



Highlights



Report on the Agreement on the Follow-up to the Audit of the Immigration and Refugee Board of Canada

October 2011

The Public Service Commission (PSC) is an independent agency reporting to Parliament, mandated to safeguard the integrity of the public service staffing system and the non-partisanship of the public service. In addition, the PSC recruits qualified Canadians from across the country.

Background

In October 2009, the Public Service Commission (PSC) tabled the results of its audit of the Immigration and Refugee Board (IRB). The audit found deficiencies in the organization's systems and practices in the areas of human resources (HR) planning, monitoring and HR support to sub-delegated managers in the central region. The audit also raised concerns about the compliance of the IRB's appointments and appointment processes with the *Public Service Employment Act* (PSEA), the PSC Appointment Framework and other governing authorities.

Following the audit, the PSC and the IRB signed an agreement stating that the IRB would report to the Commission on the implementation of the audit recommendations, and that the PSC would continue to audit appointments as they were made by the IRB for a period of one year (July 2009 to June 2010), to provide more assurance on the compliance of appointments. The IRB also agreed that the PSC could investigate any internal appointment process identified in the audit, and that the IRB would implement appropriate corrective action upon receipt of the PSC's investigation reports.

Observations on the terms of the agreement

As per the agreement with the IRB, the PSC continued to audit the IRB's appointments over the one-year period. While the 2009 audit raised issues concerning the appointment of former Governor-in-Council (GIC) employees, the current report could not comment on this issue, as no former GIC appointments were made during this audit period. The PSC's audit work revealed that the IRB's appointments and appointment processes mostly complied with the PSEA, the PSC Appointment Framework and other governing authorities. Merit was met in almost all of the appointments audited; furthermore, all but one of the rationales for non-advertised processes demonstrated that the guiding values were respected. However, indicators of error, omission or improper conduct were found in 2 out of 37 of the appointment processes audited.

As per the agreement, the IRB developed an action plan and reported to the PSC on the implementation of the recommendations from the original 2009 audit. The IRB's Departmental Staffing Accountability Report results for 2010-2011 show that it has taken action and demonstrated improvements against the audit recommendations made in the 2009 audit report.

Following the 2009 audit, 16 investigations were initiated; 14 were conducted by the PSC, while 2 were conducted internally by the IRB. The PSC has completed 13 investigations, and identified errors or improper conduct in 11 instances; in the other 2, the PSC concluded that there was no evidence of improper conduct. Three investigations remain ongoing: one at the PSC and two at the IRB.

The IRB disagreed with the findings of the PSC's investigations and with the corrective actions in the majority of cases, except for instances where the PSC's conclusion was "unfounded," and believes that PSC investigations violate procedural fairness. The PSC believes that its investigations were conducted appropriately and in accordance with the principles of procedural fairness; it follows operational procedures that have been used since the PSEA came into force and that have been supported in numerous court reviews.

Under the PSEA, deputy heads are delegated the authority to staff from outside the public service (external staffing), but the PSC retains the power

to investigate these external processes and order corrective actions, when necessary. For appointment processes staffed from within the public service (internal staffing), the PSEA delegates to deputy heads the authority to make appointments and to investigate and order corrective action. In cases where the PSC is of the opinion that the delegated authority is not properly exercised, it can withdraw the entire delegation, impose conditions on it or seek exclusion to it. The PSC believes that internal appointment investigations must still conform to the values of the PSEA, including the core value of merit. The PSC will need to play a greater role in addressing issues that affect the independent safeguarding of merit and the guiding values.

As a result, the PSC is developing recommendations for an exclusion from the PSEA and its regulations whereby internal investigations and corrective actions at the IRB will be the responsibility of the PSC rather than of the IRB's deputy head.