of the member which could form the basis of a conduct complaint.

After reviewing the complaint, and consistent with the recommendation of the Ombudsperson, the Chairperson dismissed the complaint under the Procedures because none of the allegations were within scope.

The complaint was dismissed and the file was closed.



## Case No. 22-005

The complainant was a Manager at the Canada Border Services Agency who read a decision written by a Refugee Protection Division member.

The complainant alleged that the member's written decision was problematic.

The way the member wrote their decision and reasons related to their decision-making and exercise of adjudicative discretion, and therefore, was not within the scope of the [Procedures for Making a Complaint about a Member](#) (the Procedures).

After reviewing the complaint, and consistent with the recommendation of the Ombudsperson, the Chairperson dismissed the complaint under the Procedures because the allegation was not within scope.

The complaint was dismissed and the file was closed.

## Case No. 22-006

The complainant was counsel for a refugee claimant whose case was heard by a member of the Refugee Protection Division.

The complainant alleged that the member failed to comply with the [Code of Conduct for Members of the IRB](#) as they displayed deplorable behaviour, when they had noted that the complainant was "significantly unprepared" for their client, and was allegedly biased.

The member's statement during the hearing related to the member's decision-making and exercise of adjudicative discretion and therefore is not within the scope of the [Procedures for Making a Complaint about a Member](#) (the Procedures).

The allegation of bias was related to how the member came to their final decision. This allegation was related to the member's decision, and therefore, was not within the scope of the Procedures.

The Office of the Ombudsperson reviewed to the audio recording of the hearing and determined that there were no comments or behaviour on the part of the member which could form the basis of a conduct complaint.

After reviewing the complaint, and consistent with the recommendation of the Ombudsperson, the Chairperson dismissed the complaint under the Procedures because none of the allegations were within scope.

The complaint was dismissed and the file was closed.

### **Case No. 22-008**

The complainant was counsel for a refugee claimant whose case was heard by a member of the Refugee Protection Division.

The complainant alleged that the member's comments during a pre-hearing conference were offensive, including the alleged insinuation that the complainant and his client had concocted a plan to delay the refugee hearing.

The member's decision to hold a pre-hearing conference to allow the complainant to respond to questions about multiple delays was part of the member's adjudicative discretion, and therefore, was not within the scope of the [Procedures for Making a Complaint about a Member](#) (the Procedures).

After reviewing the complaint, and consistent with the recommendation of the Ombudsperson, the Chairperson dismissed the complaint under the Procedures because the allegation was not within scope.

The complaint was dismissed and the file was closed.

### **Case No. 22-009**

The complainant was counsel for a refugee claimant whose case was heard by a member of the Refugee Protection Division.

The complainant alleged that the member asked insensitive questions during the hearing and gave inappropriate reasons in their written decision. More specifically, the complainant alleged that the member did not take cultural differences into account when asking questions, did not consider the complainant's status as a vulnerable person, and did not consider the effects of post traumatic stress disorder.

The way the member formed and posed questions to determine credibility was part of their adjudicative discretion, and therefore does not fall within the scope of the [Procedures for Making a Complaint about a Member](#) (the Procedures). This would be the case even if a claimant was a vulnerable person or had post-traumatic stress disorder.

The Office of the Ombudsperson reviewed the recording of the hearing and noted that the member treated the complainant with sensitivity and respect as provided for under [Chairperson Guideline 8: Procedures With Respect to Vulnerable Persons Appearing Before the IRB - Immigration and Refugee Board of Canada](#). The audio recording also determined that there were no comments or behaviour on the part of the member which could form the basis of a conduct complaint.

After reviewing the complaint, and consistent with the recommendation of the Ombudsperson, the Chairperson dismissed the complaint under the Procedures because none of the allegations were within scope.

The complaint was dismissed and the file was closed.

### **Case No. 22-011**

The complainant's sibling was an appellant who was the subject of a deportation order before the Immigration Appeal Division. The member held a hearing to review the complainant's sibling's appeal of the order.

The complainant alleged that the member asked inappropriate questions and did not follow criminal disclosure procedures during the hearing.

The allegations were based on a misunderstanding of the member's role in the hearing. It was part of the member's adjudicative discretion to form and pose questions. The allegations were related to the complainant's lack of understanding that the appellant's former criminal charges and convictions must be discussed, and that inconsistencies must be put to the appellant for explanation during the hearing.

Members of the Immigration and Refugee Board are not required to follow criminal disclosure procedures. It was part of the member's adjudicative decision-making to decide which documents to allow, which documents to provide to the parties, and how much time to allow parties to review documents during a hearing. Therefore, the allegations were not within the scope of the [Procedures for Making a Complaint about a Member](#) (the Procedures).

After reviewing the complaint, and consistent with the recommendation of the Ombudsperson, the Chairperson dismissed the complaint under the Procedures because none of the allegations were within scope.

The complaint was dismissed and the file was closed.

### **Case No. 22-012**

The complainant was counsel for refugee claimants whose case was heard by a member of the Refugee Protection Division.

The complainant alleged that the member was disrespectful towards counsel and discriminated against the complainants, did not consider social and cultural differences, and did not accommodate the participants during the hearing.

The way a member formulated their questions was a matter of adjudicative discretion. This allegation related to the member's decision-making and exercise of adjudicative discretion, and therefore, was not within the scope of the [Procedures for Making a Complaint about a Member](#) (the Procedures).

The Office of the Ombudsperson reviewed the audio recording of the hearing and determined that there were no comments or behaviour on the part of the member which could form the basis of a conduct complaint.

After reviewing the complaint, and consistent with the recommendation of the Ombudsperson, the Chairperson dismissed the complaint under the Procedures because none of the allegations were within scope.

The complaint was dismissed and the file was closed.

### **Case No. 22-013**

The complainant was counsel for a refugee claimant whose case was heard by a member of the Refugee Protection Division.

The complainant alleged that the member intimidated the claimant during the hearing when their counsel was not present and imposed a new hearing date without counsel's consent.

The decision to proceed without counsel present, and the re-scheduling of a hearing, were matters of adjudicative discretion, and therefore, were not within the scope of the [Procedures for Making a Complaint about a Member](#) (the Procedures).

After reviewing the complaint, and consistent with the recommendation of the Ombudsperson, the Chairperson dismissed the complaint under the [Procedures](#) because the allegations were not within scope.

The complaint was dismissed and the file was closed.

### **Case No. 22-014**

The complainant was counsel for a refugee claimant. The complaint pertained to an interlocutory decision by a Coordinating Member of the Refugee Protection Division and subsequent actions by the member who heard the claim.

The complainant alleged that the member did not react appropriately during the hearing after the coordinating member had postponed the hearing. In addition, the complainant alleged that the coordinating member inappropriately rescheduled the hearing to a date when counsel had two hearings.

The decisions to follow the ruling of another member and the re-scheduling of a hearing were matters of adjudicative discretion, and therefore, were not within the scope of the [Procedures for Making a Complaint about a Member](#) (the Procedures).

After reviewing the complaint, and consistent with the recommendation of the Ombudsperson, the Chairperson dismissed the complaint under the *Procedures* because the allegations were not within scope.

The complaint was dismissed and the file was closed.

### **Case No. 22-015**

The complainant was counsel for refugee claimants whose cases were heard by a member of the Refugee Protection Division.

The complainant alleged that the member decided that a claim was withdrawn for inappropriate reasons (i.e., the claimant was absent due to an illness), and that the member was aggressive and biased by pre-writing their decision.

The decision of whether to classify a claim as withdrawn, as well as whether and when to allow breaks to prepare submissions, were part of the member's adjudicative discretion. The way that a member came to their decision was also a matter of adjudicative discretion, and therefore, the allegations were not within scope of the [Procedures for Making a Complaint about a Member](#) (the Procedures).

The Office of the Ombudsperson reviewed the audio recording of the hearing and determined that there was no evidence that the member pre-wrote their decision. The member specifically informed the complainant and claimants for both files that he was taking a break to prepare before providing his oral decisions on the files. The audio recording also indicated that there were no comments or behaviour on the part of the member which could form the basis of a conduct complaint.

After reviewing the complaint, and consistent with the recommendation of the Ombudsperson, the Chairperson dismissed the complaint under the Procedures because the allegations were not within scope.

The complaint was dismissed and the file was closed.

### **Case No. 22-016**

The complainant was the legal representative for a refugee claimant whose case was heard by a member of the Refugee Appeal Division.

The complainant alleged that the member accused counsel of being a liar when they wrote in their decision that counsel had misrepresented the evidence contained in relevant research reports.

The term “misrepresented the evidence” is commonly used by members when weighing the evidence and in their decisions. The question of how the member determined what language to use in effectively expressing their assessment of the matter before them was a matter of adjudicative discretion, and therefore, was not within scope of the [Procedures for Making a Complaint about a Member](#) (the Procedures).

After reviewing the complaint, and consistent with the recommendation of the Ombudsperson, the Chairperson dismissed the complaint under the Procedures because the allegation was not within scope.

The complaint was dismissed and the file was closed.

### **Case No. 22-017**

The complainant was counsel for refugee claimants whose case was heard by a member of the Refugee Protection Division.

The complainant alleged that the member was disrespectful and unprofessional towards counsel, did not respect cultural differences, and lacked integrity.

Pursuant to the [Procedures for Making a Complaint about a Member](#), and consistent with the recommendation of the Ombudsperson, the Chairperson referred the complaint for investigation by the Office of the Ombudsperson. The final investigation report came to the following conclusions:

- The review of the video recording did not reveal any instances where the member used an aggressive tone or questioning technique. The member’s tone was courteous and respectful throughout the hearing. Further, the member’s overall behaviour was courteous and respectful. This allegation was unfounded.
- There was no evidence of the member not considering cultural differences and only allowing partial interpretation during the hearing.
- A review of the video of the hearing revealed that the member addressed counsel, the claimant, and the interpreter using appropriate titles and courtesies throughout the

hearing. The member questioned the claimant calmly and asked questions of clarification to assist in their adjudication of the claim. At no time did the member appear unprofessional in conducting the hearing. This allegation was unfounded.

- There was no evidence to support that the member lacked integrity during the hearing.

The investigation report was provided to the Chairperson. He was satisfied that the investigation was thorough and fair. The Chairperson accepted the conclusions in the report and found that there were no breaches of the [Code of Conduct for Members of the IRB](#).

The complaint was unfounded and the file was closed.

### **Case No. 22-018**

The complainant was counsel for a refugee claimant whose case was heard by a member of the Refugee Protection Division.

The allegations in the complaint were regarding the member's questioning during the hearing and the reasons provided in their decision.

The way the member formed and posed questions and put inconsistencies to the claimant for explanation during the hearing were matters of adjudicative discretion, and therefore, were not within scope of the [Procedures for Making a Complaint about a Member](#) (the Procedures).

After reviewing the complaint, and consistent with the recommendation of the Ombudsperson, the Chairperson dismissed the complaint under the Procedures because none of the allegations were within scope.

The complaint was dismissed and the file was closed.

### **Case no. 22-019**

The complainant was counsel for refugee claimants whose claims were decided by a member at the Refugee Protection Division.

The complainant alleged that the member failed to comply with the [Code of Conduct for Members of the IRB](#) (the Code) as they became unnecessarily agitated and cast aspersions on the complainant's professionalism when the member raised the question of missing information on a document.

Pursuant to the [Procedures for Making a Complaint about a Member](#), and consistent with the recommendation of the Ombudsperson, the Chairperson referred the complaint for investigation by the Office of the Ombudsperson. The final investigation report came to the following conclusions:

- A review of the audio and video recording of the hearing did not provide any evidence of the member becoming agitated nor displaying any inappropriate facial expressions. There was no evidence to support this aspect of the allegation.

- The conversation between the member and the complainant was a frank discussion of the complainant's failure to disclose the document according to RPD rules. The complainant provided several reasons why the documents were not disclosed. The member expressed concern that the complainant had not made the proper applications to have the document admitted. The complainant claimed that this was sufficient to constitute an attack on the complainant's professionalism. However, the member was only re-stating the facts that were before them. For these reasons, there was no evidence to support this aspect of the allegation.

The investigation report was provided to the Chairperson. He was satisfied that the investigation was thorough and fair. The Chairperson accepted the conclusions in the report and found that there were no breaches of the Code.

The complaint was unfounded and the file was closed.

### **Case No. 22-023**

The complainant was a lawyer, but not counsel of record, who had offered to represent the claimants for an abandonment hearing before the Refugee Protection Division.

The complainant alleged that the member failed to comply with the [Code of Conduct for Members of the IRB](#) (the Code) as they did not act honestly and in good faith, nor in a professional and ethical manner in mistakenly identifying the complainant as counsel of record.

The Office of the Ombudsperson determined that an administrative oversight by the Registry had resulted in an incomplete version of the member's decision regarding the abandonment claim—rather than the member's full decision—being issued in error. This led to the complainant mistakenly believing that the member had identified them as the counsel of record.

The allegation was not about the conduct of the member, and therefore, was not within scope of the Procedures for Making a Complaint about a Member (the Procedures).

After reviewing the complaint, and consistent with the recommendation of the Ombudsperson, the Chairperson dismissed the complaint under the Procedures because none of the allegations were within scope.

The complaint was dismissed and the file was closed.

### **Case No. 22-025**

The complainant was counsel for a refugee claimant whose case was heard by a member of the Refugee Protection Division (RPD).

The complainant alleged that the member did not act honestly and in good faith, lacked integrity, and did not conduct the hearing fairly, resulting in an incomplete audio recording, issues with interpretation and many unnecessary delays in scheduling.

The Office of the Ombudsperson determined that the incomplete audio recording was due to a technical issue when uploading the audio file, and not the member's conduct. The allegations



related to delays in scheduling hearings and interpretation issues were also not about the member's conduct. Therefore, all allegations were not within scope of the [Procedures for Making a Complaint about a Member](#) (the Procedures).

After reviewing the complaint, and consistent with the recommendation of the Ombudsperson, the Chairperson dismissed the complaint under the Procedures.

The complaint was dismissed and the file was closed.

### **Case No. 22-026**

The complainant was counsel for a refugee appellant who made a complaint about a Refugee Appeal Division member.

The complainant alleged that the member refused to allow affidavit evidence in the appeal which was submitted to supplement parts of the missing audio recording from their Refugee Protection Division hearing.

The member's decision whether to accept an affidavit in place of parts of a missing audio recording related to the member's decision-making and adjudicative discretion, and therefore, was not within the scope of the [Procedures for Making a Complaint about a Member](#) (the Procedures).

After reviewing the complaint, and consistent with the recommendation of the Ombudsperson, the Chairperson dismissed the complaint under the Procedures.

The complaint was dismissed and the file was closed.



## Annex 3: Long description

### Member complaints process

#### 1. Acknowledgment

A written complaint is received. The Office of the Ombudsperson sends an acknowledgment of receipt to the complainant.

#### 2. Screening

The Ombudsperson reviews the allegations in the complaint and makes a recommendation to the Chairperson about whether the allegations in a complaint relate to the conduct of a member and about the next steps in the complaints process. After considering the recommendations from the Ombudsperson and reviewing the complaint and other relevant information, the Chairperson will decide to:

- a) Refer some, or all, of the allegations for investigation to the Ombudsperson or an external investigator if the allegations are about the conduct of the member
- b) Dismiss some, or all, of the allegations if the allegations are not about the conduct of a member or are frivolous, vexatious, or otherwise an abuse of process
- c) Refer some, or all, of the allegations to a Deputy Chairperson for action
- d) Take any other action deemed required in the circumstances

The Chairperson's decision letter, which includes the reasons for the decision, is sent to the complainant, the member, and member management.\*

Note:

\* The member is not notified of the complaint until after the file related to the complaint is no longer before the member.

#### 3. Investigation

The parties are given an opportunity to provide submissions before and after the investigator prepares a draft investigation report which is based on available evidence and contains preliminary findings of fact and analysis.

The report is then finalized and submitted to the Chairperson.

#### 4. Final decision

The Chairperson reviews the investigation report and decides whether any allegations are founded and whether there was a breach of the Code of Conduct.

The parties and member management are informed of the Chairperson's decision. Further actions are taken, as appropriate. The file is closed.

**Principles that are applied in the process:**

When a complaint is referred for investigation, the process will ensure that:

- the complaint is dealt with as quickly as fairness and thoroughness permit
- it is procedurally fair to the parties - i.e., the person who made the complaint and the member who is the subject of the complaint
- the identity of parties will be protected, to the extent possible, and as outlined in the Privacy Act and the Access to Information Act
- adjudicative independence of IRB members is respected while members are accountable for their conduct

**Service standards for processing member complaints:**

- 5 calendar days to acknowledge receipt of complaint
- 60 calendar days for the screening of the complaint<sup>†</sup>
- 170 calendar days for the final decision<sup>†</sup>

Note:

† This service standard does not include the time that passes if the case related to the complaint is still before the member who is the subject of the complaint.