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Immigration consultant regulator in court

By Anca Gurzu

As the government continues its crackdown on fraudulent immigration consultants, the national body that regulates the industry is being taken to Federal Court over allegations it has unfairly sanctioned three of its members for publicly criticizing the regulator.

The case threatens to shed more negative light on an organization that critics—including a parliamentary committee—say is doing a poor job fulfilling its mandate.

The Canadian Society of Immigration Consultants is an independent not-for-profit body created by Citizenship and Immigration Canada in 2004 in an effort to crack down on rogue immigration consultants. All consultants who charge a fee for their services are required to register with CSIC. The society's website says its mandate is "to protect the consumers of immigration consulting services while ensuring the education, competency testing and discipline of its members."

According to affidavits filed by the three consultants, the dispute centres on a Citizenship and Immigration Committee report of the immigration consultant sector that was published in June 2008. The report was the result of many hours of testimony from immigration consultants across the country, many of whom raised concerns about CSIC.

The committee found that the organization was failing to protect the public from unscrupulous activities as per its mandate. It recommended, among other things, that the organization be set up with a federal statute, in the same way as a law society, through stand-alone legislation, rather than as a non-profit entity.

According to an affidavit filed in the Federal Court by Phil Mooney, CSIC managers did not approve of the committee's recommendation, and informed society members of its opposition through an online letter that same month.

"CSIC finds this [the suggestion to be set up under federal statute] unacceptable as the recommendation fails to recognize our true contribution and all that we have accomplished so far," reads the document.

On June 24, 2008, the Canadian Association of Professional Immigration Consultants—the largest non-profit association representing these practitioners—published a letter on its website responding to CSIC's previous letter and also endorsing the committee's report and recommendations.

One part of the CAPIC letter read that then-CSIC head John Ryan "states that CSIC has a Strategic Plan. That is news to most of us, as we have never seen it. It does not appear anywhere on the web site. Perhaps that is why so many feel that CSIC is busy doing things to us, instead of listening."

On July 3, 2008, CSIC launched a complaint against all CAPIC's board of directors—a position all three plaintiffs had at that time—for allegedly breaching the society's code of ethics by publishing that letter.

According to the official complaint, written by CSIC investigator Pierre Briand, CAPIC drew "discredit on the society and the profession. Your article undermines the Society principles of independence, integrity and effectiveness.... By these comments you displayed lack of respect toward the Society, and also brought discredit against the Society mandate and governing principles."

The investigator was referring to two rules in CSIC's Rules of Professional Conduct, which say that an immigration consultant must act toward the society with respect and dignity, and must not undermine or threaten its mandate.

After the investigation, which lasted from June 2008 to March 2010, CSIC dismissed the complaint against all CAPIC directors except Mr. Mooney, Rhonda Williams and Gerd Damitz.

Mr. Mooney, also the past president of CAPIC, was fined \$1,000 for having breached the two conduct rules, while Ms. Williams and Mr. Damitz were told they were not fully co-operative during the interview stage of the investigation and withdrew and concealed information.

Nancy Tibbo, CSIC's communication manager, confirmed to *Embassy* last month that Mr. Mooney was found to have breached the society's rules for professional conduct.

"We stand by the decision that was rendered," Ms. Tibbo said, "but of course Mr. Mooney is entitled to appeal that decision and it sounds like that's what he's doing."

CSIC would not offer any other comments on the case.

On April 14, the three members filed an application for judicial review, hoping to clear their records and arguing they were unfairly targeted by CSIC.

"The statements contained in CAPIC's letter are legitimate comments on a matter of public policy," the document reads. "CSIC does not have the authority to discipline members who express their views on matters of public interest, including the report of the Citizenship and Immigration Standing Committee on CSIC."

According to the document, the three CSIC members were never told what statements of their letter were inaccurate. They are defending their actions by invoking the freedom of expression and freedom of the press from the Charter of Rights and Freedom.

Mr. Mooney wrote in his affidavit that he has long been thinking that CSIC's complaints and discipline procedure was used for "improper political purposes."

"I believe that the Order was made against me in an effort to silence CAPIC and to prevent me from engaging in respectful criticism of CSIC," he wrote. "I also believe that the Order was made to prevent me from running for a position on CSIC's Board of Directors."

Overall, Mr. Mooney stated that "In my view, CSIC is using its Rules of Professional Conduct to protect itself from criticism, rather than protect the public from dishonourable immigration consultants, which is its mandate."

Mr. Damitz, who also filed his affidavit this month, wrote that "In my opinion, it is unacceptable in Canada to use a complaint mechanism for punishing members for voicing criticism of the Regulator, and is actually counter effective to consumer protection as the Regulator's valuable resources are occupied in its efforts to mute its critics."

None of the allegations have been proven in court. CSIC has 30 days to respond to the applicant and then a judge will decide whether a hearing can take place.

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