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REPORT 3

**The Governor in Council Appointment Process
in Administrative Tribunals**



**Office of the Auditor General of Canada
Bureau du vérificateur général du Canada**

OAG

Performance audit reports

This report presents the results of a performance audit conducted by the Office of the Auditor General of Canada under the authority of the *Auditor General Act*.

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- conclude against the established audit objectives, and
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Introduction

Background

Governor in Council appointments

3.1 A **Governor in Council** (GIC) appointment is an appointment made on the recommendation of the responsible minister and approved by the Governor in Council. The government appoints heads and members to tribunals that regulate an area of law or render judgments on the legal rights of individuals in specific areas of the law. In some cases, tribunals provide a forum for individuals to appeal decisions made by the government. Governor in Council appointments to these tribunals are therefore an important responsibility of government.

3.2 Appointments are for a specified term that varies in length depending on the tribunal's enabling legislation, the preference of the minister, and, in some cases, the preference of the individual. Appointments can be for full-time or part-time positions.

Past report

3.3 In 2009, the Office of the Auditor General of Canada undertook an audit of the GIC appointment process to determine if procedures were in place for the timely appointment of qualified individuals to 43 Crown corporations and 52 small entities, and the Immigration and Refugee Board of Canada. In that audit, we found while some actions had been taken to increase transparency, there were lengthy delays in making appointments to small entities and to the Board. Neither the appointment process nor the results of the process were communicated adequately to the entities and individuals involved. At the Board, we found that vacancies contributed to an increase in backlogged cases.

3.4 In our 2009 audit, we also found a lack of evidence that selection criteria were established for positions and that reference checks were conducted on appointees for entities other than the Board. We reported that orientation and training were functioning well, but that performance was not consistently considered in reappointment decisions.

Governor in Council—The Governor General, acting on the advice of Cabinet, as the formal executive body that gives legal effect to those decisions of Cabinet that are to have the force of law.

3.5 In response to the recommendations made by the House of Commons Standing Committee on Public Accounts following our 2009 audit, the Clerk of the Privy Council proposed a six-point plan. The plan aimed to

- develop guidance on the appointment process,
- improve the management of vacancies,
- better plan for upcoming vacancies,
- increase transparency and access to the GIC appointment process,
- increase the rigour of the appointment process, and
- enhance training and orientation for stakeholders and appointees.

3.6 We also noted in our 2009 audit that the passing of the *Federal Accountability Act* in 2006 provided for the establishment of a Public Appointments Commission. The Act stated that the Commission was to

oversee, monitor, review and report on the selection process for appointments and reappointments by the Governor in Council . . . to ensure that every such process is widely made public and conducted in a fair, open and transparent manner and that the appointments are based on merit.

The Privy Council Office (PCO) said in a government response to the Standing Committee on Public Accounts that this would “be accomplished by the development and implementation of a Code of Practice that will outline minimum standards for selection processes for GiC positions . . . and by monitoring, auditing and reporting on the Government’s compliance with the Code of Practice.”

3.7 The Public Appointments Commission was never set up, and was formally eliminated in the 2012 budget. The federal government at the time noted in its budget plan that it had taken actions that “significantly strengthened the rigour and accessibility of the public appointments system.” The Code of Practice was never developed.

Focus of the audit

3.8 The focus of this audit was to determine whether timely appointments of qualified individuals were being made to selected administrative tribunals to maintain continuity of service. We also assessed progress on some of the areas for improvement identified in our 2009 audit of the appointment process. These included guidance provided by the Privy Council Office, the number and length of vacancies, and communication to appointees concerning their reappointment.

3.9 The audit examined the roles played by the Privy Council Office, selected administrative tribunals, and respective portfolio departments (the department reporting to the minister responsible for a tribunal, which

is part of the minister's portfolio). We did not audit the appointment decisions or the roles played by ministers, ministers' offices, or the Office of the Prime Minister.

3.10 While the 2009 audit included Crown corporation appointments, this audit focused on administrative tribunals. We looked at appointments of chairs and vice-chairs in 24 tribunals, and we conducted more detailed work in 4 of these 24 tribunals (Exhibit 3.1).

Exhibit 3.1 Characteristics of the four selected administrative tribunals that were examined in detail

Tribunal	Mandate	Operating budget in the 2014-15 fiscal year	Current complement of Governor in Council appointees	Responsible minister
Immigration and Refugee Board of Canada	Immigration Appeal Division: Decisions on appeals related to immigration decisions made by the government, on matters such as refused family sponsorship applications, removal orders requiring people to leave Canada, or residency obligation decisions. Refugee Appeal Division: Decisions on appeals related to denial of refugee protection (for individuals whose requests to be granted refugee status in Canada have been denied). <i>(Note that decisions regarding refugee protection claims are made by a separate division, staffed by public servants.)</i>	\$121 million	65 full-time members	Immigration, Refugees and Citizenship Canada (formerly Citizenship and Immigration Canada)
Specific Claims Tribunal Canada	Decisions on First Nations historic claims against the Crown relating to reserve lands, other assets, and unfulfilled Treaty promises, with authority to decide compensation of up to \$150 million.	\$3 million	1 full-time judge and 2 part-time judges (equivalent to 2 full-time judges in total)	Indigenous and Northern Affairs Canada (formerly Aboriginal Affairs and Northern Development Canada)
Competition Tribunal	Decisions on matters such as corporate mergers, misleading advertising, and restrictive trade practices that are investigated by the Competition Bureau.	\$2 million	3 part-time judges; 7 part-time lay members	Innovation, Science and Economic Development Canada (formerly Industry Canada)
Civilian Review and Complaints Commission for the RCMP	Investigations of complaints from the public regarding the conduct of RCMP members.	\$10 million	1 full-time and 1 part-time member	Public Safety Canada

3.11 This audit is important because administrative tribunals provide a mechanism for redress for decisions made by the government and can have a direct impact on Canadians. Appointments to these tribunals must be timely, to ensure the tribunals can carry out their work. Appointees must also have the right background and experience to carry out their roles effectively.

3.12 More details about the audit objective, scope, approach, and criteria are in **About the Audit** at the end of this report (see pages 17–19).

Findings, Recommendations, and Responses

Support for the Governor in Council appointment process

The Privy Council Office has issued guidance on the appointment process, but this guidance is not on its website and does not refer to all types of appointments

Overall finding



3.13 Overall, we found that since our 2009 audit, the Privy Council Office has issued guidance and information to ministers, departments, and tribunals on vacancies and on steps in the appointment process. However, this guidance is not accessible on the Privy Council Office website. In addition, although judges appointed to tribunals are not subject to the same appointment process as other appointees, the guidance does not mention this exception.

3.14 This is important because departments, ministers, tribunals, and potential and current appointees need to understand the requirements and steps involved in the appointment process so that vacancies can be filled with qualified appointees in a timely manner.

3.15 Our analysis supporting this finding presents what we examined and discusses

- Privy Council Office guidance,
- information sessions, and
- vacancy reports.

Context

3.16 The Privy Council Office (PCO), on behalf of the Prime Minister, is responsible for establishing and administering policies and services that promote high-quality Governor in Council (GIC) appointments. Specifically, for tribunal chairs and all other full-time appointees, PCO receives applications, evaluates candidates, and manages and participates in the interview process. For part-time appointments, PCO is not responsible for the selection process. PCO is also not responsible for

selection processes in tribunals where the responsible Minister has been delegated by the Prime Minister the authority to conduct his or her own selection processes, such as the Immigration and Refugee Board of Canada.

3.17 The Board manages GIC selection processes on behalf of the Minister of Immigration, Refugees and Citizenship, who was delegated this authority by the Prime Minister.

3.18 Two of the tribunals, the Specific Claims Tribunal Canada and the Competition Tribunal, have members who are sitting judges. The Minister of Justice is therefore responsible, together with the portfolio minister, for making recommendations for all appointments to the Specific Claims Tribunal Canada and for judicial appointments to the Competition Tribunal. Other stakeholders involved in these appointments are the chief justices of the superior courts, including the Federal Court, from which the proposed members are to be drawn. These chief justices recommend judges from their courts (if the judges themselves agree) to the Minister of Justice to sit on the tribunals. A separate agency, the Office of the Commissioner for Federal Judicial Affairs Canada, on behalf of the Minister of Justice, has responsibility for administering appointments of judges to the superior courts, including the Federal Court.

3.19 The last tribunal in our selected sample, the Civilian Review and Complaints Commission for the RCMP, has no GIC appointees other than the chair and vice-chair.

Recommendations

3.20 Our recommendations in this area of examination appear at paragraphs 3.29 and 3.30.

Analysis to support this finding

3.21 **What we examined.** We examined the guidance and information provided by PCO to ministers and their offices, departments, and tribunals on the roles and responsibilities and timelines for appointments.

3.22 **Privy Council Office guidance.** Following our 2009 audit, PCO committed to the House of Commons Standing Committee on Public Accounts that it would improve its guidance on the appointment process. Later in 2009, PCO issued its Guide to Managing the Governor in Council Appointments Process. The Guide provides information to ministers, departments, and tribunals on the appointment process. The Guide, however, is not available on PCO's website, which makes it difficult for stakeholders—including ministers' offices, departments, tribunals, and potential appointees—to access the guidance.

3.23 According to the Guide, selection processes for all appointments must be accessible, competency-based, and transparent. These processes must include the development of selection criteria that reflect the specific nature of the position and the weight of its responsibilities.

3.24 The Guide sets out responsibilities for different stakeholders:

- Ministers (not the Privy Council Office) are responsible for making recommendations for all GIC appointments. Ministers are also responsible for managing vacancies for the tribunals within their portfolios, for ensuring appointments are made in a timely manner, for carrying out consultations with tribunal chairs on the skills and qualifications needed to fill vacancies, and for making appointment recommendations to the Governor in Council.
- The Office of the Prime Minister is responsible for consulting with responsible ministers' offices on all appointment-related issues and for coordinating the GIC appointment process.
- Portfolio departments are responsible for working with the Privy Council Office to develop selection criteria and notices of vacancy.

3.25 The Guide states that it is important to allow enough time to complete a selection process if an incumbent is not to be reappointed. In 2009, we observed that there was no standard time period for notifying appointees of reappointment decisions. The Guide addresses this by requiring that, for tribunal chairs or other full-time members, "decisions on reappointment must be made at least six months before the end of a public office holder's term of office." For part-time member positions, decisions on reappointments must be made at least three months before the end of the term.

3.26 When we met with tribunals and their portfolio departments to confirm that this guidance was being applied, we were told that this was not the case for the appointment of judges to the Specific Claims Tribunal Canada and the Competition Tribunal. Department of Justice Canada officials told us that sitting judges in superior courts are subject to a separate, rigorous selection process when they are appointed as judges and that this process precludes the need to apply the rules, procedures, and processes that apply to other GIC appointees. This is not evident in PCO's Guide.

3.27 **Information sessions.** We found that PCO held an information session in 2012 to explain the appointment process, the requirements in the Guide, and roles and responsibilities to staff from ministers' offices, portfolio departments, and some tribunals. An additional session was held in 2014 for staff from ministers' offices only. This was useful for increasing transparency in the process. However, there has been no session since 2012 for portfolio departments. Moreover, there was no mention in the information sessions of a different process for the appointment of judges to tribunals.

3.28 **Vacancy reports.** Another way that PCO supports the GIC appointments process is by informing portfolio departments of all upcoming vacancies in administrative tribunals. We found that PCO issued regular vacancy reports to portfolio departments and the

Immigration and Refugee Board of Canada with information on positions for which incumbents' terms were ending, 12 months before term expiry. PCO also regularly shared this information with ministers and the Office of the Prime Minister. The vacancy reports enable departments and ministers to take action either to reappoint an incumbent or to launch a recruitment and selection process to find a new appointee. PCO also listed the incumbents for all appointments, and noted any vacancies on its appointments website.

3.29 Recommendation. The Privy Council Office, in consultation with portfolio departments and tribunals, should indicate in its guidance whether there are any exceptions to the process requirements, such as the appointment of judges to tribunals.

***The Privy Council Office's response.** Agreed. A Guide to Managing the Governor in Council Appointments Process (November 2009) provides general guidance that has assisted staff in departments, organizations, and ministers' offices in applying the government's policy in respect of the vast majority of Governor in Council positions to be filled. In this context, the Guide does not address the specifics of every case. In future guidance, the Privy Council Office will provide information on the types of positions that are subject to different selection processes (such as the appointment of judges to tribunals), in accordance with policy decisions taken by the government. In this regard, the Privy Council Office will continue to provide guidance on the procedures applicable in those cases to staff in the departments, organizations, and ministers' offices that support ministers in managing vacancies or making appointments to those positions.*

3.30 Recommendation. The Privy Council Office should post its guidance in a central location so that all stakeholders can easily find and access the guidance.

***The Privy Council Office's response.** Agreed. The Privy Council Office will post its updated guidance centrally in future, so that stakeholders will have available to them the information relevant to their specific needs.*

Vacancies in administrative tribunals

Many key positions have been vacant for long periods

Overall finding



3.31 Overall, we found ongoing and in some cases lengthy vacancies in Governor in Council positions. In two of the four tribunals we examined in depth—the Immigration and Refugee Board of Canada and the Specific Claims Tribunal Canada—these vacancies have resulted in delays in tribunal decisions.

3.32 We also found that appointees were not given sufficient notice if they will be reappointed. While communication of reappointment decisions to appointees was more timely than it was in 2009, we found that it still did not meet the requirement of six months’ notice for reappointment of full-time appointees established by the Privy Council Office.

3.33 It is important for Governor in Council positions in tribunals to be filled in a timely manner to avoid delays in important tribunal decisions that affect individuals. In addition, providing advance notice of reappointment to Governor in Council positions is important for continuity of operations in tribunals.

3.34 Our analysis supporting this finding presents what we examined and discusses

- vacancies in tribunals, and
- communication with appointees regarding reappointment.

Recommendation

3.35 Our recommendation in this area of examination appears at paragraph 3.44.

Analysis to support this finding

3.36 **What we examined.** We examined the number of vacancies in the four tribunals we audited, and the impact of these vacancies. We define vacancies as the number of needed positions expressed by tribunals that have not been filled.

3.37 **Vacancies in tribunals.** The number of vacancies in Governor in Council (GIC) positions and the length of time they have remained vacant are significant. As noted in Exhibit 3.2, some positions were vacant for lengthy periods of time.

Exhibit 3.2 Length of vacancies in tribunals is significant

Tribunal	Current Governor in Council vacancies (based on needs expressed by tribunals)	Average length of Governor in Council vacancies
Immigration and Refugee Board of Canada	21 out of 86 (excluding the chair)	9 months**
Specific Claims Tribunal Canada	2 out of 4	17 months*
Competition Tribunal	4 out of 14	20 months**
Civilian Review and Complaints Commission for the RCMP	0 out of 2	7 months**
* Positions are still vacant		
** Average length of vacancy for positions that were vacant and filled during our audit period		

3.38 At the Immigration and Refugee Board of Canada, we found that although the total number of GIC appointees was much smaller than it was when we carried out our 2009 audit, the vacancy rate of 21 out of 86 members was about the same. Board officials told us that a conscious decision was made not to fill these positions, because it was thought that workload would decrease in certain areas after a period of time. However, by reallocating resources from one division to another, this allowed a backlog to build up in the Immigration Appeal Division. The shortage of members was one factor that contributed to a caseload of close to 11,000 outstanding immigration appeals, with an average of 18 months to process each appeal. This was significantly longer than the average 10-month processing time we reported in our 2009 audit. Delays in processing appeals may have impacts such as creating uncertainty for appellants and their families.

3.39 In 2015, the Board introduced administrative changes to the appeal process to address the backlog in appeals, and undertook steps to fill member positions. By the end of our audit period, the Immigration Appeal Division had begun to reduce the number of outstanding appeals.

3.40 At the Specific Claims Tribunal Canada, where members must be superior court judges, a 2014 analysis indicated that it required one additional full-time member and “a sufficient number of part-time members to bring the number up to four full-time equivalents.” Despite this need, which was confirmed by the Department of Justice Canada, no appointment was made to the Tribunal between 2012 and the end of our audit period. After the audit period, Tribunal officials told us that this need had increased to six judicial members. A shortage of appointees at this Tribunal means further delays in addressing First Nations claims in a timely manner. Tribunal officials told us they had to inform interested parties that the Tribunal could not confirm hearing dates due to the lack of available judges.

3.41 At the Competition Tribunal, there were four vacancies: three judicial member vacancies and one lay member vacancy. We also noted delays in the time it took to fill other vacancies during our audit period. For example, a vacancy for one judicial position in 2013 was only filled in 2015. The former chair of the Tribunal told us that dates for hearings had to be scheduled far in advance so the Tribunal had enough time to prepare for cases. For one lay member position, it took 16 months to appoint an individual with the expertise in economics needed to hear cases before the Tribunal at that time. The *Competition Tribunal Act* requires that proceedings be dealt with as expeditiously as possible. The delays in appointing judicial and lay members could affect the Tribunal’s ability to meet this requirement, resulting in potential financial impacts on businesses and consumers.

3.42 At the Civilian Review and Complaints Commission for the RCMP, there were no vacant GIC positions. However, we found that the former part-time vice-chair acted as chair for four years before being appointed as chair. The reason given for this delay was that the appointment as full-time chair depended on the passing of new legislation in November 2014 that gave the Commission expanded powers for investigation and called for a full-time chair position. Because the individual had the role of both interim chair and vice-chair, this put at risk the Commission's ability to carry out its mandate in the event he was unable to perform his duties.

3.43 Despite efforts to improve the management of vacancies introduced since our audit in 2009, our findings point to ongoing delays in filling GIC positions. These delays affected the operations of the tribunals, which in turn have had an impact on individuals.

3.44 **Recommendation.** Innovation, Science and Economic Development Canada, Indigenous and Northern Affairs Canada, and Public Safety Canada should work with ministers, as well as tribunals, as early as possible to fill Governor in Council positions, in order to support continuity of operations.

Innovation, Science and Economic Development Canada's response.

Agreed. Innovation, Science and Economic Development Canada officials will continue to support ministers and work with the Competition Tribunal, and other players in the appointment process, in order to support continuity of operations. The Department's efforts in this regard will fully reflect the government's new policy on Governor in Council appointments announced on 25 February 2016.

Indigenous and Northern Affairs Canada's response. *Agreed. However, this is on the clear understanding that in order to maintain the independence of the Specific Claims Tribunal Canada, officials from Indigenous and Northern Affairs Canada will not advise ministers on the candidates to fill vacancies. The Department keeps a record of the names and terms of Tribunal members.*

Public Safety Canada's response. *Agreed. While Governor in Council appointments, such as those at the Civilian Review and Complaints Commission for the RCMP, are at the discretion of the Governor in Council, Public Safety Canada will continue to work with the Privy Council Office in providing support to the Minister of Public Safety for recommendations he may want to bring forward to the Governor in Council.*

3.45 **Communication with appointees regarding reappointment.**

We examined whether incumbents were notified in a timely manner of reappointment decisions. Timely notice is needed so that appointees can arrange their personal and professional affairs and attend to operational priorities. Uncertainty around reappointment can have an impact on carrying out a tribunal's mandate efficiently and effectively. The Privy Council Office's (PCO's) guidance requires that decisions to reappoint be made at least six months before the end of the term of a full-time appointee and three months before the end of the term of a part-time appointee. The guidance encourages ministers or their offices to advise incumbents in writing as soon as possible.

3.46 In our review of letters sent to full-time appointees notifying them that they would not be reappointed, we found that the average period of notice given was 3.5 months before the end of their term. This was an improvement over our finding in our 2009 audit. At that time, members were often informed of reappointment decisions only after the expiry of their terms. However, the current notice given does not meet the requirement of six months' notice, as stated in the PCO Guide on GIC appointments. PCO officials indicated that communication of reappointment decisions is the responsibility of ministers.

Process to promote high-quality appointments

Selection processes for full-time appointees were well documented, but those for part-time appointees were not transparent

Overall finding



3.47 Overall, we found that the selection processes run by the Privy Council Office (for chair and other full-time positions) and by the Immigration and Refugee Board of Canada were advertised and had selection criteria. For several part-time positions, we saw no evidence that the position was advertised, or that candidates were assessed against selection criteria. The Privy Council Office indicated that there was always a selection process; however, this may not have been documented if it was conducted by ministers or their offices, as opposed to the Privy Council Office.

3.48 This is important because, as the Privy Council Office notes in its Guide to Managing the Governor in Council Appointments Process, "making qualified appointments is key to the achievement of the Government's objectives and the strengthening of accountability. Recruiting and appointing the right individuals with the necessary expertise and skills is essential to the effective functioning of government organizations." The Guide requires ministers to develop selection

processes that reflect the specific nature of the position and the weight of its responsibilities. The Guide emphasizes the need for “accessible, competency-based and transparent selection processes.”

3.49 Our analysis supporting this finding presents what we examined and discusses

- recruitment and selection of chairs and vice-chairs,
- recruitment and selection in the four selected tribunals,
- regional and employment equity representation,
- reference checks and background checks, and
- conflict of interest certification.

Context

3.50 The Privy Council Office (PCO) is responsible for promoting high-quality appointments. Appointees are required to follow the Ethical and Political Activity Guidelines for Public Office Holders and “uphold the highest ethical standards so that public confidence and trust . . . are conserved.”

3.51 Governor in Council appointments in administrative tribunals are made either “during pleasure,” meaning that the incumbent may be removed for any reason at the discretion of the Governor in Council, or “during good behaviour,” meaning the incumbent may be removed only for “cause,” such as behaviour or an action that breaches the standard of expected conduct. When an appointment term ends, the incumbent can be reappointed, unless there is a legislative provision limiting this.

Recommendations

3.52 We made no recommendations in this area of examination.

Analysis to support this finding

3.53 **What we examined.** We examined whether the recruitment and selection processes were open, formal, transparent, and based on an assessment against qualifications and other requirements, including diversity and regional representation. We reviewed the process for chairs and vice-chairs in our broader sample of 24 tribunals, and the process for members for the 4 tribunals we examined in detail.

3.54 **Recruitment and selection of chairs and vice-chairs.** As noted in the PCO guidance on appointments, PCO is responsible for coordinating the selection process for leadership and other full-time positions in tribunals. The PCO Guide states that “a selection process should formulate selection criteria, outline a recruitment strategy and establish an assessment process. These elements are essential features of an accessible, competency-based and transparent selection process.” Where PCO did run the selection process, in our review of selection files for

chairs and vice-chairs, we found that all were advertised in the *Canada Gazette* and on PCO's Governor in Council appointments website, and that all positions contained selection criteria.

3.55 PCO is not responsible for the selection process for any part-time positions, including vice-chairs. These processes are therefore the responsibility of ministers, their offices, and their departments. PCO does not monitor how candidates are identified for these positions. We found that PCO did not have any record of a selection process where it did not run the process itself, such as the appointment of judges as chairs of tribunals or the appointment of part-time vice-chairs. PCO told us that there is always a selection process; however, there may be no documentation of this when it is conducted by ministers or their offices. In our view, this does not meet the requirement for transparent selection processes.

3.56 **Recruitment and selection in the four selected tribunals.** At the Immigration and Refugee Board of Canada, we found that all seven member positions filled during our audit period had been advertised in the *Canada Gazette*, all seven files contained selection criteria, and all seven files contained evidence that the candidate was evaluated against the criteria.

3.57 For lay members at the Competition Tribunal, who are part-time appointees, we did not find evidence of a selection process. The chair of the Competition Tribunal expressed a need for a lay member with expertise in economics but, as noted in paragraph 3.41, it took 16 months to appoint an individual with the required expertise.

3.58 At the Civilian Review and Complaints Commission for the RCMP, we found no evidence of a selection process or an assessment of candidates against required qualifications for the part-time vice-chair.

3.59 PCO officials indicated that there was always a selection process; however, this may not have been documented if it was conducted by ministers or their offices, as opposed to PCO itself. They noted that departments may have no knowledge of the selection process conducted by the minister or his or her office, adding, "The fact that appointments proceeded in the cases where no evidence of a selection process was available in departmental records supports the view that the GIC was satisfied that the selection process undertaken met government policy requirements." In our view, this did not meet the requirement for transparency in the selection process.

3.60 Judges undergo screening before becoming superior court judges, and are therefore not assessed against specific requirements of the tribunal. The decision to create a tribunal composed in whole or in part of sitting judges reflects a determination that the overriding requirement of the tribunal position(s) is judicial qualifications and experience.

3.61 Regional and employment equity representation. PCO states in its guidance that “responsibility for making qualified appointments that reflect Canada’s diversity in terms of linguistic, regional and employment equity representation rests with Ministers.” This requirement is also stated in notices of vacancy for appointments. However, we found no evidence that regional representation or employment equity were considered in any of the chair or vice-chair selection files that we reviewed. PCO officials told us that ministers exercise discretion in this regard, with no requirement to document this assessment. In our view, this limited the transparency of the process.

3.62 Reference checks and background checks. In the final stage of the selection processes run by PCO, PCO conducts reference checks for candidates who are retained at the end of the selection process if requested to do so. In our review of 30 PCO selection process files, we found evidence that a reference check was conducted for all but one appointee. PCO told us that when reference checks are done by ministers’ offices, no documentation would be available. Again, in our view, this part of the process is not transparent. PCO is also responsible for overseeing background checks before all appointments and reappointments, excluding judges. Tribunal chairs and vice-chairs are subject to a check by the RCMP, the Canadian Security Intelligence Service, the Office of the Superintendent of Bankruptcy Canada, and the Canada Revenue Agency. In our sample, we found that PCO had records that background checks were conducted in all cases.

3.63 We excluded judges from our review of reference checks and background checks. Judges undergo these checks when they are appointed to superior courts and are therefore not subject to reference checks or background checks when they are appointed to tribunals.

3.64 Conflict of interest certification. Before their appointment, individuals are told that they must sign a document certifying that they will observe the Ethical and Political Activity Guidelines for Public Office Holders as a condition of holding office in the Government of Canada. These guidelines state that public office holders (both part-time and full-time) are subject to the requirements of the *Conflict of Interest Act* and other obligations under the *Lobbying Act*. In our review of appointment files, we found that all contained this certification.

Orientation and training for appointees

Orientation and training are offered to tribunal chairs

Overall finding



3.65 Overall, we found that there were a number of types of relevant training to orient new chairs to government policies and procedures and their accountabilities as leaders of administrative tribunals. However, we noted that one quarter of the chairs did not attend any of the training offered by the Privy Council Office or the Canada School of Public Service.

3.66 Having appropriate orientation and training is important because appointees need to have certain knowledge for the effective functioning of their organizations within the government context. New appointees bring knowledge and skills to the position when they are appointed, but may not have knowledge of the roles and responsibilities of public office holders, the legal framework and values and ethics requirements, and the functioning of the federal government and the respective tribunal itself.

3.67 Our analysis supporting this finding presents what we examined and discusses

- orientation and training for public office holders, and
- training specific to each tribunal.

Recommendations

3.68 We made no recommendations in this area of examination.

Analysis to support this finding

3.69 **What we examined.** We examined whether new appointees received training on their responsibilities as public office holders.

3.70 **Orientation and training for public office holders.** We found that the Privy Council Office (PCO) offered one-on-one sessions to newly appointed chairs and also informed the chairs of other sessions delivered by the Treasury Board of Canada Secretariat. These sessions covered topics such as the responsibilities of public office holders, the process for appointing tribunal members, the machinery of government, and access to information. A total of 14 types of one-on-one sessions were offered. Three quarters of the chairs took at least one session over our audit period. PCO told us that some appointees did not need to take these sessions given their previous experience.

3.71 The Canada School of Public Service also offers non-mandatory training to heads of tribunals on subjects such as public sector integrity, crisis management, integrated planning, change management, and financial management and accountability. However, these training sessions were not well attended by tribunal chairs who were employed during our audit period. Of the 10 training sessions offered from 2010

to 2015, 5 were cancelled due to low registration and only 13 of 37 chairs attended any of the sessions. However, 7 of the chairs were appointed in 2015 and may not have had an opportunity to attend the training during our audit period.

3.72 The Heads of Federal Administrative Tribunals Forum, a committee made up of heads of tribunals, also provided learning opportunities, as well as working groups to discuss specific issues of interest. Other training was provided through non-governmental bodies such as the National Judicial Institute and the Council of Canadian Administrative Tribunals.

3.73 **Training specific to each tribunal.** Within each of the four tribunals, chairs were provided with information on the mandate and operations of their respective tribunals from the staff at their tribunals.

Conclusion

3.74 We concluded that issues remained in the timely appointment of qualified individuals being made to selected administrative tribunals, which affected continuity of service to Canadians. Many key positions have sat vacant for long periods. These delays affected decision timelines for tribunals, which in turn affected individual Canadians and other stakeholders. While the Privy Council Office has issued guidance on the appointment process, this guidance is not available on its website and does not address all types of appointments or explain any exceptions to the process, such as the appointment of judges to tribunals.

3.75 We concluded that while most selection processes are open and transparent, there was no evidence that part-time appointees were evaluated against established criteria to support qualified appointments. While Privy Council Office officials indicated that documentation of this was not a requirement, in our view, this runs counter to the Privy Council Office's requirement for accessible, competency-based, and transparent selection processes for all appointments.

About the Audit

The Office of the Auditor General's responsibility was to conduct an independent examination of the Governor in Council appointment process to provide objective information, advice, and assurance to assist Parliament in its scrutiny of the government's management of resources and programs.

All of the audit work in this report was conducted in accordance with the standards for assurance engagements set out by the Chartered Professional Accountants of Canada (CPA) in the CPA Canada Handbook—Assurance. While the Office adopts these standards as the minimum requirement for our audits, we also draw upon the standards and practices of other disciplines.

As part of our regular audit process, we obtained management's confirmation that the findings in this report are factually based.

Objective

The objective of this audit was to determine if timely appointments of qualified individuals were being made to selected administrative tribunals to maintain continuity of service to Canadians.

Scope and approach

The audit included the following entities:

- the Privy Council Office;
- the Department of Justice Canada;
- selected administrative tribunals: the Civilian Review and Complaints Commission for the RCMP, the Competition Tribunal, the Immigration and Refugee Board of Canada, and the Specific Claims Tribunal Canada;
- respective portfolio departments of the administrative tribunals: Public Safety Canada (the Civilian Review and Complaints Commission for the RCMP); Innovation, Science and Economic Development Canada, formerly Industry Canada (the Competition Tribunal); Immigration, Refugees and Citizenship Canada, formerly Citizenship and Immigration Canada (the Immigration and Refugee Board of Canada); and Indigenous and Northern Affairs Canada, formerly Aboriginal Affairs and Northern Development Canada (the Specific Claims Tribunal Canada); and
- 20 other administrative tribunals listed under the Governor in Council appointments website in the broader file review sample.

The audit did not examine Crown corporations or the role of the Governor General, ministers' offices, or the Office of the Prime Minister.

We reviewed documentation, met with key stakeholders, and analyzed vacancies in administrative tribunals over a period of time, and analyzed staffing files for appointments to administrative tribunals.

Criteria

Criteria	Sources
To determine whether timely appointments of qualified individuals were being made to selected administrative tribunals to maintain continuity of service to Canadians, we used the following criteria:	
A vacancy management process is in place for Governor in Council (GIC) appointments and reappointments to support the process of filling vacancies in administrative tribunals in a timely manner to ensure business continuity.	<ul style="list-style-type: none"> • A Guide to Managing the Governor in Council Appointments Process, Privy Council Office, November 2009 • 2009 March Report of the Office of the Auditor General of Canada, Chapter 2—The Governor in Council Appointment Process • The Selection Process for Governor in Council Appointments to the Immigration and Refugee Board of Canada, 2015
Successful candidates are informed of their appointment in a timely manner.	<ul style="list-style-type: none"> • 2009 March Report of the Office of the Auditor General of Canada, Chapter 2—The Governor in Council Appointment Process
The recruitment and selection processes for GIC positions are open and transparent, and based on an assessment against qualifications and other requirements (for example, security clearance, reference checks, conflict of interest, diversity, and regional representation).	<ul style="list-style-type: none"> • A Guide to Managing the Governor in Council Appointments Process, Privy Council Office, November 2009 • Governor in Council Appointment Process Overview, Privy Council Office, 2014 • 2009 March Report of the Office of the Auditor General of Canada, Chapter 2—The Governor in Council Appointment Process • Governor in Council Appointments Procedures Guide, Privy Council Office, 2008 • Process Guide for Governor in Council Submissions (Other than Regulations), Privy Council Office and the Treasury Board of Canada Secretariat, 2013 • The Selection Process for Governor in Council Appointments to the Immigration and Refugee Board of Canada, 2015
New GIC appointees receive appropriate orientation and training regarding their duties and responsibilities as public office holders.	<ul style="list-style-type: none"> • 2009 March Report of the Office of the Auditor General of Canada, Chapter 2—The Governor in Council Appointment Process • A Guide to Managing the Governor in Council Appointments Process, Privy Council Office, November 2009 • Terms and Conditions of Employment for Full-Time Governor in Council Appointees, Privy Council Office, 2011 • Accountable Government: A Guide for Ministers and Ministers of State, Privy Council Office, 2011 • Directive on Delegation of Financial Authorities for Disbursements, Treasury Board, 2009

Management reviewed and accepted the suitability of the criteria used in the audit.

Period covered by the audit

The audit covered the period between March 2010 and November 2015. Audit work for this report was completed on 12 February 2016.

After our examination phase, Aboriginal Affairs and Northern Development Canada became known as Indigenous and Northern Affairs Canada; Citizenship and Immigration Canada became known as Immigration, Refugees and Citizenship Canada; and Industry Canada became known as Innovation, Science and Economic Development Canada. There was no impact on our audit work and findings.

Audit team

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List of Recommendations

The following is a list of recommendations found in this report. The number in front of the recommendation indicates the paragraph where it appears in the report. The numbers in parentheses indicate the paragraphs where the topic is discussed.

Recommendation	Response
Support for the Governor in Council appointment process	
3.29 The Privy Council Office, in consultation with portfolio departments and tribunals, should indicate in its guidance whether there are any exceptions to the process requirements, such as the appointment of judges to tribunals. (3.21–3.28)	The Privy Council Office's response. Agreed. A Guide to Managing the Governor in Council Appointments Process (November 2009) provides general guidance that has assisted staff in departments, organizations, and ministers' offices in applying the government's policy in respect of the vast majority of Governor in Council positions to be filled. In this context, the Guide does not address the specifics of every case. In future guidance, the Privy Council Office will provide information on the types of positions that are subject to different selection processes (such as the appointment of judges to tribunals), in accordance with policy decisions taken by the government. In this regard, the Privy Council Office will continue to provide guidance on the procedures applicable in those cases to staff in the departments, organizations, and ministers' offices that support ministers in managing vacancies or making appointments to those positions.
3.30 The Privy Council Office should post its guidance in a central location so that all stakeholders can easily find and access the guidance. (3.21–3.28)	The Privy Council Office's response. Agreed. The Privy Council Office will post its updated guidance centrally in future, so that stakeholders will have available to them the information relevant to their specific needs.

Recommendation	Response
<p>Vacancies in administrative tribunals</p> <p>3.44 Innovation, Science and Economic Development Canada, Indigenous and Northern Affairs Canada, and Public Safety Canada should work with ministers, as well as tribunals, as early as possible to fill Governor in Council positions, in order to support continuity of operations. (3.36–3.43)</p>	<p>Innovation, Science and Economic Development Canada’s response. Agreed. Innovation, Science and Economic Development Canada officials will continue to support ministers and work with the Competition Tribunal, and other players in the appointment process, in order to support continuity of operations. The Department’s efforts in this regard will fully reflect the government’s new policy on Governor in Council appointments announced on 25 February 2016.</p> <p>Indigenous and Northern Affairs Canada’s response. Agreed. However, this is on the clear understanding that in order to maintain the independence of the Specific Claims Tribunal Canada, officials from Indigenous and Northern Affairs Canada will not advise ministers on the candidates to fill vacancies. The Department keeps a record of the names and terms of Tribunal members.</p> <p>Public Safety Canada’s response. Agreed. While Governor in Council appointments, such as those at the Civilian Review and Complaints Commission for the RCMP, are at the discretion of the Governor in Council, Public Safety Canada will continue to work with the Privy Council Office in providing support to the Minister of Public Safety for recommendations he may want to bring forward to the Governor in Council.</p>