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Chair

Mr. David Tilson

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• (1530)

[English]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Good afternoon, ladies and gentlemen. This is the Standing Committee on Citizenship and Immigration, meeting number 27 on Wednesday, October 20, 2010.

The order of the day, pursuant to the order of reference of Thursday, September 23, 2010, is Bill C-35, an act to amend the Immigration and Refugee Protection Act.

You will note that this meeting is being recorded by video.

We have two guests with us today: the Canada Border Services Agency and the Royal Canadian Mounted Police. With the Canada Border Services Agency, we have Peter Hill, who is the director general of post-border programs, who I gather will be speaking for the group today. We have Dale Brown, who is the acting director of criminal investigations division. We have Gregory Israelstam.... How did I do?

Mr. Gregory Israelstam (Counsel, Justice Canada, Legal Services, Canada Border Services Agency): Very good, actually.

The Chair: Thank you very much.

He is counsel with Justice Canada legal services

We have two representatives from the Royal Canadian Mounted Police: Superintendent Joe Oliver, director general of border integrity, who I gather will be the spokesperson initially; and we also have Superintendent Shirley Cuillierier, who is director of the immigration and passport branch. I apologize to both of you for my pronunciations, but that happens from time to time.

Each group has up to seven minutes.

Point of order, Monsieur St-Cyr.

[Translation]

Mr. Thierry St-Cyr (Jeanne-Le Ber, BQ): I am sorry to interrupt you, but I would like to have some clarification about the presence here of a camera that does not belong to the House of Commons. In the few minutes before the meeting started, I had time to check into certain rules contained in a report on that topic. I find it surprising that this new practice has been introduced, although I am certainly not against televising our proceedings; indeed, as politicians, we want to share our work with the public. However, it is the first time that I have seen this happen.

During one committee trip—Mr. Dykstra will recall this because he was there—we had a major discussion about the issue, and the

chairman agreed that the standing orders did not allow for cameras in the committee room other than those belonging to the House of Commons broadcasting service.

The explanation that we were given at that time was that certain standards and rules had to be adhered to so that the camera angles did not give an advantage to a given party, and so that no discussions were recorded without committee members being aware of it. There is also a need for some uniformity. In short, a certain number of parameters and arguments were presented to us.

So I would like a little more explanation from the chairman and the clerk, especially because we have the necessary equipment in this room to broadcast our proceedings. We have two cameras here that have been used for this purpose in the past. I would like an explanation as to why, in a last-minute decision and without anyone being notified, we have a camera here in the room recording this meeting.

• (1535)

[English]

The Chair: I raised the same questions to the clerk. I've chaired a few meetings in this place, and I don't recall this happening either.

The clerk has directed me to some broadcasting guidelines, which are directed for the media, and these came through a Standing Committee on Procedure and House Affairs report, the 40th report, adopted by the committee on March 29, 2007. The report was then presented to the House on March 30, 2007, and concurred in at the House on March 30, 2007. The clerk has given me a copy of the broadcasting guidelines. I don't imagine anyone else has them. If anyone has any questions....

Clearly, Monsieur St-Cyr, there is a guideline that mentions: "Where the notice for the meeting is either issued or amended during the 24 hour period prior to the meeting, the clerk must be notified at least two hours in advance of the meeting."

As I understand it, this is CTV that is with us, and they have complied with those guidelines.

There are other guidelines, such as the cameras must be in fixed positions, they can't move around; only the individual recognized by the chair is to be filmed; close-up shots of people or documents, or reaction shots among others, are not permitted; and it goes on.

I suppose at a later date we could ask the clerk, or maybe I can tell her now, to send copies of these guidelines in French and English to all members of the committee. But we are bound by an order of the House of Commons, and CTV is quite properly here. I'm sure they know the guidelines, and we'll be watching that the guidelines are followed.

So your point of order is well taken, but quite frankly, pursuant to the order of the House of Commons, I have no problem with them being here.

[*Translation*]

Mr. Thierry St-Cyr: I would just like to add to what I have already said, Mr. Chairman. As I mentioned, I have no problem with the principle behind the broadcasting of our proceedings. On the contrary, I will simply point out that the guidelines that have been provided call for the committee to be given reasonable notice and that it is up to the committee to define that reasonable notice. Given that I personally knew about this only about 10 minutes before the meeting, I feel that the amount of notice was hardly reasonable.

I understand that exceptions are made if the agenda has been amended within 24 hours of the meeting, which is the case here, but the amendment was quite minor, in my opinion. That is my first point.

My second point is about the provision that prohibits cameras if the meeting is already being recorded by the House of Commons. I understand that this is not the case today, since we have decided not to use the equipment that is at our disposal, but perhaps the committee should give some thought to this and see whether it might not be better to use it in an environment that we know and control, rather than having outside cameras.

I will conclude, Mr. Chairman, by saying that we will consent to the presence in this case of an outside camera, which seems to be in compliance with the rules. However, I would like to go on the record as saying that I reserve the right, even though I don't really like that expression, or the opportunity to consult the documents, and, among other people, my whip in greater detail on this point and perhaps to come back to it.

To be clear, the fact that I have no objection to this practice being used today must not be perceived as consent on our part to take this as a precedent.

• (1540)

[*English*]

The Chair: It's not a matter of you reserving the right. You can reserve whatever rights you wish, quite frankly. You can say those things, but quite frankly I take the position that this committee is bound by an order of the House of Commons of March 30, 2007.

I'll be quite honest with you, this is the first time I've ever seen these things as well, and I think you have more experience than I have. I've never seen them before. I was here, quite frankly, and I don't remember them, but apparently they were concurred in at the House on March 30, 2007.

If members of this committee do not like these guidelines, or do not like these rules, I think they're going to have to go back to the House, or go back to the Standing Committee on Procedure and

House Affairs and amend those proceedings. But at this particular point in time, I take the position that I'm bound by these rules, and CTV is quite properly here and can do what they're doing.

So we will continue. Welcome again.

Mr. Hill, could you proceed first? Thank you.

Mr. Peter Hill (Director General, Post-Border Programs, Canada Border Services Agency): I thank the committee for the opportunity to appear today to discuss CBSA's role in relation to Bill C-35.

Since 2006 the CBSA and the RCMP have developed a complementary approach in relation to immigration offences. The CBSA is the lead agency for investigating most offences under IRPA. The RCMP maintains responsibility for immigration offences dealing with organized crime, human smuggling, and national security. The CBSA has lead responsibility for offences related to fraudulent documents, misrepresentation, counselling misrepresentation, and the general offence section within the Immigration and Refugee Protection Act.

The general offence section applies to individuals who do not comply with various conditions or obligations under the IRPA. Examples include employers who hire foreign nationals without authorization, previously deported persons who return to Canada without authorization, and persons who fail to report to the CBSA officials upon entry into Canada.

Enforcement related to misconduct by consultants is complex and may cross the jurisdiction of various enforcement bodies. Depending on the nature of the consultant's activity, various criminal offences and sanctions exist under the IRPA and the Criminal Code. These would generally be investigated by the CBSA and/or the RCMP. By contrast, review of activity that is either unethical or unprofessional but does not constitute an offence falls under the responsibility of the Canadian Society of Immigration Consultants.

I will now speak to the IRPA offences most frequently related to consultants. IRPA provides for criminal sanctions to be laid in relation to counselling misrepresentation, section 126; misrepresentation, section 127; counselling to commit an offence, section 131; as well as the general offence provision under section 124.

For example, where it can be proven in court that a consultant counselled the client to provide false information with the hope of increasing the chances that their immigration application would be approved, that consultant could be charged with counselling misrepresentation. The counselling of misrepresentation could be in relation to any immigration application, for example, a temporary resident application, a permanent resident application, a spousal sponsorship, or a refugee claim. This charge could apply to consultants whether or not they are authorized to act as representatives pursuant to the regulations.

The IRPA general offence section would apply in situations where an individual who is not an authorized representative represents a client for a fee. The maximum penalty upon conviction is a fine up to \$50,000, and/or imprisonment for up to two years. Presently the regulation respecting authorized representatives applies only after an immigration application is submitted. This has been problematic, as much of the counselling often occurs prior to the submission of the application. Today, activities of this nature are not regulated by the IRPA, and ghost consultants operating in the pre-application stage cannot be pursued through the courts.

The proposed legislative amendment in Bill C-35 would broaden the legislation to also limit those providing or offering to provide consulting services for a fee in the pre-application stage to persons who are lawyers, notaries in Quebec, and consultants who are in good standing with the governing body. If you're not any of those, then you're a ghost consultant. This would close a current loophole in the legislation and provide the CBSA and its enforcement partners with a further and important enforcement tool.

Obtaining evidence of consultant fraud can be time-consuming and challenging. The applicants are often hesitant to report the counselling offences to the CBSA, as they were either party themselves to the misrepresentation, or have been convinced that even though the representative is not authorized, he or she can assist in ensuring that they receive a positive outcome on their application. As a result, most alleged offences are only brought to our attention after Citizenship and Immigration Canada has rejected the applications. Even then, applicants may not come forward for fear that they be removed from Canada.

● (1545)

[Translation]

Additionally, contracts between clients and unscrupulous consultants are often verbal in nature, and payment is made in cash, leaving little documentary evidence for presentation in court. Further, many consultants operate outside of Canada, where Canadian law cannot be applied. In such cases, investigators will attempt to identify and investigate any Canadian links to the overseas consultant.

[English]

Currently, in order to lay summary charges investigators must become aware of an alleged offence, gather all the evidence, and lay charges within six months. In the case of immigration offences and the complexities required to adequately investigate such cases, six months is generally not adequate.

One of the proposed legislative amendments in Bill C-35 would increase the statute of limitations to five years, thereby ensuring that investigators have sufficient time to properly and fully investigate various IRPA offences, refer the file to the Public Prosecution Service of Canada, and lay charges before the time period passes.

A second type of fraud with respect to consultants involves situations where an individual accepts fees for services and fails to submit any application to the Government of Canada. Allegations of this nature are best investigated under the fraud provisions of the Criminal Code, and therefore fall primarily to the responsibility of

my colleagues at the RCMP, or in municipal or provincial policing agencies.

Finally, there are cases where the alleged activity of the consultant appears unethical or unprofessional but is not a criminal offence, such as charging exorbitant fees, or the provision of poor quality advice. Matters of this nature are not the responsibility of the RCMP or the CBSA, but rather a matter for a designated body, such as the Canadian Society of Immigration Consultants.

Under the current system, government officials are limited in their ability to share information regarding allegations of this nature with the designated body. Bill C-35 would authorize government officials to share information with the governing body and ensure that the body has the required information to undertake a review and pursue disciplinary action where appropriate.

Since taking on IRPA enforcement responsibilities, the CBSA has undertaken a large number of investigations related to various offences. The agency, in many cases in conjunction with the RCMP, is currently investigating a number of cases related to immigration consultants. The CBSA anticipates that the legislative amendments contained in Bill C-35 will assist us to continue to build on these efforts and results to date by closing the loophole that currently exists with respect to individuals who provide, or offer to provide, consulting services for a fee at the pre-application stage.

● (1550)

[Translation]

Mr. Chair, in closing, the CBSA recognizes the seriousness of this issue and its importance to maintaining the integrity of the immigration program. The CBSA will continue to work diligently with CIC, the RCMP and other law enforcement partners to address this issue.

[English]

Mr. Chair, thank you very much, and I will be pleased to take questions and pass the comments over my colleague at the RCMP.

The Chair: Thank you for your presentation, Mr. Hill.

Superintendent Oliver, you may make a presentation of up to seven minutes, although I can't really complain, because we took up about 15 minutes here nattering away.

You may proceed.

Chief Superintendent Joe Oliver (Director General, Border Integrity, Royal Canadian Mounted Police): Thank you, Mr. Chair and members of the committee, for the invitation today to appear before you.

[Translation]

I am Chief Superintendent Joe Oliver, Director General of Border Integrity for the RCMP. I will focus my brief remarks on the RCMP's enforcement role in relation to immigration offences, with specific reference to offences committed by immigration consultants, and the new provisions proposed under the Immigration and Refugee Protection Act.

[English]

Investigations of immigration offences, including offences by immigration consultants, are a responsibility shared between the RCMP and the CBSA. As Canada's national police force, the RCMP works closely with CBSA and CIC as well as with domestic and international law-enforcement partners to secure Canada's borders and to protect the integrity of our immigration system.

The CBSA is the lead agency responsible for investigating most offences under the Immigration and Refugee Protection Act, including general offences, misrepresentation, counselling misrepresentation, smuggling, and document fraud.

The RCMP plays a leadership role in combatting serious and organized crime by developing and implementing strategies to disrupt organized crime threats. As part of the continuum of investigations into immigration-related offences, the RCMP has primary responsibility for investigation of offences under the Immigration and Refugee Protection Act involving criminal organizations or national security, such as organized human smuggling or trafficking in persons, and investigations requiring the employment of special police techniques. The RCMP is also responsible for investigation of Citizenship Act offences relating to immigration consultants and Criminal Code offences such as fraud, forgery, uttering forged documents, trafficking in persons, and conspiracy.

Immigration fraud cases are not new to Canada. Due to the clandestine nature of immigration fraud and the reluctance of some witnesses and victims to come forward, it is difficult to make an accurate assessment of the extent of the problem in Canada.

For some time RCMP immigration and passport units have been working closely with partners, including CBSA and CIC, to investigate cases of unscrupulous immigration consultants producing fraudulent citizenship applications and providing people with advice to commit fraud.

[Translation]

Generally, when the RCMP becomes involved in fraudulent immigration consultant cases, there is a criminal network implicated. These investigations are a priority for the RCMP, both due to the highly organized nature of the crimes and the effect this crime has on a vulnerable sector of the population.

[English]

Currently, there are several ongoing criminal investigations into the activities of certain immigration consultants who have subverted or are attempting to subvert the legitimate immigration process. While for operational reasons I cannot discuss the specifics of a particular case, I will give as an example the case of an individual who was found to be operating an immigration consultant business

in British Columbia. This individual would receive money from victims to process immigration documents that were never completed. The accused would also obtain and keep original documents belonging to the victims to use as leverage, demanding more money from the victims and saying that there was an issue with the documents. If the victims requested the return of their documents, the subject would threaten them with deportation. An undercover operation was initiated by the RCMP to investigate this criminal activity, and the subject was charged with fraud and several other offences under the Criminal Code.

• (1555)

[Translation]

The RCMP welcomes the new provisions being proposed, as the legislative amendments would provide another tool to assist law enforcement in combatting immigration fraud. Since the new provisions fall under section 124 of the Immigration and Refugee Protection Act, CBSA would be largely responsible for investigating the new offence.

However, the CBSA might refer certain cases to the RCMP where special police techniques such as undercover operations are required to achieve a successful operational outcome. The RCMP will also continue to investigate cases of immigration fraud where organized criminality is detected.

[English]

In those cases where immigration consultants are part of transnational organized crime operating in Canada or abroad, the RCMP engages its extensive liaison officer network overseas to solicit the assistance of our foreign law enforcement partners in the investigation. Collaboration with foreign partners is critical to successfully targeting those crime groups behind immigration fraud operating overseas.

The RCMP recognizes that crimes committed by unscrupulous immigration consultants undermine the integrity of the immigration system. For this reason, I wish to assure the committee that criminal complaints involving immigration consultants have been, and will continue to be, vigorously investigated in the context of organized crime or national security investigations undertaken by the RCMP.

Thank you.

The Chair: Thank you very much, Superintendent Oliver.

Each caucus will now have a round of seven minutes.

Mr. Trudeau.

Mr. Justin Trudeau (Papineau, Lib.): Thank you, Chair.

The two elements of the proposed legislation that seem to be most helpful to your job seem to be the provision allowing investigation and prosecution for advice given during the pre-application phase, and the extension of the timeline from six months to five years to allow you to do your investigations.

What interests me right now is that, obviously, under section 124, it's already an offence to provide fraudulent advice.

What resources do each of your agencies and bodies dispose of in terms of your budgets, in terms of manpower, to go after ghost consultants specifically at this time, or fraudulent immigration cases?

Mr. Peter Hill: Thank you very much.

What I can say is that our statistics and the way we track them have evolved since 2008, the last time a representative of the agency was here. At that time we were only tracking cases with respect to the type of offence, and we weren't tracking whether it was a ghost consultant or consultant.

Since then we've enhanced our systems. We're now actually able to better track the number of cases involving consultants. Often they're complex cases, so they may involve human smuggling or other infractions, so it's difficult to isolate them specifically—

Mr. Justin Trudeau: Can you give me a feel for the number of cases?

Mr. Peter Hill: —but I can give you a feel for the number of cases and the budget.

I can say, roughly speaking, that the agency has a budget of about \$19 million annually for its criminal investigations. Now, that covers all criminal investigations with respect to Customs Act enforcement, IRPA enforcement, and food, plant, and animal regulations. Roughly half of that is devoted to Immigration and Refugee Protection Act enforcement. So that will give you a sense of the amounts.

• (1600)

Mr. Justin Trudeau: What other offences fall under Immigration and Refugee Protection Act enforcement, other than crooked and fraudulent consulting?

Mr. Peter Hill: We have a number of different cases. Perhaps—

Mr. Justin Trudeau: Well then, what proportion of that proportion, if you will, is dedicated specifically towards the issue we're discussing here? A ballpark figure, again.

Mr. Peter Hill: A ballpark figure again is difficult for me to say. I'd be happy to provide you and the committee with further information.

I can tell you that we have about 36 active cases under investigation right now that involve misrepresentation, counselling misrepresentation, or acting as a representative without proper authorization.

Since 2008 we've had about 200 referrals, of which we've opened 55 cases. That will give you a sense of the proportion of resources devoted to the—

Mr. Justin Trudeau: Thank you.

Superintendent Oliver, I have the same question, but not the money question. How many cases do you guys have ongoing? I'm assuming there are going to be far fewer because most of the time it's CBSA.

C/Supt Joe Oliver: In terms of identifying the number of cases, our case management system is not designed or built to isolate the cases dealing specifically with ghost consultants.

In terms of the resources available within the RCMP's immigration passport program, we have about 175 full-time employees. Now, the reality is that this includes investigation of all offences

relating to immigration and relating to citizenship fraud as well as passport offences.

Mr. Justin Trudeau: The sense I'm getting then, and it's what we expected, is that your agencies are obviously involved in an awful lot of things other than simply cracking down on crooked consultants. I think the express desire of all us around this table is that we need to crack down on fraudulent ghost consultants.

The CSIC and the current regulator have made it very clear, and we've seen it very clearly, that the responsibility for ghost consultants lies squarely on your shoulders. It's not the regulator that gets to go after them.

With this bill, the Cracking Down on Crooked Consultants Act, and the fact that we know there are anywhere from an estimated 4,000 to 5,000 ghost consultants working out there, and that we have 36 active investigations, and maybe 55 cases since 2008, and maybe a large handful more from the RCMP, we're a long way from the 4,000 necessary.

Because we're cracking down on the crooked consultants, I'd like to know from each of you, how many extra resources are going to be afforded to you by this bill to crack down on crooked consultants?

Mr. Peter Hill: My understanding is that the agency will be required to deliver the enforcement within existing resources. So that's what we will do. We are treating this as a greater priority among our overall enforcement priorities to meet the priorities of the government. As a matter of practice, we continuously review our priorities to ensure that they are appropriate and that we assign resources to address those as best we can.

I can tell you that the Minister of Public Safety, in consultation with the Minister of Citizenship and Immigration, has given us direction in that regard to treat these kinds of cases with greater priority.

Mr. Justin Trudeau: With greater priority.

I assume that's similar for you, Superintendent.

C/Supt Joe Oliver: For the RCMP, with our priority-setting tools, our focus is clearly on organized crime. We allocate our resources, whether to human smuggling, human trafficking, or immigration fraud, based on priority.

Mr. Justin Trudeau: So the bottom line is that you're going to have to reallocate resources from elsewhere, and stop looking at some crimes, in order to continue your investigations.

The Chair: Thank you.

Monsieur St-Cyr.

[Translation]

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

I have looked at your presentation. I wanted to be sure that I properly understood the respective mandates of your two organizations as well as that of the organization that will be responsible for oversight of the profession.

More specifically on this last aspect, there are cases—and you have described them in your documents—of obvious fraud: there are those who take advantage of naive, gullible people in distress and get money from them by promising things they cannot deliver, by lying to them and getting them to lie, etc. Those are the kinds of situations we see on public affairs programs, where money is being extorted from people. It happens in immigration and other circumstances.

However, we have the issue of how the profession is exercised. If this bill were to be passed, one of its provisions would ban people outright from practising the profession, providing advice for a fee, regardless of whether they have the skills to do so or not. So we might end up with consultants who are not accredited by the organization, but who are very competent and do their work well, but who are practising illegally because they are not members of the organization.

To begin with, who will be responsible for identifying those people, and second, who will be responsible for investigating and potentially prosecuting them? Will it be you or the organization that will be created by Bill C-35?

• (1605)

[English]

Mr. Peter Hill: We would likely find out about that kind of activity through various means. We might find out from our own migration integrity officers who are abroad. There may be information that Citizenship and Immigration Canada provides to us as a result of their presence overseas, for example, at visa application centres. We may have referrals as a result of port-of-entry information, and then we would undertake to review that referral and to assess whether there is sufficient reason to pursue an investigation in that regard.

[Translation]

Mr. Thierry St-Cyr: If someone is practising illegally as a consultant, it will not be up to the regulatory body, which remains to be designated by the minister and which will oversee these consultants, to carry out an investigation and take the person to court, but rather it will be up to the agency. Is that correct?

[English]

Mr. Peter Hill: That's right. When it comes to questions of unethical or unprofessional conduct, that would be the society's responsibility, the governing body. When it's a question of an illegal activity, that would be the responsibility of either the CBSA or the RCMP, or both, depending on the nature of the investigation. If it was, for example, an organized crime network, then the RCMP would likely have the lead.

[Translation]

Mr. Thierry St-Cyr: I do not want to go that far.

I am trying to compare this with what is done by the professional orders in the various provinces, such as Quebec. In Quebec, if someone is practising as a lawyer or an engineer without being a member of the professional order, it is an offence. The professional order can launch an investigation and even take people to court, not because they have been dishonest or exploited people or been involved in organized crime, but simply because they are practising a profession without being authorized to do so.

I believe that the first clause of this bill will prevent the profession from being exercised in Canada. I simply want to know who will investigate potential offences and who will initiate legal action against those who practise the profession without authorization, against those who have not committed fraud but who have simply practised illegally? Which organization will do that?

[English]

Mr. Peter Hill: I invite my colleague Mr. Israelstam to comment.

Mr. Gregory Israelstam: The governing body, as with all governing bodies, would not have any authority to discipline somebody who is not a member of that body, just as the Law Society of Upper Canada cannot impose sanctions on somebody who is not a member. Therefore an investigation for the offence of being a consultant without having the authority to do so would have to fall to the CBSA. It would have to come to the CBSA's attention.

It may well be that the organizing body or the professional body may have information that would be relevant to that offence, and we would certainly invite them to pass that to us so we could begin an investigation.

• (1610)

[Translation]

Mr. Thierry St-Cyr: Thank you. That answers my question.

Professional orders with these oversight responsibilities actually find it very difficult in many cases to provide evidence that someone is practising the profession without being a member. It is something that can be difficult to prove. That is why in most cases, at least in Quebec, there is protection for professional titles. For example, Quebec law states clearly that I cannot claim to be an engineer and give out business cards that say "Thierry St-Cyr, engineer" if I am not a member of the professional order.

In your work to try to provide oversight in this profession, would it perhaps be easier for you if you had to prove only that someone was presenting himself as an immigration consultant, rather than having to prove that he has actually provided advice and has actually been paid for doing so?

[English]

Mr. Gregory Israelstam: The provision itself requires that in order for a criminal offence to be made out, the person, the ghost consultant, if you like, "shall knowingly represent or advise a person for consideration". So we would have to demonstrate in fact that they provided advice or representation.

[Translation]

Mr. Thierry St-Cyr: Very well.

[English]

The Chair: Thank you. Your time has expired. I am sorry.

Ms. Chow.

Ms. Olivia Chow (Trinity—Spadina, NDP): A person will tell you they have been ripped off by one of these folks but they are about to face deportation because their application is all mucked up. So the question is to Mr. Hill. Would you stay the removal until the criminals are convicted? Or are you going to proceed to deport them because that criminal will never be convicted and they will continue to smuggle, give bad advice, cheat, etc.?

Mr. Peter Hill: The answer to the question really is on a case-by-case basis. It would, I think, depend on the nature of the offence.

Ms. Olivia Chow: How would you proceed with the charges? How would you ever convict someone, whether smuggling, trafficking, giving bad advice, acting as ghost consultants or crooked consultants, or any number of things, unless the victim can speak out? They can't speak out if they are back in Mexico or deported somewhere else. How would that work?

Mr. Peter Hill: Based on our experience, we see that oftentimes the crooked consultants are in the game for many cases. What we are seeing is a series of activities—

Ms. Olivia Chow: You deport one and they get another one. You deport another one, and you never get the person charged—or you never convict them. Out of 200 charges, probably there's a 1% success in getting conviction.

What's the percentage of success in convicting right now?

Mr. Peter Hill: We've laid three charges. We have two cases where the charges have been successful, and one case is still before the courts. These are complex cases, there's no question about that, and they're time-consuming. It often takes up to a year or more to successfully conclude a case.

Ms. Olivia Chow: Yes.

C/Supt Joe Oliver: If I may follow up, one element of evidence is having somebody who will actually testify. In other cases we could rely heavily on document evidence, video evidence, records that they keep in their computers. We could use undercover techniques to infiltrate and actually put forward an undercover operator as a victim—

Ms. Olivia Chow: So out of the 200 cases that you're looking at, how many convictions have you gotten in the last four years?

C/Supt Joe Oliver: I don't have that statistic.

Ms. Olivia Chow: Ballpark.

C/Supt Joe Oliver: I would mislead the committee.

Ms. Olivia Chow: Would you be able to provide that to us?

C/Supt Joe Oliver: Yes, we'll provide that.

Ms. Olivia Chow: Okay.

Mr. Chair, can I be assured that Mr. Oliver from the RCMP will be able to provide us with the number of convictions in the cases they've been investigating?

•(1615)

The Chair: We've made a note of that.

Could you send that information to the clerk, please? We will be getting into clause-by-clause of this bill by November 3, so if you could provide that information prior to November 3, we'd appreciate it.

Thank you.

Ms. Olivia Chow: Is there a one-stop shop—

The Chair: We have a point of order.

Mr. Borys Wrzesnewskij (Etobicoke Centre, Lib.): On this, there's no timeframe on it, so could it be perhaps from 2004 forward, year by year?

Ms. Olivia Chow: Thank you.

It took about ten minutes for you to describe who's in charge of what. There are the police, the RCMP; it could be CSIS; it could be CBSA. An ordinary immigrant—who's not even an immigrant yet—could never figure out where to complain to. Is there a possibility of a one-stop shop, whether a person is subject to smuggling, trafficking, or bad advice and goes to consultants? Can they go to one place? It could be CIC or CBSA, RCMP—even just the acronyms would get people totally confused.

Can there be a one-stop shop or a snitch line so that there is a place where that person could determine whether to go to the police or if it's a fraud or whether it's RCMP? Is that possible? Who should lead that?

Mr. Peter Hill: Currently, and as envisaged in the proposed legislation, the client could raise concerns with the Department of Citizenship and Immigration, they could raise concerns with CBSA.

Ms. Olivia Chow: We've had that—

Mr. Peter Hill: On the CIC website they have information with respect to complaints and issues.

Ms. Olivia Chow: Yes, we have actually helped people to lay claims. My experience has been that they would go to the police, who would say to go to CIC. CIC would say to go to CBSA. CBSA would say to go to the RCMP. Even my office staff—with several degrees—get confused. I know they could go to all of them, but is it possible that whether it's CIC or CBSA, one agency could be the lead and then distribute it? It would just be so much easier, because it's confusing.

Let me just ask one other question. Right now the time for charges will extend from six months to five years. Why is it five years? Why not ten years? Why not longer? Why not be infinite? Why is it five?

Mr. Gregory Israelstam: We're very specifically talking about charging somebody on summary offence, which is reserved, generally, for crimes that are thought of as less serious. The Criminal Code provides as a default that you can charge somebody for a summary offence only within six months of the occurrence of the offence. Five years is an exceptional period. It's particularly exceptional when you consider that you're talking about offences for which you can't be sentenced to more than six months.

Ms. Olivia Chow: But in some cases for immigration it takes eight years, in terms of waiting, to get your parents to be sponsored in Canada. By the time they finish waiting and say, oh, the application is mucked up, but it's after five years.... Because sometimes it does take five to eight years, well, three years, before your sponsorship case is even opened up. By that time.... If the offence was occurring when the application went in, five years can go by very quickly and the applicant might still be waiting, thinking that their application is fine, but actually having been given bad advice.

Could you consider having it be ten years?

C/Supt Joe Oliver: I don't know the legal rationale for it, but in terms of the practical application, when we're talking about a summary conviction offence, where the penalty would potentially be fairly minor, to now invest police resources in an investigation that may be dated and to find evidence that may be up to ten years old would be very difficult. Your probability of actually proving the offence, you know, kind of declines the older the evidence gets. It's people's memories. Changes in technology would also impact the availability of data that are in computer systems. It becomes increasingly difficult between the time the offence takes place and the time you start investigating to prove an offence. As a practical matter, there are challenges.

The Chair: I have one brief question as a result of what Ms. Chow raised, and that has to do with issues that happen in another country. I think the minister made a statement about reciprocal agreements, I believe, with China and India.

No one knows? I don't know how I get these things in my head, but I understood that there was discussion about reciprocal agreements.

My question to you is whether either of you have any recommendations, if there were reciprocal agreements, because obviously that's a problem. These consultants could be in other countries.

• (1620)

C/Supt Joe Oliver: It's interesting that you raise China, because we actually have an MOU with the Ministry of Public Security in China, which covers offences under immigration. That was recently signed. And there is a Canada-China working group, which both Peter and I sit on. We meet either annually or biannually to discuss these and other types of transnational organized crime issues.

In terms of offences that may take place overseas, there are two ways we can approach them. If we can prove that there is a link to an offence in Canada, we can work through our international assistance group at the Department of Justice to seek evidence that there is evidence abroad. There is also extradition, if an arrangement exists. The other thing we can do if we have information that a fraud may have taken place and it is an offence in the country overseas is work with the authorities overseas to help provide them with the evidence to prove an offence in their jurisdiction.

The Chair: Thank you.

Go ahead, Ms. Grewal.

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

Thank you very much for coming to our committee.

Could you please supply us with some examples of the types of activities your organization has investigated that involve third parties representing vulnerable would-be immigrants? Maybe each one of you could answer that.

C/Supt Joe Oliver: We have a couple of MOs, I guess we would call them, for how these consultants work. There are cases of people knowingly working with corrupt consultants to get expedited access or to get access to Canada that they wouldn't otherwise have. In one

case we're investigating, the method of operation is that these people aren't living in Canada, but the crooked consultant is actually providing the necessary appearance of residency in Canada by engaging people to conduct credit card transactions on the individual's credit card. That's one example.

Others we're seeing are done through arranged marriages. In other cases of people being, I guess you could say, ripped off by consultants, a Canadian might travel abroad, put on an information session that is communicated as if it is a requirement to gain entry into Canada, charge an exorbitant amount of money, and provide certification that looks as if it's been CIC approved and would give a person expedited access to the Canadian immigration process.

Those are some of the things we're seeing in our current investigations.

Mrs. Nina Grewal: Is there anyone else who'd like to answer?

Mr. Dale Brown (Acting Director, Criminal Investigations Division, Canada Border Services Agency): I can add a few points to that.

From our perspective, we're also seeing cases, basically, as Peter mentioned earlier, that tend to touch on all of the immigration programs. The temporary foreign worker program would be an example. You may have consultants, likely unregistered, who are convincing individuals to come to Canada under the pretext that there are jobs waiting for them when they get to Canada. They generally have them pay relatively large sums of money to come to Canada to enter the temporary foreign worker stream. And upon arriving, they find out that the jobs are no longer available. That's one example.

There are basically, I would say, endless types of MOs out there for this type of fraud.

Mrs. Nina Grewal: The other thing I am particularly interested in is how the RCMP and CBSA coordinate their investigations and prosecutions of immigration offences, and how your agencies coordinate with other law enforcement agencies. Could you explain that?

Mr. Peter Hill: I'll start by mentioning that, for example, if CBSA were investigating a ghost consultant, there would be no requirement under that scenario for the RCMP to be engaged. However, in the course of that investigation, if it came to light that there were suspicions that there may be an organized crime element, then likely at the regional level that information would be conveyed to the RCMP and there would be an assessment made at that point how to proceed with the investigation. It could be done jointly. It could be handed over to the RCMP and they would take the lead.

Once the investigation had been completed and all the evidence is available that could be collected, there would be an assessment on how to bring that case forward to the Public Prosecution Service of Canada. There is very close collaboration between the CBSA and the RCMP really at all levels, right down to and including a regional operational level in these cases.

•(1625)

Mrs. Nina Grewal: The other thing I am also interested in knowing is how you receive those reports. What circumstances lead these people to come forward with their stories of wrongdoing? Can you talk to us generally about the situations in which crooked immigration consultants are reported to you?

C/Supt Joe Oliver: There are a large variety of ways in which these offences are reported. It could be through somebody who has been victimized themselves or through somebody who knows there has been a victim, somebody who is aware that someone has been victimized, but they may be intimidated to come forward because they might be concerned about what may happen to them if they do report the crime.

In the course of doing our police investigations, we may come across information where we identify the offence itself. If we have a wiretap investigation under way for a drug trafficking case and we happen to intercept communications that involved an immigration consultant, we could then proactively initiate an investigation as well.

There's the crime stoppers program, anonymous complaints, and acting proactively through intelligence. For instance, we target Internet sites that are involved in a whole bunch of criminal activity where we actually proactively go and try to identify trends and patterns.

There are a number of ways through which complaints come to both the RCMP and CBSA.

Mrs. Nina Grewal: Go ahead.

Mr. Peter Hill: Media coverage is another possibility that could be followed up on, including Citizenship and Immigration Canada overseas and its visa processing. I mentioned earlier our migration integrity officers, who are stationed abroad following and tracking as best they can irregular migration patterns, working with the local authorities abroad to try to protect basically this activity from occurring. There are multiple potential avenues by which information or referrals reach us.

Mrs. Nina Grewal: How bad does it have to be before someone will report a crooked immigration consultant?

Mr. Peter Hill: How bad does it have to be? I think it really is specific to the circumstances. There is a great range of situations. Some are, in a sense, very bad and some are not so bad. It is very situational-specific in terms of when someone would feel compelled to come forward to make a complaint or to provide information.

Mrs. Nina Grewal: Do you have a number of cases that you have dealt with or you are going to be dealing with that have come forward?

Mr. Peter Hill: I have just the numbers that I referred to previously. We have had 200 referrals, and of the 200 referrals we've actually opened up 55 cases. Of those cases, 17 have been closed because the allegations were determined to be unfounded. We currently have about 36 cases under way at the present time involving crooked consultants.

The Chair: Thank you.

Mr. Wrzesnewskyj has a point of order.

Mr. Borys Wrzesnewskyj: Yes, Mr. Chair. In consideration of the fact that we started our witness testimony 15 minutes late, I'd like the committee to consider splitting the time, so that seven minutes in this round would be cut out of the round and seven minutes in a subsequent round. That would actually give us another seven minutes, if everyone is in agreement.

The Chair: So then....

Mr. Borys Wrzesnewskyj: Unless it's unanimous. If everyone's in agreement.

Mr. Tim Uppal: You're not saying to extend the time.

Mr. Justin Trudeau: No.

An hon. member: We end at 5:30; we just take seven more minutes.

Mr. Borys Wrzesnewskyj: We split the two rounds equally, as opposed to one round of 45 and the other round of one hour.

The Chair: Someone's got to say something here. Is there unanimous consent?

Some hon. members: Agreed.

The Chair: Go ahead.

•(1630)

Mr. Borys Wrzesnewskyj: Thank you, Chair.

I want to go back to the question of those two convictions. The current regulations allow for a fine of a maximum of \$50,000 and two years imprisonment. What were the penalties imposed?

Mr. Peter Hill: They weren't approaching those limits.

The one individual who was involved in misrepresentation received an 18-month conditional sentence. There were outstanding health issues that impacted on the decision of the judge. It was made clear that if these health conditions—I don't know exactly what the details are—were not present it would have been jail time.

Mr. Borys Wrzesnewskyj: So because of the time limitation.... So basically in one case it was a conditional 18 months. And the second case?

Mr. Peter Hill: The bottom line on the second case was that the individual was requested to make a \$6,000 donation to an agreed-upon charity in lieu of a fine.

Mr. Borys Wrzesnewskyj: Thank you.

So when we look at this and we take a look at the size of this industry, does anyone have an idea of the actual dollar amount size of this immigration consulting industry? Do we have any numbers?

Mr. Peter Hill: I'm afraid we don't.

Mr. Borys Wrzesnewskyj: We can look at there being 250,000 immigrants in the last year, and let's say there are an additional two or three applications for each successful one. Of those, if every third one gets some sort of consultation and if we average about \$1,000 we're talking about a business of a quarter of a billion dollars, minimally. That's a huge business.

Do you think maximum fines of \$50,000 are adequate, especially in consideration—and you've just referenced it inadvertently—that judges often see the maximum as only being applicable in the most egregious of cases? Some of these people, some of the organized groups in this, are raking in not hundreds of thousands but millions of dollars.

Mr. Peter Hill: The proposed legislation has a combination of \$50,000 and possibly including two years in prison.

Mr. Borys Wrzesnewskyj: Correct. Do you believe that's adequate?

Mr. Peter Hill: I believe it's a step forward, that's for sure. It definitely will—

Mr. Borys Wrzesnewskyj: But that's the existing legislation, so we're just proceeding the same way we've done up until now.

Mr. Peter Hill: With the extension of the application to the pre-application part of the problem, that will close a loophole and that will be helpful. So it will go beyond the existing legislation.

Mr. Borys Wrzesnewskyj: Mr. Oliver, do you think that's adequate as a disincentive when you've got millions of dollars potentially to be gained and that's the fine?

C/Supt Joe Oliver: I think the important thing is that's where we would have to rely on other provisions, either of the Criminal Code, or we can actually engage criminal organization provisions where we can actually go after their proceeds of crime—those types of investigations. So there exists the opportunity to use the Criminal Code, which, for instance, for fraud has penalties up to 14 years in prison and so forth.

For the large part, our investigations involve those more serious Criminal Code offences versus—

Mr. Borys Wrzesnewskyj: Shouldn't we perhaps think of a friendly amendment to the proposed legislation that's come before us that would have some sort of proportionality based on the amounts people have potentially been defrauded of? Wouldn't you find that often in other types of legislation in regard to fraud?

C/Supt Joe Oliver: In terms of the fraud, under the Criminal Code they are very serious offences, and I think the penalty section carries—

Mr. Borys Wrzesnewskyj: Proportionality.

C/Supt Joe Oliver: Yes.

Mr. Borys Wrzesnewskyj: Thank you.

I'd like to address the issue of extraterritoriality. I've addressed this before with witnesses. The size of this business means that if you shut down a business here in Vancouver—you reference one case—and if a person is making a lot of money on it they can move to the source country, and there are a number of source countries that are providing the majority of those hundreds of thousands of immigrants. Should we not consider using precedents of extraterritoriality in other legislation in this particular legislation, because quite clearly it's of a transnational character, this problem.

C/Supt Joe Oliver: The offences the RCMP deals with, primarily frauds and so forth, are very serious, and we would invest the resources in pursuing the cases internationally.

•(1635)

Mr. Gregory Israelstam: I would very briefly add to that. Extraterritoriality is built into the Immigration and Refugee Protection Act offence section right now. Section 135 provides that an offence that takes place outside Canada that would be an offence in Canada can be prosecuted.

The Chair: We have come to the end.

Here they go with points of order.

[*Translation*]

Mr. Thierry St-Cyr: Mr. Chairman, we had agreed on seven minutes. Since the Liberals used up five minutes, I have a short, two-minute question. We won't debate that for three minutes. Are we agreed on that?

Mr. Israelstam, you clearly explained the current requirements—

[*English*]

The Chair: Excuse me just a second, before you get warmed up.

The clerk agrees with you.

[*Translation*]

Mr. Thierry St-Cyr: You explained the evidence that had to be provided under the current legislation to show that someone was exercising the profession illegally. That's fine.

Let us suppose now that the committee decides that it would be an offence even to present oneself as a consultant or to give the impression that one is an immigration consultant, which is the case under the legislation in place in Quebec and the other provinces.

Would it be easier to prove that someone presented himself as a consultant through a business card or an advertisement, rather than having to prove what is required under the current legislation? In your work, would it be easier to provide that evidence in court?

[*English*]

Mr. Gregory Israelstam: I believe it would. One of the things I didn't include in my explanation earlier was the fact that section 91 of IRPA will be amended to make it an offence to offer to represent or advise a person as well. I think that a public advertisement to provide immigration services—

[*Translation*]

Mr. Thierry St-Cyr: In your opinion, offering one's services by distributing business cards would be an offence under Bill C-35. Is that your interpretation?

[*English*]

Mr. Gregory Israelstam: If the offer would include an offer to provide those services for financial consideration, yes.

The Chair: Thank you very much, sir.

We have come to an end. Thank you very much, gentlemen, for appearing and giving us your opinion on this bill.

We're going to suspend until the next group comes. Thank you.

Ms. Olivia Chow: Mr. Chair, if you suspend for a minute, if the committee has some questions, could we ask the Library of Parliament to look them up? For instance, what was the number of summary charges? Was 50,000 a high enough number? There are a whole bunch of questions. Would we have a bit of time to submit all the questions and ask that a bit of research be done? When would that be?

A voice: No.

- _____ (Pause) _____
-
- (1640)

The Chair: Ladies and gentlemen, we are going to reconvene.

Ms. Cox-Duquette is present but not in the room. So we have one witness at the present time, and the other is going to come in a few moments.

We have Professor Sean Rehaag, who is a professor at Osgoode Hall Law School at York University. Thank you very much for coming, sir.

You have up to seven minutes to make a presentation to the committee.

Dr. Sean Rehaag (Assistant Professor, Osgoode Hall Law School, York University, As an Individual): Thank you very much for the invitation.

My name is Sean Rehaag. I am a professor at the Osgoode Hall Law School, where I specialize in refugee law. I'd like to speak to you today about the role of immigration consultants in Canada's refugee determination system.

Immigration consultants operate in two very different fields. The first field is immigration law. Immigration law obviously involves people who want to come to Canada to work, to study, to immigrate, to visit. Immigration consultants basically help people fill out their application forms, and they occasionally represent people with respect to those applications at the Immigration and Refugee Board. The second field where immigration consultants operate is with respect to refugee law, where immigration consultants assist claimants in preparing their claims and they also represent claimants at their refugee hearings.

Now, without wishing to minimize the significance of immigration decisions, it's important to note that refugee determinations carry very serious consequences. Indeed, they carry life and death consequences. Where a person meets the refugee definition but is not recognized as such because of errors in the refugee determination process, the possible consequences are that a person will be removed to a country where they face persecution, torture, or even death.

In light of those extremely serious consequences, I think there are a number of reasons immigration consultants, who I think have an important role to play in the immigration system, should not be involved in the refugee determination process. I'd like to go over some of those reasons quickly.

The first reason is that immigration consultants have lost the confidence of the Canadian public. As the standing committee's

report on immigration consultants in 2008 noted, there are many reports of immigration consultants failing to adhere to basic norms of professional competence and professional conduct. The government is taking measures to try to address these concerns, including through the bill that's under discussion today. But regardless of those efforts, it is going to take some time before the immigration consulting industry will be able to establish a solid track record of ensuring that immigration consultants act in accordance with standards of professional conduct and professional competence. In my view, until such time as that track record has been established, which will take several years, immigration consultants should not be involved in life and death refugee determinations.

A second reason I believe that immigration consultants should not be involved in refugee determinations flows out of some research I'm doing on various factors that affect outcomes in refugee claims. I've been doing access to information requests to the Immigration and Refugee Board and putting together data on refugee determinations. That data indicates that in 2009 only a relatively small number of people used immigration consultants in the refugee determination process. Only about 5% of folks who came before the refugee protection division were represented by immigration consultants; the vast majority were in fact represented by lawyers. In addition, where claimants were represented by lawyers, the success rates were quite high; they hovered around 55%. During the same period, where claimants were represented by immigration consultants, the success rates were much lower—around 35%.

There are a couple of different ways you can interpret these variations. One way of interpreting the variation is that immigration consultants are more likely to bring forward unfounded claims than lawyers. I think the government, given that it has an interest in reducing the number of unfounded refugee claims in Canada, may be concerned about that possibility.

- (1645)

The second possible explanation is that there are at least some folks who are represented by immigration consultants who meet the refugee definition but are not being recognized as such due to problems with their representation. That raises serious concerns in terms of the consequences for claimants.

Regardless of which of these explanations is true, the variations in the success rates give cause for concern with respect to the participation of immigration consultants in the refugee determination process.

A third and final reason why I believe immigration consultants should not play a role in the refugee determination process relates to the reforms that are occurring in the refugee determination process. So as you know, the Balanced Refugee Reform Act, which will come into effect in the next year or two, changes the refugee determination process, and one of the changes is that there will be a whole new cohort of adjudicators who will be deciding first-instance refugee decisions. Most of those adjudicators will be new hires. Most will not have prior experience making refugee determinations, and they will likely not have legal training. In that context, competent professional representation for refugee claimants is extremely important in order for this transition to the new system to function properly.

For those three reasons, I believe that immigration consultants, although they have an important role to play in the immigration system, should not be involved in the refugee determination process because of the serious consequences at stake.

The Chair: Thank you, Professor Rehaag.

Our second witness is from the Immigration and Refugee Board of Canada. Sylvia Cox-Duquette is the senior general counsel.

Ms. Cox-Duquette, thank you very much for coming. You have up to seven minutes.

Ms. Sylvia Cox-Duquette (Senior General Counsel, Immigration and Refugee Board of Canada): Thank you.

Good afternoon. Thank you, Chairman and members of the committee. As you said, I'm Sylvia Cox-Duquette and I'm the senior general counsel for the Immigration and Refugee Board of Canada. I want to thank you for your invitation to appear before you today.

I thought I would talk about the IRB's policy for handling complaints regarding unauthorized paid representatives—in other words, those persons who are targeted by this new bill.

This is the third time I've appeared before the committee, and of course following my opening remarks I'd be pleased to try to answer any questions you may have.

By way of background, and I think most of you here have heard this before, here are some background stats. The IRB is Canada's largest administrative tribunal. Our members make anywhere from 40,000 to 60,000 decisions annually, and our mission, as you know, is to resolve immigration refugee cases efficiently, fairly, and in accordance with the law. We fulfill our functions presently through three divisions: the immigration division; the immigration appeal division; and the refugee protection division.

I'd like to speak specifically about the proposed legislation, Bill C-35. As this committee knows, the IRB has no role in policy-making. This is the responsibility of Citizenship and Immigration Canada. But I did want to assure the committee that the IRB will of course implement any resulting legislation professionally and effectively that falls within its responsibilities.

I think it would be important to begin by explaining how we categorize counsel who represent individuals who appear before the IRB. You'll recall that on April 13, 2004, regulations were introduced that defined who may for a fee represent, advise, or

consult with an individual who is the subject of any application or proceeding related to their immigration or refugee status.

Obviously, the current immigration and refugee protection regulations require that a person must be an authorized representative, someone who is a member in good standing of the bar in any province, or a member of the *Chambre des notaires du Québec*, or a member of the Canadian Society of Immigration Consultants, CSIC. But it's important to remember that under the current act—and this will continue under the new *Cracking Down on Crooked Consultants Act*—that hasn't been changed. Any individual can represent or advise a person with respect to their IRB proceedings *pro bono*, for free. If a fee is to be charged, then the person must be a member of either the applicable law society, *Chambre des notaires* or CSIC, or whatever body is designated to regulate non-lawyers and non-notaries.

Obviously, the legislation is designed to protect claimants, appellants, and persons concerned who typically may be vulnerable—for example, newcomers to Canada who may not have a support system, who may not know the language or understand the immigration and refugee system. We want to protect those persons from unscrupulous or incompetent people as advisors.

I won't go through the definitions further. I'll skip right to how we deal with and how we control our proceedings before the board in order to do the best we can to preserve the integrity of our proceedings, and to prevent unscrupulous or incompetent counsel from appearing before the board, be they lawyers or immigration consultants.

We have a policy. It's been in place since April 10, 2008, and is called the policy for the handling of IRB complaints regarding unauthorized paid representatives. This policy was introduced to address specific concerns regarding the charging of fees by counsel who had declared themselves to be unpaid. Under this policy, the chairperson of the IRB or his delegate may prohibit counsel from appearing before any division of the board, and it provides the board with a mechanism for ensuring that only those representatives who meet the criteria outlined in the regulations may appear before it.

● (1650)

This policy sets out, obviously, the IRB's approach to the treatment of complaints against unauthorized representatives who may be charging a fee for their services. While it's not the primary responsibility of the IRB to monitor compliance with the provisions of the regulations that govern counsel, we don't overlook contraventions of the regulations.

One of the things we do, which I can get into in greater detail later, to prevent unauthorized representatives who are charging a fee from appearing before the board is that when a claimant commences proceedings before the board, he's asked to say whether he will be represented and to say who he will be represented by. It's then determined whether the person he's chosen to represent him or her is either legal counsel, a member in good standing of the provincial law society or *Chambre des notaires*, or a member in good standing of CSIC.

If the person is proposing to have someone else represent them— in other words, an unauthorized representative—then both counsel and the claimant must sign a declaration indicating that the services of the counsel are being provided for free. It doesn't stop there, because of course someone can sign a declaration and we may get information or we may learn during the course of a hearing that we have some doubts as to whether the person is being paid, despite their declaration to the contrary. At that point, we will question the counsel and the complainant or we will look into any information received from another source on that to ensure that the person is not charging a fee.

If for some reason we're not satisfied with the explanations we are given, then at that point we go full blast into our policy. We do an investigation. If it turns out we determine the person is charging a fee for that service, then they will be prohibited from appearing before the board.

•(1655)

The Chair: Ms. Cox-Duquette, perhaps you could wind up.

Ms. Sylvia Cox-Duquette: Yes, I will wind up.

Maybe I'll just wind up by saying this in conclusion. The IRB has a strong interest in measures that would assure competent representation and preserve the integrity of proceedings before the board. Therefore the board supports measures that would strengthen the regulation of counsel who appear for a fee in immigration and refugee matters.

Thanks.

The Chair: Thank you both for your presentations.

We'll now go on seven-minute rounds from each caucus.

Mr. Oliphant.

Mr. Robert Oliphant (Don Valley West, Lib.): Thank you, Mr. Chair.

Thank you both for appearing and giving very clear presentations. Professor, yours was one of the best-argued presentations I've heard from a witness at any committee, and that was very clear. You've shed some new light on something I wasn't thinking about.

My mind on this has been on the immigrant stream, as opposed to refugee determination stream, and then it will also come to Ms. Cox-Duquette's argument as well, because I'm worried about the vulnerability of the client. I worry more about that than I worry about the culpability of the perpetrator in this case, an unscrupulous representative. I'm always worried about that.

Your data on the lower success rate, as we determined success meaning a refugee determination that's positive, you acknowledge obviously it could be either. Unfounded claims are being brought forward by people who will take anybody because they get a fee, or it could be that they're more poorly represented.

Are there other factors going on that you've found in that study you've been doing?

Dr. Sean Rehaag: Yes. It's right to say there could be a variety of other factors. One of the factors that would be relevant is that people don't tend to go to immigration consultants if they were successful in obtaining legal aid, and in some provincial jurisdictions there is

merit to screening to determine eligibility for legal aid. So that can have an impact.

I think one of the interesting findings in the data is not just the difference in the "success rates" in the refugee grant rates but the difference between the success rates and the expected success rates based on country of origin. Whereas lawyers do better than would be expected based just on the country of origin of claimants, immigration consultants do much worse than would be expected. So I think although there are other factors, they can be accounted for by looking at that part of the data.

Mr. Robert Oliphant: Would you have any greater confidence in the role of consultants if they were regulated by law societies or the equivalent in jurisdictions in Canada, as opposed to by CSIC?

Dr. Sean Rehaag: I think law societies have a better track record with respect to monitoring professional competence and professional conduct. I think you can look at the way law societies have been successful in regulating paralegals in Ontario. So I think this would be one route that could be considered, but of course there are jurisdictional issues here.

Mr. Robert Oliphant: It could be interesting if there were a stream of paralegals specializing in immigration and refugee law. Would that open up your sense that this could be a better system?

Dr. Sean Rehaag: It might be a better system, but I would go back to my point that immigration raises separate issues from the refugee determination process. So even if the policy were to head in that direction, I think the place to start would be with regulating immigration consultants with respect to the immigration system, and once a good track record had been established, only then opening that industry up to the refugee determination process.

Mr. Robert Oliphant: Ms. Cox-Duquette, in your determination of perhaps stated pro bono representatives who actually are being paid, what protection do you offer to the whistleblowers who may actually come forward as a claimant, either in a refugee determination process or through the immigration procedures?

•(1700)

Ms. Sylvia Cox-Duquette: We don't have a whistleblower policy per se. Maybe we'd better backtrack, because I want to distinguish between what happens in the refugee protection division and other divisions. The reason I say that is because when things come to our attention in the refugee protection division, these are private, closed hearings. In sharing information that comes to light out of those proceedings, we have to navigate the Privacy Act in doing that. So that is the first hurdle.

Now, we either therefore have to get consent of the claimant to release the information that was relayed in the hearing or we have to fit it in to one of the exceptions under the Privacy Act to share it with CBSA or RCMP—and there are some. There's consistent use. The chairperson could make a determination that it's in the public interest and then must inform the Privacy Commissioner. There are a number of things that can be done, but we do proceed in that way and we generally turn over that information one way or another to the pertinent authority and leave it to them to deal with the rest. If it's a complaint about counsel in their appearance before the board—the conduct of counsel, their competence—then of course we'll deal directly with the regulatory body.

Mr. Robert Oliphant: I'll switch gears a little bit; I'm getting some good answers on that.

Vis-à-vis the pertinent authority, one of the concerns that has been raised is that the pertinent authority in the new legislation is the minister of CIC, who has a role in the system, as opposed to, say, the Minister of Justice, who could be the more pertinent authority to bring a concern to. Is there any conflict of interest that you perceive in this system?

Ms. Sylvia Cox-Duquette: I wouldn't feel comfortable commenting on that.

Mr. Robert Oliphant: Professor?

Dr. Sean Rehaag: It's outside of my area of specialization, so I don't think I'd like to comment on that either.

Mr. Robert Oliphant: I'm going to yield to my colleague.

Mr. Borys Wrzesnewskyj: Ms. Cox-Duquette, have you ever heard of a decision where PRA, the pre-removal risk assessment unit, has granted an application for protection of a family, and it's vacated by the minister's office? The minister decides to vacate a decision that the IRB, through PRA, has made. We heard about the serious consequences if we get things wrong in these particular circumstances. Have you ever heard of such a decision previously?

Ms. Sylvia Cox-Duquette: I should clarify that. Although things will change under the new Balanced Refugee Reform Act, the IRB is not responsible for PRA decisions.

The Chair: Thank you.

Mr. St-Cyr.

[Translation]

Mr. Thierry St-Cyr: I would like to thank you for your presentations, in particular Mr. Rehaag, because you have brought us back to basics in a way by getting us to think about the very existence of immigration consultants. If I am not mistaken, you are telling us that we should not allow them to exist or be able to do this type of work, at least when it comes to refugee claimants.

But generally speaking, to your knowledge, are there other areas of law in which people other than lawyers are allowed to carry out such duties and provide legal advice? Personally, I do not know of any. It seems to me that, in order to provide legal advice, a person needs to be a lawyer. The only exception that I know of right now is immigration, where people who have no legal training and are not members of the bar can provide legal advice.

In your opinion, are there other examples of professions of this type where people provide legal advice?

• (1705)

[English]

Dr. Sean Rehaag: Thank you for the question.

You're right to say that immigration consultants are quite exceptional, in that you have this situation where non-lawyers are providing what amounts to legal advice. So it's exceptional.

There are a couple of areas where non-lawyers do get involved in legal issues, specifically, surrounding the activities of paralegals in some provinces. Paralegals can get involved in certain simple legal questions, including issues surrounding property law, for example,

but as a general matter this is quite an exceptional situation to have non-lawyers providing legal advice.

[Translation]

Mr. Thierry St-Cyr: If I understand your argument correctly, you are basically saying that, because the stakes are so high and the risk of error is so unacceptable where refugees are concerned, we should not allow consultants to deal with refugee questions.

On the other hand, since the stakes involved in immigration are less high, consultants could be allowed to practise in that area. Is that your general message?

[English]

Dr. Sean Rehaag: I think that's the general argument that I'm making, but I think it's important to take into account the context here. I'm not taking the position that in principle, a well-regulated immigration consulting industry could not have people who are qualified to provide services to refugee claimants. If there were a properly functioning immigration consulting industry, maybe they could satisfy the public that the level of services they were providing were sufficient to justify their being involved in these serious refugee determinations.

My argument is that's not the case right now. There is a series of problems with respect to the immigration consulting industry. In that situation, if we're going to have an immigration consulting industry at all, my argument would be that it should be restricted to the less serious context.

[Translation]

Mr. Thierry St-Cyr: Thank you. So we need to leave those in the industry to prove basically that they are able to deal with such a serious issue.

Can you tell us how the professional fees charged by immigration consultants compare with those of immigration lawyers? I understand that fees vary from consultant to consultant, but do consultants generally charge more than lawyers or less for handling a file?

[English]

Dr. Sean Rehaag: I don't have that data. That would be a good question to ask CSIC, whether they collect some of that data.

Anecdotally, I have heard both situations where claimants will say "I was charged the same or even more to go a consultant", and situations where people will say "The reason I went to a consultant was because I didn't get legal aid and I couldn't afford a lawyer, and this guy was offering to represent me more cheaply."

[Translation]

Mr. Thierry St-Cyr: You gave a comparison between the success rates of files handled by consultants and lawyers, respectively, depending on the country. You have obviously made a scientific effort to try to isolate the variable as far as possible.

Did you take into account the impact that the type of client has on the success rate? In other words, is the difference really attributable to the type of professional representing the applicant or to the fact that clients dealing with consultants may have more difficult files than those dealing with lawyers?

[English]

Dr. Sean Rehaag: It is not something I have been able to look at in detail. I've tried to account for that a little bit by looking at different averages for success rates for claimants from particular countries. So I can tell you, for example, whether there is a difference in the success rates for claimants who are represented by lawyers and claimants who are represented by counsel where the claimant comes from India. I can do that kind of analysis, but I can't go further and look at whether the consultant serves a particular sub-community that might have serious financial difficulties, for example.

So you're right to suggest that there are other factors that might be relevant here, but the difference is so striking and so large that I think even if I'm not accounting for all of those factors, the differences are still significant.

•(1710)

[Translation]

Mr. Thierry St-Cyr: We have looked at the theoretical question of who should be allowed to exercise this profession. But we also need to provide oversight for the profession. I have raised this in my earlier questions. Where lawyers are concerned, we have a fair degree of confidence: every province has clear rules, and the bar associations have legal and technical tools to prevent people from claiming that they are lawyers when they are not.

The situation involving consultants is more difficult. I am giving this some thought. Should the committee not simply prohibit people from presenting themselves as consultants when they are not consultants, as is the case for lawyers, engineers and other professions?

In my opinion, the bill before us does not specifically make it illegal for people to present themselves as consultants. Do you not think that this is a minimum requirement in order to provide oversight for the profession?

[English]

Dr. Sean Rehaag: I think it's a good point. In the course of my research I've looked at people who were representing people and who were not members of CSIC and not lawyers, and I did actually find online advertisements where people were saying that they were members of CSIC but they in fact were not.

I think that is a concern. I think it is more of a concern in the context of immigration law rather than refugee law, because with respect to refugee law, the issue is not so much ghost consultants as it is representatives who don't have basic competence or who don't

follow the rules of professional conduct. So I think it is an important issue.

The Chair: Ms. Chow.

Ms. Olivia Chow: Do you think the \$50,000 maximum fine or a maximum two years in jail for a summary conviction is too low, given that they probably charge \$10,000, \$15,000 per case? Is that something you have an opinion on?

Dr. Sean Rehaag: It does seem low, but my sense is that the real problem is not going to be how significant the punishment is but how easy is it going to be to secure convictions. I think it is highly unlikely that most immigrants and refugee claimants who suffer mistreatment by immigration consultants are actually going to report that mistreatment. So I think there are other more serious challenges with this strategy.

Ms. Olivia Chow: Right. So to make it easier for them to report, would it make sense for a place where they could just phone in, probably under CIC, so that it is very straightforward, well publicized? Because they get bounced between police and RCMP in our experience, or CBSA or CIC. Would that make sense?

Also, do you think there should be a stay of removal until the criminals are convicted? If not, how are you going to get them convicted?

Dr. Sean Rehaag: I think a stay of removal would certainly make it easier to secure convictions. And I think on the issue of having a central location with a phone number where people could go to report all complaints, irrespective of whose jurisdiction it falls under, is a good idea, not just for the immigrants and the refugee claimants themselves but for advocacy groups that are working with them, just because it is really complicated at the moment.

Ms. Olivia Chow: Thank you.

Maybe I will ask the IRB, if there is a one-stop shop, should it be CIC? I think there is a secretariat. Maybe you're aware of a place within the CIC that people from the IRB or refugee claimants or whoever can lodge their complaints. Are you familiar with that?

Ms. Sylvia Cox-Duquette: No, I'm not.

Obviously, because we are part of the same portfolio and there are certain practical matters we have to deal with, we have our contacts at CBSA and CIC. So if something comes to our attention we certainly know at the regional level where to send those complaints or that information.

Ms. Olivia Chow: You do—

Ms. Sylvia Cox-Duquette: No, I personally don't.

Ms. Olivia Chow: I don't think any one of us knows.

Ms. Sylvia Cox-Duquette: The IRB knows.

Ms. Olivia Chow: Back to our lawyer friend, what happens is that there are recruiters who say "I'll find you a job in Canada if you pay me \$10,000", and sometimes the job doesn't exist. Then, of course, they submit their applications, whether it's for temporary foreign workers, refugee status, visitor visa, or any number of things.

As the law is written right now, even with the amendment, does it include the recruiters for employment? The complaints against those people go to human resources, HRSDC. It's a bit confusing. They are the ones who are recruiting jobs for the purpose of immigrating. Are they really immigration consultants, or are they employment recruiters?

• (1715)

Dr. Sean Rehaag: That's a good question. I don't know the answer to that question. There are other provisions in the Criminal Code that could be used where there's kind of widespread fraud. I think your question points to the complexity of undocumented and illegal migration.

Ms. Olivia Chow: Can we actually tighten up the IRPA in order to include those people?

Dr. Sean Rehaag: You could create a specific offence for recruiting—

Ms. Olivia Chow: For the purpose of immigrating to Canada.

Dr. Sean Rehaag: Right. But you'd have to figure out what the nature of that offence is: is it for coming to Canada—

Ms. Olivia Chow: But charging a lot of money.

Dr. Sean Rehaag: —for unlawful purposes, or—

Ms. Olivia Chow: Charging a lot of money.

Dr. Sean Rehaag: Then you're starting to get into consumer protection issues and you run into the difficulty that consumer protection issues are a matter of provincial jurisdiction.

Ms. Olivia Chow: Even though they are coming here as temporary foreign workers, and then if the job is non-existent they end up applying for refugee status to stay here. Obviously it's not a refugee claim, but since they're in Canada already, the job is a bit of a fake. Is that under fraud, but it is for immigration purposes?

Dr. Sean Rehaag: You would have to try to go under fraud, or you could try to regulate this by creating some kind of new profession—for example, immigration agents, temporary migration agents—but you'll run into the same kind of problem that we're facing currently.

Ms. Sylvia Cox-Duquette: I think it's probably a better question addressed to CIC. Under this crooked consultants act, to the extent the reserved job offer is connected to getting a work visa to Canada, I think you might want to ask the Department of Justice and CIC, because it may fall under this new legislation.

Ms. Olivia Chow: That would be great.

Ms. Sylvia Cox-Duquette: That's a question you would have to ask—

Ms. Olivia Chow: I'm asking the wrong person, okay.

If this is just an interim process where eventually this body can become part of the bar association, a legal society, paralegals or stand-alone consultants, there is nothing that would stop us. This is a transition period where it would go to something more permanent and independent at arm's length that would have the power to regulate.

Dr. Sean Rehaag: You could always make a change at a later date. You do run into jurisdictional issues. Certainly if you want to have the law societies involved, you're talking about a provincial not

a federal matter. There are jurisdictional challenges and then there's the challenge of establishing the track record. The more frequently you make major changes to the regulatory bodies, the more there might be a concern about establishing a successful and stable track record.

The Chair: Thank you.

Dr. Wong.

Mrs. Alice Wong (Richmond, CPC): Thank you, Mr. Chair.

Thank you, both of you, for being our witnesses.

My question is directed to the IRB and Ms. Cox-Duquette. You listed very clearly in your written presentation, as well as in your verbal presentation just now, how you prevent crooked consultants from representing claimants in proceedings before the IRB within the existing system and existing law. With the introduction of this new bill, Bill C-35, how will that help the IRB to ensure the integrity of your proceedings?

• (1720)

Ms. Sylvia Cox-Duquette: There are a couple of ways in which it helps.

Just before I get to crooked or unauthorized representatives, there can be incompetent authorized representatives. One of the things that proposed new paragraph 150.1(1)(c) of this crooked consultants act will allow us to do is to make complaints where we perceive there are clearly incompetent counsel or misconduct in proceedings before the board. It will allow us to deal directly with the regulatory body, be that the law society, the Chambre des notaires du Québec, CSIC, or whatever body is regulating the immigration consultants, without having to navigate the Privacy Act. That is helpful in terms of dealing with that aspect.

In terms of unauthorized representatives who might be appearing for a fee, I mentioned our policy. Our policy is just that: a policy. We can persuade and cajole, but it doesn't have teeth.

In the context of looking under the Balanced Refugee Reform Act, where we have to redo our rules, now that this has become in legislation rather than the regulations, that opens up a space for us to bump this policy up to an IRB rule and give it some teeth. Frankly, I think that will help us greatly in dealing with this.

Mrs. Alice Wong: Thank you.

You did mention one way that Bill C-35 can help IRB to turn your policy into something you can put into practice. What other practices will change at the IRB as a result of this bill?

Ms. Sylvia Cox-Duquette: I don't know that there are many practices that would change beyond what I've described there. One of the things we do now, and we will continue to do, is that we also have a jurisdiction that is recognized by the courts to control our own proceedings and preserve the integrity of the proceedings. We'll certainly be looking to do that.

To the extent that some things have been said here about responsibilities being clarified, that will also help in terms of dealing with any procedures we might have.

Mrs. Alice Wong: In the existing law the rule applies only during the process. The new bill, which we're presenting to the House right now, Bill C-35, states that even before they actually go to the proceedings, whoever gives them advice is under the jurisdiction of this bill.

How would that help the IRB?

Ms. Sylvia Cox-Duquette: Actually, you raise a good point. To the extent that we learn about an infraction or misconduct in our proceedings—and now this misconduct has been extended to that pre-application and pre-proceedings phase—the IRB will be passing on that information to the appropriate authorities. We will be another potential source of information to preserve the integrity of the entire system.

Mrs. Alice Wong: In other words, that rule is applied to the definition of crooked consultants, including people who are authorized and yet giving very bad advice. Even, and excuse me for saying that, with lawyers who claim they were unpaid yet they were actually paid, or they will be paid in the future.

How would that help IRB to deal with the bigger definition of the crooked consultants?

Ms. Sylvia Cox-Duquette: Other than providing information on those sorts of infractions, our main remedy in dealing with these people is to either pass the information about infractions to the authorities, or in the case of unauthorized paid representatives, bar them from appearing before the board. As I mentioned earlier, I think that bumping up to a rule of our policy is extremely important.

I don't know if you want to hear a bit more about that policy. It is quite proactive. We don't simply wait for information. The member and any employee of the board are trained to observe certain things. For example, if we're in front of someone who has appeared many times in the past as a paid representative, and all of a sudden they start appearing before us with some frequency as an unpaid or pro bono representative, we're going to ask some questions. The sheer volume of cases can lead us to ask questions. Information we receive from a Federal Court file we might be watching or information we receive from portfolio partners such as CBSA and CIC are all relevant to that.

• (1725)

Mrs. Alice Wong: I'll share my time with Rick Dykstra.

The Chair: That's all of 30 seconds.

Mr. Rick Dykstra (St. Catharines, CPC): That's fine. Thanks, Mr. Chair.

The Chair: Mr. Wrzesnewskyj just got a bonus. Go ahead.

Mr. Borys Wrzesnewskyj: Thank you, Mr. Dykstra.

Mr. Rehaag, you made a pretty compelling case that in the situation of refugee claimants the standard has to be much higher because people's lives are potentially on the line if we get it wrong. In a case where consultants perhaps have got it wrong and the pre-removal risk assessment unit has granted protection, have you ever heard of intervention by the minister's office to vacate a PRA decision to provide protection to a refugee family?

Dr. Sean Rehaag: I haven't specifically looked into that. I haven't heard about the particular case you're referring to.

Mr. Borys Wrzesnewskyj: Ms. Cox, have you ever heard of the minister or CIC intervening to vacate a PRA decision in a refugee case?

Ms. Sylvia Cox-Duquette: I can't speak to PRA decisions, but my understanding of IRPA is that vacation and cessation are applications one can bring to the IRB—and I'll only speak to the IRB because I don't want to go down the PRA path—by the minister on those decisions. Those, of course, do occur.

Mr. Borys Wrzesnewskyj: I have always assumed that you apply for ministerial intervention to prevent potential harm. Is this a precedent that is being set when you have intervention that, instead of attempting to prevent harm, causes detriment to potential refugees?

Ms. Sylvia Cox-Duquette: I don't know the case you're speaking about. A cessation application is generally based on changes in conditions in the country, and so on.

In a vacation application there must be a misrepresentation of some kind. A vacation application is not an application to debate the protection decision on the merits.

I don't know if that helps you at all.

The Chair: This is your last question, notwithstanding that the bells seem to be ringing.

Go ahead.

Ms. Sylvia Cox-Duquette: The other thing the minister can do in the context of the refugee protection division is intervene to exclude. So they can actually come forward as a party in that proceeding to say that the person should not be granted refugee status. All of that is provided for under the legislation.

The Chair: I'm going to adjourn the meeting, Mr. Wrzesnewskyj. I think we've come to the end.

I want to thank Ms. Cox-Duquette and Professor Rehaag for their remarks. Thank you very much for coming.

This meeting is adjourned.

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