



Immigration and
Refugee Board of Canada

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

Annual Report on Complaints **2020**

Status of complaints finalized in
2020 under the IRB's *Procedures
for Making a Complaint About
a Member*

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Canada 

This publication is the annual report on the status of complaints made under the Immigration and Refugee Board of Canada's (IRB) [*Procedures for Making a Complaint About a Member*](#)¹ (*Complaint Procedures*), covering the period between January 1, 2020, to December 31, 2020.

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Second Annual Report on Complaints

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Executive Summary

This is the third annual report on the status of complaints made under the Immigration and Refugee Board of Canada's (IRB) [Procedures for Making a Complaint About a Member](#)¹ (*Complaint Procedures*). This report contains information about complaints that were finalized between January 1, 2020, and December 31, 2020.

The IRB is Canada's largest independent administrative tribunal. It is responsible for making well-reasoned decisions on immigration and refugee matters, efficiently, fairly and in accordance with the law.

Decision-making in refugee and immigration cases is recognized as one of the most difficult and consequential areas of adjudication, often involving complicated questions of law and fact, regularly requiring the assessment of sensitive matters of credibility, and often resulting in life-altering decisions. The vast majority of IRB members regularly carry out their work in compliance with the highest standards of conduct as required by the [Code of Conduct for Members of the IRB](#)² (*Code of Conduct*). The standards of conduct identified in the *Code of Conduct* recognize the importance of maintaining public confidence and trust in the integrity, objectivity, and impartiality of IRB members.

Across federal tribunals, the IRB is a leader in implementing a member complaints process, recognizing it as fundamental to maintaining public confidence in the professionalism of IRB members. Going forward in 2021, the IRB will build on the measures already in place, ensuring that Board members are trained to meet the high standards of conduct expected of them. The IRB complaints process provides a formal mechanism that allows individuals to voice their concerns about the conduct of IRB members. It promotes the integrity of the decision-making process and helps to identify systemic issues or trends that require attention.

The year 2020 was unprecedented for the IRB due to the impacts of the COVID-19 pandemic on international migration patterns and operations. After in-person hearings were mostly suspended in March 2020, the IRB worked hard to continue to provide access to justice while protecting the health and safety of its staff and those who appear before the Board. By the end of the year, the IRB had fully resumed operations through a combination of in-person and, increasingly, remote hearings.

In 2020, approximately 542 IRB decision-makers (members) issued over 44,482 decisions. Of this large caseload, the Board's Office of the Ombudsperson (formerly the Office of Integrity) received 12 complaints, down from 22 complaints received in 2019 and 20 received in 2018. Although not all conduct of concern gives rise to complaints, these results underscore that the vast majority of IRB members regularly carry out their work with professionalism, consistent with the high standards of conduct established in the *Code of Conduct*.

The Office finalized 19 complaints in 2020. Of those complaints, 12 were received in 2019, and seven (7) were received in 2020.

Of the 19 complaints finalized in 2020:

- Four (4) were screened out as not related to conduct;
- Two (2) were withdrawn by the complainants; and
- 13 were investigated.

Of the 13 complaints investigated in 2020, the Chairperson found that there was no breach of the *Code of Conduct* in seven (7) cases and that there was a breach of the *Code of Conduct* in six (6) cases.

Two special reviews were also completed in 2020. These reviews, initiated by the Chairperson, may be conducted where serious allegations are made about a member's conduct outside of the complaints process. The Chairperson found that there had been a breach of the *Code of Conduct* in both of the special reviews.



The Board has fulfilled the commitments it made in the [2019 annual report on complaints](#)³ to strengthen the accountability, transparency and effectiveness of its complaints process. Of note, the IRB has:

- Appointed its first Ombudsperson and established the Office of the Ombudsperson, which assumed the responsibilities of the former Office of Integrity in October 2020;
- Completed a third-party evaluation of the complaints process, with the final report and the Board's management action plan to be published in 2021; and
- Improved the quality of decision-making, particularly with respect to gender-related claims, through initiatives such as mandatory training, the establishment of a dedicated team with specialized training in gender-related matters (the [Gender-Related Task Force](#)⁴), and updates to the [Chairperson's Guidelines](#)⁵ on Women Refugee Claimants Fearing Gender-Related Persecution and on Proceedings Before the IRB Involving Sexual Orientation and Gender Identity and Expression, which will be finalized and implemented in fiscal year 2021-22.

This report includes an overview of, and recent measures introduced to strengthen, the IRB complaints process. It provides clarification on what type of allegations can properly form the basis of a complaint under the *Complaint Procedures*, and on the role of the Office of the Ombudsperson in investigating complaints. Lastly, the report provides data on complaints received and finalized in 2020, a discussion of special reviews completed in 2020, summaries of complaints finalized, and information about how such complaints are informing the broader functioning of the Board.

A detailed description of the Office of the Ombudsperson is available in Appendix A.

Detailed summaries of cases and special reviews are available in Appendix B.

Code of conduct and complaint procedures

Code of conduct

All IRB members, whether they are public service employees (Refugee Protection Division and Immigration Division) or are appointed by the Governor-in-Council (Refugee Appeal Division and Immigration Appeal Division), are subject to the [Code of Conduct for Members of the IRB](#)² (*Code of Conduct*).

The *Code of Conduct* establishes the standards of conduct that govern the professional and ethical responsibilities of all members at the IRB. It further provides that the Chairperson is responsible for its administration, and that IRB members are accountable to the Chairperson for their compliance. These standards of conduct recognize the importance of maintaining public confidence and trust in the integrity and impartiality of the IRB, and address members' responsibilities to persons who appear before them, and to the public.

The *Code of Conduct* covers a range of obligations that govern the professional and ethical responsibilities of members. Of particular relevance are certain sections that outline the expectations around member conduct, as the *Complaint Procedures*, discussed below, only address complaints about the conduct of a member, not complaints about a member's decision.

Complaint procedures

The [Procedures for Making a Complaint About a Member](#)¹ (*Complaint Procedures*) outline the process for making a complaint about the conduct of a member of the IRB that is believed to be contrary to the *Code of Conduct*. The procedures came into effect on December 21, 2017, and established a centralized, rigorous and transparent approach to managing member complaints received by the IRB. They respect the adjudicative independence of IRB members while ensuring members are held accountable for their conduct and that all parties to a complaint are accorded procedural fairness.

When a party before the Board or any other individual has concerns with the conduct of a member, whether in or outside of the hearing room context, they may file a complaint to the Office of the Ombudsperson (formerly the Office of Integrity).

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

At the time of the launch of the 2017 *Complaint Procedures*, and during this reporting period, questions have been raised about whether an allegation of "bias" against a member could form the basis of a conduct complaint. While it is acknowledged that allegations based on bias may or may not be related to member conduct, when they are related to adjudication (i.e., the allegation relates to a member's decision or concerns allegations that the member was not impartial), they are not within the scope of the complaints process. Three (3) complaints finalized in 2020 contained allegations of bias. In two (2) cases, the allegations of bias were determined to be adjudicative in nature, and therefore were not referred for investigation under the *Complaint Procedures*. In the third case, the complainant alleged that the member was biased because of questions posed to a person of colour. Because it involved the behaviour of the member, that allegation related to bias was referred for investigation. Please refer to case numbers 19-007, 19-011, and 20-006 in Appendix B for detailed summaries of the complaints.

As shown by the last case mentioned above, an allegation that is based on bias will be referred for investigation under the complaints process if the allegation concerns misconduct (for example, an inappropriate comment or action by a member related to discrimination based on gender, race, nationality, ethnicity, religion, sexual orientation, or age in the hearing room or in a written decision).

In September 2018, the Parliamentary Standing Committee on Citizenship and Immigration issued a report: [Responding to public complaints: a review of the appointment, training and complaint processes of the Immigration and Refugee Board](#)⁶ that considered a number of issues, including the IRB complaints process. The report recommended that the IRB conduct a comprehensive review of its complaints process within three years. In 2020, the IRB undertook a third-party independent evaluation of the 2017 *Complaint Procedures*. The evaluation considered the design of the complaints process, including its implementation and efficiency, and the need for independence which was assessed through the credibility, impartiality and procedural fairness of the process. While the evaluation focused on the process for making a complaint, it also captured some outcome findings related to its effectiveness. The evaluation covered the period between December 2017 and March 2020 and included interviews with key informants (including parties to a complaint) from July to October 2020. In the fall of 2020, the initial findings of the review were presented to the IRB's national consultative committee. This committee brings together IRB senior management and stakeholders with specialized knowledge or expertise to provide valuable feedback that enhances the development and review of IRB's initiatives and processes. The final report will be published in 2021.

Overview of the complaint process

Any person may make a complaint to the Office of the Ombudsperson (formerly the Office of Integrity) about the conduct of a member. A complaint must be made in writing and either sent through the mail or to the general email inbox for the Office (Integrity-Integrite@irb-cisr.gc.ca). A [sample form](#)⁷ is available on the IRB website to facilitate the process, but a complaint can also be made without using that form.

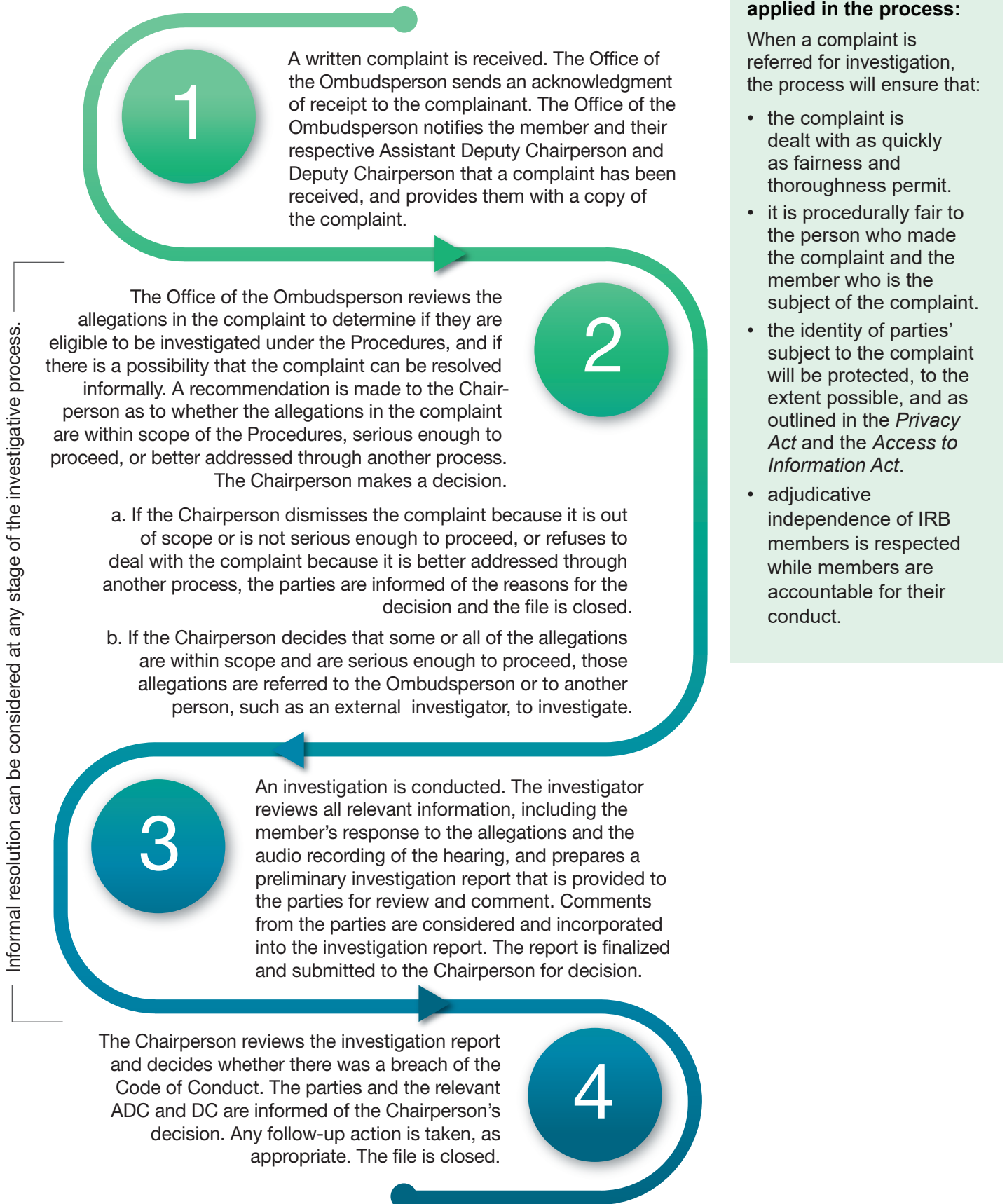
If a complaint is received regarding a case that has not yet been decided by the member, the complaint will generally be held in abeyance until such time as the member is no longer seized by the case. This is meant to ensure that the member is not influenced in arriving at their decision because a complaint has been made about their conduct.

The diagram on the following page illustrates the high-level process that follows the receipt of a complaint, which upholds the principle of ensuring a fair process. Additional details can be found in the "[Complaint Review Process](#)⁸" section (Section 5) of the *Complaint Procedures*.

The Chairperson will ensure that any follow-up actions which are appropriate in the circumstances are taken. Different labour relations frameworks apply to public servant members (Refugee Protection Division and Immigration Division) and Governor-in-Council appointed members (Refugee Appeal Division and Immigration Appeal Division). The relevant Deputy Chairperson and the Assistant Deputy Chairperson are informed about the outcome of all complaints relating to members of their division. Where the Chairperson finds that there was a breach of the *Code of Conduct* and that follow-up actions are required, the Deputy Chairperson in question will work with the manager of the member to implement any follow-up, including necessary corrective measures.

A summary of the complaint and its disposition is posted on the IRB website. In accordance with the [Privacy Act](#)⁹, the names of the parties are not publicized.

Figure 1—IRB’s Complaint Review Process





Special review summary

Special reviews may be conducted where serious allegations are made about a member's conduct outside of the complaints process.

During the reporting period, the Chairperson initiated special reviews into the conduct of two (2) RPD members at refugee hearings, both of which involved gender-based claims.

The IRB retained the services of an external investigator to investigate the allegations of misconduct in one (1) of these cases. In the other case, the Director of the Office of Integrity conducted the investigation.

The Chairperson decided in both cases that the members had breached the *Code of Conduct*. Comments and questions from the members during the hearings were found to be offensive, insensitive, and inappropriate.

One member was required to undertake professional development. The Division prepared a detailed professional development action plan that the member was required to follow. A mentor was assigned, and the member was subject to close monitoring.

In regard to the other case, because the member was no longer an employee of the IRB at the time the investigation was concluded, there was no need for disciplinary or corrective measures. However, the Chairperson decided that this case would be considered in informing the IRB's revision of [*Chairperson's Guideline 4—Women Refugee Claimants Fearing Gender-Related Persecution*](#)¹⁰. Therefore, this case, as well as the first, was taken into consideration as part of the development of revisions to the Guideline.

See more detailed information relating to these cases under "Special Reviews 001 and 002" in the attached Appendix B.

Office of the Ombudsperson

The IRB's Office of the Ombudsperson (formerly the Office of Integrity) is responsible for managing the complaints process, increasing awareness, identifying the need for improvements, and ensuring that the process is fair, transparent and accessible.

In October 2020, the IRB appointed the Board's first Ombudsperson and established the Office of the Ombudsperson. The Ombudsperson assumed responsibility for the functions of the Office of Integrity.

The Office of the Ombudsperson receives and manages complaints against members. It provides all employees with a trusted, safe space to have conversations and explore options for resolving workplace issues, and to ensure every employee knows where to go for assistance and feels safe to do so. This is consistent with the broad direction of other federal departments and agencies. This Office is an impartial and confidential resource, responsible for providing advice and managing the following matters within the workplace: values and ethics codes applicable to employees and members, conflicts of interest, political activities, disclosure of wrongdoing, and informal conflict resolution services.

The Ombudsperson reports directly to the IRB Chairperson and is independent of the IRB's four adjudicative divisions and IRB management. In 2021, the Ombudsperson will finalize an organizational structure for the Office of the Ombudsperson, and continue to add capacity to the team to reflect the growing importance and needs of the function. The Office will also increase outreach through proactive and timely communication with members, employees and the stakeholder community to ensure ongoing and improved engagement and awareness about the complaint process and other matters within its mandate.

A further overview of the primary functions of the Office of the Ombudsperson regarding the complaints process is available in Appendix A.

Summary of complaints received and finalized

Overview

The Office of the Ombudsperson (formerly the Office of Integrity) carried forward twelve (12) complaint files in 2020 from the previous year. During the reporting period, twelve (12) new complaint files were received by the Office of the Ombudsperson. Including the 12 files carried forward, the total number of open files during 2020 was 24. Of these, 19 files were finalized before December 31, 2020, including the 12 which were carried over from 2019. At the end of the reporting period (December 31, 2020), five (5) files that were received in 2020, were carried over into 2021. Three (3) complaints are being held in abeyance and the remaining two (2) complaints were at various stages of investigation as of December 31, 2020.

Figure 2 provides a breakdown of complaints received and finalized in 2020.

Figure 2: Complaints Received and Finalized in 2020 – At a Glance	
542 Members and 44,482 Decisions	
12 complaints carried forward from 2019	19 complaints finalized in 2020*
12 new complaints received in 2020	5 complaints to be carried forward into 2021
2 special reviews were also completed in 2020	

*Note that these statistics include two files that were finalized as a result of a withdrawal.

The tables below provide additional information concerning the complaints received and finalized in 2020.

Table 1 provides a breakdown of who filed complaints that were received and finalized in 2020. The majority of complaints were filed by counsel.

Table 1—Overview of complaints filed

Filed by...	New complaints received in 2020	Complaints finalized in 2020
Counsel	9	15
Minister's Representative	2	2
Interpreter	0	1
Represented claimant	1	1
Total	12	19*

*Note that these statistics include two files that were finalized as a result of a withdrawal.

Table 2 provides a breakdown of complaints by division received and finalized in 2020. The majority of complaints were related to the Refugee Protection Division.

Table 2—Complaints by Division

Complaints related to...	New complaints received in 2020	Complaints finalized in 2020
Refugee Protection Division	10	18
Refugee Appeal Division	0	0
Immigration Division	1	1
Immigration Appeal Division	1	0
Total	12	19*

*Note that these statistics include two files that were finalized as a result of a withdrawal.

Table 3 provides a breakdown of the files received and finalized since 2018.

Table 3—Complaints by calendar year

Status	2018	2019	2020
Continued from previous years	0	10	12*
New complaints opened during the year	20	22	12
Total complaints open during the year	20	32	24
Complaints finalized during the year	10	20	19†
Complaints carried forward into the next year	10	12	5

* In the 2nd Annual Report, one complaint was mistakenly reported as having been received in 2019; however, the complaint was officially received in 2020. As such, the totals have been corrected in the present report.

† In addition to the 19 complaints finalized during the year, two (2) Special Reviews were completed.

On average, for the files finalized in 2020:

- Complaints were acknowledged within an average of 9.4 working days.
- The Office of the Ombudsperson conducted the investigation, received comments and submissions from the parties, finalized the investigation reports, and the Chairperson issued formal letters of decision within an average of 6.8 months. (Note: the average does not include the periods of time during which complaints were put into abeyance because the proceedings were not yet finalized before the member.)

Case summaries

Of the 19 complaints finalized in 2020, four (4) were screened out, two (2) were withdrawn, and 13 were investigated.

The Chairperson may refer a complaint to an external investigator to conduct the investigation and prepare a report. Referral of cases to external investigators ensures that investigations are conducted by persons with expertise in the subject matters and facilitate a timely resolution to the complaints. The IRB is increasingly exercising this option in order to ensure efficient and effective investigations.

Of the 13 complaints that were investigated, five (5) were referred to an external investigator. Additionally, one of the two special reviews completed during the year was referred to an external investigator. Four of the external investigations were gender related.

Table 4: Outcomes of Complaints Finalized in 2020

Screened out—not conduct	4
Withdrawn	2
Abandoned	0
Investigated—Chairperson’s decision—breach of code	6
Investigated—Chairperson’s decision—no breach of code	7
Total finalized in 2020	19

Appendix B of this report provides detailed case summaries for files screened out and files that were investigated and finalized during the year, excluding withdrawn complaints. The sections below provide high-level descriptions for all cases that were finalized and closed in 2020.

Screened Out in 2020

Complaints are dismissed if they fall outside the scope of the *Complaint Procedures*. This means that complaints are not referred for investigation if they do not relate to member conduct but rather to a member’s decision or the exercise of adjudicative discretion. This approach is based on the legal requirement that members’ adjudicative independence cannot be fettered. During the reporting period, four (4) complaints were screened out as they did not pertain to conduct but rather to adjudicative matters (i.e., they generally related to dissatisfaction with the member’s decision or the exercise of adjudicative discretion).

Complaints Withdrawn in 2020

A withdrawn complaint is one where the complainant informs the Office of the Ombudsperson that they have decided not to pursue the matter. During the reporting year, two (2) complaints were withdrawn: One (1) complaint was withdrawn because the member’s apology was accepted by the complainant, and the other one (1) was withdrawn by the complainant after a positive decision was issued with respect to the claim that formed the basis of the complaint.

Complaints Abandoned in 2020

Abandoned complaints are those where a complaint is filed and acknowledged by the Office of the Ombudsperson, but at some stage of the process, the complainant stops responding to correspondence. They are advised that if they do not state their intentions by a certain date, the matter will be closed by the Office. During the reporting period, no complaints were deemed abandoned.

Complaints Investigated and Decided on in 2020

During the reporting period, thirteen (13) complaints were finalized after investigation.

In six (6) instances, the Chairperson found there was a **breach** of the *Code of Conduct*:

- One complaint involved a claimant who alleged to be a victim of physical and sexual abuse at the hands of her former partner. The claimant alleged that three questions posed by the member were inappropriate, displayed a misunderstanding of the nature of domestic violence, and displayed a lack of sensitivity towards claimants who have experienced gender-based violence contrary to [Chairperson's Guideline 4—Women Refugee Claimants Fearing Gender-Related Persecution](#)¹⁰. Please refer to case no. 19-008 in Appendix B for a detailed summary of the complaint.
- A second complaint alleged that the member was impatient and disrespectful. The member was alleged to have made harassing and exaggerated remarks at the start of the hearing regarding the evidence on file, which created a tense and negative atmosphere, intimidated the claimant, deprived the claimant of a fair hearing, and impugned the complainant's competence. The complaint also alleged that the member used sarcasm towards the claimant and made disrespectful comments about the quality of the complainant's work. Please refer to case no. 19-016 in Appendix B for a detailed summary of the complaint.
- A third complaint involved a claimant who alleged to be the victim of domestic violence at the hands of her former partner. The complaint concerned allegations that the member's conduct was inappropriate and characterized the atmosphere in the hearing room as akin to a police interrogation. Specifically, the complaint alleged that the member was aggressive and used an intimidating tone, and that the member's comments and questions passed judgment on the refugee claimant, particularly as regards to her private life. Please refer to case no. 19-021 in Appendix B for a detailed summary of the complaint.
- A fourth complaint involved a claimant who alleged to be the victim of domestic violence at the hands of her former partner. The complaint alleged that a member demonstrated a lack of understanding of the phenomenon of domestic violence and of the claimant's socio-cultural context, and that his questions and comments were based on myths and stereotypes. The complaint also alleged that the member created confusion that had the effect of destabilizing the claimant. Lastly, the complaint alleged that the member was disrespectful towards the complainant, accusing her of having coached the claimant and put words in the claimant's mouth. Please refer to case no. 19-023 in Appendix B for a detailed summary of the complaint.
- A fifth complaint alleged that the member created a stressful climate in the hearing room during the two sittings in question. More specifically, the complaint alleged that the member made inappropriate comments, was argumentative, interrupted the claimant while canvassing the claimant for answers, and prohibited the complainant from intervening in the hearing until it was her turn to make submissions or ask questions. Please refer to case no. 20-001 in Appendix B for a detailed summary of the complaint.
- A sixth complaint involved a female claimant who experienced a seizure during the first sitting of the hearing. The complaint alleged that the member's response to the medical emergency was inappropriate and insensitive, while the female claimant was awaiting the arrival of medical emergency personnel. The complaint alleged that the member prejudged the refugee claim, denying the complainants a fair hearing. Specifically, the member's behaviour indicated that she did not believe the female claimant was actually having a medical emergency. From this, flowed the member's rejection of the refugee claim, which was based in part on the persecution the female claimant had allegedly suffered due to her medical condition. The complaint also alleged that the member did not take the complainants' privacy into account when suggesting to continue the hearing while IRB security offers were present in the hearing room. Further, the complaint alleged the member showed a lack of

understanding of the hearing process by proposing to continue with the hearing when neither of the claimants could have been expected to follow it. Please refer to case no. 20-006 in Appendix B for a detailed summary of the complaint.

In the other seven (7) instances, the Chairperson found there was **no breach** of the *Code of Conduct*:

- One complaint involved a claimant who alleged to be the victim of gender-based violence. The complaint alleged that the member did not treat the claimant with sensitivity, was biased, and was not procedurally fair. More specifically, the complaint alleged that the member used an authoritative and angry tone, and exhibited an aggressive and intimidating attitude towards the claimant, having “made up her mind on the claim” from the outset. It was alleged that the member, from the beginning of the hearing, doubted the validity of documentary evidence filed by the claimant, questioned the authenticity of a medical report, and misread the content of a doctor’s letter thereby causing significant distress to the claimant. The complaint also alleged that the member disbelieved or refused to accept some of the claimant’s explanations, and continued to question the claimant after she had become emotionally upset. Please refer to case no. 19-007 in Appendix B for a detailed summary of the complaint.
- A second complaint involved a claimant who alleged to be the victim of domestic violence at the hands of her former partner. The complaint alleged bias because of questions the member posed to a hearing observer who was a person of colour, prior to the start of the hearing. It was also alleged that the member made a comment that reflected a lack of understanding and knowledge about diversity of African cultures. It was further alleged that the member told counsel to control the claimant’s emotional behaviour, and in doing so, failed to consider the challenges and difficulties that women who have experienced gender-based violence may experience during a hearing. Please refer to case no. 19-011 in Appendix B for a detailed summary of the complaint.
- A third complaint involved a claimant who alleged to be a victim of gender-based violence and who had been identified as a “vulnerable person” under the IRB’s [*Chairperson’s Guideline 8: Procedures With Respect to Vulnerable Persons Appearing Before the IRB*](#)¹¹. The allegations related to the member’s behaviour and tone, as well as statements made during the hearing. The complaint alleged that during questioning, the member insisted on placing before the claimant three photos of herself showing visible injuries. It was also alleged that the member made comments and used expressions which were inappropriate, disrespectful, and which relied on myths and stereotypes about victims of violence. Please refer to case no. 19-015 in Appendix B for a detailed summary of the complaint.
- A fourth complaint was submitted by a Canada Border Services Agency hearings officer, who alleged that the language and tone in the member’s correspondence was inflammatory and hostile. More specifically, the complaint alleged that the member’s use of the term “‘so-called’ statutory declaration” and comments about two exhibits was insulting. The complaint also alleged that the member’s correspondence was intended to bully and intimidate the complainant and to threaten that the person concerned would remain in detention indefinitely. Please refer to case no. 19-017 in Appendix B for a detailed summary of the complaint.
- A fifth complaint alleged that the member’s tone of voice and body language during the hearing was unacceptable. The complainant, who was an interpreter, alleged that the member rudely interrupted her while she was interpreting, and at one point told her: “If you do not know how to say ‘basic claimant form,’ then you do not need to be here.” The complainant submitted that she was intimidated by the member’s behaviour, and felt the member bullied and belittled her. The complaint also alleged that the member told the claimant, in an unacceptable tone, that the claimant should have requested an interpreter in her first language because the claimant did not understand French. Please refer to case no. 19-020 in Appendix B for a detailed summary of the complaint.

- A sixth complaint alleged that the member interrupted the complainant and did not allow a break; did not listen to the refugee claimant; was condescending towards the claimant; responded to his own questions without letting the claimant answer; and confused the facts as a diversion tactic to tire out the claimant. Please refer to case no. 19-022 in Appendix B for a detailed summary of the complaint.
- A seventh complaint involved a Canada Border Services Agency hearings officer. The complaint alleged that the member did not let the complainant raise an objection and never dealt with an objection; cut the complainant off and did not afford her an opportunity to present submissions without interruption; and attempted to control and assert an air of authority over the complainant. The complaint also alleged that the member was demeaning and condescending, made statements that were disrespectful and unprofessional, and used a rude and belittling tone of voice. Please refer to case no. 20-008 in Appendix B for a detailed summary of the complaint.

Special Reviews in 2020

Special reviews may be conducted where serious allegations are made about a member's conduct outside of the complaints process.

During the reporting period, the Chairperson initiated special reviews into the conduct of two Refugee Protection Division members at refugee hearings that involved gender-based claims. In both instances the Chairperson found there to be a **breach** of the *Code of Conduct*.

One (1) review related to allegations that the questions the member asked the claimant during the hearing were offensive, insensitive, and inappropriate. The member persisted in asking the same question several times in different ways and the claimant was forced to answer various versions of the question several times. The language used effectively minimized the traumatic experience the claimant was describing. Further, the questioning was not carried out with sensitivity and respect and had the potential to create a traumatizing and anxiety-producing effect. The investigation report also concluded that a comment which the member made about a mental health condition was flippant, unnecessary and disrespectful because it made light of the claimant's mental health. Please refer to Special Review No. 001 in Appendix B for a detailed summary of the complaint.

The second review related to allegations that some of the member's questions to the claimant at the hearing were highly problematic. The manner in which the questions were asked was at odds with the need for sensitivity, dignity and respect when members preside at gender-based claims. Members must test the veracity of claims and are expected to lay out their valid concerns for the claimant based on the record. However, in the context of gender-based claims, they should, at an absolute minimum, soften the delivery of their questions and frame those questions in a compassionate and caring manner. That was not done in this case. Please refer to Special Review No. 002 in Appendix B for a detailed summary of the complaint.

Trends and areas for improvement

The only year-over-year trend identified pertains to gender-based claims. The number of gender-related complaints finalized during this reporting period was equal to those finalized in the previous reporting period (six complaints each year). All of the gender-related complaints finalized in 2020 were actually complaints received in 2019; none of the complaints received in 2020 were gender-related. However, the two special reviews conducted in 2020 were in response to allegations about gender-related matters. Additionally, while the initiatives completed in 2020, which are outlined above, represent significant steps to address concerns raised through the complaints process regarding gender-related claims, the IRB acknowledges that the benefit of this work has not yet been fully realized as there is a natural delay between implementation and impact. The Board will continue to track any complaints received alleging members did not display the requisite degree of sensitivity or respect in the context of a gender-based claim going forward and will assess whether additional measures are required.

While there were no specific areas for improvement identified as a result of the complaints received in 2020, the IRB is committed to continuous improvement as a Board. A number of initiatives are underway to enhance the quality and consistency in decision-making, many of which will continue into 2021-22. In 2020, an independent review of the IRB's Quality Assurance Framework found the framework to be clear, comprehensive, innovative, and designed to ensure quality decision-making and high performance at the Board. In fiscal year 2021-22, the initiatives below are expected to build on the quality assurance measures already in place, ensuring that Board members are trained and supported to make quality adjudicative decisions. The activities will have a long-term impact on the IRB's decision-making.

Key initiatives identified for 2021 include:

- ongoing mandatory training on gender violence, including addressing myths and stereotypes about victims and the effects of trauma on victims' memory; and, on unconscious bias and cultural competence. The training is focused on the need for extreme sensitivity in the way members conduct hearings and appeals in gender-based refugee claim proceedings;
- leveraging the implemented [Gender-Related Task Force](#)⁴, a dedicated team of decision-makers specifically trained in trauma-informed practice, at the Refugee Protection Division, to ensure claims are given the special attention and sensitivity needed;
- completing the reviews and implementing the changes to the Chairperson's guidelines on gender and sexual orientation and gender identity and expression, in accordance with developments in the law and social science and to further promote consistency and efficiency in decision-making:
 - completing the review and update of the [Chairperson's Guideline 4—Women Refugee Claimants Fearing Gender-Related Persecution](#)¹⁰ and associated training, tools and guides;
 - completing the implementation of the recommendations from the review of the [Chairperson's Guideline 9—Proceedings Before the IRB Involving Sexual Orientation and Gender Identity and Expression](#)¹² with the development of associated training and tools for adjudicators, interpreters and registry staff; and
- implementing recommendations from the third-party evaluation of the IRB's complaints process, as required.

Conclusion

Decision-making in refugee and immigration cases is recognized as one of the most difficult areas of adjudication, often involving complex questions of both law and fact, regularly requiring the investigation and assessment of sensitive matters of credibility, and often resulting in life-altering decisions. The inquisitorial nature of many of the proceedings, where members are actively involved in questioning claimants, imposes greater challenges on members than would otherwise be the case.

In 2020, 542 IRB members issued 44,482 decisions. Twelve (12) complaints were received regarding member conduct. This is equivalent to approximately one (1) complaint for every 3,707 decisions rendered, as compared to 2019 which was equivalent to one (1) complaint for every 3,295 decisions rendered. Although not all conduct of concern gives rise to complaints, these results underscore that the vast majority of IRB members across all four divisions regularly carry out their work with professionalism, consistent with the high standards of conduct established in the *Code of Conduct*.

Across federal tribunals, the IRB is a leader in implementing a member complaints process, recognizing it as fundamental to maintaining public confidence in the professionalism of IRB members. Going forward in 2021, the IRB will build on the measures already in place, ensuring that Board members are trained to meet the high standards of conduct expected of them.

Building on its current priorities and initiatives, in 2021 the IRB will continue to provide mandatory training for all refugee decision-makers on gender violence; leverage and monitor the implementation of the Gender-Related Task Force; and will continue to focus on reviewing, updating and implementing changes to Chairperson's guidelines. In addition, the Board will implement recommendations from the third-party evaluation of the IRB's complaints process, as required. Finally, the Office of the Ombudsperson will staff and implement its new organizational structure and will increase engagement with staff, members and stakeholders alike in order to raise awareness of matters within its mandate and continue to strengthen the complaints process.

Appendix A

Overview of the Office of the Ombudsperson (formerly the Office of Integrity)

In 2020, the IRB established the Office of the Ombudsperson (the Office), which assumed responsibility for the functions under the Office of Integrity, amongst other responsibilities.

As an overview, the primary functions of the Office regarding the complaints process are the following:

Manages the complaints process

The Office acknowledges receipt of a complaint, provides screening recommendations to the Chairperson (as to whether the allegations fall within the scope of the *Complaint Procedures*), communicates regularly with the parties to the complaint, conducts investigations and prepares final investigation reports for the Chairperson's consideration in reaching a decision on the complaint. In addition, the Office posts case summaries on the IRB's website and supports the production of this *Annual Report on Complaints*.

Supports potential complainants in navigating the process

The Office publishes information on the IRB website on the member complaints process, including a [complaint form](#)⁶, and access to the *Code of Conduct* and the *Complaint Procedures*.

Throughout the complaints process, the Office is available to respond to questions and provide procedural information to complainants and those considering filing a complaint.

Increases awareness of the Complaint Procedures and Code of Conduct amongst members

The Office raises awareness with members through new member training, where the *Code of Conduct* and *Complaint Procedures* are reviewed, and makes presentations to members during learning and professional development days. Governor-in-Council appointees who join the Refugee Appeal Division or the Immigration Appeal Division attend a joint presentation given by the Office of the Conflict of Interest and Ethics Commissioner, and the IRB Office of the Ombudsperson, at which time the latter outlines the requirements of the *Code of Conduct* and the *Complaint Procedures*.

Additionally, members who are the subject of a conduct complaint have access to the Office of the Ombudsperson in order to obtain procedural information to assist them in understanding the steps in the process. The Office ensures that all parties to a complaint are treated fairly.

Identifies improvements through monitoring of trends and any systemic issues related to member conduct

Fundamental to the complaints process is the centralized and consistent management of complaints received. This allows the Office to identify emerging trends in complaints, potential areas for additional improvements in member training, and procedural changes that might improve the overall complaints process.

Ensures that the complaints process is fair, transparent and accessible

When a complaint is filed about an IRB member, the Office is mindful of the need to respect the member's adjudicative independence by ensuring that complaints relate to conduct and not decision-making, and by ensuring that all parties are afforded procedural fairness as provided for in the *Complaint Procedures*.



Communication is important throughout the entire complaints process. The Office ensures that the complaints process is explained, as much as possible, in plain language; steps in the handling of a complaint are clearly laid out; parties are kept informed of progress throughout the process; and summaries of the facts and disposition of finalized complaints, as well as annual reports about the complaints process, are published and available on the IRB's website.

Appendix B

Case Summaries—Complaints Finalized in 2020

The case summaries below relate to complaints which were finalized in 2020. Complaints which were abandoned or withdrawn in 2020 are not included.

Identifying information has been removed in accordance with the requirements of the *Privacy Act*.

Case No. 19-007

The complainant appeared before the member as counsel for a refugee claimant at a Refugee Protection Division (RPD) hearing.

The refugee claim was based on gender-based violence. The claimant claimed her family was subjected to discrimination and aggressions by assailants, including attacks at their home.

The complaint alleged that the member did not treat the claimant with sensitivity, was biased, and did not afford the claimant procedural fairness.

Specifically, the complaint alleged that the member used an authoritative and angry tone, and exhibited an aggressive and intimidating attitude towards the claimant, having “made up her mind on the claim” from the outset. It was alleged that the member, from the beginning of the hearing, doubted the validity of documentary evidence filed by the claimant, questioned the authenticity of a medical report, and misread the content of a doctor’s letter thereby causing significant distress to the claimant. The complaint also alleged that the member, after asking the claimant why she had returned to the house where she had been assaulted, stated that she disbelieved the claimant and refused to accept the claimant’s explanation. Lastly, the complaint alleged that the member asked questions of the claimant after the latter had become emotionally upset.

The Office of Integrity forwarded the complaint to the Chairperson for a decision on whether the allegations were within the scope of the complaints process under paragraph 5.5 of the [Procedures for Making a Complaint About a Member](#)¹ (*Complaints Procedures*).

The Chairperson decided that the allegations related to bias and to a breach of natural justice and procedural fairness, fell outside the scope of the *Complaints Procedures* because they were not related to the conduct of the member. The Chairperson decided that the other allegations were related to the member’s conduct and within scope. He referred those allegations to the Director of the Office of Integrity (the Director) for investigation.

The member was invited to provide the Director with a response to the complaint and subsequently provided written comments. The Director listened to the audio recording of the proceeding and reviewed the parties’ submissions. The Director prepared a draft investigation report containing preliminary findings of fact and analysis, and provided both parties an opportunity to comment on the report. Both the member and the complainant provided written submissions. The Director then prepared a final investigation report.

In the investigation report, the Director concluded that there was no breach of the [Code of Conduct for Members of the IRB](#)² (*Code of Conduct*) for the following reasons:

- The allegations to the effect that the member began the hearing in a confrontational or aggressive fashion, or that she was angry or spoke in an authoritative tone, were unsubstantiated. The tone and approach of the member were neutral and professional.

- It was within the member's authority as a decision-maker to ask questions—even repeatedly—about the authenticity of documentary evidence. To the extent the member doubted the validity of reports filed by the claimant because the member was biased, the underlying basis of such an allegation would be adjudicative in nature and would not be about the member's conduct.
- As regards the allegation that the member misread the doctor's letter when she was reading it aloud at the hearing, causing the claimant to become upset, the member apologized to the claimant on several occasions, both during the hearing and in her reasons for decision. The member took ownership of this mistake and apologized for it in her submissions filed as part of the investigation. While the incident had negative repercussions on the claimant by causing her significant emotional distress, the error made by the member in this case was distinguishable from conduct constituting a breach of the *Code of Conduct*.
- It was reasonable for the member to ask the claimant difficult or delicate questions about the attack. The manner in which the questions were put to the claimant was not inappropriate, and there was no evidence to support the allegation that the member did not believe the claimant's explanation.
- Overall, the member demonstrated sensitivity, for example by advising the claimant in advance that she had difficult questions to ask, by reassuring the claimant, and by offering to take a break when the claimant became emotional. However, there were other instances where a more reassuring approach would have been warranted. The member's neutral tone and her direct approach to questioning could be interpreted at times as being insensitive. Further, on more than one occasion, the member repeatedly asked the same question to the claimant without providing clarification or additional detail, which could have contributed to the claimant's unease. In her submissions during the investigation, the member acknowledged these observations and indicated she would take this feedback into account and adjust her approach to questioning.
- The member's conduct was generally in keeping with the expectations set out in the *Code of Conduct*, informed by the [Chairperson's Guideline 4—Women Refugee Claimants Fearing Gender-Related Persecution](#)¹⁰. However, the member would benefit from being more aware of how certain questions or an inquisitorial approach might have a negative impact on a claimant, and she should adjust her questioning accordingly.

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

Both parties were informed about the resolution of the complaint through decision letters from the Chairperson. The Chairperson stated that he was satisfied the member had not only taken note of the suggestions contained in the report, but that the member would take them into account in the context of future hearings.

The complaint was dismissed, and the file was closed.

Case No. 19-008

The complainant appeared before the member as counsel for a refugee claimant at a Refugee Protection Division (RPD) hearing.

The refugee claim was based on gender-based violence, namely physical and sexual abuse at the hands of a former partner.

The complaint alleged that three questions posed by the member were inappropriate, displayed a fundamental misunderstanding of the nature of domestic violence, and displayed a lack of sensitivity towards claimants who have experienced gender-based violence contrary to [Chairperson's Guideline 4—](#)

[Women Refugee Claimants Fearing Gender-Related Persecution](#)¹⁰. Specifically, the complainant submitted that it was inappropriate for the member to ask the claimant, “So, are you sure you were raped?”, “Do you know who the father is?” and for the member to ask why the claimant had been in counselling for so long and had been seeing so many counsellors.

The Office of Integrity forwarded the complaint to the Chairperson for a decision on whether the allegations were within the scope of the complaints process under paragraph 5.5 of the [Procedures for Making a Complaint About a Member](#)¹ (*Complaints Procedures*).

The Chairperson decided that the allegations were within scope and referred the complaint to the Director of the Office of Integrity (the Director) for investigation.

The member was invited to provide the Director with a response to the complaint and she subsequently provided written comments. The Director listened to the audio recording of the proceeding and reviewed the parties’ submissions. The Director prepared a draft investigation report containing preliminary findings of fact and analysis, and provided both parties an opportunity to comment on the report. The complainant confirmed that they did not have any comments on the draft report; the member provided written submissions. The Director then prepared a final investigation report.

In the investigation report, the Director concluded that there was a breach of the [Code of Conduct for Members of the IRB](#)² (*Code of Conduct*) for the following reasons:

- Guideline 4 explains the need for particular sensitivity to the circumstances and experiences of female claimants who fear gender-related persecution. Members are expected to treat claimants who are the victims of gender-related persecution with an appropriate level of sensitivity based on the *Code of Conduct*, as informed by Guideline 4. This sensitivity must be observed throughout the proceeding.
- While the member’s goal was to assess credibility by probing inconsistencies between the claimant’s narrative, the documentary evidence, and the claimant’s testimony, the member posed the questions at issue without outlining the inconsistencies she wished to resolve and without providing the claimant with any context. Even if one accepts that the questions needed to be asked, the questions as posed were blunt and insensitive. Further, the third question could have been interpreted as undermining or making light of the claimant’s trauma.
- The member could have approached all three lines of questioning with greater regard for sensitivity and the claimant’s dignity. The questions could have been framed and asked in a more respectful and sensitive manner.
- Taken as a whole, the three impugned questions, together with the member’s submissions during the investigation, would tend to indicate a certain level of misunderstanding on the member’s part as to how members should demonstrate sensitivity under the *Code of Conduct* towards a claimant who has been the subject of gender-based violence.

The investigation report was provided to the Chairperson. He was satisfied that the investigation was thorough and fair. The Chairperson accepted the conclusions in the report and found that there was a breach of the *Code of Conduct*.

Both parties were informed about the resolution of the complaint through decision letters from the Chairperson.

The Chairperson requested, in his letter to the member, that the member reflect on the report’s findings and how they could inform adjustments to the member’s approach to questioning claimants making gender-based claims. The Chairperson stated that while he appreciated and was mindful of the difficult nature of the member’s job, the questions should have been framed in a more sensitive manner in the circumstances.

The Deputy Chairperson of the RPD and the appropriate Assistant Deputy Chairpersons were informed of the results of the investigation for follow-up action as applicable. Shortly thereafter, the member's employment with the IRB came to an end. As the member was no longer an IRB employee, remedial or disciplinary actions were not warranted under the circumstances.

The complaint was founded, and the file was closed.

Case No. 19-011

The complainant appeared before the member as counsel for a refugee claimant at a Refugee Protection Division (RPD) hearing. The member in question is no longer an employee of the IRB.

The refugee claim was based on gender-based violence, namely violence suffered at the hands of the claimant's former partner.

The complaint alleged bias on the part of the member because of questions posed to an observer who was a person of colour, prior to the start of the hearing. It was also alleged that the member made a comment that reflected a lack of understanding and knowledge about diversity of African cultures. It was further alleged that the member told counsel to control the claimant's emotional behaviour, and in doing so, failed to consider the challenges and difficulties that women who have experienced gender-based violence may experience during a hearing.

The Office of Integrity forwarded the complaint to the Chairperson for a decision on whether some of the allegations were outside the scope of the complaints process under paragraph 5.5 of the [Procedures for Making a Complaint About a Member](#)¹ (*Complaints Procedures*).

The Chairperson decided that the allegations were within the scope and referred the complaint to the Director of the Office of Integrity (the Director) for investigation.

The member was invited to provide the Director with a response to the complaint and subsequently provided written comments. The Director listened to the audio recording of the proceeding and reviewed the parties' submissions. The Director prepared a draft investigation report containing preliminary findings of fact and analysis, and provided both parties an opportunity to comment on it. Written submissions were received from the complainant. The Director then prepared a final investigation report.

In the investigation report, the Director concluded that there was no breach of the [Code of Conduct for Members of the IRB](#)² (*Code of Conduct*) for the following reasons:

- The former member's comments during the hearing about familiarity with African culture were not inappropriate. They were made with the goal of calming the claimant, empathizing with her, and building trust.
- While members have a responsibility to ascertain the identity of hearing observers, if a member were to ask only a racialized hearing observer whether they are a refugee (and not ask the question to a Caucasian hearing observer), such a comment would be inappropriate and could be perceived as disrespectful or discriminatory. Here, the alleged question was not on the record and based on the evidence that the complainant provided, it could not be objectively confirmed that the comment was made. It was confirmed on the record that when the hearing began, the member asked about the identification of both observers and the nature of their presence.
- As regards the allegation that the member failed to consider the challenges and difficulties that the claimant experienced during the hearing, the member's alleged comments that counsel should "control" her client's behaviour and should not "encourage" her client's behaviour by requesting breaks are not captured by the audio recording or transcript. Based on the evidence provided by the complainant, it could not be confirmed that the alleged comments were made.

- Although the member could have been more sensitive to the claimant's need for breaks during the hearing by according breaks more frequently or willingly, the member's management of the hearing did not lack sensitivity. The member was sensitive to the trauma experienced by the claimant and to the difficulties faced by the claimant in the hearing room. When the claimant became emotional, the member reassured her in a gentle tone, tried to put her at ease, and informed her in simple language that she could request a break if she felt one was needed.

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

Both parties were informed about the resolution of the complaint through decision letters from the Chairperson.

The complaint was dismissed and the file was closed.

Case No. 19-015

The complainant appeared before the member as counsel for a refugee claimant at a Refugee Protection Division (RPD) hearing. A colleague of the complainant later took carriage of the file after the complainant left the law firm, and was considered to be the complainant for the purpose of the complaint process.

The refugee claim was based on gender-based violence, and the claimant had been identified by the RPD as a "vulnerable person" under the IRB's [Chairperson's Guideline 8: Procedures With Respect to Vulnerable Persons Appearing Before the IRB](#)¹¹.

The allegations related to the member's behaviour and tone, as well as statements made during the hearing. The complaint alleged that during questioning, the member insisted on placing before the claimant three photos of herself showing visible injuries. It was also alleged that the member made comments and used expressions which were disrespectful, and which relied on myths and stereotypes about victims of violence.

The Office of Integrity forwarded the complaint to the Chairperson for a decision on whether the allegations were within the scope of the complaints process under paragraph 5.5 of the [Procedures for Making a Complaint About a Member](#)¹ (*Complaints Procedures*).

The Chairperson decided that the allegations were within scope and referred the complaint to the Director of the Office of Integrity for investigation. The Chairperson subsequently referred the complaint to an external investigator in order to facilitate a timelier resolution to the complaint.

The external investigator was a labour arbitrator, mediator and workplace investigator. She was formerly Vice-chair with the Human Rights Tribunal of Ontario.

Both parties were given the opportunity to discuss the matter with the investigator by telephone, to file written submissions and supplementary documentation, and to file replies to the submissions of the other party. The investigator reviewed the audio recording of the proceedings. A draft investigation report was prepared, and the parties were provided with an opportunity to comment on it. The member confirmed that he did not have any comments on the draft report; written submissions were received from the complainant. The investigator then prepared a final investigation report.

In the report, the investigator concluded that there was no breach of the [Code of Conduct for Members of the IRB²](#) (*Code of Conduct*) for the following reasons:

- During the hearing, the member’s demeanour was professional and courteous. While he at times asked pointed questions or expressed skepticism about some of the claimant’s responses, the member did so without being disrespectful or impolite.
- The claimant had been identified as a vulnerable person, and it befell the member to show great sensitivity towards her and her circumstances as a victim of sexual abuse, and to avoid retraumatizing her. However, this did not prevent the member from asking sensitive questions for the purpose of testing credibility.
- It was reasonably necessary for the member to place the photographs before the claimant in the circumstances because they raised important questions regarding credibility, which the member had a duty to evaluate. It was difficult to see how the claimant could have responded to some of the questions without seeing the photos. Showing photos of this nature to a vulnerable witness should be avoided unless it is reasonably necessary to accomplish a member’s decision-making functions. The member struck the right balance between fulfilling his adjudicative responsibilities and taking care not to traumatize the claimant.
- As regards the allegation that some of the member’s comments relied on myths and stereotypes and demonstrated a lack of understanding of the dynamics surrounding gender-based violence, the comments and questions identified in the complaint were generally not inappropriate. In examining whether the questions posed breached the *Code of Conduct*, it is important to keep in mind the inquisitorial nature of a member’s role. Though some of the questions posed were rather probing, they were relevant to the matters at issue, and were not disrespectful or impolite.
- The member ought not to have stated that the claimant “made” five children (“faire des enfants”, in French), as such an expression has a negative connotation, contributes to the objectification of women—especially vulnerable female claimants—and is not the most respectful way of saying that the claimant had five children. The member used the expression only once, after it had been used several times by the interpreter. A single use of the expression in the particular context of the hearing did not amount to a breach of the *Code of Conduct*. However, the member should be advised not to use this expression in the future.

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

Both parties were informed about the resolution of the complaint through decision letters from the Chairperson. The member was reminded not to use the impugned expression in the future.

The complaint was dismissed, and the file was closed.

Case No. 19-016

The complainant appeared as counsel for a refugee claimant at a Refugee Protection Division (RPD) hearing.

The complaint alleged that the member was impatient and disrespectful. The member was alleged to have made harassing and exaggerated remarks at the start of the hearing regarding the evidence on file, which created a tense and negative atmosphere, intimidated the claimant, deprived the claimant of a fair hearing, and impugned the complainant’s competence. The complaint also alleged that the member used sarcasm towards the claimant, and made disrespectful comments about the quality of the complainant’s work.

The Office of Integrity forwarded the complaint to the Chairperson for a decision on whether the allegations were within the scope of the complaints process under paragraph 5.5 of the [Procedures for Making a Complaint About a Member](#)¹ (*Complaints Procedures*). The Chairperson decided that the allegations were within scope and referred them to the Director of the Office of Integrity (the Director) for investigation.

The member was invited to provide the Director with a response to the complaint and subsequently provided written comments. The Director listened to the audio recording of the proceeding and reviewed the parties' submissions. The Director prepared a draft investigation report containing preliminary findings of fact and analysis, and provided both parties an opportunity to comment on it. Both parties filed written comments. The Director then prepared a final investigation report.

In the investigation report, the Director concluded that there was a breach of the [Code of Conduct for Members of the IRB](#)² (*Code of Conduct*) for the following reasons:

- The member admitted to using sarcasm. While not ideal, the sarcastic language was only used once, briefly, while the member was posing pointed questions to the claimant. This single use of sarcasm did not amount to a breach of the *Code of Conduct*.
- As regards the allegations that the member made disrespectful remarks about the complainant's style of working and her work on the file, the member acknowledged being frustrated and telling the complainant in a direct and firm manner that she found her work to be unacceptable and to the detriment of the client. The member admitted to losing patience with the complainant. The language used by the member to impugn the work of the complainant ("mal foutu", in French) was colloquial and pejorative, and has no place in the hearing room. The member's comment to the effect that the complainant should spend less time taking notes and should instead take care of her client was insulting.
- The member raised her voice at a few instances during the hearing.
- Though the member was frustrated, she could have transmitted the same message in a firm but respectful manner. There are objective and neutral ways for a member to inform counsel that they have failed to do something, that counsel's conduct in the hearing room has not met the member's expectations, or that counsel's work falls short of the member's expectations.
- During the investigation, the member maintained that her conduct was justified. Regardless, the degree of frustration and the manner in which she expressed her impatience, were not appropriate. Members must maintain a certain level of conduct in the hearing room.
- Overall, the member did not conduct herself at certain times during the hearing with sufficient professionalism, courtesy, politeness, and respect.

The investigation report was provided to the Chairperson. He was satisfied that the investigation was thorough and fair. The Chairperson accepted the conclusions in the report and found that there was a breach of the *Code of Conduct*.

Both parties were informed about the resolution of the complaint through decision letters from the Chairperson.

In his letter to the member, the Chairperson requested that the member reflect on the report's findings and how they could serve as a lesson as to the conduct expected of members. The member was reminded of the importance of not raising one's voice in the hearing room—even when frustrated, that the use of a patient tone of voice is always preferable, and that the pejorative French expression "mal foutu" should not be used in the future.

The Chairperson discussed the matter with the member and confirmed his expectations of conduct going forward. The member acknowledged her mistakes and undertook not to repeat them and to conduct herself in a manner consistent with the *Code of Conduct* going forward. On this basis, the Chairperson was satisfied that there was no need for any further follow-up action.

The complaint was founded, and the file was closed.

Case No. 19-017

The complainant acted as Minister's counsel on an application to the Refugee Protection Division (RPD) for vacation of the refugee status of a person who was in detention.

The complaint alleged that the choice of language and tone in the member's correspondence was inflammatory and hostile. More specifically, the complaint alleged that:

- In a letter dated June 5, 2019, the member "insult[ed] the quality of an exhibit referring to it as 'so-called' statutory declaration";
- The member also "insulted [the complainant's] identification of two exhibits"; and
- The member's letter dated June 19, 2019, was intended to bully the complainant into adhering to the member's demands or the vacation application would be denied. The intention was to intimidate the complainant into withdrawing the vacation application. The letter was also a threat that the person concerned would remain in detention indefinitely.

The Office of Integrity forwarded the complaint to the Chairperson for a decision on whether some of the allegations were outside the scope of the complaints process under paragraph 5.5 of the [Procedures for Making a Complaint About a Member](#)¹ (*Complaints Procedures*).

The Chairperson decided that the allegations were within the scope of the complaints process and referred the complaint to the Director of the Office of Integrity (the Director) for investigation.

The member was invited to provide the Director with a response to the complaint and subsequently provided written comments. A draft investigation report with preliminary findings of fact and analysis was prepared and the parties were provided with an opportunity to comment on it in writing and to contact the Director to discuss any aspect of the complaint or the draft investigation report. The member confirmed that he did not have any comments on the draft report, while the complainant filed submissions.

The complainant's submissions contained new allegations, as follows:

- the member failed to carry out his legislative duty to deal with the Minister's application for an expedited hearing with a sense of urgency considering that the person concerned was in detention; and
- the member requested extraneous documents, insisted on a change in document format and required consent from the person concerned to be removed to his country of origin.

The member made submissions in response to the complainant's submissions. The investigation report was finalized after consideration of all submissions.

In the investigation report, the Director concluded that there was no breach of the [Code of Conduct for Members of the IRB](#)² (*Code of Conduct*) for the following reasons:

- The use of the term "so-called statutory declaration" in the member's letter was not insulting. The dictionary definition of "so-called" explains that the term is "used to show that you think a word that is used is not suitable or correct". The term expressed the member's opinion that the statutory declaration was deficient for reasons which the member had pointed out to the complainant in prior correspondence.

- As regards the other exhibits, the member merely stated in his letter that the exhibits lacked an index and were not identified. The member's comments about the exhibits were not insulting; and
- The member had serious concerns which he pointed out to Minister's counsel. However, the member's letter did not contain bullying, intimidating or threatening language.

The Director stated in the investigation report that the member's letter was direct and it reflected the member's frustration. The member perceived that the complainant had resisted the member's previous directions and he expressed his frustration with the situation.

The Director did not make findings of fact in the investigation report with respect to the new allegations which were raised by the complainant during the investigation. The Director concluded in the investigation report that these allegations fell within the member's decision-making role and outside the scope of the complaints process which applies only to member conduct. The Director stated in the investigation report that he has no jurisdiction with respect to how the member exercised his adjudicative discretion in his capacity as an independent decision-maker. The proper remedy to address concerns about the exercise of a member's adjudicative discretion is through the appeals process or judicial review. This approach is based in the legal requirement that adjudicative independence must not be "fettered" by outside influence.

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

Both parties were informed about the resolution of the complaint through decision letters from the Chairperson.

In the letter to the member, the Chairperson encouraged the member to keep in mind the importance of ensuring that his communications reflect a tactful approach at all times.

The complaint was dismissed, and the file was closed.

Case No. 19–020

The complainant appeared before the member as an interpreter who provided interpretation services at a Refugee Protection Division (RPD) hearing.

The hearing was conducted in French. The complainant interpreted from French to English for the claimant's English-speaking counsel; the member was bilingual.

The complaint alleged that the member's tone of voice and body language during the hearing was unacceptable. The member allegedly rudely interrupted the complainant while she was interpreting, and at one point told her: "If you do not know how to say 'basic claimant form' [sic], then you do not need to be here." The complainant submitted that she was intimidated by the member's behaviour, and felt the member bullied and belittled her. The complaint also alleged that the member told the claimant in an unacceptable tone, that the claimant should have requested an interpreter in her first language because she did not understand French.

The Office of Integrity forwarded the complaint to the Chairperson for a decision on whether the allegations were within the scope of the complaints process under paragraph 5.5 of the [Procedures for Making a Complaint About a Member](#)¹ (*Complaints Procedures*).

The Chairperson decided that the allegations were within scope and referred the complaint to the Director of the Office of Integrity (the Director) for investigation.

The member was invited to provide the Director with a response to the complaint and subsequently provided written comments. The Director listened to the audio recording of the proceeding and reviewed the parties' submissions. The Director prepared a draft investigation report containing preliminary findings

of fact and analysis, and provided both parties an opportunity to comment on the report. The member confirmed that he did not have any comments on the draft report; the complainant provided written submissions. The Director then prepared a final investigation report.

In the investigation report, the Director concluded that there was no breach of the [Code of Conduct for Members of the IRB](#)² (*Code of Conduct*) for the following reasons:

- There were substantive deficiencies in interpretation (including with respect to terms that are fundamental to refugee hearings at the IRB). Interpreters are paid to provide an expert level of interpretation services. Members must ensure that proceedings are fair, orderly, and efficient. Problems with interpretation may lead to a member's decision being overturned, or can lead to a hearing having to be rescheduled and heard again. The errors or lack of accuracy in interpretation were liable to result in confusion or a lack of procedural fairness.
- As regards the allegation that the member rudely interrupted the complainant, the member exercised diligence when he intervened to provide the exact English terminology and to correct errors in the interpretation in order to ensure—for reasons of fairness and the integrity of the hearing—that what was being said was clear to the listener (i.e., claimant's counsel). The member appears to have been frustrated with the situation, and was direct and at times curt when speaking to the complainant. However, the member was not trying to belittle or humiliate the complainant. Neither his choice of words nor his tone could be characterized as berating or frightening. His comments were not inappropriate in the circumstances.
- The member did not act disrespectfully or use an unacceptable tone when he adjourned the hearing. The member exercised diligence when he asked the claimant whether she would prefer an interpreter in her first language, explained to the claimant and her counsel that he had concerns about the claimant's comprehension of French, and adjourned the hearing in light of the claimant's difficulties in understanding his questions. His tone of voice was calm, and no malicious or rude undertone was detected.
- On balance, the member's conduct was not disrespectful or inappropriate.

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

Both parties were informed about the resolution of the complaint through decision letters from the Chairperson.

The complaint was dismissed, and the file was closed.

Case No. 19–021

The complainant appeared before the member as counsel for a refugee claimant at a Refugee Protection Division (RPD) hearing. The member in question is no longer an employee of the IRB.

The hearing involved a refugee claimant who claimed to be the victim of domestic violence at the hands of her former partner.

The complaint alleged that the member's conduct was inappropriate and characterized the atmosphere in the hearing room as akin to a police interrogation. Specifically, the complaint alleged that the member was aggressive and used an intimidating tone, and that the member's comments and questions passed judgment on the refugee claimant—particularly as regards her private life. The complaint also made various ancillary allegations about the way the member conducted the hearing.

The Office of Integrity forwarded the complaint to the Chairperson for a decision on whether the allegations were within the scope of the complaints process under paragraph 5.5 of the [Procedures for Making a Complaint About a Member](#)¹ (*Complaints Procedures*). The Chairperson decided that the allegations were within scope and referred the complaint to an external investigator in order to facilitate a timelier resolution to the complaint.

The external investigator was a labour arbitrator, mediator and workplace investigator. She was formerly Vice-chair with the Human Rights Tribunal of Ontario.

Both parties were given the opportunity to discuss the matter with the investigator by telephone, to file written submissions and supplementary documentation, and to file replies to the submissions of the other party. The investigator reviewed the audio recording of the proceedings. A draft investigation report was prepared, and the parties were provided with an opportunity to comment on it. Neither party commented on the draft report. The investigator then prepared a final investigation report.

In the report, the investigator concluded that there was a breach of the [Code of Conduct for Members of the IRB](#)² (*Code of Conduct*). The investigator made the following findings:

- The Chairperson's Directives are an important interpretive tool to help understand what standards of conduct are appropriate in a given circumstance. For instance, in interpreting the obligations under the *Code of Conduct*, it is relevant that the Chairperson's Guideline 4 calls for sensitivity to Battered Woman Syndrome and to the circumstances of women who are victims of sexual violence.
- The member's conduct during the hearing was troubling. While a certain degree of flexibility is needed in order for members to exercise their decision-making function, the conduct of the member in this case was inappropriate, even unbecoming, for a person responsible for determining refugee claims.
- The member was at times abrupt towards the claimant, posing questions in an interrogative style without permitting the claimant to fully respond. Some of the member's questions and comments lacked sensitivity towards the claimant, seemed flippant, and suggested a lack of respect for the claimant, her life circumstances, and the fact that she was a victim of sexual violence.
- Some of the member's comments were based on—and seemed to perpetuate and reinforce—myths and stereotypes regarding women victims of sexual violence. They demonstrated a fundamental misunderstanding of the dynamic surrounding Battered Woman Syndrome. Some comments implied that the claimant was partly responsible for the violence she had suffered, or that she was less credible because she had taken certain decisions or had not taken certain measures to counter or stop the abuse. In doing so, the comments caused or contributed to the refugee claimant's trauma.
- As regards the ancillary allegations about the conduct of the hearing, members are responsible to ensure an orderly hearing. To this end, a member can require that a witness respond to a relevant question, can identify problems associated with a document, and can give the parties directions concerning documents. A member can also insist that a witness who requested interpretation services respond to a question in their mother tongue. The member's conduct in this regard did not lack respect or courtesy.

The investigation report was provided to the Chairperson. He was satisfied that the investigation was thorough and fair. The Chairperson accepted the conclusions in the report and found that there was a breach of the *Code of Conduct*.

Both parties were informed about the resolution of the complaint through decision letters from the Chairperson.

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

The complaint was founded, and the file was closed.

Case No. 19–022

The complainant appeared before the member as counsel for a refugee claimant at a Refugee Protection Division (RPD) hearing. The member in question is no longer an employee of the IRB.

The complaint alleged that the member interrupted the complainant and did not allow a break; did not listen to the refugee claimant; was condescending towards the claimant; responded to his own questions without letting the claimant answer; and confused the facts as a diversion tactic to tire out the claimant.

The Office of Integrity forwarded the complaint to the Chairperson for a decision on whether the allegations were within the scope of the complaints process under paragraph 5.5 of the [Procedures for Making a Complaint About a Member](#)¹ (*Complaints Procedures*). The Chairperson decided that the allegations were within scope and referred the complaint to an external investigator in order to facilitate a timelier resolution to the complaint.

The external investigator was a labour arbitrator, mediator and workplace investigator. She was formerly Vice-chair with the Human Rights Tribunal of Ontario.

Both parties were given the opportunity to discuss the matter with the investigator by telephone, to file written submissions and supplementary documentation, and to file replies to the submissions of the other party. The investigator reviewed the audio recording of the proceedings. A draft investigation report was prepared, and the parties were provided with an opportunity to comment on it. The former member did not provide any comments on the draft report; the complainant filed written comments. The investigator then prepared a final investigation report.

In the report, the investigator concluded that there was no breach of the [Code of Conduct for Members of the IRB](#)² (*Code of Conduct*) for the following reasons:

- Generally, the member behaved appropriately throughout the hearing.
- During questioning, the member did not lack courtesy or respect towards the refugee claimant. Given their adjudicative functions and inquisitorial role, members must have a certain flexibility—within limits—regarding the types of questions they ask and the way they ask them. A refugee determination hearing is a stressful experience. However, the member’s conduct did not unduly contribute to the stress or fatigue that the claimant may have felt.
- It was troubling that the member refused to grant a break which the complainant said she needed for health reasons. It was also troubling that the member indicated he would continue questioning the refugee claimant in the absence of the complainant, as this would have impacted the complainant’s ability to participate in the hearing and represent her client. A member’s role involves ensuring the orderly conduct of hearings, and the complainant’s conduct in this case impacted the member’s actions in managing the hearing. This incident occurred after an animated discussion between the member and the complainant, where the latter raised her voice to the point of yelling and accused the member of bias. At other times during the hearing, the member had offered to take breaks and accorded breaks when requested. The member’s refusal to accord the break did not, in itself, amount to misconduct.
- There was no evidence to support the allegations that the member confused the facts, interrupted the claimant, did not listen to the claimant, and humiliated or treated the claimant in a condescending manner. In particular:
 - It was not inappropriate for the member to intervene when the claimant was emotional and having difficulty answering a question, in order to summarize his understanding of the claimant’s answer. The member’s tone was professional and courteous.
 - The complainant interrupted the member, made disparaging remarks concerning the member, and failed to listen to the member’s directions. The member intervened to manage the hearing and call the complainant to order.

- A failure to listen, if supported by the facts, could possibly be the subject of a complaint. Here, the audio recording demonstrates that the member listened to the claimant's responses. The way in which a member assesses the evidence, including a claimant's responses, relates to the exercise of the member's decision-making powers and is not within the scope of the complaint process.
- It was entirely within the member's rights to ask questions to the claimant so that he could assess the refugee claim. The member did not raise his voice or ask any question that could be considered humiliating or condescending.

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

Both parties were informed about the resolution of the complaint through decision letters from the Chairperson.

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

The complaint was dismissed, and the file was closed.

Case No. 19-023

The complainant appeared before the member as counsel for a refugee claimant at a Refugee Protection Division (RPD) hearing. The member in question is no longer an employee of the IRB.

The hearing involved a refugee claimant who claimed to be the victim of domestic violence at the hands of her former partner.

The complaint alleged that the member demonstrated a lack of understanding of the phenomenon of domestic violence and of the claimant's socio-cultural context, and that his questions and comments were based on myths and stereotypes. The complaint also alleged that the member created confusion that had the effect of destabilizing the claimant. Lastly, the complaint alleged that the member was disrespectful towards the complainant, accusing her of having coached the claimant and put words in the claimant's mouth.

The Office of Integrity forwarded the complaint to the Chairperson for a decision on whether the allegations were within the scope of the complaints process under paragraph 5.5 of the [Procedures for Making a Complaint About a Member](#)¹ (*Complaints Procedures*). The Chairperson decided that the allegations were within scope and referred the complaint to an external investigator in order to facilitate a timelier resolution to the complaint.

The external investigator was a labour arbitrator, mediator and workplace investigator. She was formerly Vice-chair with the Human Rights Tribunal of Ontario.

Both parties were given the opportunity to discuss the matter with the investigator by telephone, to file written submissions and supplementary documentation, and to file replies to the submissions of the other party. The investigator reviewed the audio recording of the proceedings. A draft investigation report was prepared, and the parties were provided with an opportunity to comment on it. Neither party commented on the draft report. The investigator then prepared a final investigation report.

In the report, the investigator concluded that there was a breach of the [Code of Conduct for Members of the IRB²](#) (*Code of Conduct*). The investigator made the following findings:

- The member reformulated certain questions, and at times, seemed not to understand or accept the answers provided by the claimant. While the confusion regarding some of the member's questions and the claimant's responses was regrettable, members are not held to a standard of perfection. There is no indication that the member deliberately created moments of confusion to unsettle the claimant.
- Although the member expressed skepticism regarding some of the responses about the circumstances of divorced women in the claimant's country of origin and the claimant's circumstances if she were to return there, the member was not disrespectful or rude. It is the member's role to question a claimant to determine whether they fulfill the criteria for asylum. Moreover, the way in which a member assesses the evidence, including a claimant's sociocultural factors, relates to the member's decision-making function and is not within the scope of the complaints process.
- The member was disrespectful towards the complainant when he accused her, without valid reason, of having coached her client (the refugee claimant). There is a distinction between preparing a client (which is expected) and coaching a client—which refers to influencing the content of testimony and is an unacceptable practice. While a member must take reasonable measures to ensure the integrity of the evidence, they must not make such accusations frivolously. In this case, there is nothing to suggest that the complainant acted inappropriately.
- The Chairperson's Directives are an important interpretive tool to help understand what standards of conduct are appropriate in a given circumstance. For instance, in interpreting the obligations under the *Code of Conduct*, it is relevant that the Chairperson's Guideline 4 calls for sensitivity to the particular circumstances of women who are victims of sexual violence. Some of the member's questions and comments were based on—and seemed to perpetuate and reinforce—myths and stereotypes regarding women victims of sexual violence. They demonstrated a fundamental misunderstanding of the dynamics surrounding domestic violence and Battered Woman Syndrome. Some comments implied that the claimant was partly responsible for the violence she had suffered, or that she was less credible because she had not taken certain measures to end the abusive relationship.

The investigation report was provided to the Chairperson. He was satisfied that the investigation was thorough and fair. The Chairperson accepted the conclusions in the report and found that there was a breach of the *Code of Conduct*.

Both parties were informed about the resolution of the complaint through decision letters from the Chairperson.

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

The complaint was founded, and the file was closed.

Case No. 20-001

The complainant appeared before the member as counsel for a refugee claimant at a Refugee Protection Division (RPD) hearing. The member in question is no longer an employee of the IRB.

The complaint alleged that the member created a stressful climate in the hearing room during the two sittings in question. More specifically, the complaint alleged that the member made inappropriate comments, was argumentative, interrupted the claimant while canvassing the claimant for answers, and prohibited the complainant from intervening in the hearing until it was her turn to make submissions or ask questions.

The Office of Integrity forwarded the complaint to the Chairperson for a decision on whether the allegations were within the scope of the complaints process under paragraph 5.5 of the [Procedures for Making a Complaint About a Member](#)¹ (*Complaints Procedures*). The Chairperson decided that the allegations were within scope and referred the complaint to an external investigator in order to facilitate a timelier resolution to the complaint.

The external investigator was a labour arbitrator, mediator and workplace investigator. She was formerly Vice-chair with the Human Rights Tribunal of Ontario.

Both parties were given the opportunity to discuss the matter with the investigator by telephone, to file written submissions and supplementary documentation, and to file replies to the submissions of the other party. The investigator reviewed the audio recording of the proceedings. A draft investigation report was prepared, and the parties were provided with an opportunity to comment on it. Neither party commented on the draft report. The investigator then prepared a final investigation report.

In the report, the investigator concluded that there was a breach of the [Code of Conduct for Members of the IRB](#)² (*Code of Conduct*). The investigator made the following findings:

- The member's conduct during the hearing was troubling—even unbecoming—for someone responsible for determining refugee claims.
- Even when keeping in mind the inquisitorial nature of a member's role, including the fact that a member requires some flexibility to fulfill their decision-making duty, some aspects of this member's conduct were troubling. The member lacked courtesy and respect towards the complainant and the claimant, addressing them in an aggressive tone, and making condescending and disrespectful comments. The member also fell short of his obligation to ensure the hearing was fair, orderly, and efficient. His conduct was an unnecessary burden on the process and made it unduly stressful for the people concerned.
- On several occasions, the member asked long questions which were difficult to understand. It is not surprising that the complainant intervened to ask for clarifications, to correct what she believed to be distortions of the facts by the member, and to ensure that her client had understood those complex questions prior to answering. The fact that the complainant intervened in the middle of a question seems to have been a great source of frustration for the member. His tone was quite aggressive. It is alarming that the member ignored or reprimanded the complainant for making these interventions that were closely linked to her role as representative; its effect was to limit or discourage the complainant from intervening and representing her client. There is nothing to justify the member's tone or condescending approach towards the complainant.
- The member interrupted the claimant, without giving her the opportunity to fully answer some of his questions. Interpretation adds a level of complexity to communication during a hearing. However, in one instance, it was relatively clear that the claimant's response did not fully answer the member's question and the member could reasonably have expected the claimant to add information. The member should have given the claimant the opportunity to do so. After it was brought to the member's attention that the claimant's answer was incomplete, the member reacted by placing responsibility for the situation on others and failed to give the claimant a real opportunity to finish her answer.

The investigation report was provided to the Chairperson. He was satisfied that the investigation was thorough and fair. The Chairperson accepted the conclusions in the report and found that there was a breach of the *Code of Conduct*.

Both parties were informed about the resolution of the complaint through decision letters from the Chairperson.

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

The complaint was founded, and the file was closed.

Case No. 20-004

The complainant appeared before the member as counsel for a refugee claimant at a Refugee Protection Division (RPD) hearing.

The complaint alleged that the member's analysis in her decision was selective, and that the member treated falsehoods as facts, drew negative inferences from misinformation, and manipulated testimony and evidence. The complaint further alleged that the member was not competent to perform a fair and impartial analysis, and that there was no due process because of the member's selective and late disclosure of evidence. The complainant submitted that, in light of statements made during the hearing, the member should not be hearing refugee cases.

The Office of Integrity forwarded the complaint to the Chairperson for a decision on whether some of the allegations were outside the scope of the complaints process under paragraph 5.5 of the [Procedures for Making a Complaint About a Member](#)¹ (*Complaints Procedures*).

Both parties were informed about the resolution of the complaint. In his decision letter, the Chairperson explained that the complaint process is not meant to address a member's decision or related adjudicative matters.

The Chairperson concluded that most of the allegations in the complaint were clearly about the member's decision, the exercise of adjudicative discretion, the member's reasons for decision, and professional competency. Thus, those allegations fell outside the scope of the *Complaints Procedures*.

While the complaint referred to statements allegedly made by the member, it did not provide any details regarding the statements. The Office of Integrity afforded the complainant an opportunity to provide such details. The complainant's submissions in that regard reiterated the allegations originally set out in the complaint. The submissions listed many examples of the ways in which the complainant believed the member distorted the facts of the refugee claim, demonstrated professional incompetence, failed to comply with procedural fairness, made judgments based on incorrect assessments of the merits of the case, and failed to assess evidence. It included an allegation that the member's conduct, competence, and demeanour during and after the hearing did not comply with the [Code of Conduct for Members of the IRB](#)² (*Code of Conduct*). No specific details were provided with respect to the member's conduct.

The Chairperson therefore concluded that no statements, conduct or demeanour could be identified, in either the complaint or complainant's submissions, which could form the basis of a complaint relating to member conduct.

The complaint was dismissed under paragraph 5.5(a) of the *Complaints Procedures* because the allegations were not within the scope of the *Complaints Procedures*.

The file was closed.

Note — In this case, the complainant alleged that the member failed to properly consider the evidence, was not competent to conduct an impartial analysis, and did not afford the claimant due process. These types of allegations relate to the member's decision and the exercise of the member's discretion, and are not accepted for investigation. The proper remedy to address such allegations is through the appeals process or judicial review at the Federal Court, as the case may be. This approach is based in the legal requirement that members' adjudicative independence cannot be fettered.

Case No. 20-005

The complaint related to four RPD decisions which were issued by the member between 2014 and 2018.

The complaint was filed on March 20, 2020. The complainant acted as counsel for three of the four claimants in the claims mentioned above.

The complainant alleged in the complaint that the member's decisions on credibility had been repeatedly found by the RAD and the Federal Court to be unreasonable. More specifically, it was alleged that:

- The RAD and Federal Court decisions related to the four claims show an ongoing pattern of unreasonable and unfair findings that a refugee claimant is not credible. The member's credibility findings were impugned in each of these decisions;
- The member has not adjusted her credibility assessment techniques in any way and this is unfair to all the refugee claimants who appear before her;
- The member improperly "treated each of the claimants as being a liar". Many claimants are vulnerable and traumatized and it is one thing to be refused for state protection or internal flight alternative or a lack of serious risk of persecution. It is another thing entirely to be told they are a liar, where they are not. This is re-traumatizing and highly negatively impactful assertion where it is improperly made; and
- In each of the hearings, the member's tone and failure to properly listen to what the claimants were saying, her failure to properly assess the evidence before her, her failure to take into account social and cultural differences, her failure to keep herself apprised of the law on how to make a fair and reasonable credibility determination and her failure to maintain a high level of competence and expertise required to fulfill her duties and responsibilities, resulted in the unreasonable findings.

The complainant asked that the member be required to undertake retraining on the manner in which credibility decisions are conducted. She requested that the Office of Integrity monitor whether her decisions continue to be overturned and found to be unreasonable and if so, further action should be taken.

After receiving a copy of the complaint, the member sent submissions to the Director of Integrity to the effect that this complaint was outside the scope of the complaints process because it was not about the member's conduct but rather about her decisions. She stated that she was unaware of any instances where she called claimants liars or where she was not respectful towards claimants or the complainant.

The Office of Integrity forwarded the complaint to the Chairperson for a decision on whether the complaint was within the scope of the complaints process under paragraph 5.5 of the [Procedures for Making a Complaint About a Member](#)¹ (*Complaints Procedures*).

Both parties were informed about the resolution of the complaint. The Chairperson sent a decision letter dated June 2, 2020, to the complainant, with a copy to the member.

The Chairperson decided that the allegations in the complaint related to the member's decisions, not to her conduct. As such, the allegations in the complaint fell outside the scope of the *Complaint Procedures*.

The Chairperson's letter explained that a complaint cannot be used to challenge alleged errors in a member's decisions. The letter acknowledged, however, that it is often difficult to distinguish between allegations which relate to member conduct and allegations which challenge a member's decisions.

Allegations that a member told a claimant they are a liar and allegations about behaviour which re-traumatizes a refugee claimant would typically be characterized as related to conduct. However, it is clear from the complaint that the complainant was referring to the member's negative credibility findings which she

contrasted with negative findings on other issues such as state protection and internal flight alternative. When read in context, the Chairperson interpreted the allegation that the member treats claimants as liars and retraumatizes claimants to mean that the member did not believe the testimony and evidence of the claimants. In other words, the allegation relates to the credibility decisions of the member and not to her conduct.

Similarly, an allegation that a member failed to take into account social and cultural differences would typically be treated as relating to conduct. However, the complainant did not substantiate this allegation other than to state that the RAD and Federal Court overturned the member's credibility assessments in the four claims. Considering the allegation in the context of the complaint as a whole, the Chairperson interpreted this allegation too to mean that the member did not believe the testimony and evidence of the claimants and this resulted in unreasonable findings.

As well, where a member's tone of voice in a hearing is alleged to result in intimidation, trauma, fear, etc. this will be characterized as conduct. However, the complainant merely asserted that the member's tone resulted in unreasonable findings without indicating in any way how the member's tone amounted to improper conduct.

Finally, the allegation that the member failed to keep herself apprised of the law and maintain a high level of competence and expertise, resulting in unreasonable findings, did not relate to the member's conduct. Conduct refers to a member's behaviour, not to their professional competency.

Therefore, the Chairperson was satisfied that this complaint related to the member's decisions, to the exercise of her judicial discretion and professional competency, and not to the conduct of the member.

The complainant submitted that the member should undertake retraining. In the Chairperson's decision letter to the complainant, it was noted that senior management of the Refugee Protection Division had been copied on the decision letter. Senior management was thereby notified of the complainant's concerns and were asked to follow up with the member, as appropriate. The Division implemented remedial actions including a professional development action plan which the member was required to follow.

The complaint was dismissed under paragraph 5.5(a) of the *Complaints Procedures* because none of the allegations were within the scope of the *Complaint Procedures*.

The file was closed.

Note— In this case, the complainant alleged that the member's decisions related to the credibility of the claimants had been repeatedly overturned by the RAD and the Federal Court. Section 3.3 of the Procedures for Making a Complaint About a Member states that "A complaint must be about the conduct of a member which is believed to be contrary to the Code of Conduct. A complaint cannot be about a member's decision." Complaints about a member's decisions are not accepted for investigation. This approach is based in the legal requirement that members' adjudicative independence cannot be fettered.

Case No. 20-006

The complainants were refugee claimants whose joint claim was heard by a member of the Refugee Protection Division (RPD). The claim was heard remotely via videoconference.

The female claimant experienced a seizure during the first sitting of the hearing. The complaint alleged that the member's response to the medical emergency was inappropriate and insensitive. The member questioned on whether the hearing could continue, while the female claimant was awaiting the arrival of medical emergency personnel.

The complaint alleged that the member prejudged the refugee claim, denying the complainants a fair hearing. Specifically, the member's behaviour indicated that she did not believe the female claimant was actually having a medical emergency. From this, flowed the member's rejection of the refugee claim, which was based in part on the persecution the female claimant had allegedly suffered due to her medical condition.

The complaint also alleged that the member did not take the complainants' privacy into account when suggesting to continue the hearing while IRB security officers were present in the hearing room. Further, the complaint alleged the member showed a lack of understanding of the hearing process by proposing to continue with the hearing when neither of the claimants could have been expected to follow it.

The Office of Integrity forwarded the complaint to the Chairperson for a decision on whether the allegations were within the scope of the complaints process under paragraph 5.5 of the [Procedures for Making a Complaint About a Member](#)¹ (*Complaints Procedures*).

The Chairperson decided that most of the allegations were within scope and referred them to the Director of the Office of Integrity (the Director) for investigation. The allegation that the member had prejudged the refugee claim was not referred for investigation because the Chairperson determined that it was adjudicative in nature and related to the member's decision, not to the member's conduct. It was not within scope of the *Complaints Procedures*. The proper remedy to address allegations that a member has prejudged a refugee claim is through the appeals process before the Refugee Appeal Division or judicial review at the Federal Court, as applicable. This approach is based in the legal requirement that members' adjudicative independence cannot be fettered.

The member was invited to provide the Director with a response to the complaint and subsequently provided written comments, which included an apology. The member wrote in her response that she "apologized from the bottom of [her] heart". The Director explored whether the complainants would accept the member's apology in resolution of the complaint. Ultimately, the complainants did not accept the apology and an investigation was undertaken.

During the investigation, a new allegation was raised, namely that the behaviour of the member spoke to a manifestation of systemic racism or individualized racism against the complainants.

The Director listened to the audio recording of the proceeding, and reviewed the parties' submissions. The Director prepared a draft investigation report containing preliminary findings of fact and analysis, and provided both parties an opportunity to comment on the report in writing and discuss any comments with him by telephone. Both the member and the complainant provided written submissions on the draft report. The Director then prepared a final investigation report.

In the investigation report, the Director concluded that there was a breach of the [Code of Conduct for Members of the IRB](#)² (*Code of Conduct*). The Director concluded as follows:

- After the female claimant suffered a seizure, the member suggested moving forward with the hearing. She did so because she wished to conclude the hearing in one sitting, since this would result in a quicker decision for the claimants on their refugee claim, and since efficiency is part of a member's duties. The member did not offer an expression of empathy or concern for the female claimant, nor did her conduct reflect an understanding or acknowledgment that the incident might also have impaired the principal claimant's ability to continue with the hearing. The member did not demonstrate the degree of respect and sensitivity that the particular circumstances called for, and in this regard her conduct fell short of the expectations set out in the *Code of Conduct* for Members of the IRB.
- The allegation that the member failed to consider the complainants' privacy by continuing with the hearing is unfounded. Refugee hearings are held in private and it would not have been appropriate to continue the hearing while others were in the room. However, the member did not continue the hearing. It would



have been entirely speculative to issue a conclusion on what could have or would have happened, had the hearing continued. A review of the audio recording does not show that any private information was discussed or disclosed while the security officers or medical personnel were in the room.

- The allegation that the member demonstrated a misunderstanding of the hearing process is not within scope of the *Complaints Procedures*. The question of whether it would have been a reviewable error for the member to proceed with the hearing when one or both of the claimants would not have been in a position to participate, relates to the exercise of the member's adjudicative discretion. This question does not relate to member conduct.
- The allegation regarding racism and discrimination is unfounded. An allegation about racism or discrimination at the IRB—whether systemic or individualized—is taken very seriously. In this case, the complainants did not submit evidence, expert opinion or other information to substantiate their allegation. The member made submissions about how she had personally experienced being underrepresented and stereotyped, and regarding her values and efforts to fight racism. There are no grounds to believe that the member was motivated by racism or discrimination against the complainants, or that the member's reaction to the medical emergency reveals systemic racism within the RPD or the IRB.

The investigation report was provided to the Chairperson. He was satisfied that the investigation was thorough and fair. The Chairperson accepted the conclusions in the report and found that there was a breach of the *Code of Conduct*.

Both parties were informed about the resolution of the complaint through decision letters from the Chairperson.

As regards follow-up measures, the Chairperson took into account the harm caused by the member's actions and the member's apology. The Chairperson was of the view that the member's apology demonstrated that the member has understood the impact of her actions and taken responsibility for them. The apology also demonstrated that the member has learned from this experience. In particular, the member promised to be more attentive during videoconferences and prioritize refugee claimants' health and well-being above all else. The Chairperson therefore determined that follow-up measures were not warranted in the circumstances.

The Chairperson discussed the matter with the member to confirm his expectations of conduct going forward so that such an incident would not reoccur.

The Chairperson also asked the Deputy Chairperson of the RPD to examine how best to implement further guidance to members about handling emergency situations that arise during a hearing.

As a result, the following steps were taken: Coordinating Members contacted existing RPD members to provide them with additional guidance on managing emergency situations during hearings, and the Deputy Chairperson instituted mandatory training on this subject as part of the RPD's training for new members.

The complaint was founded, and the file was closed.

Case No. 20-008

The complainant was a Canada Border Services Agency hearings officer who appeared before the member at two Immigration Division (ID) detention review hearings.

The complaint alleged that the member did not let the complainant raise an objection and never dealt with an objection; cut the complainant off and did not afford her an opportunity to present submissions

without interruption; and attempted to control and assert an air of authority over the complainant. The complaint also alleged that the member was demeaning and condescending, made statements that were disrespectful and unprofessional, and used a rude and belittling tone of voice.

The Office of Integrity forwarded the complaint to the Chairperson for a decision on whether the allegations were within the scope of the complaints process under paragraph 5.5 of the [Procedures for Making a Complaint About a Member](#)¹ (*Complaints Procedures*).

The Chairperson decided that the allegations were within scope and referred the complaint to the Director of the Office of Integrity (the Director) for investigation.

The member was invited to provide the Director with a response to the complaint and subsequently provided written comments. The Director listened to the audio recording of the proceedings, and reviewed the transcripts as well as the parties' submissions. The Director prepared a draft investigation report containing preliminary findings of fact and analysis, and provided both parties an opportunity to comment on the report in writing and discuss any comments with him by telephone. The member confirmed that he did not have any comments on the draft report; the complainant provided written submissions. The Director then prepared a final investigation report.

In the investigation report, the Director concluded that there was no breach of the [Code of Conduct for Members of the IRB](#)² (*Code of Conduct*) for the following reasons:

- Overall, the member's conduct during the two hearings was courteous and professional.
- The question of whether the member erred by not allowing a party to make an objection or by failing to consider an objection relates to the exercise of adjudicative discretion and does not fall within the scope of the *Complaints Procedures*. However, to the extent that member conduct may have been at play—for instance, a disrespectful tone or statement—it was examined as part of the investigation.
- Counsels do not have a right to the uninterrupted presentation of their case. Members should play an active role in ensuring they have a sufficient evidentiary record upon which to base their decision, as explained in Chairperson [Guideline 2: Detention](#)¹³. Throughout the hearings in question, the member intervened on numerous occasions with clarification questions or questions steering counsel to address what he perceived as gaps or matters of concern to him. The member was engaged in active questioning and hearing management. He did not interrupt the presentation of submissions in a rude or disrespectful manner.
- As regards the allegations that the member tried to control the complainant in the performance of her duties and was disrespectful and condescending towards her, the incidents complained of were examples of hearing management, undertaken by the member in a respectful manner.
- A member's role includes directing the proceedings, eliciting the evidence needed in order to make a sound decision, and steering counsel to the required level of calmness and professionalism needed to run a fair and orderly hearing.
- A member might consider it necessary to outline matters such as procedure—and is entitled to do so—even if the counsels before him are experienced. Ensuring that parties understand the process advances the goal of having fair, orderly, and efficient proceedings. There was nothing condescending or disrespectful in the member's tone when he explained procedure to the complainant.
- The member's remarks were not disrespectful or unprofessional.

While the investigation report concluded that the member did not breach the *Code of Conduct*, it acknowledged that some of the member's mannerisms could be off-putting and misinterpreted, even if they were well intentioned. The complainant felt the member's way of expressing himself to be patronizing and condescending. The report noted that the member, in his submissions filed during the investigation,

committed to working to eliminate his habit of sighing (used as a mechanism to pace himself), which he acknowledged could be misread and perceived as disrespectful. The report stated that the member should be encouraged to dispense with the repeated use of such questions as “are you listening?” and “are you focusing?” and to ask these questions to counsel only when truly necessary. In addition, the member should be encouraged to be more mindful of how some of his remarks or expressions may be perceived by counsel appearing before him.

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

Both parties were informed about the resolution of the complaint through decision letters from the Chairperson.

In his decision letter to the member, the Chairperson encouraged the member to reflect, as part of his professional development, on the suggestions in the investigation report regarding the use of certain questions and expressions and how they may be perceived.

The complaint was dismissed, and the file was closed.

Case No. 20-010

The complainant appeared before the member as counsel for a refugee claimant at a Refugee Protection Division (RPD) hearing.

The complaint alleged that the member wasted time on the issue of late disclosure of documents. The member’s behaviour was stressful for the claimant and wasted the claimant’s money as he was paying counsel for the hearing. The complaint also alleged that the claimant never made an application for late disclosure and the member therefore had no authority to render a decision about the admission of the documents. The member demonstrated a lack of understanding of the RPD Rules related to the timelines for disclosing documents. It was further alleged that the member did not act in a courteous and respectful manner and he was demeaning. The member failed in his responsibility to maintain a high level of professional competence and expertise.

The Office of Integrity forwarded the complaint to the Chairperson for a decision on whether some of the allegations were outside the scope of the complaints process under paragraph 5.5 of the [Procedures for Making a Complaint About a Member](#)¹ (*Complaints Procedures*).

Both parties were informed about the resolution of the complaint through a decision letter from the Chairperson. In his decision letter, the Chairperson stated that he was satisfied that the allegations in this complaint did not relate to the conduct of the member.

The Chairperson decided that the allegations with respect to the member’s interpretation of the RPD Rules, the time spent by the member on reviewing the issue, and his authority to render a decision relate to the member’s decision-making and not to conduct. As such, these allegations fall outside the scope of the *Complaints Procedures*.

The Chairperson also concluded that the allegation that the member did not maintain a high level of professional competence and expertise does not relate to the member’s conduct.

Conduct refers to a member’s behaviour, not to their professional competency.

The complainant requested that the recording of the hearing be reviewed along with the complaint. The audio recording was carefully reviewed and did not reveal any inappropriate behaviours which could form the basis of a complaint relating to member conduct.

The complaint was dismissed under paragraph 5.5(a) of the *Complaints Procedures* because none of the allegations were within the scope of the *Complaints Procedures*.

The file was closed.

Note—Most of the allegations in this complaint relate to the member’s interpretation of the RPD Rules, to the member’s authority to render a decision about the timeliness of disclosure of documents and to the time spent on the issue. These types of allegations relate to the member’s decision and the exercise of the member’s discretion and are not accepted for investigation. This approach is based in the legal requirement that members’ adjudicative independence cannot be fettered.

Case No. 20-012

The complainant acted as counsel for a refugee claimant at the Refugee Protection Division (RPD).

The complaint related to the member’s decision about the claimant’s request for a change of the date of a hearing. The claimant applied for a change of the hearing date, claiming that she never received the Notice to Appear. The request was denied and the claimant sought a reconsideration of that decision. The member issued a decision in his capacity as coordinating member, denying the request for reconsideration. The complainant alleged that the member’s conduct violated the [Code of Conduct for Members of the IRB](#)² (*Code of Conduct*). More specifically, it was alleged that:

- The member’s conduct was unprofessional, unreasonable and unfair and it put counsel’s integrity into question;
- The member’s decision suggested that counsel was lying about not receiving the Notice to Appear; and
- It was unreasonable to expect the claimant to find new counsel to represent her on short notice.

The Office of Integrity forwarded the complaint to the Chairperson for a decision on whether some of the allegations were outside the scope of the complaints process under paragraph 5.5 of the [Procedures for Making a Complaint About a Member](#)¹ (*Complaints Procedures*).

Both parties were informed about the resolution of the complaint through a decision letter from the Chairperson.

In his decision letter, the Chairperson stated that the complaint related to the member’s decision and the exercise of his adjudicative discretion. The complaint was not about the member’s conduct. Paragraph 3.3 of the *Complaints Procedures* states that a complaint must be about a member’s conduct which is believed to be contrary to the *Code of Conduct*. In other words, the complaint process is about how members behave while exercising their duties.

Therefore, the Chairperson decided to dismiss the complaint under paragraph 5.5(a) of the *Complaints Procedures* because the complaint was not within the scope of the *Complaints Procedures*.

The file was closed.

Note— In this case, the complaint related solely to the content of the member’s decision. Paragraph 3.3 of the Procedures for Making a Complaint About a Member states that “A complaint must be about the conduct of a member which is believed to be contrary to the Code of Conduct. A complaint cannot be about a member’s decision.” Complaints about a member’s decisions are not accepted for investigation. This approach is based in the legal requirement that members’ adjudicative independence cannot be fettered.



Special Review No. 001

Special reviews may be conducted where serious allegations are made about a member's conduct outside of the complaints process.

The Chairperson initiated a special review into the conduct of an RPD member after serious allegations of misconduct were brought to his attention. The allegations related to a gender-based claim and questions posed by the member. The member was removed from hearing claims pending an investigation and completion of mandatory professional development.

The IRB retained the services of an external investigator to investigate the allegations of misconduct by the member. The investigator is an experienced human rights lawyer and an expert on professional misconduct as a member of the Law Society Tribunal.

The purpose of the investigation was to assist the Chairperson in deciding whether the member breached the [Code of Conduct for Members of the IRB](#)² (*Code of Conduct*) and, if so, whether any follow-up actions would be taken.

The member was given the opportunity to make written submissions in response to the allegations and was invited to an interview with the investigator.

The external investigator submitted his investigation report to the IRB. As regards the questions the member asked the claimant during the hearing, the report stated that the questions related to a relevant subject area and acknowledged that the member was entitled to probe the credibility of the claim. However, the report concluded that the questions were offensive, insensitive, and inappropriate. The member persisted in asking the same question several times in different ways and the claimant was forced to answer various versions of the question several times. The language used effectively minimized the traumatic experience the claimant was describing. Further, the questioning was not carried out with sensitivity and respect and had the potential to create a traumatizing and anxiety-producing effect.

The investigation report also concluded that a comment which the member made about a mental health condition was unnecessary and disrespectful because it made light of the claimant's mental health.

The Chairperson reviewed the investigation report. He was satisfied that the investigatory process was thorough, accurate and fair.

The Chairperson accepted the conclusions in the investigation report.

The Chairperson found that there was a breach of the *Code of Conduct*. The member's conduct was not in keeping with the provisions in the *Code of Conduct*, which require members to conduct hearings in a courteous and respectful manner, to promote public confidence in the integrity of the IRB, and to uphold the values of dignity and respect.

As regards follow up steps, the investigator recommended that the Chairperson should take a corrective and rehabilitative approach, rather than imposing discipline. The Chairperson agreed with the investigator's recommendation and decided not to impose discipline for a number of reasons, including the following:

- The member expressed sincere regret and remorse;
- The member acknowledged the impact that the misconduct had on the claimant and the harm which was caused reputationally to the IRB;
- There was no prior record of misconduct; and
- The member accepted responsibility for the misconduct and committed to do better.

The Chairperson was satisfied that the misconduct would not occur again, with the implementation of the corrective measures mentioned below.

The member was informed about the decision in a letter from the Chairperson. The Chairperson also discussed the matter with the member and confirmed that corrective measures would be put in place.

The Deputy Chairperson of the Refugee Protection Division was informed of the results of the investigation and was tasked with determining the scope and duration of the corrective measures and to implement them as quickly as possible.

The member was required to undertake mandatory professional development. The Division prepared a detailed professional development action plan that the member was required to follow. A mentor was assigned and the member was put under close monitoring.

The special review was closed.

Special Review No. 002

Special reviews may be conducted where serious allegations are made about a member's conduct outside of the complaints process.

The Chairperson initiated a special review into the conduct of an RPD member after serious allegations of misconduct during a hearing of a gender-based claim were brought to his attention.

The Director, Office of Integrity (the Director) was tasked with investigating the conduct of the member at the hearing. The purpose of the investigation was to assist the Chairperson in determining whether the member's conduct at the hearing was in keeping with the professional and ethical standards of conduct set out in the [Code of Conduct for Members of the IRB²](#) (*Code of Conduct*).

The member subsequently retired from the IRB. The former member chose not to participate in the investigation.

In conducting his investigation, the Director listened to the audio recording and reviewed the transcript of the hearing.

The Director prepared an investigation report and concluded that some of the member's questions to the claimant at the hearing were highly problematic. The manner in which the questions were asked was at odds with the need for sensitivity, dignity and respect when members preside at gender-based claims. Members must test the veracity of claims and are expected to lay out their valid concerns for the claimant based on the record. However, in the context of gender-based claims, they should, at an absolute minimum, soften the delivery of their questions and frame those questions in a compassionate and caring manner. That was not done in this case.

The investigation report stated that a question the member asked at the hearing reflected a personal view and prejudice on the part of the member and a lack of understanding of the claimant's circumstances.

The investigation report also concluded that there was a failure on the part of the member to approach the questioning with the extreme sensitivity and compassion which is required when asking questions about sexual assault. Members are trained to create a safe and comfortable environment for claimants who have suffered from sexual violence, to acknowledge vulnerabilities, to be open to the need for accommodation measures, to be as unobtrusive as possible and to treat the claimant with humanity and compassion. In this case, the member did not meet these expectations.

The Director concluded that there had been a breach of the *Code of Conduct*.



The report was submitted to the Chairperson. The Chairperson accepted the conclusions in the report and he decided that there was a breach of the *Code of Conduct*.

Since the member was no longer an employee of the IRB, the Chairperson was satisfied that there was no need for corrective or disciplinary measures.

With regard to institutional measures, the Chairperson decided this case will be considered in informing the revision of [Chairperson's Guideline 4—Women Refugee Claimants Fearing Gender-Related Persecution](#)¹⁰. Therefore, the case was taken into consideration as part of the development of revisions to the Guideline.

The former member was informed of the Chairperson's decision.

The special review was closed.

End notes

1. Procedures for Making a Complaint About a Member: https://irb-cisr.gc.ca/en/legal-policy/procedures/Pages/member_complaint-plainte_commissaire.aspx
2. Code of Conduct for Members of the IRB: <https://irb-cisr.gc.ca/en/members/Pages/MemComCode.aspx>)
3. 2019 annual report on complaints: <https://irb-cisr.gc.ca/en/transparency/member-conduct/Pages/report-member-complaints-2019.aspx>)
4. Gender-Related Task Force: <https://irb-cisr.gc.ca/en/refugee-claims/Pages/gender-related-task-force-rpd.aspx>
5. Chairperson's Guidelines: <https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDir02.aspx>
6. Responding to public complaints: a review of the appointment, training and complaint processes of the Immigration and Refugee Board: <https://www.ourcommons.ca/DocumentViewer/en/42-1/CIMM/report-20/page-5>
7. Sample form: <https://irb-cisr.gc.ca/en/forms/Pages/member-complaint-form.aspx>
8. Complaint Review Process: https://irb-cisr.gc.ca/en/legal-policy/procedures/Pages/member_complaint-plainte_commissaire.aspx#s5
9. Privacy Act: <https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-privacy-act/>
10. Chairperson's Guideline 4—Women Refugee Claimants Fearing Gender-Related Persecution: <https://irb-cisr.gc.ca/en/legal-policy/policies/Pages/GuideDir04.aspx>
11. Chairperson's Guideline 8: Procedures With Respect to Vulnerable Persons Appearing Before the IRB: <https://irb-cisr.gc.ca/en/legal-policy/policies/Pages/GuideDir08.aspx>
12. Chairperson's Guideline 9—Proceedings Before the IRB Involving Sexual Orientation and Gender Identity and Expression: <https://irb-cisr.gc.ca/en/legal-policy/policies/Pages/GuideDir09.aspx>
13. Guideline 2: Detention: <https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDir02.aspx>