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Chair

Mr. Steven Blaney

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•(0845)

[Translation]

The Chair (Mr. Steven Blaney (Lévis—Bellechasse, CPC)):
Good morning, everyone. Today is December 16. This is probably the last day before we adjourn for the holidays.

This is the 39th meeting of the Standing Committee on Official Languages.

[English]

Pursuant to Standing Order 108(3)(f), we are studying the offer of bilingual services at the Immigration and Refugee Board of Canada.

[Translation]

This morning, we have the pleasure of welcoming Diane Lacelle, Serge Gascon, Sylvia Cox-Duquette and Executive Director Simon Coakeley from the Immigration and Refugee Board of Canada.

I invite Mr. Coakeley to start with his opening remarks.

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

Good morning, everyone.

As you heard, my name is Simon Coakeley and I am the Executive Director of the Immigration and Refugee Board of Canada. I am the board's Chief Operating Officer and am responsible for the performance of the board's adjudicative support, registry and corporate support services. I report directly to the Chairperson, Mr. Brian Goodman.

I am joined today by Ms. Diane Lacelle, our Director General of Human Resources and Professional Development; Ms. Sylvia Cox-Duquette, our Senior General Counsel; and Mr. Serge Gascon, our Director General of Corporate Planning and Services and our Official Languages Champion.

We are pleased to have this opportunity to meet with the committee and to provide you with information about how the IRB meets its linguistic obligations under the Charter of Rights and Freedoms and the Official Languages Act.

Like all federal institutions, the IRB is subject to Parts 4, 5, 6 and 7 of the Official Languages Act, and I will discuss these parts in a few minutes. However, as an administrative tribunal, we are also subject to Part 3 of the act dealing with the administration of justice. In addition, the charter principles of access to justice also apply to our everyday work in terms of individuals' rights to use English or French in our proceedings, but also in terms of our obligation to

ensure that the individuals and witnesses who do not speak either English or French are able to understand the proceedings in which they are participating. In the next few minutes, I would like to outline how we meet these obligations.

The Immigration and Refugee Board is Canada's largest administrative tribunal. The board is currently composed of three divisions: the Refugee Protection Division determines refugee claims made in Canada; the Immigration Appeal Division decides appeals of removal orders, sponsorship refusals and residency obligation appeals; the Immigration Division conducts reviews of immigration detentions and conducts hearings to determine if persons may lawfully enter or remain in Canada. When the Balanced Refugee Reform Act comes into force, a new Refugee Appeal Division will be created to hear appeals from the Refugee Protection Division.

Each of our three divisions conducts hearings across the country, primarily in our regional offices located in Toronto, Montreal and Vancouver. We also conduct some hearings in our facilities in Ottawa and Calgary, as well as at other locations across the country, including a number of provincial correctional institutions.

According to our departmental performance report, in the last fiscal year our divisions finalized more than 55,000 cases, broken down as follows: at the RPD, 28,500 refugee claims; at the IAD, 7,200 appeals; at the ID, 3,150 admissibility hearings and 16,500 detention reviews.

All of the people appearing before us as subjects of proceedings are asked to indicate to us at the earliest possible time whether they wish their proceeding to be conducted in English or French. In addition, if the subject does not speak either English or French, we ask them to indicate their need for interpretation into English or French. Once the subject has indicated their choice of the language of proceedings, all material submitted by CBSA, acting on behalf of the Minister of Public Safety or the Minister of Citizenship, Immigration and Multiculturalism, must be filed in the language of proceedings; if the original documentation is in another language, it must be translated into the language of proceedings, in accordance with the applicable divisional rule. When the matter is ready, it is scheduled for a hearing before a board member who is able to understand the matter in the language chosen by the subject.

In practise, the majority of French proceedings are assigned to a member whose first language is French, just as the majority of English proceedings are assigned to a member whose first language is English. Prior to the beginning of a hearing, or even during the hearing itself, the subject may choose to change the language of the proceeding. If the minister's representative has any objections to changing the language once the hearing has started, the presiding member will provide the minister's representative with an opportunity to make submissions, prior to granting the request to change the language of proceedings. In the event that the minister's representative is not able to proceed immediately in the new language, the matter will be adjourned to allow the minister time to prepare. Any additional documentation will have to be filed in the new language of proceedings.

• (0850)

The minister will not be required to translate documents already filed in the original language of proceedings. This approach was recently endorsed by the Federal Court.

[English]

In some instances, the subject of proceedings before the board will be represented by counsel whose first language is different from the one selected by his or her client. In those circumstances, the board will ensure that interpretation is provided so that the subject of the proceedings is fully able to understand and participate in the proceedings. The language of the proceedings, though—in other words, the language in which the board member will render his or her decision—is the language chosen by the subjects themselves.

All of our divisions are able to conduct business across the country in both English and French. However, the demand for French-language hearings is concentrated in our eastern region, while the demand for English-language hearings is somewhat more evenly spread across the country.

As of December 14, two days ago, the linguistic breakdown of our decision-makers was the following. In the eastern region, we have 54 members, of whom 44 are bilingual, seven are unilingual French, and three are unilingual English. In the central region, we have 111 members, of whom nine are bilingual and 102 are unilingual English. In the western region, we have 38 members, of whom six are bilingual and 32 are unilingual English. A copy of this information was provided to the clerk prior to this morning's session.

As I've also already mentioned, once a case is ready to proceed, it is assigned to a member who is able to understand the language of the proceeding. In the event that no member from that region is available to hear the matter in the language selected, a member from another region can hear the case either by video conference or in person.

These obligations are enshrined in both the Charter of Rights and Freedoms and the Official Languages Act, and they're reinforced in our own rules. As we are a quasi-judicial administrative tribunal, they also go to the very heart of the IRB's *raison d'être* and our strategic objective, which is to resolve immigration and refugee matters efficiently, fairly, and in accordance with the law.

This is an obligation we take very seriously. But in addition to this very specific obligation, as I mentioned earlier, we're also subject to

parts IV through VII of the Official Languages Act, as are other federal institutions.

In terms of service to the public, in addition to our Ottawa headquarters, our offices in Montreal, Toronto, and Vancouver are able to provide service in both languages to the public, and our Ottawa headquarters and Montreal offices are designated as being bilingual for the purposes of language of work.

While we're proud of our successes and progress to date, we also recognize that we live in an ever-changing environment where the level of demand for our service in a specific language can vary over time, just as our capacity to deliver the required level of service. Consequently, we're very proud to have a very engaged group of employees on our official languages advisory committee, which is chaired by our champion, Serge Gascon. This committee has adopted a two-year action plan that highlights the need for us to continue to focus on specific issues under parts III, IV, V, and VII of the Official Languages Act. A copy of the plan was provided to the clerk ahead of this morning's meeting.

The action plan was adopted before Bill C-11 was introduced in Parliament, and as we implement the Balanced Refugee Reform Act, the issue of structuring and staffing the new public servant-based refugee protection division and the new refugee appeal division in such a way that we continue to discharge our linguistic obligations to the people appearing before those divisions will be a significant priority. In that regard, I can indicate that when the new RPD positions are staffed sometime in the new year, we will be identifying the number of positions in each of our regions that will need to be staffed on a bilingual imperative basis, and these bilingual positions will be rated at the CCC level.

Now, ladies and gentlemen, my colleagues and I will be very pleased to answer your questions.

The Chair: Thank you, Mr. Coakeley.

We'll start the first round.

[Translation]

Mr. Bélanger, the floor is yours.

• (0855)

Hon. Mauril Bélanger (Ottawa—Vanier, Lib.): Thank you, Mr. Chair.

Thank you, ladies and gentlemen, for being here this morning.

I believe this is the first time the Standing Committee on Official Languages has received representatives from the Immigration and Refugee Board. So this meeting will be a bit broader in scope.

Mr. Coakeley, how are your responsibilities under the Official Languages Act integrated in the strategic plan of the board?

Mr. Simon Coakeley: The current strategic plan does not actually mention official languages. Although I don't have the plan in front of me, I can tell you that one of our priorities is to continue resolving issues that come our way effectively, equitably and in accordance with the act and our strategic objective.

As I mentioned, we feel that the language aspect is an inherent part of equity. In fact, every person that appears before us in a case, whether as a subject or as a witness, has the right, under the Official Languages Act, the charter or the principles of natural justice, to appear or deal with us in the language of their choice.

In addition, many people who appear speak neither English nor French. So we currently offer interpretation services that make it possible for 260 languages and dialects to be interpreted into English or into French so that the individuals who appear before us are able to understand and feel as comfortable as possible.

Hon. Mauril Bélanger: Is the Financial Administration Act included in your strategic plan?

Mr. Simon Coakeley: We are subject to the Financial Administration Act, so all the Treasury Board requirements on official languages apply to us as a federal body.

Hon. Mauril Bélanger: I find it very interesting that the Official Languages Act is not in your strategic plan. I think that's a shortcoming.

Mr. Simon Coakeley: It is in our HR plan, as my director of human resources tells me.

Hon. Mauril Bélanger: Excuse me?

Mr. Simon Coakeley: It is in our human resources plan.

Hon. Mauril Bélanger: And is that part of the board's strategic plan?

Mr. Simon Coakeley: It stems from it.

Hon. Mauril Bélanger: Based on what you are telling me this morning, it is not a priority. As an executive, you must set annual objectives. Is the issue of official languages one of your personal objectives?

Mr. Simon Coakeley: No, not at the moment.

Hon. Mauril Bélanger: Don't you think it should be?

Mr. Simon Coakeley: I think that if we felt there was a problem with official languages, it would definitely be included in the objectives.

Hon. Mauril Bélanger: When was the last time the Commissioner of Official Languages reviewed the board?

Ms. Diane Lacelle (Director General, Human Resources and Professional Development Branch, Immigration and Refugee Board of Canada): I have no information on that. The Commissioner of Official Languages has dealt with specific cases the last few times. There was no review of the board as a whole.

Hon. Mauril Bélanger: There was no review. Perhaps we will suggest that the Commissioner of Official Languages do one; maybe it is time.

The only discussion I had with the board was about a case related to the official languages, Ms. Maoua Diomande's case; you must surely remember. The board lost badly because this person's rights were violated.

Mr. Simon Coakeley: I can tell you that processes have changed.

Hon. Mauril Bélanger: Okay.

Mr. Simon Coakeley: For example, on the personal information form, we have further clarified the right of the person to

communicate in the language of his or her choice. As I mentioned, not only do individuals have the right to choose their language, but they also have a right to change their language preference at any time.

Hon. Mauril Bélanger: Excellent.

I was not aware that you held some hearings at provincial correctional facilities. How does that process work?

Mr. Simon Coakeley: I'm sorry, I misunderstood the question.

Hon. Mauril Bélanger: Do you just use their space?

Mr. Simon Coakeley: No, the Canada Border Services Agency detains those people. Here's an example that's in the news at the moment. The 492 people who came by boat to the west coast are all presently housed in correctional centres in British Columbia. In this case, given the number of people, we decided together with those in charge of the provincial centres to set up hearing rooms on the premises of the provincial facilities in order to review the detentions.

• (0900)

Hon. Mauril Bélanger: So you are the ones conducting the hearings, not third parties.

Mr. Simon Coakeley: Yes, we are the ones.

Hon. Mauril Bélanger: All right.

Mr. Simon Coakeley: We do it 48 hours after detention, then seven days later, and again every 30 days.

Hon. Mauril Bélanger: In the last 12 months, have there been complaints made to the Commissioner of Official Languages?

Ms. Diane Lacelle: Yes, we had two. One of them was resolved. As to the other one, we provided the Commissioner of Official Languages with the information, and we are waiting for an answer.

Hon. Mauril Bélanger: And before that?

Ms. Diane Lacelle: I can tell you that from 2008 to 2010, we had nine complaints in total. We can compare this with the public service as a whole, where, for the same period of time, there were 600 to 700 complaints per year. An average of three complaints per year out of 600 is less than 1%.

Hon. Mauril Bélanger: I had another topic, but perhaps I may not have time to get into it. You provided us with statistics on the number of bilingual commissioners. The Privy Council and cabinet are responsible for the appointments, aren't they?

Mr. Simon Coakeley: Not necessarily. At the Refugee Protection Division and the Immigration Appeal Division, they are appointed by the Governor in Council. At the Immigration Division, they are public servants. The figures I gave you cover all three groups.

Hon. Mauril Bélanger: Okay.

How do you ensure that language needs are taken into account when you have to fill positions?

Mr. Simon Coakeley: When positions have to be filled in a region, the chair communicates with the minister and specifies what our needs are in terms of language or in terms of gender equality. We tell the minister what our needs are. Then it is up to the Governor in Council to make the appointments.

The Chair: Thank you, Mr. Bélanger.

We continue with Mr. St-Cyr.

Welcome to the committee, Mr. St-Cyr.

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

You will agree that I had the opportunity to meet with people from the IRB on many occasions at the Standing Committee on Citizenship and Immigration.

I am a bit surprised to hear you say that things are actually going very well and that there are no problems with the use of official languages. Personally, I will focus mainly on the use of French in Montreal. A number of articles in the media have criticized the situation. There are a number of cases and instances of recourse where lawyers had to appeal to the Federal Court, which did not agree with them. You are right to say that the Federal Court has not ruled in favour of French in Montreal. Honestly, there's nothing to be proud of in winning this legal war against the use of French in Montreal.

Your theoretical speech notwithstanding, in practice and in reality, that's not what is happening and that is not what we see on the ground. For example, you are saying that, from the outset, people can freely choose the language of proceedings they want to use. Yet, in Montreal, I had the opportunity to talk to people who went through this process and they told me that they were never asked in which language they wanted to proceed. For example, if a person does not speak French, almost automatically, the official checks the "English" box without asking for the person's opinion.

You are also telling us that it is possible to ask for the language of proceedings to be changed. There was a well-known case. It is probably the one you were referring to when you talked about the Federal Court. The claimant made the request to change the language of proceedings before the investigation actually began, and they refused to translate the documents. So that did not happen when the documents were submitted, but when the documents were produced. And in Montreal, most of the documents are produced in English first. In fact, there is no practical way for someone to have the documents translated in French in time for their hearing, if they were produced in English first. Is that not so?

Mr. Simon Coakeley: I will ask my senior general counsel to give you an answer because legal issues are involved.

Ms. Sylvia Cox-Duquette (Senior General Counsel, Immigration and Refugee Board of Canada): Just to be clear, I think you are talking about Mr. Bolanos Blanco's case that went to the Federal Court. You are right, there was a change in the language of proceedings. The commissioner granted the change in the language of proceedings.

Mr. Thierry St-Cyr: Quite reluctantly.

Ms. Sylvia Cox-Duquette: Yes, yes.

You are right, he refused the request of Mr. Bolanos Blanco's lawyer to translate once again all the documents that had already been presented, when the hearing was conducted in English. Just to draw your attention to the legal issue at stake, I should add that neither the charter nor the Official Languages Act deals with documentary evidence, as everyone here knows.

Having said that, the board has rules that require the minister to submit the documentary evidence in the language of proceedings chosen by the subject. However, when there is a change in the language of proceedings and the documents have already been submitted in one of the official languages, it is not required and it is not an obligation—and the Federal Court agreed with us—to translate again...

● (0905)

Mr. Thierry St-Cyr: I will interrupt you because I am well aware of that.

Since we are talking about the Bolanos case, I want you to know that the request was made before the hearings even started, right at the beginning of the process. It was impossible to request a change in the language of proceedings, since Mr. Bolanos was never asked what his language preference was. Right at the beginning of the process, the request was made to change the language of proceedings, and they said it was too late. If it's already too late to make the request at the beginning, when is it a good time to request a change? Before a lawyer is even involved in the case?

Ms. Sylvia Cox-Duquette: I believe the Federal Court had a different perspective. If you take a look at the Bolanos Blanco case, you will see that the court was of the opinion that Mr. Bolanos Blanco did indicate his language of choice and it wasn't the Canada Border Services Agency that chose the language or anything like that. Precisely...

Mr. Thierry St-Cyr: Those are not Mr. Bolanos' claims. I don't want to dwell too much on these legal details. You won the legal war. I am not questioning that. I'm questioning the relevance of paying lawyers instead of just proceeding in French in Montreal, the way they probably proceed in English in Toronto. There is no reason why, when someone speaks neither English nor French, we should pick a language over another for them. If the decision is to start in English and, before the actual hearing, a lawyer asks that the evidence be translated into French, I think it is legitimate to proceed... This is the spirit of the official languages. You can win in the Federal Court, that's not surprising at all under our federal system. But I don't think that's the idea behind it.

Mr. Simon Coakeley: The language issue is dealt with. You have the excerpts that were given to the clerk.

All our three divisions have rules that actually address the issue of the language of choice. They clearly indicate that it is up to the subject to choose the language of communication and inform the board as soon as possible. This is included in the personal information form used by the Refugee Protection Division.

I must admit there was some confusion in the Blanco case. We also gave the clerk a copy of a memo that was distributed to all the employees and decision makers of the board. That happened to fall on June 24, 2009. We did not choose that day deliberately.

The memo gave very clear instructions to everyone at the board on how they must handle a request to change the language of communication, whether before the hearing or during the hearing.

We agree there was some confusion.

Mr. Thierry St-Cyr: All right.

Based on the new instructions, when is the evidence considered to be tabled? Is it when the documents are produced or when they are submitted for the hearing?

If it is when the agency writes them, the change in procedure is worthless because the agency has already written them in English anyway. They are told that it's too bad, that the documents are already in English and that they can request a change in procedure, but there will be no translation. When a lawyer makes a request before the proceedings even begin, that seems to be as soon as possible to me.

We have still had cases in court recently where bilingual files were submitted. The language of proceedings is either French or English. It cannot be both.

Clearly, there is the reverse process where the rules are adapted to the reality that people at the agency work mainly in English.

Ms. Sylvia Cox-Duquette: Just to explain, I want to go back to the first point and address the second one at the same time.

If, for example, as you suggest, we started all the procedures in French, that would go against the charter and the Official Languages Act. It is up to the subject to choose the language of proceedings and that is done in accordance with our rules. People must indicate their choice.

The Chair: That's great. Thank you very much.

Thank you very much, Mr. St-Cyr.

Ms. Sylvia Cox-Duquette: It is not done automatically in English.

The Chair: We'll come back to that. Thank you very much.

We will continue with Mr. Godin.

● (0910)

Mr. Yvon Godin (Acadie—Bathurst, NDP): Thank you, Mr. Chair.

I would like to welcome our witnesses.

Could you continue with your explanation? You are saying that it is not automatically done in English or in French.

Ms. Sylvia Cox-Duquette: Not at all.

Mr. Yvon Godin: Even in Toronto? Does it not happen more in English than in French? It is at the client's request?

Ms. Sylvia Cox-Duquette: It is at the client's request 100%. We must follow our rules and respect the Canadian charter and the Official Languages Act.

Mr. Yvon Godin: For example, a client submits an immigration application. At the outset, he makes the request for the language of communication of his choice.

Ms. Sylvia Cox-Duquette: Absolutely.

Mr. Yvon Godin: And it goes on from there.

Ms. Sylvia Cox-Duquette: It goes on from there.

Mr. Yvon Godin: It makes no difference whether we are in Toronto.

Ms. Sylvia Cox-Duquette: Exactly.

In terms of the issue of documentary evidence, the minister has to submit the evidence in the language of proceedings at any given moment. So, in the example given earlier, we should already know the person's choice at the beginning of the proceedings. It is usually indicated on the PIF.

Mr. Simon Coakeley: The information form.

Ms. Sylvia Cox-Duquette: It is the information form that the person takes to the court in question, for example.

Mr. Yvon Godin: I would like to understand the procedure. Let's suppose the proceedings have started and the person made a request for the language of his choice. The person is in Montreal, but decided, say, to proceed in English. He has a lawyer who speaks English very well and that's why he asked for the proceedings to be held in English. But his lawyer is not working out. He knows it is going nowhere.

Ms. Sylvia Cox-Duquette: Yes.

Mr. Yvon Godin: He is paying big bucks and it's costing him a lot, but it's going nowhere. So he has to get a new lawyer all of a sudden. He ends up with a francophone lawyer. What is the procedure then to change all the documents and give him justice?

Mr. Simon Coakeley: As Ms. Cox-Duquette explained and as the Federal Court agreed, that's the documentation that was already submitted and it's already on the record. Let's suppose the procedure started in English. The documentation submitted in English stays in English, even if the language of proceedings changes to French. But, from the time the language of proceedings changes to French, all the documents must be submitted in French.

Mr. Yvon Godin: The department would have submitted the evidence or the documents in English because the language was initially English, but if we want the person to be treated fairly, as soon as he has a new lawyer who is francophone, the proceedings will unfold in the language of his choice.

Mr. Simon Coakeley: We are talking about the language chosen by the subject.

Mr. Yvon Godin: Okay.

Mr. Simon Coakeley: Sometimes there can be situations where the subject chooses English in Montreal, for example. The reverse can happen in Vancouver. If someone in Montreal chooses English and his lawyer prefers to do presentations before the court in French, we make sure that the subject gets interpretation from French into English. But it is always his choice that takes precedence in the proceedings.

Mr. Yvon Godin: Let's take the case of an individual who wants to change the language because he has new counsel who is francophone and doesn't speak a word of English. What would the procedure be if he wants the previous documents to be in French? I'm not talking about new documents, since you said that this starts from the moment when the individual wants to change the language of the proceeding. Are you saying that, since this has already taken place before the court, it isn't necessary?

Ms. Sylvia Cox-Duquette: It is very important to point out two other things. The individual may choose to change the language of the proceeding for the simple reason that his counsel is more comfortable in the other language. But, even if the proceeding is held in English, or French, in this case, don't forget that anyone appearing before a federal tribunal has the right to address the tribunal in the official language of his or her choice.

Mr. Yvon Godin: No, I don't think so.

Ms. Sylvia Cox-Duquette: As a result, counsel always has this choice, regardless of the language of the proceeding.

Mr. Yvon Godin: No, I'm not talking about the language of the proceeding, but rather the documents.

Ms. Sylvia Cox-Duquette: As for the documents, you're absolutely right. You've understood it correctly; that's how it works.

Mr. Yvon Godin: In other words, if he chose English, for example and, along the way, he has new counsel or his counsel doesn't feel comfortable in French. From that moment on, the documents would be submitted in French, but the previous documents would stay as they are.

Ms. Sylvia Cox-Duquette: That's right.

Mr. Yvon Godin: Let's suppose that someone says that he or she needs to have some documents translated into the language chosen by the subject, as you said. But it isn't the individual who is pleading the case, it's the counsel. Is there a procedure in place to have previous documents translated?

Ms. Sylvia Cox-Duquette: The department has obligations, such as ensuring that hearings before the tribunal take place in French. Nothing is preventing anyone from having these documents translated, but the department must ensure that the documentary evidence is in French, except when the language of the proceeding has been changed. In this case, this does not apply to documents that have already been submitted.

Mr. Yvon Godin: Meaning that the legislation would need to be changed if we want...

Ms. Sylvia Cox-Duquette: That's right.

• (0915)

Mr. Yvon Godin: Okay.

Mr. Simon Coakeley: Nothing is preventing me, the individual, from having the translation done at my own expense.

Mr. Yvon Godin: No, I don't think that people would be interested in doing that.

Mr. Simon Coakeley: It's important to say that, if the original document was in a language other than the one requested by the minister...

Mr. Yvon Godin: Did you say that the small number of complaints you receive... it's actually minimal? It seems to me that,

if I were an immigrant who wanted to come here, I wouldn't want to whine too much.

Mr. Simon Coakeley: The lawyers who plead...

Mr. Yvon Godin: I'm speaking Acadian.

Mr. Simon Coakeley: ... before us are not immigrants.

Mr. Yvon Godin: That depends.

Mr. Simon Coakeley: You have to be a Canadian citizen to be a lawyer.

A voice: Even so, they aren't all lawyers.

Mr. Simon Coakeley: True.

Mr. Yvon Godin: If a client files a complaint, he will then have the services of a lawyer. I don't think I said that...

Mr. Simon Coakeley: Normally, given that a lot of people who appear before us have recently arrived in Canada, they are going to trust the advice their representatives give them.

Mr. Yvon Godin: That could be one reason.

Mr. Simon Coakeley: They can be lawyers or, in some cases, consultants.

Mr. Yvon Godin: Are there are lot of requests to change in the middle of the proceedings?

Mr. Simon Coakeley: This year, unless I'm mistaken, because I don't have the numbers in front of me, we have had 125 requests.

Mr. Yvon Godin: Were these requests to change the language?

Mr. Simon Coakeley: Yes, to change the language. I don't have the percentages for requests from French to English and from English to French.

Mr. Yvon Godin: Thank you very much.

The Chair: Thank you very much, Mr. Godin.

We will continue with the Parliamentary Secretary, Mr. Rickford.

Mr. Greg Rickford (Kenora, CPC): Thank you, Mr. Chair.

Thank you, everyone.

I have a copy of the IRB Official Languages Plan 2009-2011. My questions this morning will focus specifically, as you said, Mr. Coakeley, on Part III of the *Official Languages Act*.

We only have seven minutes. Do you have a copy of the primary objectives?

Mr. Simon Coakeley: Yes.

Mr. Greg Rickford: Initiative No. 1 sets out to:

Develop clear procedures, directives or guidelines on the interpretation and application of official languages in the administration of justice, Part III of the OLA, specifically on a number of key decisions.

I have two questions about this initiative. Can you be more specific about what stage you're at? It's almost 2011. Is this enough? Under the heading "Update/Comments", it mentions "briefing notes have been sent to employees to ensure compliance in the application of Official Languages."

Mr. Simon Coakeley: Yes. I think you also have a copy of the memorandum that I just spoke about, which was sent to all board employees on June 24, 2009. This memorandum explains the official languages obligations in hearings. The memorandum is the briefing note referred to on page 1. We still need to modify our procedure manuals to take into account the instructions in the briefing note.

The confusion surrounding the case of Mr. Bolanos Blanco led us to send a detailed briefing note to all employees and decision-makers to inform them of their official languages obligations. Furthermore, because of Bill C-11 concerning refugees, some of our plans in the past 12 to 18 months have been integrated into our reform proposal. All our procedure manuals will be revised based on the reform, and we will take advantage of the opportunity to include clearer instructions where necessary.

● (0920)

Mr. Greg Rickford: Initiative No. 2 reads as follows: "Develop a communication program and a learning or awareness program targeting the needs of each group of Registry employees...".

Same as before, can you tell us how you are going to manage this, and give us examples of measures you've taken?

Mr. Simon Coakeley: I'm going to ask Mr. Gascon to answer the question. He is our champion and chairs the committee that prepared the document.

Mr. Greg Rickford: Please be brief, Mr. Gascon.

Mr. Serge Gascon (Director General, Corporate Planning and Services Branch, Immigration and Refugee Board of Canada): This is without a doubt the first time the IRB has developed an official languages plan that was approved by our human resources committee. As for this initiative specifically, we are going to work closely with the Operations Branch to make sure that the Registry Office is informed. This stems from the memorandum that was sent in June 2009 to raise the awareness of Registry employees about official languages. We are going to use the opportunity to put more focus on this aspect. We are going to be more vigilant about making sure that employees are familiar with rights relating to official languages.

Mr. Greg Rickford: Do you have an evaluation system?

Mr. Serge Gascon: Right now, we are working with human resources, then we will work closely with the Operations Branch. We are going to focus on those places where Registry Office employees need to be made more aware of the official language obligations. We will focus our efforts so that we get the best performance possible. This is a first that was developed by the IRB to follow up on a quarterly basis and to see how the objectives will progress. We are giving ourselves two years to see what will come out of this. We are already seeing results for each of the objectives.

[English]

Mr. Greg Rickford: Thank you. This next question may be for you as well, Mr. Gascon.

In a broader context, this committee has been looking at best practices across departments. We have departments with different grades, if you will. Interestingly, in some areas of their departments they've done very well, and in others they haven't. There's been a grade to establish an overall performance.

I would encourage you to take a look at some of those. Eventually, I think, we would want to understand, and we're trying to pull out, best practices across different departments to see how they apply.

I have less than 30 seconds here to deal with objective three, so maybe I'll get right to the point here.

Your priorities—

The Chair: Mr. Rickford, I would suggest—

Mr. Greg Rickford: You would suggest that I don't do that?

Okay. I won't.

The Chair: I would suggest that you keep it for the next round. We don't have the same timing, I guess.

Mr. Greg Rickford: Okay: asking the tough questions.

Mr. Simon Coakeley: Excuse me, Mr. Chair.

I just checked something, and I provided some incorrect information to Mr. Godin a minute ago. Could I just correct that for the record?

The Chair: Go ahead.

Mr. Simon Coakeley: Of the cases that have been filed so far in 2010, we've had 164 requests, not 125 requests. That was 2009 data I gave you. I'm sorry.

[Translation]

The Chair: Mr. Bélanger, you are starting the second round.

Hon. Mauril Bélanger: Thank you, Mr. Chair.

Mr. Coakeley, I would like to finish with the issue of Governor in Council appointments. Are the appointments generally made according to advice about the need for language ability?

Mr. Simon Coakeley: For some time, there was a lack, if not a complete shortage, of members appointed by the governor in council. Since appointments have been made, the linguistic needs that we set out have been met.

Hon. Mauril Bélanger: So there was a period of time when there was a gap in that regard.

Mr. Simon Coakeley: For example, perhaps 18 months ago, in the Refugee Protection Division, there were a little over 50 vacant decision-making positions out of 127. These positions were filled based on our needs. As I just said, it's a matter of linguistic capacity, a gender balance, and so on.

● (0925)

Hon. Mauril Bélanger: Are there budget constraints on having the documents translated or on using interpretation services?

Mr. Simon Coakeley: As the chief financial officer, Mr. Gascon could answer your question.

There are always budget constraints. But if asked whether we currently have enough money to do our work, I would say yes.

Serge, do you want to continue?

Mr. Serge Gascon: Since I've been with the IRB, we have not experienced additional pressure in terms of our translation needs. We have always ensured that the translation envelope has enough in it to meet the demand.

Hon. Mauril Bélanger: So we can say that there has not been a case where the demand for translation and interpretation has not been met because of a lack of financial resources.

Mr. Serge Gascon: Exactly.

Hon. Mauril Bélanger: Thank you.

I can't find Part VII in the IRB Official Languages Plan 2009-2011. Can you tell me why?

Mr. Simon Coakeley: I will start, but I'll ask Mr. Gascon to continue.

As you probably know, Part VII is a challenge for a number of departments, but it's particularly challenging for an administrative tribunal. Actually, given the nature of our organization, our involvement with the people who appear before us and with their communities must be fairly limited to protect the tribunal's neutrality.

Then, given that our organization is very small compared to a lot of other federal departments, Canadian Heritage does not include us in the group of departments that must provide a report and have a specific plan.

We also don't give subsidies to groups. We have regular meetings with what we call the Consultative Committee on Practices and Procedures. This is where we meet with more institutional stakeholders, such as the Canadian Bar Association, the Québec Immigration Lawyers Association in Montreal, an organization like the Refugee Lawyers' Association of Ontario, and the Canadian Council for Refugees. These are all mainly lawyers' organizations...

Hon. Mauril Bélanger: Let me stop you there, Mr. Coakeley, because I only have a minute left.

I understand that this may be a challenge, but if we see absolutely nothing, this indicates to me that efforts haven't even been made.

Mr. Simon Coakeley: I can say that we have talked about it, but I know that that's not enough.

Hon. Mauril Bélanger: I want to keep my last 30 seconds, Mr. Gascon.

Mr. Serge Gascon: Fine.

Hon. Mauril Bélanger: I see that official languages are not part of your strategic plan. I also see, Mr. Coakeley, that official languages are not part of your staffing objectives. Furthermore, the Commissioner of Official Languages hasn't done an evaluation since God knows when, and there is absolutely nothing about Part VII of the Act, which is one of your legal obligations in your official languages plan. This leaves a lot to be desired.

The Chair: Thank you very much, Mr. Bélanger.

We'll continue with Mr. St-Cyr.

Mr. Thierry St-Cyr: Thank you.

I will continue with my previous questions.

You said that it's the people's choice. This doesn't correspond with reality or the numbers. Last year, the *Rue Frontenac* newspaper published the numbers on that. Most of the decisions in the Immigration Appeal Division in Montreal, the second largest French-speaking city in the world, are given in English. So it isn't true that it's the natural flow of things and that it's simply because most of the people said that they absolutely want it to be in English.

Perhaps you could pass along the message to your friends at the Canada Border Services Agency. The reality is that, when border services officers receive a person or a request, or do an interview, and the person doesn't speak French, they automatically check the "English" box. They do this without telling them that, because they are in Quebec, they can have the services of a francophone lawyer and a francophone consultant. These people are not told this, they are not given a choice and the "English" box is checked. Then, when they get to you, at the board, the documents that have been produced in English are all submitted, and even if the client or his or her lawyer asks to have the documents translated before the hearing even starts, they are told that the documents have already been produced and cannot be translated. So it's a trap. The numbers don't lie. When you get right down to it, most of the decisions given last year by the Immigration Appeal Division were given in English. That's what we get.

Don't you think that there's a glitch in the system to get so warped a result?

● (0930)

Mr. Simon Coakeley: You're right when you say that, from 2006 to 2010, most of the cases at the Immigration Appeal Division were handled in English, even if it was sometimes a slim majority, for example from 49 to 51%. However, from 2006 to 2010, close to two-thirds of the cases handled by the Refugee Protection Division were heard in French.

It's important to understand that the procedures in each section are different. For example, let's take the Refugee Protection Division. It is very likely that, when the Canada Border Services Agency meets an individual who shows up at the border, the officer checks the "English" box or begins filling out the document we call the Port of Entry Notes. But the document that is used as a basis for proceedings here is the personal information form, which the subject must complete him or herself. It's on that form that the subject is asked to indicate which language he or she would prefer to use. The notes taken by the Canada Border Services Agency have no impact on the choice of language. This document, which we call the PIF, even in French, tells us which language the proceedings will be held in.

Mr. Thierry St-Cyr: I understand that we basically don't agree on the reality, on what's really happening.

I have an even more specific question.

We recently had a case where the agency submitted a document in English while the language of the proceedings was French. Five or six minutes later, when the lawyer objected to the submission of this document, the member responded that he should have voiced his objection as soon as the document was submitted, and not five or six minutes later.

Is this a normal policy or was this a specific decision of a member?

Ms. Sylvia Cox-Duquette: Are you talking about notes taken by the Canada Border Services Agency?

Mr. Thierry St-Cyr: No, I'm not talking about that. For example, the language of the proceedings is French, and the agency submits evidence in English. When it is the lawyer's turn to speak, he says that the document is not in the language of the proceedings. The member responds that he should have objected five minutes earlier and that it is now too late. That's not the official policy of the board, is it?

Mr. Simon Coakeley: No.

Mr. Thierry St-Cyr: In other words, there is no deadline. The problem is not that the lawyer noticed five or ten minutes later that the document was in English.

Mr. Simon Coakeley: The objection must always be raised as soon as possible. If you are telling me that the objection was made five minutes later, it seems to me that it should be acceptable. Five months later is not.

Mr. Thierry St-Cyr: I understand.

The Chair: Thank you, Mr. St-Cyr.

Mr. Coakeley, you sent information and provided some statistics. Could you please send everything to our clerk? Not necessarily this morning, but later? The committee would like to make them available to committee members.

Mr. Simon Coakeley: Of course.

The Chair: We will now move on to Mr. Lauzon.

Mr. Guy Lauzon (Stormont—Dundas—South Glengarry, CPC): Thank you, Mr. Chair.

I would like to welcome all of our guests.

[*English*]

I want to change gears and talk about the IRB's human resources, the hiring situation.

Recently the IRB lost a legal bid to shut down some investigations into about a dozen appointments to its permanent staff. I'm sure you're aware of that situation.

• (0935)

Mr. Simon Coakeley: I am aware of the situation, yes.

Mr. Guy Lauzon: According to the Public Service Commission, the candidate was offered a conditional appointment with the requirement that they had to meet the official language requirement, I assume. This is probably a bilingual non-imperative position, maybe, or a bilingual imperative position but the person had to meet the language standards. Then, when the candidate failed to meet this level, after their second language test, the individual was appointed. In this case, merit was obviously not met.

How do you explain that?

Mr. Simon Coakeley: I'm not aware of the specifics. As you may be aware, the Public Service Commission conducted an audit on the IRB and they had a number of files where they had some concerns.

Mr. Guy Lauzon: Twelve.

Mr. Simon Coakeley: In terms of ones where there were language concerns, I'm aware of the specifics of one instance—it happened here in the national capital region—where we hired an individual from another federal organization, but not an organization that's part of the core public service. The individual was rated bilingual at that institution and was offered a job at the IRB on the basis that he or she—I'm not sure if it was a man or woman, quite frankly—met the language requirements.

Then it became apparent that the language test they had passed at the other institution was not valid for public service purposes, that the only valid test is one administered by the Public Service Commission. The individual failed the Public Service Commission test, but by that point had quit his or her job at the other federal institution. The manager did downgrade the language requirements in order to allow the individual to take the job with the board.

That should not have happened. It happened before any of the four of us were at the Immigration and Refugee Board, but it should not have happened. I think what motivated the manager in that circumstance was the personal situation of the individual who had quit a job in good faith and then was caught by a requirement that we should have been aware of at the time, but had been....

Now, that individual is no longer with us, and the position has been filled with somebody who does meet the original language requirements.

Mr. Guy Lauzon: What has been put in place so that doesn't happen again?

Mr. Simon Coakeley: I'll let our DG of HR talk about that.

Ms. Diane Lacelle: The PSC audit raised a number of points where we took the leadership in establishing policies, procedures, and tools for our HR advisers and managers, so that for every staffing action this would not occur again. We also do a quality assurance before an appointment is made to ensure that everything is compliant.

Mr. Guy Lauzon: Wouldn't it just be common sense that, if a person was going to a bilingual position, you'd test them in both official languages?

Mr. Simon Coakeley: A second-language evaluation in the public service is good for five years, I believe.

Mr. Guy Lauzon: Well, unless it's exempt.

Mr. Simon Coakeley: Yes, unless exempt.

This was the problem in this particular case. The individual had language exam results, but they were not Public Service Commission language results. They were from the other federal employer. There was confusion—there shouldn't have been, because the HR community should know this—around whether or not those results were valid.

But yes, within the public service it's quite clear: if you have a valid language result, you can be appointed. If you do not, then you need to have a valid language test before you can be appointed.

Mr. Guy Lauzon: Could someone on the panel here assure me that never, in future, will someone who doesn't meet the language qualifications be appointed to any position in the IRB? Can you make that commitment?

Mr. Simon Coakeley: I can commit to you that we have procedures in place that include, at the moment, 100% verification by an independent individual within the HR group who has not been involved in the staffing profile to that point. We currently have 100% checking of everything, of every single staffing action that we're doing.

But we're all human, so I don't think I would ever use the word "never" in that context.

Mr. Guy Lauzon: Okay. You can't blame me for trying.

Voices: Oh, oh!

Mr. Simon Coakeley: No.

Mr. Guy Lauzon: In one external non-advertised process, one of the essential qualifications was for the candidate to be bilingual. However, after language testing—you actually did the testing there—the employee failed to meet the essential requirement of the position and the manager downgraded the position.

Can somebody explain that?

• (0940)

Mr. Simon Coakeley: Again, I'm aware of the particular case. The language profile of the position was downgraded to give the individual a job because he or she—again, I'm not sure whether it was a man or a woman—had quit their previous job on the basis that we had made them a job offer.

No, that should not happen. That said, I think all public service managers who've run competitions over the course of their careers have faced situations where they've posted a position with a particular linguistic profile and it's proven to be unsuccessful—i.e., nobody who meets the linguistic profile also meets all of the other merit criteria.

As managers we face that all the time, and sometimes what we have to do as managers is step back and have a look at the language profile. Sometimes we adjust it, ensuring that we can provide the level of language service in some other way.

In a circumstance like that, though, what we are also obliged to do is to re-post the position and re-run the competition from scratch, not just take the one person.

Mr. Guy Lauzon: [*Inaudible—Editor*]...downgraded.

[*Translation*]

The Chair: Thank you, Mr. Lauzon.

We will conclude with Mr. Godin.

Mr. Yvon Godin: Thank you, Mr. Chair.

How many members are able to hear cases in French?

Mr. Simon Coakeley: There are 40 bilingual people and seven francophones at the Refugee Protection Division. So there are 47 people who are able to hear cases in French. In the Immigration Appeal Division, we have eight bilingual people...

Mr. Yvon Godin: Excuse me; how many?

Mr. Simon Coakeley: Eight, in the Immigration Appeal Division.

In the Immigration Division, we have 11 bilingual people right now. I don't have the breakdown of francophones, anglophones and bilingual people. But the bilingual people are able to hear...

Mr. Yvon Godin: Where is the central regional office?

Mr. Simon Coakeley: In Toronto.

Mr. Yvon Godin: Based on the information I have, that means that, in Toronto, there are six bilingual employees and 69 anglophones.

Mr. Simon Coakeley: In the Refugee Protection Division, yes.

Mr. Yvon Godin: And what about the other section, the IAD?

Mr. Simon Coakeley: It's the Montreal office...

Mr. Yvon Godin: No, I'm talking about...

Mr. Simon Coakeley: Sorry, the IAD is the Immigration Appeal Division.

Mr. Yvon Godin: There are 18 people at the Immigration Appeal Division and none of them is bilingual.

Mr. Simon Coakeley: That's right, but at the moment...

Mr. Yvon Godin: How can people receive services in French if no one is bilingual and everyone is anglophone?

Mr. Simon Coakeley: As I said in my introduction, in those situations, we ask a bilingual employee to go from Vancouver or Montreal to Toronto, or we hold the hearing by videoconference.

Mr. Yvon Godin: But when you recruit your members, don't you request bilingual members?

Mr. Simon Coakeley: These members are appointed by the Governor in Council. Yes, we indicate...

Mr. Yvon Godin: So, it's impossible to find bilingual members in Toronto out of the 11 million people in Ontario?

Mr. Simon Coakeley: Yes, but they aren't all in Toronto, unfortunately.

Mr. Yvon Godin: I'm not in Toronto. I'm in New Brunswick, and I'm in Ottawa, today.

Mr. Simon Coakeley: I know, but our members need to stay in Toronto.

Mr. Yvon Godin: The question I'm asking you is this:

Are there openings for bilingual individuals? There are people who would be willing to move. I'm sure that there are people living in Ottawa or Vanier who could apply for a job and move to Toronto, if the position of member is attractive.

Are there job offers in Toronto, in that division, for bilingual people?

Mr. Simon Coakeley: In 2006, in Toronto, only 10 people asked that the Immigration Appeal Division hear their case in French; in 2007, only 13; in 2008, there were 17, and in 2009, 17. There have been 15 so far this year.

Mr. Yvon Godin: Are these the numbers for the Immigration Division?

Mr. Simon Coakeley: No, they're for the Immigration Appeal Division.

Mr. Yvon Godin: So, three bilingual people in Toronto and 15 anglophones...

Mr. Simon Coakeley: In the Immigration Section, there are three bilingual individuals, and they are public servants. There are bilingual employees who are already part of the public service.

Don't forget that, right now, the people in the Immigration Appeal Division and the Refugee Protection Division are from outside the public service, whereas the people in the Immigration Division are career public servants.

Mr. Yvon Godin: I want to go back to the Immigration Appeal Division, because when you answered me, you said that there had been only 10 cases in French, but that wasn't actually my question.

When a position is posted, is it advertised as a bilingual position or not?

Mr. Simon Coakeley: In the case of the Immigration Division, it is, because these people are public servants. In the case of the Immigration Appeal Division and the Refugee Protection Division, it is not, because these people are appointed by order in council. There is no way of designating positions as bilingual or not. It isn't possible in the case of individuals appointed by order in council.

• (0945)

Mr. Yvon Godin: Who could do it? There are 18 of them...

Mr. Simon Coakeley: The Governor in Council makes the appointments and decides who to appoint.

Mr. Yvon Godin: So, the Governor in Council doesn't take into consideration the appointment of bilingual individuals in Toronto.

Mr. Simon Coakeley: They take it into consideration...

Mr. Yvon Godin: They take it into consideration, but they don't appoint a single one.

Have they appointed any there or not?

Mr. Simon Coakeley: Actually, there aren't any there, no.

Mr. Yvon Godin: That means that they don't take it into consideration.

Mr. Simon Coakeley: But the demand is very low.

Mr. Yvon Godin: So, it's because the demand is very low!

Mr. Simon Coakeley: The demand is very low. So, it isn't necessary to have a bilingual person in Toronto because we can

provide the service using bilingual individuals appointed to Montreal or elsewhere, and they can come to Toronto when hearings are held. There are employees who can do that.

Mr. Yvon Godin: There were 10 appeal requests?

Mr. Simon Coakeley: So far, in Toronto this year, there have been 15 requests for appeals in French.

Mr. Yvon Godin: Do these people have to wait longer than others, because you're bringing someone in from elsewhere?

Mr. Simon Coakeley: Not right now, because we are able to stay up to date. But, we haven't been in the past because of the shortage...

Mr. Yvon Godin: I think it might be time for the Commissioner of Official Languages to investigate the board.

The Chair: Thank you, Mr. Godin.

And so this concludes our meeting.

Hon. Mauril Bélanger: Mr. Chair, allow me to...

The Chair: Mr. Bélanger.

I think you would like to make a special announcement.

[*English*]

Hon. Mauril Bélanger: It's a rather unusual thing that I'm going to do here, but given the nature of the day, I thought I'd wish Mr. Coakeley a Happy Birthday.

[*Translation*]

The Chair: Mr. Bélanger, the committee members join you on this happy occasion.

This was our first meeting, but we might get to see you again. Until then, we hope you will continue your efforts in promoting linguistic duality.

Thank you and happy holidays!

Mr. Simon Coakeley: You're welcome.

The Chair: We will now go in camera to discuss the mission up north.

[*Proceedings continue in camera.*]

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