

# Immigration Consultants

## BACKGROUND

- House of Commons Citizenship and Immigration Committee released report on immigration consultants in January 1996. Issue was whether and how to regulate immigration consultants who are not lawyers to curb unscrupulous and illegal practices. Immigration Law Section recommended that only lawyers be authorized to act in immigration matters for remuneration or, in the alternative, only lawyers and licensed consultants.
- Council adopted Immigration Law Section recommendations at the 1996 Mid-Winter Meeting. The resolution identifies competency as the issue, saying that immigration consultants should be subject to training, standards, discipline and insurance requirements, as are lawyers.
- BC Law Society sought an injunction against an immigration consultant operating in that province, for unauthorized practice of law. In the August 1997 decision of *Mangat*, the BC Supreme Court held that aspects of the immigrant consultants' business did constitute the practice of law. The BCCA reversed the *Mangat* decision in November 1998.
- CBA intervened at the Supreme Court of Canada. Mayland McKimm, Q.C. (Victoria) and Mira Thow (Winnipeg) were co-counsel for CBA. In October 2001, the Court dismissed the appeal, and held that the federal government's power to determine who will appear before its tribunals is paramount over provincial power to regulate the legal profession.

## CURRENT STATUS

- In October 2002, then Immigration Minister Coderre named an advisory committee on the immigration consultant industry. Former CBA Section Chair Ben Trister was co-chair. The Minister's Advisory Committee reported in May 2003. It recommended ways to regulate and oversee the practices of immigration consultants, adopting many of the proposals from CBA's [submission](#) to the Advisory Committee aimed ensuring the proper regulation of consultants.
- In October 2003, Minister Coderre announced establishment of Canadian Society of Immigration Consultants (CSIC). Consultants must be members in good standing of the Society, to act as representatives in immigration matters. Regulations in effect in April 2004 recognize only members of a provincial or territorial law society, the Chambre des notaires, or CSIC to represent immigration applicants for remuneration.
- In December 2005, CBA President Brian Tabor, Q.C. wrote to Minister Volpe, in light of media reports that key board members and personnel of CSIC had resigned. The reports alleged exaggerated compensation levels and mismanagement in CSIC. CBA questioned whether CSIC had established or enforced effective disciplinary procedures and finalized effective competency assessment procedures. CBA emphasized that the federal government has an continuing obligation to ensure that CSIC is regulating immigration consultants effectively, in the interests of public protection. The Deputy Minister responded in March 2006, that CIC is working with CSIC to ensure that its "deliverables" are being met, and that governance issues should be addressed with CSIC as an arms-length body.

- In December 2005, CIC invited CBA to comment on a proposal to permit information sharing about the conduct of authorized representatives between CIC and organizations including law societies, CSIC, NGOs, the IRB and the CBSA. CBA President replied in February 2006 expressing concerns about the proposal (see separate note). CBA noted the functional differences between the law societies and CSIC, and stated “information sharing” is not an appropriate way to deal with concerns about immigration consultants. Rather, CIC should ensure that CSIC performs its intended role as regulator. It reiterated these views in June 2008 in response to another proposal from CIC with only minor revisions to the original.
- In July 2007, CBA wrote to CIC, again raising concerns about CSIC’s regulation of immigration consultants, in response to a Toronto Star investigation that reveals immigration consultants appearing to counsel potential immigrants to make fraudulent refugee claims. CBA raised larger concerns about the inability of CSIC, under the regulatory framework, to prevent “ghost consulting” (providing advice on immigration matters but not signing paperwork or acting as legal representative in immigration proceedings). It urged the government to monitor any disciplinary proceedings arising out of the Star investigation and conduct a broader assessment of whether CSIC is meeting its mandate for the regulation of consultants. The Minister responded in April 2008 that the government is looking at options within the legislative framework to ensure better protection from improper practices of consultants.
- In March 2008, Section Chair Alex Stojicevic appeared before the Commons Committee on Citizenship and Immigration on the regulation of immigration consultants. The Committee’s June 2008 report made a number of recommendations to improve the effectiveness of CSIC, and reduce the problem of unregistered consultants generally and “ghost consulting” in particular, including adding a requirement that only authorized representatives be permitted to provide advice to those with pending immigration proceedings, and that the use of representatives be disclosed.
- Law Society of Upper Canada challenged the validity of the regulations creating CSIC, arguing that they create a delegation that is not statutorily authorized, discriminate against paralegals working under the supervision of lawyers, and exceed the powers conferred by statute. LSUC’s appeal to the Federal Court of Appeal was dismissed in July 2008. LSUC’s application for leave to appeal to the SCC was dismissed in December 2008.
- In 2008, the Canadian Migration Institute, a wholly-owned subsidiary of CSIC, began operations. CMI provides educational materials and seminars to immigration practitioners. Immigration consultants complained about a conflict of interest, in that CMI provides educational programs for profit, and its parent controls the educational standards and assigns credits to these programs. For example, consultants have to purchase high-priced, outdated videos from CMI to meet CSIC educational requirements. These concerns were referred to in the Commons Committee’s 2008 report.
- CSIC Rules of Conduct state that, “An Immigration Consultant shall not bring discredit upon the Society by acting in such a way as to undermine...the Society,” and require members to treat CSIC with “dignity and respect.” Some immigration consultants say that this makes it impossible to express dissent about CSIC administration. In 2008, CSIC launched disciplinary investigations against the CAPIC (the advocacy body for immigration consultants) Board of Directors alleging a violation of these rules by posting letters supporting the Commons Committee’s report, and criticizing CSIC’s refusal to embrace recommendations in the report.

- In March 2010, the Quebec government pre-published a regulation that would require any representative filing an application to its provincial immigration program to fulfill certain criteria (including having an office in Quebec) and be registered with the government. Members of the Barreau du Quebec and the Chambre des notaries would be exempted. The Section wrote to the Quebec government noting the good regulation of the legal profession throughout Canada and requesting that all Canadian lawyers authorized to provide legal services in Quebec under the Barreau's rules and the National Mobility Agreement be exempted. The regulation now exempts all lawyers authorized to practice in Quebec.
- In June 2010, the Section responded to a government consultation on the selection of a regulator for immigration consultants. The Section questioned whether effective self-regulation of consultants was possible, given the experience with CSIC. The Section outlined conditions precedent for effective regulation, including statutory investigatory and prosecutorial powers, limiting the body's role to regulation and not representation, reducing the risks of conflicts for board members, and a comprehensive statutory definition of immigration legal services.
- In June 2010, the government introduced Bill C-35, *Cracking Down on Crooked Consultants Act*. The Act would prohibit anyone from representing or advising a person for consideration – or offer to do so – in a proceeding under IRPA unless the person is a lawyer, a Quebec notary, or a member of a body designated by the government. It imposes penalties on “ghost consultants” who engage in unauthorized practice. It also permits the Minister to appoint a regulator for consultants, and to ensure it is operating in the public interest (i.e. require the regulator to provide information). In October 2010, the Section told the Standing Committee on Citizenship and Immigration that, given CSIC's history, the capacity of the immigration consultant industry to self-regulate was in doubt. If it did not have this capacity, immigration legal services should be confined to Canadian lawyers and Quebec notaries. If self-regulation of immigration consultants continued, the Section proposed additional safeguards to ensure accountability and give the Minister greater oversight over the regulatory body. Chantal Arsenault and Michael Greene represented the Section before Committee. Bill C-35 received Royal Assent in March 2011.
- In March 2011, the Section raised a concern with CIC that the transcript of a video on its website regarding unscrupulous consultants contained a reference to lawyers. At the Section's request, this reference was removed from the transcript.
- In March 2011, the Minister announced that CSIC would be replaced by a new regulatory body, the Immigration Consultants of Canada Regulatory Council. CSIC is challenging this decision in court.

## **NEXT STEPS**

- Citizenship and Immigration Law Section plans to work with CIC and Federation of Law Societies to ensure a balanced approach to recognizing of immigration lawyers as authorized representatives.

- Section is scheduling a meeting with the Barreau du Quebec to discuss the disparity in the requirements for Quebec immigration lawyers to file applications under other provincial immigration programs and out-of-province lawyers to file such applications in Quebec.