

**BRIEF TO THE STANDING COMMITTEE ON CITIZENSHIP AND  
IMMIGRATION**

**42<sup>ND</sup> PARLIAMENT, 1<sup>ST</sup> SESSION**

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Submitted via e-mail to the Clerk of the Committee

## **PROTECTING CONSUMERS THROUGH REGULATING IMMIGRATION PRACTITIONERS**

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My name is Phil Mooney. I am a Regulated Canadian Immigration Consultant (RCIC), having practiced immigration since 1999. I have served as President of the Canadian Association of Professional Immigration Consultants (CAPIC) for more than three years, during the tumultuous times leading up to the change in the Regulator in 2011. Subsequent to this I served as the first President and CEO of the Immigration Consultants of Canada Regulatory Council, (ICCRC) bringing the organization from a bid concept to a fully functioning Regulator and successfully meeting all the requirements of the Contribution Agreement negotiated with the Department. I also served a two-year term as a Director of ICCRC. Previous to my career in immigration, I spent more than 30 years in the corporate world, accumulating significant business experience, which qualified me to set up and manage ICCRC. I have also mentored many new RCICs, taught Immigration at Seneca College and appeared before this Committee several times in the past, as well as the Senate Committee on Immigration.

I am pleased to see that the focus of this Committee's work is clearly directed towards protecting consumers. I realize that most of your hearings deal with other aspects of Canada's immigration system and that this review of immigration consultants is a complex issue, which takes time to understand.

I believe that my experience as a very active participant in all of the issues that you are discussing can be helpful to you and it is in that spirit that I would like to offer the following:

### **Are Regulated Immigration Consultants all Bad?**

Throughout the course of these hearings we have heard terrible stories of abuse by "consultants". Some of these stories were about RCICs, some were about unregulated consultants (ghosts). In several cases, the story-tellers themselves were not sure if the abusers were RCICs or Ghosts. But the stories gripped our hearts nonetheless.

I would ask you, then, to put yourself in the shoes of many, many RCICs who hear these kinds of stories on a continual basis while doing their daily jobs. I have heard dozens and dozens of such cases over the years, along with many cases of bad advice provided by lawyers, other RCICs, immigration settlement workers, HR managers, recruiters and especially ghost consultants.

I can assure you that just as you listen to these stories and want to stop the abuse, the clear majority of RCICs feel the same way. I am asking you to accept that these RCICs have a very strong motivation to end the abuse that comes from personal encounters with victims, many of whom we are able to help, but far too many are ones where we have to deliver very bad news, because we understand the issues and consequences as professionals.

So no, all regulated consultants are not bad. The almost 4,000 RCICs handle tens of thousands of immigration applications every month. The vast majority of these are handled competently and ethically. Of course we all hear about the “bad apples”, and the profession is still in the process of getting rid of some who have practiced for years, but it is also true of lawyers and every other profession. The other, very concerning point, is that everything heard so far is anecdotal. ICCRC has the details on every type of complaint filed against a member, which they provide to IRCC on an annual basis and even publish in their Annual Reports. A summary could certainly be provided to the Committee. Speaking anecdotally, I know hundreds of RCICs who have never had a complaint filed against them by a client and who have a success rate above 95% on all their files.

### **A Rose by Any Other Name.....**

Regulated Consultants have a burden that Lawyers do not have. The title lawyer may evoke certain negative issues, but most Canadians would understand what lawyers do and when they hear the word “lawyer”, they do not automatically think “bad” (except perhaps, divorce lawyers!) But when there is a negative story about immigration and the word “consultant” is used, the connotation is almost always negative.

When we were setting up ICCRC, we asked to be able to use a different title, such as Practitioner or Counselor. But we were told by the Department that the Minister insisted that we continue using the title Consultant. It was non-negotiable. My own assumption was that the Minister and the Department did not want to have gone through the whole exercise to change the Regulator, only to have the opposition say that all they did to fix the problem was change the name! The Act was even initially called the “Crooked Consultants Act”, which added insult to injury.

But perhaps now is the time to make the change, so that victims can better identify their abusers and more importantly, avoid them altogether. After all, hundreds of thousands of Accountants are now no longer CAs, CMAs or CGAs. They are all Certified Public Accountants – CPAs.

### **Immigration Consultants are not as competent as lawyers when it comes to immigration and citizenship.**

The facts are simple. RCICs must now undertake 500 hours of instruction on immigration related subjects and then take a Full Skills Exam, (or Entry To Practice

Exam) before being accepted into the profession. Lawyers are not required to take any immigration law courses, and there is no examination on immigration law. Yet every lawyer called to the Bar can practice immigration the next day. RCICs must take 16 hours a year of Continuing Professional Education in Immigration subjects only, while lawyers can take any courses in any area of law.

Both RCICs and lawyers are restrained by their Codes of Conduct from taking cases where they are not competent to provide quality representation. Neither group has a monopoly on ethics. So who would you trust with a TRV application? A lawyer who must self educate themselves on everything to do with TRVs after being allowed to practice, or an RCIC who has had the training on TRVs and support system in place, even before they are accredited?

Perhaps the Committee should recommend that no one, including lawyers, be allowed to practice immigration law unless they have taken a minimum of 500 hours instruction and passed a competency exam.

We also heard that regulated consultants might be OK to “fill in forms” but not appear before tribunals such as the IRB. Such an opinion grossly mistakes the nature of immigration work. Every immigration application is actually a window to the IRPA and IRPR. There are specific laws and regulations that relate to almost every question, including something as simple as an address, to detailed information on an applicant’s work history or activities. Any mistake in interpretation or even an inaccurate entry, can cause a refusal, which can be life-changing for whole families. So to imply that only representation before tribunals is “important immigration work” denigrates more than 90% of the type of representation that our system depends on. It is analogous to saying that doctors who diagnose illnesses or perform surgeries are not as important as doctors who perform autopsies! It also does an injustice to the many excellent RCICs who practice before the IRB with great distinction and who have earned accolades from the tribunals.

Statistics show that the average new RCIC is not a twenty-something who is starting his first job. Most come to the profession as their second or third career, many having worked for years in government in immigration or as accountants, lawyers or even judges in their home countries. Many come to the profession having been motivated by their own immigration experience, because they understand how important the work really is.

One of the statements in the Mangat decision by the SCC, was that the needs of prospective immigrants for assistance in dealing with IRCC, could not be met by lawyers alone.

### **Who is Prosecuting Ghost Consultants?**

By now you know that there is a real gap. CBSA can only focus on ghosts who prey on many victims. No one is going after the ghosts where there are only a few

complaints or a few victims, although ICCRC is facilitating the complaints going to CBSA. This is truly justice denied to innocent victims. The answer seems simple. ICCRC can be given Statutory Authority like the LSUC has. But that answer is too simple. An organization that is member funded with only 4,000 members cannot take on the full responsibility of paying for investigations that must meet the “beyond a reasonable doubt” standard, especially for serious offences that take years to bring charges and involve hundreds of victims. I suggest a three-step approach. Where the abuse involves fraud or human trafficking or any criminal activity such as assault, the RCMP or local police must take the cases. All other complaints against ghosts are collected by ICCRC, LSUC and CBSA. CBSA then selects the files that are serious enough to meet their standards and returns the rest to ICCRC for handling. After a pilot period, funds would be provided by IRCC to pay for this additional activity. ICCRC is uniquely situated to handle these types of complaints and can bring more tools to bear, such as the cease and desist orders and injunctions used by the Law Societies and can coordinate effective communication against ghosts within communities, using RCICs to help. It is, after all, in every RCIC’s best interests to eliminate ghosts wherever they are found, including off-shore.

### **Regulated Consultants Charge too much – do they?**

The general reaction from the RCIC community to this statement is one of disbelief! The most common complaint heard in the industry is about competitors or “visa factories” who charge only a few hundred dollars for services that most lawyers and consultants charge thousands. A typical fee for a spousal application from lawyers or regulated consultants is \$2,000 - \$4,000, based on a workload of 20 – 40 hours per case. Yet some prices in the marketplace are \$500 or even less, albeit for a very low level of support or service.

People also confuse the type of visa with the difficulty of applying for it. Temporary Resident Visas (TRVs) are the most common type of application, but also carry the highest refusal rate and can be the most difficult to obtain. So the time required can vary from a few minutes to many, many hours. Often times the RCICs job is to tell the applicant that they have no chance to succeed, thus saving the system the work of refusing them. In fact, RCICs are obligated under their Code of Professional Ethics, to protect the integrity of the immigration system by not filing applications that have no chance of success.

All too often RCICs are unfairly linked to the actions of fraudsters who are unlicensed consultants and who steal large sums of money from many people, or who cheat people of very limited means who are desperate to come to Canada. Our Code of Professional Ethics allows the Regulator to discipline members who charge excessive fees.

### **When is News really Fake News?**

One element present in the immigration consultant profession is the spirit of advocacy. As politicians, I know that you are very familiar with the many styles and results of advocacy. And you are undoubtedly aware of the practice of some advocates to use every tactic in pursuit of a goal including some that are less than honest. Throughout the short history of our profession, RCICs have been forced to put up with a long series of “Fake News” headlines and stories, where the advocates repeatedly scream about mythical crimes and abuses perpetrated by those in authority, in order to influence the general membership, who in truth pay little attention to their Regulator unless they are in trouble. A very Canadian trait! In some of the cases, it has taken determined action through the Courts by both the former and current Regulator to silence the bullies who have gone as far as preparing videos linking the behaviors of the Regulator to the last days of the Nazis and Adolph Hitler.

Just screaming something from the rooftops over and over does not make it true. This Committee was addressed by an RCIC who was describing the “horror” of an outside contractor being involved in the Complaints and Discipline process. Yet, given the circumstances when ICCRC started, this was not only a good decision, it was highly praised by IRCC and other stakeholders. Very experienced former RCMP officers who had immigration related experience were hired to investigate complaints – not decide on them - which is done by Members in true self-regulating fashion. The fact that these officers were paid as contract workers was cost effective, but much more important, they were able to hit the ground running while the rest of the organization was being set up.

In similar manner, Directors of ICCRC have been accused of profiting from their positions by paying themselves high fees, and yet all fees are fully disclosed, and at the most recent Annual General Meeting after a free and fair discussion, the membership defeated a Motion to reduce the fees, by a significant margin. Once again, more fake news dispensed from individuals whose motives are not transparent.

The fake news extended to “supposed” mistakes in the recent financial statements, which turned out to be a post Auditor typo and changes in the way data was being reported. But some of the loudest screams were about missing funds from the start up period, including actions taken by the original Board and CEO. As the first CEO of ICCRC I have first hand knowledge of every detail about those early days and as a way to demonstrate the distortions included in the fake news, I can offer the following:

- ICCRC became the Regulator in early July, 2011, with nothing but a loan from IRCC and the good will of members who believed in consultant Regulation. We did not have a single asset from the previous Regulator except a lawsuit against the Minister because of the decision. We did not even receive a list of active members with email or street addresses, or any Complaints’ files to take over, or any staff. Yet we had to be up and running as quickly as possible to carry out the very important mandate of consumer protection.

- We were approved for a loan of \$1.0 million but did not receive all the funds at once. In fact, the last installment was not received until at least 18 months later. The initial advances had to be supported by detailed receipts, which were audited at least twice in the first six months by IRCC. Nor did the Contribution Agreement allow the money to be used for certain necessary expenses, or exceed preset limits for many others.
- Then, to make matters exponentially more difficult, the Minister, in recognition of the suffering of RCICs because of the issues with the previous Regulator, gave our members a four-month fee holiday, immediately stripping us of a million dollars in revenues that we desperately needed to pay staff and start operating! While our members certainly appreciated the gesture, you can imagine the difficulty we had trying to follow our Business Plan and meet the Contribution Agreement Terms. There was no relief given to us by IRCC, either in allowing a slower schedule of implementation or additional funds. At the time, and to this day, the costs of being an RCIC are thousands of dollars a year less than they were with the previous Regulator.
- It is into that maelstrom that dedicated members jumped, showing their true commitment to making ICCRC work. Volunteer Board members committed hundreds of hours of their time to help get us started, without ever asking for their promised Director Fees. Dozens of unpaid volunteers attended hundreds of committee meetings to iron out the first policies that determined who could be accepted into the profession and how they would be accredited and educated. One of these individuals has recently appeared before you as the current Chair, Mr. Chis Daw. Chris, despite having a young family and a growing private practice, worked tirelessly with me to coordinate the bid process that led to ICCRC, along with a third person, Ms. Lynn Gaudet and a volunteer-only team of at least 100 RCICs, to put together a winning plan that still drives the functions of ICCRC today. No one was ever paid for that activity.
- You have met Mr. Barker and Dr. Bassirullah, two of the first managers hired by me, into ICCRC. Their immediate dedication was evident as they worked many more hours than expected to help fill the resource gap caused by the fee moratorium. Mr. Barker put in place a complete registration and accreditation process which allowed more than 95% of the membership of the previous Regulator to cross over in time so that their clients were not disadvantaged, as well as examine and accredit hundreds more who were completing their studies. Dr. Bassirullah hired a complete team of professional educators and with them developed a curriculum for practical education (PME courses) for regulated consultants, which is delivered professionally and free of charge to RCIC members, so they can become better practitioners. This has proven its worth in the significant reduction in the numbers of complaints received about members on issues covered by the courses, helping ICCRC to meet its mission of consumer protection.
- The dedication and tremendous effort by all of these fine people over the years deserves the Committee's thanks and respect. They do not deserve to

be pilloried by unscrupulous fake news proponents who are motivated by undisclosed issues of personal gain, be they financial need or personal attention. They do not deserve to be blamed for actions of unregulated frauds and cheats, or by those who are seeking to advance their own agendas, but who do not take the time to even file a complaint. Nor do they deserve to be hectored by members of the Committee over some requested response that didn't meet some undisclosed standard. They deserve your respect and admiration for honest, ethical work, as do the vast majority of RCIC Members who serve the public every day and provide a much needed choice for consumers.

I would like to conclude by stating that the Committee can accomplish much by making the following recommendations:

1. That ICCRC be given the authority to close the gap in consumer protection that currently exists, in the form of a Federal Statute similar to statutes authorizing Law Societies.
2. That ICCRC be allowed to change the designation of its members from Regulated Canadian Immigration Consultants to a title that helps potential victims of unregulated consultants or "ghosts" differentiate between these fraudsters and regulated immigration consultant professionals.
3. That ICCRC is allowed to resolve its own internal Board issues according to the bylaws of ICCRC and under the constraints of the Canada Not For Profit Corporations Act.
4. That the Committee commend ICCRC for all that has been achieved so far. The hundreds of volunteers who have helped launch and direct ICCRC and the thousands of RCICs who play by the rules and serve consumers ethically and professionally deserve to know that their lives and livelihoods will not be disrupted. To not do so would be an injustice.

Thank you for your time and consideration. I am available to answer any questions and provide any additional information that the Committee may request, at any time. I am not now affiliated with, or active in, the governance of ICCRC, except as a regular Member.

Sincerely,  
Phil Mooney, RCIC