



Immigration and Refugee Board of Canada 2023–24 Annual report on member complaints

Aussi disponible en français sous le titre : *Rapport annuel de 2023 à 2024 sur les plaintes à l'endroit des commissaires*

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Dear Madame Chairperson,

This is the sixth 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, 2023 to March 31, 2024.

During this period, the IRB (Immigration and Refugee Board of Canada)'s Office of the Ombudsperson had jurisdiction to receive and investigate complaints with respect IRB decision-makers (members) across the four Divisions of the Board: the Refugee Protection Division, the Refugee Appeal Division, the Immigration Division, and the Immigration Appeal Division. Together, 678 decisionmakers (members) made over 79,000 decisions and held over 43,000 hearings. There were six (6) complaints carried forward from the previous year, and 19 new complaints were received by my office.

This report contains information about the complaints received and/or finalized in fiscal year 2023-24, along with observations, trends, and outcomes of complaints. [Annex A](#) contains case summaries of each complaint finalized in 2023-24.

In 2024-25, my office will continue to strengthen the member complaints process, as we strive for continuous improvement in how to resolve complaints in the most efficient manner possible, while maintaining public and member confidence in our work.

Stephanie Shatilla

Ombudsperson

Introduction

The 678 members of the IRB held over 43,000 hearings and made over 79,000 decisions during this reporting period. During the same period, the Office of the Ombudsperson received 19 complaints, which is about one complaint per 4,198 decisions or one complaint for approximately 2,256 hearings. This indicates that IRB members generally and regularly conduct themselves appropriately and in accordance with the high professional standards expected of them. At the same time, uptake can be an effective indicator for continuous improvement, awareness, and building trust in the complaints process. A complaints process that is clear, fair, efficient, and transparent is one that stakeholders have confidence in.

The average time to process complaints increased this reporting period. The service standard related to acknowledging complaints was met 100% of the time in 2023-24, while screening was met 58% of the time. Due to a variety of circumstances, the service standard for final decisions was not met on 6 files this year.

In keeping with past reporting periods, the majority of complaints were about courtesy, respect and professionalism. Similarly, most complaints (80%) were about members of the largest IRB tribunal, the Refugee Protection Division.

Submitting or receiving a complaint 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 18 complaints finalized in 2023-24:

- 5 were investigated and did not lead to a breach of the Code
- 1 was investigated and led to a breach of the Code
- 1 was abandoned
- 1 was resolved through Alternative Dispute Resolution
- 10 complaints were considered out of scope of the Procedures

The complaints that were not about the conduct of members were based on adjudicative matters and/or the members' decisions.

Complaints Process

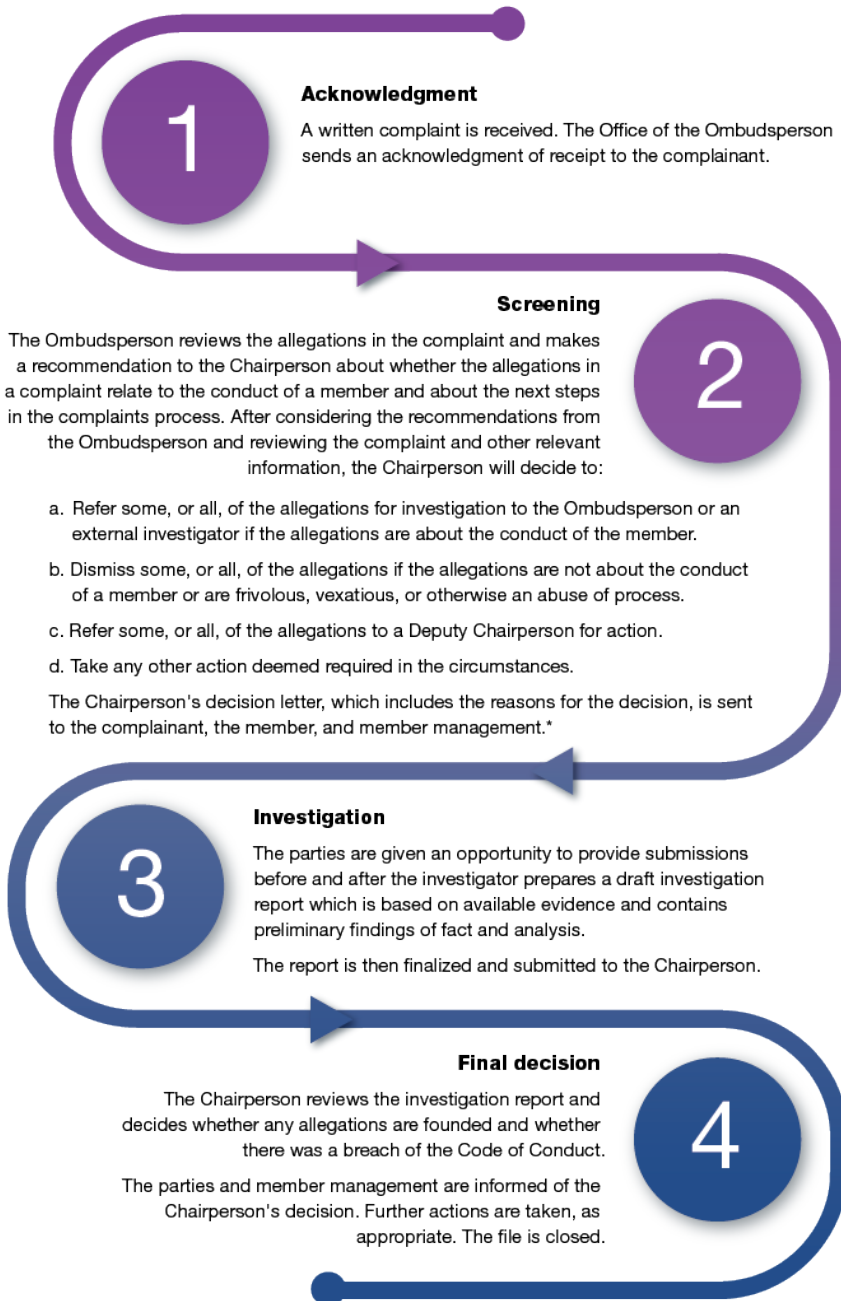
The Procedures outline the process for making a complaint about a member whose conduct is believed to be contrary to the Code. The Ombudsperson, who has jurisdiction over the complaints process, reports directly to the Chairperson and is independent of the four tribunals (Divisions) whose members are 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.irb-ombuds-conduct-conduite.cisr@irb-cisr.gc.ca) or sent by mail. Complainants are encouraged to use the [complaint form](#) to assist with this process, although it is not required.

Central to the process is the principle that it does not interfere with a member's independence. This means that complaints cannot be about what a member decides in a case. When the concern is about a member's decision (such as their reasons for decision or concerns about a denial of procedural fairness or natural justice), the appropriate action for would-be complainants 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.

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](#)

Findings, observations, and trends

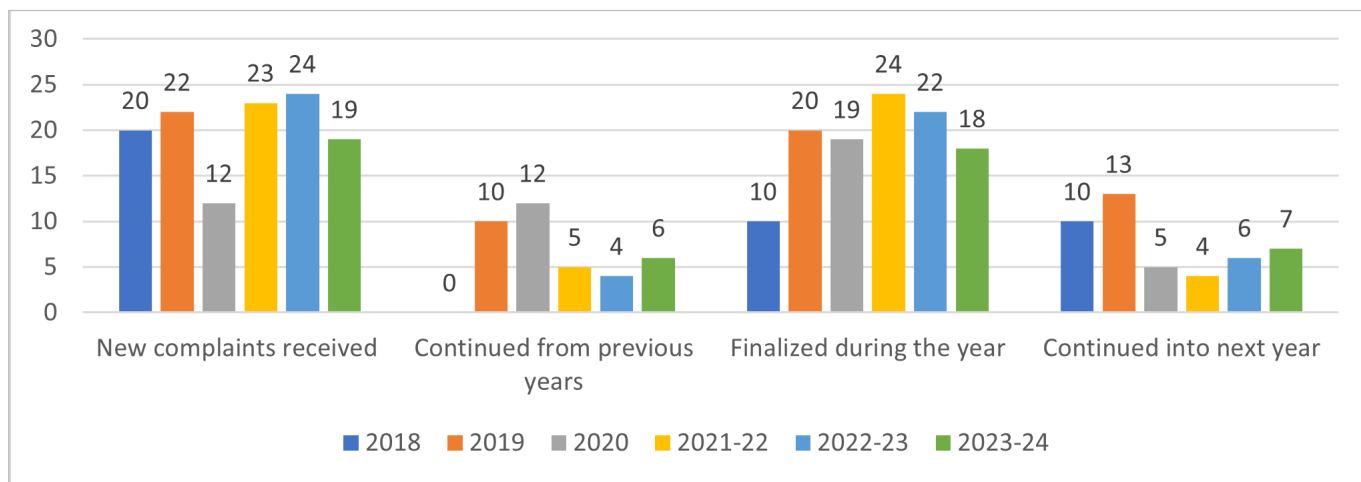
The number of complaints received over the past few years has remained fairly stable.

During the 2023-24 reporting period, 19 new complaints were received, and 6 complaints were carried over from 2022-23. Of these 25 complaints, 18 were finalized before March 31, 2024. See Figure 1 below.

7 of the 19 complaints received were not finalized in the current reporting period: 4 complaints were in the screening phase and 3 complaints were in the investigation phase at the end of March 2024.

Most complaints were received from counsel, followed by self-represented individuals. In 2023-24, about 55% of complaints received were from counsel and 35% from self-represented individuals. The remaining ten percent were submitted by a designated representative or Minister’s Counsel.

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.

Complaints being continued into the next reporting year remains consistent.

As depicted in Figure 1, since 2020, the number of complaints being continued into the next year remains consistent. This trend is an indication of the efforts taken to process complaints in a timely manner. The complaints process focuses on initiating the processing of complaints immediately following receipt. The complaints which continue to the next year are actively being managed; either they are on hold until the member is no longer seized of the file 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 number of complaints continued into next year is difficult to predict or manage since it depends on when the complaint was received, what stage the complaint is in, and the length of time it takes to complete an investigation.

The average number of days to finalize a complaint has increased.

In 2023-24, the time to acknowledge a complaint decreased, while the time to screen and finalize complaints increased to:

- acknowledged within an average of 1 calendar
- screened within an average of 83 calendar days
- finalized within an average of 220 calendar days

Acknowledgment of a complaint involves explaining the member complaints process and telling complainants what to expect next. The positive trend in acknowledgment can be attributed to the increased efficiency in how new complaints flow through this step in the process.

The expectation is that 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 (see Table 1 below):

- **acknowledged** within the established service standard **100%** of the time
- **screened** within the service standard **58%** of the time
- **final decision letters** sent within the service standard **0%** of the time

The acknowledgment service standard was met in 2023-24. The service standards with respect to the screening and final decision, however, were not met. There were more investigations completed in this year than in the two previous years combined. The complaints that were investigated were complex in nature and this, combined with other factors, contributed to longer screening and investigation timelines.

Table 1: Service standards results for 2023-24

Type	Description	Standard	Target %	Result %
Acknowledgment	Acknowledgment letter sent to complainant following receipt of the complaint	5 calendar days from receipt of complaint	100	100
Screening	Screening decision letters sent to parties following screening	60 calendar days* from receipt of complaint	80	58 (8/14)
Final Decision	Final decision letters sent to parties following investigation	170 calendar days* from receipt of complaint	80	0 (0/5)

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

In 2023-24, 19 new complaints were received out of decisions made by 678 members; or one complaint received for every 36 members, which remains consistent over the years. While the number of complaints has been relatively stable since 2018, the number of decisions made, and hearings held, has increased steadily since annual reports began in 2018. As outlined in Table 2 below, there was one complaint submitted for every 4,198 decisions made and one complaint for every 2,256 hearings held. This highlights that the IRB receives relatively few complaints despite the tens of thousands of decisions made and hearings held by its members.

A number of considerations follow from this data. The majority of members conduct themselves appropriately in undertaking their responsibilities as members. The low number of complaints received may also reflect awareness of the complaints process. Continuous improvement of the complaints process may contribute to increased awareness and to reinforced confidence in the transparency and objectivity of the process. The latter consideration is often raised in relation to recourse mechanisms such as investigations. It takes time to build confidence and trust in a process. As referenced in the [2021 Evaluation of the IRB process for making a complaint about a member](#), individuals want to feel there is value in going through the process and have confidence that they will be treated fairly.

Table 2: Members who made decisions, total decisions made by members, total hearings held by members

Year	Members who made decisions	Total decisions made by members	One complaint received per number of decisions	Total hearings held by members	One complaint received per number of hearings
2023-24	678	79,762	4,198	42,872	2,256
2022-23	608	72,552	3,023	41,084	1,711
2021-22*	691	87,325	3,797	49,543	2,154
2020	542	44,482	3,737	20,928	1,744
2019	400	72,500	3,295	38,601	1,930
2018	368	47,914	2,396	32,829	1,641

Note:

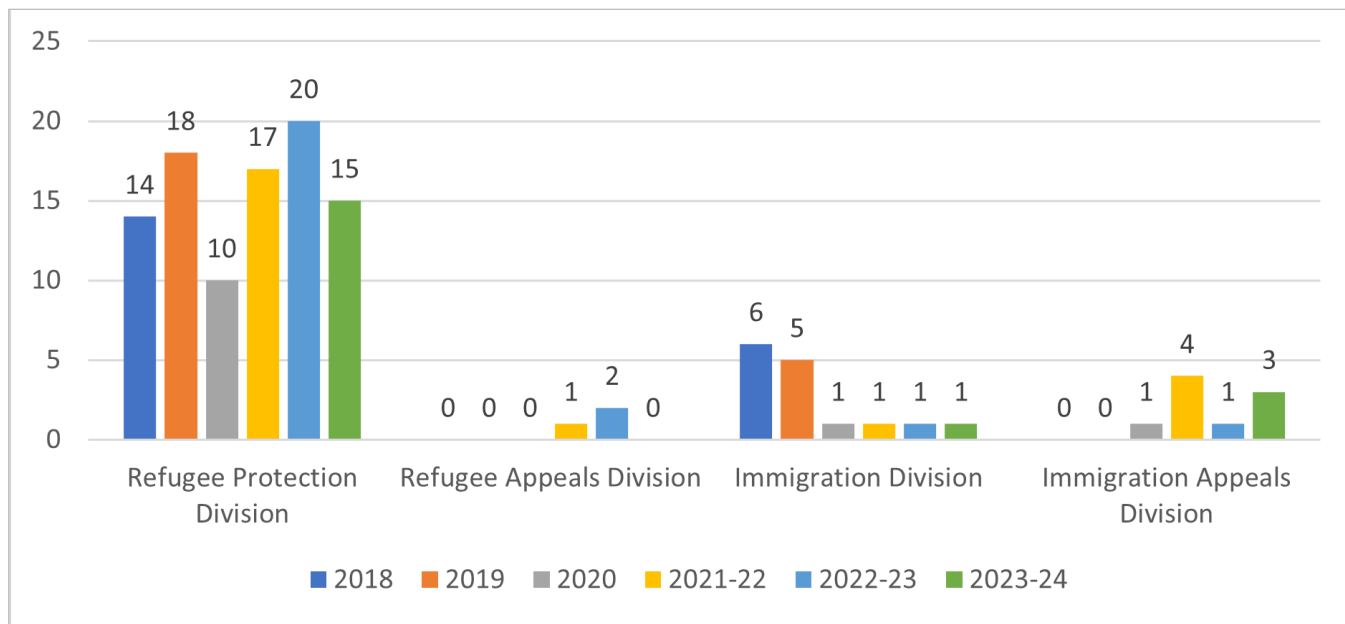
* 15-month reporting period from January 1, 2021 to March 31, 2022

Most complaints received were about the conduct of an RPD (Refugee Protection Division) member.

The RPD (Refugee Protection Division) is the largest tribunal at the IRB; it was responsible for approximately 69 per cent of decisions during the reporting period and 72% of hearings. As a result, the division continues to receive the most complaints, with 80% 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 submission of a complaint does not automatically lead to an investigation or indicate 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.

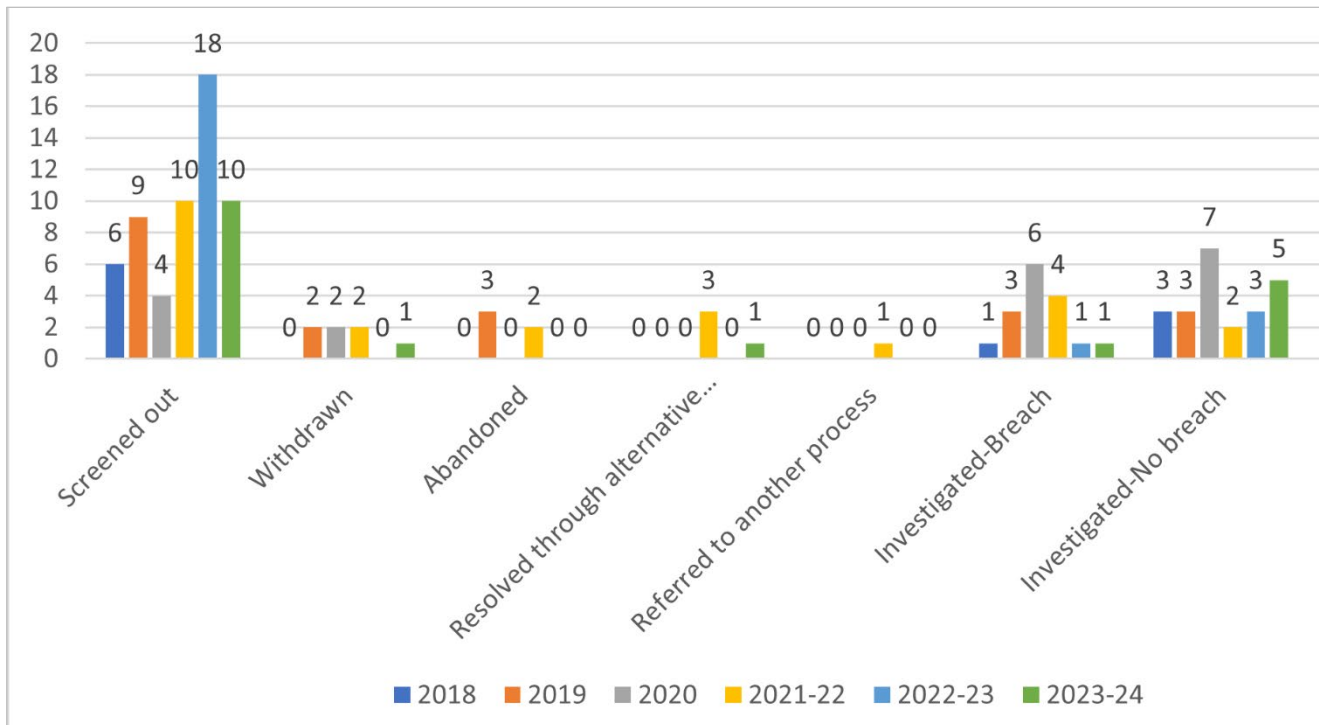
18 complaints were finalized during the reporting period, which includes 6 complaints carried forward from 2022-23. During this reporting year, finalized complaints were either investigated, screened out, resolved through alternative dispute resolution, or withdrawn. Figure 3 shows complaints finalized by outcome.

During the reporting period, 10 complaints were screened out as they were not within scope of the Procedures.

This reporting period saw a lower percentage of complaints screened out (55%) than in 2022-23 (82%). Approximately 50% of the 18 complaints included allegations that were unclear or vague. In these instances, the complainant was contacted for more information regarding the nature of the complaint, and, where warranted, the audio recordings of the relevant hearings were reviewed to determine if 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 the Chairperson did not refer them for investigation.

The higher percentage of screened in complaints in this reporting period (55%) is consistent with the number of complaints being screened for reporting periods prior to 2022-23. The Office of the Ombudsperson will continue to reinforce the process' objectives, namely the exclusive focus on member conduct, specifically, as it relates to the standards of conduct found in sections 9 to 15 of the Code of Conduct. The Office of the Ombudsperson will also continue to look for ways to clarify the information available on the website to reinforce the objective of the process to potential complainants.

Figure 3 - Complaints finalized by outcome



Outcomes: Complaints investigated and finalized

During the reporting period:

- 6 complaints were investigated by the Office of the Ombudsperson. 5 of the investigations resulted in unfounded breaches of the Code, while 1 resulted in a breach.
- In terms of the type of allegations investigated, three complaints were regarding members lacking courtesy and respect, being rude, or being unprofessional. Two complaints alleged members lacking integrity and being biased. One complaint alleged the member belittling counsel, attacking counsel's competence, and mocking them.

Individual summaries of all complaints finalized in 2023-24 are in [Annex A](#).

Observations, findings and trends

The number of complaints received remains consistent at about 20 per year. More complaints were screened in this year than in 2023-24. This can be attributed, at least in part, to the Office's efforts to contact complainants if allegations in their complaint were unclear or vague. As a result of more complaints being screened in, there were also more complaints investigated this year than in 2022-23. The relatively low number of complaints received per member, decision made, and hearing held indicates that most IRB members conduct themselves with courtesy, respect, and professionalism.

In line with previous years, almost all investigated complaints referred to section 9 of the Code, which pertains to members conducting hearings in a courteous and respectful manner. Most of these complaints also referenced section 10 of the Code, which relates to members exercising their duties without discrimination, accommodating participants in proceedings, and respecting cultural differences and human rights.

For the second consecutive year, the Office did not receive any complaints related to gender-based claims, after receiving 6 complaints in each of the four previous years. 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 [Guideline 9 - Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics](#).

Conclusion and Looking Forward

This is the sixth annual report about member complaints at the IRB.

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 19 and finalized 18 this reporting year are in keeping with previous years. While there are tens of thousands of decisions made and hearings held by hundreds of IRB members every year, the number of complaints received remains relatively low. Many complaints are screened out of the process as they are not related to the member conduct but rather about adjudicative matters or the member's decision. In total, 6 complaints led to an investigation with one complaint leading to a partial breach of the Code of Conduct.

Key observations from this report include the continuing need to facilitate awareness of the complaints process, reinforce a better understanding of the scope of the process, and the need to provide clear information in plain language on our website.

Efforts to strengthen the complaints process have yielded positive results. Not meeting 2 service standards shows that improvement can be more efficient in the screening and investigation steps of the process. This is something that will be examined when the Office studies the complaints process with an eye on continuous improvement.

Notably, there has been a decrease in complaints associated with gender-related claims over the past 2 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.

In the coming year, the IRB will review its Code of Conduct for members with an effort to make it succinct, efficient, effective, and reflective of members' obligations and work expectations. The review will aim to remove redundancies within the Code and reframe it in plain language. Other lessons learned from the last few years will be applied. The review will also require changes to the [Procedures for Making a Complaint About a Member](#). The goal is to complete the review in 2024-25.

Annex A: Case summaries

Case No. 22-010

An internal investigation found that the Member did not breach any section of the [Code of Conduct for Members of the Immigration and Refugee Board of Canada](#) (the Code).

The Complainants were counsel and the refugee claimants they represented, whose case was heard by a Member of the Refugee Protection Division. The Complainants alleged that the Member was aggressive, did not give enough breaks, and was without compassion.

The Ombudsperson's investigation report concluded that:

- There was no evidence of the Member using an aggressive tone.
- The Member granted breaks when requested. There were no instances where a break was requested, and the Member refused to grant the request.
- There was no evidence that the Member lacked compassion. Instead, there was evidence that the Member displayed courtesy, respect, and compassion towards the Complainants.

The Chairperson agreed with the conclusions of the investigation and found that there were no breaches of the Code.

Case no. 22-021

An internal investigation found that the Member breached of sections 9 and 11 of the [Code of Conduct for Members of the Immigration and Refugee Board of Canada](#) (the Code).

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 willfully belittled them, attacked their professional competence, and demonstrated bias.

The Ombudsperson's investigation report concluded that:

- The Member failed to meet the high standards of professionalism, respect and courtesy set out in the Code.
- The Member lectured the Complainant about how to represent their client, and repeatedly laughed in a manner that could reasonably be viewed as inappropriate or condescending.
- When the Complainant pointed out that their use of the word 'aggressive' was racist given the context, the Member did not apologize or attempt to reset the tone of the hearing. Instead, in that moment, the Member laughed.
- There was insufficient evidence to support a finding that the Member willfully attacked the Complainant's qualifications.
- There was insufficient evidence to support a finding that any comments made by the Member were racially motivated.
- The Member cited a possibility of an apprehension of bias, and therefore recused themselves, so there is no evidence to support a finding of bias.

The Chairperson agreed with the conclusions of the investigation and found that there were breaches of sections 9 and 11 of the Code. Member management was informed of the breaches and were provided with recommendations to implement corrective actions and training.

Case no. 21-022

An internal investigation found that the Member did not breach any section of the [Code of Conduct for Members of the Immigration and Refugee Board of Canada](#) (the Code).

The Complainant was a refugee claimant whose case was heard by a Member of the Refugee Protection Division. The complaint alleged that the Member was careless and rude to the Complainant and their lawyer. This included refusing counsel's request for a break to go to the washroom for medical reasons, and then dismissing counsel's concerns by stating that they could complain about the Member if they wished.

The Ombudsperson's investigation report concluded that:

- The urgency of the requested break occurred during counsel's second interjection, when counsel explained that his request was due to their medical condition, and then immediately left the room. There is no evidence to suggest that the Member refused counsel's request to go to the washroom once they were aware of counsel's medical condition.
- There were no instances of the Member being unprofessional, careless, or rude.
- Given that the Complainant wished to continue discussing the washroom incident at the expense of continuing the hearing, it was reasonable for the Member to tell counsel that they could complain about the Member if they wished.

The Chairperson agreed with the conclusions of the investigation and found that there were no breaches of the Code.

Case No. 22-024

An internal investigation found that the Member did not breach any section of the [Code of Conduct for Members of the Immigration and Refugee Board of Canada](#) (the Code).

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 rude and disrespectful, unprofessional, lacked courtesy, respect and integrity and was biased.

The Ombudsperson's investigation report concluded that:

- There was no evidence to support the allegation that the Member was rude, disrespectful, unprofessional or used an aggressive tone.
- The Member's tone, while firm, was courteous, respectful, and professional throughout the hearing.
- There was no evidence to support the allegation of bias.

The Chairperson agreed with the conclusions of the investigation and found that there were no breaches of the Code.

Case No. 22-027

A review of the complaint found that the allegations were not within the jurisdiction of the Member complaints process. The complaint was dismissed, and the file was closed.

The Complainant was the adult child of the Person Concerned, whose case was heard before a Member of the Immigration Division. The complaint alleged that the Member prevented the Person Concerned from having their counsel and co-counsel represent them in their preferred manner.

The Office of the Ombudsperson reviewed the complaint and found that the allegations were regarding adjudicative discretion, not conduct. The decision to remove any individual from a hearing room because they are disruptive is part of a Member's decision-making. Members are responsible for maintaining order within the hearing room and making sure their instructions are clearly understood by all parties. Proper interpretation is part of procedural fairness, and the decisions that Members make in this regard are appealable to the Immigration Appeal Division or to the Federal Court.

The Ombudsperson therefore recommended to the Chairperson that the allegations be dismissed as they do not fall within the scope of the [Procedures for Making a Complaint About a Member](#) (the Procedures). The Chairperson agreed with the recommendation.

Case No. 23-001

A review of the complaint found that the allegations were not within the jurisdiction of the Member complaints process. The complaint was dismissed, and the file was closed.

The Complainant was appeal counsel for a refugee claimant who was unrepresented when their claim was before the Member at the Refugee Protection Division. The complaint alleged that the Member asked too much of an unrepresented client, including asking the client to show evidence on a cell phone through a video camera. The complaint also alleged that the member made errors and assumptions when assessing evidence.

The Office of the Ombudsperson reviewed the complaint and found that the allegations were regarding adjudicative discretion, not conduct. Decisions regarding how to accommodate an unrepresented client are related to procedural fairness, and decisions about how to assess or accept evidence or documents during a hearing are part of a Member's adjudicative decision-making.

The Ombudsperson therefore recommended to the Chairperson that the allegations be dismissed as they do not fall within the scope of the [Procedures for Making a Complaint About a Member](#) (the Procedures). The Chairperson agreed with the recommendation.

Case No. 23-002

A review of the complaint found that the allegations were not within the jurisdiction of the Member complaints process. The complaint was dismissed, and the file was closed.

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 questioned the Claimants about information from a privileged conversation which took place during a break in the hearing, and which was recorded without their knowledge.

The Office of the Ombudsperson reviewed the complaint and found that the allegations were regarding adjudicative discretion, not conduct. The decision on how to mitigate procedural fairness issues as they arise is a matter of adjudicative decision-making. In this case, the Member recognised that the inadvertent recording of a privileged conversation is a question of procedural fairness and made an adjudicative decision on how to proceed.

The Ombudsperson therefore recommended to the Chairperson that the allegations be dismissed as they do not fall within the scope of the [Procedures for Making a Complaint About a Member](#) (the Procedures). The Chairperson agreed with the recommendation.

Case No. 23-003

An internal investigation found that the Member did not breach any section of the [Code of Conduct for Members of the Immigration and Refugee Board of Canada](#) (the Code).

The Complainants were Canada Border Services Agency (CBSA) Hearings Officers. The Complainants attended detention reviews held by a Member of the Immigration Division. The Complainants alleged that the Member made accusations regarding one of the Complainants when they were not present, and then scolded the other Complainant when they defended their colleague. The Complainants alleged that the Member then demonstrated bias towards one of them at a subsequent hearing.

The Ombudsperson's investigation report concluded that:

- The accusations made about one of the Complainants during the hearing were made by Counsel for the Person Concerned, not the Member.
- The Member did not speak to the Complainants in an unprofessional manner, nor was the Member observed “scolding” either of the Complainants as it was alleged.
- The Member was courteous and respectful throughout the hearing.
- The Member allowed all parties the opportunity to speak and/or provide submissions as appropriate. There was no evidence that the Member was biased.

The Chairperson agreed with the conclusions of the investigation and found that there were no breaches of the Code.

Case No. 23-004

A review of the complaint found that the allegations were not within the jurisdiction of the Member complaints process. The complaint was dismissed, and the file was closed.

The Complainant was an appellant whose case was heard before a Member of the Immigration Appeal Division. The complaint alleged that the start of the hearing was delayed, that the Member asked the complainant to not to give such detailed responses, and that the Member asked the complainant several inappropriate questions.

The Office of the Ombudsperson reviewed the complaint and found that the allegations were regarding adjudicative discretion, not conduct. Managing the time allotted for hearings, and questioning, are matters of Member decision-making.

The Ombudsperson therefore recommended to the Chairperson that the allegations be dismissed as they do not fall within the scope of the [Procedures for Making a Complaint About a Member](#). The Chairperson agreed with the recommendation.

Case No. 23-005

A review of the complaint found that the allegations were not within the jurisdiction of the Member complaints process. The complaint was dismissed, and the file was closed.

The Complainant was legal counsel for a refugee claimant whose case was heard by a Member of the Refugee Protection Division. The complaint alleged that the Member has a pattern of rendering findings of “no credible basis” in their cases, and that the Member looked shocked and annoyed after the Complainant refuted the Member's internet search findings.

The Office of the Ombudsperson reviewed the video recording of the hearing, which showed that the Member did not appear shocked or annoyed after the complainant refuted the Member's findings. The review found the Member's overall behaviour to be polite and courteous throughout the hearing.

The Ombudsperson therefore recommended to the Chairperson that the allegations be dismissed as they do not fall within the scope of the [Procedures for Making a Complaint About a Member](#) (the Procedures). The Chairperson agreed with the recommendation.

Case No. 23-006

The complaint was informally resolved through Alternative Dispute Resolution (ADR), and the file was closed.

The Complainant was legal counsel for a claimant whose case was heard by a Member of the Immigration Division. The complaint alleged that the Member was visibly hostile, which the Complainant viewed as an attempt to prevent them from representing their client. During the hearing, the Member acknowledged their behaviour and apologised.

The Office of the Ombudsperson contacted both parties, who indicated they would be interested in ADR. After speaking to the Member about the complaint, the Office of the Ombudsperson shared the Member's thoughts and reflections with the Complainant. The Complainant was satisfied and indicated that their concerns were resolved, and the file was closed.

Case No. 23-007

A review of the complaint found that the allegations were not within the jurisdiction of the Member complaints process. The complaint was dismissed, and the file was closed.

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 had unreasonable expectations regarding submitting evidence, that the Member did not allow the Complainant to ask questions the way they wanted to, and that the Member was biased towards the Complainant.

The Office of the Ombudsperson reviewed the complaint and found that the allegations were regarding adjudicative discretion, not conduct. Part of a Member's decision-making is to set due dates for evidence, to accept or reject the reasons for delays and to question counsel about the appearance and organization of any submitted evidence. A member's adjudicative discretion also includes whether to allow lines of questioning by counsel. In this case, the allegation of bias was based on the conduct described in the other allegations, which were all found to be matters of Member decision-making and adjudicative discretion. Therefore, this allegation of bias falls outside of the Member complaint process.

The Ombudsperson therefore recommended to the Chairperson that the allegations be dismissed as they do not fall within the scope of the [Procedures for Making a Complaint About a Member](#). The Chairperson agreed with the recommendation.

Case No. 23-009

An internal investigation found that the Member did not breach any section of the [Code of Conduct for Members of the Immigration and Refugee Board of Canada](#) (the Code).

The Complainant was a refugee claimant whose case was heard by a Member of the Refugee Protection Division. The Complainant alleged that the Member was very rude and was not listening or understanding them.

The Ombudsperson's investigation report concluded that:

- The allegation in the complaint was put forward during the hearing and the Member made attempts to understand the Complainant's concerns.
- Throughout the hearing, the Member was courteous and respectful. Attempts were made to accommodate the Complainant so that they could participate effectively in the hearing.

The Chairperson agreed with the conclusions of the investigation and found that there were no breaches of the Code.

Case No. 23-010

A review of the complaint found that the allegations were not within the jurisdiction of the Member complaints process. The complaint was dismissed, and the file was closed.

The Complainant was a refugee claimant whose case was heard by a Member of the Refugee Protection Division. The Complainant alleged that the Member suggested that the Complainant try moving to another state, and that the Member failed to consider and weigh evidence and uphold laws.

The Office of the Ombudsperson reviewed the complaint and found that the allegations were regarding adjudicative discretion, not conduct. The presence of an internal flight alternative is part of every refugee claim assessment. Questioning regarding this issue is a matter of adjudicative discretion and Member decision-making. Considering and weighing evidence and upholding laws are also matters of adjudicative discretion and Member decision-making.

The Ombudsperson therefore recommended to the Chairperson that the allegations be dismissed as they do not fall within the scope of the [Procedures for Making a Complaint About a Member](#). The Chairperson agreed with the recommendation.

Case No. 23-011

A review of the complaint found that the allegations were not within the jurisdiction of the Member complaints process. The complaint was dismissed, and the file was closed.

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 continuously interrupted the complainant while they were trying to advocate for their client, and asked the claimant to testify about the specifics of the torture that they went through in their home country. The Complainant further alleged that the Member asked the Complainant if they knew that their client would take medication during the hearing. The Complainant felt this question indicated bias, as it suggested that the Complainant pre-arranged for their client to take this medication.

The Office of the Ombudsperson reviewed the complaint and found that the allegations were regarding adjudicative discretion, not conduct. The decision to interrupt is part of hearing management, and hearing management is part of Member decision-making. A Member's role during a hearing is inquisitorial in nature and some flexibility is necessary to accomplish their adjudicative function. When possible, Members have the discretion to avoid sensitive topics, however this discretion is part of their adjudicative decision-making. The allegation of bias relates to the Member's adjudicative discretion as a decision-maker. Part of adjudicative discretion during a hearing is deciding which questions to ask, and this includes decisions about what questions to ask counsel.

The Ombudsperson therefore recommended to the Chairperson that the allegations be dismissed as they do not fall within the scope of the [Procedures for Making a Complaint About a Member](#) (the Procedures). The Chairperson agreed with the recommendation.

Case No. 23-015

A review of the complaint found that the allegations were not within the jurisdiction of the Member complaints process. The complaint was dismissed, and the file was closed.

The Complainant was counsel for refugee claimants whose case was heard by a Member of the Refugee Protection Division. The Complainant alleged that they overheard the Member questioning the claimants a few minutes into a 15-minute break without the presence of counsel.

The Office of the Ombudsperson reviewed the complaint and found that the allegations were regarding adjudicative discretion, not conduct. The claimants did not mute their video as instructed during the break. When the Member overheard someone discussing issues from the hearing, they instructed everyone to return to the hearing room and waited for counsel to return before speaking to the claimants. Accidentally overhearing claimants talk about issues regarding their claim is a question of procedural fairness. Decisions on how to mitigate procedural fairness issues as they arise are matters of adjudicative decision-making.

The Ombudsperson therefore recommended to the Chairperson that the allegations be dismissed as they do not fall within the scope of the [Procedures for Making a Complaint About a Member](#) (the Procedures). The Chairperson agreed with the recommendation.

Case No. 23-016

A review of the complaint found that the allegations were not within the jurisdiction of the Member complaints process. The complaint was dismissed, and the file was closed.

The Complainant was a refugee claimant whose case was heard by a Member of the Refugee Protection Division. The Complainant alleged that the Member's Notice of Decision was inaccurate, and that the Member took too long to make their decision.

The Office of the Ombudsperson reviewed the complaint and found that the allegations were regarding adjudicative discretion, not conduct. The assessment of evidence, the content of a decision, and timelines regarding decision-writing are also matters of member decision-making and therefore relate to adjudicative discretion.

The Ombudsperson therefore recommended to the Chairperson that the allegations be dismissed as they do not fall within the scope of the [Procedures for Making a Complaint About a Member](#) (the Procedures). The Chairperson agreed with the recommendation.

Annex B: 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†
- 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.