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Chair

Mr. Robert Oliphant

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● (1105)

[*English*]

The Chair (Mr. Robert Oliphant (Don Valley West, Lib.)): Good morning. I'm going to call to order this 106th meeting of the Standing Committee on Citizenship and Immigration as we continue our study of the Immigration and Refugee Board's appointment, training, and complaint processes.

I begin by thanking Ms. Jacobs for returning after our last meeting and for being available.

Unfortunately, your colleagues who were also witnesses on the same day are not able to come, but we are glad you are here for questions from the committee.

In our first hour, we'll begin with Ms. Warner, who has a statement coming from the Canada Employment and Immigration Union as National Executive Vice-President.

Thank you for accepting our invitation to come to the committee. That's very good. You have time for a statement and then we'll turn it over to the committee, which will have questions for either of you in our first hour of the meeting. It's over to you, Ms. Warner.

Ms. Crystal Warner (National Executive Vice-President, Canada Employment and Immigration Union): Thank you.

Thank you to the committee for inviting me.

As a nationally elected representative speaking on behalf of the majority of unionized employees at the Immigration and Refugee Board, I appreciate an opportunity to address this committee. We often express, in organized labour, our frustration around the lack of consultation that we are afforded as the elected representatives of the workers, so I encourage your committee to continue working with our union beyond today.

Some of my history includes 10 years working for the IRB in Vancouver, in various positions and divisions in the capacity of registry support staff. I am also the daughter of Chilean asylum seekers, which motivated me to find a career both working with asylum seekers and serving Canadians.

CEIU is a component of the Public Service Alliance of Canada, representing over 18,000 members, including the vast majority of unionized employees at the IRB, IRCC, and Service Canada. Last year, I was elected to my current full-time paid union position as the national executive vice-president of CEIU. In my capacity as NEVP, I oversee representation and labour relations. We represent the PM-6 decision-makers in the RPD and ID divisions of the IRB.

I was asked to speak to the committee from an organized labour perspective regarding the appointment process of members, their training, and the manner in which administration deals with complaints about member conduct. Our PM-6 decision-makers in the RPD are not allowed to comment publicly, so, as their elected representative, I will do so for them.

I have spent countless hours speaking to our PM-6 decision-makers in the IRB over the last week and, in fact, over the last several years. They are going to work every day dealing with the pressures of producing decisions, with a lack of support in the administration of their decision-making and a lack of mentorship. For the past two years, the vast majority of them have not even been properly compensated for their labour, thanks to the Phoenix pay system.

To that end, it's a bit frustrating that the first time that our union is being invited to participate in a venue such as this is as a result of concerns regarding the complaints process instead of regarding how to better serve the workers at the IRB.

I'll begin by addressing the appointment process of decision-makers. On December 15, 2012, CEIU welcomed the RPD decision-makers to our union. Almost immediately, we could see that there would be issues that required our attention. When the decision-makers became public sector workers, they were, and continue to be, paid significantly less than their GIC counterparts, by approximately $20,000 a year. They reported, and continue to report, that they're discouraged from claiming necessary overtime to fulfill their mandates.

We know our members have been providing the IRB with countless hours of uncompensated labour. Beyond this, I've heard this committee discuss both Governor in Council and public sector decision-maker recruitment and appointments. CEIU fundamentally believes that all decision-makers at the IRB should be public sector workers. GICs are constantly concerned about not being renewed. Instability in the appointment process and the insecurity of the positions themselves attracts a narrow field of candidates, often people with similar and privileged backgrounds.

Further, in an era where precarious work is on the rise, permanent employment is sought after by qualified candidates. We believe that the new appointments for decision-makers should be indeterminate, not term, to attract more skilled candidates. These appointments should be based on merit and experience. There should be no room for political influence through a political process to appoint decision-makers.

That being said, we do agree with many of the comments we have heard coming out of this committee. Decision-makers of the board should be reflective of the communities of the people who come before it, so equity staffing of LGBTQ persons, persons with disabilities, and racially visible persons should be not only encouraged but mandated.

Our union would welcome the opportunity to be consulted on developing an equity staffing policy.

With regard to the training of decision-makers, I have heard from other witnesses about a perceived lack of sensitivity in other training being provided. Having spoken to decision-makers across Canada, and through my own experience working for the board, I'm assured that there is, in fact, ample training being provided.

I would put forward other related matters for your consideration, specifically the need for additional support. Our members have raised the issues of lack of mentorship and pressures to meet unrealistic targets in completing decisions. As well, since 2012, our decision-makers have been forced to waste time trying to figure out how to make administrative inputs into the electronic database system, and they lack support by registry staff in preparing files for hearings.

In 2012, tribunal officer positions were eliminated. These positions served to prepare work for the decision-makers. Now that support is no longer available to them and additional administrative job duties have been added to their already overburdened workloads.

The current backlog at the IRB exists for two reasons: irregular border crossings and years of the board being under-resourced. This government is now providing more resources in order to better respect legislative timelines. That being said, it's unfortunate that funding is for only two years when it should be more permanent.

We believe that without significant changes to the supports put in place for our decision-makers, quality decisions will begin to be cast aside in favour of quantity, to deal with the backlogs. As a union activist, I have a concern about the amount of pressure being placed on my members to produce decisions, but as a Canadian, my concern is about the integrity of fast decisions. We are also concerned about the move to more paper-based hearings in order to render more decisions. This affects the credibility of decision-making and removes some of the humanity from the asylum process.

Regarding the manner in which administration deals with complaints about decision-maker conduct, I'd like to state that, like many of you and many of your witnesses, our union had concerns about the former administration of complaints. That being said, given the number of decision-makers and the volume of decisions they are required to render, I'm actually encouraged that, to my knowledge, there are currently only two outstanding complaints before the board. So while there may be a desire to condemn one or two individuals who have been found to have done wrong, it's unfortunate that the board isn't being acknowledged for the tremendous work it is accomplishing while under such undue pressure. There is a new investigation process at the IRB, and in our opinion, we should allow this new process to function before we condemn it or attempt to reinvent it. It's management's role to manage, and any outside process would, in our view, politicize what is a management process.

I would also ask you to consider the impacts of an external and public review for complaints made against decision-maker conduct. We have a real concern that an external system would be abused to discredit either a board decision-maker or the board itself. From a union perspective, we worry that our right to represent will be limited or diminished. We might even argue that our members are being subjected to a process that falls outside the confines of the collective agreement. This would be an overreaching complaint process, providing additional, undue pressure on our PM-6s, which raises concerns of fairness. We believe it would only serve to politicize the complaints process and provide an opportunity to slander the decision-makers in the press. Our members have the right to privacy and due process.

At the end of 2018, the IRB will initiate an independent audit of the new complaints policy. Our union is committed to working with the employer on this policy, and we should allow this process to unfold. Why choose now to create a whole separate process when we have one? I would humbly suggest that you should redirect those revenues to fixing Phoenix.

Thank you.

● (1110)

The Chair: Thank you.

We begin our questions with Ms. Alleslev, for seven minutes.

Ms. Leona Alleslev (Aurora—Oak Ridges—Richmond Hill, Lib.): Thank you very much.

I'd like to open with a question to Laverne.

In your previous testimony around the code of conduct, you gave us some ideas about how important a code of conduct would be and noted some of the challenges around implementing and executing that. Could you give us a little more detail, and remind us of some of the key elements that you gave us at your last testimony?

Professor Laverne Jacobs (Associate Professor and Director of Graduate Studies, Faculty of Law, University of Windsor, As an Individual): Codes of conduct are relatively new in this world of administrative law. That's part of the reason they've caused a bit of concern. Another thing is that they have been implemented.... For example, in Ontario, there has been a statute that requires implementation of codes of conduct, but there's no guidance as to what should be included in them and there's also no guidance about a complaints process about them. In fact, if you look at codes of conduct across the country, the ones that do exist, there are very few that have an actual complaints process. In a sense, the IRB should be commended for having set itself into a new field of creating a complaints process. The one exception, quite a large exception, is in Quebec, where there is a council that's been around for 20 or so years and there's quite an elaborate process. It could be used as a model.

Some of the things I said in terms of best practices were that we need to have an investigatory panel and that the ideal process would end with an independent decision-maker, so not the chair but someone else. The reason I said this is twofold. One is that having an independent chair avoids the kinds of issues we see with the IRB. The IRB is just a microcosm of what will happen, which is that the public will generally think that the chair of a tribunal is trying to protect the tribunal. We can avoid that by having an independent final decision-maker. The other thing is that we need to prevent chairs from having any kind of influence on the decision-maker itself. This goes back into deep and long jurisprudence in administrative law, in which it's seen as a violation of the independence of a decision-maker to have the chair or anyone have an inappropriate influence on the decisions being made.

Ms. Leona Alleslev: Crystal, you indicated that you're not comfortable with an external board. Could you give us an idea of why and at the same time give us an idea of the union's role in a complaint to support its membership?

Ms. Crystal Warner: As I mentioned, our concern with an external board is that the process would be abused. People would start to use this process to member shop for different decision-makers. More importantly, our members are entitled to due process and privacy.

Also, under the current process we have consulted with the IRB. We had a national labour management meeting last week, and we had a discussion about the role the union plays in the internal process. That's an ongoing conversation, but we represent our members well, and when the process is internal to the IRB we are in a position to be able to collaborate with the employer and ensure that our members are receiving the due process they're entitled to under the collective agreement.

● (1115)

Ms. Leona Alleslev: Why would you be precluded from representing your members if there were an external board?

Laverne, in your opinion, would the due process be jeopardized by an independent board?

Ms. Crystal Warner: We're concerned about our diminishing right to represent, because we don't know what that outside process looks like. We've heard some suggestions here, but without maybe having a clearer idea of what that process would look like, we're raising our red flags right now.

Ms. Leona Alleslev: Potentially, it's not necessarily the external nature or the independent nature of it, but it would be whatever the process structure is?

Ms. Crystal Warner: That's part of it, but it's also the fact that it would be outside of the board. Why would we be taking away the employer's right to manage? The chairperson of the IRB, arguably more than anyone else, has a vested interest in his decision-makers respecting values and ethics. I don't understand why we would take that right to manage outside the board.

Ms. Leona Alleslev: Ms. Jacobs, would that affect management's right and would it affect the due process of the members involved?

Prof. Laverne Jacobs: I think this is a very unusual situation, because we have decision-makers who are part of the public service. This is not normally seen. GIC or OIC appointees are the normal approach.

In terms of the process, it's hard to say because I don't have any examples. I don't think it necessarily has to exclude due process. I think it's correct to say it's a matter of shaping that process, so if there is a need or a reason for the union to be involved, the union should be involved.

Again, I want to emphasize how unusual this entire scenario is, simply because we don't usually have individuals from the public sector as decision-makers.

Ms. Leona Alleslev: In your opinion, should there be two separate processes, one to deal with unionized and one to deal with others?

Prof. Laverne Jacobs: I'd have to think about that a little more carefully; all I can say for now is that without having looked through all the details, I think it's a matter of considering the problematic factors in finding out whether or not the process could be shaped to address them.

Ms. Leona Alleslev: Ms. Warner, would you suggest perhaps two different processes, based on the two different employment structures?

Ms. Crystal Warner: I'd have to think about that as well. To my knowledge we have two founded complaints a year, on average. A lot is unclear to me as to why we're paying so much attention to this.

Ms. Leona Alleslev: How many investigations are there? You're saying two are founded. Our committee understands that the majority of the complaints arise from public servants.

Ms. Crystal Warner: I don't have those numbers in front of me.

Ms. Leona Alleslev: Could you give us some idea of the disciplinary range of consequences for your membership in this scenario?

Ms. Crystal Warner: Like anything else, our collective agreement provides for disciplinary measures up to and including termination.

Employers have the right to manage performance, and we expect them to adhere to the process laid out in the collective agreement.

We're there to defend our members and ensure that the employer is respecting due process.

The Chair: Thank you very much.

Ms. Leona Alleslev: Thank you very much.

The Chair: Mr. Maguire.

Mr. Larry Maguire (Brandon—Souris, CPC): Thank you, Mr. Chair.

Thank you as well for your testimony today, Ms. Warner.

My colleague was talking about the two-pronged hiring process we have. Can you explain for the record the differences you see in those two different areas and the reasons for them?

Ms. Crystal Warner: With the PM-06 decision-makers being public sector workers, especially when they're afforded an opportunity to apply for a permanent position, we feel that widens the scope of candidates who would be applying for those positions, whereas with GICs, as I mentioned, it's a political process. Often it involves individuals with more privileged backgrounds. We would really like to see the board become more reflective of the claimants who are coming before it. We feel that the avenue to doing that is a fair and transparent public sector process.

● (1120)

Mr. Larry Maguire: Could you explain the difference between the exams you'd have to do for the IRB and the exams for similar positions in other departments?

Ms. Crystal Warner: No. I think you'd have to ask the employer that question.

Mr. Larry Maguire: Okay.

The Governor in Council candidates are appointed to the IRB for three years. In your experience, what impact does the length of the term have? I believe it's three years. Can you explain what impact it has on decision-makers' independence, having that length of time?

Ms. Crystal Warner: Absolutely. I've worked in Vancouver, arguably the most expensive city in Canada. You're going out to try to appoint people who have families, who have mortgages to pay that are astronomical in cities like Vancouver, and you're trying to find someone who is willing to take a chance on a one-, two-, or three-year mandate. There's stress involved—I would see that stress in them—with being renewed, and with constantly talking and being concerned about whether or not they will be reappointed. So we're adding another incredible amount of undue stress on decision-makers who are already dealing with really sensitive and challenging work.

It is an incredibly politicized process. I worked there for a decade, and over the years I would see decision-makers, GICs, come and go, depending on the whims of the government. That didn't offer stability to the process.

Mr. Larry Maguire: In your opinion, then, what would be some of the essential characteristics for good board members?

Ms. Crystal Warner: Well, I've heard the committee talk a lot about considerations around whether or not they have legal backgrounds. I would argue that's not a necessary requirement. Familiarity with the legislation and everything else—those things can be learned. We just want candidates who are qualified, candidates who are able to do the work and who will be empathetic toward the claimants who come before them. That doesn't necessarily mean having a legal background.

Mr. Larry Maguire: Thanks. You've answered the next question I was going to ask you, about whether or not they require that training. To what extent should these members be familiar with immigration and refugee law upon being appointed to the board?

Ms. Crystal Warner: I think I would be more concerned with their ability to judge than with that, because I think those things can be learned.

Mr. Larry Maguire: Ms. Jacobs, could I get a comment from you on that as well?

Prof. Laverne Jacobs: Sure. First, one reason that GIC and OIC appointees emerged historically was to ensure that there weren't necessarily entrenched views over time. When we have a three- or five-year appointment, there's a chance to bring in perhaps a new perspective—not just of the political parties, because I don't think that's the aim at all, but of the broader public. The way in which norms change over time can be reflected.

I'm concerned about public appointments coming from the public sector simply because of the chance of there being entrenched views that are not refreshed over time, as you would have with the appointments process.

Another thing I would say is that while certainly the substance of law can be learned, I think there are reasons for having members who have a certain amount of expertise. This might also wax and wane, right? For example, right now there's an incredible backlog. It would be useful to have individuals with a high level of expertise brought in. Maybe at other times, when there's less of a backlog, you could have people who are trainable and who are familiar with legislation more generally. I think OIC and GIC appointments preserve that along with the independence, a broader independence, for the individual.

Mr. Larry Maguire: We've had several witnesses come before us in regard to complaints filed against members for improper conduct during the hearings.

Ms. Warner, I would like to know how much the union has been involved in those, and what support the union has provided its members facing these complaints.

● (1125)

Ms. Crystal Warner: You can appreciate that I am in a position of trust with my members, so I would not be in a position to comment on any specific situations. I will say that our union always ensures that we are vigorously defending the rights of our members, but I am not in a position to comment on specific situations.

Mr. Larry Maguire: I am not so much asking about a specific situation. I am looking at the type of training. What type of training or help does the union provide its members regarding conduct in their employment under the IRB?

Ms. Crystal Warner: This goes back to our ongoing discussions with the employer around mentorship and the need for it. We are told by our members that it takes over six months to really feel confident in the hearing room. Being accompanied once or twice and being shadowed once or twice is not enough. There needs to be longer-term mentorship.

Even for the longer-serving employees, getting mentorship from newer employees might address some of the concerns that our other witness is speaking to with regard to the entrenched ideas. What they are telling me is that sometimes they do not have anybody to bounce ideas off of or anybody to ask how to say something appropriately or how to ask a question appropriately. It goes back to the need for ongoing mentorship.

Mr. Larry Maguire: Has your union advocated for that training and those guidelines to be provided to its members?

Ms. Crystal Warner: Yes.

Mr. Larry Maguire: Thank you.

[*Translation*]

The Chair: We will now move on to Ms. Sansoucy. Welcome.

Ms. Brigitte Sansoucy (Saint-Hyacinthe—Bagot, NDP): Thank you very much, Mr. Chair.

Ms. Warner, thank you for your testimony. You said that your members need additional support. I would like to hear your thoughts on two types of training.

Various witnesses have appeared before the committee calling on the Immigration and Refugee Board of Canada to offer more training on assessing credibility. Various witnesses also talked about the new training on sexual orientation, gender identity, and gender expression. Just to be clear, I am referring to SOGIE, the English acronym.

For each of these two types of training, please describe what your members currently take. Do they find this training adequate? What improvements would they like to see? Does this training give them the tools they need to assess asylum seekers' credibility?

[*English*]

Ms. Crystal Warner: I think there is always room for improvement, and that is what I am hearing from our decision-makers. Many of them are telling me, in fact, that they feel they have had adequate training, not only with the new SOGIE guidelines but also on central sexual orientation. In fact, they would argue that they have some of the best training in the world. Again, it goes back to the lack of mentorship and of ongoing support over a period of time to ensure that they're applying their training in an appropriate manner.

You also asked about the additional supports that could be required internally. Before 2012, with the introduction of the PCISA legislation, our decision-makers had tribunal officers who would assist in prepping files for them, assisting with analysis and research. The clerks—and that is where I started at the IRB—would do all the administrative tasks for them.

In today's world, the decision-makers aren't spending enough of their time on decisions and hearings. Instead, they are spending too much time prepping files or trying to figure out an ever-changing computer system to input information. This is work that could be done by registry support staff. I've never understood why this is something that's being lumped onto their already over-taxed schedules.

The IRB actually provides its training internationally. Some of the decision-makers I spoke to this week have travelled to other countries to assist them in their training. I have listened to suggestions from other witnesses, and have already raised and will continue to raise questions to the employer regarding training for retraumatization of asylum seekers or the need for ongoing training on assessing credibility and avoiding bias.

From what I am seeing already, it sounds as though they are receiving the appropriate forms of training. Again, as I said, it goes back to receiving the mentorship, guidance, and supports over time in order to be apply it appropriately in the courtroom.

● (1130)

[*Translation*]

Ms. Brigitte Sansoucy: If I understand you correctly, what they need is ongoing support in addition to the various types of training offered.

You think mentoring might be a solution as opposed to ad hoc training. I am also thinking about what other witnesses have told us about the additional types of training offered following a complaint or an annual performance review, which were often not enough.

Are you saying that, rather than different types of training, what they really need is ongoing support?

I am trying to understand what exactly that kind of support would look like.

[*English*]

Ms. Crystal Warner: They do need that ongoing support, and they need it from more experienced decision-makers. I would argue that more experienced decision-makers also need it from some of the newer decision-makers.

I think we also have to consider the stress that our decision-makers are currently working under. We've been under-resourced for years. The targets for their decision-making continue to increase to the point that they're stressed out when they're in th hearing rooms. They don't have enough time to render decisions and they're not given days during which they can sit down and write a decision, so they're being pressured to do hearings in the courtroom and to make decisions during the hearing instead of doing a written decision after. I think all of that is contributing to the current environment, which to me simply goes back to the fact that they're under-resourced.

[*Translation*]

Ms. Brigitte Sansoucy: I am trying to understand. I think it is clear for you because you are referring to it and it has been around for a number of years already. I am really trying to understand what you mean by mentoring. Rather than offering ad hoc training, you think that would give them better tools.

How exactly does it work? Is each decision-maker paired up with someone who can monitor their decisions?

I am finding it difficult to understand how this works in practice for those decision-makers.

Ms. Crystal Warner: I also find it difficult to understand.

[*English*]

It's a challenge to know what that would look like. I think that would require a lot of extensive consultation with the employees. I know from speaking to them this week that they have a lot of ideas regarding what that would look like, but that's not something I'm in a position to lay out.

[*Translation*]

Ms. Brigitte Sansoucy: Okay, I understand.

As we are seeing increasingly, the budget approach seems to favour hiring people for short periods of time.

Does that preference for shorter terms affect the training your members receive and the importance of the files they are assigned?

[*English*]

Ms. Crystal Warner: It absolutely does, and not just at the IRB, but also across the public sector. We've seen a decline in the mental health of employees as a result of being constantly asked to do more with less. Being underfunded at the IRB for years has affected the entire board. The amount of stress and the amount of pressure to produce is no doubt affecting people's health. It's affecting the quality of their work. We're being pressured to move toward making faster decisions and having more paper-based processes instead of giving the asylum process the respect it's due by properly resourcing it. We've been understaffed for years at all levels. Even with two-year funding it's going to take at least six months for a decision-maker to start feeling really confident in that boardroom, so between trying to recruit them and training them, the money is almost gone. There has to be longer-term funding.

The Chair: Thank you, Ms. Warner.

[*Translation*]

Thank you, Ms. Sansoucy.

[*English*]

Mr. Whalen.

Mr. Nick Whalen (St. John's East, Lib.): Thank you very much, Mr. Chair.

Thank you for coming, Ms. Warner.

You asked at the outset why you were here, and I will say that the reason I voted in favour of doing this study is that the IRB had come into disrepute, or was seen to be coming into disrepute as a result of certain very high-profile media stories about the conduct of members. Hopefully our recommendations around appointments, training, and the complaints processes will help that. Your testimony today is very helpful, so thank you for coming.

Yours is as well, Ms. Jacobs, and I'll start with you. There seems to be a disconnect in some of the testimony we've been hearing from witnesses around what they perceive to be the motivations, or the primary role, of the chair. Ms. Jacobs, do you think that Supreme Court Chief Justice Richard Wagner is inherently there to protect the other judges, or do you think his role is more to protect the administration of justice?

● (1135)

Prof. Laverne Jacobs: His role is both.

Mr. Nick Whalen: Are you saying that you believe the chief justice is there to protect the judges?

Prof. Laverne Jacobs: No, the role is both. If I understood, you asked whether it is to protect the public—

Mr. Nick Whalen: No. Is his role to protect the judges or to protect the administration of justice?

Prof. Laverne Jacobs: Okay, sorry. It's definitely to protect the administration of justice.

Mr. Nick Whalen: Then with respect to Mr. Aterman, why do you believe his role is to protect the IRB members and not to protect the administration of justice?

Prof. Laverne Jacobs: I don't think I said his role is to protect the tribunal members.

Mr. Nick Whalen: You actually said in your answer to Ms. Alleslev's question that the public would perceive that he is inherently there to protect the members.

Prof. Laverne Jacobs: Exactly. That's what I said, that the public will—

Mr. Nick Whalen: Is he there to protect the other decision-makers or to protect the administration of justice within his department?

Prof. Laverne Jacobs: I don't think it's that easy, right? He will always be perceived as being there to protect the integrity of the tribunal. This is not just the IRB; any tribunal chair will always be perceived as having an interest in making the tribunal look its best. That's what I was trying to say.

Mr. Nick Whalen: I don't think that's the same as what you said earlier, and I'm glad you've been able to clarify. Protecting the integrity of the tribunal would mean getting rid of bad members, and I think he would also understand that to be his role, not to protect the members. Maybe you erringly said that earlier.

On a similar note, Ms. Warner, I'm trying to rationalize in my head the role of a potentially independent complaint process, which has been suggested by many of the witnesses before our committee, and whether that jibes with the potential for public servant decision-makers on the board. It seems to me that there's an inherent disconnect between what most of the witnesses have suggested and your testimony. Is it your view that the independent adjudicative process on complaints is inherently at odds with the labour management complaints regime that currently exists—

Ms. Crystal Warner: Yes.

Mr. Nick Whalen: —or do you think they can be rationalized?

Ms. Crystal Warner: I have concerns about it, but without more information on what that process would look like, I couldn't really comment further.

Mr. Nick Whalen: Would it be easier to have members who are simply not public servants, and have more clerks, as you've suggested, who would be unionized and managed as labour by the the chair of the IRB? It just seems the previous system wouldn't run into these problems.

Ms. Crystal Warner: I wouldn't agree with that. I don't think that would be simpler. The way the board has been conducting its affairs is fair. Any system is going to have problems. There are always going to be individuals who are not suited for their positions.

Mr. Nick Whalen: Sure, but I wonder whether the regime is wrong, because you're referring to the relationship between the chair and the members of the panels as being an employer-employee relationship, or a manager-and-labour relationship. When I view the role of the chair in managing the administration of justice within the department, it's clearly not. The members are not the employees of the chair; they're independent adjudicators. Thus, it seems to me that it's completely at odds. The view you expressed of the relationship with the chair is not the same as my understanding.

Maybe we'll get to that with Mr. Aterman later, but do you have any comment on that? There seems to be a disconnect in the role.

Ms. Crystal Warner: No.

Mr. Nick Whalen: With respect to staffing at the IRB, can you more broadly describe the role of the clerks? We've heard a lot about the role of the members. It seems to me that maybe one of the problems we're running into relates to staffing at the clerk level. You're the first person to have raised that before us, so if you could speak more broadly to that, it would be very helpful.

Ms. Crystal Warner: It goes back to being under-resourced. As I mentioned, we used to have different positions that no longer exist at the board, that provided an extra layer of support to our decision-makers. Those positions were eliminated in 2012 with the new legislation. As a result, as I mentioned, our decision-makers are spending too much time doing administrative work that could be done by registry support staff.

● (1140)

Mr. Nick Whalen: It's almost as if the members are both their own clerks and the decision-makers. They're given two jobs.

Ms. Crystal Warner: Yes, they would say that.

Mr. Nick Whalen: Ms. Jacobs, you've been a strong advocate for an independent complaints process for the members. You've been very helpful in that. I'm not sure if I'm entirely convinced yet, but you've made some really good arguments. How do you feel about the role that Ms. Warner describes as the lower-level adjudicators being represented by organized labour? How does that conflict with a requirement for an independent adjudicator? How does Quebec deal with this? Do you have any organized adjudicators, and how does Quebec handle that problem?

Prof. Laverne Jacobs: I can't comment on how Quebec deals with that problem, so I won't deal with that. I think Professor Houle would have been a better witness for that.

In terms of having adjudicators who are part of the public service, I've been talking about having more GIC appointees, or respecting the independence of GIC appointees. I'm not sure if your question is whether or not there is a conflict there. I think that Professor Houle last day went through quite succinctly talking about Matsqui and the other cases, showing that there is an argument for a higher level of independence. Yet, of course, the fullest level of independence would come from GIC appointees. There seem to be many different factors that could have an impact on the work of the decision-makers who are public servants, and that seems to be a bit concerning—

Mr. Nick Whalen: Thank you very much, Ms. Jacobs.

I have one final quick question for Ms. Warner. Let's see if I can get this right.

One of the ways in which the GIC appointments manage poor performance by their members is to just not reappoint them. Would it be possible within the labour relations regime that exists now to have an up-and-out option for the initial appointments for unionized members, so they would originally come in for a three-year contract, and then if they didn't work out, they'd be gone? Would that work with your union?

Ms. Crystal Warner: Are you asking me if there could be an alternative way to fire my members more easily?

Mr. Nick Whalen: I mean going forward, for new members who join. Could they join part-time or in a way...? That's what I am asking.

Ms. Crystal Warner: Okay. We have a collective agreement that provides disciplinary measures, and the employer has the right to exercise those disciplinary measures, up to and including termination. They have the right to manage performance, and they're doing that. We don't see an issue with the way things are currently being handled. If the employer does their job and the members are—

The Chair: Thank you, Ms. Warner. You got the point out.

Mr. Maguire, we go back to you.

Mr. Larry Maguire: Thank you, Mr. Chair.

To pick up on that as well, I just want to check with you and hear your opinion on the essential characteristics of those good board members. You referred to that before, but the backgrounds of appointees have been discussed by several witnesses, as I pointed out. Some of them are looking at having better substantive knowledge of refugee law, which I talked about earlier, while others are highlighting the importance of members having personal characteristics but just about fair decision-making procedures.

You referred to this earlier, and I'm just wondering about the ability to identify and understand people as opposed to having specific training in law. I am assuming—and I'll ask Ms. Warner first—that this is with regard to the compassion that's involved in the process.

Is that something that should come into it, or is a definitive type of understanding required? If not in law, is it in other areas of expertise such as psychology or some of those areas?

Ms. Crystal Warner: I think we would really welcome more diverse backgrounds at the board. I can speak only from my experience. I've seen lawyers succeed at being decision-makers, and I've seen them not succeed. I've also seen persons with a variety of different backgrounds and experience in human rights do an exceptional job at the board., so I don't think there is any one size fits all.

Mr. Larry Maguire: We've had witnesses tell us too that there are complaints mechanisms. Some of them aren't well suited to resolving the problems of decision-maker subjectivity. Do you feel that there could be interference with the deference normally shown to first-instance decision-makers in some of these cases?

● (1145)

Ms. Crystal Warner: I think this goes back to our concerns too around moving towards paper processes. Having the in-person hearings first is going to allow the decision-makers to assess the credibility of the claimants who are coming before them. I think that's really all I can say with regard to that.

Mr. Larry Maguire: Ms. Jacobs, do you have any comment on either of the questions I've just asked?

Prof. Laverne Jacobs: With respect to the first question, I think some of the qualities that are important are an ability to be fair, an ability to be empathetic, an ability to check biases including implicit and attitudinal biases, and certainly familiarity and ability to work with statutory interpretation. Part of fairness would include credibility assessment, I would say.

Sorry, could you repeat the second question?

Mr. Larry Maguire: It was about the interference with the deference normally shown on a first-instance decision-maker basis. That comes from the fact that complaints mechanisms have been identified as not always being well suited to resolving the problem of decision-maker subjectivity.

Prof. Laverne Jacobs: I'd want to think about that a little bit more. I don't have a comment on that.

Mr. Larry Maguire: Thank you.

Most of the complaint system is created internally with the IRB, whereas justices of the peace are largely regulated under the justices of the peace acts. Do you think that the federal government should make amendments to the Immigration and Refugee Protection Act at that point to institute a proper complaints process, or does it make sense that it should be handled internally?

That's for you, Ms. Jacobs.

Prof. Laverne Jacobs: The process that they have implemented can be modified, so that it has the additional features that I've mentioned, such as an independent decision-maker that's final. I suppose we could go the alternate route of creating an entirely new statute, but we'd need to look at why there was a statutory basis for the justices of the peace acts. Traditionally within administrative law, guidelines of this nature can be made by the board, and I think the board has worked within its own jurisdiction, so there's no legal issue to what it has done.

Mr. Larry Maguire: Thank you.

As my colleague across the way pointed out, this process we're hearing here began because of complaints we received with regard to some of the members on the committees.

The Chair: Could you wrap up very quickly?

Mr. Larry Maguire: Do you think the process for removing an IRB member, who's under the Public Service Employment Act, is too difficult or lenient?

Prof. Laverne Jacobs: Actually, I haven't looked at the Public Service Employment Act. I've looked at how under IRPA an individual can be removed, so perhaps I'll save you time.

Mr. Larry Maguire: Thank you.

The Chair: Thank you.

Go ahead, Mr. Tabbara.

Mr. Marwan Tabbara (Kitchener South—Hespeler, Lib.): Thank you, Mr. Chair.

Ms. Warner, you mentioned, when you were talking to my colleagues on this side of the committee, that the IRB was underfunded and understaffed. With the $74 million added to the IRB, do you think that will make a difference in processing asylum claims, etc.?

I'll get into another question right after that.

Ms. Crystal Warner: I absolutely do, but as I mentioned, because it's only two-year funding, it's too short-term.

Mr. Marwan Tabbara: It's hard for you to plan, so you'd need more funding.

Ms. Crystal Warner: We also don't know what's coming. With things that are occurring south of the border, it's hard to predict the necessary resources we are going to require.

Mr. Marwan Tabbara: I'm probably one of the last people who will be asking a question and I want to ask this to both of the witnesses. Just to wrap up, because this is the last meeting, I'd like your suggestions to the committee in terms of complaints, training, and appointments. On those three streams, we've heard a lot of suggestions. I just want you to come together and give us suggestions on those three areas, so that we can wrap up this study.

● (1150)

Ms. Crystal Warner: I would have a lot to say on all of those areas. Is it possible for me to provide written submissions to the committee?

Mr. Marwan Tabbara: Yes. You can provide written submissions. If you have something quick that you want to say, you're more than welcome.

I'll refer this question to Ms. Jacobs.

Prof. Laverne Jacobs: With respect to complaints, I think the process that has been put in place is an improvement over the one that was there before. An ideal process would have a final decision as to who's independent. It's possible to phase that in over time, so it doesn't have to be changed right away, but that's my main recommendation, to perhaps look at that.

With respect to training, I think it's important to emphasize training around credibility assessment as that has arisen quite a bit in news stories, etc. Training around implicit bias and so on is also important. I think that anonymizing conduct complaints, so that they can be used as training tools in a collective manner for the board would be useful as well.

In terms of appointments, they are fundamental and really the starting point. It's important to have merit-based appointments and to really examine the appointees who are coming through in terms of both their ability to handle adjudication hearings and their knowledge of the law or their potential to learn the law if they are not at that stage.

As I mentioned earlier, I think it's important to keep in mind that sometimes the nature of the appointments might vary, so sometimes you'll need people who have more expertise at a certain point in time, such as now with the backlogs. Perhaps at other points in time you will have a need for people with an ability to manage hearings.

The IRB is generally doing a good job—I've heard others say this is well, and I agree—and it is really the behaviour of a few particular individuals that's challenging. The discrepancy rates in approvals are also somewhat concerning.

Mr. Marwan Tabbara: I would agree with you that more resources need to be put in place, so there's more ability to manage hearings, to be specialized, and to not get bogged down by various other requirements.

Ms. Warner, do you want to elaborate on how that extra work is hindering employees in the work they're trying to do?

Ms. Crystal Warner: It's hindering the board's ability to retain its employees, because the funding is sporadic and never long-term. We're not able to attract. We're not able to post our permanent positions, and then we're not able to retain staff, because we don't know if the funding will be there the following year. The need for ongoing A-based funding is vital.

The Chair: Thank you, Ms. Warner.

Ms. Rempel, go ahead for five minutes.

Hon. Michelle Rempel (Calgary Nose Hill, CPC): Thank you.

Ms. Warner, has the workload of your members significantly increased in the last year?

Ms. Crystal Warner: Absolutely.

Hon. Michelle Rempel: Can you give me a ballpark percentage?

Ms. Crystal Warner: I couldn't give you that information.

Hon. Michelle Rempel: Okay. There are two ways to look at increases in workload. One is to put more resources in place, and the other is to look at demand for services.

How many cases are you anticipating reviewing over the next year with regard to claims that have been filed by people who have entered Canada illegally from the United States, and then, subsequently, made an asylum claim?

Ms. Crystal Warner: You'd have to ask the employer about irregular border crossings.

Hon. Michelle Rempel: Has that particular issue put a significant demand on processing?

Ms. Crystal Warner: Yes, of course.

Hon. Michelle Rempel: Would you say that the increase in resources that you're requesting can correlate to the fact that there has been a significant increase in asylum claims coming through that particular channel?

Ms. Crystal Warner: Yes, but I would also argue that we've been under-resourced for years. We saw pressure being put on the decision-makers to increase their numbers of completed decisions even prior to last year.

● (1155)

Hon. Michelle Rempel: Would you agree this has exacerbated the situation?

Ms. Crystal Warner: I don't know if I would say exacerbated the situation, but the bottom line is that there was a need for additional funding, and the funding needs to be long-term.

Hon. Michelle Rempel: Just to clarify the point I'm trying to make, last year, we had over 20,000 people cross the border illegally from the United States into Canada. Many of them made asylum claims. I know that your staff have admirably been working really hard to clear a lot of backlogs, but just to clarify, you don't know if that has exacerbated it.

Do you think it's fair to say that an additional 20,000 cases coming via this channel has perhaps led to an increase in workload?

Ms. Crystal Warner: I would have liked to see funding come in before this last year. I think the IRB is going to be able to do the job. It's being better funded now, and hopefully this government will make a decision to make that funding longer term, but it's going to be able to deliver now.

Hon. Michelle Rempel: So when you say “deliver now”, there have been news reports that say that the IRB has sort of given up on the two-year legislated timeline. When you say “do the job”, over what time period do you mean?

Ms. Crystal Warner: I struggle with news reports saying that they've given up. They have done absolutely everything but give up. In fact, they're working harder than ever. Now that they're being provided with the funding to be able to meet the increased demand on the board—

Hon. Michelle Rempel: Let's say that somebody illegally crosses the border from the U.S. into Canada today. I know every case is different, but what would the average time be for that person's case to be processed?

Ms. Crystal Warner: You'd have to ask that question to the IRB.

Hon. Michelle Rempel: Okay.

Just in terms of some of the comments you've just made about being able to get that process, those are qualified by the fact that you don't have that information in front of you. Is that correct?

Ms. Crystal Warner: I'm qualifying my comments based on the discussions I've had with PM-6s across the country.

Hon. Michelle Rempel: Okay.

What I'm trying to get at, though, as a legislator is how we allocate resources. Certainly, to be clear, we want to ensure that the IRB is functioning and doing its job quickly, because it's important when someone makes an asylum claim that we're processing that, both in fairness to the applicant and also because if people don't have valid reasons to be in Canada, they shouldn't be. I'm curious, though. You've said you think the staff you have can get the job done. Have you had any conversations about what the increased resources that you're asking for would leave in terms of efficiencies and processing time? You've made requests for more funding. In terms of metrics, based on the current volumes coming in across the border, how much is that going to reduce the processing time?

Ms. Crystal Warner: Those aren't stats that I track.

Hon. Michelle Rempel: We've heard numbers from 11 years to....

Ms. Crystal Warner: Those aren't stats that I track, so I wouldn't be able to answer that question.

Hon. Michelle Rempel: So it's a request for funding without necessarily being tied to reduced times and the metrics.

Ms. Crystal Warner: The union is not the one putting in the request for funding before the government.

Hon. Michelle Rempel: Okay, thank you for clarifying that.

In terms of actual processes or metrics—and I know the union is advocating for positive working conditions and whatnot—do you think the increase in the load that's come through has led to...? What has it done to the workplace morale right now? I'm sure it's pretty heavy in there.

The Chair: You have about 10 seconds.

Ms. Crystal Warner: Thank you for asking that question. We're working with the employer on addressing the mental health of the workers, which is our number one priority at this time.

Hon. Michelle Rempel: Thank you.

The Chair: Thank you very much.

Mr. Anandasangaree, there are a couple of minutes, if you'd like.

Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.): Yes, and I'm going to be directing my questions to Ms. Warner.

I would imagine your members are quite proud of the work they did with the resettlement of the Syrian refugees over the last two years. Is it accurate to say that?

Ms. Crystal Warner: Yes, they are.

Mr. Gary Anandasangaree: And was there increased workload at that time?

Ms. Crystal Warner: Of course.

Mr. Gary Anandasangaree: How did they view that? How did they undertake that project, and what legacy does that leave for your members?

Ms. Crystal Warner: I spoke earlier to the fact that our members have provided the IRB with countless hours of uncompensated labour, and I think that speaks to their commitment to the work they do. They should be compensated for that time.

We have brilliant staff at the IRB. We have people with master's degrees who speak multiple languages and who work at CR-4 levels. They stay at the board because of the level of dedication they have to the service they're providing to Canadians and future Canadians. I've actually never seen anything like it. They're incredibly proud of the work they do.

Thank you for the question.

● (1200)

Mr. Gary Anandasangaree: There are times in Canada when I think we'll have an increased amount of work for your members, particularly. Immigration is not static in terms of a number; it evolves. Over the last couple of years I think we've had those demands.

Do your members look at this as part of a grander vision of this country as opposed to as a chore? From what I've seen with the members I've spoken to who are part of your union, I think they were extremely motivated and they were almost fighting to fit in some of those roles during the Syrian situation. You have something. I think the union and your membership look toward immigration as something that evolves, and there are times when additional resources may be put in.

Ms. Crystal Warner: Of course. Our members have the same values and principles that our union does. We believe that Canada is a compassionate country. We welcome the diversity. In fact, I'd go so far as to say that our union would like to see this government suspend the safe third country agreement.

Mr. Gary Anandasangaree: Thank you very much.

The Chair: Thank you to both witnesses. We need to end the first panel here.

Thank you for coming back, Ms. Jacobs. That's very helpful.

Thank you, Ms. Warner, for joining us today.

We'll take a brief pause as we turn over to the next panel.

● __________ (Pause) __________

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● (1205)

The Chair: We're going to call this meeting back to order. I know some members will be joining us in just a second. We do have quorum, however.

I want to thank Mr. Aterman, the Acting Chair of the IRB, for coming back to our committee again on this study, and for bringing Mr. Kipling, the Director General for Policy, Planning, and Corporate Affairs.

Thank you.

We're delighted to have a statement from you first, and then we'll move to questioning.

[*Translation*]

Mr. Paul Aterman (Acting Chairperson, Immigration and Refugee Board): Thank you, Mr. Chair.

I have followed with interest the testimony of the witnesses who have appeared before the committee. Some of their testimony has raised some important concerns. I will limit remarks to those concerns.

First, I would like to point out that the Immigration and Refugee Board's decision to review the complaints process dates back to 2016. The media reports that seem to have triggered this study date back to late 2017. In other words, the development of a new complaints process is not in response to negative media coverage. The media reports were obviously troubling, and anyone who read them would have been justifiably concerned. Long before those reports were published, however, the board had already recognized the need to review the complaints process and, to that end, to quickly implement initiatives, which included consulting our workers.

[*English*]

Second, in commenting on the revised complaints process, a number of witnesses have suggested that having the chairperson decide on complaints puts him or her in a conflict of interest. In my respectful view, this reflects a misunderstanding of the role of the chair and his or her accountability to Parliament. In fact, it seems to presume that the chair actually has an interest in covering up misconduct. Both Ron Ellis and Professor Flaherty point out that, as the head of the tribunal, the chairperson is most interested in preserving the integrity of the adjudicative system and the reputation of the board. It's exactly for that reason that the complaints process was changed: so that the chair now deals directly with all complaints.

Third, some witnesses have suggested that the complaints process is an appropriate means to challenge the substance of a member's decision, not just their conduct. Much reference was made to variances in acceptance rates. The suggestion seemed to be that members say no too often and that something should be done about that, possibly through the complaints process. In my view, this approach is completely at odds with one of the most basic principles of the rule of law. Adjudicators are supposed to decide cases on the evidence before them and on the law, and on nothing else. Once we start trying to engineer outcomes by pressuring adjudicators, such as through the threat of complaints, the rule of law is undermined. The complaints process is to be used to address allegations that relate to the conduct of decision-makers but not to challenge the substance of what they decide. That's a matter for appeal tribunals and for the courts. I would urge this committee to bear this crucial distinction in mind.

Fourth, a number of witnesses suggested that expertise in immigration and refugee law should be a precondition to appointment as a member of the IRB. In our experience, having a background in immigration and refugee law is not nearly as valid a predictor of success as having the competencies that make a good adjudicator, and those are empathy, cultural sensitivity, reasoning skills, writing skills, and organizational skills. We teach new members the law, and in fact teaching the law is the easy part. Teaching members how to run a hearing fairly and efficiently and with respect and with sensitivity is much, much harder. That's why we try to select people at the outset who have the right competencies, as opposed to looking for people who have a background in the areas of law the board deals with. In fact, if we were to narrow the pool to those solely with a background in immigration and refugee law, this would seriously hamper our ability to recruit qualified people at a time when we're under immense pressure to find a large number of additional decision-makers.

Finally, the approach to selection that we take is one that aligns with this government's approach, which is to have a focus on identifying highly qualified candidates who reflect Canada's linguistic, regional, gender, and employment-equity diversity. I would also like to make it clear that as an accountable tribunal, this board is committed to continuous improvement. I'd like to give you an example we're working on at the moment, and that is that we're in the process of evaluating, one year in, our use of the sexual orientation and gender identity and expression guidelines. We're looking at how the guidelines have been applied to date; we're going to share out analysis with external experts, and we're going to seek their advice as to how we move forward to ensure the effective application of these new guidelines.

Thank you.

● (1210)

The Chair: Thank you very much.

I'm going to turn to Mr. Anandasangaree.

Mr. Gary Anandasangaree: Thank you, Mr. Chair.

Mr. Aterman and Mr. Kipling, welcome back.

Before I go into questions, I want to bring something to the committee's attention. I usually don't like to bring in matters during testimony, but I do want to bring this one now. It references Mr. Aterman's letter of April 23, 2018, wherein a request made by this committee for a copy of the interim report of Mr. Neil Yeates was referred back to us, the IRB being unable to provide it.

I don't know if I need to seek consent, Mr. Chair, or just move a motion.

The Chair: You can move a motion.

Mr. Gary Anandasangaree: Mr. Chairman, I move that the requested documents be provided by the department, because I believe they are the ones that had mandated the study, and that the request of April 17, 2018, be directed to the department for a response.

The Chair: Thank you.

Just to clarify for the committee, the committee did pass a motion that requested a document from the IRB. The IRB has respectfully said they don't feel it's their document to give. We have a number of options when that happens. One is to simply agree with the requested person's declining to give us a document. The second is that we could negotiate with them. The third is that we could compel it.

I would say that this is in the second category, which is to follow what they are saying, so that rather than the IRB releasing the document, it would be the IRCC that would release the document. The motion now is actually asking the IRCC to provide us with the document that was requested through a motion duly approved by this committee.

(Motion agreed to)

The Chair: All right. Now you can continue.

Mr. Gary Anandasangaree: How long do I have, Mr. Chair?

The Chair: You have about four and a half minutes.

Mr. Gary Anandasangaree: Mr. Aterman, I want to make one thing absolutely clear. The IRB is in many ways the envy of the world. You've set very high standards in terms of adjudication. From lawyers to other stakeholders that I have been able to speak to over the past number of years, the IRB does stand out as an incredible body that has done a great deal of work. In your last encounter here, you indicated that over 425,144 IRB decisions have been made since 2009. That's remarkable.

Where I think we're kind of stuck is that there is an appearance... it's not an actual conflict, but there is an appearance of conflict. There's an appearance that the chairperson undertaking the investigation may have some interest.... While I acknowledge what you said earlier today, I do think we need to find some opportunity to ensure that the IRB continues to be unimpeachable in terms of its adjudication.

What can you offer us today that will allow you to continue the work you do without putting in a strenuous layer of adjudication for complaints and still be able to reassure Canadians of the independence of the board as well as of the investigative process? I think these are two different things here.

● (1215)

Mr. Paul Aterman: In response to that, I would just refer you back once again to the remarks that I made initially. The media stories quite rightly attracted a lot of scrutiny and—

Mr. Gary Anandasangaree: Mr. Aterman, I want to go away from the media stories—

Mr. Paul Aterman: Okay.

Mr. Gary Anandasangaree: —because I'm looking at it now from a process perspective. Not to get hung up on the media assertions, I'd like to look at it strictly from a process point of view. There's a complaint against one of your adjudicators brought by either a claimant or a lawyer, and presumably it's after the fact of the decision. The problem is that the complaint comes to your office. That may or may not be a problem, but that complaint comes to your office and you basically oversee the process of that complaint through an independent body.

Is there any other way? That's all I'm asking. Can we put an advisory committee in place? Can we put some other measure in place whereby there is another layer that can buffer your office and the process so that there is at least an appearance of an increased level of independence?

Mr. Paul Aterman: I don't think having matters dealt with by the chair's office proposes an administrative burden. I think the perception problem you point to is a problem we've tried to rectify by changing the process and making the chair directly accountable.

Could the chair benefit from the advice of external disinterested parties, perhaps, who review the complaint with the chairperson? That would certainly be a possibility. What I would urge in that regard is that if that's a direction this committee wants to pursue, then I would suggest to you that if you're looking for a completely impartial view on these things, those external advisers should be people who have no stake in the game. That's to say that they shouldn't be people from the immigration and refugee bar, because those people have an interest in the outcome. That might be an option that you would want to pursue.

Again, I would urge you to also bear in mind the cost, time, and complexity associated with judicializing this process. To my knowledge, Canadian judicial councils have had referrals to external inquiry bodies, I think, 14 times since 1971. I haven't been privy to those, but I follow this in the media. Some of those inquiries were extensive and protracted and involved large numbers of lawyers.

Mr. Gary Anandasangaree: Mr. Aterman, that's what I'm trying to avoid. I do think that another elaborate process may not serve us well, but I do think it's important that we address the legitimate concerns that have been brought to us by a number of people. That's really not a reflection on you. It's really the view that people have that the adjudication is still in the same office. I think a way to buffer that—

The Chair: I need you to end there. Thank you very much. You'll get a chance to add as other questions are asked.

Ms. Rempel.

Hon. Michelle Rempel: Thank you, Mr. Chair.

Thank you for coming again. Thank you for the work that your organization is doing.

I just want some clarity on some points that certain witnesses have raised: one was with regard to the complaints process and a list of possible outcomes for a complaint. This was raised a few times. Other quasi-judicial boards, like the justice of the peace, have very clear lists on outcomes of complaints. Is making this outcomes list public something that you're looking at committing to?

Mr. Paul Aterman: There are a couple of things I'd say in response to that. One is that the board's response to any given complaint is a function of the facts of the case. In a large majority of instances they are, in our experience, one-off instances where a member behaves in a disrespectful or rude way to a complainant; and those are addressed through things like training, reprimands, and apologies.

On serious matters like removal from office, in the case of Governor in Council appointees, the Governor in Council appoints, and it's the Governor in Council that terminates or removes a GIC appointee from office. That's not a power the board has. There are provisions in the act that deal specifically with that. They're complex and they're fairly cumbersome. On the public service side, the chairperson, as the deputy head of the organization, has the powers to remove a public service decision-maker, but again it's in accordance with following due process, collective agreements, and the statutory provisions around that.

● (1220)

Hon. Michelle Rempel: Just for time, would you say there is consistency or a framework that's applied in terms of outcomes of complaints? Similar types of crimes, if you will, would have similar types of punishments, if you will. I guess what I'm trying to say is I'm not sure how you enforce a standard of behaviour if it's not clear what the reprimand would be when there are instances that have been deemed to be worthy of the same.

Mr. Paul Aterman: I think it would be practically very difficult to create a tariff or a grid that says, “This particular misbehaviour attracts this particular sanction.”

Hon. Michelle Rempel: Why?

Mr. Paul Aterman: Because it's a function of the facts of any given case.

Hon. Michelle Rempel: Yes, but one would say, especially with the case that precipitated this, in which there was certainly, according to media reports, a fairly egregious act of what could even be described as misogyny, that there would be some sort of clearly articulated outcome ahead of time. I guess what I'm trying to get at is I don't understand how we can enforce a code of behavioural conduct if the outcomes of complaints aren't clear to those who work under them.

Mr. Paul Aterman: Right. It's a fair criticism to say there was a lack of transparency around this, not just in how the complaints were processed but also in their outcomes. I think the effective remedy for addressing that is, actually, to centralize it, which is what we've done, so that there's one decision-making body that is dealing with all complaints, and the consistency will flow from that.

Hon. Michelle Rempel: To my colleague's point, we don't want a giant, cumbersome bureaucracy, nor do we want a kangaroo court, nor do we want vexatious complaints. Don't you think that, even a high-level framework that suggests what the potential outcomes could be for a successful complaints process would actually help clarify and reduce some of these problems? I'm thinking about a case in which, if a complaint goes through and then there's subsequent media or something where somebody feels like justice hadn't been served, having that transparency upfront both promotes appropriate behaviour and prevents this back and forth, having us back at this committee in two years, and that sort of thing.

I was just wondering if you want to comment on that, because this has come up a lot with our witness testimony.

Mr. Paul Aterman: It's not difficult for us to spell out the range of possible sanctions.

Hon. Michelle Rempel: Okay.

Mr. Paul Aterman: What the range of possible sanctions is in relation to any given case is the kind of thing you can't and shouldn't do in advance, because that's essentially prejudging it.

Hon. Michelle Rempel: Of course.

Mr. Paul Aterman: I think it is known to members that the sanctions can range from a reprimand to training to removal from the hearing room and, ultimately, to termination.

Hon. Michelle Rempel: To clarify, right now that range of possible outcomes isn't something that's publicized in a coherent way. Is that correct?

Mr. Paul Aterman: That's a fair comment. I think the reason—

Hon. Michelle Rempel: That's more what I'm trying to get at. I'm not asking for prejudgment. That's a fair comment. I think part of the issue is that there is a lack of clarity. What's the point of putting forward a complaint? I don't know what the outcome is going to to be. Is that potentially something you think would be a good idea, just clarifying the range of potential outcomes?

Mr. Paul Aterman: It's not a problem whatsoever for us to amend the protocol to spell out what the possible range of sanctions is. What would be a problem would be to try to match those to particular behaviours, because then you lose sight of the fact—

Hon. Michelle Rempel: Understood.

To follow on your comment, do you think that the range of potential outcomes is adequate right now to enforce the behavioural conduct you'd like to see?

Mr. Paul Aterman: Yes.

Hon. Michelle Rempel: For stakeholders who have said no, what would your push-back be?

● (1225)

Mr. Paul Aterman: I've indicated to this committee that the problem has been the failure of this organization in the past to do that in a consistent, transparent, and logical way. That's—

Hon. Michelle Rempel: I'm sorry to cut you off.

With regard to the case backlog that you're seeing right now and potential complaints, do you think that the large backlog you're seeing will have an impact on asylum seekers' ability to recall details that will determine the outcome of their future hearing?

Mr. Paul Aterman: It is a concern. It's a concern we have addressed. We have the legacy task force, which was dealing with those cases that we couldn't deal with prior to the amendments to the statutes. We have a number of cases we've been tackling and making quite a lot of progress on that date back a number of years. There are some people who are waiting up to eight years to have their refugee claim heard. When we constituted that task force, we trained members specifically on the issue of credibility assessment in light of the fact that these events are now sort of receding back in time.

It's always the case in any adjudicative system that the fresher the evidence is, the easier it is to make a decision.

The Chair: Thank you, Mr. Aterman.

Ms. Kwan, you have seven minutes.

Ms. Jenny Kwan (Vancouver East, NDP): Thank you very much, Mr. Chair.

Thank you as well to our representatives for coming back to the committee.

I know that in the correspondence you sent to us you highlighted three items. I want to touch on a couple of the items in particular.

One is that, for a complaint that has been lodged, if the board member in question has left the organization, the perspective back then was to say that we were no longer able to pursue the complaint to its finish. In your correspondence, you now write that, upon reflection, there might be a way to do so, and in fact you would pursue that.

When you have that process outlined within your organization, once you've fleshed out exactly how you would do that, can you bring that information back to this committee for our information as well? I'm particularly interested in this because I think it is important to finish a complaint to the end to ensure that the complainant ultimately has a resolution.

Mr. Paul Aterman: I need to be clear on that point. Once a member has left the organization, we have no power to sanction that member. We do have a power—and this is the point we've changed our approach on, even if we can't sanction that member—to make a determination as to whether there was conduct.... The value in doing that is that institutional lessons can be drawn and there can be closure for the complainant.

We would be happy to come back to you to indicate how the amended protocol addresses that.

Ms. Jenny Kwan: I would appreciate it. I do think it is important for a complaint to come to a finish.

Another point that you reference in your correspondence is the issue around training. Through our committee discussions, witnesses have come forward to respond to the notion that when a complaint is lodged and is found to be founded, training is required for that particular member. I asked you at that time how you determine and assess whether that individual's training or additional requirements to go through a process have been successful. Your response was that it would be evaluated in the year-end evaluation.

Some of the witnesses said that's not good enough and that, in fact, you need to check back to make sure the additional training that was required of the person who's being sanctioned has been incorporated appropriately.

To that end, I wonder if you could comment on that. The purpose here is to ensure that where a complaint has been founded, if a person has been required, for example, to go through additional training, that this training has the necessary effect that we desire. Doing it at a year-end evaluation is one component, but also following through after the training has been administered to ensure it has been effective is equally important. I wonder whether you could comment on that aspect of it.

Mr. Paul Aterman: We have a formal process for evaluating. It's done on an annual basis. It's cyclical.

As in any other organization, there are managers who, on a daily basis, are keeping an eye on the people who report to them. That's done informally. If there's a problem with a particular member, the member's manager is cognizant of that. The member's manager is involved in things such as designing what specific training is required, and the member's manager, on a daily basis, is watching how they're doing. It's written up at the end of the year in a formal evaluation.

● (1230)

Ms. Jenny Kwan: Sorry, I'm not talking about daily performance.

As an employer, for example, if you have a situation in which you have a person and you have indicated there are issues, and let's say a complaint comes forward and the complaint has been investigated and found to be valid, the person is required to go through additional training. You would want to have a way to assess that the additional training has been effective, not just in an informal way but in a formal way. And that's important.

Likewise, even aside from complaint issues, on the training itself, witnesses have indicated that the training is deficient in terms of time for board members. I think we owe it to board members to ensure they have adequate training and then, of course, follow-up after that training to make sure the training has been effective. If they need additional support, etc, it should be provided to them.

If you don't do that formal evaluation, you will have no way of ensuring that the training has been effective and that there will be optimal outcome from that training. That is the point. This is important from a process point of view but also, I think, optimizing the outcome is in everybody's interest.

Is it the intention of the IRB to not look at this issue of ensuring that there's a process to ensure that the training has been effective for those who are being sanctioned, and on a regular basis for those board members?

Mr. Paul Aterman: It's certainly not the kind of thing we would ignore. The organization is sensitized to that, and the training will address that.

Ms. Jenny Kwan: What is the formal process for that, then? You say that this is not something you would ignore, so then what is the formal process? So far I haven't heard a formal process.

Mr. Paul Aterman: I'll give you a concrete example. I'm going down on Thursday. The immigration appeal division is conducting a national training session focusing on cases that have been returned from the Federal Court, on which the Federal Court has been particularly critical of the immigration appeal division, whether in relation to things like the particular use of language in IAD decisions or to questions the court perceives as showing a lack of cultural sensitivity. That's a specific example, in which that division is focusing on the response of the Federal Court to the way that division is dealing with particular cases, and it's because the members there are prepared to reflect upon themselves, to look at themselves, and ask themselves whether they're doing the job properly.

Ms. Jenny Kwan: Okay, thank you for that, but—

The Chair: Be very brief.

Ms. Jenny Kwan: —that doesn't answer my question, I'm afraid. I'll just leave it at that.

The Chair: Mr. Sarai.

Mr. Randeep Sarai (Surrey Centre, Lib.): Thank you, Chair.

Thank you, Mr. Aterman and Mr. Kipling, for coming.

Mr. Aterman, I'm going to pick up from what Ms. Kwan asked initially. I found it troubling that with a lot of the complaints—this is the experience of many complainants—the member quits or is moved or is somewhere else and therefore the complaint is never fully addressed. If you can't now sanction someone to return, do you think that under the new measures you'll be able to do so? If so, how will you be able to get the evidence of a member who leaves when he or she finds out there's a complaint about them?

Mr. Paul Aterman: Right. I know, for example, that the Canadian Judicial Council and, I believe, the Justices of the Peace Review Council take the view that when a judge or justice of the peace leaves their office, the complaint is closed.

The approach that we're proposing is distinct from that. It's not the same as that. There are instances, I think, where as a practical matter it may be actually difficult to get all of the information out, but one approach that we can take in relation to that is to say to the member who has departed, “This complaint has been made against you. We realize you're no longer a member of the board, but you have an opportunity to tell us your side of the story. If you decline that opportunity, we may go ahead and make findings notwithstanding that.” It's not depriving them of an opportunity to put their perspective forward.

● (1235)

Mr. Randeep Sarai: It will be a voluntary thing. You're saying that in the past that opportunity was normally not afforded to the departing member?

Mr. Paul Aterman: To be frank, we've had very few instances where a member has actually left. There's the one that was the focus of this committee's study. The issue hadn't come up before. Now that it has come up, the approach, I think, that we would take in relation to that is that there's not a problem from a due process perspective if we say to the person, “Even though you're no longer a member, here's your opportunity to tell us. If you decline that opportunity, we may go ahead and make findings anyway.”

I can't say this is going to happen in every instance, because it may turn on the facts of a particular case that we actually are not in a position to do that. There's that problem, but in many instances I think we would be in a position to do that, which is why it's something that I think is in the board's interest in terms of transparency and accountability to pursue.

Mr. Randeep Sarai: I think it should be pursued because it won't allow for closure if you don't pursue that.

The second question I have has more to do with support. We heard from the earlier panel, even prior to you speaking, that current board members perhaps don't have adequate support. They're a judge and a court clerk all in one, and they're doing a lot of support stuff. Do you think that is true or do you think current board members need more support staff to make their workload easier and more efficient?

Mr. Paul Aterman: I think in terms of the way we're allocating resources internally, members would always appreciate more. It's a question of balancing that against the pressures of the organization.

The overriding concern we have right now, particularly in relation to the money we've received in the budget, is to focus on finding available decision-makers. That is job number one for the organization. If we find more decision-makers than we have support staff to support, then we're going to have to make do under those circumstances because at the end of the day, the most important thing for the organization to do is to address the large number of pending claims. It's only decision-makers who can decide cases.

Mr. Randeep Sarai: But if the decision-makers are spending too much time on administrative work that might impede their ability to make decisions—that's what I'm getting at.

You're saying that currently the support staff is not the issue; it's the lack of people who are in the position to make decisions.

Mr. Paul Aterman: That's correct, because it's a highly specialized skill and it's not easy to find people and train them up very quickly in that particular area. From a human resources perspective, that's a far bigger challenge for us than the support end of things is. The support end of things is not what I stay awake at night over. It's more about whether we can find enough people who can decide claims fairly and quickly.

Mr. Randeep Sarai: What would be the biggest impediment to finding people for that position? What's the current challenge you're facing? Why would people who are qualified and who are the types of adjudicators would we need not be applying for it ?

Mr. Paul Aterman: It's temporary funding. You have to be able to attract people for enough time that they will want to leave whatever it is they're doing to come to the IRB.

Mr. Randeep Sarai: So the length of the tenure that is offered is the primary challenge?

Mr. Paul Aterman: I think that's the challenge we're facing at the moment with temporary funding, yes.

Mr. Randeep Sarai: I'm just curious. Would having part-time positions so people could do their existing career or work wherever they're working and do this on top be a bridge to help alleviate that?

Mr. Paul Aterman: It would, and we're making use of that. The legacy team, for example, is composed largely of former members who have retired and who are working part-time, and we're beating the bushes to find people of that type. They come with experience. They get up to speed very quickly. We are making increased use of part-time decision-makers, and we're not ruling anything out in terms of where we find people who can do the job.

● (1240)

The Chair: You have about half a minute.

Mr. Randeep Sarai: I'll pass it over to the next person.

The Chair: If everyone else takes half a minute, it makes it into a minute—just to let you know.

Mr. Maguire.

Mr. Larry Maguire: Thank you, Mr. Chair.

Thank you again for being here today with us. I just want to note, Mr. Aterman, that back in March you stated that of the 425 cases, there had been 144 decisions since June. There were 21 that were founded complaints; I believe that is what you indicated at that time.

In your view, is the number of complaints in proportion to the number of decisions that we've had or to the 425 number? Does it justify rethinking the complaints process of the IRB, and if so, can you explain that?

Mr. Paul Aterman: My purpose in making that comparison was simply to try to put the number of complaints into perspective against the number of decisions that are issued by the board on a daily basis. It doesn't mean, however, that an individual complaint is not important and shouldn't be given all the due process that's needed.

The problem we have—and I think it's graphically illustrated by the cases that were in the media—is that one or two incidents have the potential to drag down the reputation of the organization and the good work of the many other people who do this, day in and day out, and have no problems. That's the reason for focusing the attention on it, and that's the reason, really, for revamping the process.

Mr. Larry Maguire: You're talking about the vulnerable individuals, and as the members hear, a lot of these cases surround these vulnerable individuals. How does that change the consideration of the complaints process, or does it?

Mr. Paul Aterman: The complaints process tries to accommodate vulnerable individuals. There are specific provisions in the revised procedure that address that, so we'll make accommodations if someone, for example, feels that they would be retraumatized by having to go through the whole thing again. We rely heavily on their representatives to advocate on their behalf, and we'll deal with the representative, for example, in terms of processing the complaint.

Mr. Larry Maguire: Thank you.

I guess it was back in February that we were looking at the end of the new complaints process. The Office of the Public Sector Integrity Commissioner will post the annual report on the IRB website, listing both the complaints and their outcomes. Keeping privacy in mind, what aspects of this complaints process should be published in order to promote transparency of the process? I know we referred to that before, but I'd just like to get a bit more clarity on it.

Mr. Paul Aterman: What you will see—and I'm working on one instance, which will shortly be up on the board's website—is a set of reasons, which is anonymized, which basically describes the problem: the allegations against the member, the findings that I'll make in relation to that, and the determination as to whether the complaint is founded. The things it won't include are names and the location of the board where it took place so that people can triangulate and figure out who it might be. They will be anonymized. The purpose of doing that is to ensure that the public looking at that can say that it doesn't really matter who it was or where it took place, but this is the allegation and this is how the board responded to it, and they can judge for themselves whether it's satisfactory. It won't be a two-line thing; there will be fairly extensive reasons, which go into detail as to what was alleged and what was determined to be the case.

Mr. Larry Maguire: It's very clear that you have that responsibility under the new complaint process procedure. I'm just wondering if you, having that responsibility and being the acting chair of personnel providing the decisions on the complainants, can elaborate on the advantages and maybe some of the drawbacks you see to having the chairperson exercise that significant control over the complaints process.

● (1245)

Mr. Paul Aterman: One of the advantages I've outlined is that I think the perception of a lack of accountability flowed from the fact that this was very diffuse, basically spread out over four divisions and three regions, which is basically 12 different decision-makers involved and inconsistencies in the way in which that was done, and it's now centralized. It's centralized in the person who is accountable ultimately to the public and Parliament. It's probably evident to you that I'm an advocate of that. I think it is an appropriate solution, so I don't actually see too many drawbacks with it.

The Chair: Thank you very much.

Mr. Tabbara and Mr. Whalen, I believe, are in this next round.

Mr. Marwan Tabbara: Thank you, Mr. Chair.

I have two things. I understand that the training process can be ongoing and there has been training done in the past and it's still ongoing on the gender-based analysis, as you mentioned in your testimony. In terms of the complaints, I asked this before. Going on with what my colleague was saying, should there be another layer in terms of the complaint process, when some adjudicators have 54% of claims with a designation of no credible grounds and then other adjudicators have 28% to 30% with that designation? I understand the discretion of the adjudicator having the evidence at hand and making that decision, but once that is an ongoing process and that's been going on for years, shouldn't there be a flag saying that between these two adjudicators there's something wrong here?

Mr. Paul Aterman: The issue, respectfully, is a question of what tools you use to address which problem. That's not a problem of conduct. That's a problem that relates to consistency or the perception of inconsistency.

I don't think I was clear enough in my past appearances with the committee on the ways in which that is addressed. There are, both in the refugee appeal division and in the refugee protection division, structures that are now set up that deal with the whole question of consistency. The RAD, the refugee appeal division, has what's called an "adjudication strategy committee", which is a group of members. It's not management. It's members, who are meeting together and they're looking at issues of concern to the RAD from a consistency perspective.

They're doing statistical analysis as to whether or not there is a consistency problem, because oftentimes it appears that there's a consistency problem and there's not. If you look at a country of origin, you see that this is not necessarily the indicator. A divergence between members on claims from a particular country of origin is not necessarily an indication of inconsistency.

I give you a particular example of that. We have claims from China in which sometimes the claimant says, "I'm being persecuted because I'm a member of Falun Gong." Another claimant says, "It's because I'm a Christian." Another one says, "It's because of my political beliefs." It's claim types within a country that give you a more granular and meaningful indicator of whether or not there is a consistency problem. It's not based upon which country of reference it is.

In the refugee protection division they've set up groups that do this, that talk. It's members talking to members about whether there is a consistency problem there or not.

In any adjudicative system, whether it's the IRB, the courts, the Federal Court, or any tribunal, there's an ambient level of inconsistency. It's because humans are deciding these cases.

I don't know what the optimal range of variance ought to be; I don't think anybody else does. With all due respect to Professor Rehaag, I don't know what he's measuring our inconsistency against. When you have extreme outliers, it's self-evident. It's just a matter of common sense that there's a problem there, but what's the range?

Mr. Marwan Tabbara: May I interrupt for a minute? I want to pass it over to my colleague. Maybe I could ask you to submit any further information on consistency.

Mr. Paul Aterman: For sure, yes. We can do that.

Mr. Nick Whalen: Thanks, Mr. Aterman.

I'm getting a stronger sense today that the measures that have been put in place over the last year to address the issues regarding the SOGIE guidelines and member appointments and the complaints process are there. It would be great now to give it some time to see them work their way through.

Another issue that arose newly today with Ms. Warner's testimony earlier is the role of a clerk versus the role of a member at the lower levels of the immigration and the refugee division, and how that work is managed, from the perspective of your role as the chair, to make sure the organization functions properly from a labour relations perspective, but also with regard to the independence of members to make decisions. At a fundamental level what also arose is whether or not we have some inconsistencies in approach here and how your organization is attempting to address those inconsistencies.

It does not seem like the traditional employer-employee relationship vis-à-vis the members. You were in the room, so perhaps you'll remember her testimony a bit. Perhaps you could speak a little to some of the challenges and how you address appropriate staffing, and also to the mixed relationship you have with the members as both their supervisor and their chair.

● (1250)

Mr. Paul Aterman: There are certain aspects inherent in the board's business which change the traditional employer-employee relationship. I'll give you an example. I'm appointed first as a member, and my substantive position is as a deputy chair, but I'm first a member and then a deputy chair.

When it comes to discussing cases with other members, my voice is no louder and doesn't carry anymore weight than any other member's does. When I talk to my colleagues about decision-making, I'm doing that as a peer.

We have to manage that relationship along with the traditional employer-employee relationship. The big issue for us, on a practical level, is being able to differentiate between when it is a matter of member independence and when it is a matter of the employer-employee relationship.

It's actually the complaints process that has highlighted much of that, because a lot of the time we didn't deal adequately with complaints against members because we characterized those things as adjudicative matters as opposed to conduct issues when they were in fact conduct issues.

It's not easy. There's no bright line there.

Mr. Nick Whalen: Well, I'd have to go further—

The Chair: I need you to end there. I'm sorry. You will get one more minute.

Mr. Maguire gets five minutes, and then we may have time for one or two more minutes.

Mr. Larry Maguire: Thank you, Mr. Chair.

I'm sure there will be a moment or two for my colleague when I'm finished.

We have a great case backlog right now in the IRB. I'm just wondering what you think of the long times of hearings. Some are several years, of course involving people waiting to get into Canada. What impact does drawing the process out over such a long time have on asylum seekers' ability to recall the details at a future hearing? Are you concerned about that? How do we deal with that?

Mr. Paul Aterman: It is a concern. Sometimes the nature of a particular case is such that it can be dealt with very quickly. Other times the substance of the claim means it's going to take place over several sittings. Those cases then get scheduled over months and sometimes even over years.

As I indicated to you, it has an impact on people's recall. It's never good for us to be stretching these cases out over a protracted period of time.

Perhaps Mr. Kipling can speak to you about the average processing times and where we are in relation to that.

Mr. Greg Kipling (Director General, Policy, Planning and Corporate Affairs Branch, Immigration and Refugee Board): As this committee may know, we are close to 19 months for average wait time for claims that are referred today. It is a reflection of the intake we're facing and our ability to process the cases. However, the influx of the temporary funding will assist, obviously, by increasing our capacity to hear and decide more cases.

● (1255)

Mr. Larry Maguire: The new complaints system is still dealt with internally in the IRB, as I understand it. However, as we've been studying the quasi-judicial boards, it appears that, for example, the justices of the peace are largely regulated under the various justice of the peace acts. Do you think the federal government should make amendments to the IRPA to institute a proper complaints process there, as well?

Mr. Paul Aterman: My understanding is that there's a distinction between judicial officers, judges, justices of the peace, and administrative tribunal members. I don't know of any tribunal complaints process. Sorry—that's not true. In Quebec they have an external body. Other than that, I'm not aware of any that review complaints externally.

I don't have any expertise in that area, but my understanding is that because judges don't have limited terms and their tenure from a constitutional perspective is such that it has to be protected, you have those extraordinary measures like the Canadian Judicial Council. That really deals only with instances in which it looks as though they're going to remove a judge from office, as opposed to a question of whether or not a particular judge in a given instance was rude to someone in their courtroom.

Mr. Larry Maguire: Thank you.

My last question will be with regard to the complaint process as well. There is no clear list of the possible outcomes of complaints. By contrast, it was said earlier that the justice of the peace has a very clear list of the outcomes of complaints.

I'm just wondering if you could, or would, commit to making that possible reprimand list public, as well.

Mr. Paul Aterman: As I indicated to Ms. Rempel, we could indicate the range of possible sanctions that are within the board's authority to impose, whether for public servants or GICs.

One thing I would like to underline is that on the GIC side, it's a Governor in Council who appoints, so the board actually has no power to remove a GIC appointee. It's only the Governor in Council who can do that, and that's through a process that is spelled out in the act at section 176 and onwards.

Mr. Larry Maguire: Thank you.

The Chair: Mr. Whalen is up again for two minutes.

Mr. Nick Whalen: Thank you very much, Mr. Chair. I guess I'll follow up on the previous line of questioning.

When we had Professor Flaherty here last week, she mentioned the characteristics we'd be looking for and the qualities of an administrator and adjudicator. Things that were raised were consistency in decision-making, obviously, competence ultimately in the law, the right temperament or conduct, and then of course the ability to efficiently do the work.

It seems to me the complaints process addresses only the conduct aspect. It doesn't address the other three areas in which somebody might have questions about the decision-making: consistency, legal competence, or efficiency in operating. How are those other three areas addressed in your management of the IRB?

Mr. Paul Aterman: You're correct. The complaints process doesn't do that. In my view it shouldn't do that. Those are issues that have to do with how well the person is doing the job, not how they behave toward other people. It's training. It's the evaluation process. Those are the tools we use to address them. We have a good process for recruiting people. It's extremely rigorous. Whether it's on the public service side or the GIC side, only one in 10 will ever qualify to even be considered. That said, it's not perfect. Sometimes we appoint people who turn out not to be able to do the job. On the GIC side you have term limits. It's dealt with that way. On the public service side there are the disciplinary mechanisms associated with that. They are used. It's a slower process.

Mr. Nick Whalen: This is probably my last question at this point. I know you don't want to try to make the decisions, but we need to come up with recommendations on this very issue. As you're the chair of the IRB, we look to you for your view on what would be more optimal for your organization.

Would it be better to have clerks operating in a clerical function as professional civil servants? Should the adjudicators be independent GIC appointments so the process by which they can be removed for issues related to consistency, competence in the law, and efficiency, would be addressed at the reappointment stage?

Do you have any views on which would be better for those lower two divisions?

● (1300)

Mr. Paul Aterman: No.

There are advantages and disadvantages with respect to both employment regimes. Fundamentally that's the choice the government is going to make.

The Chair: I'm afraid I need to end there.

I want to remind the committee that we will be meeting on Thursday. We will have a panel. Only one witness is appearing. I'm going to be proposing—you'll get a notice—that we shorten that panel slightly. Then we'll have drafting instructions for slightly over an hour on Thursday so we can do this.

Thank you very much, witnesses, for coming and for your involvement in our study.

The meeting is adjourned.

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