



January 30, 2004

Alain Théault,
Director General,
Priorities, Planning and Research Branch
Citizenship and Immigration Canada
14th Floor
365 Laurier Avenue West
Ottawa ON K1A 1L1

Dear Mr. Théault:

**RE: Immigration and Refugee Protection Act Regulation amendments
(Immigration Consultants) *Canada Gazette* Part I, December 13, 2003**

I am writing on behalf of the National Citizenship and Immigration Law Section of the Canadian Bar Association (the CBA Section), to comment on the above-noted proposed regulations.

Overview

The proposed regulatory text follows the May 2003 report of the Minister's Advisory Committee on the immigration consultant industry, recommending the creation of a independent self-regulatory body, the creation by CIC in June 2003 of a Secretariat on Regulating Immigration Consultants, and the incorporation of the Canadian Society of Immigration Consultants (CSIC) to serve as the self-regulating body for immigration consultants in October 2003. The Secretariat is working with CSIC with the intention of establishing a self-regulatory body operational by the April 2004 deadline for regulation of immigration consultants. After April 2004, CIC and the IRB will recognize only consultants who are members in good standing with CSIC.

Immigration consultants are persons who are not lawyers or notaries (members of a provincial or territorial law society or the *Chambre des notaires*), who charge fees for representation of clients before CIC officers or the IRB.

The CBA position is that unregulated consultants should not be permitted to represent clients for fee in any capacity. A regulatory body should be responsible for licensing consultants in a meaningful manner: setting admission standards; establishing standards of competency; establishing an insurance or compensation fund; adopting a code of ethics; establishing a complaint mechanism, establishing offences and penalties for misconduct, and self-financing through a licensing fee.

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Successive Ministers have encouraged a mechanism that preserves a role for regulated consultants. To date, no restriction has been placed on the practice of unregulated consultants and no imposition of mandatory enrollment in a regulating body.

These regulatory amendments initiate the restriction of unregulated practice by consultants. However, we note that the Canadian Society of Immigration Consultants is not yet in a position to regulate consultants in a meaningful way, nor do we believe that they will be able to do so by April 2004. We have serious concerns about recognizing CSIS members as authorized representatives before its regulatory standards have been independently assessed as adequate.

Comments

Article 1, amending s. 2 of the regulations

A definition is added for “authorized representative”, a member in good standing of a bar of a province, the Chambre des notaires du Quebec or the Canadian Society of Immigration Consultants incorporated under Part II of the Canada Corporations Act on October 8, 2003.

The purpose of the scheme is to ensure that CIC and the IRB recognize only those representing immigration applicants for a fee who are qualified and subject to meaningful regulation. Lawyers and Quebec notaries already meet this standard, being university trained and regulated through long-established governing bodies. Immigration consultants cannot yet demonstrate this standard. The CBA Section recommends that, in addition to acknowledging lawyers and Quebec notaries as authorized representatives, the regulation distinguish between “authorized consultants” and “unauthorized consultants”, without drawing equivalence between lawyers and consultants as “representatives”. It remains to be seen whether CSIC provides meaningful licensing of consultants or protection of the public, let alone have stature approaching that of law societies or the Chambre des notaires. Lawyers and Quebec notaries are distinct from consultants and will not be required to be members of CSIC. The CBA Section opposes the convenient but misleading grouping of lawyers and member consultants under the title of “authorized representatives”.

Article 2, amending s. 10(2)(c) of the regulations

s. 10(2)(c) is amended so that applications under the regulations shall include:

- i. the name and contact information for any person representing the applicant for fee,**
- ii. the name of the authorizing organization and membership number issued to the representative by the organization.**

There is no objection to the requirement for the representative to be identified and contact information and membership details being provided. Again, there should be a distinction between consultants and legal counsel.

This requirement is meaningful only if CIC can verify the membership information as being valid and current.

We have reviewed a draft of the CIC fact sheet “Who May Represent You”, revised to reflect these draft regulations. We recommend that the description of lawyers in the current fact sheet be maintained. We note that the link for CSIC includes the description “(member consultants, complaints and discipline)”. To balance the ease of obtaining information about lawyer representatives, we recommend adding a direct link to each of the law societies and to the Chambre des notaires, as the Federation of Law Societies of Canada is not itself a regulatory body.

Article 3, adding s. 13.1 to the regulations

13.1(1) This section allows only persons who are “authorized representatives” to represent a person in a matter before the Minister, officer or Board, subject to 13.1(2).

- i. Again, the section should be amended to refer to “...no person who is not a member in good standing of a bar of a province or territory or the Chambre des notaires du Quebec or an authorized consultant ...”
- ii. It should be clarified that the representative cannot be a corporate “person”. Only individuals should be eligible for membership in CSIC.

13.1(2) This section allows an unauthorized representative to continue ongoing representation of a person for a period of four years after the coming into force of the section, if the representation commenced before the coming into force and is with respect to a matter that continues to be ongoing.

The RIAS states that the four-year period is granted so as not to “penalize” applicants or their representatives who already have applications in process that may be complex and requiring lengthy processing times.

The four-year period is too long. It does not encourage unregulated consultants to bring themselves within the regulatory scheme in a timely manner and does not reflect the majority of time frames for applications or proceedings. Consultants eligible to apply for membership in CSIC should be required to do so within a reasonable time (not more than 18 months), regardless of continuing applications or proceedings.

Article 4, amending s. 4 of the regulations

No comment necessary.

Article 5, Coming into Force

The regulations come into force when registered, save for s. 4 coming into force on April 4, 2004.

The April 2004 deadline should be imposed, without further delay. Only by barring unregulated consultants from practice will there be effective pressure to put in place a meaningful regulatory scheme.

Further Comments

These regulations are modest but important, providing the first essential step to the regulation of consultants – the requirement that consultants be regulated as a condition to conducting practice with the Minister, CIC or IRB.

It remains to be seen, however, whether the structure, operation and funding of the regulating body – CSIC – will provide appropriate regulatory oversight.

There are no legislated minimum requirements for the regulating body. The Board of Directors of CSIC, following the action plan developed by the CIC Secretariat on Regulating Immigration Consultants, for implementation by April 2004, is implementing the membership and operational requirements.

The body must provide minimal accepted standards for:

- Admission requirements, including education and testing standards
- Code of ethics and standards of competency
- Complaint and discipline mechanisms
- Errors and omissions insurance and compensation fund
- Adequate membership and licensing fees to sustain self-financing.

We note, for example, that the CSIC website advises of the availability of professional errors and omissions insurance (\$1,000,000, as recommended by the Advisory Committee), but does not refer to a compensation fund covering loss by clients through criminal or fraudulent acts, also a component recommended by the Advisory Committee.

We further note that the requirements for CSIC membership are modest:

- There is no mandatory educational requirement. Consultants who have not completed a one-year practitioners program (designed for training legal assistants) can be eligible on the basis of a vague “one year full time experience within the past five years...”, or by having “filed ten cases since June 2002.”
- There will be mandatory knowledge and ethics tests for entry. These tests are being developed and there is no indication of requirements for continuing education or retesting to confirm competence.
- The website does not refer to complaint and investigation or disciplinary mechanisms.

The CBA Section questions the sufficiency of mechanisms to ensure that, as the regulating body, CSIC meets minimal standards for effective competency of its members and protection of the public. Put simply, it is straightforward to legislate that consultants be members of a designated body, but where are the legislated standards and mechanisms to ensure that the body establishes and maintains the minimal standards (such as recommended in the Advisory Committee report), or for revoking recognition of CSIC as a legitimate licensing body? This is a critical issue.

The CBA Section recommends that regulations provide that the recognition of CSIC as the licensing body for consultants be subject to the establishment and maintenance of prescribed standards for competency of members and protection of public, and that the recognition be revocable when those standards are not being met.

At present, CSIC is not an arm's length independent body. Its establishment is closely tied to funding and the Secretariat provided by CIC. While this may have been justified to provide start-up funding, assistance and oversight by CIC, it raises concerns that CIC now has a vested interest in the body and cannot independently assess the sufficiency of the regulatory scheme.

Those seeking to immigrate to Canada deserve no less than professional, competent representation. This can be assured only through full, meaningful regulation of those who charge a fee for such representation. The provincial and territorial law societies (including the Chambre des notaires) have a proven track record in regulating legal counsel. The CBA Section will continue to work with CIC and CSIC to ensure that consultants meet the same rigorous standards.

Yours very truly,

(original copy signed by Tamra L. Thomson for Gordon H. Maynard)

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