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# The Immigration and Refugee Board Post Reform: "Nimble and Adaptive"

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# THE IMMIGRATION AND REFUGEE BOARD POST REFORM: "NIMBLE AND ADAPTIVE"

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## Editor's Note

The following text is an edited version of the keynote address delivered on May 14, 2015, at the 8th Annual Conference of the Canadian Association for Refugee and Forced Migration Studies (CARFMS) at Ryerson University, Toronto.

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# INTRODUCTION

Thank you for your warm welcome.

I would like to thank the organizers and Professor Simeon in particular for their kind invitation. A mere four months from my appointment as the sixth Chairperson of the IRB, I am very pleased to have a chance to discuss our priorities with such a distinguished group. Interestingly, this speaking engagement comes hard on the heels of my address to the Canadian Bar Association's Immigration Division last week in Ottawa, and I understand that there may be some people in attendance here today who also heard me speak there.

Considering how recent that was, I apologize if CBA attendees find today's speech somewhat repetitive. However, if you find that anything I say today contradicts what you heard last week, you can chalk that up to my mischievous desire to shake things up a bit and keep things interesting. In all seriousness, I hope that this address is only the first step in an ongoing dialogue I plan on having with many of you over the course of my mandate.

The title of my speech is The IRB Post Reform "Nimble and Adaptive," which is, I hope, reflective of the type of organization I plan on leading for the next five years. But before I tell you about the IRB's work in refugee determination under the Immigration and Refugee Protection Act I'd like to talk a bit about myself, and a bit about the organization I was introduced to upon my arrival in January of this year. I'm also going to talk about the environment we operate in, and how it shapes our priorities. And I'll be touching upon what I see as the IRB's role in delivering administrative justice in refugee determination, through its involvement in the selection of members of the Refugee Protection Division and the Refugee Appeal Division and how it supports them afterwards. The IRB embraces a nimble and adaptive approach to exercising its mandate, which is to make impartial well-reasoned decisions on immigration and refugee matters, efficiently, fairly and in accordance with the law.

I was already familiar with the IRB when I arrived here. In my role as Chairperson of the National Parole Board, I had numerous conversations with both Brian Goodman and Jean-Guy Fleury, two former chairpersons who were very dedicated and very proud of the organization they were running.

As I've been telling my personnel during the regional meetings I'm holding these days, I've always taken an interest in migration issues, and I felt that I had knowledge to contribute that could serve the IRB, the people appearing before our decision-makers, and Canadians in general. Last spring I applied for the position of Chairperson, after resigning from my position as Public Sector Integrity Commissioner, and I started in this position in January.

I came to the IRB with nearly 35 years of experience in the federal public service, mainly in the fields of justice and human rights. I began my legal career in 1980 as a legal advisor in what was then the Department of the Solicitor General. In 1988, I became Assistant Deputy Minister at the Correctional Service of Canada, responsible for communications, evaluation and research.

Following this, in 1992, I was appointed Assistant Deputy Minister of Corporate Management at the Department of Justice Canada. This role provided an opportunity for me to collaborate with partners throughout la Francophonie, as well as with my American counterparts.

In 2003, I was appointed Deputy Head of the Office of Indian Residential Schools Resolution of Canada, where I led the efforts to resolve 16,000 pending litigation files and, ultimately, designed and negotiated, with assistance from the Honourable Frank Iacobucci, the historic 2006 settlement with the 80,000 former residential school students who were still alive.

## THE IRB'S MANDATE

I applied for the job of Chairperson of the Immigration and Refugee Board because its mission -- to make well-reasoned decisions on immigration and refugee matters, efficiently, fairly and in accordance with the law -- appealed to me immensely. A few months into this job, I can tell you that my own values and those of this organization align exceptionally well.

## VALUES

I've been impressed by how deeply ingrained the notions of justice and fairness are into fabric of this organization. They give our mission its true meaning, inform everything we do, and are the cornerstone of the work we carry out on a daily basis. Canadians have entrusted the IRB to act on their behalf and we carry out our responsibilities with a deep sense of commitment. We recognize the profound impact of our actions in

each and every case we deal with and the consequences of our decisions. We understand that people's lives and well-being are at stake, and also that we contribute to the security of Canada and ultimately, to the integrity of Canada's immigration and refugee system.

As you well know, the IRB is an integral player in administrative justice in Canada. Responsible for its own operations, but reporting to Parliament through the Minister of Citizenship and Immigration, it occupies a unique perch within the broader immigration and refugee field. In interpreting a statute of Parliament with the guidance of the courts, we exercise our mandate on behalf of Canadians and play an important role in the fulfillment of Canada's international obligations.

The IRB operates through its four divisions, each of which has a special role under the Immigration and Refugee Protection Act. The Refugee Protection Division under the leadership of Ross Pattee decides refugee claims made by persons in Canada. The Refugee Appeal Division, chaired by Ken Sandhu, hears appeals against decisions of the Refugee Protection Division. The Immigration Division, chaired by Susan Bibeau, holds detention reviews and admissibility hearings to determine if foreign nationals and permanent residents may enter or remain in Canada and the Immigration Appeal Division, chaired by Paul Aterman, hears and decides appeals on immigration matters (such as removal orders, sponsorship refusals, and residency requirements).

And, it is important to note, while their mandates do not vary from year to year, each of our divisions must carry out their operations in a dynamic environment of ongoing change. Because our intake fluctuates due to world events and policy changes –for example, we do not decide which countries are designated as safe countries of origin, that responsibility lays elsewhere -- we must be flexible and ready to adapt to changing circumstances. For this reason, the number and nature of the cases each division has to decide may vary greatly.

## ORGANIZATIONAL PRIORITIES AND ENGAGEMENT

Because managing ongoing change requires adaptability and flexibility, we have endeavored to incorporate those qualities into the Board's priorities for this fiscal year. The priorities are to resolve cases in a timely manner while ensuring quality and fairness, to foster an adaptive and flexible organization that effectively



manages its intake and workload, and last but not least to continue to build an organization that values its people and promotes management excellence.

In relation to the first priority (resolving cases in a timely manner), three of the IRB's four divisions are now subject to regulated timeframes. All four divisions must equally still deliver fair decisions as quickly as possible, as any administrative tribunal must. Those who appear before us should not have to wait unduly to have decisions made in their cases. Particularly, in the refugee context, we know that speed is essential to allowing claimants to receive swift protection or to take the next steps where their claim is rejected.

With regard to the second priority (fostering an adaptive and flexible organization that effectively manages its intake and workload), adaptability and flexibility will be critical to the IRB's success in fine-tuning its processes, as it continues to gain experience with the reformed refugee determination system. In addition, innovative strategies will be required to reduce the average processing time for immigration appeals and complete the Board's work of eliminating the inventory of pending legacy refugee claims. The IRB will seek to strengthen collaboration with portfolio agencies to enhance productivity and efficiency while safeguarding the Board's institutional independence. Recognizing that service consolidation remains a significant priority across government, the IRB will also work with central agencies to ensure that the Board's operational context and critical needs are fully understood.

And finally, concerning priority number three: (Continuing to build an organization that values its people and promotes management excellence). The effective management of human resources is essential to the efficiency of the Public Service. Ensuring that the IRB continues to be a supportive work environment and its personnel are productive and resilient is critical to the Board's continued success.

At this point, I'd like to highlight a personal observation: The first thing that struck me about the IRB when I arrived here was the caliber of its members and the personnel providing them with support. I share the view common among both private and public sector leaders that an organization's greatest wealth lies, first and foremost, in its personnel.

## SUPPORTING DECISION-MAKERS

The Immigration and Refugee Board has been fortunate in its capacity to attract and employ talented dedicated people, representing a wide cross-section of our society. These people have put their diverse skills to use carrying out the Board's mission.

In all IRB divisions, cases are heard by independent decision-makers, whom we refer to as members. Our total member complement is approximately 213, with 37 in the IAD, 94 in the RPD 94, 33 in the ID and 49 in the RAD. Our members are appointed in different ways: Members of the RAD and IAD are Governor-in-Council appointees, while Members of the RPD and the ID are public servants appointed under the Public Service Employment Act. What all members have in common, both GiC appointees and public servants, is the commitment to administrative justice principles and the mandate with which the IRB has been entrusted by Canadians. Our members are doing critical work and through the support the organization provides to quality decision-making, protection is advanced, to quote this conference's theme.

At the IRB, we spare no effort in ensuring that members are properly supported and well equipped to do their jobs. We spend a lot of energy and time on the recruitment of new members and we are continuously looking for ways to improve and revamp member training. Our goal is to ensure the highest quality of decision-making. By the way, if you are interested in career opportunities at the IRB, I'm happy to tell you that we will be running a GIC recruitment process for candidates for our appeal divisions. We will be advertising for candidates experienced in refugee or immigration law very soon. I'm sure that there are more than a few talented and dedicated people in this room willing to throw their names in the hat!

The IRB would be unable to carry out its mandate without the cadre of dedicated public servants who perform critical support functions. Our decision-makers rely on the people working in administration and in our registries, human resources, communications, information technology, corporate services, security and various other areas to enable them to focus on our core role of rendering decisions in a timely and efficient manner.

This support function includes the management of our interpreter program, which provides interpretation in over 240 languages and dialects through a pool of 7,000 interpreters. Given our business, I'm sure you can



appreciate the central importance of having an extensive program to ensure proper interpretation in our hearing rooms for the benefit of all persons appearing before us.

The IRB relies on a team of qualified employees who are responsible for gathering reliable information and preparing objective reports on conditions in the countries of origin of refugee protection claimants. They assemble information on human rights and other issues that are relevant to those claiming refugee protection. The results of this research are published on the IRB's website, and make up the National Documentation Packages on countries of origin.

The IRB also benefits from a robust legal section with a wide array of expertise. Our members are supported by this strong legal team, and all of them benefit from cross-divisional professional development sessions and integrated national training seminars that bring together personnel from all divisions and regions to train on cross-cutting issues and to promote collegiality.

Why do we invest so much effort in ensuring this level of training and support? Because our members have a critical role to play in realizing the vision of a nimble and adaptive IRB, and they are called upon to display both flexibility and creativity as our operating environment is shaped by both external and internal factors.

To give you some examples, our RAD members who have been interpreting the new provisions of refugee legislation (reform) since December of 2012 have been called upon to react to some important guidance from the Federal Court, particularly concerning the scope of the RAD appeal. In response to the decisions of the Federal Court in *Huruglica* and other cases, the RAD members have needed to expand the scope of their work to conduct their very own independent assessment of the refugee claims on appeal from the Refugee Protection Division. It is not an exaggeration to say that Federal court decisions continue to shape and redefine us as an organization. This incidentally is not new. Anytime Parliament passes new legislation, there is a period during which tribunals, such as the IRB, to go through the process of adjustment with direction from the Federal Court and the Federal Court of Appeal. This is an example of a circumstance when solid training delivered in real time almost is very important to assist members to come to their own view on how the guidance from the courts should be applied to the cases before them.

On the immigration side of the house, in February of 2015, the Supreme Court of Canada heard five appeals which involve the “trans-national crime” of people smuggling. In four of those cases, the underlying decision was made by the Immigration Division of the IRB. All Divisions of the IRB will be keenly interested to see whether the Supreme Court guidance changes the case law with respect to the proper approach to affect international instruments or the Canadian Charter of Rights and Freedoms.

More concretely, a few years ago, the IRB launched an initiative to assess various factors relating to the quality of our processes, including the quality of the decisions rendered by members. I've found that our members, in fact all our personnel, are always interested in new ways to improve our processes. This open-mindedness is what helps us remember that each proceeding and each decision is unique to the individuals who appear before us.

In order to further enhance the quality of processes and decisions, over the past few years the IRB has established common standards for members, set cross-divisional performance expectations and developed a code of conduct that applied to both Governor-in-Council and public servant members. We have also taken care to ensure whenever we're considering a new policy or procedure, Chairperson's rule or guideline to assess whether we can develop a single instrument that covers all Divisions. While it is not always feasible or appropriate to do so, we have found that this approach can bring real benefits, not only in terms of promoting efficiency, facilitating training and the like, but also in making Board processes easier for counsel to navigate. Because, after all, counsel are important stakeholders to us, and are key partners in the administration of our mandate.

## STAKEHOLDERS

The IRB is respected internationally for fairness and efficiency, and we have regular dealings with international counterparts who look to us as a source of best practices in the area of administrative justice. Recently, we hosted a delegation from Mexico, and just this week a delegation from Africa joined us for a study tour and to participate in some high-level meetings.

This hard earned reputation is precious to us, which is why we buttress it with transparency and openness in our relations with counsel and other stakeholders. Twice a year, the Chairperson of the IRB presides over a meeting with stakeholder organizations during which issues of substance are discussed. Organizations

present include the Canadian Council for Refugees, the Canadian Bar Association, l'Association québécoise des avocats et avocates en droits de l'immigration et autres. I am looking forward to my first meeting with them in June.

By the way, you may be interested to know that more than 90% of refugee claimants and appellants before the RPD or the RAD are represented by counsel, which is why we put such a premium on our engagement with the legal community. But we are also keen to engage with other interested parties and organizations, because we truly feel that their perspective matters, and they have something worthwhile to bring to the table and help us meet our goal of becoming ever more nimble and adaptive.

I value our ongoing close working relationship with our partners and stakeholders and as Chairperson I intend to build upon this relationship and continue to build on the trust that underpins it. The Board has always been able to rely on the support of our stakeholders, and I'm confident that we can continue to do so in the future.

## REFUGEE PROTECTION

I now want to spend a few minutes on the role of the Refugee Protection Division and the Refugee Appeal Division in refugee protection. As I'm sure you already know, Canada has an obligation to grant protection to Convention refugees and persons in need of protection under a number of United Nations conventions to which it is a signatory. These include the Convention Relating to the Status of Refugees (1951), the International Covenant on Civil and Political Rights (1966) and the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (1984). In addition, it is the IRB that is responsible for refugee claims made within Canada, as opposed to CIC, which manages refugee claims made from abroad.

In December 2012, a major reform was launched after Parliament enacted the Protecting Canada's Immigration System Act. This new legislation required the IRB to overhaul the RPD, and to implement the Refugee Appeal Division.

As someone who has worked within the federal public administration for his entire career, I've been struck by the profound impact of the 2012 reform of the refugee system. The legislation resulted in the establishment of the new Refugee Appeal Division and transformed the Refugee Protection Division. To a

certain extent, the IRB is still adapting to the changes to the system. But I must say that I am impressed by the flexibility and resilience displayed by the IRB in accomplishing its work in the past two years.

The RPD has continued to focus on increasing productivity and rendering quality decisions with an average case processing time of approximately four months, compared with an average time of almost two years prior to the coming into force of the Protecting Canada's Immigration System Act. They did this while implementing a system that has required adaptation along the way.

If claimants disagree, on a particular point of law or fact, with the RPD's decision in their claim for refugee protection, they can appeal the decision to the RAD, or apply for a judicial review of the decision before the Federal Court. In fact, the Act specifies that certain claims can be appealed only to the Federal Court, not to the RAD. An important aspect of our system is that RAD decision-makers are independent from the RPD.

I would be remiss not to mention a particular connection between the theme of this conference and the IRB's work: I'm not yet an expert in migration issues, but to begin with, I believe I can say that we are living in an era that continues to be marked by advances in human rights, as well as refugee laws, and therefore also by tensions between these changes and the sovereignty of nations, border controls and mechanisms for managing population migration.

As I mentioned, the IRB operates under an Act of Parliament. Our Immigration Division conducts admissibility hearings, as well as detention reviews for individuals who are detained under the Immigration and Refugee Protection Act. Without getting into public policy issues, I can offer some interesting information that I hope will shed some light.

The Immigration Division renders about 11,000 detention review decisions each year. In 2014, the ID ordered the release of the detainee in 47% of 48-hour detention reviews.

In admissibility hearings, the member's role is to safeguard the integrity of the Canadian immigration system, for example, by determining whether an individual is admissible or inadmissible to enter Canada, on grounds of criminality or serious human rights violations.

## LEGACY AND THE THREE-YEAR EVALUATION OF REFUGEE REFORM

I've already discussed a number of ways in which the IRB has worked and continues to work at being nimble and adaptive, and I think that our efforts have yielded very tangible results in recent years. For example, I think it bears mentioning that during the transition period following reform, the Board reallocated resources internally to ensure Legacy cases left over from the pre-reform days were finalized. The IRB recently wrapped up the Legacy Initiative after two years of operation, folding the remaining cases into the RPD. Through the Legacy Initiative, the IRB reduced the number of pending legacy claims from over 32,000 in December 2012 to less than 8,000 as of April 1, 2015, an achievement for which we are justifiably proud.

Since the coming-into-force of the new legislation, the IRB continues to re-examine and refine its processes in order to position itself to fulfill its mandate. In other words, we endeavor to be both nimble and adaptive in an environment of ongoing change. We are always conscious that changes can come as a result of many factors we do not control, including shifts in intake levels, legislative changes and Court decisions.

## EVALUATION

We are also participating in the three-year evaluation currently being conducted by Citizenship and Immigration Canada. The CIC evaluation will cover the relevance and performance of the new system across seven different departments and agencies, including the IRB.

Concurrently, the IRB is undertaking its own evaluation to assess the efficiency and effectiveness of its processes in relation to the work of the Refugee Protection Division and the Refugee Appeal Division. The IRB's evaluation will not assess the legal and policy framework established by Parliament, nor will it assess member performance. It will instead look at factors like challenges, resources, and the organizational processes created to ensure the RPD and RAD fulfill their mandates. It will also involve consulting with our stakeholders, including some of the people in this room today, on the awareness of and access to information about the IRB processes.

While respecting the institutional independence of the IRB and adjudicative independence of its members, the evaluation will draw on multiple lines of evidence coming from interviews, surveys, quantitative data such as case management, financial and administrative data, as well as other key documents. This evaluation should be completed by the fall.

## SOME FIGURES

Before I wrap I'd like to give just a few examples of the work of each of our four divisions:

In 2014, more than 19,900 refugee protection claims were finalized by the Refugee Protection Division. The Refugee Appeal Division finalized 1900 refugee appeals in 2014.

The Immigration Division concluded 1500 admissibility hearings and 11,300 detention reviews in 2014, and statutory timeframes were respected 98% of the time for all detention reviews.

And the Immigration Appeal Division finalized 5700 appeals in 2014.

Together, our four divisions made approximately 40,000 decisions last year.

Also important to note is that the IRB has no "quotas." We deal with each case as it arrives, and we deal with it on its own merits. Our decisions, which may be subject to judicial review by the Federal Court of Canada, are based on the evidence presented and are always accompanied by reasons.

The IRB is committed to openness, transparency, due process and, in sum, the rule of law. These are fundamental tenets of a democracy. Who will be detained for immigration purposes? Who will be allowed to remain in Canada? Who will receive refugee protection? Who will be allowed to sponsor their close family member? The questions we deal with profoundly affect the lives of the people who come before the Board, their families and Canadians. As Chairperson, I am committed to ensuring impartial, just and efficient decision-making in all four divisions, even in the context of ongoing change. I am fortunate in leading an organization that shares my values and my commitment.

## TWITTER

On a final and technological note, I'm particularly pleased to tell you about one more recent development. As an avid user of Twitter (and if you like, you can follow me....) I'm particularly excited about the recent launch of our English (@IRB\_Canada) and French (@CISR\_Canada) Twitter accounts. Our presence on Twitter is part of our ongoing efforts to keep Canadians and stakeholders informed of the IRB's activities. It reflects the need to facilitate access to the Board's online content to address the growing popularity of mobile devices and the use of social networks, of which Canadians are currently the highest users in the world. You can find us on

Twitter at "at IRB underscore Canada" and also at "at CISR underscore Canada". And now that you know our corporate Twitter handle, I look forward to having all of you as our followers!

I would also invite you to visit our website to find the most recent information, along with other resources that will certainly be of interest to you, such as the guides the IRB has prepared for refugee protection claimants appearing before the RPD and for appellants whose appeals are being heard by the RAD.

You can find us online at [www.irb-cisr.gc.ca](http://www.irb-cisr.gc.ca).

I thank you for attention today, and I hope you enjoy the rest of the conference.