



April 16, 2004

Mark Davidson  
Executive Director  
Secretariat on Regulating Immigration Consultants  
Citizenship & Immigration Canada  
300 Slater Street, 7th Floor  
Ottawa ON K1A 1L1

Dear Mr. Davidson

**Re: OP Manual 9: Chapter on Authorized Representatives**

Further to your correspondence with us providing a draft of the OP Manual chapter on Authorized Representatives, the National Citizenship and Immigration Law Section of the CBA (the CBA Section) has this response.

*We have reviewed this proposed chapter along with the Regulations pre-published on December 13, 2003 in Canada Gazette Part I, and published in Extra Vol. 138, No. 4 Canada Gazette, Part II, April 14, 2004, SOR/2004-59 30 March 2004. We refer to these latter regulations as the "Regulations".*

**"Purpose of this provision"**

The CBA Section recommends that the references to law society or law societies be to "Law Society" or Law Societies".

The last sentence of this section "CSIC was incorporated under Part II ... on October 8, 2003" is not necessary as it merely repeats the section of the Regulation and in the absence of an explanation of the status of the other societies, does not add or clarify anything here.

**PROCESS**

**Initial Screening of Submission of Applications – R10(2)**

1. Recommendation:

The first paragraph should be clarified by re-writing it to read:

**500 - 865 Carling, Ottawa, ONTARIO Canada K1S 5S8**

**Tel/Tél. : (613) 237-2925 Toll free/Sans frais : 1-800-267-8860 Fax/Télécop. : (613) 237-0185**

**Home Page/Page d'accueil : [www.cba.org](http://www.cba.org) E-Mail/Courriel : [info@cba.org](mailto:info@cba.org)**

By defining what constitutes a complete application in R.10, and by allowing for the return of an incomplete application, the Regulations give the department authority to enforce these provisions.

Rationale:

This clarifies the intent of the first three sentences and accurately reflects the statutory provisions.

The Manual statements as they stand may lead to the improper return of applications as being “incomplete” and the loss of a “lock-in” date with prejudicial consequences to applicants. It is essential that the Manual correctly reflect the requirements of s.10, to avoid unwarranted return of applications and lost rights or the litigation consequences arising therefrom.

In particular, it is not correct that s.10 requires an applicant to disclose whether “payment for services was made”, at least with respect to pre-application consultation, advice or assistance, and neither does the Act require that a Form IMM 5476 be submitted. The Act does require the applicant to advise whether a paid representative is being appointed, and if so, contact/authorization details must be provided.

### **Verification Process**

Please see above comments re: applications being considered incomplete.

### **Mid stream Processing: Refusal to deal with representatives**

#### 2. Recommendation:

We proposed that, in any case where the CIC is ceasing to conduct business with an applicant’s designated representative, the letter sent to the applicant informing them that CIC will deal only with the applicant directly MUST be copied to the designated representative.

Rationale:

This notifies both the applicant and the designated representative that CIC does not consider the representative as “authorized” pursuant to the Regulations. It gives the representative the opportunity to correct any possible error in this conclusion or otherwise challenge that decision. It also gives an applicant the opportunity to be informed by the designated, albeit possibly unauthorized, representative of the status of the application and an opportunity to be referred to an authorized representative.

#### 3. Recommendation:

The last paragraph of this section should be removed.

Rationale:

There is no authority in the Regulations for CIC to refuse to accept or process an application where no representative is appointed or where no representative is attempting to represent an applicant before the Minister, an officer or the Board.

We understand the concern with applicants not disclosing a representative and perhaps using a mailing address that may in fact be that of an unauthorized representative. If an unregulated, non-lawyer or consultant does not seek to be a representative after the application is submitted, then there appears to be no justification for refusing to process the application on the grounds that it is incomplete.

## Concealed Representatives

### 4. Recommendation:

Remove or clarify the second and third paragraphs of this section.

### Rationale:

The comments respecting applications that "appear" to have been submitted with third party assistance, and the direction that applications may be returned where a concealed representative is involved are problematic. R.13(1) does not prohibit any person, paid or unpaid, from providing advice and consultation to anyone whose application is **not** before a Minister, an officer, or the Board.

R.10(2)(c.1) and (c.2) do not require disclosure of persons who provided **prior** assistance, advice or consultation if they are not representing the applicant after the application is made or proceeding is commenced.

There is no entitlement for an officer to return an application where there is no representative designated, even if there is suspicion or knowledge that an unauthorized representative may have provided assistance, advice or consultation **prior** to submission of the application.

Given that pre-application consultation/advice/representation are not regulated, we submit CIC has no statutory basis to extend its authority to return such applications on the basis of suspected pre-application consultation with an undisclosed or unauthorized representative.

## Misrepresentation

### 5. Recommendation:

Remove this section entirely, or clarify.

### Rationale:

The directions on misrepresentation are confusing and we submit are not authorized by the Regulations or the IRPA.

First, it is contradictory to say that the omission to identify a paid representative is not in itself sufficient legal grounds to justify an inadmissibility based on A.40, but that there may be instances where the concealment could lead to an error in the administration of the Act. If the failure to identify a paid representative is an A.40 breach, then the Chapter should identify the circumstances that make it so.

Second, these provisions need to be amended to clarify that pre-application consultation with a paid representative need not be disclosed.

## Complaints and Reporting

### 6. Recommendation:

Amend the second sentence of the second paragraph to read: "These concerns should be documented and forwarded to NHQ, Selection Branch, who will take whatever action is necessary, including contacting the appropriate regulatory body."

Amend the third sentence of the second paragraph to read: “Visa offices must continue to deal with the representative until such time that disciplinary action that causes the representative to be unauthorized has been taken by the respective regulatory body.”

Rationale:

It is possible that there will be circumstances where NHQ determines that no action is necessary or that a particular complaint is without merit. The Chapter should reflect that these possibilities exist and that the officers must continue to recognize the designated representative until such time as the representative has been given due process in the investigation of the concern, and authorization removed.

### **Transition Period**

No comments.

### **Sub-Agents and Employees of lawyers and consultants**

7. Recommendation:

The first sentence of the second paragraph should be amended to read: “Any communications concerning the substantive aspects of an application or issues of merit shall be conducted strictly with the authorized representative named by the applicant.”

Remove the second sentence of the second paragraph.

Rationale:

The directions as they stand are problematic. Employees of law offices are under the direction of lawyers.

It is not the job of CIC to scrutinize these law office employees. Any regulation of law office employees or limits to their duties is a matter for Law Societies, not CIC or CSIC.

### **Form 5476B**

8. Recommendation:

It is submitted that Form 5476B be significantly revised as follows:

- Are you, the applicant, designating a representative for the purpose of the application submitted? Yes ? No ? If yes, complete the following:
- If your representative is a lawyer or notary, is your representative a member of a Canadian Law Society or Chambre des notaires du Quebec?  
Yes ? No ? If yes provide:  
Name of Law Society/Chambre: \_\_\_\_\_  
Membership Number: \_\_\_\_\_
- If your representative is a consultant, is your representative a member of the Canadian Society of Immigration Consultants (CSIC).  
Yes ? No ? If yes provide:  
Membership Number: \_\_\_\_\_

- If your representative is not a member of a Canadian Law Society, Chambre des notaries du Quebec, or Canadian Society of Immigration Consultants (CSIC), is the representative charging you a fee for representation?  
Yes ? No ?

The form should have a notation advising that upon submission of the application, the applicant may only seek consultation, advice, or representation from an authorized representative, providing the definition.

Rationale:

The new Form 5476B is confusing. Applicants, and representatives, will not understand that sections A and B are not alternatives.

The form does not have easy application to cases of authorization for release of information to counsel under the Privacy or Access to Information Act, or to cases where counsel is being retained in mid-processing.

There will be cases where Part A is not applicable while Part B is, but Part B does not contain the lines for confirming the representative's membership in a Law Society or the CSIC.

It is not clear whether counsel should use the old form 5476B in instances of disclosure requests and whether that form still exists?

We believe the above proposal contains the information that is required by the regulations and is consistent with solicitor-client privilege. It has been suggested that the former 5476B, Authorization to Release Information, could and should itself have been used with the addition of the above additional questions/information. It should still be confined to one page.

#### 9. Recommendation:

Alternatively, we propose that Form 5476B be amended by removing the question "Did you pay a representative to help you complete your application?" and replacing it with the following: "If you are paying a person to represent you with this application, complete the following."

Rationale:

The Manual is incorrect in stating that R.10(2) requires an applicant to advise if a representative is being paid. The Regulation does not require this disclosure. R.10(2)(c.2) **only** requires that the organization and membership number of a paid representative be provided.

The distinction to be made here is important, as it is not necessary for applicants to disclose their financial relationship with their representative: only to disclose the name and membership organization where there is a paid relationship. We are of the opinion that to require the applicant to disclose whether or not they have paid a representative for advice or consultation prior to the application being made is a matter of solicitor-client privilege and is not required by the Regulations.

There is no valid purpose for asking an applicant if they have paid a representative for assistance in completing their application. As stated above, the regulations do not cover the situation where an individual pays for a consultation or advice before an application is made.

As it stands, Form 5476B seeks inappropriate information and is confusing.

The confusion raised is illustrated in the following examples:

? If a counsel is consulted by a client for advice on an application being considered, but is not retained to represent the applicant in the subsequent application that is filed, is there any obligation on the applicant to disclose the lawyer or the consultation?

The answer should be “No”. Regulation 10 only requires the identity and contact information for a person “who represents the applicant”, and membership information only if the representative charges a fee for the representation.

? If a client consults a lawyer for one time legal advice **after** submission of an application, is there an obligation to disclose?

The answer should again be “No”, if there is no ongoing representation.

? Solicitor-Client privilege applies to confidentiality of the fact of retainer, fees paid, or the fact that consultation is sought, as well as the substance of the consultation. Where a client authorizes a counsel to be their representative and to receive information or make representations on behalf of the client before CIC or the Board, the privilege respecting disclosure of that retainer is waived. In the absence of that waiver, the confidentiality remains intact.

The CIC’s recourse is limited to refusing to deal with a representative who is not authorized and is charging fees for this representation.

### **Summary**

We support CIC's mandate to identify unauthorized representatives engaged in application preparation for a fee, and in implementing mechanisms for enforcement against those persons, if any, under these Regulations. That being said, there is concern that enquiries into pre-application consultations be structured so as not to impair legitimate and authorized consultations with legal counsel that are *prima facie* protected by solicitor-client privilege.

It must be kept clearly in mind that the motivation behind the introduction of these Regulations was not to regulate solicitor-client conduct, but rather, to regulate the conduct of unscrupulous consultants who are not lawyers.

This can be done by ensuring that the focus of the directions in this Chapter are on dealings applicants may have with persons other than legal counsel or registered consultants.

We trust you will consider our submissions in the finalization of the Chapter.

Yours truly,

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

Gordon Maynard  
Chair, National Citizenship and Immigration Law Section

cc Ian Laird