

CITIZENSHIP AND IMMIGRATION STANDING COMMITTEE STUDY ON
IMMIGRATION CONSULTANTS

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Contents

Introduction	2
Tracing the History and the Current Status Quo	3
Proposed Improvements	4
Conclusion.....	5

Introduction

I have been an immigration consultant since I started working for an immigration law firm in 1988, and have played a governance role in a number of Immigration Consulting Associations since 1992. From 2005 to 2008, I served as the Ontario Chapter President at the Canadian Association of Professional Immigration Consultants (CAPIC). For nearly 8 years after that I have served as an elected Director at both the regulatory bodies. I became Vice-Chair of the first regulatory body, the Canadian Society of Immigration Consultants (CSIC) towards the end of my term and was the Chair of Board at the current Federal Regulator (ICCRC) for two years.

As the co-creator of the Immigration Practitioners Certificate Program at Seneca College of Applied Arts and Technology, I aided in establishing the criteria for certifying future practicing Regulated Canadian Immigration Consultants and update programs. The Seneca program was established in 1996 and runs successfully for over 20 years as an entry requirement. It was the first program in Canada that set the standards for future programs across the nation, with a rigorous exam and curriculum based on immigration legislation providing a thorough overview of relevant and changing Immigration programs. It was delivered through University of British Columbia in BC, Bow Valley College in Alberta and La Salle College in Quebec initially. Today it is delivered by several accredited educational institutions both in class, online, or a combination of both. Furthermore, the program did not only focus solely on the content and theory of immigration law and programs, but also included an integrated practical and ethical component in every module where students learned advocacy and submission writing skills with the final module encompassing practice management.

In 2011, I attained the designation of a Chartered Director from the De Groote school of Business at Mc Master University, a joint initiative between the Conference Board of Canada and the Directors College.

Having been involved in the Immigration Consulting Profession since its inception, and having built it up from the start on the principles of ethical practice and professional service to real people – not just regarded as clients – this study is near and dear to me. It is a serious undertaking when individuals trust and empower you with the lives and dreams of their family members and/or themselves, as well as being willing to pay a fair fee for your counsel so that they may have the opportunity to make their dreams become a reality.

To hone in on the focus of this study, I am going to trace the history of the Immigration Consulting Profession and the current status quo and provide possible solutions.

Tracing the History and the Current Status Quo

Immigration Consultants have now been regulated for 13 years since April 2004. The regulator for the first seven years was the Canadian Society of Immigration Consultants (CSIC), founded in 2004 it became a stand-alone federal corporation designated under the Immigration & Refugee Protection Act and Regulations to licence members who met the prescribed standards. At the time CSIC built its infrastructure and framework with a grant of \$700,000 and a loan of \$500,000 to enable immigration consultants to enjoy the privilege of practicing while being held accountable to their clientele.

These were the building blocks which led to the creation of the current Federal Regulator, the Immigration Consultants of Canada Regulatory Council (ICCRC). In 2011, the ICCRC was designated by the Government of Canada to regulate Canadian immigration consultants. They were then recognized to oversee the activities of International Student Advisors allowing them to register as Regulated International Student Immigration Advisors (RISIA). In August 2014, under the Citizenship Act, ICCRC was designated to oversee citizenship consulting by its members. Over the past five years, ICCRC has successfully put in place Bylaws, Code of Ethics, Regulations, Policies and Code of Business conduct, to name a few; some of which have been further refined over such a short span of time. Furthermore, to demonstrate its fiscal responsibility, ICCRC will have paid back the last installment of the \$1,000,000 loan granted upon foundation, by August of 2017.

For context, here is a little bit of the history of the consulting profession. In 1986 a group of consultants formed the first immigration industry association in Canada, the Association of Immigration Counsels of Canada (AICC). This group was interested in raising standards in the industry and in turn safeguarding clients, largely through the education of its members. A second industry group named the Organization of Professional Immigration Consultants (OPIC) formed in 1990, with a similar focus. OPIC created a set of Rules of Professional Conduct and code of ethics for its members. In 1992, OPIC formed a partnership with Seneca College to start delivering immigration professional development programs for members. OPIC & AICC were independent, but had a number of mutual members. Recognizing their common goal of improving the profession, leadership at both AICC and OPIC began to work together when possible.

After the creation of CSIC, the need for a single professional association was clear. As a result, in 2005 AICC and OPIC merged to create the Canadian Association of Professional Immigration Consultants (CAPIC) with a mandate to lead, connect, protect and develop the profession for RCICs.

ICCRC has come a long way since inception and has been performing successfully within its mandate and the contribution agreement thus far. They are doing their best within the limitations, jurisdictions and parameters as set out in the Canada Not-for-Profit Corporate Act (CNCA) as detailed in the CIC 2014 evaluation report. Nevertheless, there is always room for improvement.

Proposed Improvements

I respectfully suggest that the Standing Committee on Citizenship & Immigration recommend the option of undertaking a study on Self-Regulation under Federal Statute that would grant ICCRC greater regulatory jurisdiction similar to the law under which LSUC and CPA are both governed and managed.

A Federal Statute would also offer the opportunity to address provincial concerns and needs, while clarifying jurisdiction to avoid overlapping and inconsistent regulation. This would also strengthen the mandate of the regulator to the benefit of consumers. Additionally, a Cost-Benefit Analysis done independently should be carefully considered to ascertain all aspects of practicality.

The second benefit of the proposal to regulate immigration consultants by Federal Statute would be to remove ICCRC from the jurisdiction of the CNCA that makes the regulator's job more difficult with its focus on members' right. The primary focus of the current CNCA, which has been in place since October 17th, 2014, on members' rights detracts from the ICCRC's mandate of public and consumer protection. For example sections 152(6) and 163 allow ICCRC members to submit ANY proposal of by-law for a vote, and any member notwithstanding qualifications or experience, can become a director on ICCRC's board. The CNCA is workable for professional associations whose mandates are to pursue the interests of their members, but not for a regulator whose mandate is first and foremost to protect the public.

With respect to the challenge of overlapping regulation, I respectfully recommend that the Federal Government liaise with provincial governments to eliminate overlapping regulatory regimes. Section 95 of the 1867 Constitution Act recognizes the shared jurisdiction of federal and provincial governments, as well as the paramountcy of federal law. When it comes to immigration, there is no clear boundary between federal & provincial jurisdiction, and the existence of side-by-side legislation has been widely accepted. Through Provincial Nominee Programs, many provinces have implemented their own immigration-related legislation. The overlap between the federal and provincial rules has yielded greater consumer confusion, especially when reporting cases of abuse.

Existing regulations in the province of Saskatchewan have resulted in jurisdictional conflicts pertaining to determination of fault and penalties. Saskatchewan has determined that all applications in which the applicant has indicated a preference for Saskatchewan, including the federal component, should be served by the province and not the federal government.

It is likely that this overlapping regulation has resulted from provinces not being clear about the existence of a federal regulator, or its role. An example of where a federal regulator has been considered with success is in Ontario, which recently implemented its own immigration regulations.

Lastly, an idea to consider would be a nation-wide marketing campaign to educate the public about unauthorized consultants and raise awareness of the Federal Regulator, ICCRC's, role in regulating authorized consultants. I do not think, nor do I suggest, that we can completely eradicate activities of "the unauthorized" who promote fraud and misrepresentation besides duping aspirants but we can certainly put a dent in such activity by example setting. This can be attained even with a limited budget.

Conclusion

As a practicing Canadian Immigration Consultant for more than 20 years, the last 13 of which have been under regulation. I have served more than 28,000 clients under various Canadian immigration programs. From past experience I can assure you that the clients that hire RCICs are well aware that the final decision pertaining to their application comes directly from the Government of Canada and not the authorized representative whose job is to provide them with counsel. I would like to conclude by stating that by addressing the issues and entrenching proposed solutions I see a bright future awaiting the Immigration Consulting profession and better protection of consumers in public interest.

Sincerely,

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