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Focus:

I am submitting this brief in respect to the CIMM review relating to the regulation of immigration consultants with specific focus on the continued patterns and issues of alleged 'impropriety, misconduct, fraud and abuse' observed by the Department by practitioners. It was not clear to me if this is just in respect to RCICs or also relating to all authorized representatives as per IRPA section 91(2) for which this committee is tasked with.

Description of submitter:

I have been an active immigration consultant since 1985. By the early 1990s it was evident to me that there was a need to regulate the profession and I personally joined a professional association in 1996 as they were a catalyst to push for regulation of immigration consultants. I was active on the Board of the AICC until its merger with the OPIC when it became the CAPIC. I was the first 'elected' director to the Board of CAPIC in 2004. In 2005 I was asked to join the Board of the CSIC, then regulator for the profession, to complete a nine month term vacated by a prior initial director. In 2006 I was elected by the members of the CSIC to the Board of the regulator where I served for a 3 year term. I was not able to stand for re-election as per the bylaws and thus was not on the Board in 2011 when the decision was made to replace the regulator with the ICCRC. Since 2009 I have been a subject matter expert, instructor as well as the lead for Provincial regulation of our institute which is accredited by both the ICCRC and the PTIB.

I am a firm supporter of regulation, regardless of who is designated by the Minister and feel that I may have some insight into the regulation of our profession, the problems, the issues as well as perhaps some solutions relating to the competencies of our profession as a whole.

The Role of a regulator:

To ensure competencies and ethics, to provide oversight, undertake investigations and provide meaningful, fair and transparent discipline and follow up through audits, inclusive of establishing the need for continued education.

COMPETENCIES:

The history of the standards established for immigration consultants in Canada originate from a DACUM process which was undertaken by the AICC and OPIC prior to the formation of a regulator for this profession. The results of those processes and recommended competencies was purchased by the CSIC and was the original basis for the core competencies for the profession.

Upon designation as the regulator, the ICCRC emulated those same competencies as had been established through the CSIC on a go forward basis. To their credit the ICCRC also looked at incrementing the standards of the profession and introduced amended core competencies to meet the general standards of membership. That process, from my understanding, was to ask the institutes what they were teaching, combined those results with the addition of some coverage of Citizenship as per the designation to also regulate Citizenship consultants and expand the instructional hours, resulting in the published final draft in November 2015:

English: [http://registration.iccrc-](http://registration.iccrc-crcic.ca/admin/contentEngine/contentImages/file/Form_3_FINAL.pdf)

[crcic.ca/admin/contentEngine/contentImages/file/Form_3_FINAL.pdf](http://registration.iccrc-crcic.ca/admin/contentEngine/contentImages/file/Form_3_FINAL.pdf)

French: http://fr.iccrc-crcic.ca/admin/contentEngine/contentImages/file/Form_3_FINAL_FR.pdf

In reviewing the core competencies you will note periodic wording such as:

‘Demonstrates an ability to complete application forms relating to the categories of’ (insert case type)

We also saw in the initial submission to be selected as a regulator the emphasis placed on ‘robust form filling’ competencies which as an educator and a practitioner I always questioned. While in practice we do fill forms but that is not what an authorized representative is...they are much more than a form filler. They need to know how to analyze, assess, counsel, advocate in addition to preparing clear and fulsome submissions for the types of cases they choose to work on. So I wondered about this emphasis on form filling when in today’s practice and certainly by the time these incremented standards were finalized, that the vast majority of data is no longer filled out on a pdf form but uploaded onto a private and secure portal. So how could an institute or for that matter a student ‘demonstrate’ this and would it not be better to require a demonstration of what is needed in a full submission, not just the forms? It causes me to wonder if there was some form of disconnect between education and immigration understanding on the ICCRC. While I have to assume that practitioners are involved on the ICCRC education committees...how could none of them have thought of this same concern as I was experiencing. I became to realize that the issue was systemic as it also flowed through into disconnects in the understanding of practical application when teaching the Practice Management Education material. I do have to commend the ICCRC education department and staff in some respects as I think that for many new members to practice, the format of the workshops is good and I have always enjoyed the methods of instruction undertaken by the instructors as well as the instructors themselves. But that does not address the disconnect and while I have brought this up every time we are provided with a survey I have seen no change. If we expect members to be competent then we have to present this in practical methods as well as make it meaningful and relevant to all. So teaching how to fill out a form is not teaching someone how to make a submission. If the focus of education is on form filling it is doing a disservice to the true core competencies of an immigration consultant and will result in potentially incompetent practitioners.

Recommendation:

For the ICCRC to revisit their core competencies and ensure that they are in line with today's practical application and that the true essence of an immigration advocate is being consistently taught through the accredited institutes.

Each of the accredited institutes were provided with a deadline to make a submission to the ICCRC for renewal of their programs which also included the need to expand the instructional hours to meet the new standards. However, the instructions for the submittal caused most institutes to have to provide resubmissions. There was no provision of guidance to representatives of the institutes as to what specifically was needed in the submission and thus confusion ensued. While I can only speak for the institute that I am presently involved in, we resubmitted our package and our expanded hour programming was approved – there was little change in the actual content needed. We were advised that as soon as we were approved, that we had to commence providing the new programming. As of this date, I am only aware of 3 of the 12 ICCRC accredited institutes providing the new core competencies and expanded programming. Begging the question: why are the other institutes still accredited when they are still providing the old competencies?

Accredited institutes: <http://icrc-crcic.info/become-a-immigration-professional/>

Recommendation (in hindsight but to be implemented on a go forward basis):

Ensure that the ICCRC instructions are clear. (meetings with the accredited institutes prior to the submission to clarify the process would have alleviated a lot of confusion on the parts of the institutes)

Ensure that there is a universally applied drop dead date wherein all institutes would be required to provide instruction in the incremented standards to ensure an even roll out.

Initially when the ICCRC was formed, there was an Educational Committee struck which was to include representatives of each accredited institute and ICCRC educational staff which would ensure that consistency was maintained in education provision for these entry to practice programs. This interaction would also provide the institutes with valuable feedback to assist in measuring their success and to adapt, revise or amend when needed to ensure that the resulting graduates were meeting the core competencies. As an example: timely feedback on the entrance exam results were helpful to the institutes. In recent years the Education Committee was disbanded and the feedback from the ICCRC to the institutes has become generic and the data so old as to render it useless for any practical purposes.

Recommendation:

For the ICCRC to reinstitute timely and interactive exchange between the institutes and the regulator.

The method used to test a potential member's competency by the ICCRC is based on a scenario based multiple choice exam. This method was introduced by the prior regulator and emulated by the current regulator as an easy means to examine entrance level knowledge. From an educator's

point of view coupled with a practitioner's point of view, an exam is not the best basis to confirm competencies. It is not reflective of the analytical process that would be undertaken in practice nor does it allow for the time and resources needed for research in today's world of technology. A more practical means to actually test the understanding of a learner for this purpose would be through the use of case studies wherein actual analysis and strategy must be expressed. Practical application of knowledge is a much more fulsome means to confirm if a learner has understood. One of the issues with an exam or quiz format is that there is a potential to guess at the answers which may result in individuals who are not in fact competent to practice being accepted into the membership ranks of the ICCRC.

Recommendation:

Change the method to confirm the entrance to practice knowledge of a new member from the current exam format to a more practical application format.

Currently there is no need for practical experience before one is awarded with membership in the ICCRC. While some institutes have attempted in the past to include a practicum in their educational programs these ultimately failed due to the lack of interest of the consultant community to take on students or in some cases the abuse of students by unethical practitioners. Recently the ICCRC created a task force to look into the potential of requiring prior experience before membership is conferred and to its credit is at least attempting to look at the feasibility. This is not a new idea nor a new issue. As far back as 25 years ago professional associations were looking into the potential to create this type of mechanism with little positive results based on the lack of interest of the consultant community to engage. The prior regulator undertook a fulsome study on this during their tenure; the results of which indicated that there were insufficient experienced consultants willing to take on the training of the number of new graduates; that just because someone is experienced does not make them a good teacher and that ultimately the typical practice was too small to afford the introduction of a junior employee and that many consultants were too protective of their markets to wish to share. There are some consultants in the community that may fit the ideal candidate as a mentor and some of us have actively taken on this role. However, we cannot take on the overall numbers and there is little incentive for others to join our ranks. It is an idealism, not a realism.

I am at a loss to even suggest a recommendation for this in that while I think that practical experience is imperative to ensuring competencies, this profession is not mature enough at this stage of their development to take on this role. I hope that the ICCRC task force proves me wrong.

Currently under the IRPA section 91(2) only authorized representatives may provide representation or advise for consideration in connection with the Act. Those authorized are:

Lawyers in good standing of a law society of a province (and I would have to assume also a territory)

Notaries in good standing with the Chambre des notaires de Quebec

Any other member in good standing of a law society or the Chambre inclusive of paralegals

Any member in good standing of the body designated to regulate immigration consultants. As per regulation the current designate is the ICCRC

At issue: the legislation indicates representation or advise but not preparation. There is an ongoing issue of unauthorized representatives preparing submissions on behalf of applicants under the Act, and currently the Act does not specifically prohibit this. Such practice is undertaken by individuals with no training, no accountability and in many cases no ethics.

Recommendation:

Expand the specific actions that are contained in the Act to include preparation and increase enforcement on the practice of unauthorized representatives.

As per the Act, any lawyer or Quebec notary or member of a law society or the Chambre in good standing may provide advice or representation for consideration. However, there is no standard of competencies designated in immigration law for these individuals. Very little coverage is provided on Immigration Law to become a lawyer which would not be at issue for those that then continue to article for a law firm specializing in immigration law as they would have further training and oversight to secure those needed competencies. I am not familiar enough with the training for Quebec notaries to comment on if there is sufficient coverage in their educational training to address this or what mechanisms are in place for gaining practical experience. However, there are many lawyers and I also have to assume Quebec notaries that choose to offer Canadian Immigration advise and representation who have not had the privilege of articling in an Immigration entity. Some wisely recognize their deficiencies and choose to take additional education, many of them having been my students. Others continue to practice without the added knowledge and education and thus this creates a competency issue.

Recommendation:

For the Law Societies and the Chambre to institute internal mechanisms to ensure the competencies of their members who choose to practice Immigration Law.

As per the IRPA section 91(3)(4) and (5) there are specific exceptions to having to be an authorized representative as per the aforementioned section. These would include students at law, which is not at issue as they have the supervision of a lawyer, as well as an entity that offers or provides services and who has entered an agreement with Her Majesty. So this would relate to Visa Application Centers and their respective employees as an example. There is no current method to ensure the competencies of these individuals who are offering guidance and assisting in the submission of some forms of applications to the IRCC and there has been observations that not all of the guidance provided is in fact competent.

Recommendation:

For any entity that has entered an agreement with Her Majesty in this capacity to also have to implement mechanisms to ensure competencies of their employees.

<http://laws-lois.justice.gc.ca/eng/acts/I-2.5/page-17.html#h-48>

The above was all focused on competencies and how the respective regulators or the Government may address or increase their methods to ensure competencies. However, the other side of the issue currently being looked at are: impropriety, misconduct, fraud and abuse which at times may relate to lack of competencies but also may relate to the mechanisms put in place by the respective regulators pertaining to oversight, investigations, discipline, follow up, continued education as well as audits. Since I am not a member of a Provincial Law Society nor am I a member of the Chambre, I can only provide feedback on my experience with the ICCRC specific to the issues identified and where I have personal experience. Allow me to share a few scenarios to illustrate some of the issues I have concerns about:

Scenario 1:

I was contacted by an individual who indicated he had been an agent of a member of the ICCRC and that specific member had taken the funds of many clients this individual had introduced, misled the clients and had not provided the service as contracted; as well as several other allegations. The ICCRC member had claimed to the agent and the clients he introduced that he could secure job offers for these clients and/or guaranteed student permits for these clients...none of which materialized. The ICCRC member disappeared, not returning calls and certainly not returning any money to the client or the agent nor had he provided any meaningful service. The agent had lodged a complaint to the ICCRC in respect to this member and was advised that since the individual was no longer a member of the ICCRC (having been recently suspended on a different matter) that the ICCRC could not address the complaint. When asked for guidance on what he could do, the agent was advised 'we are not a collection agency'. No guidance was provided to the complainant as per methods of further action such as filing a formal complaint to the CBSA or taking civil action. No guidance was provided at all. I assisted the agent in putting his evidence together and this was filed with the CBSA who, since there were numerous complaints against the prior ICCRC member, were actually interested in pursuing the matter. The prior ICCRC member was found guilty and ordered to restore the funds of his clients as well as sentenced to imprisonment. Regrettably the ICCRC does not have a compensation fund and thus it is unlikely that any of the victims of this consultant will ever secure restitution. So what is at issue?

A regulator is supposed to be there to protect the consumer, to provide guidance to complainants in respect to its members, be they current or prior members. I feel that the ICCRC failed to provide the guidance needed in respect to this member's actions and was not looking out for the consumer in this matter. It took a private citizen to walk the

complainant through the processes open to them in order to secure any action. For those victims of fraud, the current regulator has no means of compensation that may be provided and as of the last AGM that I attended had no intent to create a compensation fund.

Recommendation:

Ensure that the Complaints and Discipline Department have the knowledge, the patience as well as take the time to provide valuable guidance to the consumer on means to take action against a member or a non member either internally or through other avenues.

Ensure that the ICCRC creates a compensation fund for victims of fraud.

Scenario 2:

I was contacted by an individual wishing to partner with me. He and his wife were operating an immigration practice in Scotland and had been since 2007. Neither were members of the ICCRC, nor had they been members of the CSIC. The wife was authorized to practice immigration in Australia and the UK but not Canada. The only affiliation that the husband had was membership in a Canadian based immigration practitioner's professional association which he used in his promotional material as a means to show that he was knowledgeable in Canadian immigration. This perceived association confused the consumer into thinking that he was in fact authorized to practice Canadian immigration. After a lengthy exchange with this individual it was apparent that they had been working as unauthorized representatives for applicants destined to Canada for both students and workers since 2007 and continued to market themselves as authorized representatives of Canadian immigration. I lodged a complaint to the professional association as well as the ICCRC in respect to the unauthorized practice of this firm and received no response from either organization. I eventually also lodged a complaint with the Office of the Immigration Services Commissioner in the UK. In short order that organization had shut the business down. So what is at issue?

A regulator should provide a timely response to all complainants, even if the issue may be non jurisdictional. All efforts to ensure that consumers are clear as to who may represent them needs to be undertaken, not just by the regulator but also those organization that represent members or applicants in other auspices. I was later advised by a sitting director of the ICCRC that I did not receive a response from the ICCRC based on who I was. This did not surprise me as I had been publicly attacked by both sitting directors as well as their initial CEO in public forums any time I voiced something contrary to the ICCRC.

The other issue stems from the continued extra-territorial practice of unauthorized representatives. I was just lucky that this unregulated individual was operating his business in a country where there is regulation on the practice of immigration and

whose rules and regulations would preclude a member from dishonest practice, forcing the business to shut down. The same cannot be said of the majority of countries overseas and the continued practice of those that profess to be immigration professionals outside of regulation continues to this day. I have come across numerous instances of large operations in India, China, and Iran continuing to practice Canadian immigration with no affiliation to an authorized representative as per the IRPA91.

Recommendations:

Regulators and the Government should provide more education to the consumer in respect to who is authorized to represent them.

Regulators should ensure that they are providing timely responses to complainants and describing the actions that may be taken.

Regulators and the Government should reinstitute the dialog and memorandums of understanding with other international regulatory bodies to work toward the unregulated practice overseas.

The current regulator for immigration consultants should be re-formed, either under stand alone statute or through a Government commissioner to allow for direct not delegated enforcement of members as well as non members.

Scenario 3:

In 2013 I observed a posting on a public forum which was derogatory toward a member of the ICCRC who was running for a seat on the Board of Directors. While I did not know the individual who was being targeted, I felt that the tone of the posting was detrimental to the overall integrity of the profession and suggested that time would be better spent on focusing on what we need in a Director as opposed to posting unsubstantiated facts which were extremely disparaging. A sitting Director of the ICCRC responded to me, comparing me to a Nazi war criminal, alleging that I had misused member's funds while on the Board of the prior regulator and shared fraudulent information about the compensation fund established by the prior regulator.

While extremely shocked by the posting by this sitting director of the regulator, who is supposed to be leading by example, I decided to trust the policies put in place by the ICCRC and filed a formal complaint against the Director. I submitted my completed complaint and forwarded it as per the instructions given on the ICCRC website. I received a response from the Manager of Complaints and Discipline that I needed to provide a formal written complaint. While this was included with my initial submission on their designated form, I provided this again. An investigator was assigned; who advised me that the member/director was willing to apologize and asked if this would be acceptable. I advised that it would, but that I would like to see the formal apology before he posted it to the same forum that the discourse originally took place. This did not

happen. A less than sincere apology was posted by the Director on the news forum which did not address even half of the issues or insults.

Still believing in due process and that this would be afforded by the ICCRC, as per the bylaws of the ICCRC, I lodged a formal complaint to the Chairman of the Board of the ICCRC. While staff of the ICCRC were quick to provide an acknowledgement of receipt, it took five months for the Chair to contact me to advise that they took this very seriously but had not concluded their investigation. I never heard back from the Chair and in fact as opposed to disciplining the Director the Board elevated him to the position of Vice-Chair. What is at issue?

The process of investigation; the integrity of the profession, transparency of process in respect to complaints against a member of the board as well as the lessening of confidence in those who hold positions of power; who should be unbiased and ensure that all members are treated equally and fairly.

Recommendations:

Processes for complaints, not just against members but also against infractions caused by members of the Board, need to be clear and transparent with timely responses and significant discipline as a member of the Board stands in a position of authority.

Regulators should ensure that all members are treated equally and fairly; without bias or conflict of interest.

As I stated when I started this submission, I am a proponent and full supporter of regulation; regardless of who is designated as the regulator. The issue is that the model we have is failing to protect the consumer which is supposed to be the primary mandate, as it is not empowered through stand-alone legislation and it opens the potential for abuse due to conflicts within the consultant community.

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