

Canada Employment and Immigration Union  
Syndicat de l'Emploi et de l'Immigration du Canada

May 27, 2010

By email: [cimm@parl.gc.ca](mailto:cimm@parl.gc.ca)

Andrew Chaplin, Clerk  
Standing Committee on Citizenship and Immigration  
6<sup>th</sup> floor, 131 Queen Street  
House of Commons  
Ottawa, ON K1A 0A6

Dear Mr. Chaplin:

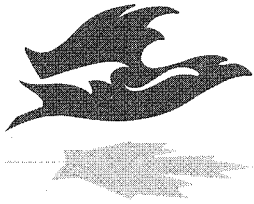
Attached you will find a submission from the Canada Employment and Immigration Union for presentation to the Standing Committee on Citizenship and Immigration.

The French version will follow by the end of today's date as it is presently being translated.

In Solidarity,

Jeannette Meunier-McKay  
National President

c.c. Hon. Jim Karygiannis



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**Governor-in-Council (GIC) political appointees from the Immigration and Refugee Board (IRB) should not be given preferential treatment to enter the Public Service and assume the new decision-maker positions which are, through Bill C-11, intended to restructure and improve the IRB.**

**Through Bill C-11, the Minister of Immigration, Jason Kenney, has stated that public servants will be the first-level decision makers.**

The intention in the legislation that these positions be Public Servants is clear. However, the IRB through its Governor-in-Council (GIC) appointed Chairperson intends to use a selection processes for these new positions which would allow current politically appointed GIC members and former members to directly enter the Public Service. They will do this by using the IRB's own hiring policy. This clearly violates the intention and spirit of the Public Service Employment Act (PSEA).

The grave concern of the **politicization of the Public Service** is identified because it has been clearly demonstrated in a recent audit undertaken by the Public Service Commission of IRB hiring practices. That audit concluded that **the IRB routinely extends preferential treatment to GIC appointees.**

Currently there is a cadre of highly qualified senior Public Servants performing the duties of Tribunal Officers at the IRB who possess extensive experience and knowledge of the entire Refugee Determination process. Tribunal Officers have a wealth of experience making decisions in both the Expedited Processes and in the Immigration Appeal Division. It is on these Public Servants that the government should focus in selecting the new decision makers.

Tribunal Officers are **career** Public Servants. They qualified to enter and remain in the public Service through rigorous selection processes, rather than through political appointments, and these officers possess the requisite expertise to perform the job. Their performance is detached from the political party of the day. They are the best placed Public Servants to meet the objectives of fast, fair, and consistent decisions.

The current structure with GIC appointed decision makers has consistently managed to produce massive backlogs and long processing times, thus demonstrating the gross inefficiencies of partisan hiring practices.

It should be noted that the decision makers with the IRB's Immigration Division **are Public Servants** and this is the most efficient of all three divisions of the IRB.

When the highly qualified pool of IRB Public Servants has been exhausted, the, hiring should be **opened to other senior Public Servants within the Public Service**, rather than patronage appointees who are **not** Public Servants. In the unlikely event that sufficient numbers of qualified candidates cannot be found within the 250,000 member Public Service, then a non-partisan selection process open to all Canadians could be run to which current and former GIC appointees could apply to enter the Public Service **without preferential treatment**.

Canada should not politicize the Public Service especially if, in this instance, the desired results are fair, fast, and consistent refugee determination decisions. There are many governments in the world who already have suffered the negative consequences of politicized Public Services. It is truly not in Canada's best interests to imitate these disasters.

The involvement of GIC appointees in any aspect of the Public Service employee selection process is clearly wrong. This selection process must be an entirely Public Service run process which respects the core values of **merit and non-partisanship**. To involve GICs in any aspect of the selection process would violate the IRB employment policy objectives.

When the IRB Chairperson spoke in front of the Standing Committee he told the committee that the IRB had been consulted as far back as eighteen months ago on the development of the new IRB structure. The questions that beg to be asked are: Why have the Public Service employees and their Union been kept in total ignorance of these developments until the announcement of the legislation? Why are **GICs** planning the structure and composition of this branch of the **Public Service**?

**The IRB has repeatedly attempted to eliminate public service jobs in favour of GICs.** The IRB has a history of attempting to eliminate the Tribunal Officer positions; through work force adjustment in 2007, and previously in 1996 when the Refugee Hearing Officer positions were threatened in favour of GIC board members following the surge of refugee advocates appointed by a previous government.

The IRB created a unique Area of Selection Policy made official in April, 2010 which allows **'persons employed'** at the IRB to apply for public service jobs. This policy appears to have been put into place specifically to allow GICs at the IRB to apply directly for public service jobs not open to the public. It is this very type of manipulation of the intention of the Public Service Employment Act that has resulted in the PSC auditors finding that **GIC appointees have been given preferential treatment when entering public service employment competitions.**

**The IRB has always treated GICs favourably, at the expense of public servants.** The recent PSC audit of the IRB has identified preferential treatment of GICs to be of major concern. In its summary at point six (6) the audit states:

*"We are concerned that preferential treatment of the appointment of former GIC appointees to public service positions in the IRB compromised the PSEA's [Public Service Employment Act] core value of merit, along with the guiding values of fairness, access, transparency and representativeness."*

Opening the new first-level decision making positions to existing and former GIC appointees is creating a vast opportunity for more preferential treatment of political appointees at the expense of opportunities for advancement of career Public Servants. In this manner the door will be opened wide for the politicization of the Public Service.

It will set the unacceptable precedent for the board to use the excuse that they need to hire GICs because they urgently need their expertise. Thus any GIC who comes to the legislated limit of their appointment to IRB, including the Immigration Appeal Division and the Refugee Appeal Division (RAD), will have preferential access to guaranteed **employment in the Public Service as a direct result of a patronage appointment. This is clearly wrong.**

**Tribunal Officers are best-suited for the new first-level decision making positions.** Tribunal Officers have as much as 20 years experience in the refugee determination process. They have extensive knowledge of the case law, the legislation, and the entire refugee field. They have received ongoing and up-to-date professional development which solidifies their expertise. They conduct primary examination of claimants and present oral or written evaluation of the merits of each claim. Tribunal Officers also conduct expedited hearings and draft reasons recommending acceptance of claims to board members. They also conduct country specific research and prepare disclosure materials, as well as stream and screen files. In the Immigration Appeal Division of the IRB Tribunal Officers preside over alternative dispute resolution conferences and specialty courts and make recommendations with direct impact on appellants' lives. As part of the training of new GIC members, Tribunal Officers are called upon to share this vast knowledge and experience.

**GICs have failed the IRB and the Canadian public by being unable to reduce the rising backlog of refugee claims.** Although the Chairperson claims that the board members are skilled, experienced and well-trained to conduct hearings, the inability of these members to deal with the large backlog is very troubling, especially when so many hearings take much longer to finalize than is necessary.

## **Why are Tribunal Officers the best candidates for these Public Service refugee determination jobs?**

In order to qualify for the senior public service job of Tribunal Officer, each officer has had to compete in a rigorous selection process which assessed their knowledge, education, skills, and suitability for the position of Tribunal Officer. Thus Tribunal Officers are perfectly suited for the Public Service decision maker position as evidenced by these qualifications, and by their commitment and dedication to the Canadian public throughout their careers. Tribunal Officers and other qualified senior Public Servants are truly the best suited candidates **to ensure the integrity of the refugee selection process and to maintain the non-partisan nature of the Public Service.**

In conclusion, it is respectfully submitted to the Committee:

Based on the evidence of preferential treatment having been extended to GIG appointees in Public Service employment selection processes in the IRB,

And based on the serious potential for continuing preferential treatment being extended to GIG appointees in future Public Service employment selection processes,

We strongly recommend that the legislation include the following provisions aimed specifically at preventing the politicization of the Public Service of the IRB :

- The delegated staffing authority be withdrawn from the chairperson of the IRB for all employment selection processes that would potentially find Public Service employees in direct competition with GIG appointees.
- The Public Service Commission be given full responsibility for conducting all employment selection processes that would potentially find Public Service employees in direct competition with GIG appointees.

- All IRB employment selection processes be mandated to give consideration to qualifying candidates in the following order of employment offer:
  1. Qualified Public Service employee candidates from within the IRB.
  2. Qualified Public Service employee candidates from within the entire Public Service.
  3. Qualified candidates from the public at large, including current and former GIC appointees.