

**GOVERNMENT RESPONSE TO THE REPORT OF THE HOUSE OF COMMONS STANDING
COMMITTEE ON CITIZENSHIP AND IMMIGRATION ENTITLED
*Responding to Public Complaints: A Review of the Appointment, Training
and Complaint Processes of the Immigration and Refugee Board***

Introduction

The Government of Canada thanks the Standing Committee on Citizenship and Immigration (CIMM) for its 20th report entitled, “Responding to Public Complaints: A Review of the Appointment, Training and Complaint Processes of the Immigration and Refugee Board,” which was tabled in the House of Commons on September 17th, 2018.

Acting at arms-length from the government, the Immigration and Refugee Board (IRB) conducts hearings regarding the claims of individuals and families to determine admissibility to Canada, detention review, and the granting of protected person status. As such, the IRB is a foundational piece of Canada’s immigration system – playing a key role in maintaining the system’s integrity – and providing a model that many nations in the world can look to.

The CIMM Study and the resulting Report provide the Government with an opportunity to think critically about the ways in which the IRB can further improve the appointment, training and complaint processes that are fundamental to the IRB’s functioning.

The CIMM Report put forward eight important recommendations, to which the Government responds below. The Government strongly supports the CIMM Report and its recommendations, acknowledging that it must work hard with the IRB to maintain the high expectations placed on the Board.

1) Maintaining Public Service and Governor-in-Council (GIC) appointments

That the current IRB appointments process for the Refugee Protection Division and Immigration Division, in which merit based appointees are screened and successful applicants are hired as public servants, and for the Refugee Appeal Division and the Immigration Appeal Division, in which merit based appointments are screened and successful applicants are hired through temporary GIC appointments, both be maintained, and that the Government of Canada consider reviewing both processes within three years.

The Government of Canada supports this recommendation.

The Government is committed to an open, transparent and merit-based approach to GIC appointments. To that end, in February 2016 the Prime Minister announced a new approach to GIC appointments that supports open, transparent and merit-based selection processes for GIC positions. This approach is designed to identify highly qualified candidates who reflect the country’s diversity in terms of linguistic, regional and employment equity representation, and strives to achieve gender parity.

Since the launch of the new approach, there have been some 26,000 applications through the online portal. Over 950 appointments have been made following an open, transparent and merit-based selection process. This includes over 85 appointments made to the Refugee Appeal Division and Immigration Appeal Division of the IRB (as of October 18, 2018).

A review of the GIC appointments process within the next three years could form part of broader policy considerations in the context of new or renewed government priorities, thereby determining review timeframes and policy decisions.

2) Improving the assessment process of IRB members

That the screening process for selecting all members of the IRB, either in the written aptitude exam or the interview process, include the evaluation of a candidate's awareness and understanding of discriminatory conduct and the standards of behavior to which members of the board are to be held.

The Government of Canada supports this recommendation.

The IRB focusses significant attention on personal suitability and open-mindedness in its selection and probationary-assessment processes for its decision-makers. In terms of public servant decision-makers, this process will soon be further reinforced by updating the selection process tools and/or the probation assessment matrices, as most appropriate, to include an assessment specifically oriented towards the candidates' awareness and understanding of discriminatory conduct and the standards of behaviour to which they will be held as decision-makers. In terms of GIC decision-makers, significant attention is also given to personal suitability and open-mindedness by evaluating candidates on their ethical standards and integrity, and their impartiality and sensitivity to multicultural and gender issues.

3) Appointing GIC members to fill vacancies

That the Privy Council Office take all steps possible to expedite recommendations of suitable candidates to the Minister of Immigration, Refugees and Citizenship in order to fill any vacancies in GIC appointees at the Immigration Appeal Division and the Refugee Appeal Division at the IRB.

The Government of Canada supports this recommendation.

The IRB's enabling legislation, the *Immigration and Refugee Protection Act*, section 152, provides that "[t]he Board is composed of a Chairperson and other members as are required to ensure the proper functioning of the Board."

PCO's Senior Personnel Secretariat oversees the GIC appointment system, supporting the selection process for some 1,400 GIC positions. In terms of appointing positions at the IRB, this

is a continuous process and PCO works in partnership with the IRB to this end. Vacancies are prioritized and positions are filled based on the evolving needs of the organization, including considerations in terms of the number of cases handled across regions.

Where positions are advertised based on their specific location, the Notices of Appointment Opportunity posted on the GIC appointments website will indicate whether a roster of highly qualified candidates may be established and drawn upon for similar opportunities, which could include other regions. These rosters are valid for a period of two years.

Once selection processes are complete and qualified candidates identified, advice is provided to the Minister of Immigration, Refugees and Citizenship to make recommendations to the GIC for appointments. PCO works very closely on a regular basis with the Prime Minister's Office, ministers' offices, portfolio departments and agencies, and organizations to identify and prioritize selection processes to fill positions that may already be vacant or will become vacant. PCO will continue to work towards addressing remaining vacant positions through its oversight of open, transparent and merit-based selection processes for GIC appointments. Since the launch of the new approach, over 85 appointments have been made to the Refugee Appeal Division and Immigration Appeal Division of the IRB (as of October 18, 2018).

4) Improving training at the IRB

That the IRB commit to a process for continuous improvement in member education, and, specifically, demonstrate improvement in member education in the areas of (a) sensitivity training, (b) trauma-informed investigation techniques and (c) credibility assessment; and that the IRB review, on a periodic basis, the effectiveness of the board's training guidelines, including the Sexual Orientation Gender Identity Expression Guideline, as education and training tools.

The Government of Canada supports this recommendation.

Given that a GIC appointment can last up to seven-years, and public servants can have an even longer tenure, it is essential to invest in member training. Training ensures that members live up to the high standard that their position demands, are aware of relevant issues, and mitigates the risk of decisions being overturned in Federal Court.

Work is underway in the IRB to accelerate improvements to sensitivity training, cultural training, credibility assessments, reason writing, and oversight and governance of the learning function for decision-makers. In addition, the IRB will undertake a regular review of how decision-makers are applying the Chairperson's Guideline on Proceedings before the IRB involving Sexual Orientation, Gender Identity and Expression (SOGIE) training. The first review will be carried out by the second quarter of fiscal year 2019-20.

When assessing improvements to be made to member training, the IRB will take into consideration the operational impacts on member established decision-making time. Training

will be completed within existing financial resources and the current amount of time allocated for member training and professional development.

5) Ensuring a mandatory continuing professional development for members

That the IRB institute a more rigorous policy of mandatory continuing professional development for members so that they remain informed of best practices and standards in each area of required competency, including relevant legislation, judicial decisions and procedural fairness; and that an evaluation of members' comprehension and application of this learning play a significant part in their yearly review, with individual programs developed for members requiring additional training or mentorship, additionally, that all guidelines and training tools be continually revised and improved to ensure continuous improvement.

The Government of Canada supports this recommendation.

The IRB is going forward with strategies to fully address this recommendation. The IRB is continually exploring new learning practices and tools, and decision-makers are already subject to mandatory continuous learning through regular training sessions, national training seminars and other learning activities. To that end, the IRB has established learning committees that will ensure that learning content is driven by the needs identified by the decision-makers and their managers. Legal training is a key component of this strategy, to ensure that decision-makers remain current with the evolving jurisprudence.

Regular performance reviews will continue to maintain and improve the required competencies of decision-makers. All decision-makers, whether GIC appointees or under the *Public Service Employment Act*, are subject to annual individual performance reviews. Each decision-maker's annual performance objectives are identified at the beginning of each year, and a review is conducted at the end of the year – or more frequently as needed. A learning plan is created when required.

6) Establishing an independent federal review board for complaints against all federally-appointed adjudicators

That the Government of Canada, through the Privy Council Office, establish a task force with representation from all departments whose portfolios involve the oversight of federal administrative tribunals to review the need for an independent review board for complaints brought by the public against federally appointed adjudicators, including members of the IRB; and to consider whether complaints processes against public service positions and GIC appointments within the federal administrative tribunal framework should be subject to different levels or avenues of review.

The Government of Canada supports this recommendation in principle.

The Government agrees with the importance of providing the public with a recourse mechanism to deal with complaints regarding breaches of conduct by members of administrative tribunals, and commends the steps taken by the IRB to establish a meaningful complaints-review process to address misconduct. From December 2017, which marked the introduction of the new Procedures, a total of 17 complaints have been received to November, 2018. The Government has not committed to establishing a task force to review the need for an independent review board for public complaints against federally appointed adjudicators.

Existing mechanisms are in place that reflect the independent, arms' length nature of administrative tribunals. Changes to the IRB complaints-review process were implemented in December 2017 to allow for better management of the process and ensure that it is implemented in the public interest.

The majority of federal administrative tribunals are required to make decisions of a quasi-judicial nature. Accordingly, they require a degree of independence from the government, in order to permit them to make their decisions free from any influence or bias or its appearance. With respect to this need for independence, analyzing the results of the IRB's comprehensive three-year review of its complaints process referred to in Recommendation 8, with a particular emphasis on the need for independence in the adjudication process, would better position the Government to determine:

- (i) The overall success of the new process, including any deficiencies in independence;
- (ii) Benefits and drawbacks of the process; and
- (iii) Whether other federal administrative tribunals could benefit from implementing similar processes.

7) Amending the Code of Conduct for members of the IRB

That the IRB institute an open and transparent process for continuous improvement to its Code of Conduct and that the IRB publish within the Code possible sanctions that could be imposed on a member upon violation of the Code.

The Government of Canada supports this recommendation.

The IRB has a proven track-record of meaningful consultations with stakeholders when updating existing policy instruments or creating new ones. The IRB consulted extensively with stakeholders when it last updated the Code of Conduct and when it created the new 'Procedures', December 2017, for Investigating Complaints Against Members.

The IRB will be making changes to the Code in late 2018. In this context, the IRB will amend the Code to outline a range of sanctions that could be imposed on a decision-maker in response to a finding of misconduct, without limiting the Chairperson's flexibility to impose remedial measures that take into account the particular circumstances in any given case. Going forward,

the IRB will continue to implement Code of Conduct improvements through existing sources of funding.

8) Reviewing and reporting back on the complaints process at the Immigration and Refugee Board of Canada

That the IRB report back to this Committee in February 2019 with a comprehensive report on the status of complaints against members brought under the current complaints process, and conduct a comprehensive review of the current complaints, with a particular emphasis on the need for independence in the complaints investigation and adjudication process, within three years.

The Government of Canada supports this recommendation.

The IRB recognized that the previous 'Protocol' for making a formal complaint was unclear and confusing, and the counsel community expressed concerns regarding the Protocol's effectiveness as a tool. As a result, on December 21, 2017, the IRB issued new 'Procedures for Making a Complaint about a Member' ('Procedures'). This development centralized the complaints process within the IRB's Office of Integrity.

The Immigration and Refugee Board will submit a written report to the Standing Committee on Citizenship and Immigration by February 2019 on the status and/or disposition of all complaints against decision-makers brought under the current complaint process, and will undertake a comprehensive review of the new 'Procedures' by 2021-2022.