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# Standing Committee on Citizenship and Immigration

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**Chair**

**Mr. David Tilson**

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Tuesday, April 28, 2009

• (0905)

[English]

**The Vice-Chair (Hon. Maurizio Bevilacqua (Vaughan, Lib.)):** I call this meeting to order, pursuant to Standing Order 108(2), for a study of chapter 2 of the report of the Auditor General of Canada, March 2009, “Governor in Council Appointments Process”.

As witnesses today, we are pleased to have with us the Auditor General of Canada, Sheila Fraser, and from the Office of the Auditor General of Canada, we have Anne Marie Smith, principal, and Jean Goulet, director. From the Immigration and Refugee Board of Canada, we have Simon Coakeley, executive director. Welcome.

Madam Fraser, you've done enough of these to know how the process works. You make opening comments and thereafter we have questions and answers. Thank you. You may begin.

**Ms. Sheila Fraser (Auditor General of Canada, Office of the Auditor General of Canada):** Thank you, Chair. We are very pleased to be here today to discuss our chapter on the Governor in Council appointments process.

As you mentioned, I am joined at the table by Anne Marie Smith, principal, and Jean Goulet, director, who are responsible for this audit. Our audit examined the process used to make Governor in Council, or GIC, appointments to crown corporations, small federal entities, and, of most interest to this committee, the Immigration and Refugee Board.

The Immigration and Refugee Board, or the IRB, is a case study of the seriousness of issues that can develop as a result of insufficient attention paid to appointments. High vacancy rates and high turnover of board members have significantly contributed to increased delays in rendering decisions and a large backlog of unprocessed cases. The result is uncertainty for claimants and significant cost to social programs.

Overall, the audit found there was unsatisfactory progress since our previous audits. Issues related to the IRB were first raised as long ago as 1997. At that time, we had serious concerns about the high turnover among board members and delays in making appointments, which resulted in a high number of vacant positions. While we noted some improvement in our 2001 follow-up report, turnover and vacancy rates observed in this audit were higher than those in 1997. As of September 20, 2008, there were about 10,000 unresolved appeals and more than 50,000 unprocessed refugee claims.

Our audit found there was a well-defined process in place for recommending members for appointment to the IRB, which has significantly evolved since 2004. The process now involves an initial

screening of candidates, suitability screening by a panel of senior-level IRB officials and external experts called the selection advisory board, a written test with a predetermined passing mark, and an interview by the selection advisory board. Following reference checks, recommended candidates are added to a list presented by the IRB chairperson to the Minister of Citizenship and Immigration for consideration in recommending appointments to the Governor in Council. The IRB chairperson also makes recommendations to the minister on reappointments of members whose terms are coming to an end, based on an assessment of their performance.

[Translation]

Following the changes made to improve the appointment process over the last four years, we expected that appointments would be made in a timely manner and that the Immigration and Refugee Board would be staffed with the number of decision-makers it required to achieve its mandate. However, at March 31, 2008, only 106 positions of a total approved complement of 164 positions were occupied—a vacancy rate of 35%. As of September 20, 2008, the IRB had a 23% vacancy rate.

Our audit also found that incumbent members were not treated respectfully when their appointments were due for renewal. Decisions on reappointment were not made or communicated in a timely manner—with members often notified only a short time prior to their terms' expiry and many after their terms expired. In addition, the Immigration and Refugee Board, which must arrange office space, case workloads and training for new members, is not always informed of the start date of new members. We are concerned that the case inventory will likely have grown since we completed our audit. The committee may wish to ask the board for information on the current status of the backlog.

As a final note, the government's response to our recommendations in the chapter gives little indication of the actions it intends to take to address the concerns that we raised. Your committee may wish to explore this further, including whether the government has developed any action plans, timelines or other strategies to deal with the inventory of unresolved cases on a timely basis, taking into account the current and projected number of new cases.

[English]

Mr. Chair, this concludes my opening remarks. We would be pleased to answer any questions that committee members may have.

**The Vice-Chair (Hon. Maurizio Bevilacqua):** Thank you very much.

We will now proceed to our question and answer section. We'll begin with Ms. Mendes....

Oh, sorry; we will not begin with our questions. We will continue with our witnesses.

Go ahead.

[*Translation*]

**Mr. Simon Coakeley (Executive Director, Immigration and Refugee Board of Canada):** Thank you very much, Mr. Chair.

Good morning and thank you for the invitation to appear before you today. I am pleased to have this opportunity to introduce myself to the committee and provide you with information on the Immigration and Refugee Board of Canada's governor in council selection process.

My name is Simon Coakeley. In September 2008, I was appointed to the position of executive director at the Immigration and Refugee Board of Canada. As executive director of the IRB, I am its chief operating officer and responsible for the performance of the board's adjudicative support and corporate services.

● (0910)

[*English*]

I'd like to start by giving you a little bit more background on the way in which the GIC selection process is managed within the IRB.

As Ms. Fraser has indicated, the basis of our selection process is the selection advisory board, or SAB. This board was created in July of 2007. The board consists of nine members: the chair of the IRB; four persons—jointly appointed by the Minister of Citizenship, Immigration and Multiculturalism and the chair—from outside the IRB; and four other persons—appointed by the IRB chair—from within. At the moment, three of the four persons appointed by the chair are senior GIC people within the IRB, and one is a senior public servant.

All members of the SAB are required to affirm their impartiality in all aspects of the selection process. Under this process, the chair is accountable for the identification of qualified candidates. The chair then recommends these candidates to the minister for consideration for appointment.

[*Translation*]

The selection process is transparent and merit-based, ensuring that only qualified candidates are considered for appointment. The IRB has established the behavioural competencies for governor in council members to ensure that they have the necessary skills, abilities and personal suitability to fulfill their tasks. These competencies are the basis for the evaluation of candidates for appointment to the IRB, as well as for the ongoing evaluation of member performance.

These competencies are: oral and written communication, conceptual thinking, decision-making, information seeking, judgment and analytical thinking, organizational skills, results orientation, self-control and cultural competence. All these competencies can be found on the IRB's website.

[*English*]

All applicants undergo a preliminary screening that evaluates basic requirements, such as education and experience, against the criteria published on our website. The SAB then meets with and reviews the applications of all candidates screened in. Based on the objective criteria established, a consensus is reached on the suitability of candidates for further consideration. Candidates are advised in writing of their status at that point.

[*Translation*]

The written test that Ms. Fraser spoke about is then administered to candidates screened in by the SAB. The test evaluates four competencies: conceptual thinking, judgment and analytical thinking, decision-making and written communication.

As Ms. Fraser mentioned, the written test is marked on a pass/fail basis and candidates must demonstrate that they meet each competency. If candidates do not meet all competencies, they fail the test. Once again, candidates are advised in writing whether or not they have been successful.

Successful candidates are invited to a behavioural event interview by a panel consisting of the IRB chairperson or a designate, normally a SAB member, of one of the external SAB members appointed jointly by the chair of the Board and the minister, and of one IRB senior manager, such as myself. In addition, there is one external human resources consultant who is an active member of the interview panel.

The interview panel conducts a behavioural event interview and will assess candidates based on six competencies: oral communication, information seeking, self-control, organizational skills, results orientation and cultural competence. Once again, candidates must demonstrate that they have passed all competencies. The decision is based on a consensus of the panel, not a vote. All members of the interview panel have received appropriate training in conducting behavioural event interviews.

[*English*]

As I mentioned, since my arrival at the IRB, I and a number of my public service colleagues have received formal training on the behavioural event interview technique, which is used to assess the candidates against their competencies. And I have participated, as have a number of my other senior public servant colleagues, in the interview process.

Based on the results of the interview and based on the results of the validation checks of the behavioural competencies, the IRB chair communicates, in writing, the names of the qualified candidates to the minister. The minister then recommends appointments to the Governor in Council from among the pool of qualified candidates. In doing so, he takes into consideration such factors as IRB operational requirements, the three locations of our operations, gender, diversity, and linguistic requirements.

When a member's appointment is due to expire, the chair provides the minister with a recommendation on whether or not the member should be reappointed. The chair bases his recommendation on the member's performance. The minister then makes a recommendation on the reappointment to the Governor in Council, after taking note of the IRB chair's recommendations.

As Ms. Fraser commented in her recent report, she recognizes that the IRB consistently follows established procedures to solicit and assess new candidates for appointment to the IRB. During the period covered by Ms. Fraser's review, new candidates were regularly recommended to the minister, and recommendations for reappointments were consistently made six months in advance of the expiry date of the incumbents' terms.

Among her recommendations, the report called on the government and the IRB to work together to determine an appropriate complement of members or other strategy to deal with the response of unprocessed refugee claims and unresolved immigration appeals on a timely basis.

• (0915)

[*Translation*]

While all three of the IRB's divisions have faced increases in their workload over the last few years, the RPD faces the most significant challenges. As of March 2009, the backlog in the RPD stood at 58,000 cases. Average processing time in the RPD currently stands at 17.7 months; in the IAD, it is 11.4 months. We recognize that these times are too long. The shortfall in the complement of members has been a significant concern to the IRB well before the release of the Auditor General's status report. As of today, the number of vacancies stands at 26 members. The IRB welcomes the recommendation of the Auditor General that, in the future, the IRB be staffed in a timely manner with the required number of decision-makers who have the knowledge, skills and experience to carry out the board's mandate.

[*English*]

The IRB is pleased that the Auditor General has recognized the processes for soliciting, assessing, and recommending qualified candidates to the minister as being sound and that the report acknowledges that the IRB selection process for recommending reappointments to the minister was done in a timely manner. We continue to work cooperatively with the minister and the government to determine the appropriate complement of IRB members to meet workload.

In closing, I would simply note that new members are being appointed to the IRB. In fact, as recently as last week, four new members were appointed to the board, one in Vancouver and three in Toronto.

Thank you very much. I would be pleased to answer any questions you may have.

**The Vice-Chair (Hon. Maurizio Bevilacqua):** Thank you very much, Mr. Coakeley.

**Mrs. Alexandra Mendes (Brossard—La Prairie, Lib.):** Do you have any more reports?

**The Vice-Chair (Hon. Maurizio Bevilacqua):** No, they are all from the Auditor General's office. It's up to you now.

**Mrs. Alexandra Mendes:** It's up to me. Thank you very much.

Thank you very much for your presentations.

I'm wondering what the reasons would be for an incumbent's appointment not to be renewed, if that person has done three or four mandates and suddenly his or her appointment is not renewed.

Mr. Coakeley, please.

**Mr. Simon Coakeley:** The chair makes his recommendation based on the performance and the extent to which the board member continues to demonstrate the competencies I outlined, and also the extent to which a board member is performing adequately in terms of hearing the required number of cases and delivering written decisions on time. The chair makes that recommendation to the minister, and then it's up to the minister to decide whether or not to make the reappointment.

**Mrs. Alexandra Mendes:** Is the incumbent ever aware of the results of that evaluation?

**Mr. Simon Coakeley:** The board member is made aware of the chair's recommendation—

**Mrs. Alexandra Mendes:** And the evaluation that supports it too?

**Mr. Simon Coakeley:** Yes.

**Mrs. Alexandra Mendes:** Okay.

If someone has been there for two or three mandates and is suddenly taken out, considering the cost that it represents to the government to train a new person, as these are jobs that need a great deal of training, why would someone suddenly stop being capable? That is something that surprises me, as I've seen be the case two or three times.

**Mr. Simon Coakeley:** I can't speak to specific cases—

**Mrs. Alexandra Mendes:** I'm not speaking about specific cases.

**Mr. Simon Coakeley:** The general pattern of appointments is that a member is appointed initially for a three-year period. If the member is reappointed, it is usually for a five-year period, and then, at that point, successive appointments are usually for a one-year period. I believe we've had one member in the recent past whose total length of time was extended to 11 years, but generally speaking, even from the members' point of view, most members, by the end of about eight, nine or ten years, are actually looking at moving on to other stages in their career.

**Mrs. Alexandra Mendes:** Thank you very much.

That's it for now.

**The Vice-Chair (Hon. Maurizio Bevilacqua):** Monsieur St-Cyr.

[*Translation*]

**Mr. Thierry St-Cyr (Jeanne-Le Ber, BQ):** Thank you, Mr. Chair.

Ms. Fraser, I have read your report carefully. Because of the nature of your work, you focus on the way in which the process operates. You do not examine the appointments as such, and their qualities. That is a great pity, I find, because I would have a number of things to say to you about that. As I know that you will not be able to comment, I will not bring it up.

According to the process, the board makes a recommendation and the minister then appoints the person. Does the minister have any choice in this process, or is it automatic, a rubber stamp? Does the minister have any flexibility when selecting the candidates recommended by the board? Mr. Coakeley can answer as well.

● (0920)

**Ms. Sheila Fraser:** The decision whether or not to appoint a candidate is always the prerogative of the minister and the governor in council. At the end of our audit, that list contained almost 100 names of people recommended, or deemed suitable, for a position. As we said, some people can be reappointed or recommended for extension. The report mentions that only 42% of the people recommended for reappointment have actually been reappointed.

**Mr. Thierry St-Cyr:** Even if the minister decided to fill all the vacant positions, there would be more names on the list than positions to be filled. So there really are choices to be made.

**Ms. Sheila Fraser:** Yes.

**Mr. Thierry St-Cyr:** If, after the fact, the minister sees that an appointment is not working, either because there was an error in selection or because, once in place, a member is clearly not doing his job, do the board and the minister have the powers needed to terminate the appointment?

**Ms. Sheila Fraser:** It would be more appropriate for Mr. Coakeley to answer that question, Mr. Chair.

**Mr. Simon Coakeley:** There are provisions in the Immigration and Refugee Protection Act dealing with relieving a member of his responsibilities. I do not have the details in front of me, but those procedures are set out in the act.

**Mr. Thierry St-Cyr:** They are in the act. Does the responsibility lie with the board or the minister?

**Mr. Simon Coakeley:** Let me consult with a colleague.

**Mr. Thierry St-Cyr:** Fine. You can invite him to come to the table.

[English]

**The Vice-Chair (Hon. Maurizio Bevilacqua):** You can come and sit in the front if you like.

[Translation]

**Mr. Simon Coakeley:** The procedure depends on the situation. For example, if there were an allegation of misconduct against a member, the board would conduct an investigation and make a recommendation to the governor in council.

**Mr. Thierry St-Cyr:** Okay.

Mr. Coakeley, in your presentation, you talked about appointment criteria for members. But there seems to be absolutely nothing about legal skills. No criteria deal with experience with immigration matters and geopolitical knowledge of the world. But that is what this administrative tribunal is all about. Is it correct to say that

criteria like that are not considered at all when members are appointed?

**Mr. Simon Coakeley:** Criteria are not set out that way, it is true. One of the provisions in the act requires at least 10% of members to be lawyers. If memory serves, currently, about 20% of members are lawyers. So that is not a cause for concern at the moment. I have sat on a selection committee where one person in four was a lawyer by training.

The competencies required include oral and written communication, conceptual thinking, decision-making, judgment and analytical thinking, and information seeking. These are all competencies that someone with legal training has acquired at law school, but someone who is not a lawyer by training can also have them.

Experience with groups working with refugees, no. Our basic criteria lead us to look for people who are already involved in their communities. People who have previous experience with immigrant groups and refugees can demonstrate experience of that kind. We provide a six-month training program to all newly appointed members. In addition, the board has a research section that provides members with information on situations in different countries.

It is not absolutely necessary for someone to have this knowledge already because we have the necessary tools to provide members with information when they are making a decision in a particular case.

● (0925)

**Mr. Thierry St-Cyr:** Do you examine the past of candidates and the effect that this past could have on the board's credibility? I do not want to talk about specific cases, because I know that you will not be able to answer. If a person is suspected of a war crime, for example, a human rights crime, or if the person has been convicted of contempt of court, is that considered? Do you ask yourselves if that person, having become a member, could be in a situation of having to administer laws that he himself may have broken, thereby putting the board's credibility at risk?

**Mr. Simon Coakeley:** Not having sat on what we call in English the SAB—I think it is CCS in French—I cannot tell you about the exact nature of the discussions that take place around that table. Clearly, if someone's application indicates that he has a criminal record, the case would be looked at a little more closely. The individual would be asked more questions, to determine, for example, whether the conviction was for shoplifting, impaired driving, or whatever. As to whether the consequences of the decisions are looked at, I can tell you that, if a person is not happy with the decision of the board before which he appeared, he can always ask for a judicial review by the Federal Court. The Federal Court refers less than 2% of board decisions back to the board for a new hearing. That is a measure of success, in a way.

**Mr. Thierry St-Cyr:** That was not what I was asking, but we can talk about that too.

[English]

**The Vice-Chair (Hon. Maurizio Bevilacqua):** Thank you.

Thank you, Mr. Coakeley.

Ms. Chow.

**Ms. Olivia Chow (Trinity—Spadina, NDP):** Ms. Fraser, I note that 89 board members were recommended, but as your report said, 42% were turned down. There were 99 new members recommended, with 43 appointed, and there are more.

My calculation is that 108 were not appointed by the minister. Does the minister have to justify that? Do you have the power to ask why 108 of former and new board members are not qualified? What criteria would they possibly use, given that the IRB chair already recommended and they obviously qualified? What criteria does the minister or Governor in Council use to reject the 108?

**Ms. Sheila Fraser:** Thank you, Chair.

The decision to appoint or not to appoint is the prerogative of the Governor in Council. We do not audit the Governor in Council. We would not ask those kinds of questions.

We simply looked at the process up to the point where, essentially, a recommendation was made, and then we looked at the result afterwards, but we do not audit the Governor in Council.

**Ms. Olivia Chow:** Given that it takes six to twelve months to get a new member to be fully productive and that in your calculation that's \$100,000 per person, that's phenomenal. Of the 89 that were recommended, 52 were turned down. These members obviously qualified. They had been IRB board members. If more of them were to come back in, surely a lot of money would be saved, since each new member would cost \$100,000 to get fully productive. Have you calculated the lost opportunity? I guess I could just multiply it; you don't really need to do a report on that.

But have you done an exit survey? For example, would you have the power to interview the 52 who were not reappointed and examine why they weren't reappointed and how much money was lost as a result?

• (0930)

**Ms. Sheila Fraser:** Again, Mr. Chair, the decision to not appoint is a decision and the prerogative of the Governor in Council.

We are concerned by the turnover. We note in the report that, as at March 31 of 2008, half of the board members were serving in their first term, which means that the board is not functioning at full capacity, if you will.

There will always be a certain amount of turnover. I think it's almost to be expected that there will be a certain amount of turnover, but the level of turnover should be better planned, and there shouldn't be such a significant turnover, because it does put a strain on the board being able to fulfill its mandate. The number of cases goes up just because people aren't as efficient as they would be in, say, their second term.

So there is a question of planning this, of knowing when terms are going to expire, what turnover would be desirable, and then what level of members are reappointed; it's really managing how the board is composed over a longer period of time.

**Ms. Olivia Chow:** May I ask a question to the IRB chair, then? Of the 89 that you or your predecessor recommended to be reappointed, do you say to the minister that you would prefer to have a certain percentage of members with experience rather than new members? That's the first question.

My second question is this. Why would you disqualify members who would take six to twelve months to be productive? I would imagine there are some members who have more experience than others, who would be a lot faster at becoming fully productive.

Thirdly, on the increased backlog, have you thought of recommending that perhaps you expand your board membership and have even more members?

Lastly, what plan do you have to deal with the significant backlog that is caused mostly by the vacancies in the last two years? Plus, it takes the new members who have been appointed as a result a long time to become fully productive.

**Mr. Simon Coakeley:** First, I should clarify. Thank you for the promotion, but I'm actually not the chair of the IRB. I'm the executive director.

**Ms. Olivia Chow:** Pardon me. A different title.

**Mr. Simon Coakeley:** Your first question, in terms of what the chair said to the minister, I really can't speak to. I do know that the chair has indicated to the current minister, and indeed to his predecessors, the need for appointments, the impact of delaying appointments, and the amount of time it does take to train our members.

In terms of the training period, the six to twelve months is obviously an average. There are definitely some people who are able to get up to speed quicker than others and there are some who need a little bit more help than others in order to get up to speed. We generally say that our formal training program takes about six months, but having trained the member, that doesn't mean that he or she is as productive as an experienced member. That varies again from individual to individual, and in terms of the appointments that we've had recently, we are definitely looking at whether or not we can tweak our training program to recognize that not everybody maybe needs to go the full six months of formal training. They will be able to "fly solo", in a sense, before that six-month period and indeed become fully productive before the end of the twelve months.

In terms of your last two questions, particularly around the backlog, we are looking internally within the board at the numbers, as I indicated in my opening comments. Our current backlog in the RPD is 58,000. While the gap in the membership complement has definitely been a contributing factor, the very significant increase in refugee claimants is also a very significant factor in the backlog. We took in approximately 36,000 claims last year—

**Ms. Olivia Chow:** I know those numbers.

**Mr. Simon Coakeley:** We expect about 45,000 this year.

So we are looking at what we could do administratively to improve that process, and we are working with our colleagues in the minister's office and also within Treasury Board to indicate what the possibilities might be in terms of increasing resources to the board. Obviously, this isn't the time, from a government point of view, when it's easy to get increased resources, given the economic situation. So we are having those discussions at the moment, but we don't have a specific plan at this point.

● (0935)

**The Vice-Chair (Hon. Maurizio Bevilacqua):** Thank you. You're well over the time.

We're going to hear now from Ms. Wong.

**Mrs. Alice Wong (Richmond, CPC):** Thank you very much, ladies and gentlemen, for coming to this committee.

I have a few questions. I'm sharing the time with Mr. Dykstra.

Probably these questions are more for Ms. Fraser.

When we looked at this new report, I wanted to clarify the context. What period did your report cover, from when to when, looking at the data and everything? I wanted this point to be clarified, please.

**Ms. Sheila Fraser:** The period covered was from January 1, 2006, to March 31, 2008.

**Mrs. Alice Wong:** Okay.

My next question is this. Does this mean you did not have the opportunity to take into account the substantial number of appointments made since October 2008?

**Ms. Sheila Fraser:** No. That is correct.

**Mrs. Alice Wong:** So this report does not cover that?

**Ms. Sheila Fraser:** That's correct.

**Mrs. Alice Wong:** For everybody's information, and also for you to comment on maybe, the current minister has appointed 29 individuals, and we appointed 8 individuals to the IRB, which leaves the IRB right now with close to 90% of its full complement.

This is my question. Is it fair to say this constitutes substantial progress or process towards a stronger IRB, looking at the recent numbers?

**Ms. Sheila Fraser:** Obviously, yes. The fact that appointments are being made is a good thing. I think what is preoccupying us, though, is the current backlog and how that is going to be resolved. We were informed that with a full complement of experienced board members, the IRB could handle about 25,000 cases a year, which means with a backlog now at 58,000 and likely increasing each year, the backlog is just going to increase. So yes, it was good that the appointments were made, but there is still a significant problem that needs to be resolved.

**Mrs. Alice Wong:** In other words, besides the number of board members—now it is almost 100%—there are other measures you recommend or you would like the committee to consider.

**Ms. Sheila Fraser:** We would certainly like the government to determine how it is going to deal with this backlog. If the IRB can only deal with about 25,000 cases a year, and there is a backlog now of close to 60,000, and we hear that there are more than 25,000 cases coming in each year, people will be in the country potentially two or

three years before they have a hearing. They become established; they may have family here; they have participated in social programs. One has to then question what the likelihood is of returning someone to their country after two, three, or four years. There is an issue about the timeliness of dealing with these cases.

**Mrs. Alice Wong:** Okay.

My next quick question is this. After looking at the reason, the way of appointing qualified individuals, is it fair to expect that qualified individuals selected under the new process would be better able to perform their duties and more likely to be reappointed or to be interested in serving for subsequent terms? As Mr. Coakeley has mentioned, there are people who may not be interested after a number of years. That's the question I want to pose to you.

**Ms. Sheila Fraser:** We note in the report that we are satisfied with the process that is in place. We believe it is a rigorous one. The candidates that are being proposed should be qualified and apt to play the role of the board member. As I mentioned earlier, a certain turnover is to be expected. People shouldn't stay on these boards for years and years. I think, as for many positions, there should be a rotation, but it needs to be managed. When we see that more than half are in their first term and now I would imagine an even more significant portion of the people will be less experienced, that needs to be managed, going forward. What is an appropriate turnover rate?

● (0940)

**The Vice-Chair (Hon. Maurizio Bevilacqua):** Further questions?

Mr. Dykstra.

**Mr. Rick Dykstra (St. Catharines, CPC):** How much time is left?

**The Vice-Chair (Hon. Maurizio Bevilacqua):** It's 4:53.

**Mr. Rick Dykstra:** I wanted to just enhance the comments you made, Mr. Coakeley, with respect to the selection process. It's transparent, it's merit-based, and it ensures only qualified candidates are considered for appointment. Could you just enhance that a little bit and describe the process very quickly? I apologize. We only have a couple of minutes and I have one other question I wanted to ask.

**Mr. Simon Coakeley:** Well, as I indicated earlier, there are two very formal parts of the process for the candidates. There's the written exam, which assesses four competencies, and then there's the interview process, which assesses six competencies.

The interview is a behavioural-event interview. People are asked, "Tell us about a time when you...", and they have to give very concrete examples from recent experience, which is usually felt to be within five years, that can be independently verified. For example, in terms of cultural competency, they might be asked to tell about a time when they had to deal with somebody from a different culture and had to sort of work between the two cultures. So they have to come up with a very real example that can then be independently verified.



Each of those competencies are assessed on a pass/fail basis. So the person either demonstrates they have the competency or they do not. The decision of the interview board is a consensus. It's not a vote. Strength in one competency does not counterbalance weakness in another. Every single competency has to be demonstrated.

**Mr. Rick Dykstra:** Thank you very much.

Ms. Fraser, one of the interesting aspects of all of this, and Mr. St-Cyr brought this up somewhat, is in terms of the work that takes place, not just in terms of checking the appointment process and how that's working, but the actual process of what's undertaken to do the work.

One of the things the report calls on is for the government and the IRB to work together to try to find a solution in terms of appointments and/or solving the backlog issue. It's fairly clear that just raising the numbers isn't going to solve the problem. I'm wondering if there are any other recommendations based on your review that you might suggest would assist us in terms of working through the backlog. As you know, our budgets are where they are, and simply being able to hire 100 extra to go through the process simply isn't going to be an option. If you do have some recommendations as to how you think it might work, it would be much appreciated.

**Ms. Sheila Fraser:** Thank you, Chair.

We didn't look at the operations of the IRB per se. It was really looking at the appointment process across government. So I would be very reluctant to say anything if we hadn't actually gone in.

I would presume that the IRB itself would have some suggestions to make to government as to how perhaps the process can be streamlined, or if, for example, the staff of the IRB could do more work in order to reduce the burden on the members. I mean, there may be different things that can be done that way. Obviously there's a significant challenge, especially with the increasing number of refugee claims coming into the country.

**Mr. Rick Dykstra:** The point you make is fair. I don't want to put words in your mouth, but it sounds like the solutions to these issues are not simply adding employees to the IRB.

**Ms. Sheila Fraser:** I'm sure if there were double the number of board members.... Actually, when you look in the report you will see that the number of board members has decreased. There were over 200 at one point, and because the backlog was decreasing, the number of board members decreased. So there has been in the past history a far higher number of board members to deal with cases.

But you're right. Given the training that's needed and the time, I don't believe there's a quick solution to this.

**Mr. Rick Dykstra:** Thank you very much.

**The Vice-Chair (Hon. Maurizio Bevilacqua):** Thank you, Mr. Dykstra.

I'm just going to follow up on something Mr. Coakeley said. You stated something along these lines, that these are difficult economic times and therefore resources are not available. Wouldn't it make sense—if in fact these are difficult economic times and resources are not available—that you would use people who are already trained

rather than investing money in people who are not perhaps as productive or efficient during these difficult economic times?

● (0945)

**Mr. Simon Coakeley:** There you're into the zone where the reappointment is the prerogative of the Governor in Council, so it is the Governor in Council's prerogative to decide who is reappointed to the board.

From an operational point of view, there is no doubt that an experienced board member is able to deal with more cases than a person who is newly appointed, until such time as that person is up to speed. So for a period of about 6 to 12 months, the productivity of a newly appointed person is noticeably less than the productivity of a person who is an experienced board member.

**The Vice-Chair (Hon. Maurizio Bevilacqua):** I only raise this issue because you brought up the point that resources are in fact limited, and I was just wondering if a different strategy would have perhaps been better. But as you correctly pointed out, you're not the person who makes the decisions. I guess I'll take up those questions with the person who does make the decisions.

Mr. Karygiannis.

**Hon. Jim Karygiannis (Scarborough—Agincourt, Lib.):** Good morning, and thank you for coming.

I was wondering if you had a chance to look to some historical data going back five or six years, such as the amount of people who were at the board, the amount of people who were applying, relatively, percentage-wise, and the length of time they took to process an application—a spousal application, for example.

**Ms. Sheila Fraser:** Chair, the only data we really have is from the beginning of 2004. We have two charts in the report, one on page 29 in the English version and one on page 31, which show the authorized positions at the board and then the number that were actually filled. Then on page 31 it shows the number of claims by quarter.

**Hon. Jim Karygiannis:** What I'm looking for is, would you be able to tell our committee how long it took to deal with a spousal appeal in 2004?

**Ms. Sheila Fraser:** We wouldn't have that level of detail of information. We have the average times. In 2006 it was about 10 months and it's gone up to 14 months.

**Hon. Jim Karygiannis:** Today would it be 14 months?

**Ms. Sheila Fraser:** Well, at the time....

Sorry, let me just get the reference.

I'll read from paragraph 2.104:

The percentage of claims outstanding for more than one year increased from 21 percent to 31 percent between 31 March 2006 and 31 March 2008. During the same period, the average and median processing times went respectively from about 12 and 10 months to about 14 months for each.

**Hon. Jim Karygiannis:** Sorry. There was a 22% to 25% increase in processing times from before until now?

**Ms. Sheila Fraser:** From 2006 to 2008. But I would expect that 2004 would have been even lower, because at that point there were over 200 board members.

**Hon. Jim Karygiannis:** Would you care to guesstimate how much lower it would have been?

**Ms. Sheila Fraser:** I don't have that information.

I don't know if Mr. Coakeley has that information.

**Mr. Simon Coakeley:** I'm afraid I don't have that information with me, no.

**Hon. Jim Karygiannis:** As we head into more uncharted territory now—you have something like 60,000 backlogged, and you can only deal with 25,000 per year—would it be safe to say that next year we could see that number double in terms of the length of time it takes? You know, if it takes 14 months now, maybe it will take 20 months, 26 months, 28 months.

What number would you consider safe to say, Mr. Coakeley?

**Mr. Simon Coakeley:** I couldn't project what it would be. The number will increase, there's no doubt about that. The average time depends very much on the composition of the cases that are heard, and that changes significantly from year to year.

**Hon. Jim Karygiannis:** Right now you have a backlog of, what, 45,000 to 50,000?

**Mr. Simon Coakeley:** As of March 31, we have 58,000 RPD files on hand.

**Hon. Jim Karygiannis:** If you're dealing with 25,000 per year, then I would expect that would be a two-year wait for somebody.

**Mr. Simon Coakeley:** In some instances, that could be, but in other instances.... We don't actually process files on a first-in, first-out basis. For example, cases involving unaccompanied minors will be moved through the system much quicker than other cases.

The average, depending on the cases that go through in a year, could be—

**Hon. Jim Karygiannis:** Simple math: at 25,000 cases per year, with 58,000 cases you're looking at a two-year wait. Am I correct?

**Mr. Simon Coakeley:** Getting close to it.

**Hon. Jim Karygiannis:** Now, is your backlog going to be able to be dealt with, or do you see the backlog increasing?

**Mr. Simon Coakeley:** As I was indicating earlier, we expect to take in about 45,000 cases this year. In our report on plans and priorities, we project that we will be able to clear 21,000 cases this year.

• (0950)

**Hon. Jim Karygiannis:** So you're going to have another increase of about another 24,000.

**Mr. Simon Coakeley:** Something like that.

**Hon. Jim Karygiannis:** Next year, then, we could see a three-year wait, roughly speaking.

**Mr. Simon Coakeley:** Roughly, yes.

**Hon. Jim Karygiannis:** Roughly speaking.

I'm not sure if you're in a position to do so, Ms. Fraser, but what do you recommend we do? Do we hire more IRB appointments? Do we call some people back who were there?

Is there any recommendation that you would make?

**Ms. Sheila Fraser:** Well, obviously, Chair, the situation is serious.

I don't have the exact numbers, but I believe in the late eighties or early nineties the number of claims was around 80,000 or so. In fact, at that time the government declared an amnesty. It might be worthwhile for the committee to go back and look at that history. At that point, the board was not able to cope.

I think we're fast approaching a similar situation. If we see that the number of cases coming in is double what the board can deal with in a year, not even considering the backlog—

**Hon. Jim Karygiannis:** Let me understand what you're recommending, Ms. Fraser. If I'm getting this right, the way we're going, if the number of people applying to the IRB continues to increase—be it because of bad decisions abroad or more people applying to come to Canada or more people seeking refuge in Canada—it could balloon completely out of hand. So we either hire more IRB members, spending a long time processing them, or this committee, you're suggesting, can recommend to the government to consider an amnesty.

**Ms. Sheila Fraser:** No. I'm not recommending that in any way. I'm just trying to point out how serious this situation can become very quickly.

Government needs to have a plan to deal with the backlog and with the number of cases coming in. It could be changing policy. It could be putting more people on the board. It could be changing process. There's probably a number of solutions.

What I'm trying to point out to the committee is that this is serious. And it's going to get a lot worse, I'm afraid.

**Hon. Jim Karygiannis:** Mr. Coakeley, do you have the inventory of people should this government decide to move quickly to deal with the backlog of applications, should this minister wish he could do that?

**Mr. Simon Coakeley:** I can't answer that at this point. As I indicated earlier, my staff and I are working on looking at the numbers, looking at some scenarios. We haven't progressed far enough down the road to be able to answer that question in detail.

**Hon. Jim Karygiannis:** When would you be in a position to give us a sense—

**Mr. Simon Coakeley:** I would think we would need probably another couple of months, but again these are dynamic processes.

One of our constraints—and Ms. Fraser did allude to it earlier—is that we are looking at what work could be done by public servants, rather than by GICs. However, particularly in the refugee protection division zone, where final decisions have to be made by Governor in Council appointees, there is a limit to what can be put on a public servant's desk. One of the things we're looking at, though, is the preparatory work that could be done by public servants rather than GICs.

**Hon. Jim Karygiannis:** A final question, Chair, if I may.

Ms. Fraser, would you say that the board right now is dysfunctional?

**Ms. Sheila Fraser:** No, we can't say the board is dysfunctional.

**Hon. Jim Karygiannis:** As far as managing the numbers?

**Ms. Sheila Fraser:** But I do say the board has a serious challenge in dealing with the number of cases it has to deal with, to manage.

**The Vice-Chair (Hon. Maurizio Bevilacqua):** Thank you.

Mr. St-Cyr.

[Translation]

**Mr. Thierry St-Cyr:** Thank you, Mr. Chair.

I would like to follow up on the comments that Mr. Coakeley made at the end of my previous turn.

Mr. Coakeley, you quoted the acceptance rate for appeals to a higher court as evidence that appointed members are very good. Your evidence is that very few appeals are upheld. But you know perfectly well that it is completely impossible to appeal on the substance of a member's decision. Let us be serious. You can only appeal on the form.

What I see as the reason for the low acceptance rates for judicial reviews is that it is impossible to appeal on substance. Perhaps I can ask you to comment instead on the figures that leave a lot of lawyers and a lot of the public puzzled: the acceptance or denial rate of some members is close to 100%. Some members deny almost all the claims they deal with. Other members allow almost all of them.

In your view, is that a sign that the appointments are good and that everything is going well at the board? Or is it in fact an indication that there is a problem?

● (0955)

**Mr. Simon Coakeley:** Mr. Chair, that is a question for our chair since he is the person who deals with the members.

I am responsible for the officials who support the process. I agree that there is a difference between a judicial review and an appeal. I know that each member must make decisions based on the facts that are presented during the hearing. What happens in the hearing room varies a lot from one case to another. That is all I can say.

**Mr. Thierry St-Cyr:** You will concede that, after a number of years, the chances are very slim that any given member will have only refugees or non-refugees before him. Mr. Coakeley, if you had to go to court for any reason, and you found out that the judge convicted 90% of the people appearing before him, would you feel that your case was going to be heard with complete impartiality?

**Mr. Simon Coakeley:** Once again, I cannot comment on specific cases. If a person feels that the hearing has not been fair, that person has several options. He can ask the Federal Court for a judicial review. If he feels that the member at his hearing is showing bias towards him, he can ask the judge to withdraw. If that request is denied, he can go to Federal Court.

**Mr. Thierry St-Cyr:** When you described the performance review for members, you said that the number of cases heard is a factor. If a member accepts 100% of the cases before him, or none at all, is that also a factor?

**Mr. Simon Coakeley:** Once again, I do not make those kinds of decisions. We must also realize that governor in council appointees are independent decision-makers. That must be approached very

carefully. Even if our chair is responsible for managing governor in council appointees, each appointee has the right to make decisions based on the facts presented at the hearing.

**Mr. Thierry St-Cyr:** On the matter of independence, we heard earlier that the mandates of a number of members are renewed at the last minute or not at all. They are not informed of the decision until the end of their mandate or even later. Are you afraid that these short timelines put undue pressure on members and compromise their independence? Could members feel that their decisions are being watched as the governor in council waits to make a decision?

**Mr. Simon Coakeley:** We were much more concerned with the organization's productivity and its ability to make decisions. As I said, you have to allow from 10 to 12 months for a new appointee to become as productive as the one he is replacing. We send recommendations for reappointment to the minister mainly with that in mind.

**Mr. Thierry St-Cyr:** Ms. Fraser, are you worried by the effect of these timelines on independence?

**Ms. Sheila Fraser:** It is not a question of independence, but of respect for those people and for the smooth operation of the board. In other countries and provinces, a person's mandate is automatically renewed for a year if they have not been notified at least six months in advance. That can facilitate the board's work during the appointment process. And it would allow the people to feel more certain about their future.

● (1000)

[English]

**The Vice-Chair (Hon. Maurizio Bevilacqua):** Thank you very much, Mr. St-Cyr.

Ms. Grewal, you're next.

**Mrs. Nina Grewal (Fleetwood—Port Kells, CPC):** Thank you very much, Mr. Chair.

Thanks to everyone for your time and your presentations.

My question goes to Mr. Coakeley. Could you please explain the selection of the advisory board, and how the process for filling the IRB vacancies differs from the process that was in place in the past?

**Mr. Simon Coakeley:** I have only been on the board since September, so I'm afraid I can't compare the current process to the previous one.

I can remind members that the selection advisory board is a group of nine people, chaired by the chair of the IRB. Four of the members are jointly appointed by the chair and the Minister of Citizenship, Immigration and Multiculturalism. The IRB chair himself selects the remaining four people. Of those remaining four, three are currently senior GIC appointees in the IRB, and one is a senior public servant. They're the ones who manage the whole selection process.

Then one of those people sits on each interview board, in addition to an HR consultant. There is usually a senior public servant as well. I've sat on interview boards, and my colleague here has sat on interview boards. Then we interview candidates on the basis of those six competencies; they have already been assessed on four competencies through a written process.

I can't compare it to the previous process, but I can say it is a very rigorous process that candidates go through.

**Mrs. Nina Grewal:** Mr. Coakeley, if the IRB were at its full capacity, would the backlog of asylum seekers be growing, shrinking, or remaining the same? Could you please explain?

**Mr. Simon Coakeley:** It would be growing, because one of the significant components of our backlog is the large increase in the number of refugee claimants over the last couple of years. In the fiscal year that just finished, we took in 36,000 refugee claimants. We project that our refugee claims next year will be 45,000. So the backlog would be growing, in any event.

**Mrs. Nina Grewal:** Mr. St-Cyr says that our process is flawed and not working properly. Could you please clarify that?

**Mr. Simon Coakeley:** Maybe I could just address the process generally. Once an IRB person has been appointed by the minister, they are given an extensive training program. This includes a process of in-class training. It includes sitting with other board members in three-member panels. They're assigned a legal advisor, a mentor, and a coach. For the first six months at least, they have a very heavy degree of support to them. After the six-month period, when they first start hearing their cases on their own, they will have a tribunal officer in the room to help present the case and help manage the case flow process. After the six-month period, they still have constant access to legal advice any time they need assistance. That's sort of right there physically present in each of our three regional offices.

In terms of the hearing process, if an individual claimant feels he or she did not get the hearing they were entitled to, they can apply to the Federal Court to seek leave to judicial review. Judicial review is not automatic; the Federal Court has to grant leave first. If leave is granted, then the court will hear the case. While I agree it's only one indication of success, we are very pleased that in overall terms only 2% of the cases the board hears are returned by the Federal Court to the board for a re-hearing.

**Mrs. Nina Grewal:** Mr. Chair, the rest of my time I'll share with Mr. Calandra.

**The Vice-Chair (Hon. Maurizio Bevilacqua):** Thank you, Ms. Grewal.

**Mr. Paul Calandra (Oak Ridges—Markham, CPC):** I have just a couple of quick follow-up questions. You said that only 42% of lapsing IRB members were reappointed. Am I correct? Am I correct that these are individuals who were appointed under the old system, Mr. Coakeley?

**Mr. Simon Coakeley:** The current system, with the selection advisory board, was put in place in July of 2007. It replaced the previous process that had two different advisory boards. I'm not sure when that process was put in place.

**Mr. Paul Calandra:** So many of these individuals who weren't reappointed, in essence, were appointed under the old system.

Just really briefly, give me a couple of examples of what would make somebody unqualified to serve on the board.

•(1005)

**Mr. Simon Coakeley:** In terms of the interview process, for example, if somebody.... One of the competencies—

**Mr. Paul Calandra:** Let me change that to unqualified to be reappointed.

**Mr. Simon Coakeley:** Well, if they were—

**Ms. Sheila Fraser:** Can I just clarify? The 42% refers to members whose term ended and were recommended by the Immigration and Refugee Board....

**Mrs. Alexandra Mendes:** And were not renewed.

**Ms. Sheila Fraser:** And were not renewed. There may have been people who were not recommended for appointment as well, but these were people who were recommended, who had evaluations done and were recommended by the Immigration and Refugee Board.

**Mr. Paul Calandra:** I appreciate that.

What would make people unqualified?

**Mr. Simon Coakeley:** Examples are if the chair felt there had been performance issues or if the individual, for example, had been consistently late in rendering decisions. I'm not speaking about a specific example, but if the chair had complaints from counsel who appeared before board members about their behaviour in a hearing room, that I'm sure would be one of the factors the chair would take into account in rendering his decisions. Any allegations would be taken into account, and particularly if there were any proven allegations of breaches of our code of conduct, that would definitely be something that would be taken into account.

**Mr. Paul Calandra:** Weren't some of the changes we have made put in place so that we could move from a system where political partisans or unqualified individuals were appointed to the board—for instance, people like Liberal partisans like Khaled Mouammar? Don't some of the changes we have made, Mr. Coakeley, move us in a direction away from political partisans being appointed and toward a board that is more reflective of society at large and more professional, as opposed to political?

**Mr. Simon Coakeley:** Because I've only been with the board since September 2008 and this process kicked in a few years before that, I can't respond to that.

**Mr. Paul Calandra:** Can your official perhaps comment?

**Mr. Simon Coakeley:** She's also been with the board about the same amount of time as I have, unfortunately. Ms. Fraser may have an opinion on that.

I can't speak to what the rationale for the process was. I can say, though, that anyone who goes through the process now is qualified for appointment to the board. They go through a rigorous selection process, and anyone whose name is referred to the minister for appointment is well qualified for appointment.

**Mr. Paul Calandra:** Thank you very much.

**The Vice-Chair (Hon. Maurizio Bevilacqua):** Thank you very much, Mr. Calandra.

We have two final questioners, Ms. Mendes and, very briefly, Mr. St-Cyr.

Ms. Mendes.

**Mrs. Alexandra Mendes:** I just want to re-emphasize what I asked Mr. Coakeley earlier and make sure it's understood. There were 42% of the board members who were recommended for renewal. So that means they had passed all the chair's qualifications and I presume the criteria. Are we agreed on this, that the chair agreed with these recommendations?

**Mr. Simon Coakeley:** That's correct according to the information I have, and again, I wasn't at the board in the period of time that was covered by the Auditor General's report. However, my understanding is that during the period covered by the Auditor General's report, which was January 1, 2006, to March 31, 2008, 89 members were recommended for reappointment and 37 of them, or 42%, were actually reappointed.

**Mrs. Alexandra Mendes:** So there were 58% who were not taken into account, who were refused.

Ms. Fraser has a—

**Ms. Sheila Fraser:** I would just clarify, Chair, that there were changes made to the process, but there was a process in place before. We looked at it in 2004 and did not have any major concerns about the process that existed at that time. In fact, it had been tightened up in 2004, and was further tightened up, and there were changes. There was an advisory panel and a selection board. Those were combined, and there were things like that, so the process was modified. But when we did the audit in 2004, we had no concerns about the process then.

**Mrs. Alexandra Mendes:** I appreciate it. Thank you, Ms. Fraser.

**The Vice-Chair (Hon. Maurizio Bevilacqua):** Mr. St-Cyr.

[*Translation*]

**Mr. Thierry St-Cyr:** Ms. Fraser, in several places in your report, you mention the social costs caused by the shortage of members on the board. Have you calculated those costs? If not, do you have an idea of what the federal government is saving and what provincial governments are paying, such as for people to be on welfare for years, for example? The federal government may feel that it is the provinces' problem, not its own, but the bill comes of the pocket of the same taxpayer, after all.

Do you have any figures on that, or at least, an idea of what they could be? Can comparisons be made? Would it be better for

taxpayers if the board were to be expanded in order to reduce the time it takes to deal with cases?

• (1010)

**Ms. Sheila Fraser:** We do not have figures like that. I think that studies have been done in the past, but we do not have them. The government might have them. The costs are certainly significant, be they for social services or health care. There is also the human cost for people waiting a very long time for a decision.

[*English*]

**The Vice-Chair (Hon. Maurizio Bevilacqua):** Thank you very much, Monsieur St-Cyr.

I would, on behalf of the committee, express to all of you my sincerest gratitude for the input you've given on this issue. You've raised some very important points—points that I'm sure this committee will reflect upon. Essentially, whether you're talking about vacancy rates, high turnovers, a large backlog, or delays in processing, there's no question in my mind that the system requires major repair. Quite frankly, the entire immigration and refugee determination system per se may in fact require overall...not just a little tweaking of the system. You've given us a lot to think about.

I would like to thank you for the work you do on behalf of the people of Canada, and for providing us with very valuable information, which I am sure we will utilize wisely during our future study on refugees. Thank you very much.

I will suspend for five minutes.

[*Proceedings continue in camera*]

• (1010)

(Pause)

• (1055)

[*Public proceedings resume*]

**The Vice-Chair (Hon. Maurizio Bevilacqua):** I would like to call the meeting to order.

Mr. Karygiannis.

**Hon. Jim Karygiannis:** Mr. Chair, I realize that we did a lot of work on this report. During committee, when we were in camera, some words could have been said by me that might have offended individuals of this committee. I'd like to withdraw those comments, and I apologize to that individual. There was no ill intended.

Thank you.

**The Vice-Chair (Hon. Maurizio Bevilacqua):** Thank you very much.

The meeting is adjourned.





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