

In the Public Interest

Submission to the Parliamentary Standing Committee on Citizenship and Immigration's Study on Immigration Consultants

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The adopted son of European immigrants, he is an expatriate survivor of the 1994 Rwandan genocide. Having personally witnessed conflict and the challenges faced by refugees, he has since been committed to the field of community development and public safety.

In 2004, Daniel Roukema testified before the House of Commons Subcommittee on Solicitation Laws where he recommended amending Canada's Hate Crimes Legislation to include, as an identifiable group, people vulnerable of hate due to their work and occupation. That same year, as President of Child Find Nova Scotia, he presided over the launch of the province's *Amber Alert* Program; and in 2005, he published *Inclusive, Accessible and Relevant Workplace Learning: A Position Paper of Visible Minorities and Workplace Literacy*. He has also been a member of several of not-for-profit boards for almost 15 years, and is currently a director of an immigrant settlement organization in the Greater Toronto Area, a social planning council, and a human rights-focused theatre group.

Daniel Roukema pursued a Master of Science in Community Economic Development at Southern New Hampshire University. He obtained a Bachelor of Arts degree in Political Science and International Development Studies from Dalhousie University, and a post-graduate certificate in European Union External Relations from l'Université libre de Bruxelles in Belgium.

Daniel Roukema was recently nominated for the Canadian Public Relations Society's *Shield of Public Service Award* for distinguished and dedicated services in the public interest. Last year, the Council on Licensure, Enforcement and Regulation (CLEAR) awarded him the *Consumer Protection Award* for his contributions to enhancing a broader public understanding of regulatory issues with respect to consumer and public protection, and citizen advocacy. In 2003, Daniel was nominated for the Atlantic Canada's Top 50 CEOs award by Atlantic Business Magazine.

This brief is being submitted to the Parliamentary Committee on Citizenship and Immigration to provide further insight into the challenges faced with regulating Immigration Consultants.

The contents are the sole opinion of the author.

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INTRODUCTION

The issues surrounding Immigration Consultants and the current as well as past regulatory body continue to generate considerable debate from the public and other stakeholders.

Immigration Consultants are professionals who provide services to individuals who seek assistance with their Canadian immigration or citizenship application processes. Canadian law requires that anyone who provides Canadian immigration or citizenship advice for a fee or other consideration must be a member in good standing of a law society in Canada, the chambre des notaires du Québec, or the regulatory body designated by the federal minister of citizenship and immigration. For the purposes of this submission "Immigration Consultants" refers to Regulated Canadian Immigration Consultants and not unauthorized representatives.

ICCRC was designated the regulatory body for Immigration Consultants in 2011, by former Minister of Citizenship and Immigration Jason Kenney. The former regulatory body, the Canadian Society of Immigration Consultants (CSIC), lost its designation after a study by a previous Parliamentary Standing Committee on Citizenship and Immigration recommended sweeping changes to the profession and its regulatory framework¹. The report was presented to Parliament on June 12, 2008, and almost nine years later the profession and the regulatory body appear to once again be at a crossroads.

This junction comes amid considerable testimony and submitted briefs from stakeholders including the regulatory body itself to the current Parliamentary Standing Committee on Citizenship and Immigration. Immigration Consultants, pleased or displeased with their profession and the realities of regulation; special interest groups, some defending ICCRC and others vehemently opposed to Immigration Consultants simply to satisfy their organizational mandates; and victims, whose experiences with Immigration Consultants went abhorrently

¹ Doyle, Norman *Regulating Immigration Consultants: Report of the Standing Committee on Citizenship and Immigration*, 39th Parliament (June 2008), available [online](http://www.parl.gc.ca/content/hoc/Committee/392/CIMM/Reports/RP3560686/cimmrp10/cimmrp10-e.pdf) <http://www.parl.gc.ca/content/hoc/Committee/392/CIMM/Reports/RP3560686/cimmrp10/cimmrp10-e.pdf>

wrong, all have well-reasoned testimonies and perspectives. The Committee has heard about unsatisfactory education levels, inadequate complaints and discipline processes, ghost consultants, fees, and the list continues.

However, there has been little discussion about the underlying issues that may have contributed to today's reality. No doubt, there is consensus among all that change is needed. But despite all the conversations about Immigration Consultants, there has been no discussion about the outcomes of the 2008 Report, and whether and how the previous government's implementation of the recommendations had an impact on where the industry is today.

In examining the 2008 Report, what model of regulation was envisioned for a new body in 2011? Reports from Citizenship and Immigration Canada (CIC) in 2014², speak of "arms-length regulatory body", but there is no mention from the federal department about self-regulation. If self-regulation was the purpose, ICCRC's birth was curiously atypical to conventional processes used to formalize self-regulating bodies, as government involvement from the outset is typically hands-on and quite demanding. ICCRC on the other hand, was established with uncharacteristically minimal intervention and government oversight. A one-million-dollar loan, a Letter of Authority, as well as a Contribution Agreement that outlined ICCRC's founding committee's promised deliverables amounted to the totality of the former government's involvement.

In a country where self-regulation is generally highly effective and processes of best practices are well-documented, *why did the government take on a hands-off approach with a profession whose previous attempt to self-regulate was a colossal failure – especially when members of the previous regulator's Board of Directors signed up to govern the new body?*

² Citizenship and Immigration Canada, *Evaluation of the Immigration Consultants of Canada Regulatory Council* (March 2014), available [online](http://www.cic.gc.ca/english/pdf/research-stats/e9-2013-icrc-eng.pdf) (<http://www.cic.gc.ca/english/pdf/research-stats/e9-2013-icrc-eng.pdf>)

By simply anointing a new regulatory body, but not taking critical best practice steps to ensure a more successful second attempt to protect the public, Minister Jason Kenney may have simply reorganized deck chairs on a sinking ship.

This regulatory body has been destined for a collision course with the public and its stakeholders since 2011, and the limited government intervention, ICCRC's organizational framework and resulting governance model might be a key factor in understanding why this profession has not yet risen.

SELF-REGULATION

This document wasn't written to lay blame, but to simply explore other perspectives about current limitations of the profession and the regulatory body, and to provide recommendations to better protect the public.

This profession is one that can, and indeed should thrive. In a country that embraces immigration as an inherent thread in its social fabric, Immigration Consultants should be highly respected professionals whose hard work would be recognized as fundamental to Canada's future. However, despite all efforts by many well-meaning industry leaders and members, the court of public opinion has a different perspective, which, after decades of bad press, is left with an unfortunate repulsive image of an entire sector.

After a second attempt at self-regulation, the foremost questions regarding the immigration consulting profession are whether self-regulation should continue, whether other forms of consumer protection should be adopted, or whether the immigration consulting practice should be discontinued altogether. Governments generally regulate professions where members of the public are vulnerable and where there is a history or high probability of abuse that can lead to devastating impacts that threaten public confidence and safety.

The privilege of self-regulation is generally only extended to professions that have demonstrated the maturity and ability to determine what members of the public are qualified to become a practitioner; implement standards required to effectively practise in the profession; and execute disciplinary measures for practitioners who fail to meet the agreed upon professional standards.

The licensing power is essentially the authority to decide who shall be permitted to earn their living by the pursuit of a particular calling. This means that professional organizations act as gatekeepers to the professions in their assessment of the qualifications of prospective members. Once an individual becomes a member of the profession, the professional organization has the power to regulate the conduct of the licensee by establishing rules of practice and standards of conduct enforceable through the disciplinary process.³

³ Casey, J.T. 2005. *Regulation of Professions in Canada 1 v. looseleaf-Release 2*. Toronto: Craswell (Orig. pub. 1994).

But the relationship between a self-regulating body and the government ministry charged with overseeing that specific public interest must remain close at all times. The government also influences the governance model and direction for the self-regulating body in several ways including granting the minister the power to appoint members of the public not affiliated with the profession, to serve as public members of the regulatory body's Board of Directors (also known as Councils with some bodies). These public members (known at ICCRC as Public Interest Directors) serve in the interest of the public as a checks-and-balance measure to ensure that the direction of the organization is purely focused on protecting the public.

The privileges and limits of power of self-regulating bodies are generally outlined in a legislative Act, and the government retains right to withdraw the privilege to self-regulate if a profession fails to comply with its obligations.

THE BEGINNINGS OF ICCRC

The Standing Committee on Citizenship and Immigration presented its findings to Parliament in 2008, and recommended the establishment of a new regulatory body.⁴ ICCRC was formally established on June 30, 2011, the day Bill C-35, An Act to Amend the Immigration and Refugee Protection Act or IRPA came into force.

When ICCRC was established, however, the government's relationship with this new body was fundamentally different than that of other government ministries charged with establishing new regulatory bodies:

1) Ministerial Appointments

Jason Kenney was clear with the founders of ICCRC that appointing Public Interest Directors would not fall within his ministerial mandate. From the outset, the government, despite its calls for better governance in the interest of the public, withdrew itself from a fundamental tenet of self-regulation.

2) Statutory Authority

There was no mention, any indication of, nor any interest in establishing legislative authority for ICCRC. Without an Act of Parliament that outlined ICCRC's scope and accountabilities, the Council has significantly fewer powers than other regulatory bodies. For example, ICCRC has no law enforcement powers, which, among other matters, prevents it from entering the premises of unauthorized immigration consultants' businesses to seize documents – a right that most self-regulating bodies have been granted.

⁴ Doyle, Norman *Regulating Immigration Consultants: Report of the Standing Committee on Citizenship and Immigration*, 39th Parliament (June 2008), available [online](http://www.parl.gc.ca/content/hoc/Committee/392/CIMM/Reports/RP3560686/cimmrp10/cimmrp10-e.pdf) (<http://www.parl.gc.ca/content/hoc/Committee/392/CIMM/Reports/RP3560686/cimmrp10/cimmrp10-e.pdf>)

Without direct legislated authority, ICCRC had to be established under the Canada Not-for-profit Corporations Act (CNCA), which had come into force just a few months after ICCRC was formally designated the regulator⁵. The CNCA established the right of members of associations to have voting powers to determine the governance and direction of organizations. However, granting regulated professionals these rights in a self-regulating body result in them influencing by-laws and governance agendas to protect themselves, not the public. ICCRC, for example, has a by-law that prohibits Public Interest Directors from serving as the Chair of the Board. This alone demonstrates that its focus and loyalty remains with the profession, whereas protecting the public, is a secondary concern.

3) Government Oversight

Minister Kenney and Citizenship and Immigration Canada, now Immigration Refugees and Citizenship Canada (IRCC) refrained from any close involvement in developing the framework of ICCRC.

To have effectively launched ICCRC, there should have been a clear directive from the minister's office outlining his expectations. A required schedule of meetings between ICCRC and the department, and even brief semi-annual meetings between the Minister and the President & CEO would have kept both better informed, engaged, and able to protect the public.

Ever since, there are daily reminders that clearly demonstrate the impact of the ineffective set up, and none more than with the Board of Directors.

⁵ Harrison Pensa, *Transition for the Canada Not-for-Profit Corporation Act – Deadline is Approaching!* ([available online](https://harrisonpensa.com/transition-canada-not-for-profit-corporations-act-deadline-approaching)) (<https://harrisonpensa.com/transition-canada-not-for-profit-corporations-act-deadline-approaching>)

BOARD OF DIRECTORS

The Board of Directors is made of up 12 immigration consultants elected from among their peers, plus three Public Interest Directors, two of whom are appointed by the Board and one elected by immigration consultants.

Organizational governance is complex and can take years for individuals to fully grasp, and in addition to maintaining a voice on behalf of the public, minister-appointed Public Interest Directors are often individuals who have demonstrated exceptional leadership in their community or careers. They generally also have a strong understanding of not-for-profit or regulatory governance and have experience in a relevant subject matter that is of importance to the Board.

While the ICCRC complement of Public Interest Directors has been quite good and consisting mainly of former Presidents & CEOs as well as Executive Directors of regulatory bodies and other not-for-profit organizations, Immigration Consultants grossly outnumber them, rendering their overall contribution to merely advisory. With five times as many Immigration Consultants on the Board, the public interest is never voiced, nor can it therefore ever be protected.

Most immigration consultants on the Board have virtually no previous governance experience. Those that are experienced have typically acquired it from serving on the Board of the profession's previous regulator, or its association, the Canadian Association of Professional Immigration Consultants. Many are sole practitioners who operate tiny immigration consulting businesses with estimated annual incomes well below \$100,000. As Board members, they are responsible for the governance of an organization whose revenues next year will exceed \$8 million, the total membership will near 5,000 and continues to grow. As a regulatory body responsible for protecting the public located mostly outside Canada, the total number of consumers they protect is in the billions.

These staggering incongruences between their personal experiences and the realities of overseeing the realities of a regulatory body that has a worldwide consumer protection mandate further underscore why closer government oversight and appointed ministerial involvement is required.

ICCRC's Board of Directors continues to struggle with the most basic responsibilities required of strong not-for-profit leadership, has been chronically weak, has failed to present itself as credible or professional, and has certainly not been able to embrace standards of processes reflective of regulatory excellence. Yet a perplexing sense of entitlement and grandiosity hovers around Board members. As a result, the Board has deteriorated the spirits of many, detrimentally affected the management of the regulatory body, and caused considerable consternation among the regulated professionals.

- Board in-fighting, lack of cohesion, and violating confidentiality agreements has informed the industry that the organization cannot speak as one voice.
- The Board members, many of whom lack formal education and training beyond immigration consulting, are unable to govern as an oversight body and instead interfere, often at great cost, in the daily operations of the regulatory body that is managed by well-educated and highly experienced staff. As a result, ICCRC spends more time reacting to crises than leading.
- ICCRC's last permanent President & CEO announced his departure in November 2015, and no replacement has been found. The next President & CEO will be ICCRC's fifth (3rd permanent, plus one acting and one interim).
- Self-regulating bodies commit themselves to transparency. While Members of most professions and the public can attend Board meetings, ICCRC's Board meetings are closed and highly secretive. In fact, ICCRC established a protocol of three levels of secrecy (Type 1 in-camera for Board members only, Type 2 in-camera for the Board and the President & CEO, and Type 3 in-camera for the Board and one or more members of the senior

management team). As a result, its regulated professionals do not trust the Board, which has given rise to rogue individuals being elected and whose actions have caused the Board, management, and the entire profession considerable harm.

- Two highly reputable and important Public Interest Directors have resigned from the Board of Directors since January due to in fighting, "back room dealings" and concerns relating to equity. The vacancies have resulted in ICCRC having only one person on the Board representing the public.
- Candidates for the Board as well as Board members themselves have frivolously accused members of the senior management team of committing serious crimes including theft, embezzlement, and assault to simply satisfy their own personal agendas and professional ambitions. These attacks have resulted in staff having to retain legal counsel at their own expense to protect themselves from their employer and the lifelong personal and professional damage these vexatious allegations can cause.
- The Board of Directors compensates itself at a rate far greater than that of equally sized regulatory bodies. Until recently, Board members were paid \$1,500 per meeting, while most other regulatory bodies compensate Boards between \$250 and \$500 for the same commitment. The compensation rate was recently changed to \$80 per hour (committee involvement is compensated at \$50 per hour), which potentially increases the overall rate from previous years. The Board is further compensated \$50 per hour for travel time to Burlington for Board meetings in addition to airport pick up and drop off in limousines and all expenses paid accommodations.

The lure of joining the Board of Directors has shifted from the opportunity to give back, to financial opportunism. Many immigration consultants campaign to be elected to the Board by attacking the regulatory body and calling for a significant reduction of annual dues through layoffs, salary decreases and closing training centres. Yet none, once elected, has called for a reduction of fees and other expenses paid to the Board.

IMMIGRATION CONSULTANTS

The vast majority of Immigration Consultants are hardworking and well-meaning individuals. That they are all problematic is an unfair generalization.

Unfortunately, whether regulated or unauthorized, all are painted with the same brush, even though most of complaints heard by the Committee are against unauthorized representatives.

However, the number of complaints that ICCRC has received against its regulated professionals are also too high, but that is not an indication of a failing profession, but rather the outcome of a small handful of bad apples who continue to face discipline.

Yes, as in any profession, there are individuals who should have never been licensed and who are ungovernable. Yes, the complaints and disciplines process should be more punitive. Yes, those with ongoing community complaints should be ejected from the profession.

But this speaks to the systemic issues that ICCRC faces. How can a complaints process in an organization overseen by individuals who approve punishment that potentially affects them, be harsh? Currently, there are board members who have more than ten complaints filed against them, and others who have not completed their mandatory annual professional development hours. The complexity of enforcing regulations on those who make the rules is symptomatic of ICCRC's inability to effectively regulate with its current structure.

GHOST CONSULTANTS

ICCRC has been actively warning the public of ghost consultants since 2013. That year, ICCRC launched the ALERT initiative, a confidential whistleblowing program to encourage the public to come forth with complaints. ICCRC received almost 1,000 tips in the first three months and forwarded most of them to the Canada Border Services Agency (CBSA) for further investigation. It was due to ALERT that ICCRC attributes the recent spike in convictions related to Section 91 of IRPA. ALERT was cancelled, however, after ICCRC was informed to not forward the increased volume of tips to CBSA.

As a member of the Competition Bureau's Fraud Prevention Forum, ICCRC has reached out in multiple languages to global audiences warning the public about Canadian law pertaining to Immigration consulting and how to report ghost consultants. Using social media as well as local and the international press, ICCRC has engaged more than 50 million people worldwide. Most recently, ICCRC has launched a series of videos in English, French, Spanish, Arabic, Mandarin, Hindi and Punjabi to increase their global reach. Recently, a highly popular video directing consumers to ICCRC's Public Register to determine the validity of an immigration consultant was viewed on Facebook in early April more than 20,000 times in 48 hours⁶.

The ICCRC Communications office reaches out daily through social media to inform the public of its mandate as well as to warn consumers of unauthorized representatives. Fifty percent of all of ICCRC's messages are related to consumer protection.

ICCRC has received considerable criticism for not being more proactive in its campaign against unauthorized representatives. However, its campaigns suggest otherwise. Also, without the legal authority to investigate or discipline unauthorized representatives, why has combatting ghosts become the responsibility become that of ICCRC? From the outset of this regulatory

⁶ Immigration Consultants of Canada Regulatory Council on Facebook. www.facebook.com/icccrcsm

body's existence, individuals without a license who help others come to Canada have been considered "consultants".

If Immigration Consultants are licensed to only practice one specific aspect of Canadian law - immigration law - then why are unauthorized representatives accused of contravening IRPA, but not violating Acts governing law societies? *Why are unauthorized representatives not charged with practising law without a license?* Given the membership size of law societies and the financial resources available to them versus the tiny regulatory body that oversees Immigration Consultants, Canada is failing to protect the public from unlicensed lawyers because it has off-loaded all responsibility to a regulatory body that has no ability to enforce the law.

RECOMMENDATIONS

Questions at the Parliamentary Committee on Citizenship and Immigration have included whether or not the immigration consulting profession is viable and whether ICCRC should continue to regulate. There are 4,000 immigration consultants in Canada, and that demonstrates a market need. Eliminating immigration consultants would create a bottleneck of applications and reduce Canada's immigration process to a crawl. Canada also prides itself in being a nation where people have access to justice, and Immigration Consultants are an important stakeholder in this process. The cost of access to lawyers by at-risk communities is itself a concern in Canada and establishing lawyers as sole practitioners to manage the immigration process would further jeopardize an already vulnerable population.

Almost 80% of Regulated Canadian Immigration Consultants are immigrants themselves, many of whom rely on this as their sole source of income. Eliminating the profession would simply put thousands of immigrants out of work and directly impact tens of thousands of families across Canada.

The profession must remain, but there is a dire need for an immediate reboot. The following are recommendations to get the immigration consulting profession to become an optimal, wanted and critical resource in Canada:

1. Revamp ICCRC's Governance Structure with Standard Government Oversight

It would be less of a burden on Canadian taxpayers to correct the weaknesses of the existing regulatory body than to establish a government-run bureaucracy. It is recommended that IRCC redraft its Letter of Authority that designates ICCRC as the body regulating Immigration Consultants, and add the following conditions:

- The Minister appoint Public Interest Directors to ICCRC's Board.

- The Board of Directors will be comprised of a maximum of 9 or 11 individuals. Fifty percent + 1 will be Public Interest Directors, appointed every 2 years by the Minister of Immigration. The remaining will be immigration consultants, elected from among their peers.
- The Chair of the Board of ICCRC will always be a member of the public. The Vice-Chair may be a member of the regulated profession.

2. Obtain Statutory Authority

The plight of self-regulating Immigration Consultants will persist until this profession is extended the same government oversight and support as other regulatory bodies. The Canada Not-for-Profit Corporations Act is designed for associations and member-driven organizations only, and as long as immigration consultants are given the authority to dictate their regulatory body's by-laws, they will continue to protect themselves and not the public.

3. Insist That Law Societies Exercise Their Statutory Powers to Combat Ghosts

Unauthorized representatives are people who practise law without a license, and therefore law societies in each province and territory need to get on board to bring illegal operatives to justice – in the interest of protecting the public.

4. Set Fees

Immigration Consultant practice fees should be set based on scope of work.

5. Amend Legislation to Convict Ghost Consultants Abroad

Bringing ghost consultants who live abroad to justice will continue to fail until laws are changed. It is proposed that while the government of Canada implore law societies to bring individuals in Canada practising immigration law without a license to justice, the government bring illegal representatives practising abroad to justice, as prescribed in Section 117 of IRPA, and have them tried and convicted for human smuggling and trafficking.

6. Establish a Provincial/Territorial Advisory Council

Regulating a profession at a national level when each province has its own immigration strategy has frustrated the regulatory body as well as provincial government. To effectively regulate nationally, it is recommended that a national advisory council of senior unelected government officials be established who would inform ICCRC of their respective jurisdictional priorities, enabling the regulator to make informed decisions on a national scale to better serve each province.

CONCLUSION

It is undeniable that there are fundamental flaws in Canada's immigration consulting profession as well as its regulatory system. This document attempted to illustrate the processes taken by the previous federal government are not reflective of typical regulatory start-up practices. It also attempted to demonstrate that with ICCRC not having statutory authority, and instead operating under CNCA, keeping the interests of the public as a foremost priority could have never realistically occurred.

In the final analysis, perhaps the burning question should be whether or not the immigration consulting industry has the maturity to self-regulate. The perspective of this submission is that it does, but it needs better leadership and direction from government to establish itself as a self-regulating body of excellence, with the same vigour and oversight that have been successful in other jurisdictions with other regulatory bodies all across Canada.

Effective regulation requires a healthy and rigorous partnership between the government, regulated professionals, and the public. The foundation and framework is already in place to build a strong structure that will allow ICCRC's regulated professionals to become vital contributors in Canada's drive for a fair, effective, and excellent immigration process.

Whether political leanings are on the left, the right, or in the centre, and regardless of any other distinguishing factor, most everyone has contributed to this study because they believe in protecting the public. So let's work together to constructively renovate ICCRC's structure and as one people move forward with pride to provide tomorrow's citizens safer passage to Canada.