

September 11, 2019

Via email: natasha.kim@cic.gc.ca

Natasha Kim
Associate Assistant Deputy Minister, Strategic and Program Policy
Immigration, Refugees and Citizenship Canada
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Ms. Kim:

Re: Regulation of Immigration Consultants

I write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) to make recommendations for Immigration, Refugees and Citizenship Canada to consider in developing regulations to the *College of Immigration and Citizenship Consultants Act*.

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 1,000 lawyers, practicing all aspects of immigration law and delivering professional advice and representation in the Canadian immigration system to clients in Canada and abroad.

The history of self-regulation for immigration consultants in Canada is well-documented in several Parliamentary reports.¹ The CBA Section remains concerned about the ability of a new self-regulatory regime to protect vulnerable immigration applicants. We remain of the view that the public would be better protected if immigration consultants work under the supervision of lawyers.² That said, with the Act adopted, we offer recommendations for the regulations and bylaws so that the College is a more effective regulator than its predecessors.

¹ See for example: [Starting Again: Improving government oversight of immigration consultants](#), Report of the Standing Committee on Citizenship and Immigration, Borys Wrzesnewskyj (2017). [Regulating Immigration Consultants](#), Report of the Standing Committee on Citizenship and Immigration, Norman Doyle (2008).

² See: The Canadian Bar Association, [Immigration Consultants](#), (March 2017); The Canadian Bar Association, [Government Report on Immigration Consultants](#), (December 2017); The Canadian Bar Association, [Clarification of the CBA's Proposal on Immigration Consultants](#) (July 2019).

Educational requirements

Those seeking to become members of the College should be required to complete at least the equivalent of a bachelor's degree, followed by two years of full-time tailored training. Courses taken online should comprise no more than 10% of program content as face-to-face interaction is needed to develop client service skills. It is also more difficult to confirm if individuals have completed all coursework themselves for courses offered online. Immigration consultants should also be required to obtain practical training before becoming members of the College, as lawyer licensing candidates are required to do. We recommend that licensing candidates be required to complete a minimum six months of practical training including a work placement of at least three months. The educational institutions training immigration consultants can offer these work placements in partnership with the legal community. Ideally, placements would be supervised by a lawyer with at least five years of practicing immigration law and no history of disciplinary action.

Language proficiency

Admission to the College should require a minimum score of 6.5 on an IELTS test or at least two years of full-time study at an institution where the language of instruction is English or French. This is consistent with language prerequisites for admission to undergraduate programs at major Canadian universities.

Residency in Canada

Members of the College must be residents of Canada, with "residency" defined the same way as for the purposes of the Canadian income tax law. A residency requirement is needed to protect the public, as regulatory standards are difficult to enforce on those living in foreign jurisdictions.

Grandfathering

The Act contemplates that bylaws may enable transitioning current licensing requirements to new ones under the College, regardless of whether ICCRC becomes the College.³ We acknowledge that current immigration consultants may be allowed to continue practicing during a reasonable transition period until the new licensing regime is in place. However, unconditional or direct grandfathering must not be permitted. The Standing Committee of Citizenship and Immigration concluded that the training, education and experience standards of the ICCRC were inadequate.⁴ Grandfathering would carry the ICCRC's weak standards over to the College. ICCRC members should have a reasonable time to demonstrate competence by satisfying the new requirements, such as passing a substantive exam, proving language proficiency, and completing practical training supervised by an experienced immigration lawyer. Katarina Stephenson, a member of your department, stated that the new College will introduce requirements to put existing consultants on par with new entrants to the profession including a competence exam.⁵ We also recommend minimum educational requirements: ICCRC members should be required to show they've completed at least two years of post-secondary education before being eligible to become members of the College. We are troubled that the President of the Canadian Association of Professional Immigration Consultants claimed to have assurances that ICCRC members will be grandfathered if

³ [College of Immigration and Citizenship Consultants Act](#) at s. 85 (8) and s. 87(10).

⁴ [Starting Again: Improving government oversight of immigration consultants](#), Report of the Standing Committee on Citizenship and Immigration, Borys Wrzesnewskyj (2017).

⁵ Senate of Canada, [Standing Committee, Social Affairs, Science and Technology](#), March 2019, comments of Katarina Stephenson, Director of Social Immigration Policy and Programs.

they vote in favour of transitioning to the College in September.⁶ There is no legal support for this assertion and it would be contrary to the public interest. Grandfathering may also create a perverse incentive for students to rush to meet current educational requirements before more rigorous standards are introduced. Some advertisements for immigration consultant training programs encourage prospective students to complete the course work now in as little as four months before the proposed 16.5-month post-graduate diploma becomes mandatory.⁷ To eliminate this incentive, we recommend a moratorium on licensing new immigration consultants until the new regulatory regime is in place.

Scope of authorized practice

Due to the complexity of immigration law, we recommend limiting the scope of authorized practice for College members to relatively straightforward matters: applications for visitor permits, work permits, study permits and family sponsorships. It is particularly important that only lawyers represent clients before courts and tribunals, where the issues and proceedings are more complex.

Tiers of licensing

The Act authorizes bylaws to introduce licensing tiers for College members.⁸ We recommend that this authority be exercised with caution. The authorized scope of work for lawyers and consultants should be distinguished, as noted above. It is already difficult for the public to distinguish between licensed immigration consultants and unauthorized practitioners. Introducing different licensing tiers for immigration consultants could cause further confusion and increase the vulnerability of clients to abuse. Regulating and enforcing multiple licensing tiers will also cost more.

Composition of Board of Directors

The Act contemplates that details of the new regulatory scheme will be implemented through bylaws passed by the Board of Directors.⁹ Under the Act, the board will be composed of at least seven directors, and the number of appointed board members may not be greater than the minimum majority.¹⁰ At least two of the appointed directors should be immigration lawyers with a minimum of ten years' experience. If the Board is composed of more than seven directors, lawyers should comprise at least 30% of board members. Similarly, at least two immigration lawyers should be among the five members of the transitional board appointed by the Minister.¹¹ The CBA Section would be pleased to recommend immigration lawyers with relevant expertise.

Role of the College

The College's role must be limited to regulation in the public interest. The regulator should not engage in advocacy on behalf of immigration consultants. In the legal profession, there is a clear

⁶ See: [Message from CAPIC President on College of Immigration and Citizenship Consultants](#) (YouTube) July 30, 2019.

⁷ [Overview](#), CSIC E-Academy at "Important changes are coming – join the immigration consulting profession now" (2019).

⁸ [College of Immigration and Citizenship Consultants Act](#) at s. 80(1)(n).

⁹ [College of Immigration and Citizenship Consultants Act](#) s. 80 is a non-exhaustive list of over 25 subject matters on which the Board may enact bylaws.

¹⁰ [College of Immigration and Citizenship Consultants Act](#) s. 17.

¹¹ If ICCRC members vote to continue to the College, s. 85 of the Act applies. If they do not vote to continue, s. 87 of the Act applies.

separation between law societies that regulate lawyers, and professional associations that advocate on behalf of the legal profession like the CBA.

Complaints and compensation

Information on the process for filing a complaint against a College member should be readily available. This should include all the steps in the complaint process, the information necessary to file a complaint, and relevant timelines. The information should be in plain language that can be understood by a layperson with limited proficiency in English and French. The Act requires the College to establish a special fund to compensate anyone adversely affected by the activities of a College licensee.¹² To protect the public, the level of funding available must be adequate to address the serious harm that misconduct by immigration consultants has on applicants' lives. IRCC should also consider allowing clients to make retroactive claims for misconduct by current ICCRC members for a reasonable time prior to the establishment of the College.

Ongoing professional development

Immigration consultants should be required to complete continuing education including at least three hours of content on ethics, professional responsibility and practice management each year. There should be no carryover of continuing education hours from one year to another. These obligations are consistent with the continuing professional development requirements for lawyers.

Code of Professional Conduct

As providers of legal services, immigration consultants should be required to comply with rules of conduct as lawyers are, including requirements relating to marketing, referral fees and conflicts of interest. The Minister should consult with CBA and Federation of Law Societies in developing a code of professional conduct for College members, as they have proven expertise in developing rigorous and enforceable codes of conduct for the legal profession. The Minister should consider exempting immigration consultants who work at law firms from some rules in the code of conduct, if their workplace is already required to comply with the code of conduct for lawyers. For example, rules relating to trust accounts need not apply to immigration consultants working at law firms, as their firms would be subject to the rules on trust accounts in the code of conduct for lawyers.

Advertising and marketing

When marketing services to the public and communicating with clients, members of the College should be required to clearly identify themselves as immigration consultants rather than using vague terms like "experts in Canadian immigration" or "legal professionals." Advertisements must not mislead or confuse potential clients into believing that an immigration consultant is a lawyer. College members must also not claim or imply that they have any influence over government decision-making on immigration matters by virtue of being regulated by the government. The proposed standards are consistent with advertising and marketing requirements for lawyers.

¹² [College of Immigration and Citizenship Consultants Act](#) s. 13.

Referral fees

College members should be restricted from accepting referral fees from people who are not immigration consultants. Members should also be required to disclose any referral fees to their clients and obtain the client's consent. These requirements are consistent with the obligations of lawyers relating to referral fees.

To protect the public, members of the College must be held to rigorous and enforceable standards of training, competence, professional conduct, and governance. Since lawyers have long been subject to such standards, IRCC should seek lawyers' input in designing and implementing a new regulatory scheme for immigration consultants. We would be pleased to clarify and elaborate on our recommendations, and we ask to be consulted as the regulations and bylaws are developed.

Yours truly,

(original letter signed by Nadia Sayed for Ravi Jain)

Ravi Jain,
Chair, CBA Immigration Law Section