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# Standing Committee on Citizenship and Immigration

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**Wednesday, April 9, 2008**

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**Chair**

**Mr. Norman Doyle**

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## Standing Committee on Citizenship and Immigration

Wednesday, April 9, 2008

• (0905)

[English]

**The Chair (Mr. Norman Doyle (St. John's East, CPC)):** Good morning, everyone. I want to welcome you here today as we continue our cross-country tour.

We're the immigration committee of House of Commons. We've been mandated by the House of Commons to hold meetings on three very important matters: temporary and undocumented workers, immigration consultants, and Iraqi refugees. We're going to meet in almost all provinces—nine provinces, I believe. We've already met in five provinces. We will finish up in mid-April in St. John's, Newfoundland.

We will have heard approximately 52 panels of representatives, soliciting their views on these very important matters. At the conclusion of our meetings, of course, we will have our committee and our officials compile a report based on the evidence you've given on these matters, and we will have the report presented to the House of Commons.

Our committee has representatives from all parties on it. Some of our people are a bit tardy this morning. We have two or three more who'll be along shortly.

We will now begin hearing from our witnesses. First, we have, from the Canadian Society of Immigration Consultants, Mr. John Ryan, who is the chair, as well as Rivka Augenfeld and Imran Qayyum.

Thank you for being here.

I think you're aware of how our committee works. We give you opening statements, and of course, the committee members may want to interact and question later on. But you do have an hour, and we invite you to begin in whatever way you wish.

**Mr. John Ryan (Chair, Canadian Society of Immigration Consultants):** Thank you, Mr. Chair; and good morning, everyone. *Bonjour tout le monde.*

My name is John Ryan. I'm here this morning to address the committee in my capacity as chairman of the board and the acting chief executive officer of the Canadian Society of Immigration Consultants. I am here with my fellow CSIC board members, Imran Qayyum, who is the vice-chair of the society; and Rivka Augenfeld, who is a public interest director from Quebec and the secretary of the corporation.

I would like to thank the chair and the committee for being in Toronto today and allowing us the time to speak on the issue of

protecting both the integrity of the immigration system and the consumers of immigration consulting services.

I will speak to you from the perspective of a regulator, describing our role and some of the challenges, and yes, even some of the frustrations that we have regarding the investigation of unauthorized, improper, and unscrupulous practices, and the need for enhanced penalties under the Immigration and Refugee Protection Act.

The Canadian Society of Immigration Consultants is an independent, not-for-profit organization, at arm's length from government, whose members are recognized as authorized representatives. Since April 2004, under the Immigration and Refugee Protection Act, only authorized representatives have been able to represent for a fee immigration applicants before the minister.

CSIC is recognized by almost all of the provincial governments, except Quebec, with respect to their provincial programs. CSIC is responsible for regulating the activities of 1,277 members, as well as setting education standards and testing for competency.

In the first few years of our existence, we have put in place membership standards, an enforceable code of conduct, a credible complaints and discipline mechanism, an errors and omissions insurance requirement in favour of the consumer, and mandatory professional development education requirements for all members. We work from an established comprehensive strategic plan, a multi-year budgeting plan, and we submit to independent financial audits that are presented to our members on a regular basis.

We carry out regular, extensive, and ongoing communications with members, we publish all decisions following the outcome of our hearings, and each year there is an open election process for CSIC directors. The board of directors is accountable to the members through the annual general meeting and special meetings that have been held and will continue to be held, and members may bring forward duly constituted motions.

[Translation]

**Ms. Rivka Augenfeld (Public Interest Director, Canadian Society of Immigration Consultants):** Thank you, Mr. Chairman.

CSIC very recently established the Canadian Migration Institute, the CMI, a wholly owned subsidiary of CSIC, which now responds to a need for quality French-language training for members and programs for legitimate providers of immigration services who are not certified Canadian immigration consultants, CCICs. That's what they are called.

Over the last three years, it became apparent to the board that the marketplace had not, nor would it, provide adequate educational opportunities in French to those wishing to undertake immigration consulting as a career. At the same time, CSIC identified the opportunity to use those same educational vehicles as a means of giving back to the community by allowing NGOs and government employees access to training that was previously available only to CCICs.

In four short years, I believe that CSIC has become an effective and respected regulator of certified immigration consultants. However, more is required of the Government of Canada to deal with unauthorized representatives who seek to circumvent the Regulations and the will of Parliament. For example, it is not CSIC's role to carry out investigation and enforcement activities related to the Immigration and Refugee Protection Act—that remains the purview of the Government of Canada. The Immigration and Refugee Protection Act provides for general offences and penalties. It is our view that more is required of the Government to enforce these provisions as they pertain to unauthorized representatives.

Our position is that stronger enforcement by the Government of Canada is required and that this can be achieved by clarifying roles within the federal government, adjusting the way federal organizations administer regulations, and making statutory revisions.

CSIC however believes that increased enforcement is only one of the ways in which the government can better fulfill its role under the model. Much more effort must be made by the government to inform immigration applicants of the existence of the protections provided by authorized representative bodies such as the law societies, the *Chambre des notaires* and the CSIC through its web site and printed materials. Empowering the consumer to make a more informed choice at the outset, when he or she is considering hiring a representative, is a far more cost-effective approach than depending on expensive enforcement after the fact.

CSIC is of the view that there is a need to clarify the respective roles of CIC, the IRB, CBSA, RCMP and local policing agencies relating to the investigation of unauthorized or improper practices and enforcement. For example, it is unclear whose role it is to investigate those who provide consulting services for a fee but are not “authorized representatives” under the Act and which of these organizations has been adequately directed and resourced to conduct investigations and take enforcement action as warranted. It is our view that there should be clearer directives as to what would trigger an investigation.

● (0910)

[English]

**Mr. John Ryan:** Mr. Chair, with the amendments to the Immigration and Refugee Protection Act, in 2004, CSIC became one of the regulatory bodies whose members are recognized as authorized representatives by CBSA, CIC, and the IRB.

“Authorized representative” became a defined term under section 2 of the IRPA regulations, and section 13.1 was added, which states in part: “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.”

In its policy manual known as IP 9, the immigration processing manual published by CIC, which is meant to be an administrative interpretation manual, CIC has interpreted this regulation so it does not apply to any unauthorized practice that sees rogue agents charge excessive fees and have clients submit their application independently to CIC. The policy should go further to enable the minister and her officers to investigate whether fees have been paid to an agent prior to the submission of the application. Further, the CIC manual also exempts education agents, for example, who advise applicants and assist in the preparation of documents, as well as organizations seeking potential immigrants and charging cost recovery fees, such as the International Organization for Migration, from having to meet the “authorized representative” definition.

We believe that CIC's interpretation of the act is not consistent with the intent of Parliament, which was to determine whether someone being paid to assist an applicant is authorized to act in this capacity. We recommend that applicants be required to disclose any assistance they paid for in the preparation of their application. This change can easily be accomplished by adopting the wording of an earlier draft of the use of representative form, the IMM5476, which is created by CIC and distributed in their kits, and that was circulated to CSIC and other stakeholders prior to adoption of the regulations. Further, we recommend that organizations seeking potential immigrants and charging cost recovery fees be required to meet the definition of “authorized representative”.

The third area of recommended action would result in stronger enforcement by the Government of Canada through its statutory revisions. “The Report of the Advisory Committee on Regulating Immigration Consultants” —the same report that resulted in the creation of CSIC—recommended that penalty provisions be included in IRPA to specifically address unauthorized and improper practice. We encourage the standing committee to recommend to the minister to adopt recommendation 31 of that blue ribbon committee and to make the necessary changes to the act.

In summary, we respectfully request that the committee recommend to the minister that the government bring about stronger intelligence and enforcement provisions related to unauthorized, improper, and unscrupulous practice. This can be accomplished by clarifying the roles of the federal organizations, making changes to the CIC manual that interprets and administers the regulations, and making the statutory revisions recommended by the minister's advisory committee on the regulation of consultants.

We don't believe, though, at the Canadian Society of Immigration Consultants, that enforcement is the only answer. We also call upon the committee to recommend to the minister that they increase their public education in terms of communicating the fact that people should be thinking twice about who they choose as a representative at the front end, so we don't have to pay expensive enforcement costs at the back end. That's a valuable use of our resources.

We, at the Canadian Society of Immigration Consultants, remain committed to our role of consumer protection through regulation. We are also committed to fully cooperating with the Government of Canada toward stronger intelligence, information, and enforcement measures that would ensure the integrity of the immigration consulting profession and protect the consumers of consulting services.

Thank you. I'd welcome your questions.

• (0915)

**The Chair:** Thank you, Mr. Ryan.

The opening statements have been completed.

Do you have questions, Mr. Telegdi?

**Hon. Andrew Telegdi (Kitchener—Waterloo, Lib.):** Could you tell us from your experience what percentage of people are represented by consultants who are licensed versus people who have unlicensed consultants?

**Mr. John Ryan:** To be honest with you, I was on the minister's advisory committee as one of the participants, as was my colleague Rivka Augenfeld, who co-chaired that committee.

Initially we estimated the number to be in the neighbourhood of 6,000. However, when we took a second look at it, after the committee—we did our own studies at CSIC—we lowered that to approximately 3,000 in terms of those practising inside Canada. Outside Canada, CIC doesn't have a clue. We don't have a clue simply because it's unregulated and the figures aren't tabulated. However, offshore, I would say, there is probably a much larger problem in terms of individuals who are practising as agents, certainly as education agents and employment agents.

For example, when I was in China, I visited with the public security ministry. They regulate and issue licences to 200-and-some companies that are practising in mainland China, which is one of Canada's top source countries. How many consultants and agents and people are working there legally and illegally is an open question and is certainly not one the Chinese government could give me any comfort on.

• (0920)

**Hon. Andrew Telegdi:** When I visited our mission in New Delhi I was talking to officials. They told us about an individual who had applied for a visa, and while the person was standing in line, somebody came along and said, "You have to do this." So the person submitted inaccurate information. The person would have had a visa if he had submitted the correct information, but he was talked into submitting the wrong information, and of course he didn't get a visa.

Now, the situation, on my subsequent visit to Delhi, had changed. You have licensed agents assisting both in visa applications and in landing.

As for the question of what happens abroad and to what extent we can really educate, you hear horror stories. Somebody might take a whole group of people from the former Soviet Union and convince them that Canada is the place to go and assure them that they could get here, and of course, at the end of the day it turns out to be a big hoax. People lose a lot of money, they are disillusioned, and of course it ends up giving Canada a black eye—not that it's any fault of ours, but this is the way it works out.

What kinds of experiences did you have at overseas missions?

**Mr. John Ryan:** Thank you for your question. I think you've hit the nail on the head. I think there are things we can do to address the exact problem you're talking about. We have written CIC, and we've had a number of meetings with Citizenship and Immigration Canada about this.

Simple consistency of messaging on the international websites—the DFAIT websites and the CIC websites—is an example. Let's use the example of Beijing. If you go to the Beijing website, to the mission, and you look at what's available in English, it links back to the main CIC website in Canada. Of course, most people get their information in Mandarin. Would it surprise the committee to know that there is absolutely no information in Mandarin available to the consumer about authorized representatives and the protection measures that the Government of Canada has put in place? There is nothing, nada, not even a mention. That means that you have a whole industry that has been able to carry on despite the rules being changed here by Parliament and the Governor in Council in 2004.

There are other examples. If you look at other websites, you will see similar messaging.

So I think the government, in a very cost-effective way, could simply streamline its messaging, inform consumers at the front end, and empower consumers to make the choice when they're deciding if they're going to hire someone. I think that's our obligation. We can do that through the kits and we can do that through the websites. So I think there are steps we can take.

There is a limit to our legal ability to get at offshore agents. Under the model, the immigration officers overseas are essentially administrative gatekeepers who are there to see whether an application filed is from people who are authorized representatives: lawyers, consultants, or *Chambre des notaires*. I think there is still a need to maintain that administrative gatekeeper role, but I think we could go miles by giving proper information to the people who are actually the consumers, the vulnerable consumers making a choice at the front side of this equation, rather than by putting a lot of our money into enforcement.

**The Chair:** Thank you, Mr. Ryan.

Thank you, Mr. Telegdi.

**Mr. Imran Qayyum (Vice-Chair, Canadian Society of Immigration Consultants):** Could I add something?

**The Chair:** Please go ahead, sir.

**Mr. Imran Qayyum:** Thank you.

Just to add to Mr. Ryan's comments, we at CSIC, from early days, adopted and have been continuing on a consumer empowerment and education process. In the very early days, we placed ads in many of the top source countries' national newspapers in the languages in which they were published—for example, Hindi, Punjabi, Urdu, and Mandarin—and we continue. At present we are placing ads in over 40 ethnic newspapers published throughout the ethnic communities in Canada. Again, those advertisements are in the local languages of the publication.

• (0925)

**The Chair:** Good. Thank you, Mr. Qayyum.

I'll go to Mr. St-Cyr.

[*Translation*]

**Mr. Thierry St-Cyr (Jeanne-Le Ber, BQ):** Thank you, Mr. Chairman.

Thank you all for being here. As you probably know, certain individuals who came to testify before our committee pointed out that there were governance problems at the Canadian Society of Immigration Consultants.

I have a series of very simple questions to ask. I simply want to check the veracity of their remarks. As I have a number of questions, I ask you not to launch into explanations and simply to tell me whether it's true or not.

Certain individuals emphasized that the society's current by-laws did not permit anyone to request an extraordinary meeting. Is that correct?

**Ms. Rivka Augenfeld:** No. You'll find the by-laws in the kit we provided you. Pardon me, but it will be little bit longer—

**Mr. Thierry St-Cyr:** I just want to know the section number.

**Ms. Rivka Augenfeld:** The by-laws concerning annual meetings and social meetings are in sections 11.2 and 11.3 of the by-laws that you have.

**Mr. Thierry St-Cyr:** Thank you. It's claimed that, rather than hold an annual general meeting in person in the summer of 2007, you only held an online meeting. Is that correct?

**Ms. Rivka Augenfeld:** Mr. St-Cyr, since our members are all across Canada and in a number of countries around the world, we thought that the fairest thing for everyone would be to have an online meeting, which is permitted by by-law. We tried to hold that meeting, which resulted in no costs to members and was very fair.

**Mr. Thierry St-Cyr:** As you'll understand, madam, I only have seven minutes. You don't need to justify yourself. I just want to check certain matters.

**Ms. Rivka Augenfeld:** Yes, I understand. That wasn't a justification. I wanted to tell you that it was possible.

**Mr. Thierry St-Cyr:** Those same individuals claim that they introduced four motions at that general meeting, supported by 70 or 100 signatures. Those motions requested that members once again be granted the right to request a special meeting, to adopt a transparency policy, to establish a finance committee consisting of members in order to control cost overruns and to review the compensation of directors and to limit that compensation to \$30,000. Those individuals claim that those four motions were rejected

without even being placed on the agenda and debated. Is that correct?

**Ms. Rivka Augenfeld:** Mr. Chairman, the tabling of motions is subject to by-laws and very clear deadlines. The motions were submitted after the deadlines, which were published well in advance. We have to respect everyone, and the submissions were filed after the stated deadlines. They were rejected, but they would have been considered if they had arrived on time.

**Mr. Thierry St-Cyr:** The witnesses who appeared before us were obviously required to tell us the whole truth, since otherwise that would be contempt against the House. With respect to the online general meeting of June 16, 2007, these witnesses told us that they could not speak out and that the only person who had that privilege was the chairman of the board. Is that correct?

[*English*]

**Mr. John Ryan:** Mr. St-Cyr, as you know, if you do not have a quorum of members at an annual general meeting, you cannot entertain the business of the day. In fact, if the members had properly.... I don't think they're misleading the committee; I just don't think they've given you complete information.

If the members had given you the complete information on the four separate attempts the Canadian Society made on June 16, July 18, August 20, and September 20 to achieve the minimum quorum required to hold the AGM, and had that AGM been held, then the members certainly would have been able to get in. However, as the chairperson, I cannot open a meeting of the members unless I have quorum; hence, there is no way to discuss the business of the day.

[*Translation*]

**Mr. Thierry St-Cyr:** All right. What is the quorum?

[*English*]

**Mr. John Ryan:** Under our bylaws quorum is defined as 20% of the membership.

[*Translation*]

**Mr. Thierry St-Cyr:** We were also told that, in March 2007, the society's ethical rules were amended to add disparagement of the society as a professional offence. Is that correct?

**Ms. Rivka Augenfeld:** As in any professional association, the members have obligations to their professional association. The codes of ethics of other professional bodies set limits on what one may say. There is legitimate criticism, and there is disparagement.

• (0930)

[*English*]

**Mr. John Ryan:** I think, Mr. St-Cyr, you will also find—

[*Translation*]

**Mr. Thierry St-Cyr:** I'll simply continue because I still have a few questions and no doubt not much time.

We were also told that the society ignored an official request to provide the membership list to a candidate in the 2007 election. Is that correct?

[English]

**Mr. John Ryan:** Well, that's not done. I'm not aware of that request. But we publish on our website who the candidates are. If you want to look at the election procedures.... They're in the procedures; they're right there. In fact, the documentation for this election is available. Everything is pre-published, and it has to be between 90 and 120 days in advance. So I don't understand why—

[Translation]

**Mr. Thierry St-Cyr:** Does a candidate for election have the membership list so he can reach the members?

**Ms. Rivka Augenfeld:** All the membership lists are on the website.

**Mr. Thierry St-Cyr:** All right, thank you.

**Ms. Rivka Augenfeld:** The names of revoked members are also on the website.

**Mr. Thierry St-Cyr:** The other information that was provided to us is that members had to pay \$800 to attend a mandatory educational conference in Toronto in May 2007 and that, if they did not attend, they had to buy a DVD of that conference for \$800 and that that was mandatory for all members. Is that correct?

**Ms. Rivka Augenfeld:** Continuing professional training is mandatory. A part of the 40 points that must be acquired over a two-year period is mandatory. We organized a conference, which had a high participation rate. For those who could not come, we provided podcasts of all sessions on the website. Someone who couldn't come could access them, but he had to pay for them, like the people who came did.

**Mr. Thierry St-Cyr:** Is it possible to share the expenses? Four persons in a single office can watch the same DVD. Could four people buy one?

[English]

**Mr. John Ryan:** No, Mr. St-Cyr, we are a professional organization and we, as members, equally shoulder the costs of running the regulator. The cost of producing, preparing for, and putting that conference on was borne equally by each and every member. That is a philosophy at the core of our mission and vision values, and it's one that, if you are a professional member of our order, you have a responsibility to. So if fees are due and payable to support the society, everyone is exposed to them, whether they are in attendance or not.

**The Chair:** Have you had sufficient time to answer?

Mr. St-Cyr, do you require an extra minute or so to—

**Mr. John Ryan:** I would just like to call Mr. St-Cyr's attention to the binder that we have circulated to all members this morning. I think he will find that all the bylaws and procedures and processes for motions, including our election processes and procedures, are absolutely democratic and in keeping with best corporate practices.

**The Chair:** The members are made aware of all that?

**Mr. John Ryan:** The members are advised 90 days in advance of any AGM, of any business at the AGM, of the voting procedures, etc. It's all there.

**The Chair:** Good. Thank you, Mr. Ryan.

[Translation]

**Ms. Rivka Augenfeld:** Mr. St-Cyr, at the end of the kit that we provided you, you'll find a comparative table of the costs involved in belonging to various professional bodies in Canada: the law society, notarial associations, fees, mandatory charges, insurance, compensation funds, and so on.

[English]

**Mr. John Ryan:** It's just at the back of the binder. There's one page, the last page. The source for these figures, ladies and gentlemen, is the Federation of Law Societies and CSIC. It's a comparison across Canada of fees that are paid by authorized representatives, irrespective of the body. If you look just quickly at the last column, CSIC's fees, you'll see we have 1,350 members as of the date of these fees; \$2,145 was our membership, including insurance. You can quickly glance across the line to see how we compare with other authorized representative bodies. In fact, what you'll find is that we are in the lower quartile of fees charged for professional membership in our order.

[Translation]

**Mr. Thierry St-Cyr:** Earlier you referred me to section 11.3—

● (0935)

[English]

**The Chair:** Okay, I will allow one more question.

[Translation]

**Mr. Thierry St-Cyr:** You referred me to section 11.3 concerning special meetings. I obviously meant meetings requested by members. However, section 11.3 concerns a special meeting called by the president, vice-president or a majority of directors.

I'd like to know the number of the provision that applies when members want to call a general meeting, because I can't find it.

[English]

**The Chair:** Very briefly, Mr. Ryan.

**Mr. John Ryan:** There isn't a bylaw that allows the members directly to call a special general meeting or an annual general meeting. They can petition the board of directors, and a simple majority of the board of directors, which is elected, will call that meeting. That's what section 11.3 enables.

**The Chair:** Good. Thank you.

Mr. Komarnicki, you have seven minutes.

**Mr. Ed Komarnicki (Souris—Moose Mountain, CPC):** Thank you, Mr. Chair.

There is no doubt that for any organization like yours, there is a time for maturation to take place, so I appreciate there are some growing pains involved.

To follow up on Mr. St-Cyr's question, I did look at your bylaws and was concerned that the special meetings of members could be convened by order of the chair, vice-chair, or by a simple majority of directors at any date, time, and place. But effectively, the directors chose not to. Even if the members petition, there's nothing in the governance part that would allow the members to have the right to call a special meeting on a certain number or percentage of membership. And I think somehow that leaves a deficiency there for members who may have a legitimate case to put forward to a board that might not be particularly interested in doing that.

I just raise that for you.

**Mr. John Ryan:** Mr. Komarnicki, in response, if you look at the beginning of the section in terms of bylaws, the tab marked "bylaws", ladies and gentlemen—

[Translation]

In French, it's the Règlement administratif.

[English]

You will see the number of times the bylaws have been amended by the corporation. And as you probably know, each time these bylaws are amended, they first must be amended with the vote of the full membership. Then, once we have the vote and approval of the full membership, we must submit it to Industry Canada for the minister's consent.

For each of these dates you see on the front page of the bylaws, this process was observed and followed. It's just in the last meeting, where we had the full membership after transition, that we had a 20% quorum issue.

But certainly the members at the upcoming annual general meeting in September can move a motion or a resolution to change the bylaws, to add a clause if they feel so inclined.

**Mr. Ed Komarnicki:** I notice your bylaws provide for a number of committees. Do you have a governance committee?

**Mr. John Ryan:** We have a standing governance committee as well as a board of directors. Two of us have our accreditation in corporate governance, issued by the Institute of Corporate Directors in conjunction with the University of Toronto and the University of British Columbia. Also, a number of our directors are sent on training for audit committee work, etc.

You will see from the different committees that not only do we have the committees, but if you look under the "election" tab you will see the board's mandate in detail, the various committee mandates, as well as the roles we take.

**Mr. Ed Komarnicki:** I notice that the conflict of interest provisions of the bylaws indicate you have a conflict of interest policy applicable to all directors. And there are some issues about that.

**Mr. John Ryan:** Yes, I would like to call your attention to the tab marked "AGM".

[Translation]

It's page 187 in French.

[English]

It's page 187 in the information, please. I'd like to call your attention to the conflict of interest policy.

**Mr. Ed Komarnicki:** All right, thank you.

● (0940)

**Mr. John Ryan:** The detailed policy is there for your inspection.

**Mr. Ed Komarnicki:** All right, because obviously some issues were raised about that, as well as compensation. I see you also have a provision relating to compensation of directors.

But one thing I thought was interesting in what you said is that you felt that being able to control those that aren't regulated.... A simple statement on the form or the application form asking whether anybody has been paid or not would go a long way, and I take note of that.

What is the penalty currently for someone who is in the society and needs to be disciplined? What's the range of penalties?

**Mr. John Ryan:** The penalties can range anywhere from a reprimand, a written reprimand, to re-education, to fines, to what is our ultimate penalty, which would be the removal of the right to practise. That is determined by an independent hearings tribunal.

On your point on the compensation report here, in keeping with best governance practices, the board hasn't decided its own compensation. We've gone out and got an independent assessment of what the board should be paid, given other market realities. We have an independent consultant who comes in and has generated this compensation report, and this has been made available to the members.

**Mr. Ed Komarnicki:** I think it's important to have an education component to it to ensure you have competent members.

**Mr. John Ryan:** Right.

**Mr. Ed Komarnicki:** It's important to have a discipline arm to ensure that those who are out of line are disciplined, and ethics for those who might be engaged in practices that are questionable.

Number one, in discipline, can you tell me what the process is? Have you gone through perhaps one process? What's involved in it?

Also, secondary to that—because I know my time is running out—I know law societies themselves generally prosecute those who are practising unlawfully or engaged in unauthorized practice. You were suggesting the government should do that. I know that for lawyers, for instance, the government of the province I'm from doesn't do that; the law society itself does that by a section that allows for a penalty for those who practise law unauthorized.

Those are my two questions.

**Mr. John Ryan:** I'll start with your second question first.

Quite frankly, it's not we ourselves who want us to do it; the government has retained that ability to enforce. Under the recommended model of the minister's advisory committee, the minister chose to retain the enforcement ability.

**Mr. Ed Komarnicki:** Should that go back to the society?

**Mr. John Ryan:** Well, it was never with the society.



**Mr. Ed Komarnicki:** Should it go to the society?

**Mr. John Ryan:** We would certainly welcome discussions on that point, because we think we need additional tools to get at this problem.

**Mr. Ed Komarnicki:** And then, on the discipline part...?

**Mr. John Ryan:** To your first issue, with respect to how our hearings process works, we receive complaints in a multitude of languages. They are reviewed by our complaints and discipline manager. We have professional staff, investigators and staff. The complaint is assigned—to give you the Webster's abridged version—to an investigator, and it's investigated.

For the complainants, if it's a fees dispute, we try to mediate that, and I have some statistics I can give you on some of the things we've done to date.

We've had ten letters of cautions and eight undertakings signed between a member and the society for re-education or education. We've had 32 fee disputes mediated or situations mediated between the consumer and the consultant. We've had three suspensions and one letter of reprimand. We've had two hearing decisions, one of which we're still waiting for the penalty to come out on; and we've had one motion, which was heard by our hearings panel.

Our hearings are independent. The manager of complaints and discipline at our society can discipline administratively. The manager has the authority to do that, or it can go to a full-blown hearing. The hearings director we have is independent. They are all trained adjudicators.

We are very cognizant of due process and procedural fairness for both the complainant and for the member who is, of course, being faced with the allegations.

**Mr. Ed Komarnicki:** And I'm sure it would need to be charter compliant, and you'll be tested if it isn't.

I have one further question before my time runs out.

Errors and omissions insurance is important. If things do go wrong, you need to have a plan where those who are injured are compensated. What portion of the fees does the errors and omissions...?

**Mr. Imran Qayyum:** It's in the chart that we put in the back of your binder. I believe it's \$225 for the year. That provides global coverage. Our members are situated not only throughout Canada and the U.S. but overseas, in India and Pakistan, and their actions are also covered. So we had to negotiate a special E and O policy to cover this.

**Mr. Ed Komarnicki:** Two hundred dollars strikes me as not being a whole lot. What do you cover in terms of the amounts, if there's a wrong or an injury?

**Mr. John Ryan:** The actual errors and omissions insurance is included in your binder. Unfortunately it's only in English, because the provider only gives it to us in English.

**Mr. Ed Komarnicki:** What does it cover?

**Mr. John Ryan:** It covers anything that's an error and omission, up to, I think, a total of \$1 million. But you have to understand that the reason our fees are so low is that, quite frankly, the insurers view

us as low risk, because in our rules of professional conduct we explicitly prohibit consultants from handling third party moneys. Unlike lawyers, who may handle trusts or that kind of thing, our consultants do not handle anything of the sort.

**The Chair:** Thank you.

Mr. Karygiannis, you have five minutes.

**Hon. Jim Karygiannis (Scarborough—Agincourt, Lib.):** Thank you. That will be ample.

Good morning, and thank you for coming.

I have a couple of questions. First of all, a lot of practitioners you have—and you have the number—seem to be engaging “translators”, and those translators are actually doing a lot of the work for the practitioner. I'm sure you've encountered that. What mechanisms do you have, or what are you planning to have, or what don't you have that you need to have in order to be able to deal with those people?

• (0945)

**Mr. John Ryan:** Mr. Karygiannis, thank you for the question.

Under our rules of professional conduct, Mr. Chair, we have a specific requirement that the member is responsible for the actions of an employee and/or an agent. If this translator is acting on a client file, which is the responsibility of the member, the society will hold the member absolutely responsible for any and all actions of agents that this member chooses to bring to the file.

**Hon. Jim Karygiannis:** Is there anything else you need—and a short answer will do, because I have a couple more—that you haven't been given by the citizenship and immigration department in order to make you able to administer justice, if you want to call it as such?

**Mr. John Ryan:** I think the minister needs to put a penalty provision in IRPA specifically, making it illegal—not just a general provision under section 124, but a specific provision in keeping with recommendation 31 of the minister's advisory committee, of a penalty for unauthorized practice.

**Hon. Jim Karygiannis:** Is there such a move in Bill C-50?

**Mr. John Ryan:** Not that I am aware of, no.

**Hon. Jim Karygiannis:** Have you been consulted by the minister on Bill C-50?

**Mr. John Ryan:** Yes, we have.

**Hon. Jim Karygiannis:** Yesterday the minister made the comment that it's not a right to come to Canada, it's a privilege. I understand that if you're at the port of entry, that is a privilege. However, I believe that it's a right to apply. However, it's not the minister's right for her to refuse the application, as Bill C-50 is moving to. I see you shaking your head, and I thank you for that.

Yesterday officials of CIC were telling folks, “Well, you can keep reapplying for 50 years. And thank you very much for applying. Every time you apply, you're going to be paying money to consultants, you're going to be paying fees. We don't know if these fees will be returned. There will be a processing fee.” So somebody who really wants to come to Canada could be applying for five or ten years, and that's an injustice to that individual.

**Mr. John Ryan:** I think I will only comment on the portion about the injustice, because as a regulator we are involved in the protection of the consumer. On that point, we have publicly taken a position on Bill C-50, only in the protection of the consumer, in terms of the need to reduce the backlog. Simply, people are putting their lives on hold for nine years, and the anguish and the trouble are simply not in the interests of the consumer. Those people being stuck in the backlog in the processing area now, because of those people and 900,000, is not in the interests of the consumer.

So as a regulator, we hope the minister and this committee will find ways to reduce that backlog so we can get back to normal processing and everybody is serviced properly.

**Hon. Jim Karygiannis:** Do you think Bill C-50 will get rid of the backlog?

**Mr. John Ryan:** I'm not going to go that far. I'm just saying that any effort to reduce the backlog to protect the consumer, the society—

**Hon. Jim Karygiannis:** Mr. Ryan, you've been an expert. You've worked in this field as a practitioner for years. To your best ability, to your best knowledge, to your guesstimate, will Bill C-50 get rid of the backlog?

**Mr. John Ryan:** In my role today, Mr. Karygiannis, I am before you as a regulator, not as an immigration consultant. I am sure other groups today may want to get into Bill C-50 with you, in terms of what you're after. But I can tell you that from a consumer protection review the backlog is simply untenable.

**Hon. Jim Karygiannis:** I take your answer as a no.

Let me ask a further one, if I may. We're going to have two streams, one on Bill C-50 and one on the backlog. Unless the minister agrees to allow more people in—more than 250,000 people—the backlog and Bill C-50 will be competing for that number. If you need the best and the brightest—as the minister is saying, they're going to get the first to come—that backlog of 900,000 right now—

**Mr. Ed Komarnicki:** I have a point of order, Chair.

**The Chair:** I have to go to a point of order.

**Hon. Jim Karygiannis:** Mr. Chair, we do have a lot of leeway on this.

**The Chair:** I know, and I've discouraged points of order during this. But I will take the point of order.

**Mr. Ed Komarnicki:** Let me raise it first.

**The Chair:** Yes. A point of order.

**Mr. Ed Komarnicki:** I hesitate to do that, because we've been drifting astray on Bill C-50 quite a bit. We're here to deal with immigration consultants. In fairness to them, that's where the question is directed, not to Bill C-50. It's the governance and the operation of that. Mr. Karygiannis has gone way afield, I think, and it's inappropriate at this hearing. There will be a hearing for Bill C-50, and he can get witnesses to come in; he can question them about that then. This is not that.

**The Chair:** Yes, I allowed some latitude yesterday, and of course that's the danger when you allow latitude. You're getting into the realm now of talking about Bill C-50, when we're really into three items: immigration consultants, temporary farm workers, and—

● (0950)

**Mr. Ed Komarnicki:** But that's my question, Mr. Chair. It has to deal with it.

**The Chair:** And I would discourage that. I'm hoping members won't get into Bill C-50. If they do, of course the chair will have to rule it out of order. But we got on the periphery of this yesterday.

It's not a point of order. Yes, I should correct myself there. It is a point of order, but I want individuals to police themselves on that, please.

So one last question, Mr. Karygiannis.

**Hon. Jim Karygiannis:** Thank you, Chair.

This will create two streams. Therefore, the backlog will get even longer. The lawyers have said that Bill C-50 will not stand the court challenge. As you are the regulator, and we're looking to engage you further on, do you foresee that what the lawyers are saying will be correct, or do you have another opinion?

**The Chair:** I'm going on now to the next questioner.

Mr. Carrier, please.

[*Translation*]

**Mr. Robert Carrier (Alfred-Pellan, BQ):** Thank you, Mr. Chairman.

Welcome to this meeting. We are here to gather information from you. My colleague has asked some quite relevant questions. The reason for all that is that we think you are considerably important in the operation of the immigration system. It's not that we have anything against you, but, as you are so important, we at least want to ensure that your organization works well.

Earlier you mentioned that your society didn't operate in Quebec as a result of an agreement. I'd like to have an explanation on that subject.

**Ms. Rivka Augenfeld:** It's not that we don't operate in Quebec. We have members there, and, in practical terms, they are subject to regulation by the various federal agencies, such as CIC, the IRB, the agency and so on. As regards cases handled through Immigration-Québec, such as sponsorship or the investor program in Quebec, they are the responsibility of Quebec's department of immigration and cultural communities, and that isn't regulated for the moment.

We've discussed that and we're still discussing it, but it's not being done for the moment. We would like it to be done because that would complete the picture in Canada. To date, the other provinces have undertaken to respect the fact that a person can be or not be an authorized representative. We have good hopes that Quebec will consider it important to do the same thing.

**Mr. Robert Carrier:** Letters have been sent to the Minister of Immigration. One of your members who met with us last week told us about problems raised earlier about which she had not received an answer from the minister.

Among my documents, I also have a letter from the Canadian Bar Association addressed to the same minister concerning the doubts raised by her about your ability to protect the public, as the mandate requires. Are you aware of those letters. Has the minister requested an explanation concerning those doubts expressed about your organization?

**Ms. Rivka Augenfeld:** We are aware of some letters, but we don't know about all of them, since the minister does not inform us of all the letters she receives. I think that's the reason why we're giving you all the documentation we have. There are a lot of perceptions and impressions about what our society does. I urge you to visit our Internet site, which was created with the highest degree of transparency possible, including codes of ethics and so on.

As my colleague Mr. Ryan said, the problem lies in an inability to prosecute unauthorized persons. In our submission, we ask that this problem be solved, that penalties, harsher sanctions be imposed by the government. In my opinion, consideration should nevertheless be given as well to the limits that are those of any professional body and that all these accusations should be reviewed in detail. As your colleague said, we have been in existence for four years, and we are doing more and more things.

• (0955)

[English]

**Mr. John Ryan:** Quite frankly, Mr. Carrier, there is a process within our bylaws, which is democratic, for this member to voice her concerns and share them with other members. If the members agree with her, then the members will do the needful and vote for different boards of directors.

We were kind of surprised that she would bring this committee into the affairs of what is an arm's-length body, which has a process approved by the industry ministry, and have you involved in the internal affairs of our organization. We certainly are not against giving you answers and being hands-open, but on the other side of it, there is a democratic process—and the standing committee is not it—within our bylaws.

[Translation]

**Mr. Robert Carrier:** I have another question on the conduct of your meetings. Earlier you said that there was no quorum and that was the reason why members were unable to speak. According to your by-laws, 20% of members are required for there to be a quorum. Since last week, we've travelled across Canada and seen the size of the country. For Canadian society, it is really difficult, virtually impossible, to obtain such a quorum. Professional associations usually require much less than 20% to ensure that members interested in the operation of their society can at least legally take part in a meeting.

Have you considered reducing that percentage or amending that by-law?

**Ms. Rivka Augenfeld:** Thank you for your question, Mr. Carrier.

As we said earlier, the annual meeting is held online. So if you were a member of our society, you could log on to your computer at home and take part in the meeting. You wouldn't have to travel or spend a cent to do so.

We're also convinced that 20% is not an extreme figure. It enables members who are in Dubai, Hong Kong or anywhere to take part. Some will have to get up in the middle of the night, but that's not as bad as having to travel physically. We are convinced that, when the meeting is held electronically, 20% is not excessive. If people choose not to participate, they can hardly then complain that they were unable to speak. If there had been a quorum, we would have held a duly constituted meeting. We would then have seen what that looks like.

[English]

**The Chair:** Mr. Carrier, we'll give you another question, because the answers were unusually long.

[Translation]

**Mr. Robert Carrier:** I would like to add a comment.

Your explanation shows that you have tried to facilitate participation, but if it doesn't meet your requirements, you can consider lowering those requirements. You do business with human beings who are not all equally inclined to take part, and that victimizes those who are convinced they want to do so.

**Ms. Rivka Augenfeld:** We're obviously examining what must be done. We have a process to follow and members to make decisions.

[English]

**The Chair:** Thank you.

We have about five minutes left, and this will complete our five-minute round.

I'll go to Ms. Grewal, who is sharing her time with Mr. Khan.

**Mrs. Nina Grewal (Fleetwood—Port Kells, CPC):** Thank you, Mr. Chair.

First of all, I would like to thank all of you for coming here. Thank you so much for your presentations. We really appreciate them.

I have very simple questions for you. The first one is, what steps should one take to check for the consultants' legitimacy and reputation?

**Mr. Imran Qayyum:** That's an excellent question.

I think the first step is to go to the CSIC website and ensure that they are an authorized representative. The membership list was constructed specifically for that. It was an authentication tool that, from the beginning, we realized we had to make available to anybody, 24/7, 365 days a year, no matter where they are. It's not possible and it's not logical to expect someone to wait until 9 a.m. Toronto time to call up the CSIC office and say, "Is Imran Qayyum a member or not?" You go to our website. Our list is there, and it's updated in real time.

**Mrs. Nina Grewal:** How should one hire an immigration consultant?

**Mr. John Ryan:** I think certainly by doing due diligence. I think anyone who's going to hire an immigration consultant or hire someone to prepare their taxes has to first be aware and actually go to the government website or CSIC's website to see what the law is.

Obviously, for an authorized representative, we have gone through steps to verify the veracity and the competency and have provided insurance and mechanisms of protection for the client. But in the final analysis, it's the client who's going to decide who they're going to hire, whether they do it themselves or whether they hire a representative.

I think we need to make many efforts at the front end to get information into that consumer's hands to empower them to make that informed choice, because then it just remedies a whole bunch of pain later.

● (1000)

**Mrs. Nina Grewal:** The last question is, what steps, if any, should we take to encourage victims to report abuse?

**Mr. John Ryan:** We see a lot of things in our complaints and discipline model. We see, depending on the culture, that some people are hesitant to come forward to us. When they do come forward to us, they want to be anonymous. They don't want to have their evidence publicly displayed at a tribunal. We have a number of challenges there. We have looked internally at our policies for how to accommodate that.

We encourage the public to tell us about problems, and not only problems with our members, but also problems of unauthorized practice, people who aren't our members, because we're tracking them. We're building an intelligence base. We're trying to get harder figures to go to our government partners, to the committee here, to tell how many non-jurisdictional and what kind of non-jurisdictional complaints we're getting. And we do pass on these non-jurisdictional complaints to the policing agencies, and we follow up.

Just because you aren't a member of CSIC doesn't mean that we're not going to get involved. We are.

**Mrs. Nina Grewal:** Mr. Chair, I would like to pass the remainder of my time to Mr. Khan.

**Mr. Wajid Khan (Mississauga—Streetsville, CPC):** Thank you very much.

Again, welcome.

Please help me understand. You regulate only individuals or also organizations?

**Mr. John Ryan:** We regulate only individuals. I know the Interpretation Act defines persons as being both individuals and persons, but the minister's advisory committee on the regulation of consultants basically said that we would regulate individuals.

**Mr. Wajid Khan:** Would you like to see the organizations also regulated by you? What are the disadvantages of not having that? What is going to stop some consultant from going out there and forming an organization just to avoid being regulated?

**Mr. John Ryan:** Forming an organization won't protect them from regulation if they receive a fee as an authorized representative. Organizations don't have standing before the government, and that's the catchphrase. The government decides who can appear before it. Organizations, if they're non-profit, if they're charitable, can appear in front of the Government of Canada.

This is a thorny issue. It's certainly something we hope the government is able to address, where people would hold themselves

out as unauthorized representatives by sheltering themselves as a non-profit or charitable organization. But we think that's for the government, at this point, to deal with. We're currently building out what we need to do in our mandate.

**Mr. Wajid Khan:** How do you regulate not just individual abuse by rogue consultants but the members who go on misrepresenting the policy to direct business in their direction?

**Mr. John Ryan:** If we're made aware of it or we become aware of it, we will hold the member to account. There are strict advertising guidelines given by the society. Those are available on our website. There is a code of conduct.

We have just had our first professional misconduct decision, which is publicly available from our tribunals on our website. We are very serious about getting the guys who are bending the rules, and if they're our members, we will take action. But again, you can build the most perfect regulatory system, but unfortunately you cannot legislate honesty.

**Mr. Wajid Khan:** How would you handle an individual who goes on the media—radio or television, or otherwise—and says, “Oh, with this particular regulation, the immigration officer, if he doesn't like your perfume, can reject your case or take this draconian measure,” that kind of stuff?

**Mr. John Ryan:** That's a good question.

We live in a free country. People can go around saying a whole bunch of things. People have said some things to this committee that may or may not be up to snuff. The reality of the situation is, how do you control them? There are advertising codes of conduct. There's a code of conduct, and if they breach our code of conduct and we have the grounds, the investigations, and the evidence, we will hold them to account.

**The Chair:** Thank you.

Thank you for your time, Mr. Ryan, Mr. Qayyum, and Ms. Augenfeld, in coming here today. You've given us an awful lot of good information, and you've corrected some of the things we've heard as we've gone on the road. Of course, our committee will examine all these things and make recommendations to government, to the minister, and undoubtedly your views will be taken into account as well.

We'll suspend for a moment or two to allow other people to get to the table.

● (1000)

(Pause)

● (1010)

**The Chair:** I want to welcome our second panel here. We have, from the International Association of Immigration Practitioners, Ramesh K. Dheer, national president

From the Canadian Association of Professional Immigration Consultants, we have Philip Mooney—a familiar face—national president. Welcome again, Mr. Mooney. We also have Alli Amlani, president of their Ontario chapter.

And from the Registered Immigration Consultants Association of Canada, we have Sean Hu, director.

And from the Law Society of Upper Canada, Malcolm Heins, chief executive officer, and Ms. Julia Bass.

Thank you.

I think you know how the committee operates. We allow for opening statements, and then we will engage you in questions and comments.

So who do we begin with? Do you want to speak, Mr. Mooney?

**Mr. Philip Mooney (National President, Canadian Association of Professional Immigration Consultants):** Thank you very much, Mr. Chair and committee members. I just hope that familiarity doesn't breed contempt.

Our remarks and our presentation today will actually be very brief. We would like to leave lots of time for questions. I'd also like to apologize in advance for the simple nature of the comments I'm about to make. There was a time in my corporate life when I used to think that the more I wrote, the more I said, and the more technical language I used, the smarter I looked. Then I became a grandfather and I realized that simplicity is certainly a much better way to go. So I hope you'll accept my remarks in terms of better communication.

Thank you.

On your website, in the statement describing the purpose of these hearings you reference immigration consultants and state, I quote: "While many immigration consultants provide valuable advice and services to their clients, some unscrupulous ones provide poor and even unethical advice and services, sometimes charging unconscionable fees to a client base that is ill-equipped to seek redress." You go on to say that you want "to identify issues and make recommendations to address abuses, within the federal jurisdiction".

Our presentation today deals with the rules concerning authorized representatives and how the intent of the Immigration and Refugee Protection Act has been subverted by a single phrase in an operations manual. As you heard Mr. Ryan state, which I think is worth repeating, regulation 13.1 states that "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".

The intent of the act is clear. Consumers must be protected, so Parliament decided that immigration consultants must be regulated. CSIC was set up to achieve that task. The wording of the regulation is clear. Authorized representatives are defined and are described as lawyers, members of the Chambre des notaires du Québec, and CSIC members.

The limitation of the regulation is perfectly clear. It applies only if a fee is charged. Yes, it was clear to everyone, except apparently CIC. Sometime after the regulations came into effect, CIC inserted in part 9 of their inland processing manual, which is the instruction by the department to its officers, one simple phrase that protects unregulated agents. That instruction reads: "It is important to understand that CIC, the IRB, and the CBSA are interpreting the regulations to mean that R13.1(1) does not apply to any representations that are made to a client before an application is submitted to CIC." In other words, an applicant is obliged to disclose the name of their representative on the use-of-representative form

only if the individual will represent them once the application is submitted to CIC, either at the time of submission or post-submission.

Now, you're holding hearings because abuse persists. Because of IP 9, unregulated consultants can not only operate with impunity, they can advertise on billboards in front of CIC offices. They can and do advertise their services on websites. They can and do advertise their services in the ethnic press. And then some are so brazen as to state, when a customer receives an inquiry from CIC after the application and is panicking about a possible refusal, that they cannot help because the application has now been filed and it's illegal for them to do so.

The intent of the act is clear. The wording of the regulation is clear. The solution is also clear. CSIC is in place to police the activities of regulated consultants, but who can pursue unregulated consultants, especially when you have IP 9 clouding the issue? Changing the wording in IP 9 to the effect that representation starts when a fee is paid or arranged to be paid for a service would allow all authorities involved to pursue unregulated agents. This would help to control abuse outside the profession, because only those actually authorized could legally be advising, preparing, and submitting applications on behalf of clients for a fee. All others would be subject to the penalties under law for issues such as fraud, misrepresentation, etc.

We can all conjure up a picture—and I think this speaks to the intent of the act—of a dingy café in a foreign land, or maybe even a bright cheerful café in downtown Toronto, where a poor unsuspecting consumer is cheated of his life savings by someone who promises him a service. That person advises the consumer on what's possible and even prepares applications to be filed over the customer's signature. We all agree that this consumer needs protection, even if the unregulated agent is actually experienced, well-intentioned, and competent, since we know that CIC will not deal with that person if problems arise at a later date.

•(1015)

We know that you've heard submissions on various issues concerning consultants, but in our opinion, this issue alone does more to affect consumer protection than all other issues combined. The remedy we propose is very simple. The wording of IP 9 must be changed. By changing a few words, we give the authorities in Canada the tools necessary to enforce the law as Parliament intended, so consumers are protected. By changing a few words, we give our associations and members the moral authority to write offshore publications and ask them to stop running ads for unregulated agents. By changing a few words, we bring the provision of immigration-related services in line with the provision of other legal services. By changing a few words, we restore integrity to the system. By making a recommendation to CIC to change a few words in IP 9, this committee will move closer to achieving its objectives.

I've kept my remarks simple. I would now like to yield the microphone to my associate Mr. Amlani, whose expertise in this area is unequalled and who actually has a technical explanation for some of the information that's included in our brief.

Alli.

●(1020)

**Mr. Alli Amlani (President, Ontario Chapter, Canadian Association of Professional Immigration Consultants):** Thank you.

We've planned our timing well for this presentation. I am involved with this to answer any questions. Having been around the practitioners' business for 20 years, I know we have done this before and we're going to do it again.

Everyone has been provided material, and I'd just like to be able to explain that. The first four pages of our material is a representation that was made in July 2005, again to the standing committee, and we're back here four years later doing the same thing again. This time, I'd like to be able to explain it better, from the technical perspective, to explain the wording. I've actually taken out abstracts from IP 9, which Mr. Mooney has alluded to, and which Mr. John Ryan has alluded to, and I would like to go a little deeper into these, because we've argued with the department ever since June 28, 2002, to explain this, and we don't seem to be getting through.

In our speaking notes, in the paper we presented, on pages 5, 6 and 7, we have provided the exact wording of the manual that contains the defect. I have underlined the words that are effective. Again, section 13.1 says "represent, advise, or consult". The use of the word "or" makes "represent" independent, "advise" independent, and "consult" independent. If you look at IP 9, it basically says anybody can give advice to anybody before the application is filed. Mr. Telegdi mentioned that in New Delhi people lining up were advised by a consultant, and so on. We hear horror stories. This will continue.

I have highlighted or underlined the part where the manual clearly says that before the submission, any advice can be given. Before the submission, application forms can be prepared, and this is the problem. If you look at the call you've made for this meeting, it addresses the issue of people who are beyond the purview of CSIC. The last part here, 9.2, talks about how to make a complaint. It says to just send the information over to CSIC so they can be careful in choosing future consultants, or to the Better Business Bureau. It doesn't direct people to CBSA, to enforcement. We need to be able to do enforcement.

The last part of my paper describes the penalties under sections 126, 127, and 128. They do not say those are for Canadians; they are for everyone in the whole world.

With that, I would like to thank you for your indulgence. Thank you.

**The Chair:** Thank you, Mr. Amlani.

Mr. Hu.

**Mr. Sean Hu (Director, Registered Immigration Consultants Association of Canada):** Good morning, Mr. Chair and committee members. Thank you for this opportunity.

My presentation will deal with three questions regarding the regulation of immigration consultants: what is not working, why is it not working, and what will work in the regulation of consultants?

What is not working? Let me say right at the outset that the Canadian Society of Immigration Consultants, known as CSIC, is not in a position to provide consumer protection. Let me use the numbers to make the point. According to the affidavit of Mr. Ben Trister, the former chair of CSIC, in a 2004 court case, at the time CSIC was established Citizenship and Immigration officials estimated that there were around 3,000 Canadian immigration practitioners who were potential members of CSIC. But the barriers set by CSIC, such as high fees, the denial of grandfathering, and the unfair language tests, have prevented about half of the 3,000 consultants from joining CSIC. So at the very beginning, the industry lost the opportunity to regulate, to bring those consultants under the new regulatory regime.

Then, according to Mr. Ben Trister's testimony in April 2006 at the Legislative Assembly of Ontario Standing Committee on Justice Policy, at the time he resigned as CSIC chair in October 2005, the number of CSIC members was still around 1,500. Now, if we check the CSIC website, 964 of these members have either resigned or been eliminated. This means that a significant number of CSIC members currently listed on its website are new graduates from various college immigration study programs. It also means that the real immigration practitioners who have current CSIC membership represent only 20% to 30% of the 3,000 consultants who have been practising in this market. Even if we assume that CSIC is doing a perfect job of regulating its members, it can play a very limited role in providing consumer protection in this industry as a whole.

What is not working? Why is it not working? CSIC experience has shown that the self-regulatory society model for regulating consultants is not working. I'll give you two of the reasons.

One reason is incompatible objectives. We believe there are two major aspects in the regulation of consultations. One is to regulate consultants' conduct in order to deal with those so-called unscrupulous consultants who defraud their clients and abuse the immigration process. The other aspect is to regulate consultants' professional qualifications to ensure competence.

We should not be confused with these two different dimensions of regulation. Other self-regulatory professional organizations, like law societies and accounting associations, have been able to combine both areas of regulation. Unfortunately, in the case of immigration consultants, the two objectives—regulating conduct and regulating competence—are incompatible. If you are focusing only on professional competence and eliminate the majority of consultants, you will lose the opportunity to regulate their conduct.

Second, it's a passive membership. Most consultants are not able to participate or get involved in the affairs of the society due to their unusual diversities and various other special reasons. So a self-regulatory society with limited member involvement would create opportunities for a small handful of people to control, to manipulate, and even abuse their authority.

●(1025)

Now what will be working? Let's make no mistake about it. We want regulation in this industry. In the past few years we have written to various government bodies calling for real regulation of consultants, meaningful protection of consumers. We would support a regulatory regime based on the following four principles.

One, it should be focused on regulating conduct rather than competence.

Two, it should be fair and inclusive. There should be grandfathering. No language test should be used to eliminate ethnic consultants.

Three, it should be transparent and accountable, preferably a government authority set up as a regulatory body. Right now, CSIC is accountable to nobody. You can imagine the frustration. When you complain to the ministry, the answer you get is that CSIC is operating as a private organization, operating at arm's length from the government. Right now, things are getting even more out of hand, because you have CMI, a business corporation, operating at arm's length with CSIC.

Four, the last principle, it should be efficient and cost-effective to make the fees affordable to consultants.

In the final analysis, the failure of CSIC, the division within the consultant community, the growing public distrust, and the prejudice against ethnic consultants will all have a long-lasting adverse impact. There is no doubt that the industry is less regulatable than it was four years ago.

The question is whether it matters. Maybe not. The four years of regulation have allowed us to see it all. Who really cares about immigrants? Who really cares about consultants? The regulation was never about them; it's all about money.

**The Chair:** Can I interrupt you there, Mr. Hu? Because time is moving along, we really need to give our people some time to question and what have you.

I will go to Mr. Heins.

**Mr. Malcolm Heins (Chief Executive Officer, Law Society of Upper Canada):** I'm here today, ladies and gentlemen, to give you the perspective of the Law Society of Upper Canada with respect to the regulation of immigration consultants.

We were founded in 1797, and we're the oldest regulating authority in Canada. Of course, in fact we predate Canada. We are a creature of statute; in fact, we were created by statute in 1797. That's really going to be the essence of my remarks here today.

The problem with the regulatory model that was put into place by Citizenship and Immigration Canada is that it was really an exercise in expediency to create a regulator quickly, without statutory authority.

CSIC was a creation of Citizenship and Immigration. It agreed to fund CSIC for the first two years. It agreed to pass a regulation that would restrict the ability of immigration consultants to appear unless they were members of CSIC. The regulation also exempted lawyers and members of the *Chambre des notaires*.

Now we, the law society, when this regulation was first proposed in 2003, pointed out to the department that this whole model was flawed and would ultimately fail. I think—just listening to the comments that have been made here this morning—that most of those comments are enumerated in the letter I wrote to the department in January 2004. I have that letter here today, if anyone is interested in looking at it.

Despite the concerns we raised, the department went ahead and passed the regulation and in effect validated CSIC. Now, I'm not casting any aspersions at all on the motives of CSIC itself. What I'm saying is that the organization can't function in the legislative architecture that's been created here by the government.

You've got to go back to square one and redo it. You need to redo it in conjunction with each of the provinces. Across the country we all regulate legal services, as law societies and as the *Chambre des notaires*. We need to sit down and reconstruct a proper statutory model.

We've just gone through this. In the last year, our authority in Ontario was increased to regulate paralegals. So we are now regulating 2,000 paralegals, in addition to 38,000-odd lawyers. So we actually have some very on-the-ground experience with how you need to go about this and what you need.

But as I listened to the other speakers this morning, and being aware myself of some of the challenges that are being faced in this area, I find the problem quite simple. You can't think you're going to regulate immigration consultants through a voluntary private corporation. You're going to have to create a statutory model, a proper one with an authorized statute from Parliament, so you can prosecute, investigate, and—as was indicated here—not only deal with the competency side but also deal with the enforcement side. Clearly that's where you've got a significant problem.

That's the essence of my remarks, Chairman.

• (1030)

**The Chair:** Thank you very much.

Mr. Dheer, did you have anything to say, or can we go to questions? Do you want some time for an opening statement?

It's up to you.

**Mr. Ramesh Dheer (National President, International Association of Immigration Practitioners):** I could speak for three or four minutes, if you want. Is that okay?

**The Chair:** Yes, indeed, sir. Please feel free to do so; you go right ahead.

**Mr. Ramesh Dheer:** First of all, I have to apologize for being late. Thanks for the invitation. I live in Mississauga, and as everybody knows, the weather is bad.

Anyway, we're mainly talking about consultants right now. I have personally been in this profession for the last 32 years. I have gone through all kinds of situations in the profession. Eventually CSIC was created, and I had the pleasure of serving the minister as a member of the advisory committee regulating the consultants. So I know all of the background to what we have gone through.

CSIC, as I just said, has gone through a lot of challenges and turbulent times. In any new organization, as we all know, especially in a professional body, you are governed by certain rules, ethics, and the whole bit. In my view, CSIC has just come out of its infancy; they are growing and becoming mature. Guaranteed, everything may not be satisfactory, but I think there is an effort on the part of the management to keep CSIC on the right track; we know that a lot of people are watching us. The idea is to keep the consumer in a safe situation while we practise our profession.

Some of you know that when CSIC was created, our association, the International Association of Immigration Practitioners, went to court against CSIC on reasons of principle. Somehow it was resolved amicably with respect from both sides. Ever since, we have supported CSIC and their recent achievements wholeheartedly, including the new institute they have set up, which is going to give courses and continuing education for those already practising.

The main problem we have in our profession is the ghost consultant. Some speakers may already have spoken about this. I know that in the last four or five years, since the regulation of the consultants was done, the business has gone down. A lot of people are complaining, including me. One of the main reasons being talked about is the ghost consultants.

We suggest that the minister, or CSIC, should be given the mandate. Our Australian counterparts and the licensing body in the U.K. have the mechanisms to nail down any unauthorized consultants who practise. I think we have to come up with some kind of arrangement here in Canada. Either the minister should take this responsibility or CSIC should be mandated to do this part of the work, because we are the people who are certified; we are the people who pay money to CSIC. At the same time, although CSIC is there for the protection of the consumer, we also have to be protected to practise our livelihood. It's our suggestion that some arrangement should be made so that our profession is protected.

• (1035)

As I said, I do commend the work done by CSIC management. At the same time, it's a new body. If there are some drawbacks, they can be overcome. I serve on the CSIC membership affairs committee as a co-chair, and we always encourage members of CSIC to come forward with constructive suggestions so that we can all get united and make a go of it. If everybody gets united in a positive direction, I'm sure that CSIC will emerge as a body that we can be proud of in a very short time to come.

These are our suggestions. Thank you very much.

**The Chair:** Thank you, Mr. Dheer.

We have time for four questioners, at seven minutes each.

Mr. Karygiannis.

• (1040)

**Hon. Jim Karygiannis:** My question will be short, Mr. Chair. If my colleague Mr. Telegdi also wants to pick up on something, I'll share my time with him.

Gentlemen, I want to thank you for appearing.

I do hear, "We're good, they're bad; we do it, they don't do it." Mr. Hu said something about the competency of immigration consultants. I agree that some of the consultants who are being weeded out by CSIC do have problems with the language barrier. Sometimes when you need to communicate with CIC, you need to be proficient in the language used. Some of their forms, I grant you, even lawyers have difficulty reading.

My real difficulty is with what I heard the minister say yesterday, and officials from the department, who said that coming to Canada is not a right, it's a privilege. At the port of entry, I can see that this is a privilege for you to enter or not, but the right to apply should not be taken away from anybody. For the minister to have the right to refuse applications is certainly something that a lot of you, I think, will have problems with.

Some of you might have been consulted by the minister on the new regulations coming down. I would ask each one of you if that's the case.

**The Chair:** You know, I'm reluctant to interfere here—

**Hon. Jim Karygiannis:** Then don't.

**The Chair:** —but it seems to me we're getting into the realm of Bill C-50 again.

**Hon. Jim Karygiannis:** No, we're not.

**The Chair:** It's going to cause some problems on the committee. We will have points of order and points of privilege coming out of our ears here.

**Hon. Andrew Telegdi:** I have a point of order, Mr. Chair.

**The Chair:** Would you please wait, Mr. Telegdi, until I'm finished speaking—and you also, Mr. Karygiannis? Please wait while I finish.

We made the ruling a few minutes ago that we won't get into Bill C-50, that Bill C-50 will be the subject of hearings. I'm simply asking members to police themselves on this.

I'm reluctant to take points of order that will interfere with members' times, but we are saying that Bill C-50 is the subject of a different set of hearings. We agreed to this prior to coming on the road: we are here to examine three different items. I would caution members to take that into consideration.

I go back again to Mr. Karygiannis....

Mr. Telegdi has a point of order.

**Hon. Andrew Telegdi:** Mr. Chair, my point of order is simply that we're dealing with three topics while the elephant in the room is Bill C-50. I made this same point when we started off the tour. At that time we said we weren't going to talk about it, but since then, Mr. Komarnicki has also filed the motion that he wants Bill C-50 to go to committee and to have the committee issue a report after about three meetings.

Now, Mr. Chair, I'm not sure how we can meet those kinds of deadlines, but I do know that if—

**The Chair:** Order, please.

I'd ask the member to get to his point of order. Get to your point of order, please.



**Hon. Andrew Telegdi:** My point is that there was agreement around the table from all the groups to deal with Bill C-50 when we have people in front of us. As I said, it was the parliamentary secretary who raised this issue.

**The Chair:** Order, please.

We are not dealing with Bill C-50 at this meeting. We are dealing with temporary and undocumented workers, immigration consultants, and Iraqi refugees. The order from the House of Commons was for the committee to deal with these three different items. I have the order here in front of me. It's the order from the House of Commons that we deal with these three items. In the meantime, we have had agreement among members of the committee that we will be holding hearings on Bill C-50.

Again, I'm cautioning members to stay within the realm of these three items that we're talking about and have been mandated by the House of Commons to hear evidence on.

Mr. Karygiannis, back to your questions, please.

**Hon. Jim Karygiannis:** Thank you. And if you'll allow me, Chair, to finish my question, you will see that this is very relevant.

When consultations were done about the creation of CSIC, the minister at the time consulted—not consulted, but they got hold of you, talked to you—and everything else. Are the consultations happening now versus the consultations that happened back then different? Have you been consulted about changes now? If you have been consulted about changes now, how does that differ from the consultations that were done then? Did the consultations then fail? If they failed then, and you have CSIC today, or if it didn't fail then, how do the consultations that are happening today on Bill C-50 mirror those consultations? And where to you see Bill C-50 going?

• (1045)

**The Chair:** Again, we are not going to entertain....

Mr. Karygiannis, I will move on to the next questioner.

**Hon. Jim Karygiannis:** My question was about the consultations now versus then. How do they see the consultations then on CSIC? The consultations then and now, how do they differ, and how did they fail, if they failed back then?

**The Chair:** We'll go to Mr. St-Cyr.

**Hon. Jim Karygiannis:** Mr. Chair, on a point of order—

**The Chair:** Order, please.

Go ahead, Mr. St-Cyr.

[*Translation*]

**Mr. Thierry St-Cyr:** Mr. Chairman, even though I am not always of the same view as Mr. Karygiannis, I believe he has a right to speak and to ask the questions he wants to ask of the witnesses. That moreover is what we agreed on at the start of the trip.

However, it seems to me that the faster the time to put this question to a vote approaches, the more picky we become. And yet we had agreed at the start of the trip that members would be free to select the subjects they wanted to address. We agreed to say that the onus was on citizens to judge whether members were off topic or irrelevant.

We are all entitled to ask the questions we want to ask during the seven minutes allotted to us. That's what we agreed upon. If anyone wishes to proceed differently, that should be debated. I would like us to let people answer the questions that Mr. Karygiannis wishes to ask them.

[*English*]

**The Chair:** There are no different rules. We have an order from the House of Commons that we are obliged to comply with.

The chair has been quite lenient in allowing certain.... You know, we've had leeway with members mentioning Bill C-50. But if we're getting into specific questions on Bill C-50, which we already have some time set aside to deal with, then we're getting away from the intent of the committee in travelling.

Mr. Karygiannis, one moment, please.

We're getting away from what our original intent was, which was to study temporary and undocumented workers, immigration consultants, and Iraqi refugees. We have that order from the House of Commons, which we are obliged to comply with. It simply says:

By unanimous consent, it is ordered,—That, in relation to its studies on Iraqi refugees, temporary foreign workers and undocumented workers, and immigration consultants, 12 members of the Standing Committee on Citizenship and Immigration be authorized to travel to Vancouver, British Columbia, Edmonton, Alberta, Moose Jaw, Saskatchewan, and Winnipeg, Manitoba, from March 31 to April 3, 2008...

to hear references to these particular items.

**Hon. Jim Karygiannis:** I have a point of personal privilege, Mr. Chair.

When it comes to the people to the right of you, when it comes to the Conservatives, the party you belong to, you allowed a lot of leeway yesterday, and I mentioned that to you yesterday.

**The Chair:** I've allowed leeway for all members.

**Hon. Jim Karygiannis:** Let me finish, please. It's a point of personal privilege, and you, sir, are obliged to hear me out. Allow me to finish, please.

Yesterday you allowed a lot of leeway. Questions were asked, and I pointed this out to you a few times. Leeway was allowed. I don't see what the difference is today. On a point of personal privilege, sir, you also allowed Mr. Komarnicki to table a motion, to grandstand in this committee, when he wanted to say that Bill C-50 should be sent to this committee. Bill C-50 originally was something that we were not supposed to speak on, but you, sir, have allowed a lot of leeway.

I don't understand what makes it different now versus yesterday. Is it because the press is in this room and because the minister made comments yesterday that you do not like to hear?

**The Chair:** That is not a matter of privilege. The reason the chair allowed leeway is that we had an air of cooperation among all members yesterday on this particular issue.

Now we're eating into the time of the witnesses.

**Hon. Jim Karygiannis:** You're also eating into my time, Mr. Chair.

**The Chair:** And I am not going to hear any more points—

**Hon. Jim Karygiannis:** You've allowed the...[*Inaudible—Editor*]

**The Chair:** I will adjourn this meeting.

**Hon. Jim Karygiannis:** Go ahead and do it. You just don't like the heat. This is why you're not.... You know what, you shouldn't be in the chair.

**The Chair:** If we do not continue with this meeting, and if we continue to eat into the time of the members here, I will adjourn this meeting.

Mr. Komarnicki.

• (1050)

**Mr. Ed Komarnicki:** In fairness, the jurisdiction of what we're set out to do here is fairly clear. Some leeway has been given to the parties here and there, but the point of the matter is that members are trying to get it wider and wider, and it's going further away from what we're supposed to be doing.

**An hon. member:** He didn't do it yesterday.

**The Chair:** Order, please.

**Mr. Ed Komarnicki:** It's appropriate to say, "You bring it up at the right place, but don't take that opportunity here because that's not what we're doing." I think it's important to enforce that.

**An hon. member:** Did you miss an opportunity yesterday?

**The Chair:** I'm going back to questioning here now. I'm not entertaining any more points of order on this particular issue.

**An hon. member:** I am raising a point of order.

**The Chair:** I am not entertaining any further points—

**An hon. member:** Why don't you adjourn the meeting and resign as chair?

**The Chair:** I'm suspending this meeting until members come to order.

**An hon. member:** You know what, I'm not going to sit here and take this. He allowed leeway yesterday. I brought in two amendments and he just didn't want to pull them in. Today when he got hard questions he didn't even want to answer. Forget it. This is a farce.

**The Chair:** Are members prepared to allow the witnesses to continue? I'm not entertaining any more points of order on this.

**An hon. member:** This is my point. You've got no choice about entertaining a point of order, Mr. Chair.

**The Chair:** This meeting is suspended. You are interrupting this meeting and interfering.

**An hon. member:** You are to listen to my point of order when I raise it, Mr. Chair. You are breaking the rules.

**The Chair:** This meeting is suspended.

• (1050)

(Pause)

• (1055)

**The Chair:** Hopefully we can continue this meeting in an air of cooperation.

The chair is aware that we are on three different topics here. We've been given orders by the House of Commons to hear these three

different topics. We all know what they are: temporary and undocumented workers, immigration consultants, and Iraqi refugees.

During the course of our travels the chair has been lenient in allowing some leeway with regard to questions on Bill C-50. That's when there was an air of cooperation between all members to proceed in that way. That air of cooperation is apparently gone, so I'm going to be fairly strict in where we go with questions on Bill C-50.

At the same time, the chair has already stated that we don't mind being in the periphery of that. We don't want to see Bill C-50 dominate the debate and get us off the topics we want to discuss, that we have been ordered by the House of Commons to proceed with. We have recommendations that'll be made to the House of Commons on these items.

We will be having a hearing on Bill C-50, and all members will be given the opportunity to call witnesses and hear testimony from these witnesses on Bill C-50. Nobody is trying to shut down Bill C-50; it's just that we've been given an order by the House of Commons to do three items, and that doesn't include Bill C-50. So the chair has to be fairly strict in that regard.

I hope members will continue with the air of cooperation we developed since Vancouver and allow us to proceed in the manner we're supposed to proceed in.

On questions, I don't know who was last.

**Hon. Andrew Telegdi:** I have a point of order, Mr. Chair.

**The Chair:** I'll entertain one point of order, and then I won't eat any further into the witnesses' time.

**Hon. Andrew Telegdi:** Mr. Chair, had you let the question be finished we would have dealt with it a long ago, and it probably would be over to the Conservatives now.

The point I'm going to make is that never have we gone on tour—and this is my third tour with the citizenship and immigration committee—that we did not bring in other issues, if the member so desired to raise them. There's nothing in the Standing Orders saying that's the only thing you can talk about, number one. Number two, had we been aware, had the committee been aware—they approved the travel—that Bill C-50 was coming forward, I dare say they probably would have asked us to study nothing but Bill C-50.

Mr. Chair, in that role, you cannot determine everything that might be 100% relevant to a particular issue. So had you been a little looser, we wouldn't have had the problem. But the point is that Bill C-50 is the most important piece of legislation before us. The parliamentary secretary asked the committee to try to expedite the matter—and I underline that—in the hearings to Bill C-50. So any information we can gather would have helped that process, but it didn't.

I just want to have that reflected in the record. That was my point.

**The Chair:** Okay. No point of order.

Mr. St-Cyr.

[Translation]

**Mr. Thierry St-Cyr:** Thank you, Mr. Chairman.

I would like to know how many members each of your organizations has.

[English]

**Mr. Ramesh Dheer:** Approximately 150 plus.

**Mr. Philip Mooney:** We have approximately 670 members.

**Mr. Sean Hu:** About 200.

[Translation]

**Mrs. Julia Bass (Law Society of Upper Canada):** We have 40,000 members.

**Mr. Thierry St-Cyr:** I'll continue with the Law Society of Upper Canada. I find that name amusing because I imagine it dates back to its founding. It's amusing to this member from Lower Canada.

In a letter, the Canadian Bar Association expressed its concerns about the ability of the Canadian Society of Immigration Consultants to perform its role adequately. I believe you also share that concern.

• (1100)

**Mrs. Julia Bass:** The society's powers commence only when a case is before the board, whereas a whole range of problems begin well before that.

**Mr. Thierry St-Cyr:** To your knowledge, in Ontario, for example, apart from immigration consultants and lawyers, are other persons authorized to provide legal advice for a fee? In other words, are immigration consultants the only exception or are there others?

**Mrs. Julia Bass:** If you're talking about authorized people, there aren't any others. There are exceptions for non-profit organizations. However, no one else is authorized to do so.

**Mr. Thierry St-Cyr:** In Ontario, to provide paid legal advice, you have to be a lawyer, the only exception being the—

**Mrs. Julia Bass:** You're talking about cases that are before the board. There is indeed a lack of regulation of the activities of consultants who provide private advice, as a number of other witnesses said.

**Mr. Thierry St-Cyr:** I would like to know something else. Since we started these consultations, my thoughts—

**Mrs. Julia Bass:** Pardon me, I'd like to add something. The Law Society of Upper Canada is now responsible for paralegals. However, the board and the minister announced that, to date, they were not authorizing the paralegals to whom we grant a licence.

**Mr. Thierry St-Cyr:** All right. You emphasized in your presentation that there is an absence of any real regulatory and control power by the Canadian Society of Immigration Consultants. I have a question. In the provinces, all these structures already exist. As far as I know, in Quebec, there is the Ordre des ingénieurs, the Barreau, the nurses, chiropractors, and so on. These professions already have a legal framework. In addition, even though they are self-regulating, there is also the Office des professions du Québec, which oversees the whole structure, in the event an organization goes off track, so that it can bring them back on the straight and narrow in a lawful manner. Each of these professional associations has powers granted it by law for its implementation, whereas that does not appear to be the case at the federal level. The federal government seems to have no expertise in this area.

Wouldn't it be a more effective solution to transfer all control and regulation to the provinces, which already have the jurisdiction and legal structure to do so, rather than to control that directly at the federal level, where there is obviously no expertise in the field?

**Mrs. Julia Bass:** I hesitate to take a position on exactly what we should do. The fact is that we need regulation with government powers. That's the problem. At home, we've just created a regulatory system for paralegals, within the Law Society of Upper Canada. The model is somewhat different in Quebec, where they have the Office des professions du Québec and other organizations, as you said. The fact is that, in order to have the full range of regulatory powers, you have to have government powers in a statute, not in a private society.

**Mr. Thierry St-Cyr:** That's somewhat my point of view. There are a few sections in the federal act that creates and delegates authority to the Society of Immigration Consultants, whereas the regulations of the professions in the provinces are extremely complex, detailed and developed. Rather than reinvent the wheel and try to redo the same thing at the federal level, which would be extremely complicated, wouldn't it be better just to tell the provinces, which know how to do it, to handle it?

• (1105)

**Mrs. Julia Bass:** If I may correct you slightly, one may even wonder whether it's actually delegated to the society. We think this is a question of actual delegation between the federal government and the society. That's the source of the problems.

**Mr. Thierry St-Cyr:** Thank you very much.

[English]

**The Chair:** Thank you.

Mr. Komarnicki, please.

**Mr. Ed Komarnicki:** Thank you. I have just a couple of questions to Malcolm, and one to Mr. Mooney.

You indicate that paralegals are governed by the law society, is that right?

**Mr. Malcolm Heins:** That's correct.

**Mr. Ed Komarnicki:** Now, the paralegals themselves are not lawyers. They don't go to law school, I gather.

**Mr. Malcolm Heins:** That's correct.

**Mr. Ed Komarnicki:** But they do provide legal services of one kind or another under the supervision of a lawyer?

**Mr. Malcolm Heins:** No, we are responsible for our regime, whereby independent paralegals can provide legal services. The law society is responsible for determining the areas of competence in which they can provide those services to the members of the public in the absence of supervision. As well, we're responsible for the accreditation of their credentials to do that.

**Mr. Ed Komarnicki:** So you do have non-lawyers providing services similar to what lawyers provide, but they're regulated for discipline and competency through the law society?

**Mr. Malcolm Heins:** Correct. We have exactly the same regulatory authority over those individuals as we do over lawyers.

**Mr. Ed Komarnicki:** Are you suggesting, then, that immigration consultants be treated similarly, as paralegals under your umbrella?

**Mr. Malcolm Heins:** I didn't go as far as saying immigration consultants should be regulated by the law society itself. We'd certainly be competent to do it within the purview of Ontario. The problem with immigration consultants, I guess, as you've heard, though, is that they're not only operating in Canada, they're operating outside of Canada.

**Mr. Ed Komarnicki:** Let me just take this thing through one step further.

What you have with the consultants is almost a mirror-type of structure compared to the legislative structure that you have as a law society. They deal with discipline, they deal with competency, they deal with ethics, they deal with errors and omissions. Those are the same kinds of things that you deal with as a law society, except by provincial statute. Is that correct?

**Mr. Malcolm Heins:** What you're missing is that CSIC can only do those things with respect to those people who choose to belong. It's a voluntary organization.

**Mr. Ed Komarnicki:** Right. Let's talk about those who choose to belong.

**Mr. Malcolm Heins:** But in the regulatory model, the true regulatory model creates a statutory framework that says you can't provide any of these activities, including consulting advice, in the absence of being accredited by the regulator. That's not what you have with CSIC.

**Mr. Ed Komarnicki:** Okay, but it's something you could have. If you have CSIC—

**Mr. Malcolm Heins:** You could, but you'd have to go back and pass the statute giving them that.

**Mr. Ed Komarnicki:** Or a regulation.

**Mr. Malcolm Heins:** I would differ that you can do it by regulation, quite bluntly.

**Mr. Ed Komarnicki:** But the fact of the matter is, there is no reason that CSIC can't do with their immigration consultants the same thing as you're doing with paralegals.

**Mr. Malcolm Heins:** If they have the appropriate statutory authorization, yes, of course.

**Mr. Ed Komarnicki:** So it may need some fixing, but they're covering all the same principles as you're covering to govern your lawyers and paralegals in your jurisdiction.

**Mr. Malcolm Heins:** Yes. That was really my point. I wasn't saying that CSIC is a bad organization. What I'm saying is that CSIC hasn't been given the appropriate statutory authority to do the job that I think everyone expects and wants it to do.

**Mr. Ed Komarnicki:** But you would agree with me that in terms of professional competence for CSIC members, education, discipline, and ethics are important things, along with errors and omissions insurance.

**Mr. Malcolm Heins:** Absolutely.

**Mr. Ed Komarnicki:** And those are the right kinds of things, and that is the right track?

**Mr. Malcolm Heins:** There is no dispute, no argument with respect to that.

**Mr. Ed Komarnicki:** With respect to Mr. Mooney, you're indicating that one of the concerns you have is that your oversight or governance doesn't apply to those who do any type of services or work up to the point of placing the application with the department. You're saying it should be taken back to the point where fees are paid or fees are arranged.

I suppose a logical extension would be to say, at any point that anyone represents someone with respect to a matter for which a fee will be charged, that should be the starting point.

**Mr. Philip Mooney:** Yes.

• (1110)

**Mr. Ed Komarnicki:** And would that solve a whole host of problems for you?

**Mr. Philip Mooney:** I'd liken it to saying, if you want to go from Vancouver to Ottawa, you should have a railroad. It's an enabling matter, because it then says that individuals within Canada, for instance, who are not regulated and who practise in those areas are actually violating the Immigration Act and the RCMP could be involved.

It states that for those individuals who are outside of Canada doing those things, if they seek entry to Canada, CBSA is involved, because as you know, you don't have to be convicted of violating an act to be inadmissible to Canada. You need to have violated the act. That's basically the rule. So they could actually refuse entry to rogue agents who are running around, coming here to solicit more business, and doing all the things we don't want them to do. So by drawing the line at just a different place in the sand, it really opens up to many people.

Our members advertise in ethnic press, and they come back and say, "Yes, but my ad is right alongside this other guy's, who's not paying any fees to CSIC, CAPIC, or anybody else." So we'll write to the publisher, and the publisher will say, "Well, what's he doing wrong? What's the rule?" And we can't give him that moral authority.

**Mr. Ed Komarnicki:** So if you take that back in time, if you have something in the application that requires the applicant to disclose whether he or she has any relationship with someone—

**Mr. Philip Mooney:** In fact, that was there originally.

**Mr. Ed Komarnicki:** Okay. And thirdly, would you like some statutory teeth for those who don't comply, who don't register but perform the services? Do you want to see something additional to what already exists, or not?

**Mr. Philip Mooney:** I'm not an authority on statutory law and the difference between law and regulation. I can't answer that question. But would I like to see something more, or would we benefit from something more? The answer is yes.

**The Chair:** Mr. Carrier, for five minutes.

[Translation]

**Mr. Robert Carrier:** I have a few questions. Welcome to our committee, despite all the uproar you witnessed.

It's disappointing to see the disparity among the organizations that deal with people who want to immigrate to Canada. We of the Bloc Québécois are aware of the problem, and we believe that it's important to take in people from elsewhere, to be a host society. So we very much depend on the consultants who help these people. We see that the Canadian Society of Immigration Consultants, which appeared earlier, was formed and made official by the government in 2002. An advisory committee had examined the entire question and recommended first that an independent self-regulating organization be formed. That's what was subsequently done.

I wonder whether you were consulted at that time. Did the advisory committee meet with you to hear your recommendations and opinion on the subject?

[English]

**Mr. Philip Mooney:** *Merci de votre question.*

As I'm sure you know, there are several different ways of consulting with stakeholders. In the process of forming CSIC, I assume the committee or the ministry at the time decided regulation was a fairly complex issue, so they appointed a panel of industry experts. Those industry experts made a recommendation to the committee, and those experts were the consultative group, and the experts were simply chosen by CIC or the government under their own criteria. People could send in applications, and they picked the panel, which then made the recommendations that led to CSIC. That's different from other representations. There's a different type of consultation when we do the Canadian experience class.

**Mr. Ali Amlani:** I can throw a little more light on it.

There were 24 people in the consortium who came forward from the 10 associations. There were a few associations around, and everybody volunteered a few people to make recommendations. The committee then struck 38 recommendations on how to regulate this industry. In the interim it was decided we would have three lawyers and three consultants and three public interest members and a chair as CIC members. That's the core group of 10 people who were first appointed.

As far as consultation is concerned, we, the consultants, had been yearning for self-regulation from 1986. Finally, it happened. That's the extent of consultation.

• (1115)

**Mr. Ramesh Dheer:** It goes back to about 22 years ago when we first formed, and I was the founding president. We formed the Association of Immigration Counsel of Canada and we always wanted to go into the regulations.

Eventually, when the ministry appointed this advisory committee—and I was one of the members of the advisory committee and I know all the proceedings—suggestions from right across Canada were made by the advisory committee, and we had a lot of input from different individuals and different organizations.

If I remember correctly, there were three consultants on that advisory committee: me, John Ryan, and Jill Sparling. The others were a couple of NGOs, and I think there were four or five very prominent lawyers from the industry. So the whole thing was dominated by the lawyers, and when I say dominated by the lawyers, I mean for guidance, not to impose anything, but there was a lot of

guidance from the lawyers. I remember one or two people from Quebec, and I forgot the man's name—Patrice Brunet, I think his name is.

So in-depth consultations were held as to how to create CSIC, and eventually it was done. The minister wanted to do it, we wanted to do it, and finally it was done. But yes, there was input from various organizations and various people before it was created.

**The Chair:** Okay, I have to go—

[Translation]

**Mr. Robert Carrier:** I would perhaps like to hear the answer of the representative of the Law Society of Upper Canada.

[English]

**The Chair:** Then I'm going to Mr. St-Cyr.

[Translation]

**Mrs. Julia Bass:** We were consulted, and we concluded that the way in which the society was established was not consistent with the committee's recommendations. We had recommended that an organization be established and that it have the necessary powers. However, those recommendations were not followed.

[English]

**The Chair:** Okay, I have to go to Mr. St-Cyr, because we're running quite a bit over time.

[Translation]

**Mr. Thierry St-Cyr:** Following Mr. Komarnicki's speech, I would like to continue with the people from the Law Society of Upper Canada. I'm trying to transpose what is done by the Ordre des ingénieurs du Québec, to which I belong. To regularize what's being done in practice, there are two parallel paths. There's obviously the internal discipline of the members of the association, with the syndic, who can intervene and impose penalties on those who do not conduct themselves properly. There is also the ability to prosecute and intervene with people who are not members and who practise the profession illegally.

If I understand what you're telling me, there is a regulatory framework, making it possible to discipline members who freely choose help. It's in its inability to discipline and intervene with non-members that there is a deficiency. Have I correctly understood?

**Mrs. Julia Bass:** That's it.

[English]

**The Chair:** Thank you, Mr. St-Cyr.

I want to thank committee members and witnesses for being here today.

I want to apologize for the banter that opened up here. Please don't take that as any indication that the committee hasn't been functioning well since we started back about a week ago in Vancouver. With politicians being what they are, and partisan leanings and what have you, this happens from time to time, but not too often.

We thank you for being here. You'll be hearing from us in the future.

We'll suspend for about two or three minutes until we can get our next group to the table.

• (1120) \_\_\_\_\_ (Pause) \_\_\_\_\_

• (1125)

**The Chair:** We will get committee members back to the table.

We welcome the Downtown Legal Services, with Mr. Joel Hechter; and the South Asian Legal Clinic of Ontario, with Ms. Anita Balakrishna. As an individual, we have Katarina Onuschak. We also have with us the Canadian Society of Immigration Practitioners, William Rallis, director of communications, Montreal. And we have Sergiu Vacaru, professor with...?

**Mr. Sergiu Vacaru (Professor, Canadian Society of Immigration Practitioners):** I come from Brock University. I was in Spain, and I was in the former Soviet Union.

**The Chair:** Thank you.

Thank you for being here today. Each organization has seven minutes for opening comments.

I will go to you, Mr. Hechter.

**Mr. Joel Hechter (Downtown Legal Services):** Thank you, Mr. Chair and members of the committee.

Hilary Evans Cameron and I are here representing Downtown Legal Services, a clinic associated with the University of Toronto's Faculty of Law. We're delighted to see the committee turn its attention to the regulation of immigration consultants, because we see many clients in the clinic's immigration and refugee division, some of whom have come to us after dealing with immigration consultants.

I personally represented such a client last year, whose consultant took a significant sum of money from her on the understanding that he would prepare and file an H and C application for her. That application was never filed. When she arrived at our clinic nearly two years later, having lost faith in her consultant's empty assurances, it was already too late to repair the damage, despite our best efforts.

At the same time as we were making submissions to Citizenship and Immigration on her behalf, we launched a complaint with the regulator. CSIC was either unwilling or unable to conduct an investigation into its member's failure to file the application, despite evidence from our client's FOSS file, which established that the application had never been filed.

Other clients have had similarly tragic brushes with insufficiently regulated consultants.

This is not to say that all, or even most, consultants are bad. In fact, some of the most vocal critics of the current scheme are good consultants, who are desperate for proper regulation, but the system is so deeply flawed that it actually features incentives for those who would exploit it.

I've been researching this problem for the better part of a year, and having spoken with consultants, lawyers, professors, NGOs, and people involved with professional regulation, I'm here today to make one thing clear. This is something you've heard before—you heard it from Mr. Heins earlier, and you probably heard it in other cities as well—that Canada needs an independent agency empowered by

statute to regulate immigration consultants. The Canadian Society of Immigration Consultants is not the creature of statute; it's merely a non-profit corporation. For a body like CSIC—which emerged from a comprehensive research process initiated by the government, and whose members are accorded privileged status in federal regulations—not to have an empowering statute is, to our knowledge, unheard of.

A statute is absolutely required for at least three pressing reasons. Number one, right now this regulator has no teeth. Without an empowering statute, disciplinary authority ultimately derives solely from the threat of revoking membership—kicking a member out of the club—which doesn't stop that consultant from becoming a ghost consultant, about which you've probably heard a great deal already, and taking fees for everything but direct representation before the immigration authorities. As you've heard, this is facilitated by IP 9.

With a properly drafted statute, disciplinary sanctions such as fines would be enforceable by the courts. This is the way it works with other regulators in pretty much every province across the country, such as the Law Society of Upper Canada, the colleges of physicians and surgeons, the colleges of nurses, and all the other regulated health professions—all the other regulated professions across the country.

The second major issue is the scope of representation, which is an issue for everyone I've spoken with, from lawyers, consultants, NGOs, to a member of CSIC's own board of directors. Without an empowering statute, non-members are simply beyond the regulator's powers, whereas, as Mr. Komarnicki noted, with the properly drafted statute, a regulator would have authority over the practice area, and not just members. This means that non-members—ghost consultants—would be subject to fines, which could be enforced by the courts.

Third, the regulator has to be accountable. Without a proper empowering statute, clients and consultants have no legal remedy available to them if the regulator fails to follow its own procedures. As Mr. Hu said, just before us, CSIC is accountable to no one. With a properly drafted statute in place, if the regulator did not abide by it, the full armamentarium of administrative law, including judicial review, would be available to those wronged, be they consultants or applicants. This is not to say that many cases would go to court. The mere fact that decisions are subject to oversight creates an incentive on the part of the regulator to comply with fair procedures. That incentive doesn't exist right now.

It is no accident that CSIC was created without an empowering statute. You've heard a lot already about why this happens. The advisory committee recommended against one because it felt that statutes were hard to amend, and a non-statutory body would be easier to criticize.

As for the first justification, that's true of any proper regulatory body, from the law societies to all the other regulators I've discussed. The list goes on. We've seen major amendments to the law society here in Ontario not that long ago. Mr. Heins and Ms. Bass were talking about them. Those are amendments to a statute that updated the system here in Ontario.

•(1130)

The second justification of the advisory committee for recommending against a statute is not particularly compelling either. Surely a regulatory body should be conceived in a manner that considers the interests of the vulnerable clients it purports to protect at least as important as those of the department, so that if the department wants to criticize the body, it can. What's more, if recent experience with medical isotopes is any indication, ministers are perfectly comfortable criticizing statutorily empowered bodies.

Taking a look at the web page for this committee's hearings, I saw that the committee is very concerned that it act within federal jurisdiction. I understand this. I just want to assure the committee—as the advisory committee did at the time CSIC was created—that the 2001 Supreme Court decision in *Law Society of British Columbia v. Mangat* clears the way for a federal statute to create a proper regulator of immigration consultants. Immigration is under federal jurisdiction. Any conflict with the fact that professional regulation is normally a provincial matter is resolved through the paramountcy doctrine. This should allay any constitutional concerns the committee may have.

Thank you for your time today. We'll be following these oral submissions and the more detailed written ones in the future.

**The Chair:** Thank you.

Who do we go to next? Anita Balakrishna.

**Ms. Anita Balakrishna (Staff Lawyer, South Asian Legal Clinic of Ontario (SALCO)):** Good morning, everyone. Thanks very much for inviting the South Asian Legal Clinic of Ontario to speak today.

The South Asian Legal Clinic of Ontario, also known as SALCO, is one of 80 legal aid clinics funded by Legal Aid Ontario. Our mandate is to assist low-income South Asians in various areas of poverty law, including immigration, because the very nature of our community is that we have a large proportion of immigrants coming into Canada.

In relation to immigration, SALCO assists clients with sponsorship applications and appeals, applications for humanitarian and compassionate grounds, some refugee work, and judicial review work at the Federal Court.

SALCO is here today because we continue to work with clients who cannot navigate the current immigration system. Many of our clients have also been abused by immigration consultants and end up having nowhere else but SALCO to turn to, after having exhausted all their financial resources. Because we provide free legal services for people who qualify, they end up coming to us.

We'd like to highlight for you that we're also here because many of our own South Asian community members practise as immigration consultants, due to their inability to become licensed as lawyers in Canada because of strict financial and other types of barriers to becoming accredited. This context, of course, must also be acknowledged when we're looking at the issue of the problem of regulating immigration consultants.

In addition, many South Asian immigrants who come here are professionally trained back home in various fields and are unable to

find jobs in their fields when they get to Canada. So immigration consulting is often a viable and sensible option for a lot of our community members.

What are we seeing at SALCO? While SALCO acknowledges the introduction of a non-profit body to regulate immigration consultants, we continue to see a number of clients who have been represented by incompetent and unethical consultants, resulting in severe consequences for them financially as well as immigration-wise. Because clients often come to SALCO after they have completely exhausted other financial resources, we feel their desperation when they come to us. They have tried every single option to obtain immigration in Canada and have not seen any of the promised results that have been guaranteed, sometimes, by their consultants. Unfortunately it has not appeared to us that this trend has reduced since the introduction of immigration consultant regulation.

Of course, SALCO also sees clients whose immigration consultants have done ethical and high-quality work. Just as there are unethical, unprofessional, and incompetent lawyers, there are unethical, unprofessional, and incompetent consultants as well.

While we believe—and I think you've heard this here today from a lot of people—that a regulatory statute would not solve all the problems associated with immigration consultants providing incompetent legal services, it would be a step in the right direction and would provide clients who have been wronged with a fair, more effective process and legal recourse.

We also think we need to acknowledge one of the root problems a lot of our clients face. It's a simple kind of problem. Many of the immigration processes that have been put in place by our government are very onerous for our clients to even consider navigating on their own. A basic sponsorship application can include up to 11 forms to be completed by the sponsor and the person being sponsored.

For an average client, the forms are confusing and difficult to understand, and for our clients, those with linguistic and cultural barriers, the task of completing applications becomes almost impossible. Couple this with a lack of financial resources and you have a situation where clients can become extremely vulnerable to incompetent immigration consultants, who at times speak the language the client speaks and who are from the community the client is from.

So one of the bigger-picture responses to the problem of immigration consultant incompetency, misrepresentation, and fraud is to simplify some of the immigration processes, such as the application to sponsor a relative, and to make the application forms more linguistically accessible to clients.

Logically, if we make it easier for people to navigate the CIC system, they will not have to seek outside help for things that should be simple processes, like sponsoring a family member.

Now, in terms of some firm examples of what we have seen at SALCO, we saw a client who had hired a consultant for assistance with a sponsorship application. Her consultant took a lofty retainer in cash and advised the client that she would handle putting in the sponsorship application. The client tried to follow up with her consultant three months later to find that the consultant had disappeared.

What is the remedy in this situation? It's to file a complaint with CSIC, an organization with no statutory backing to carry out complaints procedures in the public interest.

• (1135)

Although advised of the option, the client did not file an official complaint with CSIC due to both uncertainty about remedy as well as the desperation to find another legal representative right away to get the immigration process going for her again.

Another example is this. We saw a client who had hired a consultant to assist with an application for permanent residence on humanitarian and compassionate grounds. The consultant put in the initial application but did absolutely no follow-up work. The consultant's name didn't appear anywhere on the application, but his address was used as the mailing address for the client. We discovered that the consultant had received a letter from CIC two years after the application was denied. The client was required to file a new application and pay another \$550 processing fee to get the process started again from scratch, which was a complete waste of time and money for our client.

• (1140)

**The Chair:** Can I interrupt you there? We do have quite a number of people who are presenting, and I've received some indication that there's a great deal of interest in questioning. Maybe you'll get a chance to make some of your points during the Q and A that you didn't make at the opening.

Thank you very much.

Ms. Katarina Onuschak.

**Ms. Katarina Onuschak (Member of the Canadian Society of Immigration Consultants, Co-Chair, Education Committee, Canadian Association of Professional Immigration Consultants, As an Individual):** Good morning. My name is Katarina Onuschak, and I am here as an individual. I'm a full member of CSIC and I'm also co-chair of the education committee of CAPIC.

I have prepared an entire speech, but I wish I could just repeat what Joel Hechter said. It speaks for all of us, for those consultants who wanted the regulation, who are trying to comply with rules and procedures that we either don't understand or we simply don't receive. In doing this, we have no way of protecting the public. As Anita was saying, most of the work for us or for lawyers is done before the application is filed. That's when we advise clients. That's when we plan strategy. That's when we tell the client what they need to go through the process. And these services are not regulated. The moment the application is sent, we are sitting and waiting for CSIC to come back, and we react to whatever they have to say.

But that doesn't mean the public is protected. On the contrary, if I don't want to be regulated, I can do basically what I'm doing now for

no fee, no hassle, no danger of a heart attack, no responsibility. So I completely agree with Joel. We need regulation. We need a statute. We need a regulator that is responsible and accountable to someone. Right now the CSIC board of directors is not accountable to anyone, not to its members and not to the government. Nobody wants to touch it.

Members tried for years to get some changes made, and we were not able. Our motions for our first AGM were denied on technicalities. We have no way of calling for a special meeting to at least let our board of directors hear what we have to say. We have no remedy.

I came here to talk about education. I'm very proud that I have been instrumental in the education of consultants for years, before CSIC and before CAPIC. As the CAPIC co-chair of the education committee, I know what it takes to educate people. I'm not saying we are all educated, and I'm not saying that all consultants want to be educated, but most of us do. I think we are doing a pretty good job.

We have to complete 40 CPD points—continuing professional development points—in two years. Fifteen points are mandatory, which was mandated by our board of directors. The other 25 points can be obtained through various programs by attending courses, by attending events organized by other institutions.

For example, there is the CBA conference on immigration law, which is held every year. In 2006 and 2007 the conference was the highlight of the education program for lawyers and for consultants, and it was appropriately awarded 15 points. This year it was awarded only 10 points.

Why am I mentioning it? CSIC incorporated the Canadian Migration Institute, which is a for-profit organization that is now providing voluntary CPD points to immigration consultants. The board of directors of this new for-profit corporation is the same as the board of directors of CSIC, so basically they are applying for approval of a program, and then they approved their own two-day program, which is pretty much the same length as the CBA conference, and they awarded themselves 20 points.

• (1145)

There are so many issues, and I am sure you heard from my colleagues in Vancouver or in Calgary. I don't want to go into all the details. I just want to say that we want to be regulated. We want the rules, but we want the rules to be clear, and we want to know that if we comply with all the rules, we have the right to do what we do. If I don't want to be regulated, I simply won't be allowed to work.

Today I am a member. Some people consider me foolish. I have no rights. They can do what I do without the hassle.

Thank you.

**The Chair:** Thank you very much.

We'll go to Mr. Rallis.

**Mr. William Rallis (Director, Communication (Toronto), Canadian Society of Immigration Practitioners):** I'd like to state that the CSIC sitcom has to come to an abrupt end. The government made a huge error in supporting CSIC and implementing it to begin with. The only way out is to stop digging and start all over again.



CSIC is an unaccountable organization. It conducts itself in an arbitrary, unconscionable manner. It makes up the rules as it goes along. As well, it is not an organization that protects the public. I'll give you some examples, very quickly.

Right from the beginning, everyone who was an immigration practitioner should have been grandfathered immediately, then CSIC, as the governing body, could have governed the membership accordingly. It could have provided updates and education as we went along. Then they could be a regulatory body and protect the public by making these educational programs and updates available.

Now we get to the flawed exam, which was not tested properly. The people who put forth the questions were unqualified. There were many correct answers for the questions because of all the unqualified people who put them forth. Therefore, if you wrote the exam at the beginning, you passed, because there was nothing to compare it to. If you wrote it at the end, all the comparisons were flawed, because the whole process was flawed from the beginning.

The fact that people who could not speak English did pass to the set standard and did pass the flawed exam but were not able to work as immigration consultants I find unconscionable. I ask myself, where is the procedural fairness here? Where is fairness here to begin with? There is no natural justice implicated here, and there is a complete disregard for Canadian core values. No one knows what these things are at CSIC whatsoever.

The simple solution would be to say yes, you can practise. You passed the flawed exam, now please take an English course during the evening, and sooner or later you're going to improve your English, and that's the end of it. We're not going to kick you out and throw you to the curb in complete disregard, as CSIC has done.

This is why we say that they conduct themselves in an arbitrary, unconscionable manner. This is why we say that they do not protect the public. Because of this, and because of the now famous *Toronto Star* reports about immigration consultants from CSIC being caught doing things they should not be doing—I can't read everything, because I don't have the time here—complaints have been put forth, and CSIC will not act on complaints that have been put forth.

Personally, I put in a complaint to the chair. My complaint was acknowledged, but nothing was done about it whatsoever. Also, when I was a transitional member, I ran across some personal hardship. I could not pay my fees. I asked for rule 10.5.c to be implemented, which allows for hardship and staggered payments. They would not implement it. No reasons were given; they just refused to implement it. They said to pay my fees or I couldn't work.

Then out of nowhere, I was told to write the English exam so I could qualify for the entrance exam. That was more money coming out of nowhere. They won't let me work, but then they want my money. I was finally approved, after a long process and after being accused of not writing the English exam with permission. And I had to pay my fees before the passing mark would be implemented. The exam was just a cash grab anyway, because you had so many chances after that to write the exam, one after another after another, all with different names, and all just wanting your money.

If there's any problem with immigration consultants, it stems from CSIC not being able to do its job, because the board members are

unqualified to begin with, and they conduct themselves in an arbitrary, unconscionable manner.

• (1150)

As you said at the beginning, the CSIC sitcom has to come to an end and the government has to start all over again.

Thank you very much.

**The Chair:** Thank you.

Mr. Vacaru.

**Mr. Sergiu Vacaru:** Good day, Mr. Chairperson and honourable members of this committee.

My name is Sergiu Vacaru. I'm here to prove to you the type of abuse within the federal jurisdiction concerning authorized representatives and the result of their incompetent service.

I have a status of scholar at risk, as a scientist who cannot return to his country because of human rights and political issues. I am the author of more than 100 scientific works for books, in the bulk published in the United States.

I was arrested and tortured in Moldova because I refused to collaborate with the KGB on supervising scientists and the anti-Communist dissidents. Fortunately my family got protection because of special NATO, UNESCO, and local university grants in the U.S. A., Portugal, Spain, and so on.

I came to Canada as a visiting international professor at Brock University, but because I lodged a claim of refugee status, I lost all possibility to work. So in order to keep myself in the scientific world, I arranged two years of unpaid visiting research positions at the Fields Institute for mathematical research in Toronto.

On March 7, a Canadian judge of the Federal Court took the decision to stay my family's removal to Romania until my application was decided. My problems began for my family at the refugee board, when I was not allowed to present all the evidence and the data from my family's passports were falsified. The application for leave at the Federal Court was dismissed without explanation. My motion for the opening to the refugee board is without any decision. The pre-removal risk assessment officer refused to consider the documents from the scholar at risk program, and the extradition lawyer in Romania decided also that it was the competence of the refugee board.

There were problems with legal aid lawyers and the Canadian Society of Immigration Consultants. For instance, a lawyer from legal aid, Toronto, Ms. Geraldine MacDonald, just before their deadline to launch my motion of stay, told me that I would lose the case because I did not have the proof that the KGB would arrest and torture me. Fortunately the judge took a decision in my favour, and I am still here.

Also, I had a big problem because I complained of the CIC member Mrs. Stela Coldea. That was a most drastic situation in my case. She lied that she was a lawyer and could refer my application to the PRAA removal risk assessment on humanitarian and compassionate grounds, if necessary, also to the Federal Court. But really, she falsified the files and even had not submitted necessary humanitarian application forms. When the Canada Border Services Agency picked a date of removal for my family, Mrs. Coldea asked for \$10,000 to solve my case. She threatened that there is an established network, and if I would not pay money, my family would be returned to Moldova for torture.

Conclusions and suggestions. From my experience, I can conclude that Canada is a nice country with diverse and fair immigration programs for all ethnic groups and religions. Nevertheless, an internationally recognized scientist, educated in nuclear physics in the former Soviet Union, who refused to cooperate with KGB, who was involved in human rights activities, while his family was under the risk of flight and torture, wasn't able to get understanding, support, and protection by the Canadian immigration system. There is not a special program for scientists asking for refugee status, which is not in favour of the Canadian society and violates international established standards.

Thank you for your assistance.

•(1155)

**The Chair:** Thank you, sir.

Now we will go to questions.

Mr. Telegdi.

**Hon. Andrew Telegdi:** Thank you.

Ms. Balakrishna, I want to give you some time to finish.

Then I would also like to ask Mr. Hechter as to whether or not he would suggest, in terms of regulation, the experiences of the Canadian Law Society in terms of monitoring—

**Mr. Joel Hechter:** I'd be happy to answer your question, but if you wanted to let her go, I'll wait for that.

**Ms. Anita Balakrishna:** Thanks.

I didn't have much more to finish. I just wanted to talk a bit about one of the main problems we've been seeing at SALCO, and that's the phantom immigration consultant—when clients come to us and their applications are somehow lost or not followed through with, or the consultant who worked on their case has disappeared or has changed addresses, or refuses to transfer their file over to us. Often the consultant refuses to answer any questions about their file when we call, pretending not to have even worked with the client before. That's one of the common things we're seeing at SALCO.

I know that CIC recognized the problem of phantom consultants when it first contemplated the regulation of immigration consultants, but we feel that more meaningful steps have to be taken to actually address the problem.

The other thing I wanted to say is that we have had a few clients who have wanted to complain about their consultants, but because of the situations they're in and the onerous nature of the process, the

long waiting periods to get their complaint addressed, they don't have the means or the time or the energy to pursue those complaints.

We would like whatever process is implemented to be easy for our clients to navigate. As you know, for immigrants, newcomers, people with language barriers, it's asking a lot of them to navigate through a complicated process, especially when they're often living without status or living with very temporary status and need to get moving on things. So that's one thing we would like you to consider as well.

Finally, I wanted to review the main points we wanted to get across.

First, from what we've seen with the clients who have come to us, we believe the immigration forms and processes that exist currently for most applications are very complicated, very onerous, and make it difficult for clients to navigate through. I think this creates a huge dependence on outside help. So we would encourage...and I know when CIC was revising its sponsorship application forms, we had made submissions that the forms needed to be streamlined and made more simple.

The second thing is, of course, what everyone else here is saying, that consultants need to be regulated with a statutorily backed regulation scheme to effectively deal with complaints about immigration consultants.

Finally, start towards a more meaningful crackdown on phantom consultants, including adequate investigation and widening of the mandate of CSIC and legislating controls to increase prosecution under IRPA and by the RCMP. We need to send out a strong message that this kind of conduct is not going to be tolerated, so I think that's really important.

Finally, we just need to remember to acknowledge the context. A lot of immigration consultants are doing fantastic work. We don't want to penalize anybody who is doing fantastic work. Remember that just because someone isn't a lawyer, it doesn't mean they're automatically incompetent.

**Mr. Joel Hechter:** I want to make sure I understand your question.

**Hon. Andrew Telegdi:** The law society has been involved a lot longer than the immigration consultants in terms of regulating the members. What I'm asking is what suggestions you would make from that experience with the issue.

•(1200)

**Mr. Joel Hechter:** It's not a coincidence that the law society, which has a fairly good—in fact, excellent—reputation for discipline and enforcement, has an empowering statute. The difference between the actual codes of conduct and the disciplinary policy between, for example, the Law Society of Upper Canada and CSIC isn't all that great. The major difference is the Law Society of Upper Canada is required by law to follow its disciplinary policy and code of conduct and everything else, whereas with CSIC, if it doesn't conduct investigations as per its own policies, there's not much one can do about it.

Does that answer your question?

**Hon. Andrew Telegdi:** Partially, but I guess what I'm looking for is that maybe there can be more of an exchange as to what the experience of the law society has been. It evolved over time; it didn't happen overnight.

**Mr. Joel Hechter:** Surely, and I'm not affiliated with the law society, so I feel a bit diffident about speaking about their experiences or expertise. Certainly in Ontario and every province, the law societies are the regulators, and they do a good job across the country. They do have—I think you said it was 1797—more than two centuries of experience doing this, and that certainly is something a regulator like CSIC could learn from.

That said, with that much collected wisdom out there, not just in the Law Society of Upper Canada but in law societies across the country, it seems to me there's no reason that a properly drafted enabling statute couldn't be created to make sure a new regulator hit the ground running and wasn't trying to catch up for four years.

**Hon. Andrew Telegdi:** Thank you.

**Mr. William Rallis:** May I answer that as well?

Very briefly, it would be suitable to have each province regulate their own section of immigration consultants and perhaps have the law society of that province as the appeal mechanism. This way you could get everyone involved and make sure the system works. Then, everyone is accountable. It's not one big wide-open field.

That's my follow-up and suggestion.

**The Chair:** Mr. St-Cyr.

[Translation]

**Mr. Thierry St-Cyr:** Thank you, Mr. Chairman, and thank you all for being here today.

I'd like to address with you the question of the “area of jurisdiction” of an organization that regulates the professions.

Mr. Hechter, in your presentation, you named a whole series of regulatory agencies. Obviously, all those agencies are under provincial jurisdiction. The Canadian Society of Immigration Consultants is the only organization that was established by the federal government.

I am increasingly convinced that a large part of the problem is related to jurisdiction. When we talk about jurisdiction, in Quebec, in French, we're often talking about “champ de compétence”. I don't know how that's translated in English, but the expression “champ de compétence” includes a notion of competence. As Mr. Telegdi said, the provinces have regulated professional associations of all kinds for decades. They've developed an efficient infrastructure that operates well. The federal government, under the constitution, is not responsible for regulating the professions. In addition, it has neither the competence nor the knowledge to do so. That can be seen very clearly from the results we've seen.

Shouldn't we instead transfer the regulation of immigration consultants to those who know about it, that is to say the provinces? The act governing the status of the Canadian Society of Immigration Consultants consists of only a few paragraphs. However, the provincial statutes run to tens, even hundreds of pages. They are much more complex and sophisticated than those few paragraphs mentioning that it is these people who regulate a given field.

Wouldn't it be more efficient to use the existing provincial structures?

• (1205)

[English]

**Mr. Joel Hechter:** I'm going to try to address a couple of your points in order, the first point being that the federal government may or may not have competence to draft the kinds of statutes that are necessary for this.

I don't want to sell Parliament short. I think the federal Parliament could certainly learn from the patterns of regulation that exist in all the provinces. When a new provincial government has to pass a statute to regulate a new area, it may not have the competency to do so instantly, but it has the collected wisdom of all the statutes to base a new statute upon. That's why I said earlier that it's possible to hit the ground running. Whether it's a better idea to begin with provincial regulation.... That requires every province—I'm not sure how it works in the territories—to come up with their own regulation. It could be spotty across the country, and it takes a certain amount of time.

There should be one federal statute across the country.... With the kinds of models we're talking about—all the regulators that exist across the country—the regulation of immigration consultants isn't all that different from what's already happening under the Law Society Act in Ontario for paralegals. In fact, paralegals, as defined under the Law Society Act, embrace what immigration consultants do; they provide services of an equal nature.

[Translation]

**Mr. Thierry St-Cyr:** I think it's important to emphasize two things. Although a profession's sphere of action is a federal jurisdiction, the fact remains that control over all professions in Canada, except that of immigration consultant, is under provincial jurisdiction. If you are a lawyer, even if you argue cases concerning Foreign Affairs, which are under federal jurisdiction, in the Supreme Court, you must nevertheless be a member of your provincial professional association. If it wanted to do so, it would be quite simple for the government to require immigration consultants to be members of their provincial professional associations. At that point, those associations would establish themselves.

Second, there is an oversight mechanism in the provinces, since there are a number of professional associations. They are asked to regulate themselves, but there is also an outside organization that oversees them. In Quebec, for example, the Office des professions du Québec does that. There is no board of that kind at the federal level. What could we do? We could build from scratch an organization that would control a single profession. It seems to me that's not efficient. It would be better to invest immediately in the right solution, which is to transfer that jurisdiction to the provinces.

Do you have any comments? What do Ms. Onuschak and the other speakers think?

[English]

**Mr. Joel Hechter:** I'm sure the other witnesses, too, have opinions about that.

I think where I would start is that because immigration is so clearly under federal jurisdiction—there are immigration statutes within the provinces as well, but who gets to come to Canada is under federal jurisdiction—the Supreme Court said, in the Mangat case, that regulating that is certainly within the federal jurisdiction should the feds decide to do so. It's also, as you say, within provincial jurisdiction, and there are reasons, as you've described, for possibly giving it to the provinces.

Downtown Legal Services is consulting with the Canadian Council for Refugees and other organizations as well. We're not married to the one federal statute model. We're still in the consultation process, which is why we haven't given you a brief yet. We're still working on that.

However, we're here to say that we need a statute. Whether it's a set of provincial statutes across the country that incorporate regulation into the law societies or a federal statute that does this the same way as a law society does, we need a statute, because without a statute we're lost.

• (1210)

**The Chair:** Thank you.

Mr. Khan.

**Mr. Wajid Khan:** Thank you, Mr. Chair, and thank you, ladies and gentlemen.

We all recognize that immigration is not just about the need of the skilled labour market to meet Canada's increasing need for skilled workers. I understand it is feared that down the road almost 100% of the net labour market requirement will come from immigration. But there are also humanitarian and emotional factors in a compassionate country, and therefore it is such an important part of our lives that I tend to give some credence to the ideas put forward by the law society, as stated before. There's the Law Society Act of 1990 and then the Regulated Health Professions Act, 1991; the Professional Engineers Act, 1990; and there has also been the Public Accountancy Act of 1990.

So some people have mentioned here that this might be the way to go, and also it has been suggested there may be a conflict of interest as far as CSIC being supervised by Citizenship and Immigration Canada is concerned. I'd like to hear your comment on that as well.

Also, as everybody has admitted today and every other day, it's a known fact that there are problems within the immigration consultant family. It has been suggested that individuals or organizations are encouraging or dealing with untrained, unqualified people. I'd like to see what the impact of that might be. Those who are regulated by CSIC may still choose to misrepresent a certain policy to the public. CSIC may not be able to take any action.

So a host of questions are out there.

Ms. Balakrishna also suggested, and rightly so, that there may be unscrupulous lawyers. We're all human, and there are good and bad people in every profession. My question is, if there are unscrupulous lawyers, is there a course of action? I'd like to receive your comment on that issue.

If there was one way you could improve the system, as was suggested way back on October 31, 2003, to then Liberal minister Denis Coderre... I'm sure you're aware of that; if not, we could look into it. How can they fix the system? The system is not functional. There are problems. You all admit that. What do you think is the easiest way to bring about and monitor, federally and provincially, the change you suggested earlier? If CSIC is not satisfactory to the people who are here today, what's the alternative?

Anybody?

**Ms. Katarina Onuschak:** I think I already agreed with Mr. Hechter. I think the regulation has to be mandated by Parliament, and the regulator has to have teeth and has to be responsible and accountable to someone—I don't know whether federally or provincially. I don't think we really care. But I feel like a hot potato right now. Nobody wants us. The federal government doesn't want us, and it's too much work for the provincial, so we are where we were at the beginning.

**Mr. Wajid Khan:** What actions can CSIC take against those who are part of organizations that are qualified and yet misrepresent a particular client or a policy?

**Ms. Katarina Onuschak:** A complaint procedure is outlined on the website. I have no way of knowing what really happens. We just received, I believe, the first decision on such a complaint, and frankly I haven't had time to read it yet.

**Mr. Wajid Khan:** Mr. Hechter, what would happen in the case of the law society, if a lawyer were representing, if there was gross misrepresentation? Can there be any action taken by the law society?

**Mr. Joel Hechter:** There absolutely can, and those rules are enforceable. There are fines. All sorts of sanctions are available. If a fine is levied by the law society against a member, or even against a non-member—because again, the law society regulates the area of practice—the law society can go after someone who's not a member, someone who's hanging out a shingle and representing himself as a lawyer or taking money from someone for that reason. The law society can fine them, and if that fine doesn't get paid, the courts can enforce that fine.

• (1215)

**Mr. Wajid Khan:** Does CSIC have the same jurisdiction over...?

**Mr. Joel Hechter:** Absolutely not. They don't have a statute that empowers them to do any of those things, and that's the problem.

**Ms. Anita Balakrishna:** One of the most important things we all have to consider about whether the statute should be federal or provincial is the perspective of the clients we're dealing with. We are regulating professionals, but it's the clients out there—the vulnerable and marginalized individuals—who are going to be bringing forward these complaints and need to be more educated about where to go.

If we're looking at something federal, it is a huge task to coordinate the activities of the regulatory body all across the country and educate various communities within each jurisdiction. That is something we need to look at. Provincially, if you localize it, you may have a better ability to have a network to reach people in terms of outreach, education, knowledge, promotion, and keeping track.

I'm not an expert on whether something should be federal or provincial; I'm just telling you that from the perspective of our clients, they need something accessible. So accessibility is a key thing to look at when we're thinking about how to regulate.

**Mr. William Rallis:** May I add something?

**The Chair:** Yes, sir.

**Mr. William Rallis:** We can compare the provinces regulating their own to the provincial nominee programs. You can base it on a framework like that. But there has to be an appeal mechanism, and the law society of each province would be a good recommendation. The law society regulating consultants would be a conflict of interest. It doesn't make common sense. We can go down a list of things. Immigration is worldwide. The law society is provincial; each province has a law society.

**The Chair:** We have a couple of minutes.

**Mr. Wajid Khan:** Mr. Hechter, would you like to comment on that? Is there a conflict of interest?

**The Chair:** Then I will go to Mr. Carrier for two or three minutes.

**Mr. Joel Hechter:** I don't perceive there to be a conflict of interest. That's our position.

One of the models we're looking at is a federal statute that could contain a clause for a provincial opt-out, in a sense. In provinces such as Ontario, where paralegals are already regulated by the law society, discipline and enforcement could be handled by the law society, which has centuries of experience and a proven track record. In other places where they don't have that kind of provision, the federal statute would cover it.

**The Chair:** I have a few minutes for Mr. Carrier and a few minutes for Nina Grewal.

[*Translation*]

**Mr. Robert Carrier:** The question we're debating today is important. I'm an engineer, as is my colleague who spoke earlier. So we know that profession. A few years ago in Quebec, the École de technologie supérieure trained technicians who were virtually engineers, but who were not recognized as such. That matter was discussed for a number of years and, following negotiations, the École de technologie supérieure added certain types of training to its programming so that its graduates would be recognized as engineers by the Ordre des ingénieurs du Québec. We see that, with time, certain things can be corrected.

The major benefit that my colleague mentioned is that, in Quebec—and I cite the example of Quebec because that's the place I know best—the Office des professions du Québec governs and controls the professions. To my knowledge, we have at least 20 professions or so, if not more. For example, there are the naturopaths, the osteopaths, as well as certain professions that may be considered minor in some cases, but that are supervised by a professional association, which is overseen by an organization.

Mr. Hechter seemed to be reluctant and to say that immigration is a federal matter that it would be difficult to apply at the provincial level. Let's take the example of the Bar Association. Lawyers have to know the federal as well as provincial statutes. They are recognized for the purpose of handling immigration cases because they, in principle, know the immigration laws. Perhaps it would be a good

idea to create an immigration consultant specialty. We would ensure that immigration consultants receive minimum training, thus making it possible to supervise them more effectively. That would be one route, since a number of people want that profession to be regulated, no matter by what organization.

Do you want to respond to that?

• (1220)

[*English*]

**The Chair:** Please make a brief response, and then we'll hear a question from Mrs. Grewal.

**Mr. Joel Hechter:** I'm happy to begin to address that. I think my colleagues probably have something to say about it as well.

What really makes me happy, hearing your question, is that ultimately we're talking about the details. Everybody here seems to agree that we need a statute, and whether that statute is federal or provincial, okay, we'll figure that out. There are certainly arguments on both sides.

We're going to be presenting you with a proposal in writing not too long from now with those arguments laid out, I think, a little bit more clearly than I am in a position to do right now because we haven't finished our research. But the bottom line is that we need a statute, and if it's a provincial statute that happens province by province, or if it's a federal statute with provincial opt-out, or if it's just a federal statute that regulates across the country, that's what we need.

**Ms. Katarina Onuschak:** I totally agree.

**Ms. Anita Balakrishna:** As do I.

**Mr. William Rallis:** I'll go ahead. Well, you go ahead, because I forgot what I was going to say now.

**Mr. Joel Hechter:** Does that answer your question?

[*Translation*]

**Mr. Robert Carrier:** That's fine. In any case, since we have to leave soon, I'll be satisfied with that answer.

[*English*]

**The Chair:** I'm sorry about that. Now we need a couple of minutes from Ms. Grewal, and then we'll have to break for lunch, because the next group is scheduled for one o'clock.

**Mrs. Nina Grewal:** Thank you, Mr. Chair.

I would just like to echo what Mr. Khan said, and here today we have discussed a lot about these unscrupulous immigration consultants. So my question to each one of you is this. What new or further consequences should be imposed on these unscrupulous immigration consultants? Please, could each one of you answer my question?

**Mr. William Rallis:** I'll start.

First of all, the unscrupulous consultants will exist no matter what you do, because there have been just too many of them for such a long time, and by the time you go through the system and get it down to a manageable level, a long, long time will have elapsed. This is why I go back to saying that there's more accountability if each province takes care of this matter. The government has to set up something national to take care of the immigration consultants who are outside of the provinces' jurisdictions, and there has to be a whole new regulatory binding for people who are practising outside. I know lawyers practise outside the country, but lawyers are held to the higher standard and immigration consultants are not. So you're not really comparing the same thing.

So we're all talking the same language. We all agree that it's not working now, and we all agree that changes have to be made, so I'm saying that provinces should do their own thing. The provincial nominee program could serve as a model. The appeal mechanism is the law society of the province, and these people have to do their job. If these people do their job, this is going to discourage phantom—that's the word that is used at CSIC—immigration consultants—

**Mrs. Nina Grewal:** Thank you. I would like to give a chance to other people. Thank you.

**Mr. William Rallis:** I'm sorry. Go ahead.

**Ms. Katarina Onuschak:** I don't think I'm in a position to say what should happen to such a consultant, but whatever should or would happen should be clear and transparent, and everybody should know what the consequences are. Right now there are no consequences.

• (1225)

**Ms. Anita Balakrishna:** One of the things we do at SALCO that I think maybe should be specified as a role for the Canadian government is to provide better education and knowledge to people in the communities about what their rights are and about what an immigration consultant is. I don't know if CSIC is doing this adequately or not. They need to know what to expect from an immigration consultant, what type of behaviour is and is not

acceptable, what type of conduct is criminal in fact, and what type of conduct they can complain about and how. I think having those types of materials available to the community is very useful.

So I think that is something the Canadian government should take into consideration, whether or not we have a statute in place at this time.

The second thing I wanted to say is that any statute that is going to be disciplining immigration consultants not doing their job should be based on what's already in place in different jurisdictions—for example, lawyers. You can be fined. You can be suspended. There can be an expulsion of your membership from the law society. There are warnings that can be put into place. Perhaps there is not adequate training for certain consultants so that they don't know what their professional code and ethics should be, so training should be provided as well.

**Mrs. Nina Grewal:** Anybody else?

**Mr. Joel Hechter:** I'd like to add one thing. I appreciate where your question is coming from, but I'm not sure it's the right question. I don't think it's necessarily about crafting the right sentence, although certainly penalties are important. I think it's about creating a regulatory scheme that has credible enforcement lodged in it. We need credible enforcement. The penalties certainly have to be worked out, but for things like fraud, we already have Criminal Code sanctions against that. What we need is a regulatory scheme with credible enforcement. The details, like what sanctions, can be brought in as well.

**The Chair:** Thank you.

We really appreciate your coming before us today and giving evidence. We had to hurry up a little, but we did get in a full hour and five minutes. Thank you again. You'll be hearing recommendations coming forth from this committee, I'm sure.

The meeting is adjourned.









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