



**HOUSE OF COMMONS
CANADA**

REGULATING IMMIGRATION CONSULTANTS

Report of the Standing Committee on Citizenship and Immigration

**Norman Doyle, M.P.
Chair**

JUNE 2008

39th PARLIAMENT, 2nd SESSION

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REGULATING IMMIGRATION CONSULTANTS

**Norman Doyle, M.P.
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JUNE 2008

39th PARLIAMENT, 2nd SESSION

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THE STANDING COMMITTEE ON CITIZENSHIP AND IMMIGRATION

has the honour to present its

TENTH REPORT

Pursuant to its mandate under Standing Order 108(2), your Committee has conducted a study on *Immigration Consultants*.

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REGULATING IMMIGRATION CONSULTANTS

Immigration consultants are “non-lawyers who, for a fee, provide advice and assistance in immigration matters, or representation before immigration tribunals.”⁽¹⁾ Following allegations of unacceptable practices in the immigration consulting industry, this Committee studied the subject in 1995 and tabled a report with recommendations.⁽²⁾ In October 2002, the Minister of Citizenship and Immigration established an Advisory Committee to identify problems in the immigration consulting industry and to propose options to the Minister. In May 2003, the Advisory Committee presented its final report to the Minister⁽³⁾ recommending that the government create a self-regulatory body to regulate immigration consultants.

Following the Advisory Committee report, the Canadian Society of Immigration Consultants (“CSIC”) was established in the fall of 2003. “An independent, federally incorporated not-for-profit body operating at arms-length from the federal government, [CSIC] is responsible for regulating the activities of immigration consultants who are members and who provide immigration advice for a fee. ... [CSIC’s] mandate is to protect the consumers of immigration consulting services and ensure the competent and professional conduct of its members.”⁽⁴⁾

Despite the establishment of CSIC, complaints from the public and from within the profession about unacceptable practices by immigration consultants have continued. In April 2008, this Committee began a second study of the subject, travelling from coast to coast over a three-week period, hearing witnesses. Based on the testimony heard during these meetings, the Committee makes the following recommendations.

Regulating Immigration Consultants in Québec

In light of the Canada-Québec Accord Relating to Immigration and given the nature and specific needs of the Quebec nation as regards immigration, the Committee is of the opinion that the Quebec government should be solely responsible for regulating immigration consultants within its borders.

(1) House of Commons, Standing Committee on Citizenship and Immigration, *Immigration Consultants: It’s Time to Act*, Report 9, 1st Session, 35th Parliament, November 1995, p. 1.

(2) Ibid.

(3) Report of the Advisory Committee on Regulating Immigration Consultants, May 2003, <http://www.cic.gc.ca/english/resources/publications/consultants/index.asp>.

(4) CSIC website, <http://www.csic-scci.ca/content/about>.

Recommendation 1

The Committee recommends that the Government of Canada stipulate in its laws and regulations that, in order to represent or advise a person on any matter before the Minister of Citizenship and Immigration, an immigration officer or the Immigration and Refugee Board, an immigration consultant from Quebec shall be officially recognized under Quebec laws rather than being required to be a member of the Canadian Society of Immigration Consultants. This recommendation does not in any way affect members of the *Barreau du Québec* or members of the *Chambre des notaires du Québec*, who may continue to represent their clients as they have done thus far.

The Committee acknowledges in this regard that all the other recommendations in this report will not apply in Quebec.

Addressing Immigration Consultants' Concerns Regarding CSIC

During its travels, the Committee heard from a number of immigration consultants across the country, many of whom expressed great dissatisfaction with the way CSIC is currently governed. The Committee heard complaints that:

- CSIC membership fees are too high;
- The CSIC membership exam was prepared and marked in a questionable way;
- CSIC failed to develop an industry plan;
- CSIC decision-making lacks transparency and is not conducted democratically;
- The CSIC board of directors is not accountable to anyone;
- There is no possibility for CSIC members to call a special meeting of the Society;
- Compensation of, and spending by, CSIC board members is extravagant, ill-advised and unaccounted for;

- CSIC board members are in a conflict of interest because they created, and currently serve on the board of, the Canadian Migration Institute, a related for-profit corporation;
- Many members had little choice but to pay \$800 each to buy an outdated educational video in order obtain sufficient continuing professional development points to maintain their CSIC memberships;
- CSIC does not communicate with members, or provide services to members, equally in French and English;
- The ability of members to voice concerns with CSIC has been limited since the CSIC Rules of Professional Conduct were amended making it a professional offence to “undermine” CSIC and compelling members to treat CSIC with “dignity and respect;” and
- The CSIC website is set up in such a way that members cannot send bulk e-mail messages to all other members.

These grievances stem from various issues, and no doubt many arise because CSIC is a relatively new organization struggling to strike the right balance to regulate previously unregulated professionals. However, the Committee believes that problems at CSIC are attributable to more than just growing pains. Fundamentally, the Society has not been given the tools it needs to succeed as a regulator. As a federally-incorporated body, CSIC has no power to sanction immigration consultants who are not members of the Society, and it cannot seek judicial enforcement of the disciplinary consequences it imposes on those who are members. Further, because CSIC’s jurisdiction is not governed by statute, there is no possibility for dissatisfied members and others to influence the Society’s internal functioning through judicial review. In the view of the Committee, these shortcomings should be addressed by new legislation.

Recommendation 2

The Committee recommends that the Government of Canada introduce stand-alone legislation to re-establish the Canadian Society of Immigration Consultants as a non-share capital corporation. Such an “Immigration Consultants Society Act” should provide for the same types of matters covered by founding statutes of provincial law societies, including, but not limited to: functions of the corporation, member licensing and conduct, professional competence,

prohibitions and offences, complaints resolution, compensation fund and by-laws. Once the regulator is re-established as a corporation under a federal statute, the existing body that was incorporated under the *Canada Corporations Act* may be wound up.

Recommendation 3

The Committee recommends that the Government of Canada assist in re-establishing the new regulator and remain involved in its affairs until it is fully functioning.

While the Committee anticipates that the new regulator will function much like a provincial law society, we suggest that the details of its procedures be tailored in the way that will best protect the public it will serve. The Committee is particularly concerned that the new body be able to deal appropriately with unauthorized or improper representation, and that immigrants with precarious status in Canada be assisted in lodging complaints. To that end, the Committee makes the following recommendation.

Recommendation 4

The Committee recommends that the Government of Canada ensure that:

- the new immigration consultants' regulator institutes a third-party, no-cost complaints procedure in respect of unauthorized or improper representation to support immigrants with precarious status in Canada in lodging complaints;**
- immigrants are informed that their complaints to the regulator will have no negative impact on their immigration applications; and**
- the regulator has a prosecutor/investigator who will represent the public interest in prosecuting misconduct.**

Addressing the Problem of Ghost Consultants

Ghost consultants are paid immigration consultants who advise or represent clients in immigration matters without being "authorized representatives," which means without being members in good standing of a bar of a province, the *Chambre des notaires du Québec*, or CSIC. Representatives of CSIC expressed to the Committee their frustration in

seeing ghost consultants openly advertising their services to the detriment of the public, but being unable to discipline anyone who is not a registered member of the Society. Registered immigration consultants also expressed their frustration in competing for business with ghost consultants who appear to be able to offer more to clients at a lower price because they are not subject to the ethical standards imposed by either CSIC or a provincial law society, and because they do not pay professional fees and incur educational costs.

The Committee heard of the various ways in which rogue immigration consultants avoid federal regulation, and makes the following recommendation with the objective of greatly diminishing the categories of immigration consultants who operate undetected without being authorized representatives.

Recommendation 5

The Committee recommends that the Government of Canada amend section 13.1 of the *Immigration and Refugee Protection Regulations*, as well as the relevant Citizenship and Immigration Canada inland processing manual (IP 9), and any other relevant documentation, so as to:

- **require everyone to be an authorized representative if, whether for a fee or unpaid, they advise or consult with a person who is the subject of a proceeding or application before the Minister of Citizenship and Immigration, an immigration officer or the Immigration and Refugee Board;**
- **provide that only authorized representatives may perform pre-submission work in respect of a person who is subject of a proceeding or application before the Minister of Citizenship and Immigration, an immigration officer or the Immigration and Refugee Board;**
- **require everyone to disclose the use of any representative, whether performing pre-submission work or not, in relation to a proceeding or application before the Minister of Citizenship and Immigration, an immigration officer or the Immigration and Refugee Board; and**

- **bolster its procedures for determining whether an immigration client is using a concealed representative to greatly increase the likelihood that the involvement of a concealed representative is discovered.**

Enforcing Standards

In addition to expressing their frustration with ghost consultants, witnesses who appeared before the Committee consistently voiced their concerns that existing rules relating to immigration consultants cannot be, or are not being, adequately enforced. A number of witnesses called for the inclusion of a specific offence provision in the *Immigration and Refugee Protection Act*, whereas others suggested that existing offence provisions would be sufficient if they were properly enforced by various government departments and agencies working in concert.

The Committee agrees with witnesses who called for the enactment of a specific prohibition and offence for unauthorized practice. However, adding such a provision to the *Immigration and Refugee Protection Act* will be unnecessary once a statute re-establishing CSIC is passed. Similar to provincial Law Society Acts, the recommended federal Immigration Consultant Society Act should include specific prohibition and offence provisions for unauthorized practice. Considering that enactment and implementation of such a statute may take some time, the Committee makes the following recommendation for increased enforcement of existing laws pending enactment of the new statute.

Recommendation 6

The Committee recommends that the relevant federal regulatory and enforcement authorities (Citizenship and Immigration Canada, the Immigration and Refugee Board, Canada Border Services Agency, Royal Canadian Mounted Police, Canadian Society of Immigration Consultants, Canada Revenue Agency) work with provincial partners (provincial governments, law societies) to coordinate investigation, communication and enforcement efforts so as to ensure that unregistered immigration consultants are either referred to provincial law societies for sanction, or are prosecuted under existing federal provisions, depending on the nature of the person's practice. Such federal provisions include, but are not limited to, the general contravention provisions in the *Immigration and Refugee Protection Act*, provisions under the *Criminal Code*, and federal tax law. No later than four months after this report is presented in the House of Commons, a lead agency should be named to coordinate investigation, communication and enforcement efforts.

Addressing the Problem of Unauthorized Representatives Practising Outside Canada

The Committee heard testimony about improper practices of some foreign-based immigration consultants who take advantage of people who wish to come to Canada. While we appreciate that Canada is greatly limited in its ability to regulate occurrences in foreign jurisdictions, the Committee believes that the Government of Canada can reduce the vulnerability of prospective immigrants to rogue immigration consultants by simplifying immigration processes, and informing and forewarning prospective newcomers of the potentials for abuse.

Recommendation 7

The Committee recommends that Citizenship and Immigration Canada review existing processes related to the most common types of immigration applications with a view to simplifying them whenever possible.

Recommendation 8

The Committee recommends that the Government of Canada revise all websites of Canadian embassies and missions abroad so as to ensure that they include consistent, clear and prominent information about immigration consultants. These messages should:

- **be available in the local language(s);**
- **inform prospective immigrants that they are not required to use an immigration consultant to help them in their immigration matter, and provide them with phone numbers that function from within the country, as well as other contact information enabling prospective immigrants to direct questions to appropriate government authorities;**
- **state that if a person chooses to use an immigration consultant, only an “authorized representative” may be used;**
- **provide a list of authorized representatives practising in the country; and**
- **state that no representative can guarantee their client success in an immigration matter.**

Recommendation 9

The Committee recommends that the Government of Canada make the “Use of a Representative” disclosure form (IMM 5476) available in the local language at embassies and missions abroad. Depending on current demand, the Committee recommends that the Government of Canada make other types of immigration forms and instructions, such as those related to sponsoring a family member, accessible in languages other than French and English.

LIST OF RECOMMENDATIONS

Recommendation 1

The Committee recommends that the Government of Canada stipulate in its laws and regulations that, in order to represent or advise a person on any matter before the Minister of Citizenship and Immigration, an immigration officer or the Immigration and Refugee Board, an immigration consultant from Quebec shall be officially recognized under Quebec laws rather than being required to be a member of the Canadian Society of Immigration Consultants. This recommendation does not in any way affect members of the *Barreau du Québec* or members of the *Chambre des notaires du Québec*, who may continue to represent their clients as they have done thus far.

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APPENDIX A LIST OF WITNESSES

| Organizations and Individuals | Date | Meeting |
|--|------------|---------|
| <p>Canadian Bar Association Alex Stojicevic, Chair National Citizenship and Immigration Law Section</p> | 2008/03/31 | 18 |
| <p>Canadian Society of Immigration Practitioners Elie Hani, Vice-Chair Nancy Salloum, Chairperson</p> | | |
| <p>Law Society of British Columbia Carmel Wiseman, Lawyer Policy and Legal Services Department</p> | | |
| <p>As individuals Lynn Gaudet, Immigration Consultant Tanveer Sharief, Immigration Consultant Commissioner for Oath, Immigration Plus Peter Veress, Founder and President Vermax Group Inc.</p> | 2008/04/01 | 19 |
| <p>Culture Connect Int'l Ltd Olukayode (Kay) Adebogun, Senior Immigration Consultant</p> | 2008/04/02 | 21 |
| <p>As an individual Kenneth Zaifman, Lawyer Zaifman Immigration Lawyers</p> | 2008/04/03 | 22 |
| <p>As an individual Katarina Onuschak, Member of the Canadian Society of Immigration Consultants Co-Chair, Education Committee, Canadian Association of Professional Immigration Consultants</p> | 2008/04/09 | 27 |
| <p>Canadian Association of Professional Immigration Consultants Alli Amlani, President Ontario Chapter Philip Mooney, National President</p> | | |
| <p>Canadian Society of Immigration Consultants Rivka Augenfeld, Public Interest Director Imran Qayyum, Vice-Chair John Ryan, Chair</p> | | |

| | | |
|--|------------|----|
| Canadian Society of Immigration Practitioners | 2008/04/09 | 27 |
| William Rallis, Director Communication (Toronto) | | |
| Sergiu Vacaru, Professor Brock University | | |
| Downtown Legal Services | | |
| Joel Hechter | | |
| International Association of Immigration Practitioners | | |
| Ramesh Dheer, National President | | |
| Law Society of Upper Canada | | |
| Julia Bass | | |
| Katherine Corrick, Director Policy and Legal Affairs | | |
| Malcolm Heins, Chief Executive Officer | | |
| Sheena Weir Government Relations | | |
| Registered Immigration Consultants Association of Canada | | |
| Sean Hu, Director | | |
| South Asian Legal Clinic of Ontario (SALCO) | | |
| Anita Balakrishna, Staff Lawyer | | |
| As an individual | 2008/04/14 | 31 |
| Prashant Ajmera | | |
| Canadian Society of Immigration Practitioners | | |
| Mireille Gauthier, Chief Executive Officer Montreal | | |
| As an individual | 2008/04/15 | 32 |
| Annette Landman, Canadian Certified Immigration Consultant President, Eastern Canada Immigration and Job Consultants Inc. | | |
| Bruce Perreault and Associates | 2008/04/16 | 35 |
| Bruce Perreault, Member of the Canadian Bar Association and of the Canadian Society of Immigration Consultants (CSIC) Founding Director, Canadian Association of Professional Immigrant Consultants (CAPIC) | | |
| Canadian Migration Institute | | |
| Ross Eastley, Managing Director and Chief Executive Officer | | |
| Dawn Moore, Director | | |

Department of Citizenship and Immigration

2008/04/28

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Les Linklater, Director General
Immigration Branch

Brenna MacNeil, Director
Social Policy and Programs, Immigration Branch

Immigration and Refugee Board of Canada

Geoff Zerr, Director
Criminal Investigations Division, Enforcement Branch

François Guilbault, Senior General Counsel

Canada Border Services Agency

Steve Sloan, Director
Criminal Investigations Division, Enforcement Branch

Royal Canadian Mounted Police

Mike Cabana, Chief Superintendent
Director General, Border Integrity
Federal and International Operations

Canada Revenue Agency

Denis Meunier, Director General
Enforcement and Disclosures Directorate
Compliance Programs Branch

APPENDIX B LIST OF BRIEFS

Organizations and individuals

Prashant Ajmera

Barreau du Québec

Bruce Perreault and Associates

Canadian Bar Association

Canadian Society of Immigration Practitioners

Culture Connect Int'l Ltd

Christopher Daw

Theuna de Waal

Lynn Gaudet

Arun K. Mittal

Katarina Onuschak

Tanveer Sharief

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* of the Standing Committee on Citizenship and Immigration from 2nd Session of the 39th Parliament ([Meetings Nos. 18, 19, 21, 22, 27, 31, 32, 35, 37, 48 and 49](#)) is tabled.

Respectfully submitted,

Norman Doyle, MP
Chair

Supplementary Opinion of the Conservative Members of the Committee

With respect to immigration consultants, the fact that there should be a self-regulatory body is not in dispute. The mandate of such a body should be to protect consumers of immigration consulting services and to ensure competent and professional conduct. The issue is how best to accomplish that goal given that a federally incorporated not-for-profit body presently exists. This current body is of fairly recent origin and its operations are at various stages of maturation. It would appear that fundamental to its success is its ability to ensure that all those that provide services are registered and that there are meaningful sanctions if they are not. Equally important to the success of this body is the concern that once service providers are registered, they maintain an acceptable professional and ethical standard and are subject to meaningful discipline in the event of breaches.

Given that the regulated activity is with respect to a federal immigration proceeding or application, the regulatory body should be a federal one, with jurisdiction over all provinces and territories. It would be up to the provinces and territories to regulate as to any matters relating to provincial and territorial immigration matters.

There are a range of options available that should be considered by the government but what appears clear is that the status quo is not an option.

Range of Options:

1. Changing the existing field manual and policy to reflect points 1 to 4 relating to pre-submission work, authorized representatives, disclosure, and concealed representatives referred to in the majority report or a close variation to it.
2. Ensuring that existing rules or more robust rules are adequately enforced.
3. The inclusion of specific offence provisions in the IRPA. It is of note that the only recommendation of the Report of the Advisory Committee on Regulating Immigration Consultants that was not followed in the creation of the existing body was Recommendation 31, "The Committee recommends that penalty provisions be included in the IRPA to address unauthorized and improper practice." To this effect, an option would be for the government to introduce legislation to add an offence provision to the IRPA addressing unauthorized and improper practice. The provision should specify the punishment for anyone who commits the offence and it should be substantial.

4. That the existing or new body consider or be encouraged to establish a complaints procedure in respect of unauthorized or improper representation where immigrants with precarious status in Canada could lodge complaints.
5. That the current organization consider arranging an independent governance expert to assess its governance structure to ensure it meets objective and acceptable standards and that the finding should be made public. At the very least it should ensure that a specified and conventional number of members have a means to call an extraordinary or special meeting to deal with issues of concern to them.
6. That the government of Canada consider introducing stand-alone legislation to re-establish the Canadian Society of Immigration Consultants along the lines recommended in the majority report.

Other considerations

All of the issues that stand-alone legislation would have to address could include those that also need to be addressed under the existing body namely: conduct, professional standards, competence, prohibition, offences, complaints resolution, compensation funds and bylaws. Much of what needs to be addressed by the existing body and which is being addressed with various levels of success would need to be addressed by the new body. In each case it would be important that the membership themselves establish the governing bylaws. In either case, it is likely that not all of the members will be pleased with the membership fees, the professional standard requirements, the ethical standards established or the discipline meted out, but that is the nature of self-governing bodies. What is important is that the membership, through their elected members, have a say in the development of the policies affecting each area.

If options are chosen other than stand-alone legislation, it is suggested that a period of time be given to the existing body to come to maturation on the issues of concern or face re-establishment by stand-alone legislation.

In order for the regulatory body to succeed it is important that it be given the tools needed to succeed. Consideration therefore should be given to include the penalty provisions previously referred to and to ensure that the rules, regulations and legislation apply to presubmission work.

Finally, as referred to in the majority report, consideration should be given to streamlining and simplifying the application forms and processes relating to them.

There is a great need to make it easier for prospective immigrants to access and navigate the application process by simplifying and streamlining the forms and process. The present process makes it difficult for people to apply to come to Canada on their own and without the assistance of immigration consultants. Ideally, our immigration application processes should be easily accessible to those wishing to work and live in Canada. Such measures toward this goal would help prospective immigrants rely more on themselves and less on potentially unscrupulous consultants, thereby helping prospective immigrants to protect themselves.

Respectfully submitted,

Ed Komarnicki, M.P.
Souris-Moose Mountain
Parliamentary Secretary to the
Minister of Citizenship and Immigration

