



December 17, 2021

Via email: sean.fraser@parl.gc.ca

The Honourable Sean Fraser, P.C. M.P.
Minister of Immigration, Refugees and Citizenship
2A - 115 MacLean Street
New Glasgow, NS B2H 4M5

Dear Minister Fraser:

Re: Proposed Amendment to Section 91 of the Immigration and Refugee Protection Act

I write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section), to propose an amendment to s. 91 of the *Immigration and Refugee Protection Act* (IRPA) to remove paralegals from the categories of persons authorized to practice immigration law.

The CBA is a national association of 36,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Section is comprised of over 1,200 lawyers, practicing in all aspects of immigration law and rendering professional advice and representation in the Canadian immigration system to clients in Canada and abroad.

The CBA Section takes the position that only lawyers should be authorized to practice immigration law, and non lawyers (including consultants and paralegals) should be required to work under the supervision of lawyers.¹ Since the government has decided to allow consultants to continue to practice independently, we appreciate the efforts to ensure adequate training.² However, paralegals are not required to complete the College of Immigration and Citizenship Consultants training, and receive insufficient training to adequately protect vulnerable immigration applicants.

Background on IRPA Section 91

IRPA s. 91 outlines who is authorized to give advice and representation for consideration on immigration applications or proceedings. The categories of authorized persons include lawyers who are members in good standing of a provincial or territorial law society and “any other member in good standing of a law society of a province or the Chambre des notaires du Québec, including a

¹ [CBA Resolution 20-06-A, Protecting the Public from the Practice of Immigration Law by Immigration Consultants](#); CBA Section submission on [Immigration Consultants](#), p. 9-10 (March 2017).

² Immigration, Refugees and Citizenship Canada, [New College of Immigration and Citizenship Consultants officially opens](#).

paralegal.”³ Section 91 also refers to members in good standing of bodies designated by the Minister. The Immigration Consultants of Canada Regulatory Council (ICCRC) is a designated body.

In 2010, then-Minister of Citizenship, Immigration and Multiculturalism Jason Kenney sponsored Bill C-35, which initially did not mention paralegals in s. 91(2)(b).⁴ The amendment to include paralegals was introduced on the last day of the House of Commons Citizenship and Immigration Committee’s consideration of the Bill, after a presentation by the Law Society of Upper Canada. The amendment was a surprise and there was no opportunity for meaningful discussion about it.

In speaking about the amendment to the Parliamentary Committee, Minister Kenney stated that paralegals were only being authorized to give advice under the direct supervision of lawyers:

Paralegals fall under the regulatory authority of the provincial law society. Essentially, the law society recognizes a lawyer, and the lawyer is responsible for the conduct of the paralegal under their supervision. So if we're recognizing lawyers for purposes of immigration conduct, we ought also to recognize those who are normally regulated by the law society, who help them with immigration cases.

It's just that simple. I think we would clarify that a lawyer's not going to go offside if he has some of the work on an immigration file done by his properly trained and licensed registered paralegal.⁵

Minister Kenney restated this reasoning to the Senate Committee on Social Affairs, Science and Technology in March 2011:

Here is the reason why the House committee adopted this amendment with respect to paralegals. Frequently, law firms will act on behalf of our ministry's applicants for immigration or visas. A common practice in a law firm would be for a partner to delegate either all or part of the work to a paralegal.⁶

The Minister’s remarks indicate the government’s intention in including paralegals in s. 91(2)(b) was that they would be supervised by lawyers and not practice immigration law independently. Unfortunately, the amendment was passed without consultation, and overlooked the requirement for paralegals to operate under lawyer supervision. It effectively authorized hundreds of unsupervised paralegals—many of whom had no training in immigration law—to represent and advise applicants in relation to Canadian immigration applications.

Scope of Practice in Immigration Law for Ontario Paralegals

The Law Society of Ontario (LSO) licenses and regulates lawyers and paralegals. Paralegals in Ontario have been allowed to provide legal services directly to the public without lawyers' supervision since 2008. As a professional regulator mandated to act in the public interest and protect consumers of legal services, the LSO prescribes the scope of practice for paralegals. The LSO bylaws authorize paralegals to represent individuals at Small Claims Court, on certain summary conviction offences, certain provincial offences, claims for statutory accident benefits, and appearances before provincial (Ontario) or federal administrative tribunals.⁷ The

³ IRPA [s. 91\(2\)\(b\)](#).

⁴ [Bill C-35](#), Third Session, Fortieth Parliament, 59 Elizabeth II, 2010 (First Reading.)

⁵ [Transcript of the meeting of the House of Commons Committee on Citizenship and Immigration](#), November 1, 2010.

⁶ [Transcript of the proceedings of the Senate Committee on Social Affairs, Science and Technology](#), March 9, 2011.

⁷ Law Society of Ontario, [By-Law 4](#), s. 6.

authorization to appear before federal tribunals enables paralegals to practice immigration law by conducting proceedings before the Immigration and Refugee Board (IRB).

When it was defining the scope of practice for paralegals, the LSO Task Force on Paralegal Regulation intended to include services in areas of law that were already permitted in legislation and matters before tribunals “that allow for appearances by agents.”⁸ In 2004 the *Immigration and Refugee Protection Regulations* were amended to prohibit the provision of immigration legal services for consideration by anyone who was not an “authorized representative,” which then included lawyers and immigration consultants but not paralegals.⁹ The IRB did not recognize paralegals as authorized representatives until IRPA s. 91(2)(b) came into force in 2011.¹⁰

Some Ontario paralegals have challenged the LSO’s restriction of their scope of practice in immigration matters to IRB proceedings. In September 2020, a few paralegals filed a notice of application to the Ontario’s Superior Court of Justice seeking a judicial declaration of their right to practice immigration law within an unrestricted scope except for Federal Court proceedings. The litigants alleged being “unjustly discriminated against” by the LSO. Referencing IRPA s. 91(2)(b), they note “the law says I can practice the full scope of immigration.”¹¹ The application has not yet been adjudicated by the Superior Court of Justice.

The issue of immigration law practice by non-lawyers is also being considered in British Columbia. In November 2020, the Law Society of the British Columbia (LSBC) launched an initiative that may allow non-lawyers, such as paralegals, to deliver legal services directly to the public in certain areas of law. The LSBC committed to devising corresponding licensing requirements. The LSBC president was quoted as suggesting immigration law as one area where non-lawyers could practice.¹² As part of this initiative, LSBC launched an “innovation sandbox” and invited proposals from individuals and organizations seeking to offer services in areas of legal need.¹³ Those admitted to this innovation sandbox will pilot the delivery of legal services under the LSBC’s oversight.

Stricter Regulation of Immigration Consultants

The federal government has sought to strengthen the regulation of immigration consultants following a study of the deficiencies in the regulatory and disciplinary frameworks governing immigration consultants and paralegals.¹⁴

The federal government established a new regulatory regime for immigration consultants in Canada through the *College of Immigration and Citizenship Consultants Act*, which came into force in December 2020. The College is subject to government oversight. The intended regulatory scheme involves prerequisites for education and training, a compulsory code of professional conduct, and authority to investigate and penalize unlicensed immigration consultants. Minimum competency standards are enhanced as new applicants must complete a mandatory diploma program in immigration and citizenship law. Queen's University is the sole English-language provider in Canada

⁸ Law Society of Ontario, [Report to Convocation](#), Task Force on Paralegal Regulation (September 2004) at paras. 65, 85.

⁹ [Regulations Amending the Immigration and Refugee Protection Regulations](#), SOR/2004-59.

¹⁰ [Report to the Attorney General of Ontario on the Implementation of Paralegal Regulation](#), IRB, 2004

¹¹ The Buffalo Tribune, Sam Abott, [Ontario Paralegals take Law Society to court over restrictions on immigration services](#). See also, [Lawyers Daily, Paralegals taking Law Society to court for restricting scope of immigration practice](#), 10 November 2020.

¹² Canadian Lawyer, [Law Society of B.C. taking steps to expand access to legal services by non-lawyers](#), 13 November 2020.

¹³ Law Society of BC, [Innovation Sandbox](#).

¹⁴ CIMM Committee Report, [Starting Again: Government Oversight of Immigration Consultants](#).

to train immigration consultants and the Université de Montréal was recently announced as the French-language provider.¹⁵ The proposed programs will be offered over three terms, delivered primarily online and comprised of 9-10 courses.¹⁶ They intend to prepare students to write the entry-to-practice exam to become licensed as a regulated immigration consultant with the College. Admission to the Queen's program will normally require a bachelor's degree and attaining a B average in post-secondary studies.¹⁷ The Université de Montréal has similar admission standards.¹⁸ The program admission criteria elevate the competence requirements for new immigration consultants. Previously, it was possible to be licensed by the ICCRC after completing an immigration-consultant program of as little as a few months without a prior post-secondary credential.¹⁹

The CBA Section maintains that the public would be best protected if only lawyers were permitted to represent immigration applicants²⁰ because the immigration consultant programs, delivered mostly online in less than two years, are not comparable to a law degree. However, we appreciate the federal government's efforts to strengthen the requirements for becoming an immigration consultant. The CBA Section's remaining concern is that paralegals are not required to complete the Program to pursue an immigration law practice, further deepening the substantive educational gap between the training for lawyers, consultants and paralegals.

Limited Training and Education of Paralegals

With new standards for immigration consultants, Ontario paralegals will soon have the most relaxed licensing requirements among the categories of people authorized to advise and represent immigration applicants pursuant to IRPA s. 91.

Ontario paralegals can be licensed with limited post-secondary education and training. While graduation from an accredited program is a prerequisite to becoming licensed as a paralegal in Ontario, there is significant variation in admission criteria and training among institutions. Among the 23 accredited programs, nearly 80% require only high school completion to be admitted. More than half are one-year programs, including a four-week practicum or work placement. Immigration law is not a required course for LSO-accredited paralegal education programs, and is not an entry-level competency assessed by the LSO paralegal licensing examination.²¹ As such, the LSO allows a paralegal with one year of post-secondary education and no specific training in immigration law to represent vulnerable clients in IRB proceedings where their lives, liberty and security are at stake.

Education, training and licensing requirements for lawyers are more rigorous. Outside Quebec, law school applicants must almost always complete at least three years of an undergraduate degree before applying to law school. Law students must take courses relevant to the practice of immigration law such as administrative, constitutional and criminal law. Law students are trained in statutory interpretation, issue-identification, legal research, and written and oral advocacy. This extensive training equips lawyers to conduct proceedings at the IRB, where representatives need to examine witnesses, cross-examine the opposing party, evaluate evidence for its probative value and

¹⁵ Queen's Gazette, [Queen's Law launches Graduate Diploma in Immigration and Citizenship Law](#), May 1, 2019. Université de Montreal, [L'UdeM formera en français les consultants en immigration du Canada](#),

¹⁶ Université de Montreal, [D.E.S.S. en réglementation canadienne et québécoise de l'immigration](#).

¹⁷ Queens, Graduate Diploma in Immigration and Citizenship Law, Admission requirements, [online](#).

¹⁸ Université de Montreal, [D.E.S.S. en réglementation canadienne et québécoise de l'immigration](#).

¹⁹ For example, the pre-requisites to enroll into the 34-week program for immigration consultants at the Academy of Learning included a two-year post-secondary credential or two years of "related" work experience, Academy of Learning, [Immigration Consultant](#).

²⁰ CBA Submission, [Regulation of Immigration Consultants](#), 2019.

²¹ Law Society of Ontario, [Entry-Level Paralegal Competencies](#).

prejudicial effect, and present legal arguments. In most cases, lawyer licensing candidates in Ontario must complete 8-10 months of experiential training after law school.²² They must pass the barrister and solicitor examinations, each of which are four hours.²³ The entry-level competencies assessed in these examinations include knowledge of statutes such as the IRPA, and knowledge of how immigration law intersects with other domains such as criminal law and family law.²⁴

In 2009, during the five-year review of the paralegal regulation regime, the reviewer – appointed by the Attorney General of Ontario – observed that the “universality of the criticism of the paralegal education” was the “most striking aspect” of that review. Even with the then-general standard of a two-year college program for paralegals, the reviewer highlighted complaints about the absence of prerequisite education, work and life experience, and/or demonstrated aptitude (e.g., similar to the LSAT), as well as inattention to the substantive legal knowledge that graduates would need to work competently as paralegals, particularly when engaging in advocacy and presenting evidence.²⁵

Paralegals signing up as Authorized Paid Representatives on the portal

On December 10, 2021, a paralegal publicly reported successfully registering to the IRCC Authorized Paid Representative portal, argued that they were now a registered consultant and suggested they could submit applications on behalf of clients. The paralegal encouraged other paralegals to do the same, despite the fact that LSO has restricted the scope of practice for paralegals in immigration matters to matters before the IRB.²⁶

The CBA Section is concerned that a paralegal could successfully register to the IRCC Authorized Paid Representative portal, because they do not fall under the definition of authorized paid representatives.²⁷ One mechanism IRCC could implement to vet applications for Authorized Paid Representative Portals would be to screen registration requests for LSO members numbers beginning with P, indicating a paralegal. The CBA Section urges IRCC to establish a rigid screening process for those registering as Authorized Paid Representatives. As a safeguard measure, the CBA Section also recommends that the status of currently active Authorized Paid Representatives be vetted to ensure no paralegals use the portal illegally.

Proposal to Amend s. 91

The CBA Section urges the government to amend IRPA s. 91 to exclude non-lawyer members of law societies from the authorization to advise and represent immigration applicants.

²² Lakehead University and Ryerson University have an integrated practice curriculum, so articling or the LPP are not required.

²³ Law Society of Ontario, [Licensing Examinations](#).

²⁴ Law Society of Ontario, [Entry-Level Barrister Competencies](#).

²⁵ [Report of Appointee's Five-Year Review of Paralegal Regulation in Ontario - Ministry of the Attorney General \(gov.on.ca\)](#)

The reviewer quoted a report co-written by Small Claims Court Justice Pamela Thompson concerned with an assessment of the Humber College Paralegal Education Diploma program which was “one of the more highly regarded in the province”:

No other professional programme encourages twenty-year-olds to start a business on their own where the future of the client can be impacted financially (as with courts and tribunals) or socially (as with criminal & POA courts) ... [We] have serious concerns about the maturity of paralegal graduates from colleges and private schools. We are also troubled by the poor ability in English of paralegals who must navigate a system where spoken and written language is so important.

²⁶ Law Society of Ontario, [Paralegal Licensing Process FAQs](#).

²⁷ IRCC, [How to use the Authorized Paid Representatives Portal](#).

Allowing paralegals with insufficient training to advise and represent immigration applicants is inconsistent with the federal government's efforts to improve competence standards for immigration consultants. This harms vulnerable recipients of legal services, runs counter to the public interest, and undermines an express legislative objective: to maintain the integrity and fairness of the Canadian immigration system.²⁸

To mitigate the effect of this change on paralegals whose practice currently focuses on immigration matters, we recommend a reasonable transition period of two years. This would allow paralegals to transition to another specialty, or to qualify as immigration consultants under the new College. Paralegals could also continue to do immigration work under the supervision of lawyers as appears to have been the Minister's intent when s. 91(2)(b) was introduced.

The CBA Section appreciates the opportunity to express our concerns about access to competent legal help for immigration applicants, and to offer a meaningful improvement. We look forward to further discussions with you and remain available to answer questions or propose additional solutions.

Yours truly,

(original letter signed by Véronique Morissette for Kyle Hyndman)

Kyle Hyndman
Chair, CBA Immigration Law Section

²⁸ IRPA, s. 3(1)(f.1).