



Canadian Association of Professional Immigration Consultants
L'Association Canadienne des Conseillers Professionnels en Immigration

From the Bottom Up

A Newsletter for CSIC members about their issues.

Issue #249

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*Welcome to our Newsletter **From the Bottom Up**. Our articles and postings will cover immigration matters that affect your business and lives.*

In this issue:

Towards a Better Regulator

Part 1 of 3

With all of the contradictory messages flying around our profession these days, we would like to take a sober look at how we got where we are today, and what will likely happen in the near future. We are pleased to present a three-part Report, designed to answer the following questions:

- Where we are with regards to self-regulation?
- Will we end up regulated by law societies?
- Why are CIC and the Minister proceeding the way they are?
- Why have they allowed CSIC to stay in business, and even participate in the bid process for a new Regulator?
- Why is CSIC saying this is "just a review"?
- What do they know that we don't?

The answer to the last question is clearly, "nothing".

CAPIC has established excellent relationships with CIC, the Minister and the Standing Committee and while CSIC had no idea what was happening, we have known for months what the Minister's intentions were. Details have been surprising - pleasantly so in making ghost agent activities an offense under IRPA - and a little puzzling in the methodology they are using to deal with CSIC.

For those of you who are relative newcomers, we have laid out some of the history.

TOWARDS A BETTER REGULATOR

Part One:

BACKGROUND: (How we got here)

We reread the Mangat decision to see what effect it has on what we are now going through. The previous Immigration Act stated that individuals were entitled to representation by non-lawyers, who could charge a fee. This included filling in forms and giving advice, as well as representing before Immigration tribunals. In essence this is what Mangat was about - it preceded IRPA, deciding that the Federal Immigration Act sections 30 and 69(1) - sections about representation - took precedence over the Legal Profession Act of B.C. Those sections used the term "counsel" which the Courts clearly stated did not mean "lawyers", and the courts also described many tribunals where non-lawyers could represent and charge fees. The court also stated that the Federal government could regulate consultants in Section 114(1)(v) but had not yet done so, but said this was "permissive" not "mandatory"

"Section 114(1)(v) refers directly to any person, other than a person who is a member of the bar, which demonstrates that Parliament has contemplated a role played by non-lawyers in the immigration process. The fact that the Governor in Council has not yet established a licensing system in this area pursuant to s. 114(1)(v) is irrelevant to the meaning of ss. 30 and 69(1). As Mackenzie J.A. pointed out for the British Columbia Court of Appeal, there is nothing in those provisions which requires other counsel, whether they act for a fee or not, to be licensed. Moreover, s. 114 is only permissive. It cannot incorporate a licensing requirement for "other counsel" in ss. 30 and 69(1). Quite to the contrary, the fact that s. 114(1)(v) creates only the possibility for the regulation of a "person, other than a person who is a member of the bar of any province" reveals Parliament's primary intent to permit a class of people to be representatives and render services in that capacity, and its secondary intent to allow for the regulation of that class of people." (*From Mangat*)

Then came IRPA, which gave the Minister the right to Regulate "persons" by way of Regulation, in Section 91 of IRPA:

"Regulations

91. The regulations may govern who may or may not represent, advise or consult with a person who is the subject of a proceeding or application before the Minister, an officer or the Board."

This led to the Definition in the Regulations:

"authorized representative"

« représentant autorisé »

"authorized representative" means a member in good standing of a bar of a province, the Chambre des notaires du Québec or the Canadian Society of Immigration Consultants incorporated under Part II of the Canada Corporations Act on October 8, 2003. "

... then to

"Representation for a fee

13.1 (1) Subject to subsection (2), no person who is not an authorized representative may, for a fee, represent, advise or consult with a person who is the subject of a proceeding or application before the Minister, an officer or the Board."

And, finally, interpreted by CIC in IP9 5.1:

"They specify that a fee-charging person who is not an authorized representative may not provide immigration advice, represent or consult once an application is submitted."

Now we come to the issue of what the Minister (the government and CIC) could do if he was unhappy with ghost agents and the Regulator. This is the plan they have been working on for a year. The Minister told the CAPIC Board on June 9th, 2010 that he wanted this done in the summer of 2009, but it took this long to work out "the plan".

1. Ghost Agents:

He could have extended the provisions of IP 9 to include giving advice or filling in forms, but the only "punishment" would have been to refuse to process a file. In making all of these activities an offense against IRPA, and punishable by fines or imprisonment, he delivered far more than we expected, and made it possible to actually punish people who were helping clients with files that were already submitted. Suddenly the stakes are much higher for ghost agents! Those in Canada will have to go out of business, except for the real crooks. Unfortunately they will always be with us.

ACTION:

This is why we must keep putting pressure on all MPs to enact speedy passage of Bill C-35 and not let any group obstruct the process for any self-serving reasons. Let's get the letters pouring in all summer, and let's visit all the MPs in their own ridings - they will all be there. The Minister could be changed, and we want the pressure to stay on all parties to pass the law.

2. CSIC

The Minister could have removed CSIC from the Definitions, putting all of us out of business, but in doing so he would have orphaned hundreds of thousands of files, and exposed the department to class action lawsuits from good consultants for loss of livelihood.

Nor could the Minister "threaten" the current Regulator with removal because of poor performance without getting into a long legal fight about what was being done or not done, because CSIC has the right to operate its business as it sees fit. It is a private company.

Instead, Bill C-35 gives the Minister the right to not only say who can represent, but also who can regulate consultants, so the next time (hopefully never) - he can do away with all the complications and just appoint a new regulator.

Finally, because any Act of Parliament can die on the order paper the Minister and CIC came up with the idea of the Notice through the Regulations to ensure that change happened! They have started the process by asking what the requirements should be for selecting a new Regulator. And to prevent law suits, CSIC is being allowed to participate in a fully transparent process. No one can argue procedural fairness, no member will be disadvantaged if a new Regulator is appointed, and no one's practice will be interrupted when CSIC is wound down, because everyone would be grandfathered to the new Regulator through an orderly transition period.

Most importantly, the Minister will be acting within his authority because he is complying with Section 91 of the Act.

The facts above also mean that the lawyers will not get their wish and eliminate consultants - because of Mangat and sheer numbers of immigrants this would effect.

Tomorrow - part Two - THE REAL RISKS

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