Report of the Independent Review of the Immigration and Refugee Board

A Systems Management Approach to Asylum

April 10, 2018 (FINAL)

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Biographical Note on the Independent Reviewer

Neil Yeates served as Deputy Minister of Citizenship and Immigration Canada (now Immigration, Refugees and Citizenship Canada) from 2009 until 2013. Prior to taking on this role, Mr. Yeates served as Associate Deputy Minister at Indian and Northern Affairs Canada, as well as Assistant Deputy Minister at both Health Canada and Industry Canada.

Mr. Yeates first joined the Government of Canada from the Government of Saskatchewan in 2004. In his 20-year career with the Government of Saskatchewan, he held a variety of Deputy Minister positions including with the Department of Learning, the Department of Post-Secondary Education, Learning and Skills Training, and the Department of Corrections and Public Safety. Further, he also held Assistant Deputy Minister positions in the departments of Health, Social Services and Finance.

Mr. Yeates holds a B.A. (Honours) in Political Science and History from Queen's University and an M.A. in Political Science from the University of Regina.

Following his retirement in 2013 Mr. Yeates joined the Board of the Trans Canada Trail and is currently the chair. He is also the Co-Chair of the Human Capital Council at the C.D. Howe Institute, a member of the Justice Canada Audit Committee and a mentor with the Trudeau Foundation.

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Foreword

Today, the refugee determination system is at a crossroads. Once again it is dealing with a surge in claims that it is ill-equipped to manage, running the risk of creating a large backlog that, if not tackled promptly, may take years to bring to final resolution. This Independent Review was initiated due to lower than expected productivity at the Refugee Protection Division, which became apparent as intake increased in 2015 and 2016. Thus the Review was directed before the latest surge of claims began in earnest, adding additional urgency to the Review work. Not only have claims substantially increased in 2017, reaching almost 50,000 in the calendar year, but the surge has been dominated by illegal border crossings in an effort by claimants to avoid the provisions of the Safe Third Country Agreement with the United States, which would likely make many ineligible to file a refugee claim in Canada. In response to this Review and the growing refugee claims the IRB independently launched an action plan in July 2017 aimed at increasing the productivity of the IRB. In parallel CBSA was undergoing a separate review of its resources and priorities to "ensure greater financial planning and control", directed by the Treasury Board.

Canada's refugee determination system, referred to as the In-Canada Asylum System or ICAS, has evolved significantly since Canada signed the UN Convention on the Status of Refugees and Protocol in 1969. Most recently the system underwent extensive reforms in 2010 and 2012, under the *Balanced Refugee Reform Act* and *Protecting Canada's Immigration System Act*. The thrust of these reforms – the results to date of which are detailed in this report – was for faster processing of claims, with a view that *bona fide* claimants would be more quickly approved, and failed claimants, after access to the new Refugee Appeal Division (RAD) of the IRB, would be more quickly removed from Canada. These reforms sought to manage refugee determination as a system, with the necessary governance and performance measurement mechanisms in place to continually monitor and adjust the ICAS as circumstances required. Various changes were made to assist this system management approach such as the legislating of timelines for hearings and shifting from Governor-in-Council appointees to public servants as first-level decision makers at the IRB's Refugee Protection Division.

In the course of this management-focussed review, it became apparent that there are, in fact, two competing paradigms at work. One, the systems management paradigm seeks to impose order and system-wide governance. The other, the independence or passive paradigm, allows each component of the system to operate on its own with little regard for the system as a whole. A robust and active horizontal or system governance is needed to steer this complex system and to guide system performance and results. The IRB has historically gone back and forth between these paradigms but in general has operated as an autonomous adjudicative body, separate from the rest of the asylum system and has provided great deference to decision makers, which has contributed to this passivity. Therefore limited use has been made

of guidance and other tools to both support and supervise these staff who are referred to as IRB Members. Reluctance by IRB management to set targets on decisions expected per week and to adopt tools such as decision assessment aids or standardized decision templates is indicative of how deeply rooted this approach is in the culture of the IRB. In this autonomous, decision maker-centric model there is little scope for systems management tools without running against internal IRB concerns about the erosion of institutional independence. While it is universally agreed that decision makers need to be impartial and independent in their decision-making capacity, the Review was specifically asked to look carefully at the parallel challenge of institutional independence in light of the successes and challenges of managing asylum with an arm's length tribunal model.

There are three fundamental recommendations being made in this Report. The first is that a systems management approach for the ICAS be adopted. The second recommendation is that this be done within one of the following two ways:

- **Option 1:** largely but not entirely, maintaining the current structures and roles of the IRB, IRCC and CBSA (referred to as "system reform") but overseen by an Asylum System Management Board
- **Option 2:** undertaking major structural reform to create an integrated refugee determination system that would integrate as many functions as possible in a single organization (referred to as a "Refugee Protection Agency"), reporting directly to the Minister of Immigration, Refugees and Citizenship. The Refugee Protection Agency would be responsible for intake, first-level decision making for refugee protection along with Pre-Removal Risk Assessment decisions, and for international resettlement. An Asylum System Management Board would also provide system-wide governance in this option.

Detailed recommendations have been made to develop and implement a systems management approach and to re-engineer current asylum processes. These recommendations can be implemented in a manner that maintains existing structures – the system reform option – or within the context of a new Agency. Many of these recommendations, if accepted, can be implemented immediately. The first question, however, is whether to proceed with a systems management approach, and if yes, then begin implementation now while assessing further the preferred organizational option. It is important that the organizational model is considered as soon as possible as it will affect how a systems management approach is developed and implemented.

The third fundamental recommendation is to increase the capacity of the system now on an interim basis. This will, regardless of the longer term approach taken, require incremental resources in the immediate term. It is recommended that an aggressive approach be taken to eliminate the current backlog of cases by April 2020. This approach would, if the recommendations of this Report are accepted, be designed and implemented within the context of either option for a systems management regime.

This Report is organized into seven chapters, beginning with an overview of the evolution of the refugee determination system, then providing some international best practices, followed by a summary of stakeholder views, and then an outline of different models for Canada is presented, concluding with a more detailed analysis and set of recommendations for a system management approach. The models are summarized in Chapter 7.

Background to the Review

Under Budget 2017 the Minister of Immigration, Refugees and Citizenship was mandated to have an Independent Review undertaken of the asylum processing procedures at the Immigration and Refugee Board (IRB) of Canada to examine opportunities to gain efficiencies and increase Refugee Protection Division decision maker productivity, as well as to review the IRB's mandate as it relates to governance, structure and associated accountability mechanisms (see the full Terms of Reference[1]).

While the Review has examined first-level decision making and the Refugee Protection Division of the IRB, all elements of the asylum process have been considered from intake through to decision making and removal or permanent residency, and the roles of other delivery organizations: Immigration, Refugees and Citizenship (IRCC), Canada Border Services Agency (CBSA), as well as the roles of Public Safety (PS) for the security portfolio, the Department of Justice (JUS) in relation to legal aid, the Federal Court (FC) and the Courts Administration Service (CAS). This broader examination was considered essential, given the inter-dependent nature of the asylum system.

Specifically, as outlined in the Terms of Reference, the Review has sought to:

- identify options and recommended approaches to achieving greater efficiencies and higher productivity with respect to the processing of asylum claims,
- take into account the legal framework within which the IRB operates, as articulated in the *Immigration and Refugee Protection Act* and in jurisprudence,
- address IRB efficiencies and productivity in a manner that respects the institutional independence of the IRB and the independence of its members in decision making under the current model, and
- explore alternate structural and governance models and approaches that could lead to possible efficiency gains while maintaining fairness.

Neil Yeates, a retired senior public servant and former Deputy Minister of Citizenship and Immigration Canada, was designated the third party management expert and has undertaken this Review with the support of IRCC, CBSA and IRB, all of whom contributed expertise to the Review team to assist in the task.

The Review was greatly assisted in its work through the contributions of the individual federal organizations who were generous with their time, contributing information, data and analysis needed by the Review team to meet the objectives of the review: CBSA, JUS, IRB and IRCC.

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[1] *https://www.canada.ca/en/immigration-refugees-citizenship/news/ 2017/06/immigration_and _refugeeboardreviewtermsofreference.html*

International perspectives, which are presented in Chapter 2, drew upon the knowledge and insights of officials from the European Asylum Support Office and the European Commission, U.S. Citizenship and Immigration Services, *L'Office français de protection des réfugiés et apatrides*, the Home Office and the Independent Chief Inspector of Borders and Immigration of the United Kingdom, and the migration agencies of Sweden, Germany and the Netherlands, as well as the Migration Policy Institute, and Intergovernmental Consultations on Migration Asylum and Refugees (IGC).

The Review wishes to acknowledge the contribution of experts, academics and stakeholders who were consulted and shared their knowledge, expertise and ideas for a more efficient system: the Canadian Council for Refugees and its supporting members; the Canadian Association of Refugee Lawyers; Legal Aid Societies of Alberta, British Columbia, Manitoba, and Ontario; Montreal Legal Aid; the *Association Québécoise des avocats et avocates en droit d'immigration*; Kinbrace; *Table de concertation des organismes au service des personnes réfugiées et immigrantes*; the Canadian Association of Professional Immigration Consultants; the Parole Board of Canada; UNHCR officials in Ottawa, Montreal and Geneva; the Customs, Employment and Immigration Union; Hilary Evans-Cameron; Doug Ewart; Jennifer Hyndman; Sean Rehaag; Peter Showler; Lorne Waldman. Stakeholder perspectives are outlined in Chapter 3 of this Report.

Chapter 1: Overview of the In-Canada Asylum System

The In-Canada Asylum System (ICAS) has developed over the last five decades since 1969 when Canada signed the 1951 UN Convention on the Status of Refugees and its Protocol of 1967.[2] Under these international commitments Canada is obliged to protect persons on its territory who have a well-founded fear of persecution based on race, religion, nationality, membership in a social group or political opinion. Canada first implemented its obligations through domestic legislation under the *Immigration Act* of 1976 which set out a paper process, with limited appeal rights to the Immigration Appeal Board, the precursor to the IRB.

By the early 1980s the refugee determination procedure was already experiencing backlogs and delays when a key Supreme Court decision in 1985 (*Singh*) enshrined that where credibility of the claimant is at stake, an oral hearing must be undertaken. The *Singh* decision is often seen as a watershed that enforced *Charter* protections for migrants on arrival on Canadian soil. In 1980 Canada received what today looks like a very modest 1,488 refugee claims. By 1985 the number of claims increased to 8,260 claims raising concerns regarding the capacity and the suitability of the refugee determination system. In response, the government commissioned two major studies: the Ratushny Report (1984) and a report by Rabbi Gunther Plaut (1985) to recommend approaches for a new asylum determination system that would address both the need to be heard, and balance the competing interests of fairness and efficiency. While there was no consensus at that time on how to precisely reform the refugee determination system, there appeared to be near unanimity that the system was broken and required reform. In the words of the Ratushny Report: "... it is difficult to envision a process which could be more wasteful of time, resources and good-will than that which presently exists."

One of the preoccupations of reform in the early 1980s was to separate immigration considerations from refugee determination decisions, and it was the Plaut Report that most strongly advocated for an independent body to adjudicate claims, separate from the immigration processing function within the Employment and Immigration Commission. As the government refined proposals for a new refugee determination system, there were many structural options for the government to choose from. The top three for consideration were:

- The refugee determining authority would be a court of record,
- The refugee determining authority would be directly supervised in its administrative capacities by the Minister of Employment and Immigration,
- The Immigration Appeal Board would be restructured into the Immigration and Refugee Board with two permanent division. The

[2] The Review consulted a variety of historical sources, including policy deliberation documents, and reports from Standing Committees, the Library of Parliament and government studies.

Immigration Appeal Board for immigration appeals and the Refugee Board to determine refugee claims.

The House of Commons Standing Committee on Labour, Employment and Immigration favoured the proposed Board being directly supervised by the Minister. However, the government of the day proposed a tribunal model within Bill C-55 which was introduced in the House of Commons in 1986. It was in 1988, when claims had reached 85,000 that, following lengthy debate, the government passed legislation. This legislation would establish the asylum system that is largely in place today: the institutionalization of an arms-length, quasi-judicial body that would hear claims for protection in a non-adversarial hearing.

Thus in 1989 the IRB was created as an independent administrative tribunal that reports to Parliament through the Minister of Immigration, Refugees and Citizenship, vested with making refugee protection decisions in Canada, ensuring the principle of *non-refoulement* or non-return to risk of persecution. Respecting the *Singh* decision, the newly created Convention Refugee Determination Division of the IRB would ensure procedural fairness to the person making the claim by offering an oral hearing. Cases were referred by immigration officers at the port of entry or inland processing offices to two-member panels of decision makers at the IRB to independently assess the case for protection. They were supported in that decision making by adjudicative support staff and country research staff within the IRB.

Canada later ratified the *UN Convention Against Torture* in 1995 which obliged Canada to protect those at risk of torture or cruel and unusual treatment or punishment. The legislative framework which provides protection under both UN Conventions were brought together in successor legislation, the *Immigration and Refugee Protection Act* of 2002. This new immigration legislation set out the following as principles for the refugee program including on efficiency of the system (emphasis added below):

> *(a) to recognize that the refugee program is in the first instance about saving lives and offering protection to the displaced and persecuted;*
>
> *(b) to fulfil Canada's international legal obligations with respect to refugees and affirm Canada's commitment to international efforts to provide assistance to those in need of resettlement;*
>
> *(c) to grant, as a fundamental expression of Canada's humanitarian ideals, fair consideration to those who come to Canada claiming persecution;*
>
> *(d) to offer safe haven to persons with a well-founded fear of persecution based on race, religion, nationality, political opinion or membership in a particular social group, as well as those at risk of torture or cruel and unusual treatment or punishment;*
>
> ***(e) to establish fair and efficient procedures that will maintain the integrity of the Canadian refugee protection system, while upholding Canada's respect for the human rights and fundamental freedoms of all human beings;***

(f) to support the self-sufficiency and the social and economic well-being of refugees by facilitating reunification with their family members in Canada;

(g) to protect the health and safety of Canadians and to maintain the security of Canadian society; and

(h) to promote international justice and security by denying access to Canadian territory to persons, including refugee claimants, who are security risks or serious criminals.

Today, as in 1989, the IRB remains the principal element of Canada's asylum system, with IRCC and CBSA handling case intake and case outcomes post-decision. Canada was early to ratify the 1967 *Protocol* and was a leader in creating models for adjudication that fully respected the intent. Moreover, from its beginnings, the system provided access to judicial review by the Federal Court and decisions such as *Singh* accorded claimants with protections under the *Charter*. As such, the asylum system in Canada is highly respected by national and international stakeholders as a model which affords natural justice through a specialised, independent, quasi-judicial, first-level decision. As part of the 2010 and 2012 reforms, the asylum system now offers access for most types of claims to a specialist administrative appeal on the merits of the case at the Refugee Appeal Division.

In recognition that country conditions change and may adversely impact a person's ability to return home, the asylum system is supplemented by other temporary protection mechanisms in the Canadian system. The Administrative Deferral of Removals and Temporary Suspension of Removals programs are managed by CBSA under the authority of the Minister of Public Safety. These programs ensure that persons without status in Canada are not returned to their country where conflict, a humanitarian crisis or conditions of generalized risk exist. This ensures that those in need of temporary protection are afforded it in times of crisis and provides time for persons already in Canada the opportunity to make claims for protection without fear of having to return to possible danger. In addition, most persons under a removal order from Canada (who have not had a recent protection decision by the IRB) have access to a Pre-Removal Risk Assessment undertaken by IRCC which serves to assess the forward-looking risk to the individual on return to their country of origin when or where conditions may have changed.

The In-Canada Asylum System operates in the broader context of a managed migration approach within which the Minister of IRCC tables an annual Immigration Levels Plan in Parliament every November. This plan includes an estimate of permanent resident cases from the refugee stream, combining asylum and international resettlement. Thus to an extent a decision is made each year on the intake into the permanent resident stream between successful in-Canada asylum cases and those resettled as refugees from abroad.

In-Canada asylum is distinct from Canada's humanitarian refugee resettlement program, where persons in need of protection abroad are selected to resettle in Canada as permanent residents following screening by IRCC and/or by the UNHCR. The UNHCR looks to Canada to assist in finding durable solutions for today's

estimated 22.5 million refugees.[3] By contrast, Canada's asylum procedure is only accessible to persons with the means to gain access to Canada, whether through visa-free access, work, study or visitor visas, smuggling ventures or access by land by exception to the Safe Third Country Agreement at the Canada/US border. The number of asylum claims vary widely from one year to the next due to ever-changing patterns of migration and refugee crises around the world. In this respect, asylum cases present a challenge to manage as the number of in-Canada claims are difficult to accurately forecast. Temporary and permanent resident visa systems are in place to ensure screening and selection of those seeking to visit, study, work or resettle to Canada with a view to minimizing overstays and refugee claims. Visa systems and border controls are critical to managing access to Canada. However, visas and border controls are seldom completely effective and are often unable to quickly address the dynamic pull and push factors of international migration and the asylum system. Recent experience demonstrates that the character and quality of other countries' visa and immigration systems can have a significant impact on migration movements and cross-border flows.

With the advent of human capital immigration models that place a high emphasis on education, language and skilled labour, asylum systems in countries like Canada risk becoming avenues of last resort for lower skilled economic migrants, who generally do not have access to other pathways to permanent residence. Current rates for granting of protection are over 65%[4] and these persons deemed in need of protection are given direct access to apply for permanent residence in Canada. Given this pathway, there are ever present concerns that asylum procedures can be vulnerable to misuse. When there are lengthy waiting times for an initial protection hearing there are further concerns that the asylum system may be abused to prolong temporary stays in Canada for healthcare, work permits, public schooling, direct access to Canadian citizenship for children born while in Canada and other benefits, all of which make future removal from Canada of many unsuccessful claimants difficult.

"Backlogs", Program Efficiency and Funding

Backlogs – of cases in the inventory waiting a protection decision, recourse at the Federal Court, or removal from Canada – have been a persistent issue for the IRB and the asylum system as a whole since the formalization of the program under the 1976 *Immigration Act*. Since the inception of the IRB in 1989, two notable case decision backlogs have occurred: in 2002 with over 57,000 claims and in 2009 with over 62,000 pending claims. In both instances, the backlog represented more than two year's capacity at the RPD. Some measure of inventories are a normal part of processing, however, the circumstance today where the protection decision backlog is two years' worth of inventory, time to complete cases will inevitably increase. By late 2017, the Refugee Protection Division was exceeding one year's worth of inventory. The Refugee Appeal Division decisions were taking in excess of 11 months

[3] UNHCR indicates that 22.5 million persons are displaced http://www.unhcr.org/figures-at-a-glance.html UNHCR, Figures at a Glance, June 19, 2017

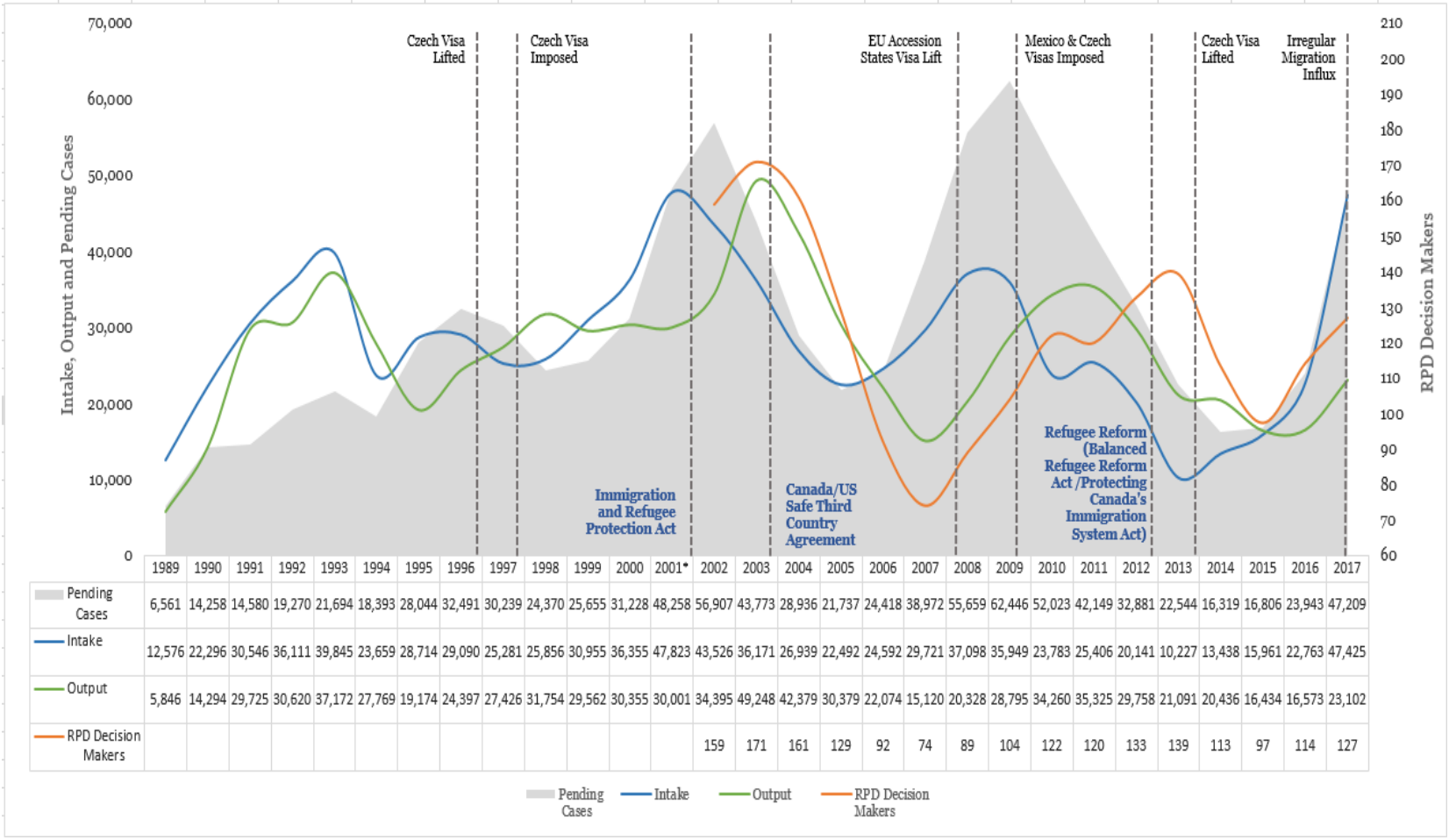
[4] IRB's 2017 data published on their website indicates that 63% of finalized cases were positive.

and Federal Court judicial reviews and Pre-Removal Risk Assessment decisions were taking longer than 6 months and with increased volumes of claims all of these timelines are growing accordingly. Outcomes for cases tracking through these procedural steps today will take several years to come to finality.

In 2004 the IRB received additional operational funding and eliminated the decision backlog in two years assisted in part by the move from two-member to single member adjudication. The IRB also implemented processing tools, such as expedited hearings, to increase the productivity of decision makers, and at the same time, the government opted to delay the implementation of the Refugee Appeal Division in recognition that there was little capacity to take on additional effort at the same time as addressing the backlog.

In 2009 a backlog again began to accrue which precipitated the legislative reforms of 2010 and 2012. As part of implementation of reforms the government earmarked funding to address the backlog separately from the new system which provided a stable funding base to handle claim levels of 22,500 annually.

Figure 1: ***Historic View of Activities of the RPD (Input, Output, Resources and Backlog)***[5]



	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001*	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Pending Cases	6,561	14,258	14,580	19,270	21,694	18,393	28,044	32,491	30,239	24,370	25,655	31,228	48,258	56,907	43,773	28,936	21,737	24,418	38,972	55,659	62,446	52,023	42,149	32,881	22,544	16,319	16,806	23,943	47,209
Intake	12,576	22,296	30,546	36,111	39,845	23,659	28,714	29,090	25,281	25,856	30,955	36,355	47,823	43,526	36,171	26,939	22,492	24,592	29,721	37,098	35,949	23,783	25,406	20,141	10,227	13,438	15,961	22,763	47,425
Output	5,846	14,294	29,725	30,620	37,172	27,769	19,174	24,397	27,426	31,754	29,562	30,355	30,001	34,395	49,248	42,379	30,379	22,074	15,120	20,328	28,795	34,260	35,325	29,758	21,091	20,436	16,434	16,573	23,102
RPD Decision Makers														159	171	161	129	92	74	89	104	122	120	133	139	113	97	114	127

[5] Prior to 2002, the asylum system consisted of two-member panels

Recent Reforms of 2010 and 2012

In order to address the higher volumes of claims and ensure timely adjudication of claims the *Balanced Refugee Reform Act* (2010) and the *Protecting Canada's Immigration System Act* (2012), referred to as "Refugee Reform", introduced differential processing standards structured on faster timelines with these key reforms:

- Designated Countries of Origin were established to expedite cases from countries that do not normally produce refugees,
- The Refugee Appeal Division was implemented to make the asylum system faster and fairer by allowing for the review of RPD decisions and providing coherent and consistent jurisprudence and with some restrictions on access to appeal such as for Safe Third and Designated Country cases,
- Legislated or regulated timelines for Refugee Protection Division hearings and Refugee Appeal Division decisions (and administrative targets were established for other processing steps),
- Refugee Protection Division decision makers were converted from Governor-in-Council appointees to public service employees to reduce vacancies and improve staffing flexibility,
- Bars to accessing Pre-Removal Risk Assessments and Humanitarian and Compassionate applications for permanent residence to limit post-claim recourses and delays with removal,
- Cessation of protection provisions were amended to revoke permanent residency from person's stripped of protected person status, except in cases where country conditions had changed.

Three pilot projects were also funded: CBSA Assisted Voluntary Return and Reintegration pilot; IRCC Ministerial Reviews and Interventions pilot for credibility or program integrity issues to complement the existing CBSA interventions program; and the RCMP Enhanced Security Screening pilot.

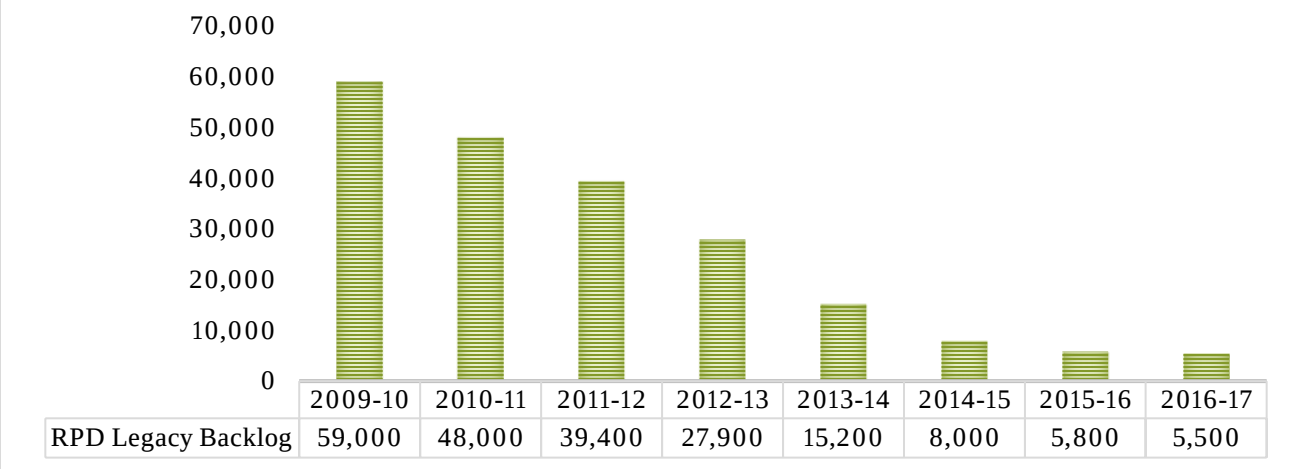
The system moved to processing of cases on 30-, 45- and 60-day regulated timelines for an initial hearing at the Refugee Protection Division with decisions to be finalized within four months from claim to decision delivery. In order to meet these timelines the intent of the reforms was to move to a more informal hearing and decision-making processes, similar to other countries. GiCs were replaced with new public service employees reducing decision-making costs and facilitating the professionalization of the protection decision maker role thereby increasing the consistency and quality of decision makers. To increase the efficiency of hearings, procedures were amended to give decision makers greater control over refugee protection proceedings. In addition, the reforms put in place a waiting period before a work permit would be issued that was equivalent to the expected time it would take to process a claim. With these changes the number of claims was significantly reduced, with the fast-track processing for persons from Designated Countries of Origin acting as a deterrent to unfounded claims. In the first two years post-reform asylum claims declined dramatically, reaching a low of 10,429 in 2013 (versus an average of 28,500 cases in the previous five years pre-reform).

Significant funding (commencing in 2010/11) was provided across departments to implement the reforms and to reduce the claims backlog.

Given that capacity varied across the system at the time, the reforms aimed to stabilize capacity to handle 22,500 claims per year at the IRB, IRCC and CBSA. However, program review (under the Deficit Reduction Action Plan) required departments to reduce their funding requirements for these measures and the IRB also absorbed operating funding reductions. At the time these reductions were not seen as affecting processing capacity at the IRB or elsewhere.

In regards to backlog reduction a three-year strategy was implemented to process claims pending at the Refugee Protection Division, and the associated downstream impacts for removals, Pre-Removal Risk Assessment and Humanitarian and Compassionate Permanent Resident applications. The goal was to reduce the backlog as much as possible prior to the coming into force date of the new system in December 2012. The 2012 internal audit of the backlog reduction strategy[6] found that with the additional funding and internal efficiencies the IRB not only achieved but surpassed this target. Given the lower intake in the early years post-reform, the IRB was able to continue to reduce the legacy claims backlog. However, as intake climbed in 2015 and continued, their capacity to address the legacy backlog decreased as resources were diverted to the new system cases. As such, a residual 5,500 claims remain in their pre-2012 backlog, which are only now being addressed as of September 2017 as part of a two-year special task force of decision makers.

Figure 2: ***Refugee Protection Division Legacy Backlog[7]***



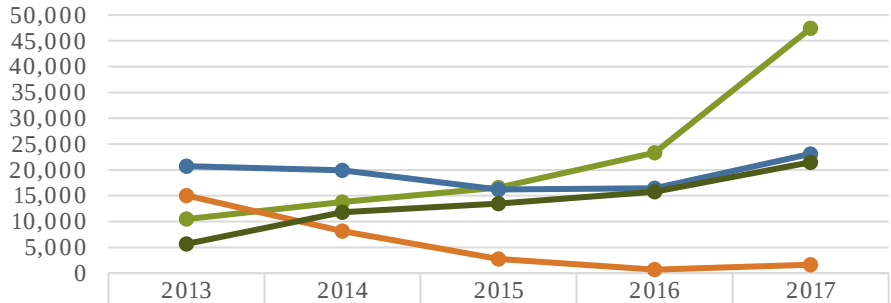
	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
RPD Legacy Backlog	59,000	48,000	39,400	27,900	15,200	8,000	5,800	5,500

[6] IRB Internal Audit of Backlog Reduction, 2012
[7] From IRB Departmental Performance Reports 2010/11 to 2016/17

Recent Evaluations and Results Measurements Post-2012

In 2016 IRCC led a mandated three-year horizontal evaluation of the reformed In-Canada Asylum System studying data from 2012 to 2014. The evaluation found that the new system claimants received a decision five to six times faster than old system claimants and the cost of support services per claimant were reduced as a result of shorter time spent in the system. In addition, removals timelines were occurring faster under the new system compared to the pre-reform years. Despite claims being processed more quickly, not all claims were processed as per the legislated timelines for holding Refugee Protection hearings and the administrative targets for removals that were established as part of the reforms. The evaluation identified a number of challenges associated with meeting these targets due to dependencies on other steps in the system such as front-end security screening delays and delays in staffing positions. Further, the cost of processing per claimant could not be compared as not all departments tracked expenditures in detail by program. The evaluation also found other gaps, such as differing intake assumptions, varying timelines/targets, removal issues, and legal challenges, all of which resulted in pressures in meeting the objectives of Refugee Reform. Contrary to expectations, staffing model changes at the Refugee Protection Division did not make decision making more efficient, nor did process changes result in less requirement for legal support to the claimant or reduced use of recourse to the Federal Court. The effectiveness of the Refugee Appeal Division was not evaluated and thus becomes an important aspect of this Independent Review.

Figure 3: ***Refugee Protection Division Intake and Total Finalizations***



	2013	2014	2015	2016	2017
RPD Intake	10,465	13,800	16,592	23,350	47,425
RPD Total Finalizations	20,696	19,928	16,200	16,432	23,102
Legacy Finalizations	15,045	8,115	2,741	671	1,622
New System Finalizations	5,651	11,813	13,459	15,761	21,480

The evaluation found that the Designated Countries of Origin regime was initially successful at significantly reducing the number of asylum claims from countries that are considered to respect human rights and offer state protection, and that these measures limited access to the Refugee Appeal Division and a Pre-Removal Risk Assessment. However, Designated Countries of Origin claimants did not receive first-level decisions faster than other claimants and a July 2015 Federal Court decision extended access to the Refugee Appeal process for these claimants, though

the impact was small with only about 250 cases immediately gaining access.[8] In addition, the one-year Pre-Removal Risk Assessment bar and the bar on accessing an application to Permanent Residence in Canada on Humanitarian and Compassionate grounds reduced the number of people applying for these programs.[9] However, many failed claimants were not removed before the bars expired and they therefore ultimately had access to these recourse mechanisms, defeating the purpose of the bars.

The evaluation made six recommendations focused on timelines and targets, governance, data monitoring and reporting, intake, and information sharing. IRCC, as the lead department, accepted all of the recommendations and committed to an ambitious management response action plan to address the issues. Work continues to meet the evaluation commitments to administrative improvements, including streamlining the intake process, electronic information-sharing between organizations, data management and improved governance of the system, but these initiatives are facing delays due to the immediate pressures to process the increase in asylum claims since January 2017.

In parallel to the ICAS Evaluation, the IRB commissioned a separate evaluation of the Refugee Protection Division covering the period from December 15, 2012 to March 31, 2015 which assessed 19 areas for action. While the goal of the reforms was to reduce the cost of the asylum system by decreasing timelines, the IRB evaluation found that assumptions underlying the redesign and restructuring of the Refugee Protection Division underestimated resource needs required to meet these tighter timeframes. Like the IRCC evaluation, the IRB evaluation highlighted challenges meeting the faster timelines, contributing to an increase in the volume and age of pending claims (i.e., backlog as the claim inventory exceeded the Refugee Protection Division processing capacity to meet the timelines). Delays were also attributed to several areas outside of the IRB's control such as timeliness of security screening. From a broader perspective, the evaluation questioned the sustainability of the new system, pointing to significant stress reported by decision makers struggling to meet timelines and targets.

Overall, there were 15 recommendations related to delivery and effectiveness, with several focused on increasing support services, improving performance management and scheduling. The IRB has pursued implementation of these recommendations with a notable exception of a recommendation to implement a biannual time management study for members to enable the better assessment of resource requirements. A detailed action plan is being undertaken by the IRB.[10]

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[8] DCO claims continue to be low at 11% of claims intake based on IRCC Operations Dashboard data, January to August 2017.
[9] Failed claimants may meet exemptions to the Humanitarian and Compassionate Considerations bar pertaining to best interests of the child or health/medical provisions.
[10] From the IRB Refugee Determination System, Management Response and Action Plan

Current State of Asylum System Management

Today, the asylum system is characterized by the complex interaction of the IRB, IRCC, CBSA and the Federal Court. The system's shared program results are delivered through independent organizational planning and accountability structures, or in other words, a horizontal system is largely being managed vertically. Therefore, system-wide governance, process re-engineering, resource planning, forecasting and innovation, are significant challenges.

Case Study: Lacolle Border Crossing

In the summer of 2017 the Saint-Bernard-de-Lacolle crossing on the Quebec-New York border experienced an unprecedented spike in the number of asylum-seekers illegally crossing into Canada from the United States adjacent to the legal port of entry. This situation highlighted existing asylum system issues and provides timely lessons on the importance of coordination and integration of processes between organizations.

Immediate Cause International migration trends, changes to immigration and asylum environment in the United States ▪ The United States signalled that it would allow temporary protection status on significant migrant populations to expire

Coordination Complex co-ordination required between RCMP acting as first point of contact with irregular border crossers and CBSA, IRCC and IRB accountable for processing this heightened volume of cases with limited port infrastructure

Intake The RCMP and CBSA both set-up new emergency operations at Lacolle to address security and admissibility only ▪ DND initially sheltered the claimants, the Canadian Red Cross now manages the logistics of providing shelter and medical help to claimants on arrival ▪ Claimants are transported to Montreal for eligibility determination by IRCC ▪ IRCC increased productivity from 200 to 500 claims per day based on triaging and assembly line processes

RPD Claimants provided with a placeholder hearing date ▪ RPD will be required to re-schedule thousands of claims with placeholder hearing dates given by CBSA and IRCC but without reasonable prospect of a timely hearing

Horizontal trilateral governance was reinvigorated under the 2010 Refugee Reform project. Program governance included a Deputy Minister-led steering committee, including IRCC, CBSA and the IRB, and a comprehensive reporting framework on results. This level of trilateral governance of the system is necessary to sustain in order to address the emerging productivity and volumes challenges. The *Metrics of Success*, a set of indicators and benchmarks agreed to by all partners, have not been actively utilized as a tool to make regular course corrections. Where the metrics have highlighted performance issues the responsibility for responding to them has rested with individual organizations. For example, CBSA's front end security screening timeframes were not being met in 2015 due to conflicting priorities of Syrian resettlement, resulting in the postponement of approximately 40% of the initial hearings at the Refugee Protection Division. Corrective actions were taken in late 2016 but only after significant delays, costs and impacts were already felt across the system. This reinforces that when discrete parts of the system are performing poorly the impact can be felt across all the partner organizations. That is, if one actor surges their capacity and the action is not matched by complementary activities of downstream actors, then the result is delay in another part of the system.

Trilateral governance is framed by a Memorandum of Understanding between IRB, IRCC and CBSA, which was renewed in 2016 to clarify roles and responsibilities, and to refine cooperation on information sharing, priorities, detention, officer safety and security, and interpreters. The trilateral agreement is broad in scope and has

significant potential, as defined in the principles "... to, where appropriate, share information and cooperate on administrative, safety and security measures with respect to matters within the mandate of the IRB". In lieu of a routine and mature governance regime, task forces have been struck on a responsive basis to deal with issues and crises including the wave of recent irregular arrivals of claimants via the United States, and previously in response to irregular marine arrivals. This is not to say that horizontal governance is easy or straightforward. Indeed the pull of vertical accountability is strong and the entire Government of Canada accountability regime for Ministers and Deputy Ministers is built upon it. Each component of the asylum system has a different accountability structure – IRCC to its Minister directly as a government department, IRB to Parliament through the Chairperson to the Minister of IRCC, and CBSA to the Minister of Public Safety by way of its President as an agency Head within the Public Safety portfolio. Creating a more diffuse accountability regime would be difficult.

Organizational cultural issues have impeded close collaboration. It is universally accepted that asylum decision maker independence must be respected. However, the IRB's application of "tribunal independence" has presented a challenging environment within which to maintain horizontal governance, implement management systems, collaborate on innovation and focus on efficiency and results. Impediments to collaboration with partners arise on matters relating to backlog strategies, processing approaches, shared services and offices, administering information to the claimant, as well as liaising on priorities and management of caseload. These areas of potential collaboration address not case-by-case decision-making issues, but rather how the system cooperates with respect to caseload management.

With respect to oversight the IRB reports to the Minister of IRCC through standard planning and reporting tools, such as the annual Department Plan and Departmental Results Report (mandated by the Treasury Board Secretariat Policy on Results), through which it also exercises its accountability to Parliament. These tools typically receive little attention in Parliament or in the wider public arena. A more active ministerial oversight of the IRB by the Minister of IRCC is not viewed as tenable within the current model of an arm's length and independent IRB, headed by a Chair who serves "during good behavior"[11] as a Governor-in-Council appointee, typically mandated with a five-year term. The Chair of the IRB, as a tribunal head, is exempted from the Privy Council Office-led performance management process for GiCs, whereby an annual executive performance agreement is established and an annual performance review is undertaken.

Failure to Meet Productivity Targets and Timelines

While processing targets for some steps in the system were achieved post-reform, others, such as legislative timelines for first level protection hearings and the removal of failed refugee claimants, were not achieved, with both litigation on the

[11] The IRB Chairperson is appointed to the Board by the Governor in Council, to hold office during good behaviour for a term not exceeding seven years, subject to removal by the Governor in Council at any time for cause.

new law and capacity challenges identified as key issues. As noted previously, litigation of the 2012 reforms has extended access to the refugee appeal for persons from designated countries of origin, and there is litigation underway challenging the 12-month bar on access to permanent residence on Humanitarian and Compassionate grounds. Likewise, refugee appeals continue to be litigated on questions of scope and authority. Newly introduced jurisprudential guidelines by the Refugee Appeal Division are beginning to shape decision making at the first level but are likewise currently subject to ongoing litigation. The cumulative effect of the litigious nature of refugee decision making is likely a contributing factor to the tendency towards conservative and risk-averse management approaches. As an example, interventions and litigation have resulted in a low number of oral decisions given at the hearing. Under Refugee Reform the vast majority of decisions were to be given orally but the majority of decisions are reserved by the member to be written after the hearing.

In the period prior to this Review, processing output at the Refugee Protection Division fell significantly short of the funded capacity of 22,500 in 2015 and 2016, with finalizations of 16,200 in 2015 and 16,432 in 2016. While hearings for 90% of claimants were supposed to be held within regulated timelines, the IRB was never able to meet this target achieving a high of 65% in 2014 to 2016 and dropping to 59% by 2017[12]. The output of the Refugee Appeal Division has been also less than planned due to lower decision maker productivity and significant delays in Governor-in-Council appointments. In its post-reform analysis the IRB reported that the majority of the output gap between reform assumptions and results at the Refugee Protection Division related to unanticipated challenges with implementation of its human resource plan, specifically, insufficient recruitment, slow ramp-up and lower than expected productivity. A more complex caseload from a greater variety of countries is suggested to account for the remainder of the gap.

The system's efficiency is undermined by multiple, sometime duplicative hand-offs between different asylum system actors, along with the absence of a common triage system for managing caseload and a technological platform for information sharing. Scheduling performed at intake by IRCC and CBSA results in a high rate of re-scheduling by IRB. The tight timeframes for hearings and the formal procedures of the current hearing model compromises efficiency and impedes pre-hearing methods to identify determinative issues so as to focus hearing and decision-making time. Decision-making productivity and efficacy are undermined by insufficient guidance and supports for decision makers.

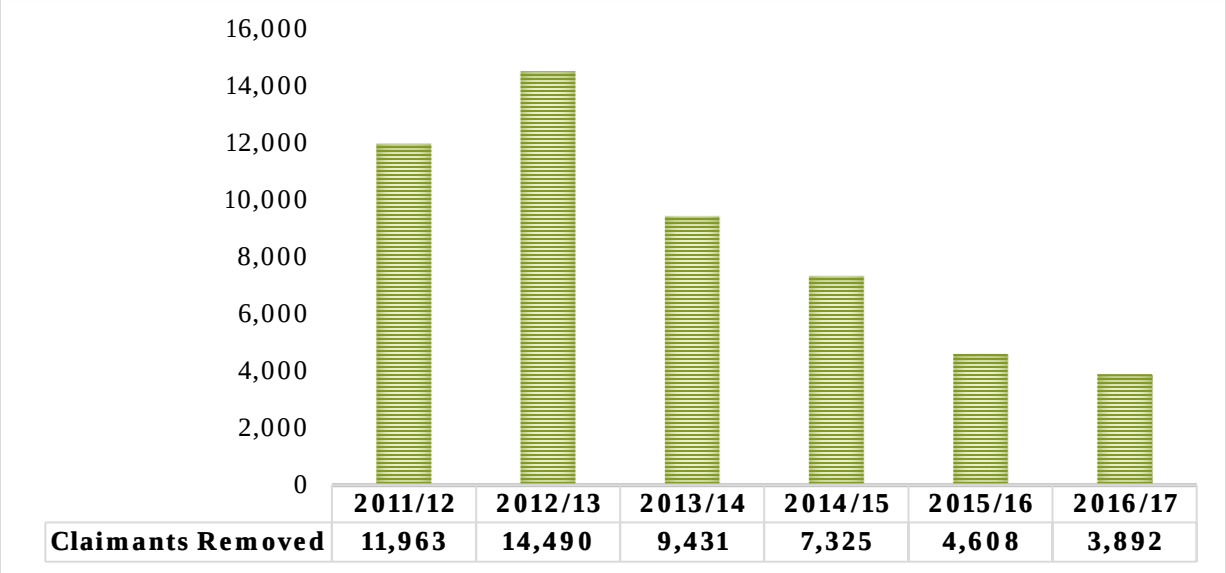
Post-first decision recourses – including the Refugee Appeals, and Pre-Removal Risk Assessments – are taking longer than expected and also impeding finality of case outcomes and removals. Paper-based decisions on appeal are taking longer than in-person first-level hearings. The rate of return of cases by the Refugee Appeal Division to the Refugee Protection Division was as high as one in five cases but has recently improved. Federal Court judicial reviews are likewise taking over six months, leaving less than six months for removals to occur before the bar to the Pre-

[12] Sourced from publically available IRB data on finalizations and internal sources on hearing timelines.

Removal Risk Assessment expires. Pre-Removal Risk Assessment decisions are currently taking longer than six months.

At the end of the continuum there are delays in removals of claimants not in need of protection, with failed claimants who abscond, are unwilling to cooperate on travel document application from their country of origin or are unable to renew travel documents due to the lack of consular cooperation. Resourcing and prioritization of refugee removals are not fully at the level envisaged under the reforms. As a result, returns of failed claimants dropped to 3,892 in 2016, notwithstanding a backlog of 17,000 cases of ready to return persons. This failure of finality creates a pull factor for asylum flows and increases the likelihood that failed claimants will find pathways to remain in Canada, notably applying for Humanitarian and Compassionate consideration, where 80% of applicants are estimated to be failed refugee claimants.[13]

Figure 4: *Removal of Failed Asylum Claimants*



	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17
Claimants Removed	11,963	14,490	9,431	7,325	4,608	3,892

Funding Asylum

As noted previously, asylum claims dropped dramatically in the early years following the reforms in 2012, but have been steadily increasing since 2015 and in 2017 will significantly exceed the funded capacity. Based on experience operating in the new system, the IRB initially indicated that the Refugee Protection Division had a processing capacity of 14,500 claims annually, a substantial 35% gap from the funded level of 22,500.[14] With rising pressure to process claims within existing resources the IRB began to introduce efficiencies in the fall of 2016, increased

[13] IRCC estimates that failed claimant applications for Humanitarian and Compassionate considerations could represents as much as 80% of caseload.
[14] Immigration and Refugee Board Review, Terms of Reference.

staffing of decision makers from new[15] and existing sources of funds, and was able to finalize 17,597 claims in 2016/17, an increase of 30% from the 13,522 made in 2015/16. For 2017 the IRB completed 23,103 claims,[16] using resources earmarked for the RAD to achieve this goal. The RPD had over 47, 000 referred cases pending at the end of 2017. However, with intake of claimants at almost 50,000 for 2017, it is double the funded "steady state" capacity.

Historically, spikes in asylum claims have occurred for various reasons, most recently as a result of irregular arrivals side-stepping the Canada-US Safe Third Country Agreement. While causes have varied the effect has been the same as there is no contingency framework to provide additional budgetary and human resources to increase capacity to meet higher claim levels. As a result, spikes quickly result in delays in the scheduling of hearings and in the rendering of protection decisions and the growth of backlogs. Once a backlog has accrued it can only be reduced and eliminated if processing capacity exceeds intake for a prolonged period of time, unless other policy measures are taken.

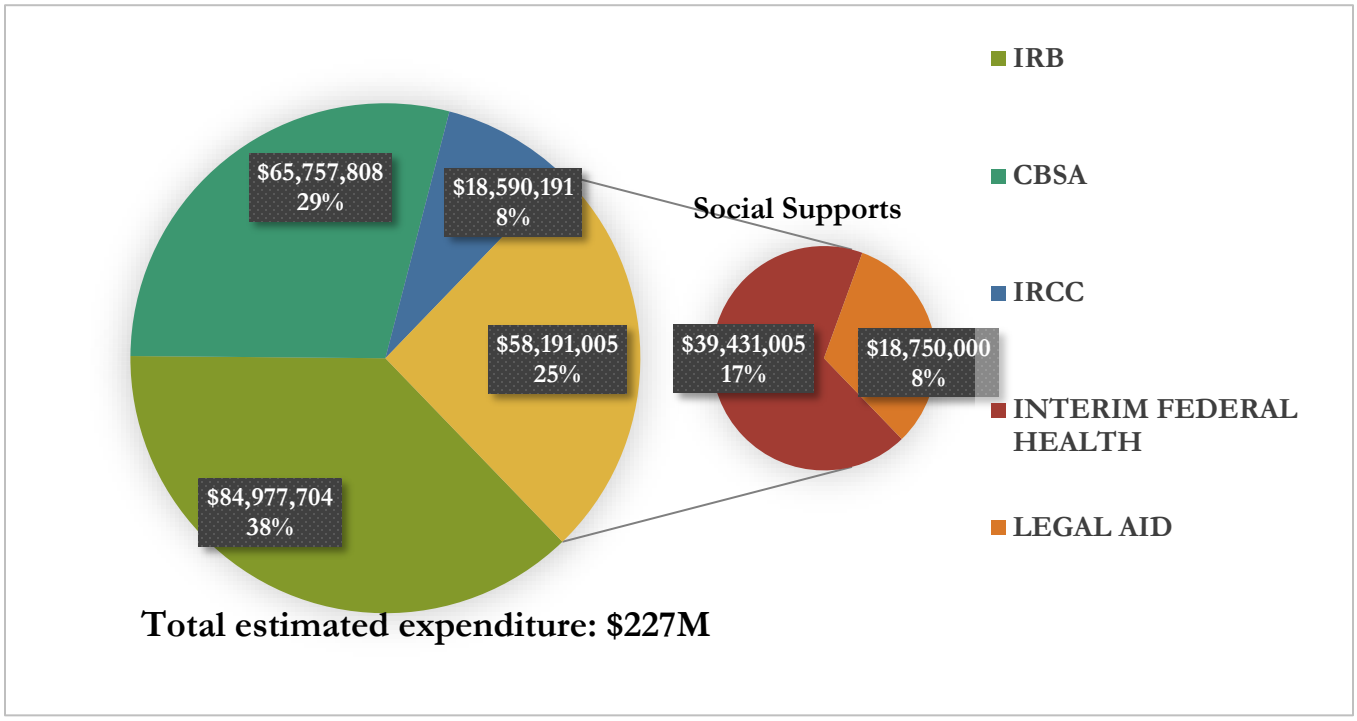
In addition to the systemic and long standing problem of managing spikes, information about the actual costs of federal processing and supports is limited. IRCC and CBSA expenditures are not disaggregated from other domestic network costs. This Review has sought to provide a high level system cost for the first time for consideration. Stronger program oriented financial controls, with clear lines of accountability are critical to the management of the system. Expenditures should be tracked and assessed holistically, rather than focusing solely on incremental funding. With the financial information available to date, it is estimated that the Government of Canada has spent on average **$216 million annually** in the four years post-reform. This includes both the direct costs for processing and social supports in the form of Interim Federal Health Program (IFHP) benefits and provincial Legal Aid borne by Department of Justice, but does not include costs for the Federal Court and downstream provincial costs.

Figure 5: ***Total Federal Expenditures for 2012/13 to 2016/17***

Organization	2013/14	2014/15	2015/16	2016/17
IRB	$95,729,336	$91,258,427	$81,294,245	$84,977,704
CBSA	$77,790,080	$72,034,339	$67,534,310	$65,757,808
IRCC	$16,905,394	$16,905,394	$17,902,088	$18,590,191
Interim Federal Health (IRCC)	$23,668,047	$18,536,334	$20,648,519	$39,431,005
DOJ (Legal Aid)	$12,000,000	$12,000,000	$12,000,000	$18,750,000
Total[17]	**$226,092,857**	**$210,734,493**	**$199,379,162**	**$227,506,709**

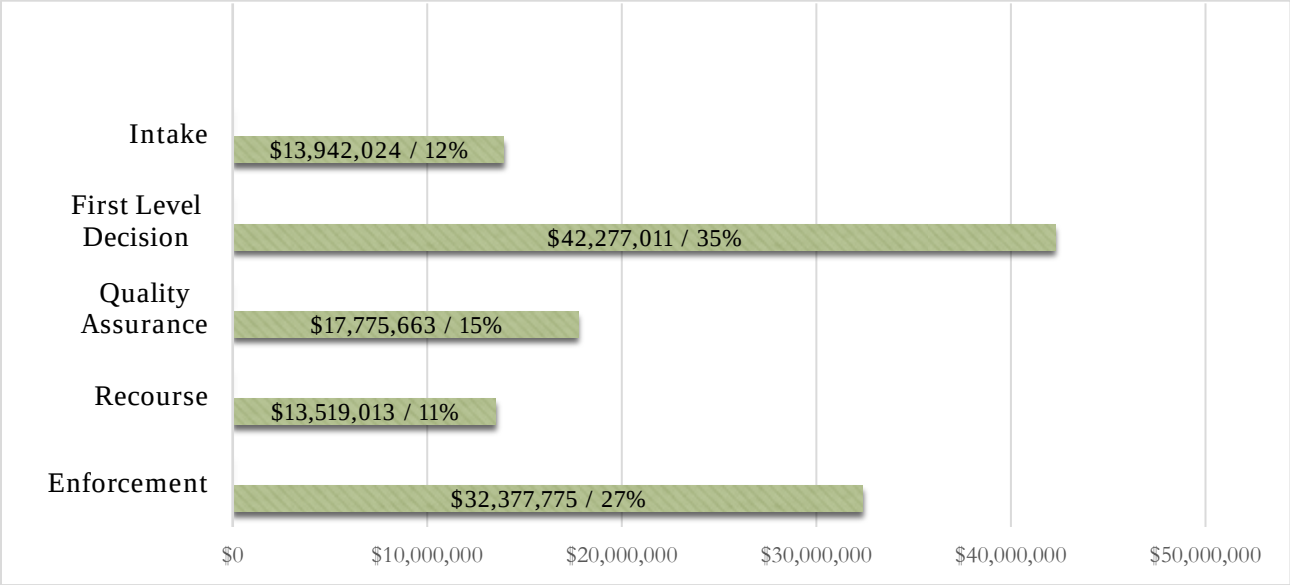
[15] Additional funding was provided in 2017/18 related to December 2016 visa program changes.
[16] 2017/18 data on RPD decisions were not yet available to the Review.
[17] Financial information provided by departments include approximate costs for internal services and accommodations.

Figure 6: ***Breakdown of Estimated Total Federal Asylum-related Expenditures for 2016/17***



Breaking down the main types of activity for processing regardless of the department — intake, first-level decision, quality assurance (reviews and interventions, hearings and investigations), recourse (Refugee Appeals) and enforcement (removals, Pre-Removal Risk Assessment) — highlights that the majority of resources are invested in first-level decision making and recourse. The expenditures for enforcement are also notable given that this expenditure is for a fraction of cases (less than 1,000 intervention cases and 3,500 removals). In short, any redesign of the system must take into consideration where to target resources to achieve optimal results for the system as a whole.

Figure 7: *Estimated Direct Expenditures by Activity for 2016/17*[18]



Current Efforts

Since the launch of the Review, asylum partners have separately pursued measures which hold some promise:

The **IRB** launched an action plan[19] in July 2017 to improve processing efficiencies, through client-centric, IT-enabled and other innovative measures. The Plan of Action acknowledges their use of unnecessary court-like processes and puts forward a goal to function as informally as possible. The plan also includes initiatives to improve case management, electronic document submission, as well as implementation of new staffing and performance management initiatives. Separately, the IRB has also launched initiatives to address backlogs, including hiring retired decision makers to process the remaining legacy cases from 2012 and earlier. The Toronto office is testing improved case triage models. These initiatives are promising, but are still in early stages and it is not possible at this point to assess their long term impacts. In addition to their internal action plan, the IRB commissioned a comparative analysis[20] with other administrative tribunals in Canada and other international refugee systems regarding processes, structures and best practices. This report (referred to as the Ewart Report) offers several areas for the IRB to consider, including: better use of IT, rationalizing information flow to and from claimants, streaming of cases, increasing staff support for adjudicators, reducing the need for written reasons for refugee protection decisions, increasing supports for decision writing, improving quality control and consideration of cross

[18] Direct expenditures do not include internal services or accommodations
[19] IRB Plan of Action for Efficient Refugee Determination
[20] IRB, The IRB in Context: Comparing Tribunal Efficiency across Subject Matter and Jurisdictional Lines, Final draft report, D. Ewart, Sept. 30, 2017.

appointments between the divisions of the IRB. Most of these elements will be covered in this report.

IRCC is addressing the most recent spike in asylum claims by increasing the efficiency of its inland eligibility determination process, driven by the significant increase in demand in Quebec. The additional capacity put in place and streamlined processing has dramatically reduced waiting times for claimants to complete the intake process. However, front-end processes continue to be cumbersome, including overlapping admissibility and eligibility determinations between IRCC and CBSA, before a claimant files a basis of claim for protection.

CBSA is currently undergoing a review, seeking to address program funding requirements across its mandate and reset priorities as needed. It is not known whether CBSA's review will have an impact on the components serving the asylum system and the priority of this program in the Agency going forward.

Fast, Fair and Final?

Writing in 2009, Peter Showler, an academic and former Chair of the IRB, argued for a system that should be "fast, fair and final", observing that "Canada's refugee claim system is too slow" and that "delays hurt legitimate refugees and can attract frivolous claims".[21] This Review views the rubric of "fast, fair and final" as a useful measure of the asylum system.

"Fast" requires establishing the necessary procedural safeguards and reasonable timeframes for claimants to be able to prepare their case with legal support and for decision makers to be well prepared to hear claims. Thus, the quality of first level decisions is in many respects the linchpin of an asylum determination system. A system that cuts corners on the quality of first-level decision making is likely to see any efficiency gains eroded by lengthy and costly appeals, and a lack of finality for cases not needing protection. Equally an over-built first-level decision-making system that seeks perfection will undermine speed, with decision making taking too long for persons in need of protection and delaying removals of those ultimately found not in need of protection.

Since 1989 the IRB has experienced several notable periods where the timeliness of decision making lagged and case inventories accrued that significantly exceeded the Refugee Protection Division's processing capacity. Today this history is being repeated again, with the number of people seeking protection in Canada in 2017 reaching close to 50,000 persons. These volumes represent a three-fold increase over 2014 volumes. These challenges are not new, though the scale is significant, representing about double the capacity of the current system. As noted previously, Canada's system has never been particularly fast and even when claim volumes were relatively low productivity targets at the RPD were not met in the post-Refugee Reform period. Processing times have increased significantly in times of high claim volumes as the asylum system and the Government of Canada have been slow to

[21] Peter Showler and Maytree, "Fast, Fair and Final: Reforming Canada's Refugee System", p.1.

respond with either new measures or an expansion of system capacity. This remains the situation today as processing times are rapidly increasing in 2018. Thus, the objective of "fast" is being lost.

What about fairness? Canada's asylum system is well respected internationally for its perceived high degree of fairness. Fairness, in the refugee context, is ensuring the claimant has the opportunity to tell their story in front of specialized decision makers who are highly competent in adjudicating claims and can ensure procedural fairness. Those decision makers must be reasonable in assessing the individual's specific case for protection, drawing on the person's testimony and evidence, balanced against available information on the specific circumstances of the country of origin. The decision maker is required to be culturally sensitive and unfettered by personal or institutional bias, or beholden to any political or bilateral relations considerations.

In Canada, but much less so in EU asylum models, fairness has been linked to the notion of the institutional independence of the IRB. That is, decision makers must be able to hear cases in an environment within which their decisions are not seen to be fettered by external considerations, such as the foreign policy positions of the government of the day. This question of protecting decision maker independence is at the heart of Canada's current system design and underpins the continuing rationale for an "arm's length and independent" tribunal and the culture of deference to decision makers at the IRB. Academic studies point to variations in approvals and rejections by individual decision makers at the RPD for cases that have similar facts and relate to the same country of origin.[22] Fairness is undermined when decision making is not perceived as consistent and gives way to recourses that are reasonably likely to succeed. In Canada, the IRB's interpretation of institutional independence and the culture that has evolved around it seems to have impeded the use of quality assurance tools and the supervision of decision makers common to many other jurisdictions.

What about "final"? Prior to Refugee Reform appeals of RPD decisions could only be made to the Federal Court through the leave process. The introduction of the Refugee Appeal Division (RAD) provided a new appeal body, but left access to the Federal Court for those not satisfied with a RAD decision. It was intended that the process at the RAD would be a fast, paper-based review, with limited allowance for new evidence not reasonably available at the time of the RPD hearing. It was not to be a *de novo* or new hearing. Experience over the past five years suggests that the RAD is not particularly fast, and in 2015 and 2016 cases at the RAD took longer than at the RPD. In addition, RAD cases are being referred back to the RPD for redetermination as the RAD is unable to finalise a small but significant proportion of decisions. The vast majority of failed claimants at the RAD then proceed to the Federal Court, making "final" a somewhat distant goal. Achieving "final" has been made even more difficult by delays in removals, given the challenges in getting cooperation from receiving countries which has led to significant reductions in

[22] Sean Rehaag of York University/Osgoode Hall writes on outcomes at the RPD and RAD suggesting divergent decision-making among individual decision makers.

removal numbers over the past five years. Thus, “final” has proven elusive in the Canadian asylum system.

In summary it is clear that the system as a whole today is not meeting its timeliness goals nor goals on finality of negative outcomes in part owing to management issues and in part due to passive approaches to quality assurance. The pull factors created by uneven decisional quality and system delay in turn serves to encourage non-bona fide asylum seekers to try a chance at the system in hopes of a result and at a minimum, achieve a lengthy deferral of return to their country of origin. Addressing the need for efficiency and speed in a manner that assures both fairness and finality is the focus of this Review. There are certain aspects of this almost 30-year-old system that are not “reform-able” without direction and leadership from the government.

For the Review meaningful transformation requires a strong systems management perspective to prioritize cases in need of protection and to deter cases that are presented in bad faith and erode confidence in the asylum system. Fairness does not need to be in any way compromised to achieve process improvements that simplify a claimant’s interaction with the process, or to streamline cases that are manifestly founded or highly credible to a simplified decision-making process, or even to provide tools and guidance to aid decision making so that there is consistency and transparency in approach. Achieving efficiency and finality and preserving fairness becomes a question of thoughtfulness and balance to the implementation of the approaches that are presented in this Report.

Conclusion

Overall, while the current activity across the IRB, IRCC and CBSA is commendable, structural problems with intake, scheduling and hearings persist, in addition to longstanding management issues raised in successive evaluations and audits, relating to governance, human resources, performance monitoring and reporting. In the absence of more strategic management, overall success remains at best uncertain and at worst unlikely. It is clear that the Government of Canada has invested significantly to process and support asylum claimants while they are in Canada. With volumes of claims doubling, additional funding will need to double if the system retains a “status quo” approach. This current “crisis” provides an opportunity to re-assess how work is being done, and is the fundamental purpose of this Review.

It is important to remember that the Canadian refugee determination system has evolved over several decades, shaped by the changing refugee landscape, jurisprudence and reform efforts by various governments. The IRB has now been in place for nearly 30 years. The Canadian system is well regarded internationally and Canada has long been recognized as a refugee-accepting country, as highlighted most recently by the Syrian refugee response. However, the Canadian system has had difficulty in meeting successive waves of refugee claimants, which although generally unpredictable in their make-up, do regularly occur. Slowness in reacting has led to the creation of significant backlogs of cases, which are both costly in financial terms, but also place claimants in a difficult position, often for years, after which it may be very difficult to remove unsuccessful cases. The significant reforms of 2010 and 2012

have not proven to be sufficient in terms of creating an effective and efficient system. The question now presents itself: can the system as it is currently structured and managed produce the results that are expected? The answer to this question is presented in the balance of this Report.

Chapter 2: International Best Practices

Canada's current challenges in coping with surging claims are not unique. Over the last three years asylum claims rose dramatically in EU countries where the flow of asylum seekers increased by 123.4% from 562,700 in 2014 to 1,257,000 in 2015, decreasing only slightly in 2016 to 1,204,300.[23] In Sweden alone in 2015 asylum claims reached 169,000 or 1.7% of the population. Translated into the Canadian context it would be akin to a surge of more than 600,000 claims – double total current immigration levels and more than a tenfold increase in 2017 refugee claims. In Germany approximately 890,000 asylum seekers arrived in 2015.[24]

These recent pressures on European asylum systems, with unprecedented levels of asylum seekers crossing into Europe from Africa and the Middle East, severely strained the ability of key countries to manage such large inflows. However, the EU has been a test-bed of innovation in asylum processing, with countries like Germany and Sweden able to rapidly increase decision-making capacity inside a single year by significantly increasing processing and decision-making staff and leveraging its case triage system. Overall in the EU the increase in decisions made between 2014 and 2016 was greater than the increase in intake (201% versus 114%).[25]

With this wealth of recent experience the Review studied international best practices and lessons learned in governance, management strategies and processing approaches through interviews, site visits and document research. This analysis considers the approaches of Sweden, France, Germany, The Netherlands, the United Kingdom (UK), and the United States (U.S.). In Europe, EU directives set common minimum standards for asylum systems, which countries implement individually. While all countries have challenges with asylum processing, across the various models it is evident that many of these systems have innovated beyond where Canada is today. They have put in place robust management systems to overcome significant fluctuations in asylum claims. International best practices are summarised below along the themes pertinent to the Canadian context: governance, funding, processing claims, human resources and information technology.

Governance

Among the countries studied, the majority have integrated many steps of the asylum process in a single organization. Within the asylum processing models most are structured as operational "agencies", with about half responsible for the full continuum from asylum registration through to first-level decision, resettlement in country and voluntary return. As operational organizations they are not setting

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[23] Eurostat News Release, 16 March 2017. Comparatively, in Canada and the U.S., asylum seekers increased by 37.4% in 2015 and 38.4% in 2016

[24] Asylum and refugee policy: the role of the federal budget, Germany Federal Ministry of Finance, January 27, 2017

[25] Eurostat, First instance decisions on applications by citizenship, age and sex (quarterly data)

asylum policy but are focussed on delivery. Independent and impartial decision making is provided within the parameters of natural justice. In the EU this principle is outlined in the directive on common procedures for granting and withdrawing international protection.[26] Decisions regarding other discretionary forms of protection, such as humanitarian and family reunification, are incorporated into the asylum decision-making process. In many instances, such as in the U.S., the Netherlands and the UK, the same operational organization is responsible for resettlement of refugees from overseas. Asylum appeals in every instance are handled outside the decision-making organization, typically within specialised judicial bodies reporting under justice ministries.

The Swedish Migration Agency is part of the Ministry of Justice and is responsible for the entire migration continuum from refugee claims to student and work visas, temporary and permanent residence permits, housing and voluntary removals. In Germany the Federal Office for Migration and Refugees is an agency of the Ministry of the Interior, in charge of intake and decisions with the majority of steps taking place in arrival centres. In the UK asylum is the responsibility of the Immigration and Protection Directorate within UK Visas and Immigration, a division of the Home Office, and includes initial screening to decision, case management through the appeal process and assisted removals.

The U.S. is somewhat unique as it has a dual protection system managed by different organizations. Inland and port of entry cases are decided by asylum officers within the Refugee, Asylum and International Operations directorate of the US Citizenship and Immigration Services (USCIS), an agency of the Department of Homeland Security. Expedited removal cases are screened by USCIS asylum officers and then referred to an immigration court, which decides whether foreign nationals charged with violating immigration law should be removed or granted relief or protection, similar to the Canadian Pre-Removal Risk Assessment process.

The Netherlands and France operate decentralized systems involving several organizations. In the Netherlands, the Ministry of Security and Justice is the lead department, with three agencies responsible for reception, decisions and removals. In France, the *Office français de protection des réfugiés et apatrides* (OFPRA) is responsible for decisions under the portfolio of the *Ministère de l'intérieur*, with the police and municipalities managing intake.

Both the UK and the U.S. also have independent review bodies defined in legislation. The UK Independent Chief Inspector of Borders and Immigration reports on the efficiency and effectiveness of services to the Home Secretary and Parliament and is informed by an Independent Advisory Group on Country Information and a Refugee and Asylum Forum. The U.S. has a Citizenship and Immigration Services Ombudsman within the Department of Homeland Security dedicated to improving the quality of USCIS services and assisting individuals in resolving problems with an annual report to the Secretary of Homeland Security and Congress.

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[26] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on Common Procedures for Granting and Withdrawing International Protection (recast), Article 10, 3.(a)

System Management

There are a broad set of asylum system management tools in use by countries. Where roles are shared between organizations, regular meetings and coordination among heads of organizations are supported by management approaches to monitor and manage the decision-making process. As an example, in the Netherlands, heads of agencies and staff at the working level meet to coordinate horizontally and vertically, via an agreed upon multi-year plan for asylum that includes productivity targets for key steps in claims processing. Detailed forecasts are reviewed and approved by senior management three times per year forming the basis for funding. The agency responsible for decisions discusses its plan every quarter, including targets for different processing streams, with results reviewed weekly by management.

In Germany, to address the crisis, a steering committee with state secretaries from all involved federal ministries was created, led by the Federal Ministry of the Interior and a plan was developed within six months with the Federal Chancellery responsible for general policy coordination. This was supplemented with a coordination group between the federal, state and local authorities responsible for housing. An integrated refugee management system was developed with previously separate federal and regional processes now taking place at arrival centres in each state, supported by decision making centres and branch offices, managed through frequent senior management meetings. Within one year of the beginning of the surge, asylum procedures were shortened, simplified and digitized.

The U.S. and the UK also reported ongoing engagement at senior levels to review system performance, including targets, forecasts and resources. The U.S. establishes targets in collaboration with regions, and closely monitors each step of the process nationally to quickly address any problems. Uniquely, France has a management board of elected officials and NGOs, who set general procedures, annual objectives and validate the budget. The head of asylum (the Director-General of OFPRA) reports to the board and commits to defined service standards and quarterly reporting.

Funding Models

Most countries studied have managed resource allocation processes. These systems are supported by forecasting models and productivity targets, which in turn inform resource requests for future years. Forecasts are updated annually but encompass a multi-year view.

The Netherlands is funded in accordance with forecasts and processing time: the majority of cases are processed under an eight-day system, with the remainder under a longer timeframe. The funding model in the UK is tied to the government funding cycle, updated annually, with some flexibility to reallocate internally or access a central contingency fund to adapt to fluctuations in volume. UK funding is tied to the forecast combined with processing service standards, wherein about 50% of cases are considered straightforward and processed within 6 months. The remainder are usually completed within 12 months. The UK also sets targets for other elements of the process, such as screening interviews. The UK has indicated that their forecasts

are typically within 1% of actual intake. The Swedish Migration Agency similarly maintains a comprehensive forecasting model and reports quarterly to the Swedish Ministry of Justice.

USCIS has a staffing allocation model, which applies data-driven methodologies to quantify resource needs by office, including the Refugee, Asylum and International Operations, with the key drivers being the projected intake, hours per completion rate (or productivity rates), utilization or take up rate, and subject matter expert input. As the U.S. funds its asylum system through revenue generated by user fees from other immigration programs, it is important that intake forecasts are as accurate as possible. This rests within a larger governance structure and is reviewed and revalidated by management in operational, policy and finance three times a year.

Of note, both the U.S. and Sweden benefit from the flexibility to internally reallocate resources given they are both situated within larger organizations responsible for all asylum processing as well as additional business lines. However, the Swedish model provides additional flexibility: in-year funding can be adjusted twice and to address surges, a contingency per activity can be accessed with overruns possible if they can be compensated elsewhere in the Agency. While the U.S. and Sweden do not have a multi-year budget, both provide two- and five-year outlooks respectively for planning purposes.

In Germany, to address the crisis, two supplementary budgets were approved in 2015, along with subsequent annual budgets negotiated among all levels of government. Within the Ministry of Finance, a coordination committee for refugee-related issues was established to monitor and plan asylum system expenditures. At the end of the 2015 fiscal year surplus funds were used to build a reserve for additional refugee-related expenditures. The 2016 staff budget was also significantly increased by nearly 5000 permanent and temporary positions mainly to secure the border and decide asylum claims. In addition, humanitarian aid was almost tripled to help address the root causes of the mass migration.

Processing Claims

The organizational structure of asylum systems determines to a large extent the complexity and efficiency of procedures. Of the countries studied there were systems with integrated asylum procedures and others which engaged multiple parties from intake to decision. For all countries asylum procedures typically follow a two- or three-step process, followed by decisional review and/or quality assurance processes, within an overall timeline of about three to six months for straightforward cases:

- registration of claim, followed by a decision (with or without interview), or
- registration of claim, intake examination, followed by decision (with or without interview).

Registration

In European countries great emphasis is placed on quick registration and identity verification for security purposes. At the initial registration basic information about

the claimant is collected: identity, travel documents, travel history, fingerprints and photos, with minimal information on the nature of the asylum claim itself. Electronic forms are often completed by officials, rather than the claimant. Registration serves to quickly verify identity, inadmissibility history, and previous visa applications or asylum claims. This step can be as short as a few hours in Sweden where there is no criminal check (as per EU asylum policy, criminality is not a bar to access a claim) to 4 hours in the UK, which involves an admissibility decision. Germany, like the UK, does not release claimants until cleared by a security check, which takes a few hours for the majority of cases.

To confirm identity of large numbers of undocumented claimants, Germany uses voice biometrics, specialized keyboards to translate names and mobile data analysis. For unaccompanied minors, a significant volume in the 2015 wave of asylum seekers, the Netherlands, France and Sweden conducted medical tests to verify age. In Sweden, the UK, and the U.S. expedited removal process, there is a screening interview so that the asylum seeker can briefly explain their claim and answer questions.

In France claims must be made within 120 days of entry unless there is a valid reason for delay. Under law, registration must take place within three working days after asylum seekers have expressed their intention to file a claim, which can be extended to 10 working days when there are large numbers of arrivals. In the Netherlands registration typically takes one to three days, including reporting, interview and health screening. Then, claimants have a minimum six-day rest period or up to three weeks prior to the start of the eight-day decision-making process.

Triage

Most countries have a triage system with several case streams to improve the efficiency and effectiveness of the asylum process. Each organization determines specific streams according to specific criteria, such as the country of origin, travel route, complexity of the claim, past outcomes and the time required to complete processing. These streams vary anywhere from three to seven different categories, including manifestly unfounded and founded cases, and country or geographic groups. Claims that appear well-founded and unfounded are generally put through an expedited process. Most countries also prioritize unaccompanied minors and individuals in detention.

Triaging is typically done by someone other than the interviewer/decision maker, usually at or following registration. In France, the municipality receiving the claim identifies the stream. In Sweden, teams of dedicated case workers triage the files into streams prior to sending notices to claimants to appear. In the UK, files are triaged following the screening interview. Along with registration, these triage systems serve to prepare the case file for the interviewer/decision maker by collecting and organizing basic information on the claimant.

International Best Practices: UNHCR and EASO

Strong exemplars of efficiency in the EU asylum context are applying new management tools to their systems to address fluctuations in intake, supported by the UNHCR and the European Asylum Support Office (EASO), which have become centres of expertise in the sharing of best practices. EASO also provides operational assistance, such as interviews, quality assurance and other support to EU member states. Key best practices are provided below:

- Backlog analysis and data management, with regular collection, analysis and reporting of detailed statistics to identify trends and inefficiencies.
- Use of case management technology, interview/decision templates and automated processes.
- Contingency planning to ensure adequate staff and managers, including cross-trained or temporary staff to respond quickly to changing volume.
- Various case-processing procedures for different caseloads or profiles of applicants allowing the operation to categorize and prioritize claims into streams for differentiated group or expedited case processing and ensuring information required is gathered upfront according to defined criteria.
- Specialization of staff functions and responsibilities to ensure consistency and adequate attention to each task.
- Effective management to set clear performance targets according to complexity of the task, assign work, ensure a well-coordinated office, reduce duplication or gaps; supervision and training of managers may also be required.
- Setting clear performance targets for each step of the process, taking into consideration the complexity of the case, and active oversight by managers.
- Intensive, high-quality training for new staff covering skills and knowledge, ongoing professional development and targeted training to respond to needs identified through ongoing supervision.
- Measures to improve staff care to help prevent or reduce stress, and reduce staff turnover.
- Information on countries of origin, e.g., guidance on key issues (internal flight alternatives, state protection) and technical guides, e.g., interviewing claimants, assessing facts, exclusions, addressing vulnerable or special needs cases to increase consistency.
- Training modules for new staff and ongoing professional development delivered in a 6-week online course and on-the-job coaching to respond to needs identified via ongoing supervision.

Where interviews are required clients and counsel are convened according to the readiness of the file and the scheduling strategy, which takes into account the assigned stream. For example, Sweden sends notices one month in advance, based on the availability of counsel using an electronic availability calendar and consequently there are very few requests for date changes. Most systems operate under the premise that it is the responsibility of the claimant and counsel (lawyer or other) to be available or to find a replacement counsel that can be present.

Interviews and Decisions

All countries examined have an interview process in an informal setting focused on determining the basis of claim, often with case specific research and submissions occurring afterwards. Several countries use specialized staff for different steps in the

decision-making process, meaning that interviewers are not always decision makers. Some use regional country specialists in response to short-term surges but reported that case type specialists for particular vulnerable groups provide longer term efficiency benefits. Most countries have detailed weekly targets based on case types and streams, with higher targets for straightforward cases and lower targets for complex cases. In Germany, during the crisis, straightforward cases and large families were prioritized with higher targets. In the UK, a dedicated casework team is testing new ways of working to improve efficiency.

In all countries studied there is a decision review process with a second decision maker, a senior decision maker or a supervisor. Some countries review 100% of cases, while others focus on those from decision makers on probation and on complex cases. In the UK technical specialists and senior case workers are responsible for reviewing about 50% of all decisions, in addition to conducting random checks and quality assurance. Complex cases and those with no appeal rights must also be signed off by a senior case worker. In Germany, the U.S. inland process and France, the interviewer/decision maker drafts the decision, which is reviewed by a supervisor. In Sweden, the interviewer makes a recommendation to a decision maker, who oversees a team of interviewers.

Interpreters participate in the interviews in person, by video conference or by phone. In Germany, interpreters are assigned based on the language that claimants can understand to avoid the need for rare language services. The U.S. monitors the quality of a claimant's interpreter using a phone service.

Individuals may be supported by a lawyer or another representative. In Sweden and the Netherlands, free legal assistance is provided to claimants under a duty counsel model in most instances. Interestingly, in Sweden cases streamed to positive decision making are not represented. The Netherlands has a notable appeal-like step integrated into the eight-day decision-making process, whereby they work collaboratively with counsel to finalize draft negative decisions, which reduces formal appeals and significantly improved efficiency of the overall process.

In an effort to maximize productivity, tools such as checklists are provided to interviewers and decision makers to help them focus on the factors required to make a decision. Most countries have templates for interview notes and decisions. The UK has a notable assisted decision-making tool, which is a digital decision tree to support consistency while allowing for case precision where relevant.

European countries provide summaries and findings on country conditions, and instructions on the aspects for decision makers to address based on the type of refugee claim and the countries involved. Other ministries of government are responsible for either preparing (such as the Ministry of Foreign Affairs in the Netherlands) or providing input to reports on major intake countries. Germany prepares concise reports. Country of Origin information is made publicly available, with the exception of Germany.

Quality Assurance and Program Integrity

All countries studied evaluate the quality of asylum decisions on an ongoing basis through formal quality assurance programs. Quality assurance systems include decisional review models at the operational level, in addition to quality assessment units responsible for random post-decision reviews and reporting to management. Quality control is an internal function of each organisation, with the exception of France, which employs the UNHCR on contract to evaluate the quality of interviews, research and decisions, with the findings made public. Specialized quality units within organizations are typically responsible for the creation of standards, guidelines, training, regular auditing of decisions, timely identification of issues, as well as monitoring trends.

In the Netherlands, randomly selected cases are reviewed weekly. In the UK, operational assurance is directed by executive and risk assurance committees, as well as a governance board. At the operational level, there are first line checks and performance monitoring, while an independent compliance team assesses a small percentage of random cases and conducts targeted reviews. Internal audit, the Independent Chief Inspector and UNHCR provide a third level of assurance. In Germany, a team also reviews a small percentage of cases monthly and addresses complaints. The U.S. has program integrity and quality assurance units that are accountable for establishing indicators and checklists, reviewing security cases and a sample of cases based on annual plans. The UK, the U.S. and Germany provide feedback on findings from these reviews to enhance training.

Appeals

Of the countries reviewed all have appeal processes for rejected claimants under justice ministries, separate from the decision-making organization. In most countries, appeals are heard by an administrative law court, often a specialized migration chamber with immigration law experts. In general refugee claims that are determined to be manifestly unfounded do not have a right of appeal. In France the *Cour nationale du droit d'asile* (CNDA), a specialised court for asylum appeals, holds public hearings. In the U.S. decisions may be appealed to the Board of Immigration Appeals. The Netherlands allows one-week for appeal applications to support quick removals and decisions are provided in four weeks. Most appeal bodies studied have the authority to substitute decisions.

Judicial review is also generally available to claimants following the appeal process. The UK has a notable process to encourage resolution of claims without litigation in an effort to bring down the percentage of cases that proceed to judicial review. Pre-Action Protocol letters are exchanged between the claimant and government. Typical remedies include reconsideration of all or part of the original decision and/or an undertaking to proceed with a course of action within a specified timescale, for example, agreeing to reconsider a decision within three months.

Removals

Removals are a challenge for all countries. Based on data gathered in 2009 from countries with comparable asylum systems, typical rates of removal for failed

claimants are less than 50% overall. To complement forced removals all countries examined have voluntary or assisted return programs usually within asylum organizations to encourage departures. Information to claimants about assisted return is shared throughout the asylum claim process. Most countries offer assistance with return travel and reintegration in home countries (including employment and training), and many have tailored projects with the International Organization for Migration. The Netherlands funds its program through its foreign aid program, with grants and contributions available to NGOs, which provide practical reintegration assistance to failed claimants. The U.S. and Sweden also have direct agreements with certain countries to facilitate the removals of claimants. The Netherlands actively manages the removal of failed claimants with automatic interviews every six weeks tied to ongoing social support. In 2017 Germany provided assistance to almost 55,000 failed claimants through its voluntary departure program, while the UK assists about 20% of failed claimants. In France approximately 4,774 persons returned voluntarily in 2016 and 1,095 persons benefited from some kind of assistance. Countries noted that these programs are a cost effective means for governments to support reintegration of failed claimants, as well as helping to meet humanitarian objectives, particularly where other return measures have proven inadequate in increasing compliance with departure.

Human Resources

As most countries have integrated systems within one larger agency, there is flexibility to reallocate staff as needed. In Sweden and the U.S. staff are moved between regional offices or different business lines in accordance with operational demands and priorities. While the Netherlands has a decentralized system decision makers are regularly reallocated based on caseload. To cope with the 2015 crisis Sweden, Germany and the Netherlands hired new permanent and temporary staff from a wide range of backgrounds through agencies, mainly to assist with registration and screening interviews and other support functions. Germany also seconded thousands of officials from other federal organizations and hired additional local staff. The UK and the Netherlands both deployed mobile decision-maker teams during the crisis and Germany also set up centralized decision-making hubs to support arrival centres. In Sweden, when refugee claims decreased substantially in 2016, resources were moved from the front end (intake and first-level decisions) to later stages in processing (re-assessment of the temporary status permits).

With respect to international resettlement processing, most countries send asylum decision makers on refugee resettlement missions given the similar nature of work between in-country asylum and overseas protection. In the U.S. there are distinct teams of asylum and resettlement officers within the same directorate, who can apply for short-term cross-posting assignments or be cross-trained based on need.

All countries recognize the critical role of the decision maker and focus on the recruitment of the right individual based on key competencies.France and Sweden recruit individuals with international experience. In Sweden personality tests are also used and problem-solving capacity is evaluated. In the Netherlands most case workers are trained lawyers. Similarly, the U.S. recruits most asylum officers from

law schools, and others from non-governmental organizations or immigration programs within the U.S. government. The UK job poster emphasizes the requirement to meet performance targets.

Training for new decision makers varies from 5 to 16 weeks and occurs online, in the classroom and through practical exercises. All countries cover essentially the same subject matter: refugee law, interviewing, decision making, research and case management. Germany has a training centre delivered in multiple locations and a large pool of trainers to address the high demand. During the crisis the training program was reduced, re-focused on training to specific skills such as (interviewing) or country specialization. Follow-up training was provided by Germany as well as quality standards. Most countries have a one year probation period at which point the decision maker is considered to be fully trained. The U.S. also requires supervisory asylum officers to attend specialized training on case law application, consistency and effectiveness in evaluating asylum officers' interviews and written work, and improving feedback, interpersonal and workload management skills.

Retention of highly skilled decision makers is a universal challenge with regular staff turnover, usually every three years. The UK is beginning a new developmental program to improve recruitment and retention.

Information Technology

Digitization is seen as essential to efficiency and all countries are developing or have developed e-solutions. Sweden, Germany and France have one primary case management system. Sweden has also digitized all documents. Germany has invested heavily in IT as well with the majority of the process now digitized. Germany utilizes a central identity database accessible by all security partners, a dedicated technology lab to quickly develop digital solutions, a biometric identity card for claimants, and an automated system to distribute claimants fairly throughout the country. In the UK, in addition to the assisted decision-making tool, web-based video conferencing is being expanded to reduce office space. The UK and the U.S. have also established transformation offices to provide better government services, including for immigration, focused on improving the client experience.

Lessons for the In-Canada Asylum System

While the countries reviewed all have their own unique legal, policy, organizational context, they offer a range of best practices for Canada to consider. From an organizational perspective, integrated agency models have enabled countries to simplify and shorten the overall asylum processes, from intake to assisted removal programs, and easily monitor and adjust staffing and funding. In the area of appeals, specialized judicial bodies are able to review and finalize protection decisions without the need to return the decision to the first level.

Emphasis on early and quick registration, including security, exclusion and identity screening on the first encounter with the claimant, has allowed many countries to track and manage cases efficiently. European countries as well as the UNHCR are encouraging the reduction of effort to process straightforward and manifestly unfounded claims, viewing the expediting of cases as one tool to relieve the significant processing pressures. Cases are streamed to tailored processes, with specialized expertise or senior decision makers for complex case types.

Overview of Best Practices

Active system management with detailed planning, flexible funding and resource allocation, including temporary staff

Integrated processes from intake to decision to minimize hand-offs

Case streaming with early information-gathering and faster processes for well-founded and unfounded claims

Informal interviews with firm dates, videoconferences for flexibility, document submission at interview and after

Decision aids, such as templates, checklists and guidelines to improve consistency

Decision review & ongoing quality assurance to reduce errors and appeals

Discretionary protection decisions immediately following asylum determination to speed processes

Digitization and integrated IT systems to speed and simplify processes

Assisted removal programs in collaboration with NGOs to support faster reintegration of failed claimants in home countries at reduced cost

All countries conduct interviews in simple and informal settings, with few flexibilities for claimants and counsel to change the date. Gathering of supplemental claimant evidence and documents occur at or following the interview, which minimizes delays. Quality assurance is reinforced through decision review and is used to inform training and guidance to decision makers to correct errors and ensure consistency.

Finally, most systems have invested in digitization to speed processing, from paperless files to decision-making checklists and templates that assist the drafting of decisions, and integrated IT systems allowing for real-time information-sharing between organisations.

Chapter 3: Stakeholder Perspectives

The Independent Reviewer engaged with a broad range of stakeholders who shared their insight into the current functioning of the system from the perspectives of users, advocates and specialists in the asylum field. Stakeholders were forthcoming with ideas, offering proposals for efficiencies and opportunities for improvements. While there was not consensus on all issues, stakeholders universally stressed the importance of the fairness of the system. A common, core position that was brought forward was the principle of independence of refugee decision making, with a preference for the tribunal model at arm's length to government, citing the risk to fairness if decisions are not exercised under institutional independence. Equally, stakeholders raised concerns related to policy and legislation that are not summarized here as these considerations were outside of the scope of this Review. In addition to the focussed consultations undertaken by the Independent Reviewer, the Review had access to the results of IRCC stakeholder consultations that were held in July 2016.

Across the themes of this Review, stakeholders provided valuable input which is summarized below.

Governance

Stakeholders universally support a fast system that ensures fairness to the claimant. System inefficiencies amongst the key organizations are viewed as undermining this goal. Concerns were raised about the lack of overall management of the system, and the need for a more coherent process. Clients and their cases suffer from the unnecessary and unclear hand-offs between organizations and the delays which result. Some stakeholders wish to see decision making aligned in a single, expert organization, including Humanitarian and Compassionate decisions, Pre-Removal Risk Assessments and status decisions pertaining to stateless persons in order to ensure consistency of decision making and client treatment in relation to these similar decisions. There is a desire to increase accountability of the system with a reporting and oversight mechanism, such as an ombudsman or inspector that could monitor asylum processes and report to Parliament.

Processing

Stakeholders support the need for increased flexibility in the system in keeping with the principles of natural justice and without sacrificing fairness. Many stakeholders encouraged moving away from rules-based processes such as rigid timelines that do not reflect case complexity, so as to be as informal as possible in resolving cases. For example, look to minimizing the number of steps clients need to take in the process and eliminate redundancy. Simple technology solutions were recommended to speed up processing, such as e-mail to communicate with counsel and claimants, and electronic filing. Many suggested that tight timelines for the lodging of the Basis of Claim and for hearings lead to postponements. It was reinforced that longer decision

timelines could improve the IRB's capacity to stream cases to specialized decision makers and ensure the readiness of cases to be heard. Plain language in all communications with claimants was also suggested to improve understanding of the process. A pre- and post-reform comparison was recommended to determine what aspects of the process are now taking longer than previously.

Legal Counsel

Legal assistance was widely recognized as essential to an effective process, noting that counsel's early and informal access to claimants increases speed and reliability, and ensures fairness. The need for consistent, stable funding for legal aid across the country was stressed. It was reinforced that claimants are screened for legal aid through both means and merit-based tests. Early access to work permits could decrease costs of means tested legal aid. Federal funding to all provinces for either legal aid/duty counsel programs was promoted as a means to achieve equitable, accessible legal service with a much higher level of expertise and reliability, e.g., legal aid clinics specializing in refugee law. To address other issues contributing to poor representation, such as inadequate regulation and training, confidentiality and ineffective complaints processes are needed in the system. A quality assurance mechanism tied to funding was suggested to increase public accountability on legal aid costs.

Asylum Application

Stakeholders agreed that there should be a consistent process wherever a claim is made whether at the port or inland. Forms should be consolidated and streamlined into one, eliminating overlap and redundancy between CBSA, IRCC and IRB. The claimant process was often viewed as necessitating claimants and counsel to submit the maximum amount of information to ensure that any relevant issue that may arise in a hearing is not inadvertently missed. This approach has significant costs and would be better corrected by clarifying substantive issues prior to the hearing or as early as possible in the claim process. Other specific suggestions included:

- Either focus eligibility interviews solely on the issue of eligibility or make all refugee claims eligible, with any relevant eligibility issues addressed as part of the claim.
- Eliminate duplication between eligibility and the decision process.
- Provide longer timeframes for perfection of the basis of claim.
- Collect information specific to the refugee claim only.
- Reduce the number of documents to be submitted by claimants and the need for translation.

Case Management

There was a widespread call for more expedited processing and short hearings, open to all claimants regardless of country of origin. The system should provide more flexibility to triage straightforward decisions that can be made quickly on clearly positive cases that do not require hearings. A triage process prior to scheduling, focused on the defining issue(s), was recommended to identify expedited cases and

to free adjudicative resources for more complex cases. Many suggested using administrative support models to recommend positive cases to decision makers. This would both lower costs and increase productivity. Case streaming by country of origin, unaccompanied minors, single issues, persons in detention or unique claimant circumstances, expedited groups, and Ministerial interventions was raised as a useful tool to better manage caseload. Other specific suggestions included:

Leverage fast-track/expedited processes:

- With safeguards, fast track cases whether the outcome is positive or negative; return to the old system to fast track all manifestly founded cases and develop a parallel fast track system for cases that are likely to be unfounded.
- Claimants from all countries should be eligible for expediting based on guidelines; counsel should be able to recommend cases.
- Fast track vulnerable cases (unaccompanied minors, claimants with family left behind in a situation of risk, those who cannot continue with education due to immigration status, claimants in detention, legacy cases, LGBTQ community).
- Paper screen claimants whose cases are well documented.

Make better use of short hearings:

- Use short hearings where the case appears strong but paper review is inadequate; claimants should be sent to a full hearing only if a positive decision cannot be made following the short hearing.
- Consider past Refugee Protection Division practices: one-hour expedited interviews for claims likely to be accepted but requiring some assessment of credibility; and scheduling two short hearings for straightforward claims in the time slot now required for one.
- Assign short hearings only to those decision makers who can do this well.

Improve scheduling and reduce postponements and adjournments:

- Transfer scheduling to the decision-making organization.
- Claimants should receive notice of an effective date soon after referral; if postponed, provide a new date immediately.
- Schedule claimants who are ready sooner.
- Avoid delays as much as possible, as counsel prepares each time, adding to cost.
- Internal policies and management practices should work to resolve and minimize delays such as due to decision-maker illness, failure to disclose documents, lack of interpreters or qualified interpreters, security clearances, and unrepresented claimants.

Decision Making

Several experts in the field of asylum adjudication spoke candidly to the Review of the opportunities to improve the quality and productivity of decision makers. Two key themes emerged with respect to decision making. First, improve consistency and speed. Second, hearings should be as informal as possible, as overly strict rules

inhibit the ability of claimants to give spontaneous accounts of their experiences. Pre-hearings with counsel were also widely recommended. Other specific suggestions:

- Increase transparency of decisions, with clearer reasons that acknowledge uncertainties.
- Develop guides on topics such as credibility, internal flight alternatives, generalized risk and state protection.
- Establish guidelines for circumstances where the Minister will intervene, particularly in relation to IRCC credibility interventions, and limit interventions to exclusion or information not on file.
- Invest in good, objective country information and update it dynamically as conditions change.
- Bring back interview rooms for non-formal, fast track decisions.
- Hear and complete claims in one sitting, adjourn early whenever possible, and deliver more oral decisions.

Post-Decision

Several proposals were provided to streamline processes following the first protection decision, notably, that Refugee Appeal Division should make final decisions and not return cases to the Refugee Protection Division. Priority processing at the Refugee Appeal Division was also proposed. To assist the Refugee Protection Division, broader use of Refugee Appeal Division jurisprudential guidelines were suggested, particularly in relation to state protection and internal flight alternatives. The goal for the appeal should be for the Federal Court to fully defer to the competency of the Refugee Appeal Division, reducing judicial review to questions of law.

To encourage the return of persons to their countries of origin with dignity and anonymity, a voluntary returns program was recommended as a more effective approach than forced removal. In lieu of forced return, an independent office could facilitate the return of refused claimants to their country. This could be offered as in-kind assistance for housing, or livelihood training or through discretionary payments for transportation and resettlement. Stakeholders recommended streamlining the permanent residence application process with the claim process to improve efficiency.

Funding

All stakeholders agreed there should be sufficient funding to process claims on a timely basis. Backlogs serve no one's interest except those attempting to prolong their stay in Canada. A mechanism to provide extra resources for increased claims or backlogs was strongly recommended.

Human resource management

To support processing efficiencies stakeholders emphasized that maintaining a full complement of available decision makers and interpreters at all times must be a

priority to eliminate capacity shortfalls. Well-trained and supported decision makers was highlighted as the essential component of an effective system and that recruitment is critical. Other specific suggestions:

Staffing

- Increase requirement for greater substantive knowledge of refugee law such as through recruitment of legally trained decision makers.
- Use background checks to assess judgement; assess reductive skills as part of recruitment; continually improve processes to assess aptitude.
- Select skillful and unbiased decision makers. Reassess appointed versus public service decision makers as efficiency has not been met under the new model.
- Improve speed of appointments.
- Appoint the highest calibre candidates to the Refugee Appeal Division to earn the respect and deference of the Federal Courts and provide guidance to the Refugee Protection Division in order to increase its efficiency.
- Assessments should be consistent between the Refugee Protection Division and the Appeal Division.
- Increase use of term and part-time positions; and
- Consider recruitment of professional interpreters.

Training and performance management

- Decision makers should be better trained in decision writing, use of expedited processes, and identifying key issues.
- Examine Refugee Appeal Division returns and provide training to avoid future errors and yield more timely adjudication.
- Have service and human rights organizations provide ongoing training.
- Strengthen mentoring programs to support performance and to reduce burn-out.
- Refugee Protection Division quality assurance should go beyond Refugee Appeal Division outcomes and include timeliness and complaints.
- A simple, transparent complaints process should exist to improve the quality of decisions.
- Address uneven processing at Ports of Entry and perceived inconsistencies through training.

Conclusion

While the interests of stakeholders are wide-ranging there is a thread of consensus that is instructive. From discussions with stakeholders it is clear that there are many opportunities to make improvements to the overall functioning and efficiency of the system and that external contributors such as lawyers and NGOs should be part of the considerations of any revised approaches to asylum adjudication.

In accordance with the themes of this efficiency review, stakeholders' perspectives are instructive on all aspects of the system. On the front-end of the system, stakeholders support a better process for claim intake that would reduce duplication

and improve the collection of information, making better use of automation to assist the process. For decision making, stakeholders have a strong interest in ensuring that case resolution is tailored to the case, such as through better triage, informal resolution of issues and narrowing of issues in advance of hearing the claimant. The ideas of stakeholders are driven by procedural fairness interests of the claimants who bear the weight of the formality of the process and equally by NGOs and legal aid which bear part of the cost of this formality. There is a common interest in fairness, accountability and results which resonate in this Review. This Review has considered many of these practical suggestions in developing the recommendations that follow.

Chapter 4: Toward Systems Management of Asylum in Canada

A key observation arising out of consultations with IRB, IRCC, CBSA and stakeholders is that the efficiency of the asylum system in Canada has suffered as a result of the lack of active, coherent and accountable management across the entire continuum of its activities. In the absence of such management decisions for different components of the system are being made without due regard for their impact on other parts of the system – including the protection decision-making process. Productivity and efficiency of the system as a whole suffers as a result.

Hence a system management approach is essential. Within this approach different governance options are possible, ranging from a more efficient and coordinated system to one that is integrated largely into one organizational structure. However, there are some common parameters and principles that provide the essential framework for the overall approach, and irrespective of the option for the end state, this Report recommends that a number of systems improvements – not requiring organizational or legislative change – be pursued immediately to increase efficiency, address capacity gaps, and bring the backlog of claims down to the level of a working inventory. Such a programme of action would result in necessary short-term improvements, while also paving the way for more meaningful, systemic transformation.

Framing Parameters

In other immigration and refugee programs, the government has levers to control access through selection processes and screening tools. Apart from visas and travel authorities, there are few asylum-specific levers that control access to protection – Canada has a legal obligation to consider all eligible claims made in Canada seeking protection on a case-by-case basis. Decades of experience demonstrates that regardless of the source of asylum spikes, there are periods when asylum demand outstrips the capability of the system to respond. A managed system will be helpful in addressing these cycles, but contingencies will also be needed to get out of the cycle of spikes being followed by the accrual of backlogs and delayed decision making.

Within a systems management paradigm, it is important to draw a distinction between managing caseload across the asylum system, and managing decision making on individual cases. For the latter, natural justice and international and Canadian legal norms provide an essential framework. Managing caseload relates to how decisions are made to manage, prioritize and stream volumes of cases across the asylum system. Strategic caseload management presupposes a governance structure providing accountability – ultimately to Parliament – for all component parts of the system, against a coherent plan. The system requires collective governance that would permit coherent and strategic management of asylum flows.

Fair and efficient decisions on refugee status determination should be the goal of Canada's asylum system, prioritizing the need for protection. The independence of decision making on individual cases is essential, in accordance with the principles of natural justice, and respecting international and Canadian norms. The independence of a quasi-judicial administrative tribunal is a model for protecting the independence of decision making that rests at one end of the spectrum relative to international practice. However, and as underscored in the analysis of other international models, maintaining this unique model is not essential for preserving decision-making independence. Irrespective of the organizational model, there are management practices that can be pursued in support of decision makers related to how cases and decisions are triaged, streamed and prepared.

In considering options for models that would encourage a systems management approach, without sacrificing independence of decision making, some basic parameters and principles have framed the recommendations:

- Respect for international commitments, the Canadian Charter of Rights and Freedoms, and Canadian jurisprudence
- A client-centred service orientation
- Fair, independent decision making
- Timeliness and efficiency across the processing continuum
- Integrity of the asylum system to maintain public confidence
- Accessibility of recourse
- Finality of recourse decision making to assist enforcement
- Robust governance providing for system-wide management and accountability
- Flexibility to respond to influxes and crises
- Cost-efficiency

Bearing in mind the above parameters and principles, within a management paradigm, steps can be taken to put in place foundational measures. First a reset of governance including a reset of the management approach and funding of the system. From this foundation transformative change can be built, which is addressed in this chapter.

Governance, Results, Accountability and Funding

With the asylum system operating through three primary federal organizations — CBSA, IRCC and IRB — results are delivered through independent planning and accountability structures. Horizontal trilateral governance requires exceptional commitment by all parties to maintain and has proven frail when tested over time. When discrete parts of the system are performing poorly, the impact is felt across all the partner organizations. Results frameworks for the asylum program require both vertical and horizontal governance to be effective, target-focussed and functioning as a whole system.

Resource allocation for asylum is also not managed as a system. Departments receive a fixed level of funding for asylum processing and are accountable individually on the management of those funds. The majority of planning and negotiations that occur take place on an ad hoc basis when new incremental resource requests are made; for example, in relation to visa policy changes or during a spike in claims as in the current situation of irregular migration along the U.S. border. While resource requests may be legitimate from any one department's perspective, there is limited ability to reflect the needs of the system as a whole. There are no formal mechanisms to strategically focus or shift resources between departments from different activities in response to demand, if warranted.

Further, departments remain accountable for their own expenditures and funding for asylum processing is currently not "fenced" or protected. In day-to-day operations, each department internally allocates resources towards or away from asylum processing as deemed appropriate in each organization. Given that each department has numerous priorities to balance, resources for asylum processing may be in competition with other programs. While there may be notional allocations for asylum within any given department, given that these resources are not fenced or constrained, they can be moved to meet other operational needs without consideration or accounting to the system as a whole. Over time, what was originally in the organizational budgets may become unknown.

Lastly, there are few mechanisms to easily access contingency. During a spike in intake, organizations are required to internally reallocate resources. Organizations, with the exception of the CBSA which has a two-year carry forward, do not have the ability to move resources from one year to the next. There is also no established mechanism to easily access revisions to permanent funding or contingency funding without the unwelcomed process of developing proposals for government deliberation.

Canada Border Services Agency – Competing Priorities

Canada Border Services Agency (CBSA) was created in 2003 to provide integrated border services, and incorporated responsibilities from the customs and immigration departments at the time. CBSA plays an integral role in asylum processing at ports of entry, security screening of cases, intervening in serious cases and ensuring timely removal of failed claimants from Canada. An analysis of the expenditures of the Agency since the 2012 reforms shows that under current horizontal accountability the asylum system is competing for resources with the broader priorities of the Agency. In 2012, CBSA received new funding to implement the reforms and augment the Agency's existing capacity to process 22,500 claims annually, including claims intake, screening, investigations, hearings, case enforcement and removal. CBSA's estimated pre- and post-reform expenditures on asylum remain relatively similar, with outputs at pre-2012 levels. In the case of removals output is significantly below pre-reform levels.

Recommendation 1 – Implement a systems management approach.

Recommendation 2 – Establish an Asylum System Management Board at the Deputy Minister level to recommend an annual plan for the asylum system to the Minister of Immigration, Refugees and Citizenship:

- ***setting out processing priorities;***
- ***confirming forecasts;***
- ***establishing operational performance targets;***
- ***setting resource allocations in a comprehensive budget plan;***
- ***setting quality assurance objectives;***
- ***establishing an information technology and system investment/innovation plan; and,***
- ***establishing a results reporting framework.***

Recommendation 3 – An annual plan should be tabled to Parliament by the Minister of Immigration, Refugees and Citizenship in consultation with the Minister of Public Safety and the Minister of Justice to report annually on the system as a whole.

Annual Immigration Levels Plan

Each year, the Minister of Immigration, Refugees and Citizenship tables the upcoming immigration levels plan to Parliament by November 1. The plan sets out the government's immigration objectives for the year, in both determining the total number of permanent residents and the "mix" of residents, for example, balancing priorities of reuniting families and economic growth. A target and a range is established for each category and for the plan overall, and if required, additional resources are sought to meet the objectives of the plan. While IRCC is the lead department, IRCC requires collaboration with delivery partners including the Public Safety portfolio and the IRB to achieve its objectives. While the plan will continue to be tabled annually, in 2017 for the first time, a multiyear levels plan was presented. The target for the next three years is now earmarked in the fiscal framework.

To achieve a systems management approach a more robust model for governance is needed that would establish a trilateral governance to engage in system-wide planning, allowing opportunities for all contributing partners to develop plans to meet the dynamic needs of the overall system. In such a model, a Management Board would undertake a system forecast for intake, set processing priorities, establish resource levels, and formalise a three-year plan annually for consideration by the Ministers and Parliament. This would complement the current multi-year immigration levels plan.

Recommendation 4 – The Asylum System Management Board should establish clear performance expectations for all organizational heads/deputies based on the Minister-approved annual plan.

Leveraging the knowledge and foresight of the Management Board, the Minister should be enabled to provide direction on the administration of the workload of all organizations, including the IRB, IRCC and CBSA, and set operational performance expectations without being perceived as influencing or directing outcomes on protection or enforcement cases. This could be achieved transparently through a mandate letter from the Minister to all deputy heads or via the Clerk to deputy heads through alignment of performance management agreements or letters of expectations.

Recommendation 5 – The Asylum System Management Board should develop productivity measures across the asylum system.

Productivity of the system has not been stable or predictable and has undermined confidence in further resourcing of the system. Uneven productivity rates coupled with changing intake has rendered it challenging to establish core cost drivers. Establishing a baseline for performance is critical to achieve predictability. Costing assumptions and methodologies of all partners need transparency so that all actors in the system understand and appreciate resource trade-offs. Departments should

collectively determine measures for productivity which are reported upon and reviewed on a quarterly basis. Models for establishing and measuring productivity are discussed further in *Chapter 6*.

Recommendation 6 – Develop an annual asylum budget that is reset each year based on forecasted intake and productivity targets set by the Asylum System Management Board.

While the Minister of IRCC remains responsible for the asylum system, ultimately the deputy head of each organization is responsible for presenting funding requests and are accountable for expenditures. It is evident departments are consulted for each incremental request for funding, however there lacks a central authority responsible for taking a horizontal approach to funding and to appropriately consider potential trade-offs, including shifting resources between departments where warranted. While central agencies can play this role to an extent, often intervention occurs too late in the process to effectively address systemic issues.

To address this, departments should immediately begin laying the foundations to develop an annual asylum budget within the Asylum System Management Board. In doing so, the Management Board should work directly in consultation with the Treasury Board of Canada Secretariat and Department of Finance. One annual budget should be presented for the whole system that includes a forecast of the next two years for planning purposes. The level of funding would be reset each year based on the forecasted intake for the next year and the productivity targets set by the Asylum System Management Board. It is recommended that an annual plan is put in place starting in 2019-20 with a new ongoing baseline, and a draft budget should be developed for 2018-19. The asylum budget should form a key component of the annual asylum plan which would be tabled in Parliament by the Minister of IRCC at the same time as the annual multiyear immigration levels plan.

Recommendation 7 – To support an asylum budget all departments should review and determine a mechanism to track expenditures.

The horizontal evaluation brought to light that not all departments were able to track expenditures related to asylum processing pre-2013. For example, while one of the intentions of the horizontal evaluation was to present the per unit cost pre and post reforms, the evaluation was only able to compare the average cost of support services and not the cost of processing as not all departments systematically track costs related to asylum system and are not able to accurately track and present all of their program related expenditures.

Furthermore, as the horizontal evaluation focused on the incremental funding provided as part of the 2012 reforms, it did not examine the already existing A-base of department's pre-reforms. Notably, this Review has gathered —for the first time — an accounting of the full expenditures for all partners for asylum processing over time. In order to understand the full cost of asylum processing and to establish a true baseline going forward, systems are needed to ensure that expenditures and resources are fully tracked. Departments should immediately review how expenditures are captured (such as through a program assessment) and systematically track resources going forward in a consistent manner.

Recommendation 8 – Develop a flexible funding model.

Given that the government cannot stop processing asylum claims once capacity is reached it is paramount that a system-wide approach is taken to manage resources and provide flexibility to adjust funding where warranted. The Asylum System Management Board should work with central agencies to immediately develop a system-wide flexible funding model. This model would be supported by robust tools for forecasting, costing and tracking of expenditures. This would allow quarterly updates of the forecasted intake and resource requirements to be presented and approved by the Management Board, allowing for in-year adjustments as necessary and provide greater ability to forecast large changes.

In terms of structure the Management Board should work with central agencies to develop an annual asylum budget with the asylum plan which is congruent with the current immigration levels plan. Likewise, the budget should be approved and reset annually based on the forecasted intake and productivity targets but should include at least three years' forecast provided as both an estimated target and a top range. This would help situate in-year plans and enable the earmarking of future year funding requirements.

Specifically, funding should address processing estimates at the top end of the forecasted range and contingency funding would also be provided for activities over the top of the range (e.g., 10% per activity). Both the funding from the target to the top of the range and the contingency could be placed in specific allotments in departmental reference levels. With updated and enhanced tools such as the cost per claimant, departments should be able to precisely determine the amount of funds needed per activity. For example, if the number of appeals processed exceed the pre-determined baseline, funding could be released based on the set amount of funding per appeal at the end of the year. Conversely, if the number of appeals do not exceed the baseline, funds could either be reallocated by the Asylum System Management Board or be returned to the fiscal framework based on discussions with central agencies.

Two viable options include placing funds in a special purpose allotment or frozen allotment[27]. In either option, in order to access contingency funding, departments would be required to fulfill pre-determined requirements for "release" at the Treasury Board of Canada Secretariat which can range from a CFO attestation to approval at Treasury Board. Most critically, when funds are placed in a separate allotment, they would be required to be tracked separately and cannot be used towards other activities. While at first glance, another option would be to put all the funding, rather than the top range and contingency, into an allotment, this would severely constrain the ability of departments to cash manage. To support either option, mechanisms should be in place for the transfer of funding to organizations from front to back-end processes when intake declines or as operational pressures arise, but that such transfers are directed and approved by the Management Board.

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[27] In a special purpose allotment, funding is "fenced" and often tracked with a special code by departments whereas in a frozen allotment, funds are withheld until one or more conditions are met.

Quarterly updates to the Management Board would allow sufficient time to plan and adjust funding levels accordingly for the following year.

In a fully integrated Agency model, further flexibility including ability to address large surges could be provided through seeking a two-year carry forward or appropriation. A two-year appropriation would be viable if activities were consolidated within one organization and would require legislative authority.[28] This would allow the agency to carry forward all unused funds from one fiscal year to the next, thus providing access to greater contingency and a mechanism to address both lower and higher volumes. As with the previous model, the same range and contingency per activity could be retained and kept in allotments, so that unused funds could return to the fiscal framework. Current examples of organizations with a two-year carry forward include Parks Canada and the CBSA because of the operational nature of their business and their limited ability to control their client groups. In the case of asylum processing, a compelling argument can be made given the government has limited control over the number of claims received.

Recommendation 9 – Formalize regular, system-wide human resource planning and monitoring processes.

Disciplined processes are needed to ensure that human resources are allocated as effectively as possible across organizations at all times. There should be clear staffing and performance goals, HR plans to accomplish these goals, regular national reporting to identify issues and make adjustments and account for progress. Building on the current weekly and monthly review of productivity and availability reports at the RPD, a formal, monthly, national review of performance would maximize the allocation and recruitment of decision makers across the system.

Recommendation 10 – Establish an External Advisory Committee composed of asylum experts to advise the proposed Asylum System Management Board on plans and proposals.

Stakeholders have suggested that ministerial oversight could best be achieved through an independent review body that could report to the Minister or Parliament on the effectiveness of the tribunal, reducing the perception of political interference in the operation. There is significant merit in establishing a core group of external advisors that would be able to advise on the feasibility of priorities and plans of an Asylum Board both to reflect the needs of the claimant and advocacy community and build necessary transparency and stakeholder support for plans through early and informed engagement.

Recommendation 11 – The Asylum System Management Board should recommend a plan to the Minister of IRCC to eliminate the current asylum system backlog by 2020.

Existing capacity gaps need to be addressed. Reducing the systems backlogs to working inventories within 24 months will increase the chances of success for the

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[28] Section 7 of the *Financial Administration Act* states that unexpended funds lapse at the end of a fiscal year.

post-2020 system. Backlogs have significant downstream impacts for provinces which bear the costs of providing health, education and social service supports to claimants as they await a final decision.

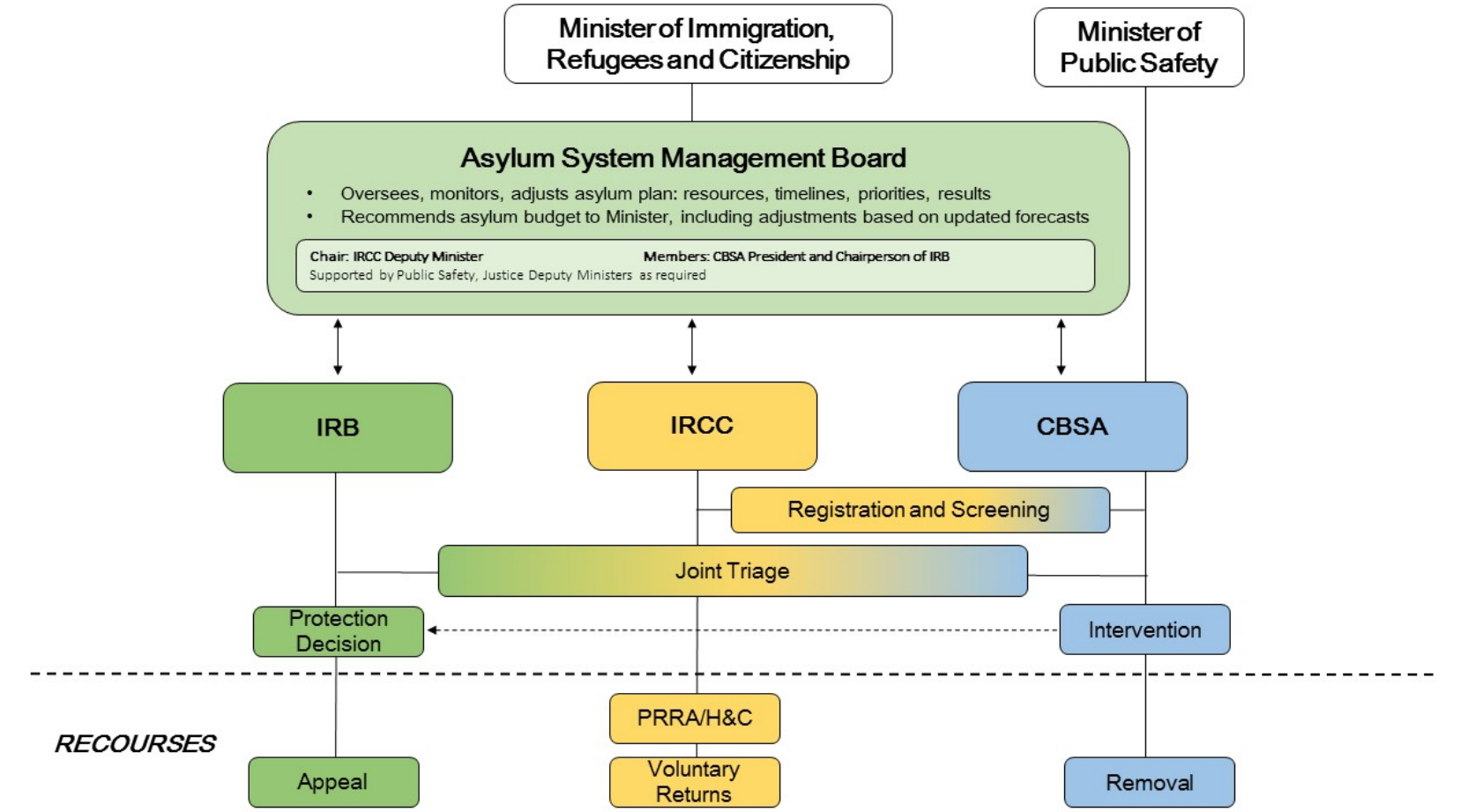
Recommendation 12 – Adopt one of two models for a systems management approach for asylum.

In order to provide coherence to the implementation of these management reforms, it is recommended that a Board be established as soon as feasible. A decision needs to be taken from the outset as to the vision for the end state. The key choice to be made is between:

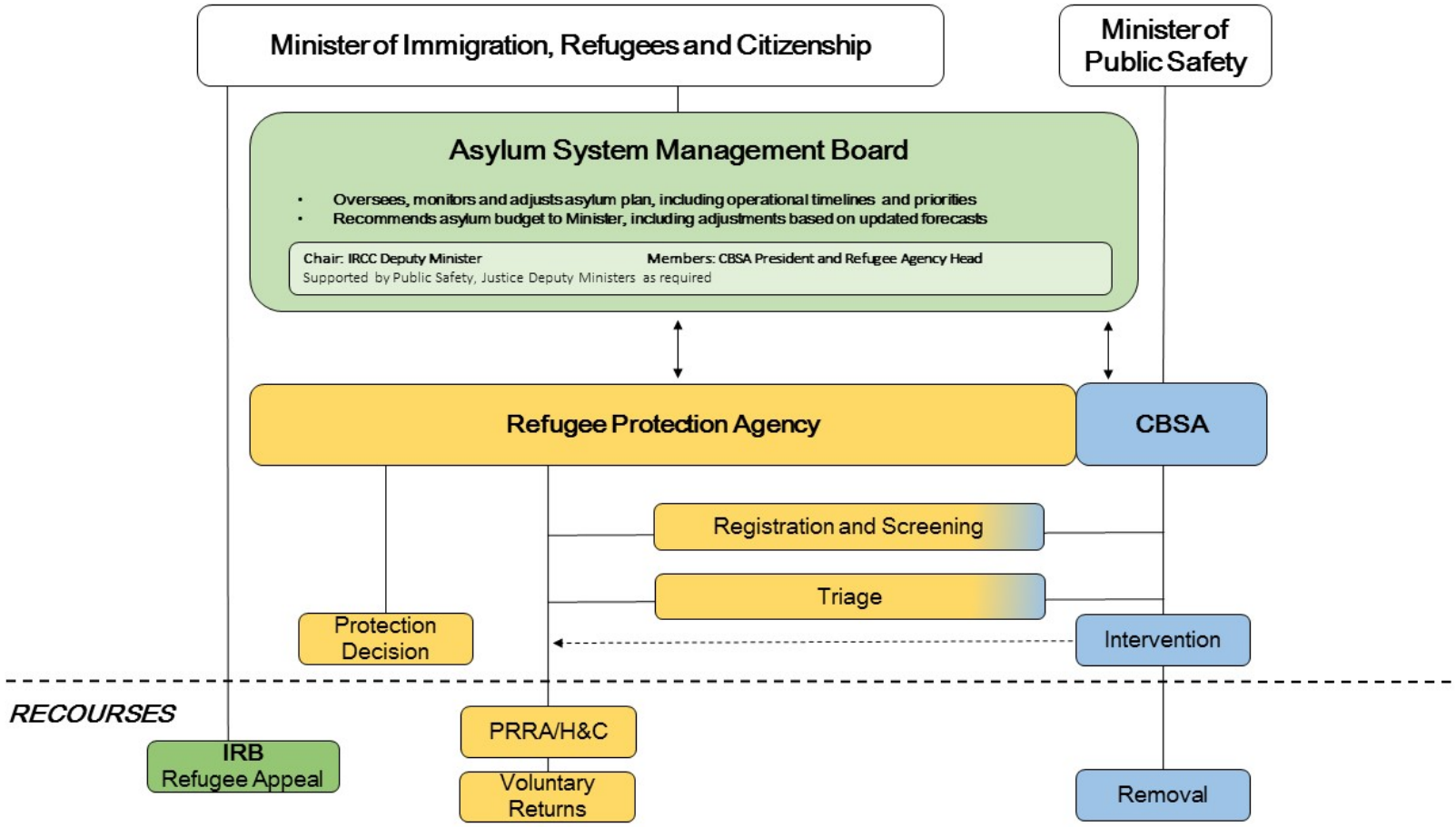
1. *Systems Reform Model* that would integrate front-end processes to improve efficiency and would rely on reset horizontal coordination to ensure effective performance management across the asylum continuum. A closer aligned system would provide more robust horizontal management under the leadership of the Minister of IRCC and coordination on the part of a DM-level Asylum System Management Board (ASMB). Front-end processes would be integrated into one, so as to permit strategic triaging and streaming of cases. Otherwise, the *Systems Reform Model* preserves vertical accountability of participating departments and agencies, but coordinated through the ASMB. Solutions proposed in this model can be achieved without legislation and are equally valuable as immediate steps that can be taken while considering a more integrated model.
2. *Integrated Model* that would place the whole protection-related federal mandate within a Refugee Protection Agency reporting to the Minister of IRCC, merging protection programs in one integrated Agency. As in the proposed *Systems Reform Model*, front-end processes would be integrated and streamlined to reduce redundancy and duplication. All first-level protection decision making, whether in Canada or abroad, would be entrusted to one agency reporting to the Minister of IRCC. Security and interventions functions would remain under the Minister of Public Safety though opportunities exist to explore improvements to front-end processing at ports of entry. Appeals would remain separate in an administrative tribunal alongside Immigration Appeals Division at the IRB.

This report details the characteristics needed to support either model. A detailed summary of both models is provided in *Chapter 7*.

Option 1 - The System Reform Model



Option 2: An Integrated Refugee System



Chapter 5: The Asylum Claim Process

The asylum system process is built around three core steps: presentation of the person's claim, decision on the claim and post-decision processes, which could be recourses and enforcement for negative claims or permanent residency applications for those deemed in need of protection. From this simple "information-to-decision" flow a much more complex system has emerged with multiple partners and participants: IRCC, CBSA, the IRB, the Federal Court, the RCMP, CSIS, claimants, counsel, consultants, and interpreters (see Figure 8 below). The system's essential goals are straightforward: to provide persons in need of protection the opportunity to have their case presented to a decision maker. While legislative reforms in 2012 produced an initial amelioration in processing time and finalizations early in the new asylum system, as intake increased timelines were not being met in a majority of cases and backlogs have grown at all levels of the process.

As Peter Showler highlights in *Fast, Fair and Final*, an asylum system "must be able to respond to large and variable intake with limited resources like any other function of government." With procedural fairness for the claimant as a given in any system design, what are the characteristics of an efficient asylum process? From a process perspective, there are some essential characteristics needed to support a streamlined and efficient processing model:

1. Goals are common and clear to all: All parties should work to common processing priorities and are respectful of those priorities.
2. Process is simple: Process should be free from duplicative steps and non-value added handoffs between participating partners and within organizations.
3. The decision maker should be informed at every step: All information needed to enable decision points are gathered as early as feasible in the process, and address the information needs of all parties (from eligibility decision makers to first-level decision makers to removal officers) within the system and for both positive (such as application data for permanent residence) and negative outcomes (such as travel document expiration).

These characteristics are strikingly deficient in the current system. The process today is significantly siloed, complex for both users and delivery agents, with parties separately carrying out their role in accordance with their own internal goals and priorities. With the significant increase in cases, the system has been unable to come to a common set of processing priorities and organize itself around those priorities. As a consequence, the process is not respectful of the time of claimants nor the energies expended across the continuum all aimed at bringing cases to finality. Legislated timelines contribute to a "just in time" hearing system that struggles to keep hearings proceeding as booked. Procedural fairness requirements, availability of counsel, interpreters and late disclosure all conspire against the maintenance of these "just in time" hearing dates and work against the strategic management of

cases that could stream similar cases to decision makers skilled in specific case types or to tailored processes.

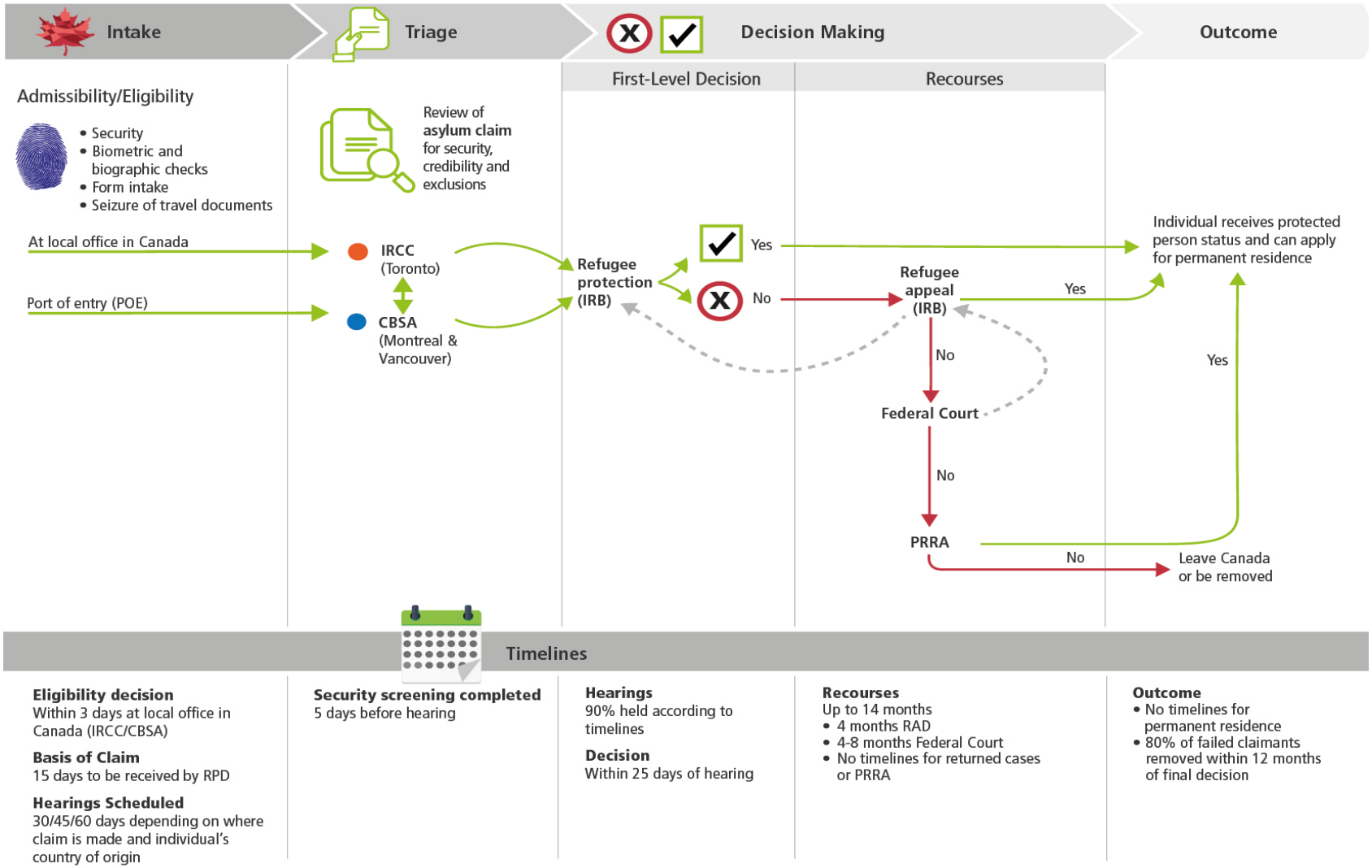
A simple and informed process would involve a single intake interview, unified case triage and one-step, early decision making supported by clear information flow from intake, to decision, to post-decision. There are many opportunities to bring about efficiencies – some more valuable from a cost-benefit perspective but all contributing to better economies of scale, reduction of overlap and redundancies, fewer errors in quality and integration of the process between all partners.

This chapter will assess efficiency opportunities of the process from end-to-end. It should be noted that some of the current inefficiencies in the process are reinforced by legislation. In an integrated Agency model supported by a new legislative framework certain process challenges are overcome. Recognizing that changes to legislation can require significant time to develop and implement, it should be noted that the majority of these recommendations can be implemented without legislation.

Recommendation 13 – Establish an expert committee to engage and consult in detailed process design and processing solutions with the legal community and stakeholders.

Resources with deep knowledge of asylum in the Canadian context are rare. With the system poorly understood, design has suffered – corrections to one aspect of the process open new challenges elsewhere. To fully optimize the process and reduce the risk of negative consequences (such as delays, inflexibility, litigation), it will be critical that Canada's leading experts, both within and outside government, are engaged to ensure optimal re-design of key components of the asylum system including testing approaches prior to implementation.

Figure 8: ***Simplified In-Canada Asylum System Process Flow***



Intake Procedures

The first step of the asylum process can occur at an IRCC inland office or at a CBSA port of entry. The intake process establishes the informational foundation of a claim. This includes information needed for the admissibility (identity documents, fingerprints, passports, personal history and security screening) and eligibility decision (travel history, previous claims, residency, admissibility) in order to refer a claim to the RPD. In addition, the inland and port of entry staff also provide the claimant with information about the process, obligations as a person under an enforcement order and authorize temporary health care benefits.

Recommendation 14 – Implement a consistent claim intake process whether the claim occurs in country or at a port of entry.

Feedback from stakeholders and the Refugee Reform evaluation report indicate that the overall intake process requires a consistent and streamlined method for all claimants, whether they enter a port of entry or an inland office. Currently, IRCC (inland) and the CBSA (at the port of entry and for those detained inland) are responsible for carrying out the intake process and interview for individuals making asylum claims. There are different timeframes and inconsistent processes due to the decentralized nature of respective locations and mandates. A concern raised by stakeholders is that the port of entry examination by CBSA is more exhaustive than the intake interview of IRCC, giving rise to the concern that one process is too detailed and invasive for vulnerable persons presenting claims at the port and the other less rigorous and value-added. A common, consistent, respectful but thorough approach is needed. Implementation of this recommendation would create a single process, allowing for consistent information gathering and an opportunity for IRCC and CBSA to focus on quality and maintaining integrity of the system. In an Agency model, the Agency would be responsible for these activities both inland and at high volume ports of entry.

Recommendation 15 – Streamline the intake process by adopting electronic forms to simplify how information is collected from the client and recorded in the Global Case Management System (GCMS).

There is an opportunity to consolidate intake forms to avoid duplicating the information gathered at the outset. There is a significant opportunity to streamline the intake process by rationalizing form data with case creation in GCMS and dynamic e-forms that can be completed by the client and/or counsel. Current information requirements duplicate much of the data entry process in GCMS and are repeated in downstream information collection steps (such as the IMM0008 Application for Permanent Residence). Establishing e-forms would ensure that essential information needed along the processing continuum is collected early in the process and only collected once.

Recommendation 16 – Provide plain language information and forms in a variety of languages to ensure individuals understand the asylum process.

The majority of people seeking asylum and the public are unaware of the nature of an asylum proceeding, expectations of the process, a person's immigration status during the process, and what test is to be met for protection in Canada. In addition, many do not speak either English or French. Building on the work of the NGO sector to support applicants in the process,[29] investment is needed to ensure better informed claimants. Coupled with simplification, this could reduce the time spent with the claimant explaining their obligations, reduce the length of overall processes and achieve greater client compliance with procedures.

Recommendation 17 – While in most cases eligibility can be assessed within three working days, in cases where there is insufficient information, a reassessment of eligibility should be mandatory prior to a first level hearing.

Currently, the eligibility decision is seen as critical to ensure claimants are given timely access to benefits such as work permits, health benefits and other support services. This places undue pressure on the system when there is insufficient information to make a sound eligibility decision. Benefits could continue to be available to the claimant once the registration and data collection step is complete, but where identity is not well-supported, eligibility should always be re-reviewed once greater information is available (i.e., from information sharing, security screening and integrity checks). This should be a core activity of triage addressed in Recommendation 20 below.

Recommendation 18 – Cases should not be scheduled for a hearing until Front End Security Screening (FESS) is complete.

Procedures pertaining to the treatment of exclusions cases under the Refugee Convention are poorly understood. Necessary investments are needed to ensure that claimants are carefully screened prior to being referred for a hearing in the most timely and effective manner. Steps should be taken to ensure that the FESS procedures and tools are re-evaluated to ensure that screening can be completed quickly in all but the most complex of screening cases. To this end, better automation of the security screening process should be explored further in pursuit of these goals of thoroughness and timeliness.

Recommendation 19 – The national detention risk assessment and alternatives to detention should be used to manage detention of asylum claimants within existing resources.

In keeping with the overall National Detention Strategy goal of reducing the detention of vulnerable persons, detention should only be used where supported by a thorough risk assessment.

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[29] See as reference the work of Kinbrace at refugeeclaim.ca

Reviews and Ministerial Interventions

Once information is collected from the claimant reviews are undertaken by IRCC and CBSA to identify any credibility, criminality and security concerns. The review process is primarily used to assess the need to intervene on claims before the RPD. An IRCC Reviews and Interventions office reviews all files in Ontario whereas in the rest of the country the CBSA Hearings Program undertakes this initial triage, both operating from a common procedure. The goal of this review is to:

- Establish whether there are any admissibility, eligibility or exclusionary issues:
  - previous claims for protection or claims abandoned or withdrawn
  - in rare cases, Safe Third Country cases will be addressed where the person is still in custody
  - inadmissibility for criminality in-Canada or overseas criminality and refer these cases to the IRB Immigration Division
  - possible status in a third country (1E exclusion)
- Assess whether to intervene on credibility, misrepresentation, or exclusions (residency in a third country, serious non-political crime, UN sanctions, organized crime, national security or war crimes) at the RPD during the protection hearing or whether a removal order should be pursued at the Immigration Division of the IRB.

After file review, IRCC will intervene on any program integrity, misrepresentation, 1E exclusions or credibility, and CBSA will intervene on grounds of security, war crimes, or criminality. In a separate and parallel process, IRB will complete its own case review and determine whether the Minister should be invited or requested to present evidence, as IRCC or CBSA are not required to advise of any intervention until 10 days before a hearing.

The same offices within CBSA and IRCC will also review RPD decisions to assess the need to intervene in subsequent processes. The file is reviewed for various circumstances: where there may be a serious impact on the integrity of the program and may affect the assessment of subsequent refugee claims at the RPD and the RAD (where an oral hearing is scheduled for credibility issues), new information is received, or, when a three-member panel is struck by the RAD.

As a whole, integrity activities ensure asylum program enforcement and compliance, verifying the quality and correctness of eligibility decisions, RPD and RAD decisions and deter misuse of the asylum system. Subject to the specific mission and priorities, each partner employs tools and controls to monitor and identify priorities for enforcement and compliance. The table below summarizes program integrity activities undertaken by the IRB, IRCC and CBSA. The majority of the integrity activities intersect and contribute to organizational integrity objectives, but are not directed by an overarching trilateral framework or tied to an integrated risk assessment.

Figure 9: ***Program Integrity Activities Across the Asylum Process***

Program Integrity Activity		IRB	IRCC	CBSA
Intake	Eligibility and admissibility determinations are made by officers to ensure that only eligible claimants may access the system Re-determination provisions also allow for CBSA and IRCC to correct eligibility decisions later		✓	✓
FESS	Security screening of claimant			✓
Case Review	Both IRCC and CBSA review cases for integrity, security, criminality and war crimes for the purpose of streaming to interventions		✓	✓
Identity Management	Confirming the identity of the claimant through criminal databases, immigration information sharing and biometric checks, reviewing identity documents and seizure of travel documents	✓	✓	✓
Intervention by the Minister(s)	CBSA (Minister of Public Safety) may intervene on serious grounds, IRCC on credibility and program integrity grounds at the RPD and/or RAD		✓	✓
"Red Letter"	RPD invites/alerts the IRCC or CBSA of issues (security, identity, exclusion) through RPD file review	✓		
Enforcement	Removal enforcement is critical to maintain integrity of the system			✓
Trend Analysis	IRCC: For program integrity CBSA: For human trafficking, security screening and risk assessment IRB: For case adjudication	✓	✓	✓
Interpreter Performance	Interpretation quality and professional standards	✓		
Quality Assurance	On RPD and RAD file preparation quality	✓		
Vacation and Cessation Provisions	Minister may cease or vacate an individual's protected person status when there is evidence that they re-availed themselves of their country of origin or obtained their status via fraudulent means		✓	✓

Recommendation 20 – Working through the Asylum System Management Board, develop and implement a single triage system to review all cases for integrity reasons and to optimize efficiency of case resolution.

The manner in which cases are prioritized, triaged and scheduled is critical to the effective overall management of the asylum continuum – from the point of intake through to first-level refugee status determination – and requires collaboration

amongst IRCC, CBSA and Public Safety portfolio partners with the IRB. For example, if the consideration of the merits of manifestly unfounded claims can be fast-tracked this can reduce subsequent spikes in similar claims. Triaging for priority cases with high approval rates – as the IRB has done through the "expedited processing" — can result in efficiency gains. The triage system should be nimble enough to adjust to changing priorities as they arise. If, at the front end, all partners can collaborate seamlessly using the same criteria for priorities, then efficiencies can be gained. A holistic approach to triage and prioritization is key to efficiency and a systems management approach. The triage system should be based on regular assessments of the nature and types of claim being made.

Recommendation 21 – Within a common triage system, a processing strategy should be in place to manage all types and sub-types of caseload.

All cases should be subject to a system to manage the inventory of cases regardless of priority. A strategy would allow priority caseload to be processed at the earliest opportunity and to focus an interview or hearing on issues relevant to the adjudication of the specifics of the claim such as manifestly founded and unfounded streams, priority hearings on serious exclusionary grounds. Although there is simplicity to the first-in first-out approach to case management, it is not an effective means of managing the complexity of different streams of asylum claims. Processing strategies should be implemented for:

- highly vulnerable claimants, such as unaccompanied minors and detainees
- cases with the possibility of exclusion
- manifestly founded or unfounded claims
- RAD and Federal Court returns
- cessation and vacation cases
- country and claim types
- cases that are undocumented and those at risk of passport/travel document expiry

Recommendation 22 – Clarify the roles of the ministerial intervention function (particularly in relation to credibility findings) to avoid duplication with the role of the RPD decision maker.

In the current system, ministerial interventions are an essential tool to prevent the misuse of the asylum system. Clear roles for IRCC, CBSA and IRB reduce unnecessary interventions by the Minister where the decision maker has the pertinent information needed to make a finding without need of an intervention. The IRB has indicated that duplicative activities particularly in relation to interventions on credibility add time to case preparation and adjudication. Credibility issues should be flagged within a common triage function as part of the case preparation for first-level decision. In an integrated Agency model with a Refugee Protection Agency, reviews would be a foundational component of triage, and ministerial interventions would be the responsibility of CBSA.

Recommendation 23 – Develop a quality assurance framework, overseen by the Asylum System Management Board, to clarify and communicate accountability, roles and responsibilities.

The current IRCC Program Integrity Framework is viewed as duplicative by the RPD as decision makers must also assess the credibility of the claimant and documentary evidence by looking at the same information that is available to the intervening party, giving rise to the perception of redundancy. In a fully integrated intake to decision model, a quality assurance or decisional review regime would ensure the adequacy of program integrity safeguards.

Streaming Cases to Decision

The current refugee determination system does not use a systemic approach to case management and operates largely on a first-in, first-out model with some expedited processing by country of origin. A very small number of cases proceed to decision without a hearing, meaning that the majority of cases track toward a standard hearing.

Recommendation 24 – Processing timelines for hearings should be removed from legislation. Service standards should be set for intake processes and first-level case decision finalizations, ideally within 90-120 days based on annual resourcing and productivity targets set by the Asylum System Management Board.

Resource levels, productivity, and caseloads impact processing timeliness. Legislated timelines are inflexible and do not take into account the substantial variations in case complexity nor the impact of fluctuating demand. Removing timelines from the legislation and allowing the ASMB to recommend targets or service standards as part of an annual plan to the Minister will allow the system to react quickly to a changing environment by proposing reasonable timelines for intake processes, refugee determinations, refugee appeals, pre-removal risk assessments and removals. Realistic timelines should be informed by available resources, budget and inputs to the process. Adequate time to complete a claim as well as integrity and exclusion investigations should also be considered.

Refugee determination targets should shift focus from the hearing date to completion of the first-level decision. The Review suggests a target of 90 to 120 calendar days from referral to decision. Both stakeholders and the RPD have also previously suggested targets within this range.[30] However, as noted above, the ASMB should undertake its own analysis and make a recommendation to the Minister.

Recommendation 25 – Common triage should be used to stream cases to decision based on complexity and by quality of the claim, whether a hearing is required or not, ensuring that cases are streamed to

[30] A 90-day to decision model was presented as the preferred approach under previous reforms and was consistently raised by stakeholders as a reasonable timeframe.

specialized decision makers which may specialise by groups of similar countries, specific countries or types of claims.

An active management approach would address caseload systemically across all case types, tailoring approaches in accordance with their needs (paper processing, informal interview, formal requests for evidence, hearing or combinations thereof). The identification and collective implementation of streamlining provides opportunities to address spikes in volumes, through prioritization and specialization of decision makers not only by country, but by issues and claim types.

Recommendation 26 – Paper-based decision making should be considered in as many cases as feasible.

The 1985 Singh decision only required that a hearing occurs when questions of credibility arise and are material to decision making. In a model where triage processes are identifying cases for processing streams, a paper-based decision-making model should be encouraged for straight-forward positive cases, supported by an optional interview or hearing at the decision maker's discretion. In the Refugee Protection Agency model, where triage to decision is fully integrated in one organization, paper decisions could be subject to quality assurance or decisional review, where a case officer recommends a decision to a senior officer who approves the decision.

Recommendation 27 – Scheduling of hearings should be harmonized with the common triage process, to ensure only those cases requiring hearings are scheduled and each case is assessed for time required. Scheduling should take into consideration the availability of parties (specialized decision maker, claimant/claimant's counsel and interpretation services) using e-scheduling tools.

Both internal and external stakeholders view the current scheduling system as counterproductive, not allowing flexibility to address gaps or issues in advance of a hearing, and scheduling all cases regardless of complexity. As highlighted in the table below, scheduling arrangements made at intake are not achieving the results desired with a very high level of re-scheduled hearings, adding inefficiency. While the majority of hearings in the first four years after Refugee Reform were heard on time, a significant amount of cases were rescheduled from the original date and time provided by CBSA or IRCC. A nimble and well-functioning scheduling system would take into account priorities and case management strategies. Specialised decision makers can be enabled to group cases that are tagged for hearing and set time allowances in accordance with complexity. All reasonable factors such as the availability of the decision maker as well as claimant's counsel, interpretation and disclosure timeframes should be incorporated into the scheduling of a hearing with a view to bringing changes of date and time to a minimum.

Figure 10: ***Delayed Hearings Due to Scheduling Changes***

		At least one schedule change	

Year of Target Hearing	No Change to Scheduled Hearing		Not heard on time		Heard on time		All cases with schedule changes		Total heard on time
2013	2,632	48%	1,352	25%	1,502	27%	2,854	52%	75%
2014	4,036	52%	1,422	18%	2,331	30%	3,753	48%	82%
2015	4,326	48%	2,137	24%	2,551	28%	4,688	52%	76%
2016	4,832	39%	4,732	38%	2,763	22%	7,495	61%	62%
Total	**15,826**	**46%**	**9,643**	**28%**	**9,147**	**26%**	**18,790**	**54%**	**72%**

First-level Hearing and Decision Making

Once a case is referred to the RPD for a first-level decision the case file is disclosed to all three parties: CBSA, IRCC and IRB. The IRB registry triages and transfers the case to the decision maker. Claimant and counsel can disclose evidence up to 10 days prior to the hearing, so that the decision maker has all the necessary documentation and an adequate amount of time to prepare for a hearing and render a decision. While disclosure rules provide for this time to prepare for the hearing, it is a very narrow window for the RPD to organize effectively. Where there are interventions the Minister can bring information for disclosure right up to the time of the hearing. For procedural fairness, the claimant also must have a reasonable time to obtain any evidence and supporting documents, as well as time to prepare their case. Inadequate time to gather facts and provide supporting evidence may result in unnecessary postponements and adjournments and potential for more appeals.

Recommendation 28 – Identify the key issues of the hearing prior to the hearing date in collaboration with counsel in order to assist in resolving the case more quickly.

In the interest of furthering improvements to case preparation, the decision maker should be encouraged to identify key issues to reduce time required for a hearing. Pre-hearing discussions with counsel or interviews with the claimant by phone or through email to reach informal understanding of key issues and to assess needed evidence should be considered with a view to narrowing issues to be addressed in the hearing or to resolve the case without a full hearing.

Recommendation 29 – The ASMB should consider a trilateral service contract for interpretation services by phone, web and in person available to serve both the intake process and the refugee determination interview or hearing.

Quality interpretation at each step of the process is an important element in gathering accurate information, enhancing the claimant's understanding of the process and minimizing delays for IRCC, CBSA and the IRB. While interpreters are currently accredited by the IRB, both IRCC and CBSA compete with the IRB for these resources and have lower pay-scales which needlessly affects the availability and consistency of interpreters available across the asylum process. A professional

interpreter service that can be virtually deployed across the asylum system through a telephone service would enhance efficiency of the system by improving the quality, availability and cost. Better controls on interpreter assessment and performance could reduce appeals where interpreter quality is at issue.

Recommendation 30 – Accommodation plans should transition away from large, formal hearing rooms in favour of smaller flexible interview spaces and video-conferencing for remote counsel/claimants.

Repurposing existing offices allows for more flexibility in scheduling hearing rooms and should reduce the footprint cost and minimize postponements due to lack of space. Alternative rooms such as currently used for vulnerable claimants reduce the formality of the proceedings seen in the system which is intimidating to persons appearing before the first-level decision maker.

Decision-Making Guidelines and Tools

In the consideration of individual cases for protection, decision makers are required to make timely and fair refugee determination decisions. The decision maker considers whether protection is merited based on an assessment of the particular facts of a case, and knowledge of the conditions of the country of alleged persecution or risk, within the context of applicable international and domestic law. Decision makers are supported with strong research and advice to assist in decision making. Case preparation time can be reduced if decision makers are supported by staff, including in researching and synthesizing pertinent facts related to countries of origin, and in identifying key issues in a case. Other best practices identified include the use of tools and guidelines – such as decision trees and concise country of origin information. In developing and applying these tools and practices, respect for the independence of case-by-case decision making is maintained. In general, reducing case preparation work by decision makers results in both cost and time savings, while maximizing actual decision-making time and efficacy. Decision-making quality and consistency can also benefit.

Recommendation 31 – Ensure that Country of Origin Information (COI) is synthesized for decision makers.

The UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* emphasizes that knowledge of conditions in the applicant's country of origin is an important element in assessing claimants' credibility. A 2004 UNHCR report on COI states that "information needed to assess a claim for asylum is both general and case specific" and in evaluating the specific basis of a claim the decision maker "must

place his/her story in its appropriate factual context, that is, the known situation in the country of origin".[31]

The IRB has a world-class Research Directorate that produces comprehensive information by country in the form of publicly-available "National Documentation Packages" that are used by Canadian decision makers and asylum offices around the world. These packages consist of public documents from international academic, NGO, governmental and media sources that report on country conditions such as political, social, cultural, economic, and human rights conditions. Additional information is gathered during IRB-led fact finding missions. COI is loosely organized under broad headings, but it is not assessed or synthesized. It includes only publicly-available materials for transparency and disclosure purposes. As the IRB's website confirms: "It is the responsibility of those participating in refugee protection proceedings to go to the IRB website to review the documents in the NDP for the claimant's home country as the Refugee Protection Division may consider them when deciding the claim."[32] The significant effort of identifying which materials might be relevant to a specific case is left to the decision maker who may be provided additional material by the claimant in support of their claim. As RPD decision makers largely operate with limited case

Country of Origin Information and Guidelines Case Study: Afghanistan

Using Afghanistan COI for illustrative purposes, the IRB National Documentation Package for Afghanistan contains 148 documents from diverse sources ranging from foreign governments, international organizations, NGOs and experts. The package includes 7,300 pages of documents published over a 10-year period which has been updated twice a year since 2011. The information is organized under broad headings; however, the information is not assessed or synthesized. So as to avoid any appearance of fettering determinations, it is left to the decision maker to interpret the information and determine its relevancy and credibility.

By contrast, the UK produces both synthesized COI, as well as country guidance for decision makers. The objective of this approach to help support decision makers, ensure consistency and predictability in decision-making while also "systematising and preserving knowledge of the conditions in a particular country or region for use in future cases, thus contributing to the correctness of risk assessment and the decisions reached."[1] In the case of Afghanistan, there are six documents ranging in length from 23-48 pages, each covering a different protection or human rights-related situation, and considerations are provided to decision makers.[2] An Independent Advisory Group provides on-going recommendations on UK COI/country policy notes.

[1] Stern, Rebecca, "*Country Guidance in Asylum Cases: Approaches in the UK and Sweden*", Refugee Law Initiative, Working Paper Number 9.
[2] https://www.gov.uk/government/publications/afghanistan-country-policy-and-information-notes

[31] UNHCR, *Country of Origin Information: Towards Enhanced International Cooperation*, February 2004
[32] Immigration and Refugee Board website, section on "National Documentation Packages" http://www.irb-cisr.gc.ca/Eng/ResRec/NdpCnd/Pages/index.aspx

Guidance – Many authorities, but underutilized

In addition to COI, there are a number of tools currently in place that help guide decision making in addition to domestic legislation and IRB rules:

- decisions of 3-member panels of the RAD
- jurisprudential guides
- persuasive decisions
- IRB Chairperson's guidelines and instructions
- UNHCR guidelines, policies, and policy notes

Decision trees are also envisaged for development in the IRB Action Plan. Training guides are yet another source of guidance.

The purpose of these various tools and instruments is to help guide quality decisions; Chairperson's guidelines are used mainly to address how certain types of claims should be handled (such as dealing with gender, sexual orientation, unaccompanied children and vulnerable claimants) and for procedures.

However, with respect to the interpretation of law or mixed law and fact (i.e., in areas such as state protection, personalized generalized violence, internal flight alternatives) these are underutilized. The jurisprudential potential of the RAD to clarify issues before the RPD is similarly underutilized, with only three jurisprudential guides in place. The RPD has no guides currently in operation.

preparation support, this approach to COI has a detrimental impact on their productivity.

An alternate approach would be to give weight to the quality and currency of informational sources. Current COI holdings could be supplemented with synthesized country situation briefs as a reference tool for the decision maker who would be free to consult on the fuller range of COI information.

Recommendation 32 – Develop guidelines specific to countries and claim-types to support decision makers (as well as claimants and counsel) in assessing different types of claims.

An examination of international practices reveals there is a growing trend of producing country guidance notes. Guidance would summarize and assess COI, apply the legal principles and identify any key issues in protection decisions, such as internal flight alternatives, state protection, generalized violence. These types of guides could substantially assist decision makers to available COI as well as streamline case preparation. Guidance would also ensure consistency of knowledge across different decision makers.[33] Such guidance should be developed and maintained for the top source countries of asylum and refugee resettlement to Canada. It should supplement, rather than be combined with COI. The guidelines would be reviewed and approved by the Chairperson of the IRB or the head of the Agency (under an integrated model) and developed in consultation with the External Advisory Committee proposed in Recommendation 10.

[33] Houle, France and Sossin, Lorne *Tribunals and Policy-Making: From Legitimacy to Fairness* in *Essays in Administrative Law and Justice (2001-2007).*

Recommendation 33 – Develop one common Government of Canada resource for country information to support all protection-related decisions.

There is scope for the development of common tools across the asylum system. While all protection decisions are decided on a case-by-case basis by independent decision makers, similar decision making takes place elsewhere in the Government of Canada – for example with respect to suspensions and deferrals of removals (CBSA), Pre-Removal Risk Assessments (IRCC), and extraditions (Justice). While some information on country situations is shared, each part of the system has developed its own guidelines and information. For example, supplemental to the National Documentation Packages prepared by the IRB, since 2014 IRCC has managed its own Country Information Library to report on country conditions, including related to human rights, immigration program trends and risk information, which is made available to IRCC decision makers across their network. This makes use of assessments collected from Government of Canada missions abroad and annual Government of Canada human rights reporting. Reporting should be written for public disclosure and use in any immigration-related procedure. Shared information and reporting has the potential of reducing duplication of effort and redundancies across the system, while also increasing research efficiency and consistency in decision making.

Recommendation 34 – Develop informal and practical tools to help identify key material facts for decision making and decision writing.

There is scope to utilize more practical tools to assist decision making including:

- adjudicative support staff to prepare cases and conduct case research[34]
- tools to identify key issues in cases
- pre-hearing discussions to focus evidence and narrow issues
- decision-writing aids

As underscored in other international models, a number of other asylum systems currently provide advisory support, tools, decision trees, case-specific research and decision templates as a means of expediting the preparation of decisions. These types of tools and methods assist the decision maker in focussing on the key issues of the case, provide support to the preparation of well-reasoned decisions and enhance consistency between decision makers. They can focus the hearing and serve to shorten time needed and reduce adjournments. Decision-writing aids also provide a sound basis for quality assurance work. The IRB Plan of Action envisages developing a decision framework "to guide decision structure and decision making" as part of a major information technology transformation project to develop a "Knowledge and Information Management Tool".[35] Interim tools should be implemented

[34] Ewart, Doug, "The IRB in Context: Comparing Tribunal Efficiency across Subject Matter and Jurisdictional Lines", 30 September 2017.
[35] Immigration and Refugee Board, IRB Plan of Action for Efficient Refugee Determination, 28 July 2017

immediately to increase productivity of decision making and writing in the shorter term.

Decision Delivery

Protection decisions are provided orally from the bench and written up thereafter or are reserved and provided only in writing.

Recommendation 35 – Continue to reduce the need to provide written reasons for positive decisions and encourage oral decisions supported by a decision template.

An electronically enabled decision template should be developed for RPD decisions and reasons to reduce the time required to write decisions and to improve quality and consistency of decisions.

Recommendation 36 – Within the context of the Quality Assurance Framework proposed in Recommendation 23, a quality assurance process for decision making should be designed and implemented.

Within a quality assurance framework, specific qualitative and quantitative measures should be established to ensure that the intent of the program is being met.The current performance indicators instituted for program integrity activities are based on targets related to completions. Key factors that are important to the overall health of the asylum system are:

- average time to process by types of cases and processing stream (intake to decision)
- interview/hearing quality and length
- decision outcomes by case type and by processing stream (paper-based, short interview/hearing, complex)
- decision variance rates
- quality checks on decisions
- outcomes on intervention
- outcomes on recourse
- specific quality measures on counsel, consultants and interpreters

Quality assurance should be incorporated into routine daily operations, provide on-going reporting, be actively monitored by staff and managers and used to inform training. Significant integrity or processing issues that arise at intake or triage should be swiftly and formally communicated to all system partners through regular alerts.

Recommendation 37 – Consideration should be given as to whether first level protection decision makers should be enabled to refer cases to IRCC for Humanitarian and Compassionate (H&C) processing.

Despite the one-year bar on applications for Humanitarian & Compassionate (H&C) consideration following a negative decision at the RPD, a very high proportion of the H&C caseload is comprised of failed asylum claimants, with applications normally filed as one of the very last recourses. As it is considered at the very end of the process, many applications are wholly or partially based on establishment factors. Other forms of H&C considerations deal with hardship, discrimination, medical, and/or family considerations.[36]

The protection claims of family members are joined together for the purpose of holding the hearing, but each individual family member receives a decision on the merits of their own claim. In cases where only one member of the family is found to be protected, most family unification issues can be addressed in the permanent residency application. In cases where a dependent child is granted protection but the parent is not, H&C is used to maintain family unity. In protection cases, decision makers are challenged to address cases of discrimination. In some cases, protection decision makers will address discrimination by granting protection which is not fully consistent with the test for protection. These decision makers are well placed to make a recommendation to the Minister on compelling files that may merit H&C consideration, which could streamline processing.

Recourses

The 2001 *Immigration and Refugee Protection Act* contained provisions for an appeal of the first-level RPD decision to a RAD at the IRB. The RAD appeal process was designed to be more extensive than the judicial review process at the Federal Court by providing for a review on the merits of the claim, and for the RAD to substitute decisions. Leave is required in the Federal Court judicial review process based on a determination on whether the applicant has a "fairly arguable case". The Federal Court does not typically allow new evidence, does not hear oral testimony, and, if the judicial review is successful, the Court refers the matter back to the RPD for redetermination. These distinctions were critical for stakeholders who had long argued for a broader appeal process. It was also expected that as a specialized appeal body the RAD would be able to quickly (i.e. within 90 days) re-assess cases in a paper-based process. At the same time, the RAD was expected to improve the consistency of refugee decision making by developing coherent national jurisprudence in refugee law. This would contribute to robust and high quality RPD adjudication and help RPD members to make their decisions more expeditiously. It was also expected that the RAD would reduce the number and proportion of cases proceeding to the Federal Court.

The appeal provision was not brought into force until 2012, owing to the capacity issues at the IRB to manage a surging intake alongside a backlog of claims. The scope of the RAD was modestly enlarged in the 2012 legislative amendments allowing for limited introduction of new evidence – primarily evidence that arose after the RPD

[36] Applicants may base their requests for H&C consideration on any relevant factors including establishment, ties to Canada, the best interests of any children, health considerations among other factors. See https://www.canada.ca/en/immigration-refugees-citizenship/services/application /application-forms-guides/guide-5291-humanitarian-compassionate-considerations.html

decision – and for the possibility of an oral hearing in relation to that evidence should credibility be at issue. The intent, however, was to avoid *de novo* or completely new hearings at the RAD. These measures were counterbalanced with streamlining provisions, such as bars to the RAD that denied access to certain groups (for example, manifestly unfounded RPD determinations, Designated and Safe Third Country claims). Timely processing of appeals was considered to be critical to the objectives of ensuring that genuine refugees would quickly integrate into Canadian society and that failed claimants would be quickly removed from Canada.

The first two years of the RAD's existence (2013 and 2014) were a ramp-up period as the organization was implemented and as new cases worked their way through the system. Court decisions have also had an impact on the RAD, notably the July 2015 decision striking down the access bar to DCO claims. The nature of the RAD review has also been directed by Federal Court decisions. It is expected that jurisprudence affecting the RAD will continue to evolve.

In Figure 11 below we can observe appeal outcomes both prior (2002-2012) and post (2013-2017) the existence of the RAD. In the pre-reform period 63% of negative RPD cases sought leave from the Federal Court, and of these, the majority (87%) were dismissed. Of the 13% of cases that did proceed 39% were successful at the Federal Court on their judicial review, representing about 5% of all cases seeking leave. At the RAD from 2015 and 2017, between 72% and 79% of refused claims by the RPD resulted in RAD appeals. It is difficult to precisely compare the pre and post reform periods given the somewhat different bases for review between the RAD and the Federal Court. Nonetheless, it is clear that a higher proportion of cases are now being appealed. In addition, the RAD is substituting relatively few decisions (8-11%) and sending a significant proportion of cases back to the RPD for redetermination (13-19%). It should be noted that substituted decisions increased and referrals decreased somewhat in 2017 due to commendable efforts by the RAD. Finally, the high rate of overturned cases (i.e. those sent back to RPD for redetermination and decisions substituted by the RAD), which were estimated to be 10% at the time of RAD implementation, in 2015-2017 were in the range of 24-27%, fully a quarter of appealed RPD cases.

Figure 11: *Appeals Pre-Reform to Post-Reform*[37]

[37] RPD/RAD data from IRB. RPD data reflects new system decisions only. Court data pre-reform is derived from IRCC data from 2002 to 2012 based on total cases (not principle) and thus there are discrepancies with the IRB data presented in Figure 12. The Review has noted data discrepancies with datasets held by Justice, IRCC and IRB on Federal Court outcomes, though trends are consistent.

	Pre-reform Average	2013		2014		2015		2016		2017	
RPD Claims											
RPD Claims Referred	27,400	10,465	-	13,800	-	16,592	-	23,350	-	47,425	-
RPD Decisions	28,106	5,651	-	11,813	-	13,459	-	15,761	-	21,480	-
Accepted	11,807	3,064	54%	7,156	61%	8,596	64%	9,972	63%	13,559	63%
Rejected	11,836	2,009	36%	3,961	34%	4,119	31%	4,821	31%	6,231	29%
Abandoned	1,509	221	4%	271	2%	212	2%	286	2%	715	3%
Withdrawn/ Other	2,954	357	6%	425	4%	532	4%	682	4%	975	5%
RAD Appeals											
	Federal Court										
Appeals Filed/% of RPD Negative Decisions	**63%** of negative RPD cases applied to Federal Court: 13% leave allowed 87% dismissed	1,146	57%	2,391	60%	2,959	72%	3,813	79%	4,895	79%
Decisions		688	-	1,935	-	2,781	-	2,967	-	3,136	-
Referred Back to the RPD on Merit	39% JR consented/granted	85	12%	296	15%	483	17%	570	19%	409	13%
Overturned by the RAD on Merit		38	6%	71	4%	209	8%	235	8%	346	11%
Dismissed (Merit)	52% denied	291	42%	1,060	55%	1,606	58%	1,618	55%	1,625	52%
Administrative dismissal	4% withdrawn	274	40%	508	26%	483	17%	544	18%	756	24%

Recommendation 38 – Eliminate returns to the RPD by the RAD through amendments to IRPA.

As outlined in the analysis above, while the RAD is working to reduce returns to the RPD, a substantial number of cases are being referred back for a new hearing. These cases are generally placed at the back of the RPD queue as incoming cases are dealt with first in order to meet the legislated hearing timelines. Furthermore, returned cases are typically heard by a different RPD member and thus the intent of the RAD appeal to avoid a *de novo* hearing is not being met, and conceivably another negative decision at the RPD could result in a new RAD appeal, with the effect of "ping ponging" cases for an extended period of time.

The RAD is constrained in finalizing decisions, i.e., substituting and confirming RPD decisions, as a result of the relatively narrow IRPA provisions allowing for an oral hearing at the RAD. The RAD has convened oral hearings in only 2% of cases, in part because the legislation only allows for a hearing where credibility is raised in the context of new evidence. In order to prevent cases being referred back to the RPD these provisions will need to be amended. It is understood that the RAD will require more time in finalizing decisions when a hearing is required. However, there will be considerable time savings for the system as a whole, and importantly, for the claimant.

Recommendation 39 – Undertake ongoing monitoring over the next two years (to 2020) of the Federal Court's deference to the RAD and whether there is a need for a two-step appeal process.

It had been expected that with the establishment of the RAD, over time, the Federal Court would show deference towards it and the rate of accepted leave applications would decrease. Instead the rate of accepted leave applications has increased in RAD cases versus cases that went directly from the RPD to the Federal Court pre-reform. Figures 12 and 13 below show the flow of cases between the RPD and Federal Court pre-reform and between the RAD and the Federal Court post-reform. From 2007 to 2012 an average of 57% of negative RPD decisions proceeded with leave applications at the Federal Court. From 2015-2017 an average of 81% of negative RAD decisions sought leave.

It should be noted that the *number* of cases going to the Federal Court has declined from an average of about 4,000 cases pre-reform to an average of 1,760 cases in 2015-2017 (the latter are made up of a nearly equal proportion of RPD and RAD cases). It is important to note that the output of the RPD has varied from year to year along with the number of negative decisions "eligible" to access the RAD and the Federal Court. In 2015 to 2017 the number of negative decisions was considerably lower than average (an annual average of 1,062 in the 2015-2017 period versus an annual average of 7,088 from 2007 to 2012). Hence, the available "supply" resulted in the lower number of applications at the Federal Court.

In examining the outcomes from the Federal Court, and as noted above, an average of 81% of RAD refusals or 881 cases annually sought leave in the 2015-2017 period. Leave was granted in 23% of the cases, and of these judicial reviews were granted 51% of the time. This compares to a pre-reform (2007-2012) leave acceptance rate of about 21% and a judicial review grant rate of about 26%. Contrary to expectations the Federal Court is accepting a slightly higher proportion of leave requests and granting a much higher proportion of judicial reviews from the RAD than it did with just the RPD. The Federal Court continues to hear cases directly from the RPD and in the 2015-2017 period it received 2,638 RPD leave applications and granted leave in 551 cases or 21%, essentially the same rate as RAD cases at 21.5%. In short, it appears that the Federal Court provides limited, if any, deference to the RAD. This suggests a need to further assess the contribution of the RAD to the refugee determination process. If most of the negative RAD decisions continue to proceed to the Federal Court, and if many are then returned to the RAD for consideration[38], then the value-added of the RAD is limited. In addition, with 58 funded members the RAD is fully half the size of the RPD and if deemed not sufficiently effective the decision makers could be re-assigned to the RPD. This assessment should be completed by 2020.

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[38] Federal Court will return decisions of the RAD to the RAD, however owing to the RAD's inability to address some issues, the case is often sent onward to the RPD. This is another clear reflection of the inefficiency of the mechanism, where the case sits in three queues on the way up through the appeals process and will wait in two more processing queues on the way back to a re-determination at the RPD.

Figure 12: ***Negative decision outcomes from RPD to Federal Court***[39]

Decision Year	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
	Pre-RAD						Post-RAD Implementation				
TOTAL Negative RPD Decisions	**6,494**	**6,348**	**9,216**	**13,035**	**15,216**	**13,484**	**9,539**	**7,911**	**5,331**	**4,694**	**5,685**
Negative IRB Principal Decisions (RPD)	4,329	4,232	6,144	8,690	10,144	8,989	6,359	5,274	3,554	3,129	3,790
Leave applications (RPD)	2,266	2,636	3,375	4,377	5,592	6,048	3,691	2,634	1,237	670	731
Leave applications granted (RPD)	700	656	595	951	1,410	913	778	551	303	161	100
Leave applications denied (RPD)	3,032	3,417	4,155	5,558	7,826	4,984	3,025	1,999	894	480	324
Judicial Reviews consented and granted (RPD)	233	232	159	215	265	265	326	327	417	129	67
Judicial Reviews denied (RPD)	216	242	212	280	394	394	333	305	367	113	51

Figure 13: ***Negative decision outcomes from RAD to Federal Court***

Decision Year	2007-2012	2013	2014	2015	2016	2017
	Pre-RAD	Post-RAD Implementation				
Negative RAD Decisions (Total)		300	1,149	1,721	1,574	1,485
Negative IRB Principal Decisions (RAD)		200	766	1,147	1,049	990
Leave applications (RAD)		143	585	898	861	885
Leave applications granted (RAD)		37	159	226	232	129 (15%)
Leave applications denied (RAD)		99	411	655	613	495
Judicial Reviews consented and granted (RAD)			37	132	141	92
Judicial Reviews denied (RAD)			14	74	120	94

Recommendation 40 – Allow for "deemed" continuation of RAD Governor in Council (GiC) decision-makers until replacements are appointed to improve RAD staffing flexibility.

Recommendation 41 – Within the ASMB Quality Assurance Framework develop a quality assurance regime at the RAD.

[39] IRB data, however pre-RAD leave applications granted and denied data is from IRCC because the IRB did not have data available for these years.

Pursuant to regulations the RAD is required to make a decision within 90 days after an appeal is perfected. The RAD is not currently meeting this timeline, nor was it able to consistently meet this standard from its inception. RAD had an inventory of 2,130 cases as of March 31, 2017. This has grown to 3,170 cases as of the end of 2017. In 2016 cases took an average of over four months to resolve on appeal and in 2017 processing times have increased to over 11 months. Contributing to timeliness issues are two key factors: the complement of decision makers and decision maker productivity levels. First, the number of RAD members has been significantly short of the full complement, due to delays in the GiC appointment process. Productivity (the annual number of decisions by a member) has been below target in each of the past 4 years, averaging 78 decisions annually versus the target of 100. The contribution of each of these factors to the RAD output are shown in the table below.

The funded capacity of the RAD was initially set at 4,500 cases annually (45 decision makers averaging 100 appeals each), but was subsequently increased to 5,800 cases under new funding in 2016. Intake levels have gradually ramped up from 2013, reaching 3,813 cases in 2016 and were 4,895 in 2017. These intake levels remain within the funded capacity of the RAD. However, the decision maker complement has always been substantially below the funded level and has now reached a crisis level shortfall, averaging only 31 decision makers in 2017, or 53% of the full complement. At the target productivity level these 31 decision makers should have produced 3,100 decisions, and but had an output of only 2,306 decisions (approximately 26% lower than the target). The shortfall in the number of decision makers (i.e., 26 members) resulted in a shortfall of at least 2,600 decisions in 2017 (at the actual rate of RAD productivity this would have been 1,924). Had the RAD been properly staffed to funded levels it would be meeting timelines and there would not be a current backlog. Using current productivity levels it is estimated the RAD requires a complement of 52 decision makers if it is to stay ahead of its current inventory of cases (43 decision makers at the target level of productivity). Both issues of staffing and decision-maker output need to be addressed. A lack of capacity at the RAD threatens to undermine the entire asylum determination process.

Figure 14: ***Decision making at the RAD and the impact of Staffing Shortfall and Low Productivity***[40]

Year	RAD Intake	Funded	Current Complement	Impact of Staffing Shortage and Productivity Shortfall

[40] RAD intake is presented in principal cases.

		Decision makers	Expected decisions	Decision makers	Expected decisions	Actual decisions	Actual Decisions/ Decision makers	Due to lack of decision makers		Due to productivity of the current decision makers	
2013	815	45	4,500	10	1,000	465	46	-3,500	-87%	-535	-13%
2014	1,714	45	4,500	17	1,700	1,307	77	-2,800	-88%	-393	-12%
2015	1,869	45	4,500	25	2,500	1,879	75	-2,000	-76%	-621	-24%
2016	2,302	49	4,900	30	3,000	2,005	67	-1,900	-66%	-995	-34%
2017	2,992	58	5,800	32	3,200	2,119	66	-2,600	-71%	-1,081	-29%

Historically, the GiC appointment process has been unreliable and unresponsive to resource needs at both the RPD and RAD. RPD members are now public servants, the staffing for which has its own challenges. However, like the RPD, the RAD needs to be optimally resourced at all times in order to fulfill its adjudicative mandate, and to ensure the timeliness of case resolution. The RAD has seen an almost complete turnover of its members since 2015, which one would expect to have resulted in a decline in productivity as new members are brought on board, trained and gain the experience necessary to be fully productive. This has indeed been the case as productivity rates decreased from an average of 83 decisions in 2013 and 2014 to 73.5 in 2016 and 2017, a drop of 11%. It is a credit to the RAD and the IRB that the decline was not higher. Given the challenges associated with the GiC appointment process it is proposed that RAD members be deemed to continue their appointments until a replacement is in place. The IRB should have the discretion not to continue an appointment for performance reasons or should the RAD have sufficient capacity to meet the 90-day standard.

The qualifications to serve as a member of the RAD are fairly general. They include: a university degree (or equivalent combination of education and experience), experience in the interpretation of legislation and regulations and preparing written decisions, and use of word processing software. Experience as a tribunal decision maker is an asset.[41] Since 1989 when the IRB was established the legislation (IRPA) has required that key management positions at the IRB, along with 10% of decision makers, must have five years' experience in the legal profession. The need for legal experience would seem to be particularly important in the case of the RAD that operates in the appeals space, is subject to reviews by the Federal Court, a body that is staffed by judges, and must work with claimants' lawyers. Furthermore, refugee determination is highly litigated. This has been recognized at the RAD as nearly 80% of members are lawyers. In this context the qualifications for RAD members should be reviewed by the IRB to determine whether greater weight should be given in the job posting to legal qualifications, and the extent of legal experience needed. Similarly, training should be reviewed in the context of feedback from the Federal Court and a robust quality assurance process should be implemented. Quality assurance can be designed and implemented without impinging on the

[41] https://appointments.gc.ca/slctnPrcs.asp?menu=1&lang=eng&SelectionProcessId=87306927-831D-414D-82A6-1D5E6887F870

independence of decision makers. Regular reviews of the written decisions of RAD members can be conducted and feedback provided. This is especially important in the 12-month learning phase of the role. More broadly, lessons learned should be incorporated into training, peer review sessions and mentorship initiatives. These measures are suggested in view of receiving greater deference from the Federal Court to RAD decisions on the assumption that the higher the quality of these decisions the fewer leaves will be given and fewer reviews granted, thereby validating the value added of the RAD.

Recommendation 42 – Increase the development and use of jurisprudential guides by both the first-level of decision making and the RAD, as well as binding precedential (three-member panel) decisions.

The inclusion of a statutory authority to make guidelines and jurisprudential guides "indicates Parliament's intent that the Chairperson should be involved in the adjudication strategy of the IRB as a whole, in order to assist decision makers on matters of substantive and procedural importance."[42] The Chair also has authority to constitute three-member RAD panels, whose decisions are binding on the RPD and single-member RAD panels. Jurisprudential guides articulate policy through the application of the law set out in a decision of the IRB to the specific facts of another individual case before a decision maker. To date, they have been used sparingly and currently four are in force, all made since June 2016.

One of the reasons offered as to why the RAD's jurisprudential role has been underutilized and unrealized is because the legislative authority links guidance to a decision. As a consequence, where jurisprudential direction was deemed warranted, the RAD believes it needed to wait for a "perfect" decision – i.e., one that well represented the caseload around the issue identified in need of a guide. In the case of the UK, where its appeal mechanism has a similar jurisprudential role, representative cases can be heard simultaneously with testimony from experts, in order to maximize the quality and relevance of the guidance.

In consultations with stakeholders it was noted that publicly available guides on interpretation of principles affecting refugee status determination would also be helpful. Credibility assessment is a key determination that a first-level decision maker must make.[43] The last publicly available guide prepared by the IRB dates to 2004, is 72 pages long and contains more than 300 references to Federal Court decisions. There has been considerable progress registered since then between the UNCHR and other countries on developing transparent, simplified guides with respect to principles, factors and approaches. In updating guidance in this area the UNHCR's "Credo project" report[44] is an important tool.

Further development and greater use of jurisprudential guides is recommended. This would allow the IRB to address emerging issues, resolve ambiguities in the refugee jurisprudence, resolve inconsistency and repetitive errors in decision making and

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[42] Immigration and Refugee Board, "IRB Plan of Action for Efficient Refugee Determination", 28 July 2017
[43] UNCHR, "Beyond Proof", 2013.
[44] UNHCR with the European Refugee Fund of the European Commission, "Beyond Proof: Credibility Assessment in EU Asylum Systems", 2013

allow for more efficiency in the decision making process. Both the 2017 IRB Plan of Action and the "Ewart Report" similarly acknowledge that more can be done in this regard.

Post-Decision

Upon delivery of a decision positive cases are currently permitted to proceed with an application for Permanent Residence, including spouses and dependents. In the current process forms are already provided upon lodging of claims at intake. With negative claims, upon completion of appeals, the CBSA Removals Program attempts to ensure that failed refugee claimants with an enforceable removal order are removed from Canada, though historic rates of removal are quite low as noted in Chapter 1. Once a person is subject to an enforceable removal order, an interview is conducted to ensure that a travel document is available and, if eligible, that a Pre-Removal Risk Assessment (PRRA) is offered that will re-assess the person's individualized risk to life, risk of torture, persecution or cruel and inhumane treatment. PRRA is available when one year or more has elapsed since the last protection decision and is a safeguard to assess any change to the individual's risk on return. If a valid travel document is not available, CBSA inland enforcement officers liaise with foreign embassies to secure the required travel documents. The CBSA may also make further arrangements for removal, including travel arrangements, providing escorts, and liaising with CBSA staff abroad to ensure an efficient removal from Canada to the country of origin.

Recommendation 43 – Fully integrate Permanent Residence processing of non-accompanying spouses/dependents into the asylum intake process to minimise repetitive processes and additional data collection on positive grant of asylum.

The service standard for processing of permanent residence is currently over two years. Delays in reunification can create unnecessary demand on asylum as family members opt to make their own claims not knowing when their residency status will be resolved. While the Review did not assess the scale of this issue, stakeholders indicate that these circumstances compel dependents to seek pathways to Canada including use of smugglers during the lengthy wait times between the asylum claim of their family member and access to permanent residence. Consideration should be given to minimizing wait times where declared dependents are waiting overseas to be unified.

Recommendation 44 – Develop specific PRRA targets and service standards to improve processing time.

In preparation for the anticipated PRRA transfer to the IRB planned as part of the 2012 reforms, the PRRA program succeeded in significantly reducing the backlog of cases ahead of 2012 reforms. Post-reform, decision makers occasionally met processing targets, supported by a national monitoring process. PRRA cases often have concurrent H&C applications and a positive first stage approval on H&C will serve to close the PRRA case. The combined PRRA and H&C work streams result in

competing priorities that serve to lengthen the time for PRRA processing, which is currently taking 12.8 months. PRRA is intended to be completed as soon as possible to facilitate removal but there are currently no set service standards with regards to PRRA. The ASMB should set realistic timelines informed by a whole system view of the asylum process. PRRA should have its own clear processing service standard to deliver a decision to CBSA in support of removal and should not be delayed. Concurrent H&C processing would need to occur within the PRRA service standard.

Figure 15: ***PRRA and H&C Officer Productivity***[45]

Year	Average Available PM-04 FTEs	Actual Principal Decisions	Actual Principal Decisions Per Decision Maker	Average Principal Weekly Cases
2013	58.2	2,246	39	1.0
2014	62.3	3,262	52	1.3
2015	56.4	3,937	70	1.8
2016	54.3	4,252	78	2.0
2017	55.7	4,393	79	2.0

Recommendation 45 – Provide PRRA officers with a list of all asylum claim documents to strengthen their ability to assess new evidence.

PRRA officers currently receive the RPD decision as part of the case file and may request additional documents. Providing a list of all the documents considered as part of the asylum claim with the initial case file would provide PRRA officers with additional information to support decision making and reduce delays with document requests. A shared electronic case file would diminish the need for re-disclosure of information.

Recommendation 46 – Pre-Removal Risk Assessment decisions should be performed by first-level protection decision makers.

PRRA decisions should be made by first-level decision makers, which could be achieved in a system reform or integrated model. Timeframes for decision making are not serving the system goal of timely removals, with PRRA decisions taking longer than the time needed to deliver first-level decisions. Like first-level decision makers, new PRRA officers receive comprehensive training, followed by regular sessions on litigation trends. To strengthen PRRA and first-level decisions, officers should receive the same training on how to assess the need for protection. In an integrated model, a single organization would develop and deliver this training. In a

[45] PRRA data was available in total decisions (i.e. persons) only. In order to convert the data from total decisions to principal decisions, the post-reform principal to total H&C risk and discrimination ratio (1.7). The calculation assumes 40 productive weeks per year. Data is sourced from IRCC reporting on PRRA and H&C decisions and outcomes.

system reform model, IRCC and the RPD should work together to align training, as part of current plans to update their respective programs.

Recommendation 47 – Removals should be prioritized as soon as the removal order comes into effect.

There should be no delay in effecting removals for claimants where removal orders are in effect. Requests to report for return should be included in delivery of negative outcomes at RPD and RAD with reporting requirements monitored on those that fail to report. A central office should immediately schedule all returns with CBSA monitoring scheduled departures for compliance.

Recommendation 48 – A voluntary low-risk, unescorted returns program should be re-assessed to establish whether such a program, administered by IRCC or the Refugee Protection Agency, would encourage more failed claimants to depart Canada.

Removals are a significant overall cost to the asylum system. Consideration should be given to ensuring that travel document applications are prepared at the front end of the process. Having failed claimants report to a centralized returns office at the time of a negative final decision may be a more cost effective way to administer returns, given the low-risk profile of the majority of claimants. The same office could administer the termination of permits and benefits and handle PRRA applications.

Chapter 6: System Enablers

Human Resource Management

Strong human resource management practices are essential for high quality and efficient asylum decision making. Stakeholders and past studies have emphasized the importance of having fully staffed and highly-trained interviewers and decision makers at the RPD available to identify and address key issues relevant to determining a refugee claim as quickly as possible. Recruitment based on competencies, a flexible workforce, and capacity for rigorous performance management are also highlighted as important elements of efficient and effective human resource management. In this section key strategies for improving the recruitment, training and retention of staff are explored.

Recommendation 49 – Develop a Protection workforce to ensure availability of experienced staff and to increase staffing flexibility.

One of the objectives of the 2010 and 2012 reforms was to create a more stable workforce to address high turnover among Governor-in-Council (GiC) decision makers and delays with replacements, which resulted in a high vacancy rate and therefore insufficient staff to deal with the workload. By changing the classification of members to public service positions it was assumed that there would be fewer vacancies, fewer absences and more flexibility to adjust staffing levels as claim demands fluctuated. A modest annual attrition assumption was set versus the historically higher rate experienced with GICs, and a PM-6 classification commensurate with other similar IRB positions was proposed for consistency, albeit this level was higher than decision-making streams at IRCC.

While the initial complement of public service decision makers included staff with knowledge of the asylum system the majority were new RPD decision makers. Over the first three years of the new system the turnover rate was equal to or greater than the GiC average, resulting in significantly fewer decisions relative to the planned capacity of 22,500 per year. Staff availability was also an issue leading to lower output during unfilled, short-term absences. Given the limited PM-6 career path in the RPD, some newly recruited decision makers moved to PM-6 and GiC positions in other IRB divisions. In 2016, a new recruiting approach was launched to create a pool of PM-6 decision makers, with an open job poster to be assessed in the spring and fall each year. As presently designed the recruitment approach prioritizes candidates with tribunal experience as they have been a source of strong candidates, rather than using a competency-based screening approach.

Taken together, the availability of decision makers remains a challenge. In an integrated system model, there is significant potential to develop a broader, more flexible protection workforce. Under the Refugee Protection Agency first-level asylum decision makers, PRRA officers and international resettlement staff would

form a cadre of protection officers under the management of a single organization. A developmental pathway could be established for decision makers to different streams/levels of case complexity, i.e., PM-4 for paper reviews, PM-5 for short interviews, PM-6 for complex cases. This would provide a career path to recruit, develop and retain highly trained protection officers, increase staffing flexibility throughout the asylum system and help ensure that there is sufficient staff to meet workload. An annual staffing process, focused more clearly on competencies assessed through written, oral and simulation exams, and outreach to new sources of potential candidates, could increase the availability of potential hires and reduce administration required for multiple processes. Opportunities for cross-postings with overseas refugee resettlement operations would also provide variety and increase consistency in decision making across protection programs.

Recommendation 50 – Establish a contingent workforce to facilitate a rapid response to increasing claim volumes and thereby avoid the build-up of backlogs.

Given the fluctuating caseload, quick access to supplementary staff is needed to avoid processing delays and backlogs. A number of federal organizations have developed contingent or seasonal workforces to manage peaks in demand (e.g., Canada Revenue Agency, Elections Canada, Statistics Canada). Deliberate and managed over-staffing, part time and casual staff, and/or staffing pools should be used to manage both periods of high demand and to manage high levels of attrition. In an integrated model officers within a Refugee Protection Agency could be reallocated and cross-trained to other duties as needed, albeit likely challenging. In an aligned model, mechanisms to obtain staff quickly from outside organizations are needed. Currently, the RPD hires decision makers from other tribunals and former GiCs for short-term or casual positions, in addition to assignments from within the organization. However, this approach appears to be largely responsive, resulting in periods of insufficient staff to deal with the workload, and agreements to obtain additional, short-term staff from federal partners are not in place. To ensure that there is readily available staff at all times, staff from federal partners should be identified for prospective assignments based on key competencies and pre-trained. Careful attention would need to be paid to ensure that stand-by staff for other necessary services, such as interpreters and legal counsel, are also available in order to prevent delays in holding hearings.

Recommendation 5 1– Fully train and assess productivity of new first-level decision makers within the probationary period.

The ability to meet productivity targets is a key competency of decision making. Following reform it was anticipated that new decision makers would achieve peak productivity within 12 months. However, evidence shows that both GiC and public service decision makers only reached peak productivity in their third year. The IRB indicated that the flaws in this assumption account for a modest decrease in case finalizations annually.

Case Study: Parole Board of Canada

The Parole Board has a well-established approach to the case management of decision making and GiC decision makers. Key elements of this approach include:

- **Staffing based on key competencies:** GiC candidates require excellent analytical and decision-making skills, ability to interpret information, clear, concise and comprehensive communication skills, the ability to perform in an environment with a heavy workload, tight time constraints and within a stressful environment.
- **Targets**: Detailed work expectations are communicated at the time of recruitment. In general, as described on the PBC web site, a Board member's work week consists of two days of preparation for hearings, two days of hearings and one day of in-office decisions. On average, Board members must prepare three to six cases per hearing day and make eight decisions on in-office days.*
- **Training, Performance Monitoring and Quality Assurance**: New appointees receive orientation training over several weeks, with a full caseload within 3-6 months, and additional orientation and mentoring/support as needed; ongoing annual training is informed by case reviews, jurisprudence, annual evaluations, consultation with various stakeholders. Additional training is provided to decision-makers when deficiencies are identified; quality reviews and annual competency-based assessments are undertaken.
- **Key enablers that contribute to efficiency of decision-making**:
    - **Legislation**: Clear decision-making criteria and identified timeframes
    - **Case Support**: Adjudicative support model includes staff case preparation so that decision-makers receive all the necessary information (i.e. decision-ready) in advance of a review.
    - **Hearings**: Conducted in a semi-formal setting, such as in Correctional facility board rooms and meeting rooms.
    - **Digitization**: Fully digitized electronic file system, assignment and scheduling through an automated case system; use of electronic decisions, digital signatures, format; decision-makers can work electronically in hearings and can work remotely supported by videoconferences; workload can be shifted easily across the country.

* From *www.canada.ca/en/parole-board/services/board-members/roles-and-responsibilities-of-a-member.html*

The July 2017 IRB Plan of Action includes developing a national, immersion approach to training decision makers, as well as establishing a consistent approach to releasing poor performers on probation. These changes are important to improve case ramp-up. However, information provided to date indicates that the RPD still engages in resource planning based on an 18-month productivity ramp-up, with productivity peaking at 24-36 months, which is well beyond the standard 12-month probationary period. Slow case ramp-up impedes overall productivity. Increasing expectations of new recruits so that full productivity can be assessed within the 12-month probation period is necessary to identify performance capacity sooner and minimize loss of productivity with staff turnover. A probationary panel assessment model for new recruits should be considered. In addition, typical finalization expectations, and quality and timeliness standards should be included in job posters to better inform prospective staff of expectations.

Recommendation 52 – Strengthen professional development for decision makers with regular training on key competencies, such as writing concise decisions and holding focussed interviews/hearings.

While comprehensive professional development training is provided to staff on a monthly basis, the focus is on adjudicative consistency. Training on key competencies is offered to staff instead through external organizations. Developing a decision maker competency profile and designing a curriculum to tailor (online, self-guided, evaluated) training to the knowledge and competency profile components is a best practice. This would provide the basis to refine key competencies, such as writing concise decisions and holding focussed hearings and will assist decision makers in meeting targets. Opportunities for regular feedback from decision makers and management should be provided to ensure that training is relevant.

Recommendation 53 – Develop the supervisory function overseeing first-level decision makers to increase quality assurance and performance management.

The RPD management structure overseeing decision makers consists of one deputy chairperson (EX-4), three assistant deputy chairpersons (EX-2) responsible for three regional offices, and nine coordinating members (AS-8), who work with teams of 8-12 decision makers in addition to some adjudication duties. To strengthen coordinating member positions, responsibilities should be focused solely on management, with a requirement for greater HR experience and/or management and supervisory training. Classification issues such as management functions and span of control should be reassessed.

Recommendation 54 – Dedicate specialized staff for asylum intake at major Ports of Entry.

CBSA has moved away from specialised asylum processing at high claim ports of entry. As a result, intake processed at ports is a significantly longer and more costly process. Recognizing that the asylum intake process is a highly specialized function and comprises many clerical aspects that mix both officer and administrative duties, ports with significant asylum volume should consider dedicating back office staff to improve the timeliness and, quality and consistency of processing. Using flexible administrative CBSA staff, or Agency staff under an integrated model would make the process more efficient, free up border officers for security components of the process and reduce costs.

Recommendation 55 – Explore best practices in other helping professions to strengthen resilience and mental health.

Resilience is an essential skill to help people cope with emotionally demanding professions and heavy workloads, reduce absences and increase retention. While many attributes associated with resilience are individual, providing adequate organizational support is also noted as critical. This includes supportive supervision, cohesive working teams, peer support or coaching, mentoring and training – many elements that the RPD is offering or considering as part of the Plan of Action.

Examining best practices in other professions assisting people under duress, such as child protection services or emergency health care, could provide new ways to improve the well-being of decision makers. Opportunities to screen prospective staff for resilience should also be considered.

Decision Maker Productivity

The productivity of decision makers is central to the output of each line of business within the asylum system. The significantly lower than expected productivity at the RPD was the key driver for this Review. Although RPD productivity is the focus of this review, the productivity of other comparable decision making within the asylum system was also assessed. To increase overall productivity, decision makers need to complete cases to a high level of quality quickly, and the system must be organized to ensure their success. The objective is to maintain public confidence in the system, and to reduce the number of cases overturned or returned from the RAD and Federal Court. In short, to achieve the right balance of "fast, fair and final".

Compared to previous years, first level decision maker productivity increased significantly in 2017 and the RPD finalized 23,100 total cases (21,480 new system and 1,622 legacy cases). This translates to approximately 12,594 decisions as seen in Figure 16 below. Several factors may account for this productivity increase. These include additional funding for decision makers, implementation of efficiency measures outlined in the IRB Plan of Action and an increased ability to specialize due to higher intake. Despite this increased productivity, the RPD fell short of the reform annual target of 144 decision per decision maker. In 2017, the RPD came closer to meeting its internal productivity target of 100 to 130 decisions per year by achieving an average of 99 decisions per decision maker in that year.

As discussed in Chapter 5, the RAD has fallen short of internal productivity targets due to the combination of an unresponsive GiC reappointment process and low productivity. The overall productivity shortfall is about a third of its expected output. Lastly, based on analysis of the Review, PRRA and H&C decision makers have also fallen short of internal productivity targets by approximately 50%.

Although care must be taken when comparing the decision-making productivity of these three lines of business due to differences in the work in question and data quality issues,[46] the above analysis points to a need to streamline the asylum process to better support decision makers throughout the system. As will be discussed below, a realistic productivity model that takes into consideration all the inputs and variables required to achieve a given output should be developed. This modelling would help set realistic productivity targets, which are key to the effective and efficient management of the system as a whole.

[46] Data quality issues include different productivity target setting methods and different productivity calculations. The PRRA officer complement reflects available officers while RPD and RAD decision maker complements do not. PRRA productivity targets were converted from total decisions to principal decisions in order to compare productivity with the other lines of business.

Figure 16: ***System-wide Productivity of the Current Decision Maker Complement 2016 to 2017***

Year	Line of Business	Intake (Principal)	Decision Maker Complement	Expected Decisions per Decision Maker	Expected decisions	Actual Decisions per Decision Maker	Actual decisions	Overall Productivity Shortfall	
2016	RPD	13,906	114	144	16,416	85	9,737	-6,679	-41%
	RAD	2,302	30	100	3,000	67	2,005	-995	-33%
	PRRA/H&C	6,431	54	108	6,060	78	4,252	-1,808	-50%
2017	RPD	26,959	127	144	18,288	99	12,594	-5,694	-31%
	RAD	2,992	32	100	3,200	66	2,119	-1,081	-34%
	PRRA/H&C	5,862	56	108	6,216	79	4,393	-1,823	-52%

Recommendation 56 – Set realistic but ambitious targets for first-level decision making and RAD based on detailed data analysis on the use of time, and incorporate into a robust productivity model.

It is recognized that asylum cases can vary widely in their complexity. As a result, productivity targets need to be based on the triage of cases by complexity and the decision making approach employed for each type. Although overall performance of decision makers is a result of multiple factors including availability, work processes and management, individual expectations should be clear, ambitious and measured regularly. The 2012 reforms expected that the average public servant decision maker would make as many decisions per year as the most productive GICs pre-reform. This assumption supported the original target of 22,500 total finalizations per year (principal claims plus dependents at a factor of 1.6). However, at the RPD overall, public service employees post-reform produced fewer decisions than GICs. Similarly RAD member productivity has not been met.

The RPD tracks annual decisions but does not quantitatively track the amount of time members spend on their various tasks. Coordinating members are expected to monitor performance and, if issues are identified (i.e., not keeping up with workload), they will work with the decision maker to improve their performance.

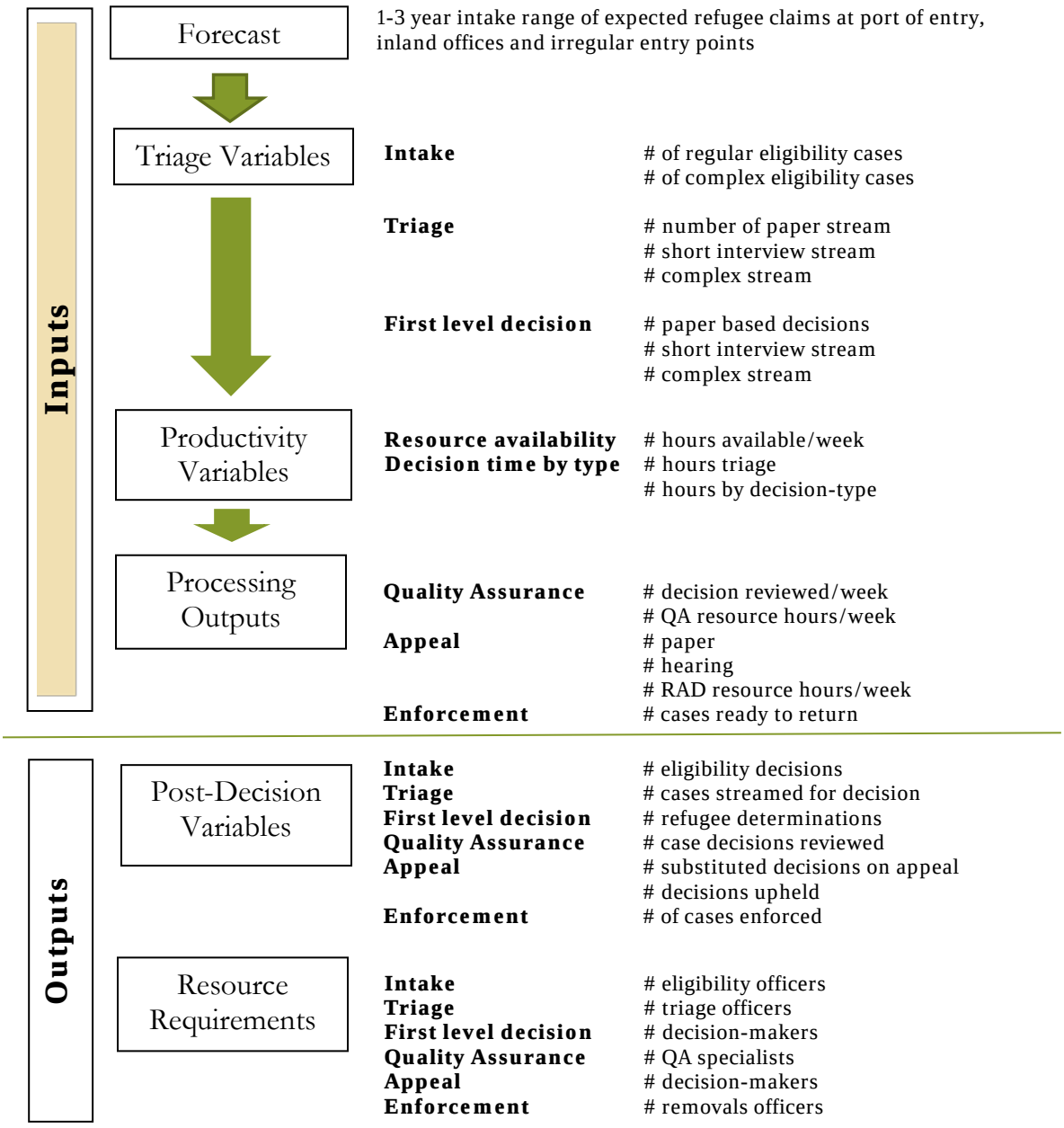
To increase productivity, targets should be set for each step of the process, including preparation, interviews, decision writing and delivery, based on detailed time analysis and taking into consideration various case types.

Recommendation 57 – Develop a new productivity model that incorporates the triage system and other efficiency measures recommended in this Report for approval by the ASMB.

An essential component of a systems management approach is developing and implementing the management tools to assess and forecast case processing requirements. Chief among these tools is a flexible productivity model that can account for the changing volume and type of claims, various case processing

strategies, the use of new intake and triage systems, and the optimal balance between decision makers and support-staff.

Figure 17: ***Components of a Productivity Model for the Asylum System***



A productivity model for first-level decision making should include the following:

- Setting targets for processing streams based on the mix of the inventory of cases
    - Targets for paper based decisions and short interviews, with the remainder of complex cases requiring a full hearing.
    - Assumptions by stream based on past approval rates by case and country types (X% paper-based, Y% short interview and Z% complex).
- Setting individual decision-making targets by processing stream (paper, short interview and complex).
- Models would need to be adaptive to process changes and technology improvements, and would reflect case preparation and support services, clearer guidance and decision tools.

Below, these components are illustrated in a sample productivity model for the RPD is provided for illustrative purposes, comparing actual output in 2017 with an alternate triage system (see Figure 18). Three streams are used: paper based decisions (20% of cases), short interviews (50% of cases) and complex cases (30%). It has been estimated that the decision-maker time required for these streams is 2, 5 and 13 hours respectively. Using these assumptions output for the current complement of the RPD increases from 15,000 to 19,000 finalizations (27%). To manage an intake of nearly 50,000 (31,000 principal decisions) as occurred in 2017, the decision-maker complement would need to be increased from the current 127 to 206. Clearly the assumptions made are critical in determining the model's output. The Review believes these assumptions are reasonable. However, they will need to be tested in actual practice, monitored and adapted as necessary.

Similar models would need to be developed for intake procedures, triage, decision support staff, RAD, PRRA and removals. The Review believes the approaches recommended in this report will substantially increase productivity. Along with intake, productivity is the other key factor in determining resource allocations and for informing the annual budget. These productivity models should be approved by the ASMB and the results reported quarterly to the Board, and then updated on an annual basis or more frequently if necessary.

Figure 18: *Sample RPD Productivity Model*

	# of Total Decisions/ Capacity	# of Total Principal Decisions[47]	# Decisions/year (#Decisions/ week)	# Decision Makers)[48]
Current State				
2% of decisions are paper-based	406	254	240 (6)	2
98% of decisions are regular hearings	19,914	12,446	100 (2.5)	125
Other efficiencies	3,680	2,300	-	-
Total	**24,000**	**15,000**	**-**	**127**
Sample 1: Streaming and increased productivity with current complement of decision makers[49]				
20% decisions are paper-based	6,080	3,800	520 (13)	8
50% of decisions are short interviews	15,200	9,500	200 (5)	48
30% of decisions are complex	9,120	5,700	80 (2)	71
Total	**30,400**	**19,000**	**-**	**127**
Sample 2: Streaming and increased productivity with additional decision makers				
20% decisions are paper-based	9,920	6,200	520 (13)	12
50% of decisions are short interviews	24,800	15,500	200 (5)	78
30% of decisions are complex	14,880	9,300	80 (2)	116
Total	**49,600**	**31,000**	**-**	**206**

Recommendation 58 – Undertake a supervisory review of all reasons for quality and consistency pre- or post-decision.

As noted in the International Best Practices chapter decisional review models work effectively in high productivity asylum systems. At the RPD, decision makers may request advice from legal advisors or coordinating members at their discretion. Quality assurance primarily occurs as feedback during performance management

[47] Using a conversion rate of 1.6 (ratio of principal decisions to total cases with dependents)
[48] The number of decision makers required may not exactly add up due to rounding.
[49] Sample 1 and 2 assume the following number of productive time: 6.5 hours/day, 4 days/week and 40 weeks/year. The model proposed only presents decision maker time and relies on other supports including triage, decisional aids, administrative and adjudicative support. The model assumes the following approximate number of hours per decision: 2 hrs for paper-based (13 decisions/week), 5 hrs for short interviews (5 decisions/week) and 13 hrs for complex hearings (2 decisions/week). This is different from the current model of 4.3 hrs for paper-based (6 decisions/week) and 10.4 hrs per hearing (2.5 decisions/week).

discussions where decision makers invite their coordinating manager to assess select decisions. Decisions will also be placed under periodic reviews led by the IRB Evaluation unit. However, given the importance of quality and consistency, a more systematic approach is recommended, whereby supervisors review all reasons pre- or post-decision to identify and address any gaps in analysis on an ongoing basis, and potentially minimize RAD and Federal Court returns. This should form the core responsibility of supervisors, who would determine the appropriate approach for each decision maker. Various models are used amongst international partners. In the case of a pre-decision model, supervisors would review cases within set timelines and discuss any issues with the decision maker, who would retain the authority to finalize the case.

Recommendation 59 – Rebalance the support model for decision makers to determine how staff can better assist with case preparation.

Following reform case preparation duties moved from support staff to decision makers. It is well documented that case preparation takes time away for core adjudication responsibilities. Moving administrative case preparation duties from decision makers to lower level staff would improve overall productivity. The large pool of registry staff could be reorganized to provide distinct support positions to decision makers, i.e., to ensure that the file is complete and ready for review. This would also give registry staff additional opportunities for career development and improve retention. A pilot is currently underway with registry staff supporting decision makers in a ratio of 1:3. The evaluation of this pilot should determine the benefit of this approach and the optimal support to decision maker ratio.

Legal Supports to the System

Legal representation has become a well-established feature of the asylum system in Canada. Today, as compared to pre-2012, a significantly higher proportion of claimants are represented by a lawyer or consultant, in large part due to the accelerated processing timelines which limit employment and thereby increase eligibility for means-tested legal aid.[50] Pre-reform, approximately 88% were represented as compared to 96% currently.

Lawyers, consultants and NGOs assist claimants with the preparation of their claims, collection of relevant evidence and assist with hearings. Legal aid typically covers these core costs along with translation and interpretation. In sum, it is a parallel or shadow cost of the asylum system, shared between the federal and provincial governments, and many inefficiencies of the asylum system, such as scheduling, are borne by the legal aid community and reflected in their costs. For this reason it becomes an important element when considering efficiency measures.

The majority of federal contributions to immigration and refugee legal aid are directly offsetting costs for refugee claims. However, according to the Department of Justice evaluation of the legal aid program, federal contributions represent approximately 35% of the total costs.[51] What is notable is that only six of 10 provinces offer refugee legal aid and most have an eligibility process with merit and means-based screening. However, more than 90% of applicants qualify for RPD support in most jurisdictions. RAD eligibility is more rigorous with 50% or fewer claimants typically qualifying for support at this stage.[52]

Refugee lawyers note that counsel's role in preparing a coherent refugee claim saves decision-maker time. With better electronic tools and communication, greater efficiencies could be gained. Stakeholders also noted that counsel competency has a significant impact on the outcome of the process and that many claimants are represented by inexperienced counsel which results in wasted time and unnecessary costs.

Recommendation 60 – Simple electronic processes should be developed to improve collaboration with counsel, including scheduling of interviews and document submissions.

As recommended in *Chapter 5* above, process design should fully consider the participation of counsel to ensure the efficiency of the system.

[50] Based on IRB data on level of representation and from interviews with provincial Legal Aid societies
[51] Evaluation of the Legal Aid Program, Department of Justice, December 2016
[52] Based on interviews with provincial Legal Aid societies

IT Enablement

IT enablement is fundamental to the information intensive process of the asylum system. Partners rely on the collection and sharing of client information in order to support multiple decision points in the processing continuum, from identity, admissibility, eligibility, triage, interventions, protection decision, post-decision recourse, permanent residency and case enforcement. While many similar organizations in Canada and in other countries (including asylum organizations) are migrating toward next generation technology solutions that include business intelligence, decision automation and predictive analytics, the asylum process in Canada is only partially enabled by information technology.

IRCC's Global Case Management System (GCMS) is the primary tool to process all applications for immigration and citizenship. GCMS is not fully used for asylum processing as partner departments rely heavily on their own systems, namely, the IRB's NOVA and the CBSA's National Case Management System (NCMS). While these systems are interoperable to an extent, each organization is operating its own case management tool with limited cross functionality between systems. GCMS and supporting applications are used for case tracking in a process which remains heavily reliant on paper. This differs from a case management workflow tool which supports end-to-end processing for asylum claims. Interactions with claimants and their counsel are occurring by fax, mail, electronic submission of documents[53] and call centres and are yet to be enabled through a self-service web portal. Figure 19 below shows the complicated flow of information through the multiple data systems and highlights the continued reliance on paper.

Main IT Systems for Asylum Processing

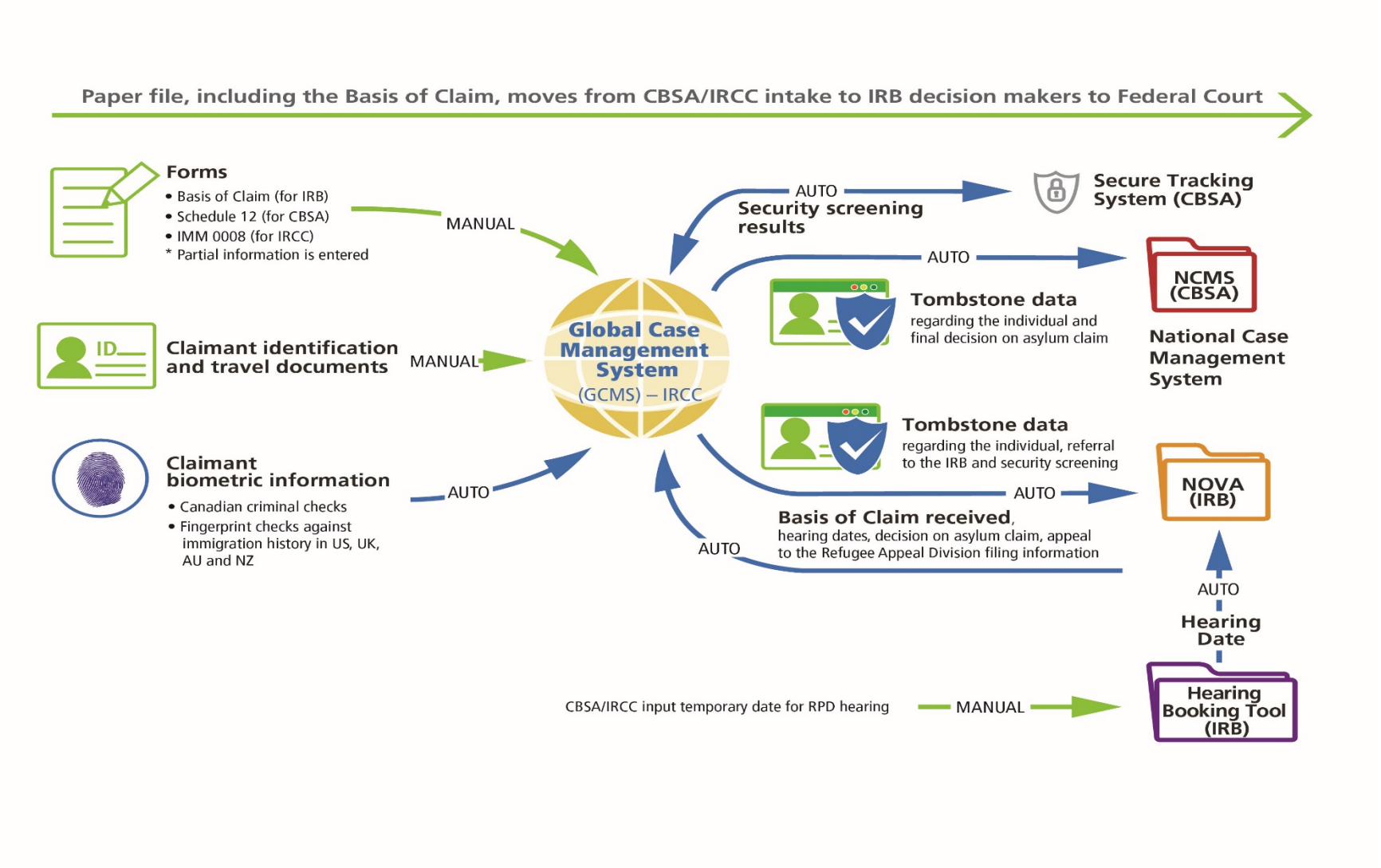
GCMS
IRCC's Global Case Management System (GCMS) is an integrated and worldwide system used to process applications for citizenship and immigration services, and to track asylum cases.

NCMS
CBSA's National Case Management System (NCMS) is the primary tool for tracking immigration enforcement cases related to criminality, detentions, hearings, interventions, appeals, investigations and removals.

NOVA
IRB's Nova system is the primary tool for storing, managing and tracking information pertaining to the clients and their cases before the Board.

[53] Since July 2017, claimants are able to submit documents electronically to the RPD using Canada Post's epost Connect service.

Figure 19: ***Information Technology Supporting Canada's Asylum System***



A number of information technology changes were implemented to support the transformative changes to the asylum system under the 2012 reforms, and their results have affected the current state of technology today. As the policy lead, IRCC also received funding to establish a dedicated monitoring and analysis unit as well as to enhance the refugee information database referred to as the Refugee Claimant Continuum. While the majority of the necessary technical system changes were completed, notable gaps remained. For example, the Hearing Booking Tool was developed as a temporary solution for IRCC and CBSA officers to be able to schedule hearing dates on behalf of IRB. A more agile tool that could schedule based on the availability of decision makers has not yet been developed. In addition, IRCC's Refugee Claimant Continuum, the key information database, is not fully enabled.[54]

For the IRB, the successful implementation of the 2012 Refugee Reform project included implementation of a new system to replace the System for Tracking Appellants and Refugees (STAR). While implementing any new system is challenging, the IRB had experienced a previous unsuccessful attempt at implementing the Integrated Case Management System (ICMS). Lessons from ICMS were taken into consideration as the IRB pursued NOVA, with the focus on having in-house development and on replicating the existing functions of STAR. Further automation plans were set aside until 2016.

Evolution of IRB's IT systems

1989: System for Tracking Appellants and Refugees (STAR) was developed and used for RPD

2007: Unsuccessful implementation of the Integrated Case Management System (ICMS)

2012: NOVA is implemented to support reforms and used in all divisions

2016: Continuous Improvement Program for NOVA is launched to move towards electronic end-to-end processing

2017: IRB's Plan of Action identifies IT-enablement as a key pillar

The decision to pursue NOVA rather than adopting GCMS highlights a missed opportunity for the asylum system to integrate all business processes within one system. At the time, CBSA was also moving to adopt GCMS for claims intake. The NOVA project charter indicates that one of the primary considerations for the in-house development approach was to ensure control over the timing of implementation, as there were short timeframes for the coming into force of the new asylum system. Given IRCC maintains ownership and control over the development of GCMS, it was identified that the IRB would be challenged to have its requirements fulfilled without a robust governance structure in place to prioritize system development requests.

[54] As an example, Federal Court data is not reliably tracked and included in the Refugee Claimant Continuum database.

Recommendation 61 – Conduct an independent IT health check for the asylum system with the goal of building an integrated IT plan.

The NOVA Continuous Improvement Program is the IRB's five year plan (2016-2021) to move from case tracking to case management. This includes an enhancement of the Hearing Booking Tool to allow for scheduling to be done in "real time" and aligned with member availability, which is anticipated to greatly reduce the need to reschedule cases, a long standing irritant between IRCC, CBSA, IRB, claimants and counsel. The vision of the program is to support the priorities of the IRB by "the establishment of a secure, reliable and efficient case management tool that will streamline operations and standardize business processes while providing for an electronic application process and integrated end-to-end document management." The program aims to develop a full self-service portal, develop user-friendly reporting, regularize a scheduling tool, introduce automation in the case workflow, and standardize outgoing correspondence.

Notably, the program takes an agile approach to IT development, exemplified by scheduling releases to NOVA every three weeks (versus the traditional model of few and tightly controlled releases) through constantly engaging and receiving feedback from a network of end users. While this remains in early days, it is in contrast to the standard approach to IT development to date where development is tightly controlled, providing user feedback is regulated, and releases occur a few times a year.

While the IRB's plan is highly commendable for its forward-looking components, a system-wide approach is not being taken with the key partners of IRCC and CBSA. To avoid fragmentation of the asylum system, departments should immediately conduct an independent IT health check to review and assess the current approaches to IT development with the goal of building an integrated IT plan.

Recommendation 62 – The integrated IT plan should include the development of a single case management system and electronic file, an electronic mechanism for claimants to submit information and electronic scheduling tool.

An IT health check should set the requirements for building a multi-year plan for IT for consideration of the Asylum System Management Board. This plan should consider agile development, and should focus on user needs, iterative design, a client service-orientation, and interoperability. Experts should work with the Canadian Digital Service in the development of the plan.

Key components of an integrated IT plan should include developing a single case management system. Unless another strong business rationale is presented, GCMS should be considered the default system as the majority of claimant interactions are captured in GCMS, such as work permits and federal health certificates. However, dedicated resources and sufficient priority are required to enable GCMS to be responsive to this line of business. The IT plan should include the development of a single electronic case file which would replace the current patchwork of paper files and duplicative IT systems.

The **Canadian Digital Service** was launched in 2017, modelled after the Government Digital Service in the UK, and similarly, the US Digital Service. Their mandate is to build and design better government services, and they have prioritized immigration as one of the focus areas in the next three years.

Second, the integrated IT plan should include the development of an electronic mechanism for claimants to provide their information through electronic forms and a self-service portal with the goal of eliminating the present difficulty for claimants to provide and update information. It should also include a tool for electronic interview or hearing transcription, a mechanism for communicating with claimants electronically, such as email, rather than the current process which relies on mail, courier and fax. In the immediate term the plan should include an electronic scheduling tool which takes into account the availability of claimants, their representative, interpreters and decision makers.

Recommendation 63 – Implement a system-wide data governance strategy.

Priority should be given to developing a data governance strategy to support improved operational and executive reporting. Current tools for reporting and planning are not adequate for the operational management of the asylum system.

Recommendation 64 – Consider the use of predictive analytics for risk assessment.

The ASMB should encourage the use of predictive analytics to inform decision making, to quickly and accurately identify low and high risk cases, to streamline processing and improve program integrity. The Review takes note that various partners may be in the midst of developing new tools for automation. Overall, the Review supports the use of automation, supported by analytics in a framework, where possible and warranted. However, any proposal should be looked at carefully to assess whether it aligns with a more integrated IT approach for asylum and immigration processing as encouraged under these recommendations.

Chapter 7: Summary of the Proposed Models

Building from the specific recommendations provided within this report, this chapter provides a summary overview of the attributes of the two models for attaining a systems management approach. It is important to note that either model requires significant change from the status quo.

Option 1 - The System Reform Model

A more closely aligned system would result in significant streamlining and improved coordination through more robust horizontal management under the leadership of the Minister of IRCC and coordination on the part of a DM-level Asylum System Management Board (ASMB). The ASMB would be responsible for recommending an annual asylum system plan. Front-end processes would be integrated into one, so as to permit strategic triaging and streaming of cases. Otherwise, the System Reform Model preserves vertical accountability of participating departments and agencies, but overall coordination for asylum is provided by the ASMB. The operation of the ASMB is based on consensus and cooperation among the members. The ASMB is not able to override vertical accountabilities, but it seeks to develop common understandings and approaches for managing the asylum system.

An essential component for the systems approach is the establishment of productivity targets through the ASMB for each step of the asylum determination process, supported by a human resources strategy. An IT health check and framework of data governance would develop the cornerstones of electronic tools, interoperable IT management, and predictive analytics to inform triage and forecasting of asylum flows. A model for contingent funding and a flexible workforce would be developed to address backlog elimination and to address any new or emerging growth in volumes. Active monitoring by the ASMB would provide for mid-year corrections as required.

Governance and Accountability

- Minister of IRCC, in his/her accountability for the asylum system, should table an **annual asylum system plan** in Parliament to:
  - Identify for the coming year asylum flow forecasts, processing standards and caseload priorities as well as productivity standards, linked to the asylum system's annual budget and anticipated capacity
  - Report on the previous year's asylum plan and results
- A **Deputy Ministers' Asylum System Management Board (ASMB)** chaired by the Deputy Minister of IRCC and including the Chairperson of the IRB, and the President of the CBSA, with provision for Public Safety portfolio, Justice and Global Affairs Deputies as required, to:
  - Recommend the **annual asylum plan** to the Minister
  - Approve the **management plan** for each department and agency on how the annual asylum system plan is to be achieved

    - Approve a **comprehensive budget plan** and establish **resource allocations**
    - Establish **operational timelines** for security screening, scheduling, hearings, rendering of decisions and finalizations
    - Establish **priorities** and criteria for the triaging and the streaming of claims
    - **Monitor implementation** of the plan, directing adjustments as may be required, and providing regular reports to the Minister
- An **Expert External Advisory Committee** is established which is comprised of advisors external to government and would provide ongoing advice to the ASMB on plans and proposals
- A **framework for evaluation** (including Metrics of Success) is developed and approved by the ASMB and the Minister; monitoring is regularized under the ASMB, and evaluations are conducted at regular intervals
- The **President of CBSA tables annual reporting to the ASMB** on security screening, interventions, and enforced removals

Funding

A single budget is set for the asylum system, and contingencies provide for flexibility in responding to asylum spikes.

- **Asylum system budget** is agreed upon and reset annually, funding is fenced and results of expenditures against productivity standards and claim volumes are regularly monitored by the ASMB
- **Contingent workforce and funding** provides a flexible resourcing model for addressing unanticipated changes in asylum claim volumes

Streamlining and Process Improvements

Steps should be taken immediately to improve the speed and productivity of first-level decision making without undermining quality by:

- **Designing one common front-end process** to cover the range of activities from the collection of identity information through eligibility determination to the completion of the basis of claim for protection, using simplified forms and tools
- Implementing a **single triage system** on the basis of criteria approved by the ASMB, based on the level of effort (paper-based approvals, expedited, "single issue" or complex hearings), case type or priority consideration (such as vulnerable persons)
- Adopting an **informal interview** approach, leveraging videoconferencing and a smaller footprint
- Where first-level hearings are merited, actively encouraging the **use of efficient tools and practices (such as pre-hearing discussions or exchanges)** so as to identify and reach agreement on the key issues for a hearing more quickly
- Providing better support to decision makers with respect to **case preparation,** including through the identification of key issues and up-to-date information needed to adjudicate the case (e.g., country of origin considerations, state protection factors, internal flight alternatives)

- Continuing to promote the strategic use of **guidelines** to frame protection decisions, issued under the delegated authority of the IRB in consultation with the ASMB, covering assessment of countries and claim types
- **Eliminating interventions by the Minister of IRCC,** with the Minister of Public Safety continuing to make interventions in first-level and appeal determinations, on security, exclusions and integrity grounds. The current Review and Interventions program at IRCC transitions to a robust **quality assurance** program that reports to the ASMB
- **Reducing the requirement for written reasons** – for example requiring them only for negative decisions, cases with interventions, and/or for cases carrying possible jurisprudential value or risk (as may be determined by the ASMB)
- **Simplifying decision writing**, including with the use of decision trees, templates along with digital recordings
- Permitting hearings at the **RAD** so as to avoid cases being sent back to first-level decision for re-determination, without broadening the grounds for appeal
- Building a program to encourage **voluntary returns and alternatives to enforced removals**, administered under the authority of IRCC, with CBSA retaining responsibility for enforced removals.

System Enablement

System wide human resource planning would ensure clear performance expectations and accountability by:

- Establishing productivity expectations in an annual asylum plan that are reflected in the **Performance Management Agreements** of the heads of departments and agencies and in a letter of expectations which is established for the Chairperson of the IRB
- Renewing high quality e-enabled **training and professional development** that would be available to all protection decision makers across the government and which can shorten time to train when new decision makers are required on short notice
- **Specialized, flexible CBSA staff** dedicated to asylum intake at high volume ports of entry
- Attracting **highly-skilled appeal decision makers** with the expectation that RAD decisions would have the trust of the court and leave applications to the Federal Court would diminish
- Developing a **contingent workforce which can be called up in response to sudden increases in volumes of claims** using contingency funding. Cross-utilization of IRB and IRCC workforces (**first-level refugee status determination and PRRA decision makers)** should be considered to address combined backlogs

IT integration would encourage implementation of a common IT system along with an electronic mechanism to interact with claimants and to exchange information, including to replace information gathering by paper forms. Immediate steps can be taken to:

- Conduct an **IT health check** for all systems currently used for asylum processing in order to set an agile and integrated approach for IT across the system's business lines, establishing a three-year IT plan, starting in 2018 under the direction of the ASMB.
- Develop a **framework for data governance and predictive analytics** that will inform evidence-based decision making, as well as enhance options for screening, triaging and risk assessment.

Option 2: An Integrated Refugee System

An integrated model would re-set the current system by merging the protection program in one integrated Refugee Protection Agency with the majority of processes under a single and independent lead. As in the proposed *Systems Reform Model*, front-end processes would be integrated and streamlined. In addition, all first-level protection decision making, whether in Canada or abroad, would be entrusted to a protection workforce managed within one agency reporting to the Minister of IRCC. The appeal would remain alongside Immigration Appeals Division at the IRB and would be structured in law to finalize decisions.

- **A Refugee Protection Agency** is created reporting to the Minister of IRCC, with the ASMB providing management oversight
  - Intake, triage and **first-level protection decision making is fully integrated**
  - The integrated protection regime could provide opportunities to **integrate domestic protection and PRRA decision makers with overseas Refugee Resettlement selection staff**
  - **Does not include** functions related to security, interventions, enforcement and enforced removals which would continue to be the responsibility of CBSA
  - **Decision-making authority for protection decisions delegated to the Director of the Refugee Protection Agency** in *The Immigration and Refugee Protection Act*
  - **Decision making is permitted at the first interview** for classes of claims determined by the ASMB, without need for full written reasons
  - At his or her own initiative, an Agency decision maker would be able to recommend to the Minister consideration of **humanitarian and compassionate** factors, for a family member of principal asylum claimants
  - **Pre-Removal Risk Assessments** are undertaken by the Agency
- A comprehensive program for **training and professional development** is put into place for all decision makers and support roles in the protection workforce
  - **Specialized Agency staff** are processing asylum intake at high volume ports of entry
- **A productivity model is implemented for all aspects of the asylum process** and monitored by the ASMB

- Refugee Appeals and Immigration Appeals operate as a **single appeal** within a tribunal (alongside the IRB's Immigration Division) and maintains a highly trained and specialised adjudicators
- **Voluntary returns and alternatives to enforced removals**, drawing upon successful practices in use internationally, is developed and administered under the authority of the new Agency
- Enabling legislation for the creation of the new agency provides authority for a two-year financial carry forward
- Corporate support services (HR, IT, finance and administration) are provided to the Agency by IRCC

Comparing Models

The table below compares the status quo with the System Reform Model and the Integrated Refugee Protection Agency Model:

	Current Model	System Reform Option 1	Integrated Model Option 2
Governance, Results, Accountability and Funding			
System Management	Ad-hoc horizontal management coordinated by IRCC	Horizontal management coordination of organizations by ASMB	Horizontal management of RPA coordinated by ASMB
Funding	Fixed resources not directly tied to forecasts individually managed	System-wide annual budget and contingency tied to forecasts with individual accountability	System-wide annual RPA budget and contingency tied to forecasts with two-year carry-forward
Data Governance	Some system level reporting with individual accountability	System-wide strategy with individual accountability	System-wide RPA strategy
Process			
Intake	CBSA and IRCC	IRCC	RPA
Triage & Scheduling	CBSA, IRCC, IRB	System-wide process managed by IRCC	System-wide process managed by RPA
Decision-making Guidelines and Tools	Lengthy COI packages, no common GoC COI, lack of strategic guidelines, low use of jurisprudential guides	Concise, common GoC COI briefs, strategic guidelines, increased use of jurisprudential guides, decision aids	Concise, common GoC COI briefs, strategic guidelines, increased use of jurisprudential guides, decision aids
Ministerial Interventions	IRCC and CBSA	CBSA	CBSA
First-Level Decision	RPD with majority of cases requiring hearings	RPD with more paper decisions	RPA interview model with more paper decisions
Appeal	RAD	RAD, no returns to RPD	Merge RAD & IAD, no returns to RPD
PRRA	IRCC	IRCC/RPD	RPA
H&C	IRCC	IRCC	RPA
Removals	CBSA	Voluntary program at IRCC, forced removals at CBSA	Voluntary program at RPA, forced removals at CBSA
Resettlement	Separate IRCC program	Separate IRCC program	Integrated within RPA
System Enablers			
Protection Workforce	Various classifications and levels for different case types across system	Various classifications and levels for different case types across system	Single classification of protection officers at various levels for different case types
Contingent Workforce	Term and casual contracts when needed	System-wide assignments	Cross-trained RPA officers
IT	Mostly paper-based, multiple systems with minimal integration	IT health check; move towards single system, electronic files	IT health check; move towards single system, electronic files
Productivity	By organization	System-wide with agreement	RPA

Many of the key elements are the same between Options 1 and 2. However, there are important differences which are summarized below:

- **Greater integration in the Agency model** - PRRA and some H&C cases and international resettlement are placed in the Agency but not in the IRB under the System Reform Model.
- **Integrated protection workforce flexibility** - with several business lines the Agency would be able to re-assign staff more readily, develop contingent staffing and work more closely with IRCC.
- **Reduced system complexity** - the current system has too many hand-offs between IRCC, CBSA and the IRB. The Agency would be responsible for intake to decision and for voluntary returns.
- **Clearer accountabilities** - by maximizing functions in the Agency accountability is more direct and straightforward.
- **Decision maker independence is preserved** - with authority for the granting of refugee protection delegated in IRPA to the Director of the Agency.
- **Duplication is avoided** - Ministerial interventions are limited to CBSA.
- **Administrative overhead is minimized and greater economies of scale are achieved** - the Agency would receive administrative support from IRCC, a much larger organization than the current IRB and it is expected significant economies can be achieved.

Choosing between these models is not straightforward. Both require substantial leadership and implementation effort from IRCC, CBSA and the IRB. As Canada approaches the 30 year mark since the introduction of the tribunal model at the IRB, it is an appropriate time to assess whether this model is best suited to refugee determination today. Regardless of the organizational approach taken reform is urgently required.

Moving Forward

The initial objective of this Review was to assess and provide recommendations to improve the efficiency of first level asylum decision making at the Refugee Protection Division of the IRB in light of the lower than expected productivity at the RPD. It has become clear that the RPD operates in a larger asylum context and there are many factors outside of the RPD that effect the efficiency of first-level decision making. No one aspect of the system can be pinpointed as the root cause of inefficiency, nor is there an antidote to the complexity of protection decision making at the RPD, RAD or at the point of Pre-Removal Risk Assessment. Protection decision making is by its nature a complicated adjudicative function. It is this very complexity and the importance of understanding asylum as a system, combined with fluctuating demand of asylum flows, which drive the core recommendations and conclusions of this report.

With the introduction of the IRB in 1989, nearly 30 years ago, it is now overdue to put in place the necessary mechanisms to make asylum a much more managed system. The key element of a stable and predictable system put forward by this Review is a robust governance regime to oversee the entire continuum of asylum processing. A system-wide resource and productivity model paired with an annual funding review cycle will enable the system to respond nimbly to changes in demand. This will be essential to getting ahead of the current asylum crisis and to be prepared for any future sudden growth in demand.

Governance can also offer opportunities to better prioritize work and effort towards decisions. Disjointed organization-by-organization approaches cannot achieve system goals. A shared responsibility for prioritization would alleviate the current discomfort on processing approaches wherein the decision to prioritize specific caseload or to take a “first in, first out” approach is decided by a single organization but the results are borne by the system as a whole. Shared governance can and should be established to resolve difficult trade-offs and ensure all caseload is addressed in the most appropriate, cost-effective and expeditious matter.

Further, gains can be made on efficiency by integrating processing from intake to decision across the continuum. Organizations must work much more closely together to derive better value from the claimant touchpoints at registration to eligibility so that case decisions on straightforward cases can be high integrity but lighter touch and lower cost to the Government of Canada. In the hand-off between claim registration and eligibility processes to assessment of the basis of claim, hearing and first-level decision, time and effort is consumed on procedures and interactions that are not fully harmonized. Equally, technology is not facilitating streamlined case intake and management to the extent needed in an information intensive process which today should be fully e-enabled, capable of virtual processing and claim management.

Optimization of processing through streamlined procedures and technology should be paired with concerted management approaches to enhance support and training to decision makers and support staff. The complexity of processing and decision making requires that investments in training and tools need to be commensurate with the task. On the one hand, generalist officers are being asked to deliver highly specialized programming at entry points to Canada, while on the other quality assurance in case processing and decision making has not been systematized in a way which ensures that repetitive errors are rooted out of this expensive and litigious system. In this complex processing space, active management tools have an important role to play to optimize both the quantity and quality of decisions. In this vein, the RAD continues to provide an opportunity to hone the quality of RPD decisions and to clarify issues of importance to RPD decision making and in so doing, build its value as an appeal and continue reduce the need for review by the Federal Court.

With finality of a protection decision that is high quality, enforcement consequences should be confidently and quickly pursued. Further tools can be leveraged early in the process for negative claims to enable safe and humane returns. Claimant engagement on consequences of a failed claim should begin on lodging of the claim and be reinforced at each negative decision-point and actively managed thereafter. The effectiveness of enforcement needs regular oversight as the effort and costs to diligently process and adjudicate claims for protection are of limited value when there is no finality.

As noted at the beginning of this Report, the first decision is whether to embark on a systems management approach to asylum. The second is to consider whether the proposals herein require a deeper structural integration through the creation of Refugee Protection Agency to achieve the sustainable path recommended in this Review. Finally, an investment is required in the capacity of the existing system. The asylum system is at a critical juncture. For claimants and their families a well-managed system is as essential as it is for Canada and Canadians.

Annex A: Immigration and Refugee Board Review – Terms of Reference

Context

In the context of Budget 2017, the Minister of Immigration, Refugees and Citizenship has been mandated to undertake an independent review of the Immigration and Refugee Board (IRB) of Canada to determine the possibilities for efficiencies and higher productivity. The review will be led by a third party expert with oversight by the IRB, Immigration, Refugees and Citizenship Canada (IRCC) and central agencies.

In addition to looking at efficiencies and productivity, the review is to include a review of the IRB's mandate as it relates to governance, structure and associated accountability mechanisms. While the review will focus on the IRB, it should also consider the asylum system as a whole, as well as approaches taken by other countries and international best practices.

To support this outcome, a Final Report outlining the findings of the review, as well as recommendations for action is to be completed by early June 2018 at the latest. An Interim Report is also to be provided by mid-December 2017.

Background

The in-Canada asylum system (ICAS) supports a core part of Canada's humanitarian tradition of offering protection to people who are displaced and persecuted. While IRCC is the overall steward of the system, it is delivered by multiple organizations, including the IRB, the Canada Border Services Agency (CBSA), Public Safety Canada and the Department of Justice.

The IRB is an independent administrative tribunal responsible for making decisions on immigration and refugee cases. The IRB has two divisions responsible for determining asylum cases and appeals, namely the Refugee Protection Division (RPD) and the Refugee Appeal Division (RAD).

The IRB also has two other divisions. The Immigration Division (ID) conducts admissibility hearings and detention reviews. The Immigration Appeal Division (IAD) decides appeals on certain immigration cases (e.g., family sponsorship applications, certain removal orders, applications based on meeting residency obligations and admissibility hearings).

In 2012, funding was provided to all departments responsible for delivering the asylum system to process 22,500 claims annually. However, based on its experience operating in the new system the IRB found that the funding provided only allows for the processing of approximately 14,500 claims annually, although through the pursuit of efficiencies and other measures the Board finalized 17,200 claims in 2016-17.

The volume of asylum claims fluctuates greatly from year to year, and has been steadily increasing since 2013. Delivery organizations in the asylum system are

required to process all claims they receive. At current capacity levels, this rising intake contributes directly to an expanding backlog of waiting claims.

Objective

The objective of the review is to identify options and recommended approaches to achieving greater efficiencies and higher productivity with respect to the processing of asylum claims. Options and recommended approaches should also consider impacts on other IRB divisions and business lines, as deemed necessary.

Implementation of any recommendations stemming from this review will follow the submission of a Final Report and would be subject to Cabinet approval, as appropriate.

Key considerations

The review will take into account the legal framework within which the IRB operates, as articulated in the *Immigration and Refugee Protection Act* and in jurisprudence. The review of IRB efficiencies and productivity will be carried out in a manner that respects the institutional independence of the IRB and the independence of its members in decision making under the current model. It will also explore alternate structural and governance models and approaches that could lead to possible efficiency gains while maintaining fairness.

Scope

The focus of the review will be mainly on the RPD of the IRB as it would appear to be facing capacity challenges that are not present in the other two IRB divisions. The RPD's overall efficiency and effectiveness is instrumental to a well-functioning asylum system. The RPD is also the IRB's largest division, representing approximately one third of IRB expenditures. To the extent that recommendations have an impact on IRB business other than the RPD, the review should also take into account the overall functioning of the IRB, including the RAD, ID and IAD, and may include internal services such as administrative support and accommodations for decision making.

While the review will be mainly focused on the IRB, given the current structure of the asylum system, recommendations could consider elements of the asylum process from intake through to decision making, including the roles of other delivery organizations (whether within the current structure or through a different structure) and efficiencies to minimize federal delivery costs and costs for services to asylum claimants. Among other factors, this analysis will include a comparison of the first-level decision making and appeal processes at the IRB with both adjudicative and administrative models and best practices in other countries.

The review should address the following three questions:

1. How can the efficiency of the asylum system be improved in its current structure;
2. What elements of the IRB's current structure could change in order to optimize efficiency and productivity while maintaining fairness? and

3. Should the review propose a different governance and accountability framework, how should this framework apply to the other divisions?

Assessment criteria

In carrying out the review, the Third Party Expert should consider the following criteria, amongst others as appropriate:

Effectiveness and Structure

- Analyze the governance structure and related accountabilities mechanisms, particularly as related to the asylum system (but not excluding other lines of business), from eligibility to decision making, to identify any duplication between delivery partners and compare with international examples.
- Consider efficiencies and improvements that can be made within the existing legal and regulatory environment.
- Consider how current rules, regulations and legal requirements may constrain the IRB.
- Provide a comprehensive cost-benefit analysis of any new structure being proposed which specifically highlights any efficiency gains.

Productivity and Efficiency

- Analyze business processes including triage, scheduling of claims, case preparation, and length of hearings.
- Consider whether the use of hearing space, technology aids and tools is efficient and effective, as well as the feasibility of implementing innovative tools/platforms and case management strategies, as informed by international examples.
- Consider how current measures being implemented by the IRB may achieve greater efficiencies and how the IRB currently responds to fluctuating volumes.
- Consider whether the division of tasks between administrative support personnel and decision makers is appropriate.
- Consider how performance management can be leveraged to improve efficiency.

Roles and responsibilities

Third Party Expert

Lead the review. Provide independent advice to the Minister of Immigration, Refugees and Citizenship. Report on progress directly to the Steering Committee.

Steering Committee

The Steering Committee will provide oversight and guidance for the review, which includes overseeing the work of the Third Party Expert to ensure deliverables align with these Terms of Reference.

Independent Review Secretariat

A small secretariat, led by an Executive, will be established to provide administrative support as well as collect and analyze information and support the drafting of the report, as directed by the Third Party Expert. The secretariat will also provide administrative support for the Steering Committee.

Central Agencies

Central Agencies will review results to ensure that the information will meet Central Agency decision-making information requirements.

Treasury Board:

The Treasury Board will review the results and recommendations brought forward by the Minister of Immigration, Refugees and Citizenship as appropriate.

Timelines and deliverables

Conclusions and recommendations generated by this review will be presented in Interim and Final Reports as outlined below.

Interim Report - The interim report should provide a summary of findings and recommendations based on the assessment criteria. **Due:** December 15, 2017

Final Report - Building on the Interim report, the final report should provide detailed analysis, findings and recommendations related to the assessment criteria. **Due:** June 1, 2018

Key activities

April – May 2017 - Establish Steering Committee and review Secretariat. Finalize Terms of Reference and/or Statement of Work. Select Third Party Expert

June 2017 - Third Party Expert to begin work. Initial briefing/meeting of Steering Committee and Third Party Expert. Assessment Framework (including methodology) presented to Steering Committee.

June – November 2017 - Review is conducted. Monthly meetings with the Steering Committee

December 2017 - Interim Report provided to Steering Committee

December 2017 – May 2018 - Receive Feedback from Steering Committee. Prepare detailed Final Report.

June 2018 - Final Report is provided to Steering Committee

Annex B: Comparing 2012 Reforms with Current Performance

Reforms of 2012 are tracked on a quarterly basis through a results framework entitled the Metrics of Success, an IRCC-coordinated report.

Component of Asylum Process	Reform	Results to end of 2016/17
Information Gathering	BRRA proposed a PM-3 Interviewing Officer at an 8-day triage interview; replaced with the basis of claim form (BOC) in PCISA as a cost-saving measure and due to stakeholder opposition; replaced the personal information form, which had to be submitted to the IRB within 28 days of making a claim.	Data not available
Eligibility Determination	Eligibility determination must be made within 3 working days of an officer receiving the claim: • For claims at a POE, the claimant is to submit the BOC to the IRB not later than 15 days after the day of referral of the claim. • For inland claims, the claimant is to submit the BOC during the eligibility interview.	In practice, the eligibility determination is not being met within 3 working days at inland offices because the claimant makes first contact with a clerk who schedules an eligibility interview up to several weeks after first contact.
Scheduling of the Hearing	IRCC or CBSA officers schedule the hearing at the IRB at the time of eligibility determination (the IRB previously scheduled the hearing).	50% of hearings are immediately rescheduled by the IRB due to availability of decision makers. 35% were delayed in 2016/17, an increase from previous years, mostly due to FESS.
Front-end Security Screening (FESS)	Security screening is to be conducted on all refugee claimants 18 years of age and older, for concerns related to sections 34, 35, and 37 of IRPA. For 80% of cases, screening is completed: ▪ within 25 days of inland DCO claimants; ▪ within 40 days for POE DCO claimants; and ▪ within 55 days for non-DCO claimants.	Target timelines were largely met in 2016/17. Q3 was the only period during which the target was not met. 2015 IRB evaluation noted that data shows a substantial proportion of delay related to FESS occurs after confirmation has been received.

Refugee Protection Division	Informal hearing conducted by public servant decision makers instead of Governor-in-Council appointees. Hearing to be fixed according to timelines (from date of claim): ▪ 30 days for inland DCO claimants; ▪ 45 days for POE DCO claimants; and ▪ 60 days for non-DCO claimants. 90% of hearings to be held according to timelines (from date of claim): ▪ 30 days for inland DCO claimants; ▪ 45 days for POE DCO claimants; and ▪ 60 days for non-DCO claimants.	The proportion of hearings held within the regulated timelines continues to fall short of the 90% target, with an average of 59% of hearings held within the timelines for 2016/17. Secondary intake (RAD and Federal Court returns, applications to vacate or cease) can remain unresolved for extensive periods of time, creating—in combination with unresolved new referrals—a new system backlog.
Refugee Appeal Division	Creation of a Refugee Appeal Division; access barred for certain claimants. Claimant has 15 days from day on which they receive the RPD's written reasons to file an appeal and 30 days to perfect the appeal. Decisions to be made within 90 days of the appeal being perfected (except when a hearing is held).	In 2016/17, about 80% of claims receiving a negative RPD decision appealed (if eligible to do so). The amount of time required to render a decision has increased in recent years. In Q1 2016/17, 66% of decisions were made within the 90-day target. This dropped to 30% by Q4 2016/17. Overall, decisions are being made in five months.
Federal Court	At least 50% of denied leave decisions made within 120 days of the application for leave. The hearing must be held no sooner than 30 days and no later than 90 days after leave was granted.	Data not available
Designated Countries of Origin	New authority for the Minister to designate countries of origin (DCO); claimants from these countries are subject to different timelines and were not initially eligible to appeal RPD decisions to the RAD.	All DCO cases are granted access to the RAD
Cessation and Loss of Permanent Resident Status	When the IRB finds a protected person's refugee protection status has ceased, permanent resident	No change

	status is lost (unless cessation is due to a change in country conditions).	
Humanitarian and Compassionate Claims	Bar on access to humanitarian and compassionate (H&C) consideration for 12 months following an IRB decision and bar on access to concurrent H&C applications starting when the claim is referred to the RPD (exceptions for medical issues or best interests of the child). No legislative timelines or service standards	In the last 12 months ending June 2017, H&C decisions had an average processing time of 23 months. Please note that this figure reflects all H&C decisions including those that are not failed refugee claimants.
Pre-Removal Risk Assessment	One-year bar on PRRA applications after last decision at the IRB or last PRRA for non-DCOs; three-year bar for DCOs. No legislative timelines or service standards	No change Current processing time not available at this time
Removals	Claimants who do not have the right to appeal to the RAD are excluded from an automatic stay of removal upon filing an application for leave and for judicial review of an RPD decision. Removal of 80% of failed refugee claimants within 12 months of an IRB decision.	No change In 2016/17, fewer than 40% of new system claimants and fewer than 60% of legacy claimants were removed within one year of the final IRB decision. On average, removals take 14 months from the claim date and seven months from the last IRB decision.

Annex C: Summary of Recent Program Evaluations

Evaluation of the In-Canada Asylum System (April 2016)

1. With respect to the ongoing operation of the in-Canada asylum system, IRCC, in collaboration with relevant organizations, should:

a. Review assumptions around intake, productivity, and resourcing to inform future costing exercises;
b. Further analyze existing challenges with respect to the current timelines and targets, and implement measures to address these challenges, or adjust the timelines and targets, as needed. This should include in particular, targets for RPD decisions and removals; and
c. Further analyze the policy objectives for the reforms and key stages of the ICAS that are not entirely achieving intended results and make the necessary policy revisions.

2. IRCC, in collaboration with relevant organizations, should put in place the appropriate governance needed to ensure effective decision making and to oversee and monitor the implementation of any further in-Canada asylum system changes and ongoing delivery, and to address the results of the evaluation.

3. With respect to the ongoing monitoring and reporting on the performance of the in-Canada asylum system, IRCC, in collaboration with relevant organizations, should:

a. Determine what components of the in-Canada asylum system will be monitored and reported upon and reach agreement with respect to targets and definitions; and
b. Address existing data and reporting gaps. This should include ensuring that the required data are being captured by participating organizations and fully integrated into the Refugee Claimant Continuum.

4. IRCC should formalize data governance and project management for the Refugee Claimant Continuum.

5. IRCC, in collaboration with relevant organizations, should reduce the administrative inefficiencies within the refugee intake process, where feasible.

6. IRCC, the CBSA, and the IRB should implement processes to allow for the electronic sharing of information between organizations, where feasible.

Evaluation of the RPD (December 2015)

1: The IRB should consider a limited exercise where members track their time for a few weeks once or twice over a year, to update assumptions, enable more accurate resource estimates, provide information on which activities are using the most time, inform training or other decisions related to how to distribute human resources to increase efficiency.

2: The IRB should consider a pilot project to determine if the provision of extra-hearing support would be a cost-effective method of increasing the efficiency of the system.

3: The IRB should consider a pilot project on the provision of RPD transcripts to the RAD to assess the efficiency gains the availability of transcripts would provide.

4: The RPD should review their "single-issue" adjudicative approach and whether it supports a more efficient refugee determination system by considering the approach from the perspective of the entire system and not just the RPD.

5: The IRB, CIC, and the CBSA should discuss scheduling, FESS delays and information-sharing; in particular, a more robust/flexible scheduling tool, scheduling practices that gives the RPD more control, and more timely and responsive information-sharing.

6: As part of Recommendation #2, consider a redesign of the Registry or whether some other method is more suited to providing members with more support.

7: With recommendation #2, the IRB should consider how the Research Directorate can deliver more timely responses with more focussed content to the RPD.

8: The IRB should review how the analytical function can be restructured to enhance effectiveness.

9: The individual performance targets should be set in consultation with members and based on evidence of what is reasonable in the current system.

10: The RPD and the RAD should consider whether they should post more persuasive decisions of public interest on their website, and evaluate the Ready Tours and Information sessions to obtain a better idea of the uptake and satisfaction with these activities.

11: The RPD should review the BOC form to determine if improvements are needed to allow for a clear narrative of the information relevant to the claim.

12: Delays in scheduling hearings resulting from surges should be tracked and examined to understand the precise cause of delay. The RPD should consider the downstream effects of surges on member productivity to more fully understand the division-wide impact.

13: Delays after FESS confirmation has been received should be categorized as operational limitations of the RPD and reflected in the revised performance measure.

14: Monitoring and reporting on the backlog should be factored into the RPD's performance measures, including volume and age of the inventory and analysis and reporting on the nature of the cases and the factors that contributed to these cases ending up as backlog.

15: The RPD and the RAD should review the suggestions for the improvement of knowledge management tools raised in this evaluation and take action as warranted.

Annex D: Proposed Terms of Reference for the Asylum System Management Board

Mandate and Scope

The Asylum System Management Board (ASMB) has a primary responsibility for the oversight of Canada's asylum system while respecting the mandates and accountabilities of individual participating organizations.

The objectives of the ASMB are to:

- Coordinate the development and on-going functioning of a system management approach to Canada's asylum system, including clear performance expectations and accountability framework
- Approve annual and ad-hoc budget requirements in line with an agreed productivity and forecasted intake
- Establish a monitoring framework including performance measures and operational timelines for triaging, security screening, scheduling, hearings, rendering and finalization of decisions and removals
- Recommend the annual asylum plan to the Minister of IRCC for tabling in Parliament, along with the report on the implementation and results of the previous year's plan, targets, performance operational standards and triage priorities
- Approve the strategic and operational plan of each department and agency involved in the achievement of the annual asylum plan, including risk mitigation strategies
- Review and monitor organizations' progress in implementing plans, and approve any significant changes as may be required, and provide quarterly reports to the Minister

Membership

Chairperson: Deputy Minister of IRCC

Members:

Chairperson of the IRB

[Director of Refugee Protection Agency]

President of the CBSA

If the designated Chair is not available, then an alternate will be responsible for convening and conducting that meeting. Designated representatives must have decision-making authority within the context of the committee, and must be at the rank equivalent of Associate Deputy Minister.

Observers by Invitation:

Public Safety Canada

Justice Canada

Finance Canada

Treasury Board Secretariat

Secretariat

The ASMB's Secretariat will be designated by the Chairperson and will be responsible for:

- Developing an annual work plan for approval of the Board;
- Coordinating the ongoing monitoring of work plan deliverables;
- Developing, coordinating and disseminating meeting agendas and materials to members 5 business days prior to meetings;
- Preparing Records of Decisions and tracking follow up;
- Providing logistical support such as meeting invitations, records of attendance and boardroom bookings;
- Supporting the Chairperson with the governance of the Board.

Governance

Supporting Committees - The Board may be supported by interdepartmental subsidiary committee(s) as required. The mandates and responsibilities of any subsidiary committees will be as set forth in their terms of reference, and approved by the Board.

External Advisory Support - The Board will consult at regular intervals the Expert External Advisory Committee. Consultations with the Expert External Advisory Committee will take place annually.

Work Plan - A cyclical, multi-year work plan framed by the ASMB's objectives will guide the Board's deliverables. The work plan will provide for oversight of the development of the annual plan and reporting to Parliament, as well as regular monitoring of the performance management of the asylum system.

Decision Making - Decisions of the Board will be taken by consensus and shall be reflected in the Records of Decision, including expected follow up.

Frequency of Meetings - The committee will meet no less frequently than on a quarterly basis. *Ad hoc* meetings to address specific topics may be scheduled.

Records of Decision - Records of Decision (RoD) will be drafted by the Secretariat within 3 working days. Comments on RoDs on the part of the Chairperson and members will be solicited in order to incorporate their feedback prior to the next meeting, where the RoD will be ratified by the members of the ASMB. Approved RoDs will be available in both official languages.

Action Items – Action items identified within the RoD will be tracked by the Secretariat. Responsible organizations will be required to inform the Secretariat of any developments related to their action items. Discussion and monitoring of action item follow up will be a standing agenda item for the Board.

Agenda Items - Members are invited to propose agenda items by contacting the Secretariat.

Evaluation - On an annual basis the Board will undertake a review of the Terms of Reference and the Board's effectiveness. The Chairperson will send a report to the Board identifying any necessary recommendations and actions.

Annex E: Summary of the Report of the Auditor General: The Processing of Refugee Claims (1997) and Not Just Numbers (1997)

Two major reports were prepared after the IRB was created. Both recommended improvements to management of the system, and many of the detailed proposals remain relevant today – those reflected in the recommendations of this review are marked (*).

Relevant highlights from the *Report of the Auditor General of Canada to the House of Commons*, (December 1997), excerpted from Chapter 25–The Processing of Refugee Claims:

Receiving Claims	
Determining eligibility: an essential control but ineffective	*25.47 Citizenship and Immigration Canada should review the mechanisms used in the application of the eligibility criteria set out in the *Immigration Act*.
More complete, more relevant information needs to be gathered during the initial contact with the claimant	*25.51 Citizenship and Immigration Canada and the Immigration and Refugee Board should cooperate to establish a common strategy for ensuring that all information relevant to the processing of refugee status claims is collected in a timely fashion.
Provision to process claims in the first country of asylum has never been applied	25.56 Citizenship and Immigration Canada should intensify its efforts to ensure an increased level of international cooperation with respect to responsibility for the review of refugee claims.
Efforts to improve the selection process for Board members need to be continued	*25.70 The government should ensure that the selection process for Board members provides greater certainty that appointments or reappointments to the Immigration and Refugee Board are based on the qualifications needed to respond to the complexity and the importance of the task.
High turnover among members and short terms have a significant negative impact on productivity; Having available the decision makers as needed is important	*25.84 The government should improve its practices for appointing Board members, in order to ensure that the Immigration and Refugee Board has a sufficient number of experienced decision makers available when they are needed.
Determination of Refugee Status	
The Board places great importance on maintaining and developing the skills of its members; The information available does not always foster informed and equitable decisions	*25.98 The Immigration and Refugee Board and Citizenship and Immigration Canada should ensure that Board members are supplied with the information needed to make well-reasoned and fair decisions.
The Board's practices need improvement	*25.107 The Immigration and Refugee Board should: • Be more rigorous and consistent in its practices in the refugee determination process; and • Establish an overall strategy and monitoring mechanisms to ensure that it meets its operational objectives.
Organizational climate at the Board could jeopardize the success of initiatives to improve the refugee determination process	25.113 The Immigration and Refugee Board should take urgent action to improve its organizational climate and develop a common vision among its employees.

Handling Failed Refugee Claims: A slow, complex and ineffective process	
Questions about the efficiency and the results of the risk-of-return review	25.125 Citizenship and Immigration Canada should ensure that the risk-of-return review is: • Within the scope of the objectives set for the Post-Determination Refugee Class in Canada; and • Carried out in an efficient and timely manner.
More rigour needed in evaluating humanitarian and compassionate grounds	25.130 Citizenship and Immigration Canada should introduce a greater degree of rigour into the mechanisms surrounding decisions based on humanitarian and compassionate grounds.
The Department is experiencing a great deal of difficulty carrying out removals	25.140 Citizenship and Immigration Canada should ensure that it has the information needed to manage removal-related activities and it should take steps to increase its effectiveness at removals.
Accountability and Information to Parliament	
A need for more complete and relevant information to parliamentarians	* 25.144 Citizenship and Immigration Canada and the Immigration and Refugee Board should ensure that parliamentarians receive the information needed to hold the government to account for the performance of all activities related to the processing of refugee status claims.
Conclusion: A thorough review of the system is required	

Relevant highlights from**,** *Not Just Numbers, A Canadian Framework for Future Immigration***,** December 1997 excerpted from Chapter 7 - Offering Canada's Protection:

7.7 Establishing a Structure for Protection	
(i) International Leadership	82: The Protection Act should enable Canada to exercise leadership in generating international protection-oriented responses to refugee crises.
(ii) A Single System for Protection	*83: The Protection Act should provide that all of Canada's protection activities be managed as part of the same system.
(iii) A Single Protection Agency	*84: The Protection Act should create a protection agency to be responsible for the management of Canada's protection system.
	*85: The protection agency should develop a cadre of career civil servants as Protection Officers and Appeal Officers. The protection agency should assign Protection Officers to determine protection claims both abroad and in Canada, and Appeal Officers to review decisions on in-Canada protection claims.
(iv) A Protection Advisory Committee	*86: The Protection Act should provide for the creation of an Advisory Committee composed of experts to advise the protection agency.
7.8 More Inclusive Grounds for Protection	
	87: The Protection Act should provide criteria consistent with Canada's obligations under the 1951 Convention Relating to the Status of Refugees and other current and developing human rights and humanitarian standards, violation of which would result in the endangerment of life

	and security of a person. These same criteria should be used when examining protection claims both in Canada and abroad. All criteria should be examined in a single administrative procedure.
	88: The protection agency should give priority to the most vulnerable and those most in need. There should be no requirement that applicants be likely to establish themselves successfully in Canada.
7.9 The Overseas Protection Process	
(i) Early Focus on Most Vulnerable	89: The Protection Act should provide conditions to encourage claims for protection to be made at the earliest possible opportunity, which means in the following order: overseas, at the port of entry, inland.
(ii) Selection Arrangements — Governmental and Non-governmental	90: The Protection Act should contain provisions enabling the protection agency to enter into selection and/or settlement arrangements with non-governmental organizations. Based on the general protection criteria, these organizations could select persons overseas in need of protection.
	91: Protection seekers abroad could be sponsored by the Government of Canada or, in some cases, by non-governmental organizations. Resettlement assistance would be provided by the government, non-governmental organizations, or both.
(iii) Specific Procedures	92: To improve the fairness and efficiency of overseas protection determination procedures, the legislation should provide for the following: • The overseas Protection Officer would be authorized to do paper pre-screening of potential claimants; • Applicants would be permitted legal representation by a member of any provincial law society, a member of an association regulated by a province, or a person who was not remunerated for services rendered; • A written decision by the Protection Officer, stating reasons, would be required within six weeks of the protection determination interview; • Decisions could not be appealed; and • Where a claim was allowed, the case would be forwarded to the responsible Canadian visa office for processing for landing.
	93: The Immigration and Citizenship Act and the Protection Act should allow for persons abroad who are determined to be in urgent need of protection to be issued temporary protected status.
7.10 The Inland Protection Process	
	94: The Protection Act should provide for an inland protection determination system that is fair, consistent and timely and that reflects natural justice. Bona fide protection seekers should find it in their best interests to come forward as early as possible.
(i) Safe Third Country Provisions	95: The Immigration and Citizenship Act should enable the Minister to prescribe a country as a safe third country, including in relation to a class of persons. The protection agency would have to be consulted. The proposed

	regulations and a statement indicating why the proposed country should be considered a safe third country would be submitted to the Standing Committee.
	96: The Immigration and Citizenship Act should provide for the Minister to table before the House of Commons any safe third country regulations and a statement. The statement would include whether the proposed safe third country complies with relevant international law concerning the protection of persons seeking asylum and with other relevant human rights standards.
(ii) Pre-Determination Procedures	97: The Immigration and Citizenship Act and the Protection Act should reflect that the protection agency would have jurisdiction over all protection claims as soon as they are made. Ineligibility determinations would be made by Protection Officers, except where a person comes to Canada within the year after being found not to be in need of protection or where a person comes from a safe third country. In those cases, the determination would be made by the status determination officers.
	98: The Protection Act should include a provision that precludes making a further protection claim while an unsuccessful claimant remains in Canada. Where an unsuccessful claimant has left Canada after the claim was determined and has subsequently returned to Canada, the current period during which no new claim may be made should be extended from 90 days to one year.
(iii) Specific Inland Procedures	**1. First Interview** 99: The Immigration and Citizenship Act should provide that statutory immigration requirements (medical, criminality and security checks) be initiated for persons seeking protection upon their arrival on Canadian soil.
	100: The Immigration and Citizenship legislation should prescribe as a mandatory condition of provisional status for persons seeking protection in Canada, the requirement to undergo a medical examination for reasons of public health and safety within 10 days of arriving in Canada.
	2. Timely Processing by Protection Agency 101: The Protection legislation should codify all requirements and time limits of the inland process, equally applicable to all parties. The legislation would establish time limits for filing a protection claim inland, with possible extensions permitted due to a change in circumstances.
	3. Access to Assistance and Counsel 102: The Protection legislation should provide for comprehensive assistance services to protection claimants at the port of entry.
	4. Granting of Provisional Status and Access to Benefits 103: The Immigration and Citizenship Act should permit the granting of provisional status to persons who claim to need protection except where a claimant is uncooperative, is determined to be a danger to the public, or poses a security risk. The Protection Act should accord persons with provisional status the right to work and other social benefits.

	104: The Protection Act should require the federal government, through the protection agency, to assume all income assistance and health-care costs for inland claimants until the final determination of their cases (either accorded landed immigrant status or removed from Canada).
	5. The Protection Determination Interview 105: The Protection legislation should establish the conditions for a fair and timely process, with protection determination interviews to be held within six weeks of the submission of a claim, and the requirement for the claimant to provide full and timely disclosure.
	*106: To expedite the interview process, the Protection legislation should provide for an initial review of the case by designated employees of the protection agency. These employees would be authorized to recommend to a Protection Officer that a claim be accepted without an interview where the case warranted.
	6. Decisions 107: The Protection legislation should require a protection decision to be made within six weeks of the interview. Successful claimants would be referred by the protection agency to Citizenship and Immigration Canada for processing towards landed immigrant status.
	7. Appeals *108: The Protection legislation should provide for appeals of protection decisions made by Protection Officers in Canada to an appeal section of the protection agency. The appeal should be restricted to a paper review based on the merits. The appeal section could request further information, confirm the decision, or render a new decision.
7.11 Protected Status: Temporary Status, Cessation	
(i) Temporary Status	109: The Immigration and Citizenship Act and the Protection Act should provide that persons determined to need protection but who cannot show satisfactory identity documents should be granted temporary protected status, and they could apply for landing after three years.
(ii) Cessation of Status	110: The Immigration and Citizenship Act and the Protection Act should prescribe that a process to revoke temporary protected or landed immigrant status granted on protection grounds could be initiated at the instigation of the Minister. This process would be called cessation.
	111: Cessation grounds would include: 1) re-availing oneself of the protection of the country of persecution; 2) status obtained fraudulently or through misrepresentation; or 3) reasonable grounds to believe the person committed war crimes or crimes against humanity.
	112: The decision on cessation would be made by a Protection Officer following an interview. The decision would not be subject to appeal, except when the person whose rights are affected by the decision is a landed immigrant. In the case of a landed immigrant, the cessation procedures would have to be commenced within three years of landing. Landed immigrant status would be deemed lost when the decision of the Protection Officer concluded that there was cessation.

7.12 Landing Protected Persons	
	113: The Immigration and Citizenship Act should reflect that persons determined to be in need of protection by Canada should be immediately processed for landing, subject to the statutory medical, criminality and security checks.
	114: All persons determined to be in need of protection either inland or overseas would be exempted from paying a fee for processing a landing application. They would still be subject to the right of landing fee, but a loan would be available.
	115: The Immigration and Citizenship Act should continue to provide that immediate family members (spouses and dependent children) should be included in the landing application and processed concurrently, even if they reside abroad.
	116: The Immigration and Citizenship Act should exempt persons granted protection in Canada and abroad and their dependants from the excessive cost component of the medical inadmissibility provisions. The Immigration and Citizenship Act should require that all persons outside Canada who are determined to be in need of protection, as well as those dependants outside Canada of a person determined to be in need of protection, should be required to undergo a medical examination for reasons of public health and safety prior to receiving their documentation to travel to Canada.
	117: The Protection Act should specify that when a person abroad in need of protection requires extensive medical care, the protection agency must ensure that all necessary facilities are arranged with the province of destination.
	118: The Protection Act and the Immigration and Citizenship Act should reflect the federal government's responsibility for medical costs for persons seeking protection in Canada and those found to be in need of protection prior to obtaining landed immigrant status.
7.13 Implementing a New Protection System	
	*119: Resources should be allocated to maintain the current Convention refugee determination system until it has completed determinations for all claims received prior to the implementation date for the new protection system. The quorum of the Convention Refugee Determination Division should be reduced to one member for this purpose.
7.14 Removals	
	Removals should be executed as quickly as possible after a negative final determination. We cannot stress strongly enough that this should be an absolute priority of the government. The integrity of the entire protection system depends on it. Those who are not accorded Canada's protection should not be permitted to remain; otherwise, the protection system would serve no purpose.

Annex F: Summary of Review Recommendations

Governance, Results, Accountability and Funding

Recommendation 1 Implement a systems management approach.

Recommendation 2 Establish an Asylum System Management Board at the Deputy Minister level to recommend an annual plan for the asylum system to the Minister of Immigration, Refugees and Citizenship:

- setting out processing priorities;
- confirming forecasts;
- establishing operational performance targets;
- setting resource allocations in a comprehensive budget plan;
- setting quality assurance objectives;
- establishing an information technology and system investment/innovation plan; and,
- establishing a results reporting framework.

Recommendation 3 An annual plan should be tabled to Parliament by the Minister of Immigration, Refugees and Citizenship in consultation with the Minister of Public Safety and the Minister of Justice to report annually on the system as a whole.

Recommendation 4 The Asylum System Management Board should establish clear performance expectations for all organizational heads/deputies based on the Minister-approved annual plan.

Recommendation 5 The Asylum System Management Board should develop productivity measures across the asylum system.

Recommendation 6 Develop an annual asylum budget that is reset each year based on forecasted intake and productivity targets set by the Asylum System Management Board.

Recommendation 7 To support an asylum budget all departments should review and determine a mechanism to track expenditures.

Recommendation 8 Develop a flexible funding model.

Recommendation 9 Formalize regular, system-wide human resource planning and monitoring processes.

Recommendation 10 Establish an External Advisory Committee composed of asylum experts to advise the proposed Asylum System Management Board on plans and proposals.

Recommendation 11 The Asylum System Management Board should recommend a plan to the Minister of IRCC to eliminate the current asylum system backlog by 2020.

Recommendation 12 Adopt one of two models for a systems management approach for asylum.

The Asylum Claim Process

Recommendation 13 Establish an expert committee to engage and consult in detailed process design and processing solutions with the legal community and stakeholders.

Intake Procedures

Recommendation 14 Implement a consistent claim intake process whether the claim occurs in country or on arrival at a port of entry.

Recommendation 15 Streamline the intake process by adopting electronic forms to simplify how information is collected from the client and recorded in the Global Case Management System (GCMS).

Recommendation 16 Provide plain language information and forms in a variety of languages to ensure individuals understand the asylum process.

Recommendation 17 While in most cases eligibility can be assessed within three working days, in cases where there is insufficient information, a reassessment of eligibility should be mandatory prior to a first level hearing.

Recommendation 18 Cases should not be scheduled for a hearing until Front End Security Screening (FESS) is complete.

Recommendation 19 The national detention risk assessment and alternatives to detention should be used to manage detention of asylum claimants within existing resources.

Reviews and Ministerial Interventions

Recommendation 20 Working through the Asylum System Management Board, develop and implement a single triage system to review all cases for integrity reasons and to optimize efficiency of case resolution.

Recommendation 21 Within a common triage system, a processing strategy should be in place to manage all types and sub-types of caseload.

Recommendation 22 Clarify the roles of the ministerial intervention function (particularly in relation to credibility findings) to avoid duplication with the role of the RPD decision maker.

Recommendation 23 Develop a quality assurance framework, overseen by the Asylum System Management Board, to clarify and communicate accountability, roles and responsibilities.

Streaming Cases to Decision

Recommendation 24 Processing timelines for hearings should be removed from legislation. Service standards should be set for intake processes and first-level case

decision finalizations, ideally within 90-120 days based on annual resourcing and productivity targets set by the Asylum System Management Board.

Recommendation 25 Common triage should be used to stream cases to decision based on complexity and by quality of the claim, whether a hearing is required or not, ensuring that cases are streamed to specialized decision makers which may specialise by groups of similar countries, specific countries or types of claims.

Recommendation 26 Paper-based decision making should be considered in as many cases as feasible.

Recommendation 27 Scheduling of hearings should be harmonized with the common triage process, to ensure only those cases requiring hearings are scheduled and each case is assessed for time required. Scheduling should take into consideration the availability of parties (specialized decision maker, claimant/claimant's counsel and interpretation services) using e-scheduling tools.

First-Level Hearing and Decision Making

Recommendation 28 Identify the key issues of the hearing prior to the hearing date in collaboration with counsel in order to assist in resolving the case more quickly.

Recommendation 29 The ASMB should consider a trilateral service contract for interpretation services by phone, web and in person available to serve both the intake process and the refugee determination interview or hearing.

Recommendation 30 Accommodation plans should transition away from large, formal hearing rooms in favour of smaller flexible interview spaces and video-conferencing for remote counsel/claimants.

Decision-Making Guidelines and Tools

Recommendation 31 Ensure that Country of Origin Information (COI) is synthesized for decision makers.

Recommendation 32 Develop guidelines specific to countries and claim-types to support decision makers (as well as claimants and counsel) in assessing different types of claims.

Recommendation 33 Develop one common Government of Canada resource for country information to support all protection-related decisions.

Recommendation 34 Develop informal and practical tools to help identify key material facts for decision making and decision writing.

Decision Delivery

Recommendation 35 Continue to reduce the need to provide written reasons for positive decisions and encourage oral decisions supported by a decision template.

Recommendation 36 Within the context of the Quality Assurance Framework proposed in Recommendation 23, a quality assurance process for decision making should be designed and implemented.

Recommendation 37 Consideration should be given as to whether first level protection decision makers should be enabled to refer cases to IRCC for Humanitarian and Compassionate (H&C) processing.

Recourses

Recommendation 38 Eliminate returns to the RPD by the RAD through amendments to IRPA.

Recommendation 39 Undertake ongoing monitoring over the next two years (to 2020) of the Federal Court's deference to the RAD and whether there is a need for a two-step appeal process.

Recommendation 40 Allow for "deemed" continuation of RAD Governor in Council (GiC) decision makers until replacements are appointed to improve RAD staffing flexibility.

Recommendation 41 Within the ASMB Quality Assurance Framework develop a quality assurance regime at the RAD.

Recommendation 42 Increase the development and use of jurisprudential guides by both the first-level of decision making and the RAD, as well as binding precedential (three-member panel) decisions.

Post-Decision

Recommendation 43 Fully integrate Permanent Residence processing of non-accompanying spouses/dependents into the asylum intake process to minimise repetitive processes and additional data collection on positive grant of asylum.

Recommendation 44 Develop specific PRRA targets and service standards to improve processing time.

Recommendation 45 Provide PRRA officers with a list of all asylum claim documents to strengthen their ability to assess new evidence.

Recommendation 46 Pre-Removal Risk Assessment decisions should be performed by first-level protection decision makers.

Recommendation 47 Removals should be prioritized as soon as the removal order comes into effect.

Recommendation 48 A voluntary low-risk, unescorted returns program should be re-assessed to establish whether such a program, administered by IRCC or the Refugee Protection Agency, would encourage more failed claimants to depart Canada.

System Enablers

Human Resource Management

Recommendation 49 Develop a Protection workforce to ensure availability of experienced staff and to increase staffing flexibility.

Recommendation 50 Establish a contingent workforce to facilitate a rapid response to increasing claim volumes and thereby avoid the build-up of backlogs.

Recommendation 51 Fully train and assess productivity of new first-level decision makers within the probationary period.

Recommendation 52 Strengthen professional development for decision makers with regular training on key competencies, such as writing concise decisions and holding focussed interviews/hearings.

Recommendation 53 Develop the supervisory function overseeing first-level decision makers to increase quality assurance and performance management.

Recommendation 54 Dedicate specialized staff for asylum intake at major ports of entry.

Recommendation 55 Explore best practices in other helping professions to strengthen resilience and mental health.

Decision Maker Productivity

Recommendation 56 Set realistic but ambitious targets for first-level decision making and RAD based on detailed data analysis on the use of time, and incorporate into a robust productivity model.

Recommendation 57 Develop a new productivity model that incorporates the triage system and other efficiency measures recommended in this Report for approval by the ASMB.

Recommendation 58 Undertake a supervisory review of all reasons for quality and consistency pre- or post-decision.

Recommendation 59 Rebalance the support model for decision makers to determine how staff can better assist with case preparation.

Legal Supports to the System

Recommendation 60 Simple electronic processes should be developed to improve collaboration with counsel, including scheduling of interviews and document submissions.

IT Enablement

Recommendation 61 Conduct an independent IT health check for the asylum system with the goal of building an integrated IT plan.

Recommendation 62 The integrated IT plan should include the development of a single case management system and electronic file, an electronic mechanism for claimants to submit information and electronic scheduling tool.

Recommendation 63 Implement a system-wide data governance strategy.

Recommendation 64 Consider the use of predictive analytics for risk assessment**.**

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This report is based on information collected from both internal and public sources between June 2017 and March 2018, including:

- ***Documents:*** *Departmental records, plans and results (Reports on Plan and Priorities/Departmental Results), court decisions, legislation, audits, evaluations, reports from external experts*
- ***Data analysis****: Financial plans and expenditures, cost per claimant data, forecasting models, intake and finalization data, productivity data*
- ***Interviews****: Internal and external experts in Canada and in reference countries*
- ***Site visits****: Toronto and Montreal Offices of the IRB, IRCC and CBSA; the Lacolle, Quebec border crossing*
- ***Case studies****: Reviews of other tribunals and service delivery models*
- ***Decisions:*** *RPD, RAD, Federal Court, Federal Court of Appeal and IRCC on various protection-related cases (including randomly-selected)*

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