



July 6, 2011

Via email: Kenney.J@parl.gc.ca

The Honourable Jason Kenney, P.C., M.P.
Minister of Citizenship, Immigration and Multiculturalism
360 Laurier Avenue West, 10th Floor
Ottawa, ON K1A 1L1

Dear Minister:

I would like to extend my congratulations on your reappointment to lead the Citizenship, Immigration and Multiculturalism portfolio in the new Parliament. The Canadian Bar Association appreciates the opportunity to meet regularly with you and your officials to convey the perspective of the legal profession as we pursue our mutual goal of improving the law and the administration of justice in the areas of refugee protection, immigration and citizenship.

We hope that the CBA Citizenship and Immigration Law Section (CBA Section) may continue the dialogue with you on a number of priority issues, including the following.

Refugee Reform

Like you, the CBA Section wants to see Canada's refugee system operate efficiently, fairly, and expediently. We also welcome new measures to deter and punish human smugglers that prey on vulnerable people who wish to come to Canada, often subjecting them to horrifying conditions. We have expressed concerns that Bill C-49, now Bill C-4, would violate the *Canadian Charter of Rights and Freedoms* and would punish all those who come to Canada through mass irregular means, regardless of whether or not these individuals are genuine refugees.¹ We would welcome an opportunity to meet with you and your officials to discuss our concerns and explore ways to make the system work better without punishing bona fide refugee claimants.

We are also concerned about the elimination of the Designated Source Country class, which has been an effective mechanism for protecting human rights activists in countries with widespread and well-documented human rights abuses without forcing those individuals to flee their countries of origin before seeking protection. We have proposed several changes to the class to make it more effective and responsive, and we encourage you to consider whether the class might be reformed rather than eliminated.²

¹ CBA Section submission on Bill C-49: <http://www.cba.org/CBA/submissions/pdf/10-78-eng.pdf>.

² April 28, 2011 letter from CBA Section to Citizenship and Immigration Canada, online: www.cba.org/CBA/submissions/pdf/11-24-eng.pdf.

Consultant Regulation

We have frequently expressed our concerns regarding the lack of effective consultant regulation by the Canadian Society of Immigration Consultants.³ We are pleased that CSIC has been replaced and that the *Immigration and Refugee Protection Act* will give the government greater powers of oversight of the new regulator, to ensure that immigration consultants comply with high ethical and competency standards that will protect the public. We commend the steps you have taken in this regard.

Now that former Bill C-35 has come into force, we recommend that further steps be taken to ensure the new regulator, the Immigration Consultants of Canada Regulatory Council, has the capacity and mandate to establish and promote ethical and professional standards among consultants and to monitor, investigate and discipline them.

For the reasons set out in our submission on Bill C-35, the CBA Section maintains that the public can most effectively be protected if the representation of applicants and the practice of immigration law are restricted to members of provincial and territorial law societies and the *Chambre des Notaires du Québec*, and those who work under their direction and control.

If consultants are to be permitted to continue providing immigration services, they must be effectively regulated and we hope that the implementation of Bill C-35 will achieve this purpose.

Marriage Fraud

The recent Throne Speech signalled the government's intent to reintroduce regulatory amendments to address marriage fraud. While we support measures to protect Canadians and those coming from overseas against being duped into marriage by unscrupulous individuals, we feel that regulatory amendments must be carefully circumscribed to target only those who have perpetrated fraud.

In our previous submissions on this subject, we have cautioned against overly broad regulations that would expose those in abusive relationships to further harm, discriminate against those from communities who practice arranged marriages, or punish those who have suffered genuine breakdown of a bona fide relationship.⁴ We are particularly concerned that the proposed regulations on sponsorship bars and on conditional permanent residence fail to distinguish between cases of

³ See the following submissions: December 12, 2005, Letter to the Minister of Citizenship and Immigration, online: http://www.cba.org/CBA/sections_cship/pdf/society.pdf; July 10, 2007, Letter to the Minister of Citizenship and Immigration, online: http://www.cba.org/CBA/sections_cship/pdf/csic.pdf; July 2, 2010, Letter to Citizenship and Immigration Canada, online: <http://www.cba.org/CBA/submissions/pdf/10-47-eng.pdf>; and October 2010, "Bill C-35, *Cracking Down on Crooked Consultants Act*," online: <http://www.cba.org/CBA/submissions/pdf/10-72-eng.pdf>.

⁴ Submissions concerning regulatory amendments to address "bad faith" relationships: July 17, 2008 letter to Citizenship and Immigration Canada, online: <http://www.cba.org/CBA/submissions/pdf/08-41-eng.pdf>; and April 30 2010 letter to Citizenship and Immigration Canada, online: <http://www.cba.org/CBA/submissions/pdf/10-28-eng.pdf>. Submission concerning regulatory amendments to provide for "conditional permanent residence": May 18, 2011 letter to Citizenship and Immigration Canada, online: <http://www.cba.org/CBA/submissions/pdf/11-27-eng.pdf>. Submission concerning regulatory amendments to provide for a five-year sponsorship bar for previously sponsored spouses, common law partners and conjugal partners: May 18, 2011 letter to Citizenship and Immigration Canada, online: <http://www.cba.org/CBA/submissions/pdf/11-28-eng.pdf>.

marriage fraud and relationships that have genuinely broken down and therefore overreach the objective of fraud deterrence.

We would be pleased to meet with you or your officials before regulations are enacted or a bill is introduced to suggest ways that the law might achieve the stated objectives without unintended consequences for good faith immigrants and their sponsors.

Foreign Worker Regulation

We have previously expressed concerns about aspects of the new Temporary Foreign Worker regulations.⁵ It appears that many of the negative effects have been neutralized by way of departmental policy. However, we suggest that these changes should be written into regulation rather than relying on policy manuals and operational bulletins. An example is the four-year cap on work permits which the regulations suggest will apply to most work permits, but the manuals have limited it to a very small class of foreign workers.

In terms of the regulations themselves, we continue to have misgivings about the additional administrative burden imposed on employers as well as serious privacy issues created with respect to personal information of other employees. There appears to be continuing confusion about which department is responsible for conducting genuineness assessments of employers and about overlapping responsibilities.

The CBA Section looks forward to working with you and your officials, and we trust you find our input beneficial.

Yours truly,

(original signed by Rod Snow)

Rod Snow
President

Yours truly,

(original signed by Chantal Arsenault)

Chantal Arsenault
Chair, National Citizenship and Immigration Law Section

⁵ See the December 2009 submission of the CBA Section to Citizenship and Immigration Canada: <http://www.cba.org/CBA/submissions/pdf/09-66-eng.pdf>.