



THE CANADIAN
BAR ASSOCIATION

L'ASSOCIATION DU
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Immigration Consultants

**CANADIAN BAR ASSOCIATION
IMMIGRATION LAW SECTION**

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PREFACE

The Canadian Bar Association is a national association representing 36,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

This submission was prepared by the CBA Immigration Law Section, with assistance from the Legislation and Law Reform Directorate at the CBA office. The submission has been reviewed by the Legislation and Law Reform Committee and approved as a public statement of the CBA Immigration Law Section.

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Immigration Consultants

I. INTRODUCTION

The Immigration Law Section of the Canadian Bar Association (CBA Section) appreciates the opportunity to participate in the Citizenship and Immigration Committee's study of the legal, regulatory and disciplinary frameworks governing and overseeing immigration consultants in Canada.

The CBA is a national association of over 36,000 members, including lawyers, notaries, academics and law students, with a mandate to seek improvements in the law and the administration of justice. The CBA Section has approximately 1,000 members practicing all areas of immigration law. Our members deliver professional advice and representation in the Canadian immigration system to thousands of clients in Canada and abroad.

The issue of non-lawyer immigration practitioners is a longstanding problem in Canada, with a significant impact on the integrity of Canada's immigration system. The incompetent or fraudulent representation of applicants for permanent residence by unscrupulous consultants has been the subject of scrutiny by the federal government since as early as 1981.¹

Immigration applicants are amongst the most vulnerable consumers of Canadian legal services. Their first language may not be English or French, and they likely lack familiarity with the complexities of Canada's immigration and legal systems. As a result, they may not be in a position to assess the legitimacy of the advice they receive or the accuracy of information provided in their application by a consultant. Applicants may also have difficulty differentiating between categories of immigration practitioners, and believe they are hiring a lawyer when they are not.

For over 20 years, the CBA Section has recommended that representation or advice for consideration in section 91 of the *Immigration and Refugee Protection Act* (IRPA) and its predecessors should be limited to lawyers (who are effectively regulated) or consultants (only

¹ See Canadian Bar Association Immigration Law Section, *Submission on Immigration Consultants* (June 1995).

if they are effectively regulated).² Despite the introduction of two consecutive self-regulating bodies, there is mounting evidence that the regulation of immigration consultants remains inadequate.

Because the attempts to regulate immigration consultants have proved ineffective – with serious consequences for Canada’s immigration system and those who wish to apply – we believe that IRPA section 91 must now be amended to permit representation for compensation only by lawyers who are members in good standing of a law society in Canada or notaries who are members in good standing of the Chambre des notaires du Québec.

II. ONGOING PROBLEMS WITH REGULATION OF IMMIGRATION CONSULTANTS

A brief overview of the CBA Section’s submissions since 1995 illustrates how concerns about the ongoing problems in regulating immigration consultants have changed very little over time.

1995 Submission

The CBA Section’s 1995 submission on Immigration Consultants, noted that “recurring problems with fraudulent practices by immigration consultants are evident in bogus refugee claims, wrongful issuance of work visas, loss of investment by business immigrants and the increasing number of illegal immigrants in Canada.”³ We recommended that, due to the complexity of immigration matters, it could be argued that only formally trained lawyers should provide immigration law advice. As an alternative, we recommended that the onus be placed on immigration consultants to submit proposals to provincial governments to establish a self-governing licensing body with certain characteristics, including admission requirements, standards of competency, an insurance or compensation fund, a code of ethics, a complaint mechanism, and defined offences and penalties.

² See Canadian Bar Association Immigration Law Section, *Bill C-35 – Cracking Down on Crooked Consultants Act* (October 2010), available [online](http://ow.ly/INie30arHEX) (http://ow.ly/INie30arHEX), see also Canadian Bar Association Immigration Law Section, *Selection of a Regulator for Immigration Consultants* (June 2, 2010), available [online](http://ow.ly/9pHV30arHHs) (http://ow.ly/9pHV30arHHs), see also Canadian Bar Association Immigration Law Section, *Depiction of Immigration Lawyers on Federal Government Websites* (June 2010), available [online](http://ow.ly/D3C830arHJH) (http://ow.ly/D3C830arHJH) See also *Immigration and Refugee Protection Act*, SC 2001, c 27, available [online](http://canlii.ca/t/52hdn) (http://canlii.ca/t/52hdn)

³ *Supra* note 1.

1999 Submission

Our 1999 recommendations called for an amendment to the *Immigration Act* limiting the practice of immigration law for remuneration to members in good standing of a provincial or territorial law society, or consultants licensed by a licensing body with the characteristics outlined in our 1995 submission.⁴

Alternatively, if the government declined to limit the practice of immigration law for remuneration to those two categories, we recommended that it be limited to the practice to individuals ordinarily resident in Canada. This was intended to preclude “ghost consultants” – those who act as immigration consultants without disclosing their representation, and are primarily located abroad.

We also emphasized the importance of a self-regulating body for immigration consultants, noting that the substantial costs should be borne by those seeking to benefit financially from representing clients rather than scarce tax dollars, and not by Citizenship and Immigration Canada, whose resources were best used for administering the *Immigration Act*.

2010 Submissions

The CBA Section made three submissions on immigration consultants in 2010 – by which time, the Canadian Society of Immigration Consultants (CSIC) had been operating for six years, and our views on regulating consultants had changed.⁵

CSIC had been ineffective in regulating consultants due to internal governance problems and mismanagement, as well as lack of enforcement of its ethical and professional standards. It had adopted a dual role, acting as both a regulatory body and a representative body, advancing the interests of its members. There was a perception that CSIC was not disciplining its members to avoid embarrassment, and that disciplinary efforts focused on silencing members who criticized the directors and management. As a result, ghost and other unscrupulous consultants had continued to proliferate.

Reflecting these concerns, we commented that, “[i]t should not be presumed that the best way forward is to continue the self-regulation of immigration consultants.” We recommended that “the representation of immigrants and the practice of immigration law [should] be limited to

⁴ *Supra* note 1. *See also* Canadian Bar Association, Resolution 96-03-M: Immigration Consultants (February 1996).

⁵ *Supra* note 2 (Bill C-35, Selection of a Regulator & Depiction of Immigration Lawyers).

members of provincial and territorial law societies and the Chambre des Notaires du Québec.” However, if it was felt that if the Minister was empowered to designate a body to regulate consultants, the *Immigration Act* should also provide the power to revoke this designation.

Immigration Consultants of Canada Regulatory Council

CSIC was replaced by the Immigration Consultants of Canada Regulatory Council (ICCRC), designated by the Government of Canada as the national regulatory body for immigration consultants in July 2011. According to ICCRC’s 2016 Annual Report, there were approximately 3,633 active practicing members of the ICCRC, the majority in Ontario and British Columbia.⁶ Reflecting the relative immaturity of the field of practice, 63% of members had five or less years of experience.

ICCRC now faces similar criticism for mismanagement and governance issues, including a divided board, lack of transparency and high directors’ fees.⁷ Concerns about the complaints and disciplinary process, as well as ineffective enforcement have also been raised. In December 2016, ICCRC reported that an astonishing 1710 complaints had been made against consultants in the five years since the council was established – and misconduct by consultants is likely underreported due to the vulnerability of the population they serve.⁸

Ghost and other unscrupulous consultants

There is a personal, financial and societal cost when unscrupulous or incompetent individuals provide representation for a fee, and public confidence in Canada’s immigration system is reduced. Applicants lose the opportunity to obtain competent advice and risk their ability to immigrate to Canada, while unmeritorious cases waste valuable time and resources for tribunals and courts, as well as for taxpayers.

The sad reality is that ghost consultants operating outside of ICCRC’s regulation often exploit immigration applicants through high fees, threats or other criminal means. Many of these

⁶ See Immigration Consultants of Canada Regulatory Council, *Annual Report 2016* (June, 2016), available [online](http://ow.ly/VXva30aletQ) (http://ow.ly/VXva30aletQ).

⁷ See Laura Lynch, CBC News, *Council Overseeing Canada’s Immigration Consultants Faces Criticism Over Transparency, Directors’ Fees* (November 11, 2016), available [online](http://ow.ly/lfx30alevV) (http://ow.ly/lfx30alevV). See also House of Commons Standing Committee on Citizenship and Immigration, *Evidence, Meeting Number 053, 1st Session, 42nd Parliament* (March 8, 2017), available [online](http://ow.ly/ZYkn30alexM) (http://ow.ly/ZYkn30alexM).

⁸ *Ibid* (CIMM Meeting No. 53).

consultants make empty promises, or represent applicants incompetently by providing services without sufficient knowledge of Canada's immigration laws or procedures.⁹

CBA Section members see regular examples of incompetent or fraudulent representation by consultants. These include improperly advising against disclosing family members for fear that applications would be delayed, sometimes with dire consequences – such as when a spouse is not disclosed and then cannot be subsequently sponsored. We have seen cases where consultants take fees to file work permit extensions from within Canada when applicants are well beyond the 90 day restoration period. In the most serious examples, we have seen cases where consultants have counselled clients to fabricate narratives and file false refugee claims.

ICCRC lacks the authority to investigate non-members, including ghost consultants, but receives a large number of complaints about them. As of March 31, 2016, ICCRC reported that it had received 1,115 complaints against non-members since 2011.¹⁰ Of these, ICCRC forwarded 669 complaints to the Canada Border Services Agency (CBSA) or the Royal Canadian Mounted Police (RCMP), and 19 to a law society for further investigation and enforcement. CBSA generally investigates individuals who organize “mass misrepresentations or fraud” to have the greatest deterrent effect. One-offs and smaller cases are unlikely to be investigated, leaving a significant enforcement gap.¹¹

The investigation and prosecution of ghost consultants is further complicated by a number of factors. They can be difficult to track because they often operate through oral contracts, accept payment in cash and don't give their names. Many ghost consultants are located outside of Canada, and ICCRC has been criticized for accrediting online Immigration Practitioner Programs offered by a number of Canadian colleges, that give easy access from anywhere in the world.¹² Victims may be hesitant to complain for fear that they will be penalized for a consultant's misconduct. There is often little incentive to do so when faced with the possibility of deportation, barriers to family reunification or threats from an exploitive consultant.¹³

⁹ *Ibid* (CIMM Meeting No. 53).

¹⁰ See Immigration Consultants of Canada Regulatory Council, *Registrar Update Complaints and Professional Standards as of 31 March 2016*, (March 2016), available [online](http://ow.ly/tuO630aleC6) (http://ow.ly/tuO630aleC6).

¹¹ See House of Commons Standing Committee on Citizenship and Immigration, *Evidence, Meeting Number 052, 1st Session, 42nd Parliament* (March 6, 2017), available [online](http://ow.ly/OCdB30aleED) (http://ow.ly/OCdB30aleED).

¹² *Ibid*. See also Immigration Consultants of Canada Regulatory Council, *Accredited Immigration Practitioner Programs (IPPs)* (December, 2016), available [online](http://ow.ly/H0sv30aleGm) (http://ow.ly/H0sv30aleGm).

¹³ *Supra* note 11 (CIMM Meeting No. 52).

Protecting the public

The federal government, and the regulating bodies it establishes through legislation, have a duty to protect the public they serve. The measures to date to regulate representation or advice for consideration through IRPA are not working. The prevailing trends of misconduct and numbers of unscrupulous consultants have not changed substantially over time – and there continue to be serious questions about whether immigration consultants are capable of self-regulation, even with significantly revamped oversight.

The constituency offices of Members of Parliament are often overwhelmed with immigration questions and concerns about consultants, and are unable to provide legal advice. In 2015, Green Party Leader Elizabeth May, expressed serious doubts about immigration consultants, an industry she says appears to require more oversight: “I’m deeply concerned about the quality of advice that potential immigrants and refugees get from immigration consultants,” May said. “I don’t want to smear an entire class of professionals but in my work as an MP... quite often I find that the advice given by immigration consultants has made their [individuals] situations worse.”¹⁴

Members of Parliament can refer individuals needing immigration law advice to immigration lawyers. Many Canadian law societies maintain online legal referral services for the public, and the Law Society of Upper Canada (LSUC) maintains a list of Certified Specialists in Immigration and Refugee Law in Ontario.¹⁵

IRCC also has a role in protecting the public from unscrupulous consultants. IRCC’s website should inform applicants about the risks of using unregistered immigration practitioners, and suggest that applicants contact an immigration lawyer for advice on immigration laws if they choose, as well as information on how to contact one. This information should be made available to an applicant in their first language on request.

Where IRCC suspects a ghost consultant has been used by an applicant, it could attempt to contact the applicant directly to alert them to the possibility that their application may have been compromised, and suggest hiring an immigration lawyer. Existing local immigration processing offices in key cities could be made accessible to immigration lawyers. This would

¹⁴ See Kelsey Johnson, New Canadian Media, *We Will Not Tolerate People Going Underground* (May 5, 2015), available [online](http://ow.ly/nXRu30aleJ0) (http://ow.ly/nXRu30aleJ0), original article by iPolitics.ca (March 31, 2015), available [online](http://ow.ly/NcQo30alePx) with subscription (http://ow.ly/NcQo30alePx).

¹⁵ See Law Society of Upper Canada, *Services for the Public*, available [online](http://ow.ly/r9rB30aleTt) (http://ow.ly/r9rB30aleTt).

allow urgent cases requiring redress due to the actions of unscrupulous consultants to be brought to IRCC's attention quickly, and in person. IRCC could also develop a system to verify that authorized representatives identified in applications are members of law societies in good standing.

III. LIMITING THE PRACTICE OF IMMIGRATION LAW TO LAWYERS AND QUEBEC NOTARIES

The ongoing problems with immigration practitioners who are not lawyers result from the complex nature of the Canadian immigration system and laws, as well as the inherent vulnerability of immigration applicants, and require competent, ethical professionals with oversight from experienced regulators to resolve.

Immigration law is an area where incompetent representation can have dire consequences for the lives of applicants and their families. Given the persistent failure to adequately regulate immigration consultants, the CBA Section recommends restricting the representation or advice for consideration in section 91 of IRPA to lawyers who are members in good standing of a Canadian law society or notaries who are members in good standing of the *Chambre des notaires du Québec*.

There are good reasons to support limiting the practice of immigration law to lawyers and Quebec notaries: established self-regulation; rigorous professional, educational and training standards; and effective discipline and enforcement.

Effective self-regulation

Lawyers are self-governing professionals who are held to high ethical standards. Canadian law societies (including the *Chambre des notaires du Québec*) are well-established bodies with a long history of regulating and disciplining their members in the public interest.¹⁶ For example, LSUC has been governing lawyers in Ontario since 1797.¹⁷

All Canadian law societies have Rules of Professional Conduct to protect the public that are detailed and rigorously enforced. Law societies have a legislated responsibility to investigate

¹⁶ *Supra* note 2 (Bill C-35). *See also, Andrews v Law Society of British Columbia*, 1 SCR 143 at pp. 187-88, available [online](http://canlii.ca/t/1ft8q) (<http://canlii.ca/t/1ft8q>).

¹⁷ *See* Law Society of Upper Canada, *About the Law Society*, available [online](http://ow.ly/chpX30arHRr) (<http://ow.ly/chpX30arHRr>).

each complaint regardless of the merit, so clients have a true recourse. In addition, they can prosecute illegal practitioners who provide legal services to the public without a license.

In striking contrast to the high number of complaints received by the ICCRC against consultants, few disciplinary cases against immigration lawyers are reported in Canada. Law societies do not track complaints by practice area, however a search of the two main legal research services, CanLII and LexisNexis Quicklaw, reveals since 2011 (when the ICCRC was established) only 23 reported disciplinary cases against immigration lawyers across Canada – nine each in Ontario and Quebec, two each in Saskatchewan and Alberta, and one in New Brunswick.

In Ontario, immigration lawyers received a 50% base premium discount from LawPro (their professional liability insurer) in 2015 because of the low number of claims against them.¹⁸

Legal education and training

Immigration law is a complicated, technical area of law that changes frequently. It intersects with other areas of law such as human rights, international, criminal, family, employment, corporate and tax law. Practicing competently in this area requires keeping up to date with legislation, regulations, immigration policy, manuals and operational bulletins, as well as processing trends at visa offices, inland processing centers and ports of entry.

Immigration lawyers are held to high education and training standards, and must graduate from law school – a three year, university degree program with high admission standards. In law school, they learn skills like statutory interpretation, legal research and writing, which are necessary to understand and apply the intricacies of immigration law effectively.

The immigration system can be unforgiving, and administrative errors must be navigated with legal expertise and care.¹⁹ What can seem like a simple situation in immigration law can be quite nuanced. Lawyers apply their education, training and experience to ask the right questions about immigration law issues and provide insight into a client's case, helping them to navigate the system efficiently and ensure their applications are complete. This can save applicants years of time and prevent disappointment.

¹⁸ See [Lawyers Professional Indemnity Company, 2015 Annual Report](http://ow.ly/vQ8k30alf1Y), (http://ow.ly/vQ8k30alf1Y) page 11.

¹⁹ See *Law Society of British Columbia v Mangat*, 2001 SCC 67 at paragraph 53, available [online](http://canlii.ca/t/51zn) (http://canlii.ca/t/51zn).

In a previous submission we commented that “Canadian immigration lawyers perform important work in bridging the gap between general information and individual circumstances. They help potential applicants interpret how laws and administrative rules would apply to them, supplying advice and technical expertise in the application process.”²⁰

Practicing immigration law also involves appearing before tribunals and courts to represent clients. Lawyers learn the advocacy skills needed to handle sophisticated legal proceedings, like examining witnesses and presenting legal arguments that highlight appropriate facts and are supported by relevant case law – distinguishing some cases while relying on others as precedent. It has been shown that when lawyers represent refugee claimants, for example, their success rate is higher.²¹

The importance of this training was highlighted recently by Paul Aterman, Deputy Chair of the Immigration Appeal Division of the Immigration and Refugee Board of Canada (IRB): “there's a big distinction between the litigation work we see and the kind of work that involves assisting a client to fill in applications. Lawyers go through three years of law school, through an articling period. They have to be called to the bar. It's a more rigorous regime than the one that's expected of immigration consultants...” Other countries, such as the U.S., protect the public by prohibiting consultants and paralegals from making written submissions or appearing before administrative tribunals and courts to represent clients in immigration matters.²²

Recognizing the complexities of immigration law, most lawyers practicing in other areas of law do not advise clients on immigration matters, and refer these cases to reputable immigration lawyers. It is difficult to imagine how a non-lawyer could practice effectively in this area. It is for this reason that the CBA Section recommends that the restriction on representation or advice for consideration in IRPA should also apply to paralegals.

Paralegals have been permitted to provide these services through subsection 91(2)(b) of IRPA since June, 2011.²³ Our recommendation would impact paralegals licensed by the LSUC in Ontario, who are currently able to provide certain legal services in the field of immigration law

²⁰ *Supra* note 2 (Depiction of Immigration Lawyers) at page 1.

²¹ *See* Sean Rehaag, *The Role of Counsel in Canada's Refugee Determinations System: An Empirical Assessment* (2011) OHLJ 49:1 71-116, available [online](http://ow.ly/Y2ty30alfru) (http://ow.ly/Y2ty30alfru).

²² *Supra* note 11 (CIMA Meeting No. 52).

²³ *See* Law Society of Upper Canada, *Paralegal Licensing Frequently Asked Questions*, available [online](http://ow.ly/v1og30alfal) (http://ow.ly/v1og30alfal).

within a limited scope of practice related to IRB hearings.²⁴ Paralegals who are members LSUC can also become a Regulated Canadian Immigration Consultant (RCIC) registered with ICCRC through a streamlined admissions process. These paralegals can provide other immigration-related legal services, which would otherwise be outside of their scope of practice, and are not connected to an IRB hearing.²⁵ While the LSUC requires paralegals to meet basic core competencies that include elements of administrative law, civil litigation, and litigation hearings, there are currently no substantive requirements related specifically to either immigration law or practice before the IRB.²⁶

Access to Justice

In 2001, the Supreme Court of Canada decided in *Law Society of British Columbia v Mangat* to maintain an exception in the then *Immigration Act*, which allowed applicants to choose non-legal representatives as a valid exercise of federal power.²⁷

Justice Gonthier reasoned that sanctioning the use of non-legal representatives was an indication of Parliament's intention to increase the efficiency of administrative bodies, facilitate access to administrative procedures, and decrease formality. He also remarked that allowing non-legal representatives to serve as counsel on immigration matters would allow applicants to find cost-effective alternatives to lawyers who were fluent in their language and familiar with their cultures.

Although these are valid objectives, efficiency and informality are meaningless if an applicant is denied justice due to incompetent or unscrupulous representation – and the rationale behind the usefulness of consultants in promoting access to justice is no longer compelling. Lawyers are well equipped to provide applicants with accessible immigration law services.

Canada's legal profession is rich in cultural and linguistic diversity, and there are many lawyers who are available to provide immigration law services across the country. In Ontario, for example, 1,079 lawyers spent at least some time practicing immigration law in Ontario in

²⁴ See Law Society of Upper Canada, *By-Law 4*, available [online](http://ow.ly/BIs930alfcS) (http://ow.ly/BIs930alfcS).

²⁵ See Law Society of Upper Canada, *Special RCIC admissions stream for licensed paralegals*, available [online](http://ow.ly/7pk030alfg8) (http://ow.ly/7pk030alfg8). See also, Immigration Consultants of Canada Regulatory Counsel, *Registration Guide for Paralegals*, available [online](http://ow.ly/cezb30alfiD) (http://ow.ly/cezb30alfiD).

²⁶ See Law Society of Upper Canada, *Paralegal Competencies*, available [online](http://ow.ly/t9ZR30arHV4) (http://ow.ly/t9ZR30arHV4).

²⁷ See *Law Society of British Columbia v Mangat*, 2001 SCC 67 at paragraphs 56-58, available [online](http://canlii.ca/t/51zn) (http://canlii.ca/t/51zn).

2015.²⁸ In British Columbia, 1,537 lawyers spent at least some of their time practicing immigration law in 2015, and in Nova Scotia, 56 lawyers reported practicing some immigration law.²⁹ Lawyers can also provide immigration clients with cost-effective services, often at rates lower than those charged by consultants. For example, it has been reported that consultants have asked graduating international students to pay exorbitant fees of \$15,000 to \$20,000 to help find them a job that will help them gain permanent residency.³⁰

To promote access to justice, law societies offer public services such as referral services, and lawyers provide *pro bono* legal services in times of need.³¹ For example, the CBA Section sponsored *pro bono* projects after natural disasters and political upheaval (Sri Lanka 2005, Haiti 2010, Philippines 2013 and Syrian refugees 2015). Recently, immigration lawyers volunteered at various airports across Canada following the first US Executive Order barring the entry of foreign nationals from Iraq, Syria, Iran, Libya, Somalia, Sudan and Yemen, and ceasing refugee admissions.

RECOMMENDATION

The CBA Section recommends that subsection 91(2)(b) and (c) of the *Immigration and Refuge Protection Act* be repealed, to restrict representation or advice for consideration in IRPA to lawyers who are members in good standing of a law society of a province, or notaries who are members in good standing of the *Chambre des notaires du Québec*.

IV. CONCLUSION

The CBA Section has recommended for over 20 years that the practice of immigration law should be limited to lawyers (who are effectively regulated) or consultants (only if they are effectively regulated). Because the so-called regulation of immigration consultants has proved ineffective we recommend that IRPA section 91 now be amended to permit representation for

²⁸ As reported to by Allison J. Cheron, Manager & Senior Counsel, Law Society of Upper Canada Client Service Centre on March 9, 2017.

²⁹ As reported to by Vinnie Yuen, Communications Officer, Law Society of British Columbia, and Pierre Benoit, Officer, Database Administration, Nova Scotia Barristers' Society on March 9, 2017.

³⁰ *Supra* note 7 (CIMM Meeting No. 53).

³¹ See Canadian Bar Association, *Pro Bono Services Available in Canada*, available [online](http://ow.ly/xdGJ30alfu2) (<http://ow.ly/xdGJ30alfu2>).

compensation only by lawyers who are members in good standing of a law society in Canada or notaries who are members in good standing of the Chambre des notaires du Québec.

This recommendation would require legislative and regulatory amendments, as well as consultations and transitional measures. We would be pleased to offer further recommendations on how this could be accomplished.