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Chair

Mr. David Tilson

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• (1535)

[English]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Ladies and gentlemen, we'll start the meeting. This is the Standing Committee on Citizenship and Immigration, meeting number 28, on Monday, October 25, 2010. Pursuant to the order of reference of Thursday, September 23, 2010, we are reviewing Bill C-35, An Act to amend the Immigration and Refugee Protection Act.

Before we start, the clerk has passed to all of you a budget for the bill we are reviewing. I trust you've all received it. I would like someone to move a motion that this budget be adopted.

An hon. member: *D'accord.*

The Chair: *Merci, monsieur.*

All those in favour?

(Motion agreed to)

The Chair: We will now proceed with Bill C-35. We have two witnesses before us: Mr. Lorne Waldman, who is an immigration lawyer, and Maria Yvonne Javier.

Ms. Javier told me how to pronounce her name before the meeting started, and I appreciate that, because one of my many faults is that I have trouble pronouncing people's names. Thank you, Ms. Javier.

You each have up to seven minutes to make a presentation to the committee. Who would like to go first?

Ms. Javier, thank you for coming.

Ms. Maria Yvonne Javier (As an Individual): I will go first. It's my pleasure.

Good afternoon, ladies and gentlemen. Thank you for inviting me to speak before you today. My name is Maria Yvonne Javier. I was a programs director for Multicultural Helping House Society, a non-profit service provider for immigrant settlement and employment services. As an agency, we helped hundreds of immigrants settle in and adjust to their new lives in Canada. Those were the happy stories.

However, we also encountered immigrants and migrant workers who were deceived by what we now refer to as "ghost consultants". Let me tell you how this happens.

There is immigrant or migrant worker A. That's me. I went to the website, downloaded the forms, filled them out, and submitted them.

I'm here without any help from anyone. Then there's immigrant or migrant worker B, who needs an immigration consultant because they don't understand the forms, or they are rich and just want someone else to do it, or they are almost—but not quite—qualified, so they need a creative mind to help them.

A ghost consultant is defined as somebody who is not registered but is giving advice for a fee. The fees could run from \$5,000 to \$10,000—or even more, depending on how complex the case is. Bill C-35, as I understand it, hopes to eliminate this ghost consultant, who I would like to call "Casper". He may be a ghost, but he's friendly; this is only business, and there is no swindling involved.

Now let me introduce you to immigrant or migrant worker C, who comes to Canada through a ghost consultant, not Casper, the friendly ghost, but a mean ghost, or a ghost recruiter with a ghost employer and ghost documents. This ghost is also a magician and can magically produce documents that look authentic enough to pass the scrutiny of Immigration and CBSA officers. Once immigrant C is outside the airport, the magician's assistant appears out of nowhere, gives him some Canadian dollars, retrieves all the ghost documents, and disappears into thin air. Immigrant C never sees this person again and doesn't even know the name of the person.

That, ladies and gentlemen, is the new ghost: not Casper, the friendly ghost, but a real, live monster. This is not an unscrupulous consultant who charges exorbitant fees; this is a major swindler.

The registered immigration consultants and your so-called ghost consultants, my Casper, are all waiting in fear to see how the bill will affect them. But this new ghost I described doesn't even care what you do, because these new ghosts are nameless and faceless, and believe me, none of the victims will give them up. They will be ghosts as long as there are desperate people who will pay anything to get to Canada. They will be there because the recession has made Canadian employers bold enough to hire illegals and pay under the table.

I'm not expecting you to eliminate this new ghost: a single bill will not do this. These people are experts, with years of experience bringing illegal immigrants to the U.S. and Europe. I just want you to understand that we are not talking about \$10,000 here. This is a multi-million-dollar scam. The people I encountered said that there were 10 of them and they were the pilot project. That was in 2009. This is now the end of 2010.

I wouldn't be surprised if by now they have brought in 100 people who have each paid \$10,000. That's \$1 million. Your fine is \$50,000. These ghosts are making a mockery out of our immigration system and have made a fool out of every legal immigrant who had to go through the tedious process. Your jail term is two years. These are not unscrupulous consultants; let's not give them nice names. These are major swindlers. Call them what they really are: criminals.

This is not to say that you should not pass the bill. If you truly believe in your hearts that this bill will eliminate the Caspers of this world, then go right ahead and pass the bill, but understand that Casper is what we call a small fish, and don't forget the big sharks. I have seen far too many heartbroken fellow Filipinos innocently deceived by these new ghosts.

Although I no longer work for Multicultural Helping House, I remain an advocate for this cause. I have put up a company, 1-800-Godmother, with me being the godmother they can run to for help. I will no longer sit back and watch this happen.

• (1540)

While I cannot stop the ghosts myself, I can make sure that the victim recognizes a ghost when they see one. I may be a Canadian citizen now, but I am still a Filipino, and a lot of these victims are my countrymen.

I am here before you today to respectfully request you to please find it in your hearts to understand that these people are victims. If we cannot run after the ghosts, if the ghost documents are so good that our own immigration and CBSA officers cannot tell the difference between a ghost document and a real one, then let us not take it out on the victims and send them back home.

I cannot offer you a solution. This problem has existed for decades in the U.S. and Europe. Canada is the new dreamland, so it's Canada's turn. Maybe this is the price we have to pay for being a better dreamland than the U.S.

Ladies and gentlemen, the future of these ghost consultants and their victims is in your hands. All I can ask at this point is for you to show a little compassion to the victims and show no mercy to the criminal ghost consultants.

Thank you for your time.

The Chair: Thank you, Ms. Javier. You have a wonderful way of expressing yourself. Thank you for your presentation.

Mr. Waldman, it's your turn. You have up to seven minutes.

Mr. Lorne Waldman (Immigration Lawyer, As an Individual): Thank you.

I certainly empathize with everything the previous speaker said; however, I think most of what she said are issues that are beyond the scope of this legislation. I agree that it's important not to penalize the victims and to go after the criminals, but having said that, we're now here considering a piece of legislation that is designed to regulate a profession.

I have to make a disclosure in my brief opening remarks; that is, I have represented clients who are in litigation against the current regulator, CSIC. Interestingly enough, one of the issues that arose in that case was whether the Federal Court or any court had

jurisdiction, or which court had jurisdiction over CSIC. As a result of our litigation, it's now clear that CSIC, the current regulator, is a federal board and tribunal and therefore subject to review by the Federal Court.

It took a year to be resolved. Now it's clear. I'm in the middle of this litigation. So my knowledge of the current regulator and my concerns about the bill and about this regulatory model are based upon my experience both in the litigation and also with other consultants who I have spoken to.

I firmly believe that regulation of consultants is essential. This comes from my experience in many years of seeing what the previous speaker spoke about: the victims of unscrupulous consultants, many of whom are not regulated and who charged large amounts of money and didn't do any work. In many cases, if they did do work, they did incompetent work that prejudiced the opportunity that some people might have had to go through the system legally.

The victims of unscrupulous and unregulated consultants are many, so it's vital that if the government enters into the field of regulating consultants, they do it properly. There is an urgent need for a good regulatory body, one that provides good standards, educational standards that ensure continuing legal education, because we now have one bill passed last June, another bill currently before the House, and a third bill, all affecting immigration. Regulatory changes are frequent. It's impossible to be a competent lawyer or consultant in this field unless you engage in continuing education, so it's vital that any regulatory body require that its consultants engage in proper education.

The difficulties with the current regulatory body, I think, are in the way it was set up. I know that it was set up under the former government, but the current government plans to continue with the same regulatory model, which I think is highly problematic.

I'm sure you are aware that there are three possible models. One would be self-regulatory. That has been rejected. The other would be a government regulator. That apparently has been rejected. So we are left with this third model, which is a private corporation that gets its power because only members of the corporation can appear for money before the Immigration and Refugee Board or before consultants.

The difficulty with this model as it was set up was that it really left the government powerless to control the regulatory body once it was created. So what we now have is a regulatory body gone rogue, I would suggest; it's a body that the government created but has no power to control. The government can't demand that the body hold annual general meetings. It can't demand copies of the audited financial records. It can't demand that the body create a power so that members can demand a meeting if a certain percentage pass a petition.

These are basic rights that exist in most self-regulatory bodies. The current system does not allow the government to hold the regulatory body accountable at all. That's a huge problem.

The other major problem with the current body is that it doesn't have effective powers to be able to undertake its function. Any body that is a disciplined body has to have the power to subpoena and call witnesses; it has to have broad investigatory powers. The current CSIC does not have that power and I can tell you why that's a problem.

I was involved in a case where I was representing the people who were subject to a complaint by CSIC against them, based on a newspaper article. A newspaper reporter went to the consultant, pretended to be someone, and got the consultant to say things, and there was the suggestion the consultant had acted improperly.

We argued that CSIC couldn't effectively prosecute them because they had no power to subpoena the reporter to come forward and testify before CSIC. Without having the person who is the actual "victim"—and I'll put that in quotation marks—it was impossible, in my view, to have an effective disciplinary action.

• (1545)

On the one hand, you have a body that is not accountable to the government or to the public because it's a private corporation. It's only accountable as far as the bylaws require accountability, and the current bylaws don't have sufficient accountability. On the other hand, you have a body that is charged with engaging in discipline of members but that doesn't have sufficient powers to be able to discipline the members.

So the current model is not one that's working effectively. That's independent of all the difficulties with how it's being run by the current board of directors and all the difficulties I've heard from people and the concerns raised.

The legislation does not really go far enough to address these problems. It gives the minister the power to require certain documents, but it doesn't give the minister the power to impose certain basic governance requirements on the governing body.

So you have a situation now where new bodies are applying, pursuant to the order in council. One concern I have, quite frankly, given the complex nature of creating a regulatory body from scratch, is that I wonder whether the government has really created a situation where the only qualified body will be the current body.

So then you will have gone through this whole process of asking for submissions, looking for a new regulatory body, and sort of being stuck with the current body as being the only qualified bidder, in which case people are going to ask why you went through the process if you thought this current body wasn't satisfactory. So you're seeking another body, and you've created a system where you didn't create the conditions to allow for another qualified body to come forward.

The Chair: Perhaps you could wind up, Mr. Waldman.

Mr. Lorne Waldman: Yes, I'll be more than glad to answer any questions. Those are the key points I wanted to make.

The Chair: I didn't mean to cut you off.

Mr. Lorne Waldman: No, that's fine.

The Chair: I was just trying to warn you.

Okay. We will now go in rounds of each caucus.

Mr. Waldman and Ms. Javier, each caucus has up to seven minutes.

Mr. Oliphant is first.

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

Thanks to both of you for being here.

I'm going to start with a couple of questions for Mr. Waldman and then I have some for Ms. Javier.

So that we separate this from the structural problems of the regulatory body versus the personnel, or the people, or the effect of that creation, I want to do the structural part. We'll leave the other part out.

It seems to me that we've had a confusing set of witnesses from the government side. We thought this piece of legislation was primarily about consumer protection, but the senior officials from the department said it was really about the integrity of the immigration system. Now, those two are related, I understand that, but I'm trying to clarify your thoughts: if this is truly consumer protection, what is missing?

Obviously, I think the department is responsible, with CBSA and other agencies, for the integrity of the system. Consumer protection, it seems to me, requires accountability mechanisms for licensing, for complaints and discipline, etc., and penalties and appropriate abilities to effect that accountability.

On the integrity of the system side, you need independence from the body that these people are appearing from. It would seem to me you need resources to do your work, whether those are legal resources, such as the power to subpoena at a discipline hearing, or resources in terms of going out to the bad guys out there, who are not the ghost consultants, as we are calling them, but the really bad ones. You need resources to do that.

Is this legislation, in your mind, primarily consumer protection or is it about the integrity of the system? What can we do to try to improve both of those things, the consumer protection and the integrity of the system?

• (1550)

Mr. Lorne Waldman: I think it has to be about both, because the regulation of consultants has a dual aspect.

On the one hand, you have the immigration officials, who are struggling with precisely the problems the other witness described. You have people who are unscrupulous and who don't care about presenting false documents. Their only objective is to make money. They have no sense of any obligation or duty to the system and aren't accountable because they operate outside the law. They operate secretly. I mean, if a lawyer presents a false document, at a certain point that's going to come back and the lawyer's going to be disciplined—and that's aside from the whole issue, hopefully, that lawyers act with integrity.

Independently of that, a lawyer would know that consequences are going to flow, so lawyers have to be careful. If consultants are part of a regulatory body, they have to be careful. So there is the issue of the integrity of the system that's involved, and that's why the bill attempts, in some ways, to deal with ghost consultants. Really, I think the reality is that dealing with ghost consultants is something that has to be left to enforcement and the police, because anything short of that is not going to be really effective.

On the other hand, from the point of view of the users, this bill has to be about consumer protection. It has to be about ensuring we get a regulatory body that serves a dual function, one of ensuring the integrity of the people who operate as consultants, but also one of ensuring integrity vis-à-vis the client, the person who is the user.

There has to be an element of consumer protection, so we have to ensure that the regulatory body, the people who are the consultants, are acting in the public interest, on the one hand—that's the issue that concerns CBSA—but also in the interests of the users. There's a dual aspect. I don't think there's any contradiction between the two. Obviously when you focus on one, you're interested in certain things, and when you're focusing on the other, you're interested in other things.

Mr. Robert Oliphant: Before I was on it, this committee recommended a different model. It recommended a regulatory body similar to a law society or to any of the professional organizations that I'm used to in Ontario: stand-alone with a piece of legislation, appointments by order in council, and powers that generate from that. Would that have been your preferred model for this?

Mr. Lorne Waldman: Absolutely. I think that a regulatory body would have been accountable and would have solved all of the issues in terms of accountability and governance. Also, any regulatory body has all of the effective powers in order to be able to effectively discipline its members, so I think that would be the best solution, without any doubt.

Mr. Robert Oliphant: Ms. Javier, I want to ask about your business, 1-800-Godmother. Could you be assumed by some people to be an immigration consultant in that firm?

Ms. Maria Yvonne Javier: No, I am not.

Mr. Robert Oliphant: But could someone think you were, if you were giving advice to immigrants?

Ms. Maria Yvonne Javier: No, because I don't give any advice at all. We actually have immigration consultants.

Mr. Robert Oliphant: You have immigration consultants who are licensed, but your business would not have to be licensed. I say that because in the funeral business, which I keep bringing up, the funeral home has to have a licence and is accountable to the body, and the funeral directors have to be licensed and are accountable.

I worry about your business. I'm not questioning it whatsoever, but I'm worried that someone could actually think you were breaking the law because they might think you're giving immigration advice.

Ms. Maria Yvonne Javier: The licence I have is a recruitment licence, so when people come to me it's because they're looking for a job and they need a new work permit for the new job. That's why I partner with immigration consultants and they handle the work permit side. We handle only the search for employment.

• (1555)

Mr. Robert Oliphant: So it's the employment side. I guess I'm trying to make sure that well-meaning people who are simply walking with somebody are not targeted in this legislation, but that we really go after the bad guys.

Ms. Maria Yvonne Javier: The bad guys, yes, that's—

Mr. Robert Oliphant: I think we're on the same line here, because there are people who give advice, casual advice—

Ms. Maria Yvonne Javier: That's true.

Mr. Robert Oliphant: —and then there are immigration consultants, and then there are people who are violating basic human rights and the understanding of what they should be doing. That would be a concern of mine. Is that a shared concern?

Ms. Maria Yvonne Javier: That is right. A lot of people give advice and that's actually very dangerous, because you give simple advice because you have experience with one case, but that person might have another case. The problem is that even if they don't charge anything, the client takes it as real advice, so—

Mr. Robert Oliphant: So we should crack down on those, then.

Ms. Maria Yvonne Javier: Yes. We have to be very careful—even I do—that the advice.... That's why I always say when it comes to immigration, the work permit, and the papers, you have to go to the immigration consultant. I have a bunch of them who have different prices giving the same service. Everybody's registered with CSIC, but they have different prices. I make the client choose which consultant they are comfortable with.

The Chair: Thank you, Ms. Javier.

Monsieur St-Cyr.

[Translation]

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

Let me continue the discussion with you, Ms. Javier.

During your presentation, you described a very worrisome situation. From what I understood, you said you were not able to provide a solution. That's somewhat unfortunate because that is exactly what the committee is looking for.

You have emphasized—and I believe Mr. Waldman talked about it too—that we should not punish the victims. Although I too share this noble point of view, I was wondering what you meant by that. Are we to understand that victims of fraud should be allowed into Canada, even if their application is invalid, just because they were victims of fraud?

[English]

Ms. Maria Yvonne Javier: Yes, that is what I am asking. I know it's very difficult and painful, but from the victims' point of view, in their minds they did not know. They were innocent. They thought the papers were correct. They thought this person was just helping them.

Now, let me differentiate between the victims. There might be a victim who is not really a victim, who actually knew the documents were fake. Those we should not bring into Canada; those we should send home.

[Translation]

Mr. Thierry St-Cyr: How can we tell the difference? Unless we are mind-readers, how can we be sure whether someone who submitted fake documents is aware of it or is simply a victim of fraud?

[English]

Ms. Maria Yvonne Javier: From my experience, you can tell, because once you are talking to the person, somewhere in the conversation it's going to come out. The people who interview them have to be trained to watch out for the signs. You can tell if the person is lying or not.

[Translation]

Mr. Thierry St-Cyr: If we did that, wouldn't there be a risk of relieving people of their responsibility to ensure that their consultants are doing honest work?

[English]

Ms. Maria Yvonne Javier: Yes, we run the risk of doing that, and the way to eliminate the risk, or to at least bring it down, is to train our own immigration officers, or CBSA, or whoever it is who will be interviewing them.

[Translation]

Mr. Thierry St-Cyr: That's fine.

Mr. Waldman, I would like to go back to my colleague Mr. Oliphant's question.

When I asked the departmental officials about the constitutional grounds of their bill, they said the reason for that was first and foremost to protect the integrity of the system. They obviously could not say that the main purpose was to protect consumers because that falls under the jurisdiction of Quebec and the other provinces. There is an issue of jurisdiction, and in my opinion, it is important.

In French, we often talk about the "*compétences des provinces*". The French word "*compétence*" has a double meaning. It is used first to refer to "*compétence constitutionnelle*", meaning constitutional jurisdiction, but also to the ability—acquired through one's experiences, knowledge and expertise—to perform a task. So the French word refers to someone's competence to do the job.

Sometimes, I get the impression that the failure of the Canadian Society of Immigration Consultants is because the federal government does not have the required competence. I am not only talking about constitutional jurisdiction to regulate a profession, but there is no legal framework like the one in the provinces to regulate any profession at all.

Would you agree that there is nothing at the moment under federal legislation and in our federal institutions that allows the federal government to create a regulatory body for any profession?

• (1600)

[English]

Mr. Lorne Waldman: You're asking me a legal question on the jurisdiction of the federal government, and I think the Supreme Court of Canada decided that in a case called *Mangat*. The B.C. law society argued that the federal government had no jurisdiction to regulate consultants, and the Supreme Court of Canada concluded

that it did. So the question of which body—federal or provincial—has the jurisdiction has been decided by the court.

There is a second related question, and that's in terms of competence. I would agree that one possible solution would be for the regulation to fall to the provincial law societies. In Ontario, for example, the provincial law society now regulates paralegals. Since the law society has expertise over the regulation and all the experience in regulating in consumer protection, it would make sense to have them be the regulatory body. Albeit many people think the law society doesn't do it that well, it does have more experience than anybody else in the area, and it does its best. So now that the law society is into the area of regulating paralegals in Ontario, it would make sense for them to be the regulatory body.

Now, that would work if every law society in every province were prepared to undertake the responsibility of regulating the paralegals in the province. But it would be the preferred solution, for sure.

[Translation]

Mr. Thierry St-Cyr: I really like the term you have used. The expertise needed to regulate professions is found in the professional systems at provincial level and not at federal level.

[English]

Mr. Lorne Waldman: The only expertise that exists is the expertise that CSIC has acquired over the course of the years that it's been the regulatory body. And I think many people would suggest that CSIC has not done an effective job.

The Chair: Thank you, Monsieur St-Cyr.

Mr. Young.

Mr. Terence Young (Oakville, CPC): Thank you, Mr. Chair.

Madam Javier, if the Government of Canada allowed immigrants who purchased documents for \$10,000 from unscrupulous people to stay in Canada, would that not empower those criminals and perpetuate that system where the immigrants are taken advantage of?

Ms. Maria Yvonne Javier: Yes, it would, but even if you did not, they would still be there.

Mr. Terence Young: They would still be...?

Ms. Maria Yvonne Javier: They would still be operating.

Mr. Terence Young: But there are a lot of phone calls going back and forth, back and forth, between foreign countries and Canadians, and a lot of potential immigrants have family members here. They can find out. Some of them know that paying \$10,000 for documents is a shady way of coming to Canada.

Wouldn't that just perpetuate the system if you said, "Well, we're sorry, you've been taken advantage of, so therefore you can stay"?

Ms. Maria Yvonne Javier: Let me try to explain how the desperate person's mind works. A desperate person—

Mr. Terence Young: I understand the thinking. In some ways, you say...you almost don't blame people because the opportunity is so great in Canada. I'm just concerned that it would perpetuate this criminal activity and make it keep going on.

It might?

Ms. Maria Yvonne Javier: It might, yes.

• (1605)

Mr. Terence Young: Okay. Thank you.

Mr. Waldman, do you believe this legislation will offer potential immigrants more protection from people who are acting as consultants?

Mr. Lorne Waldman: The difficulty I have with the legislation as it's currently drafted is that it doesn't have sufficient requirements to deal with the problems that have arisen with the previous regulator.

In other words, the previous regulator, for example, hasn't had a meeting of its members in several years. It has tried and it hasn't had a quorum—

Mr. Terence Young: But you haven't answered my question. Do you think it will offer additional protection?

Mr. Lorne Waldman: I don't see any major improvements.

Maybe the only additional thing I see, from the point of view of the regulator itself, is that the minister will give himself the power to demand certain documents. At the present time, the minister can't ask for, has no power to acquire, anything from CSIC, which is deeply disturbing. I mean, they can't even ask for an audited set of financial statements.

So that is one power, but it doesn't go far enough.

Mr. Terence Young: Thank you.

Can you tell us about the vulnerability of potential immigrants to ghost consultants? I'm assuming you've worked with some people in the past. Maybe you could tell us of one or two situations where people have really been taken advantage of or have been in a bad situation due to ghost consultants.

Mr. Lorne Waldman: Yes. I saw a group of Koreans—it doesn't really matter, but they just happened to be Koreans—who showed up in my office. They'd paid a consultant who wasn't regulated something like \$50,000 to submit papers. They thought he had submitted them. When we went to check, nothing had been submitted. We went to check on him and he wasn't licensed as a consultant, so we reported it to the RCMP. They basically said that they didn't have the resources to conduct an investigation because it wasn't big enough.

The problem is that there are huge amounts of fraud, but given the limited enforcement ability that's available and the limited resources, a lot of this fraud is not investigated. Because unless you're talking about hundreds of thousands or millions of dollars, it's just not worth the energy.

Mr. Terence Young: Chair, I'd like to share my time with Mr. Dykstra, if I may.

The Chair: Mr. Dykstra.

Mr. Rick Dykstra (St. Catharines, CPC): I'd like to extend that, Mr. Waldman, because one of the things the bill sets out very clearly is that it extends the prohibition to "represent or advise" for a fee to all stages of the application and proceeding. You're still speaking to this as if someone doing some initial consulting work actually is going to be free of not having to be licensed or free of not having to be potentially investigated for his or her work if it is not legal work.

I want to make sure you understand that the bill itself now extends...it's not just once an application has been filed. This bill gives the regulator the right and the privilege to be able to make sure and ensure that the individual or company representing a particular client now has to register, even, obviously, prior to the actual submission of the application.

Mr. Lorne Waldman: Yes, I'm aware of that. I think that undoubtedly is an improvement, but at the end of the day, the extent to which it's going to make a difference is going to depend on the effectiveness of the regulator, and that's where I have a lot of concerns—

Mr. Rick Dykstra: Mr. Waldman, you're very much speaking to a number of issues that the regulator will have to deal with under regulation. I understand your concerns. I think some of them are extremely valid. From a regulatory perspective, once the bill has passed, a number of these issues are going to need to be addressed in terms of the rights and privileges and exactly what the responsibilities of the organization will be, but we can't set out in legislation....

We had this discussion at our last committee meeting, where one of our witnesses was upset, because potentially there wasn't enough money for the new organization to work with. It was asked if we are supposed to set a fee within the legislation. No. That work is done once the legislation is passed. The ministry will go into its work in terms of how the regulatory framework will set itself up around the legislation.

So I do think—and I hope you would agree—that a number of your concerns from that specific perspective will indeed be addressed at that stage.

Mr. Lorne Waldman: The problem with the legislation as currently drafted—and it could be fixed by amendment, I would think—is that it doesn't give the minister the power to impose any governance requirements on the regulatory body. It allows for the minister to require documents, but doesn't allow for the minister to.... And for sure, those would be done by regulation, but if you don't have the power to create a regulation that requires the body to have annual meetings, then you can't create that power by regulation—

• (1610)

Mr. Rick Dykstra: So it's that part. If we were to—

Mr. Lorne Waldman: You'd have to amend the legislation to increase the power—

Mr. Rick Dykstra: So if we were to take a look at that from a clause-by-clause perspective, you're saying this bill would be sound.

Mr. Lorne Waldman: Well, it would be a significant improvement. Remember: there are two concerns. One is the governance concern, which means that you have to make sure that any—

Mr. Rick Dykstra: We have no governance now. There's no governance model now—

Mr. Lorne Waldman: Yes, that's right.

Mr. Rick Dykstra: —so this is a vast improvement over something that doesn't actually exist.

Mr. Lorne Waldman: Right.

Mr. Rick Dykstra: Okay. Thank you.

Mr. Lorne Waldman: I agree with you that it's an improvement, but you need to amend the legislation to allow the minister to acquire specific governance minimal standards that exist with all other regulatory bodies but don't exist here.

The Chair: Thank you.

Mr. Trudeau.

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

You made a comment, Mr. Waldman, about how dealing with ghost immigration consultants should only be left to enforcement officials. The name of this bill is the “Cracking Down on Crooked Consultants Act”. Do you feel that this bill does crack down on crooked immigration consultants?

Mr. Lorne Waldman: To the extent that it extends the jurisdiction of the regulatory body to earlier steps in the process, it allows for some level of protection. Having said that, the reality is that my experience with ghost consultants is that to a very large extent they operate outside the law.

On almost a daily basis in my office, I see people who have been helped by and have paid money to people, but when I look to see if their consultant is regulated, he or she is not. At that point, the only recourse is to call the police or the RCMP, or CSIC. As far as I'm aware, CSIC has not been able to effectively do anything about the problem of ghost consultants. That's why I firmly believe that the answer is to clearly delineate when a person must be a consultant. The bill extends that, so that's one improvement I acknowledge.

Once you've done that, the only way of protecting the consumer and the integrity of the system from ghost consultants is by injecting a large amount of money into the enforcement stream.

Mr. Justin Trudeau: This bill, as we've seen a number of times, doesn't have that.

I'd like to turn to CSIC itself. We had people from CSIC come before us. We asked them to submit financials, which they haven't yet submitted, although they may still be coming.

In your experience as someone who has actually had interactions with CSIC on this level, how transparent have they been? We know that the minister hasn't been able to compel them to be transparent. Have they been voluntarily transparent around some of the things they've done?

Mr. Lorne Waldman: One of the recurring complaints I've received from members of CSIC, who have approached me in different capacities, is a complete lack of transparency of the organization. There is a failure to hold public membership meetings. They attempt to hold them on the Internet or by teleconference,

which has resulted in several failures because they don't get a quorum.

There is a lack of transparency in how money is spent and how much money is being paid to the board of directors. There are concerns about conflict of interest between the Migration Institute and CSIC, with both being directed by similar people. There are allegations by people that the discipline process is being used as a means of preventing people from running for the board of directors.

Those are all things I've heard about CSIC from people who I've been in contact with. Some of these matters are now in the course of being litigated in the courts. I'm involved in three cases, and in all three cases, the Federal Court judges who had to give leave found that there was a serious issue that warranted the court considering the judicial review. The cases are going to be scheduled some time in the next few months.

Mr. Justin Trudeau: In your reading of Bill C-35—and you've mentioned that we may end up in a situation where only the current regulator, CSIC, actually has an application and is chosen to be the future regulator—how much changes within this system? How much of a real level of transparency is the minister going to be able to compel with the modifications brought forward by Bill C-35?

•(1615)

Mr. Lorne Waldman: The only governance provision in the bill, the only new power the minister has, is the power to demand documents. That's why I've said there would have to be amendments.

The minister can demand financial statements or other documents from CSIC, but that's not enough to answer all of the other concerns. There would have to be a power added in the bill to ensure that the minister can create minimum standards of governance, so that a regulation could be passed requiring an annual public meeting, requiring that any new organization allow the members, or 20% of the members, say—

Mr. Justin Trudeau: So I'm—

The Chair: Sorry, but you're out of time.

Monsieur St-Cyr.

[Translation]

Mr. Thierry St-Cyr: I would like to go back to the question of jurisdiction.

You mentioned the decision of the Supreme Court. Since I am not a lawyer, I will do my best with this. In my opinion, since current legislation essentially allows the federal government to decide on who will appear to represent a client, the Supreme Court determined that the government could say who it wanted to deal with and that it was its choice.

In my view, Bill C-35 is heading towards something much broader. It is not only a question about regulating who represents a client before the federal government but it is also about regulating the whole profession. This would include consultants who only do preliminary consultations, even before getting to the applications.

Would you agree with me that there is a change in the scope of the legislation? Do you think that, with this new legislation, the Supreme Court could now arrive at a different decision in terms of the federal government's jurisdiction to regulate the profession of consultant?

[English]

Mr. Lorne Waldman: I think Mangat made it pretty clear that the federal government has jurisdiction to regulate consultants. That would allow them to create a regulatory body like CSIC and then to impose conditions on the body. I don't think any constitutional issues would arise from this legislation.

[Translation]

Mr. Thierry St-Cyr: Earlier, I pointed out the two meanings of the French word "*compétence*".

In Quebec, if a professional body goes off the rails, the Office des professions du Québec could eventually take action and put a professional organization under administrative supervision in order to set it straight.

Could you tell us whether you have this in Ontario and the other provinces?

[English]

Mr. Lorne Waldman: In Ontario there are a lot of provincially regulated professions: architects, engineers, lawyers.... I think most professions are regulated provincially.

[Translation]

Mr. Thierry St-Cyr: Is there something beyond that, which would allow action to be taken if a professional association was not doing its job?

Let's take Quebec, for example, because that's the situation I am familiar with. If the Ordre des ingénieurs du Québec decided to no longer consult its members, to no longer hold general meetings and to no longer have elections, the Office des professions du Québec would have the authority to intervene, to place the association under its trusteeship, to hold elections and restart everything.

The federal level does not have that. You have clearly showed it. There is no way to intervene in an organization's internal affairs. Does the system that we have in Quebec also exist in Ontario or other provinces?

[English]

Mr. Lorne Waldman: Well, for example, I've looked at the legislation of the law society of which I'm a member. It allows the Attorney General to intervene in certain situations to require documents and things like that.

I think the same would be true with most other regulatory bodies. The ministers responsible would have the power to intervene if they believed that the body was not running its affairs in accordance with the public interest. I'm not aware of there being some kind of superbody in Ontario.

• (1620)

[Translation]

Mr. Thierry St-Cyr: Okay.

Again, to continue comparing what is already in place in terms of professional associations, not only do most of them regulate the practice of a profession, but they also protect the title, making sure that only the members of the organization are allowed to describe and present themselves as engineers, lawyers and so on.

It is not clear whether the bill will prohibit people from distributing business cards on which they claim to be immigration consultants, although they are not members of that association.

Is that your understanding too? If so, do you think we should introduce an amendment to explicitly forbid the use of the title of immigration consultant by those who are not members of the association?

[English]

Mr. Lorne Waldman: That's a very good idea. You're precisely right. It wouldn't be breaching the law if a person handed out cards saying, "I'm John Smith, Immigration Consultant". People only breach the law when they start giving immigration advice. I think it's a good idea to regulate the use of the term.

The Chair: Thank you.

We'll go to Mr. Uppal.

Mr. Tim Uppal (Edmonton—Sherwood Park, CPC): Thank you, Mr. Chair.

Thank you, Madam Javier, for your presentation. It's quite obvious that you're very passionate about what you do and are very concerned about the would-be victims of these crooked and ghost consultants. You mention the different types of ghost consultants. You're right when you say that there was a time when it could have been just a family friend or somebody who was trying to help somebody out, but this has obviously become a very large business now.

From your experience—because you've dealt with a number of these cases and hear a lot of these stories—how significant an issue or problem are these unscrupulous immigration consultants or ghost consultants? Do you have a percentage of the number of people who come to see you?

Ms. Maria Yvonne Javier: In the last couple of years, there have been more. I don't really have numbers, but they're significant enough for it to cause a problem or to cause some concern.

Mr. Tim Uppal: You mentioned that one bill is not going to solve all of the problems. We agree. I agree with you. Any piece of legislation cannot solve the whole problem, especially some of the concerns you raise about other countries, about things that happen outside our borders. Sometimes a lot of this fraud happens where the application originates, and it's very difficult for a Canadian piece of legislation enacted here to apply outside of our borders and regulate the industry there.

But here in Canada, would you agree that because the bill regulates consultants, or applies a penalty or a fine on these crooked consultants at any stage of the application, it would help in cracking down on some of these people?

Ms. Maria Yvonne Javier: I don't mean any disrespect, but I don't agree.

If the title of the bill were about cracking down on CSIC and the industry itself, the immigration consultants, perhaps, but when the title of the bill is about cracking down on ghost consultants—

Mr. Tim Uppal: On crooked—

Ms. Maria Yvonne Javier: —on the crooked consultants... Because they're not even part of the equation. You see, here's the way it is: there is a desperate person who wants to come in, and there is a swindler, and they're both outside. This operation is not going to work at all without the cooperation of the immigration officer and CBSA. But with this, it works. CSIC and all the other immigration consultants are out of the picture. They're on this side; the problem is on that side.

Mr. Tim Uppal: If somebody were to set up an immigration consulting company—and I'm talking about setting one up that's not registered, not with CSIC or any other regulatory body—how does that person get others to know that he or she is running this business? How do they get the word out? How do they reach out? In my experience, from what I've seen, they will advertise in different ethnic newspapers and that type of thing. Is that your experience?

•(1625)

Ms. Maria Yvonne Javier: Yes, they advertise, and it's by word of mouth. When they are able to bring somebody in successfully, people find out about it.

Mr. Tim Uppal: People find out about it even though they're not registered.

Ms. Maria Yvonne Javier: They do, yes, even though they're not registered.

Mr. Tim Uppal: Providing that advice and not being registered actually is breaking the law, and now this bill would give the authorities the ability to go in and stop them. So there is a way now for these ghost consultants to be caught, in the sense that they can no longer advertise and they can no longer freely go out and tell people what they do. Because definitely, as you said, the word would get out. Correct?

Ms. Maria Yvonne Javier: But these ghost consultants are not here in Canada.

Mr. Tim Uppal: You're right. There's not much we can do about the ones in other countries. But within Canada, it would definitely crack down on them.

Ms. Maria Yvonne Javier: Yes, it might.

Mr. Tim Uppal: Thank you.

I'll share my time with Mr. Dykstra.

Mr. Rick Dykstra: Ms. Javier, I want to pursue that a bit further, because I don't think there are too many people sitting around the table here who disagree with your perspective that what happens in another country isn't something we have any jurisdiction over. You do understand that this is pretty much impossible for us to do.

Ms. Maria Yvonne Javier: I agree, yes.

Mr. Rick Dykstra: Okay. We're agreeing that we're dealing with a bill that deals with ghost consultants or with the industry here in Canada, so the bill is fairly specific. It has eight specific measures in it that are going to change the way this industry works. I haven't

heard from you which of the eight pieces you actually support and which of the eight pieces you do not support.

Ms. Maria Yvonne Javier: I...

Mr. Rick Dykstra: I don't want to put you in an uncomfortable position. I read one of them to Mr. Waldman, which was that the process will now begin much before applications are filed. The bill also gives the minister much stronger authority.

I certainly take Mr. Waldman's comments into account, although I think he's the first person who's come here as a witness to suggest that we're actually not giving the minister enough authority under this legislation. I actually appreciate that, because everyone else who has come here has indicated, as some of my colleagues in the opposition have indicated, that it gives the minister too much authority. He's indicated that it actually may not give him enough.

I would like to hear specifically what you like about the bill, because it does in fact go a lot further than the legislation currently in place does.

Ms. Maria Yvonne Javier: Okay. The way I see the bill, it's trying to regulate CSIC. I may be wrong.

Mr. Rick Dykstra: But that's what you just said you wanted to have happen. You said the title of the bill should be "How to Regulate CSIC". Now you're saying that the bill actually does that.

Ms. Maria Yvonne Javier: Yes, I agree.

Mr. Rick Dykstra: Okay. So you like that part of it?

Ms. Maria Yvonne Javier: Yes, I like that part. I'm not a big fan of CSIC. I know what their problems are.

Mr. Rick Dykstra: I understand that. You've made that really clear this afternoon, so thanks. We have to be a little more—

Ms. Maria Yvonne Javier: That's right, but I do agree that the bill may be able to regulate them. All I'm saying is that it will not regulate the ghost consultants.

Mr. Rick Dykstra: Well, I suggest, though, that if someone's going to do business in this country as a consultant and doesn't register with what will be the new regulatory body, they will be charged. They won't be able—

Ms. Maria Yvonne Javier: They will if you find them.

Mr. Rick Dykstra: Well, I suppose we could sit and have this discussion on every piece of justice legislation that's brought forward. It's against the law to steal, but it doesn't mean that everyone who does steal gets caught, right?

Ms. Maria Yvonne Javier: That's true.

Mr. Rick Dykstra: We're all agreed on that. Nothing gets us to 100%, but our goal is to get closer to 100%. If we're at 25%, which I think is a figure you're suggesting today, you'd have to agree that this bill gets us a lot closer to 100% than we currently are now.

Ms. Maria Yvonne Javier: Yes.

Mr. Rick Dykstra: Okay. Thank you.

The Chair: Mr. Wrzesnewskyj.

Mr. Borys Wrzesnewskyj (Etobicoke Centre, Lib.): Thank you, Chair.

Mr. Waldman, just so the record is clear on this, you actually stated that you would prefer to see a government regulator as opposed to going the route that the government has taken with this legislation.

Mr. Lorne Waldman: Well, on the preferred course, number one would be a self-regulating body. Number two would be a government regulator, and this would be the least preferred option, because it's the one that provides the least ability to exert any kind of public control over the regulatory body.

Mr. Borys Wrzesnewskyj: Thank you.

So what we're discussing, actually, is how to fix the least optimal choice.

Mr. Lorne Waldman: That's my view.

Mr. Borys Wrzesnewskyj: One of the suggestions you made was for an amendment that would allow the minister to regulate standards, but although you can call on documents, it still doesn't allow the government to do a full financial or performance audit, does it?

• (1630)

Mr. Lorne Waldman: No.

Mr. Borys Wrzesnewskyj: So I guess we're onto another amendment, perhaps an amendment to allow the Auditor General to go in and audit this body. It almost seems as though we'd have to make a series of amendments to this. I'm actually getting somewhat unnerved, because you also made a statement—and we've heard it from others—that the way the process has been structured by the government, there's most likely going to be only one body that's going to end up being the regulator.

Mr. Lorne Waldman: I looked at the call for proposals, I discussed with people what it would take to come up with a reasonable proposal and also the amount of money it would take to get together everything that's required, and it would be in the hundreds of thousands of dollars. Given that I don't see any interest in some of the bodies that might have applied, like the law societies or the Federation of Law Societies, which would be the obvious choices, I can't really see how any other body would come forward.

The Chair: I think that's it. Are you finished?

Mr. Borys Wrzesnewskyj: Yes. Has it been five minutes already?

The Chair: Well, it's 4:30, and time has flown—and I'm going by the slow clock, too, I might add.

I want to thank you, Ms. Javier and Mr. Waldman, for your contribution to the committee today. Thank you very much for coming.

Before I suspend, I'd like to say something to the committee for your thought. There are five undertakings that have been given to the committee, and none has been given. I'll leave you with that.

Mr. Justin Trudeau: What do you mean “undertakings”?

The Chair: I mean undertakings by witnesses to give us things.

Mr. Justin Trudeau: You mean that witnesses are to submit and respond back to—

The Chair: They are to give us things, to give us information, to give us statements.

This meeting is suspended for a moment.

• (1630)

(Pause)

• (1630)

The Chair: We'll reconvene.

Mr. Wrzesnewskyj, on a point of order.

Mr. Borys Wrzesnewskyj: Yes, Chair. On the matter that was raised just before we recessed for a moment, I think it's important that the committee set a time for the various witnesses who had obligated themselves to provide information to the committee. I think that by the end of this week... If we request it today or tomorrow morning, all of these individuals—they've had some time—should provide the information that they're obligated to provide to the committee by this Friday. If that could be put in writing to them, it would most likely encourage them to get that to us forthwith.

• (1635)

The Chair: The clerk and I will do a letter to the witnesses.

Mr. Borys Wrzesnewskyj: Thank you.

The Chair: Thank you for that direction.

We now have our second hour. We have two witnesses. From IMMFUND, we have Holly L. Gracey, who is the chair, and John Ryan who is a member of the board of directors. We also have, from the Mennonite Central Committee Canada, William Janzen, who is a consultant.

I welcome the three of you to the committee.

Ms. Gracey, are you making your presentation?

Ms. Holly L. Gracey (Chair, IMMFUND-IMMFONDS Inc.): Yes, I'm making the presentation.

The Chair: You have up to seven minutes, please.

Ms. Holly L. Gracey: I'll try to be fast.

Thank you for inviting me here today to speak to Bill C-35. I'm the chairman of the board of directors of IMMFUND.

IMMFUND was established in 2008 to offer consumers of immigration services an added layer of protection against the potential criminal activities of immigration consultants who are members of the Canadian Society of Immigration Consultants. It is a wholly-owned not-for-profit subsidiary of CSIC, which has its own staff and board of directors. Since its inception, the fund has collected just over \$1.2 million from CSIC members, who are required to make an annual contribution.

I'd like to take a moment to describe how the fund works. If a CSIC member is convicted for a criminal act in a court of law, and if that act resulted in the loss of a client's money, IMMFUND will reimburse the client for their loss. To date, there have been no claims against the fund, but we are aware of five cases currently before the courts that could result in claims.

I'll now turn to IMMFUND's position on Bill C-35. The provision for clear penalties is strongly supported by IMMFUND, because it should discourage those operating in Canada from continuing to practice outside of regulation. IMMFUND strongly supports Bill C-35 because it offers consumers added protection by closing a loophole that allows ghost consultants to front-end services and further prevents them from openly advertising their services.

Of particular concern to IMMFUND is the provision that gives the immigration minister the unilateral power to designate a regulatory body with a simple notice in the *Canada Gazette*. This awesome power could create instability in the immigration system. It is of paramount importance that Bill C-35 be amended to allow for the Governor in Council, and not the immigration minister, to select the regulator of immigration consultants and establish criteria under which this power would be exercised.

I want to take the opportunity to stress the instability that would ensue should any body other than CSIC be designated regulator as a result of Bill C-35. If CSIC ceases to exist, so too would IMMFUND, and make no mistake, IMMFUND provides an added layer of stability to the Canadian immigration system by offering protections to consumers that would not otherwise exist.

I was disheartened to hear one of my fellow CSIC members last week talk about the possibility of dismantling the fund. This viewpoint shows a complete lack of respect for consumers and a lack of understanding about how to run an effective regulatory body. It's important to remember that the job of a regulatory body is to protect consumers, which goes to the very heart of why it's necessary to create IMMFUND as a subsidiary of CSIC. Further, the foundations of its very existence guarantee that the assets of the fund would not be used for CSIC operations.

If CSIC is not recognized as the regulator, the \$1.2 million that CSIC members have already contributed will not be returned to them, but would instead be repatriated to the parent corporation to cover any costs associated with the wind-down of its operations. I don't have to tell you that this would leave consumers without any source of potential compensation for criminal acts perpetrated by CSIC members until a new fund could be established.

IMMFUND is just one of the ways that members of CSIC work together to protect the consumers of immigration consulting services while contributing to the integrity of the immigration system. I urge this committee to act on the recommendations that IMMFUND has presented to you today in the interests of consumer protection and the immigration system as a whole.

Thank you.

•(1640)

The Chair: Thank you very much, Ms. Gracey.

Mr. Janzen, you have up to seven minutes. Thank you for coming.

Mr. William Janzen (Consultant, Mennonite Central Committee Canada): Thank you.

This committee has heard stories of big swindlers, of big fish, and criticisms that this bill does not do enough to enable the government to go after them.

My approach or my emphasis is very different. I'm concerned about some small fish: small fish who are actually honest, well-informed, and transparent, but who do this work on a small-scale basis, on a part-time basis, and charge modest fees, partly because they're motivated in part by charitable considerations.

For them to go through the certification process, to take all the training, pay the membership fees, and go through all the professional development requirements, would simply put them out of business. They wouldn't do it anymore.

So this is a very different issue that I'm bringing forward and I appreciate that the committee is willing to also listen to these concerns. I did bring a document. I'm sorry that I couldn't bring it out earlier. I was invited to make this presentation on Friday, so I finished writing it only today. I brought some copies to the clerk. I don't know if all of you have received it or not.

The Chair: Mr. Janzen, they will eventually reach the committee. Our problem is that they must be in French and English. Your documents will eventually reach committee members.

Mr. William Janzen: Okay. That's fine. Thank you.

I could explain the context in which this issue arises for me. It has to do with Mennonite communities in Latin America. Many of the people in those communities came from Canada but have moved back, and so on and so forth.

But it also relates to charitable work in Canada. There are charitable organizations that do a lot to welcome refugees and to assist newcomers with a range of things, including citizenship and immigration questions.

There is also a question of how the bill will relate to travel agencies, which often help people apply for tourist visas. Would that be prohibited?

Then, in section 3 of my brief, I go to elements of a solution. One factor obviously is transparency. There ought to be transparency, and if there is transparency, then there will not be ghost consultants, by definition.

But I also refer to the fact there is an internal transparency system at present. When a person makes an application, at the end of the application form there is a question: who has helped you to prepare, to fill in, this application form? Our people always fill that in.

Also, if a person who does provide assistance wants to do any follow-up inquiry, they have to submit a "Use of a Representative" form, or a different authorization form that is signed by the applicant. So there is a significant internal transparency system, and I wonder whether it could be strengthened. There could be accountability requirements added to that transparency, and also investigative powers, and so on. That could go part of the way.

But then I go on to say that if there is to be a new regulatory system covering everybody who provides assistance with any kind of immigration work and charges even the smallest fee, if that is the system, then we would like to ask that it be structured with different gradations, first of all because there are significant differences in the level of complexity in immigration work. To apply for a tourist visa is fairly straightforward. To apply for permanent resident status in the family class, or even for humanitarian and compassionate consideration, is not too complex. Where it gets more complex is when one applies in the investor or skilled worker class, where it involves a provincial nominee program and so on. Then it gets much more complex.

One of the things that could be done may be that people who get certified to work at one level of complexity need not meet all the requirements or pay all the membership fees required to be certified for working at the higher level of complexity. That's one suggestion.

Another reason for gradations relates to enforcement. If every form of assistance on every immigration matter, where even the smallest fee is charged, and if everyone like this has to be fully certified, then there will be problems with enforcement. There will be ghost consultants, because people will do more such things under the table.

It should also be asked whether it is really wise to burden Canada's law enforcement agencies with the task of enforcing laws that prohibit every little thing where people are honest and there is no suspicion, where the only question is whether or not they are fully certified, and where there are no other questions about the assistance.

Those are some reasons why I think a system of gradations should be seriously considered within that regulatory body.

Then I have some concerns about what happens outside of Canada, because if this law is passed as it is, it would probably lead those consultants outside of Canada who are honest to stop working. Because they'll say, "Well, I'm not going to break the law of Canada, and I'm not going to do something that the laws of Canada don't allow". So then the field outside of Canada will be left to unscrupulous consultants, because, as this committee has heard, the government really doesn't have much capacity to enforce the law outside of Canada. So in some ways it would really make things worse there.

Also, if consultants outside of Canada want to become certified, they will face even higher costs because of all the professional development trips they will have to undertake to come to Canada to take the courses, and people will be exploited even more.

Then I come to the last part, where I have some recommendations on the bill. Proposed subsection 91(1) reads, "Subject to this section, no person shall knowingly represent or advise a person for consideration—or offer to do so—in connection with", and here I would like to ask for the insertion of one word, "prohibited", so that it reads "with a prohibited proceeding or application under this Act".

Now, why would that word "prohibited" make a difference? Well, it would immediately mean that not every small immigration proceeding or application would be subject to it. The minister would be required to provide a list of the kinds of immigration assistance,

the immigration matters, whether that's a tourist visa application or a bit much more complex.

I have, I think—

• (1645)

The Chair: I can see you're getting warmed up, sir, but we're already well over your time.

Mr. William Janzen: Pardon me. I will leave it at that.

The Chair: If I gave the other time to your colleague, we'd be over, so I'm going to ask Mr. Trudeau if he has questions. You might have an opportunity to put in your answers there.

Mr. William Janzen: Thank you for your indulgence.

The Chair: Thank you, sir.

Mr. Justin Trudeau: Thank you.

I appreciate both of you coming here today.

I would like to start my questions with IMMIFUND. One of the concerns that keeps coming back is around some of the lack of transparency that is perceived by members and others around CSIC and the linked corporations and entities around it.

You've collected \$1.2 million for the fund, I guess over two years, and the levy for each member is around \$300.

Ms. Holly L. Gracey: In the first year we collected \$500, but in the second year we reduced it to \$350.

Mr. Justin Trudeau: What are the levies going to be for next year?

Ms. Holly L. Gracey: For this coming fiscal year, which is starting on November 1, it will be \$350.

Mr. Justin Trudeau: It's \$350 as well. Now, you haven't paid out anything from that \$1.2 million. You mentioned five cases. Are these criminal cases that may come forward?

Ms. Holly L. Gracey: That's correct.

Mr. Justin Trudeau: When the members pay in every year with this levy, do they get detailed financial statements of what IMMIFUND is doing with the money?

Ms. Holly L. Gracey: As a not-for-profit subsidiary, all our financial revenue and expense has to be consolidated into our parent corporation's financial statements. All of those are released to the members of the CSIC at the annual general meeting.

You might want to add more to that, John.

• (1650)

Mr. John Ryan (Member, Board of Directors, IMMIFUND-IMMIFONDS Inc.): Yes, under law, Mr. Trudeau, as you know, corporations and subsidiaries all have to do consolidated statements.

Mr. Justin Trudeau: So the answer is yes, they are posted. Are they—

Mr. John Ryan: Yes, and they're made public. Also, members are allowed scrutiny through an AGM process to ask questions about them.

Mr. Justin Trudeau: So we would be able to see that. Do you have a website or something where we can go to look at what the financial statements of IMMFUND are?

Ms. Holly L. Gracey: It would be on the CSIC website, because they're consolidated into the CSIC financial statements.

Mr. John Ryan: And the annual reports.

Mr. Justin Trudeau: On the links between CSIC and IMMFUND, then, you highlight.... Perhaps you can enlighten me. I see a bit of a contradiction in your brief where you say that these funds are being held for...as an example, if one of those five cases ends up in charges being laid against the CSIC members who are under criminal investigation. However, there is a theoretical possibility that CSIC would cease to exist as of January 1. Would those funds no longer then be available to cover the results of these court cases?

Ms. Holly L. Gracey: The fund itself is a subsidiary of the parent. If the parent is going to wind up, the first thing they're going to do is close down their subsidiaries and repatriate those funds into the parent corporation.

Mr. Justin Trudeau: The funds were never paid for the parent corporation, and you're very clear that CSIC does not take any operational—

Ms. Holly L. Gracey: You can explain how it works, John—

Mr. Justin Trudeau: Sorry to interrupt, but CSIC does not take any operational funds from IMMFUND. There's a bank account somewhere with \$1.2 million in it, right? Is there \$1.2 million in that bank account?

Ms. Holly L. Gracey: Well, that was what was collected, yes.

Mr. Justin Trudeau: It was what was collected or that's what's in the fund?

Ms. Holly L. Gracey: There would have been expenses in those first two years as well.

Mr. Justin Trudeau: What expenses?

Mr. John Ryan: Those would be detailed in the annual report, Mr. Trudeau.

Mr. Justin Trudeau: Can you give me an example?

Ms. Holly L. Gracey: I can for the first year because this fiscal year isn't over until the end of this month and we'll have to undergo our external audit before that. In the first year, we had expenses in the amount of about \$200,000.

Mr. Justin Trudeau: That was \$200,000 for...?

Ms. Holly L. Gracey: That was for the set-up of the fund relating to professional fees for drawing up bylaws, policies, and things of that nature, and also for rent, staff, etc.

Mr. Justin Trudeau: No claims to process, though?

Ms. Holly L. Gracey: No claims to process.

Mr. Justin Trudeau: What was the staff doing?

Mr. John Ryan: Largely, rolling out policies for the fund. This was obviously not something you can just flip on. Quite frankly, it's a developmental process, Mr. Trudeau. We have one employee working in IMMFUND.

To get to your earlier question, the funds are segregated. The issue at hand, though, is that we have no way of controlling when those criminal actions will come to conclusion. So clearly if any wind-up—

Mr. Justin Trudeau: So have you looked at putting them in—

Mr. John Ryan: For any wind-up of the corporation—if I could just cut to the chase for you to help you—obviously the parent corporation would have to keep funds there for a period of time until such time as those cases had wound their way through the courts, so the funds would be available to pay out any claims. Then the moneys would be used to dissolve a corporation, pay rents, leaseholds, and whatever the corporation—

Mr. Justin Trudeau: The corporation you mean—not CSIC, but IMMFUND itself?

Mr. John Ryan: CSIC, the parent corporation. It would repatriate into the parent corporation. But not until such time—

Mr. Justin Trudeau: Sorry, Mr. Ryan, but I'm limited in my time. I'm just trying to understand.

You've collected these fees to protect both: the consumers and the immigration consultants who are members of CSIC. But you're saying that if CSIC were to disappear, you wouldn't choose to put these fees in trust for these five pending cases, but you would hold them aside. It seems to me that there's a little disconnect there, because if CSIC is indeed wrapped up as of January of next year, those court cases may not be decided for another few years.

That \$1.2 million would have to be held in trust somewhere. When those court cases end up going through or not going through, whatever, CSIC wouldn't exist anymore, so it should be returned to members who paid into it. No?

Ms. Holly L. Gracey: Not by law. You can't return it to members on a not-for-profit.

Mr. John Ryan: CSIC wouldn't wind down until such time as the court cases have wound their way through. There would be a process whereby moneys would have to be kept in trust. I don't want to speak on behalf of the board of directors who may be in position at that time, but the reality of the situation is that when a non-profit organization runs out, it's not automatic that the money goes back to the members—at least, so our legal advice says.

I understand the issue you're concerned about from a public protection point of view. I will tell you quite frankly as a CEO of CSIC that absolutely the moneys will be held in trust, to ensure that the consumers who have been negatively affected by the members of CSIC are protected, just as our errors and omissions insurance policy would have to be in place until such time as those items and those issues would be finalized.

● (1655)

Mr. Justin Trudeau: Let's suppose CSIC was replaced. Well, it would be replaced by a different regulator, which I assume would have to have a similar fund like this because it was a requirement. Would the fund, the \$1.2 million, whatever is not used by these court cases, therefore not be able to be transferred to the new immigration consultant regulator?

Mr. John Ryan: Not unless there was a process of negotiation between the new regulator and the old regulator. The funds would be there for claims up to the point where CSIC stopped being the regulator. So if there were a claim or an infraction or criminal conviction that originated in the time that CSIC was a regulator, then the fund would survive until such time as those claims had gone through the process.

The Chair: Thank you, Mr. Ryan.

Monsieur St-Cyr.

[Translation]

Mr. Thierry St-Cyr: If I understood correctly, you are not able to tell the committee how much money is left from the \$1.2 million that was collected.

[English]

Mr. John Ryan: We are: exactly \$1.2 million is in the fund.

Again, we're talking about the last annual audited statements, which were issued in February of this year. Our current fiscal year is coming to an end on October 31 of this year and our audited statements will not be publicly available until February 2011.

[Translation]

Mr. Thierry St-Cyr: Ms. Gracey said in her presentation that the fund has collected \$1.2 million from the members. Ms. Gracey further said that, since then, there have been operating expenditures, and so on. Could you tell me what the difference is between the two?

You came to testify before the committee. I am not asking you to tell me the amount to the dollar, but you must have an idea of what is left. Is it half, three quarters, 80%?

[English]

Mr. John Ryan: Oh, the majority of it is left and I can give an undertaking.... I don't have that figure right at hand, Mr. St-Cyr, but I will certainly by Friday, given that I've just heard the motion, ensure the committee gets that information.

[Translation]

Mr. Thierry St-Cyr: All right.

In your presentation, you also said that there was a compensation mechanism for people who have allegedly been defrauded by the members of the association.

When do the consultants have to be members? Is it when the crime is committed or at the time of the court decision?

[English]

Mr. John Ryan: Yes, when they pass our standards, our exam, obtain a college diploma from a recognized institution across Canada, and stand our bar to get into the profession; there is a professional bar that they must write and pass. Plus, they must pass an exhaustive background check that goes back to their eighteenth birthday for any criminal record, credit checks, and all of this kind of stuff with respect to good character. Then they become a member, Mr. St-Cyr.

The day they become a full member of the corporation is the day they're covered on a move-forward basis.

[Translation]

Mr. Thierry St-Cyr: But, if a consultant is already a member when the crime is committed, and then leaves the association or is expelled, the person will still receive compensation.

You talked about compensation for damage and financial losses. Is there a ceiling for the amount?

[English]

Mr. John Ryan: Obviously the amount that's in the fund would be the ceiling.

[Translation]

Mr. Thierry St-Cyr: But are there no regulatory limits? If someone's loss is \$500,000 and, if the money is available, will the whole amount be covered? Isn't there a limit, like with insurance coverage?

[English]

Mr. John Ryan: It's much similar to the law society fund, Mr. St-Cyr, LAWPRO, that's offered by the Law Society of Upper Canada. It's there to compensate the criminal actions of a member, in addition to errors and omissions insurance, which covers a whole range of other problems.

[Translation]

Mr. Thierry St-Cyr: In your presentation, you also stated that the \$1.2 million fund—or whatever is left, at least—should obviously be returned in full to the new association that would be created, if necessary, in order to cover the wind up costs.

What makes you believe that it is so obvious? It seems to me that a fund designed to protect the people has its own autonomy that could very well be transferred from one body to another since it is a legal entity and has its own legal bank account.

● (1700)

[English]

Mr. John Ryan: I'm certain that could come as a result of negotiation between the new regulator, if there is one, and CSIC. I will say, however, that you have to understand that this \$1.2 million is still a fund that has not been properly funded.

Our actuarial studies in terms of the risk require a much larger fund. We have decided that in order to try to minimize the impact, or at least make it workable with a membership of 1,800 members, this has to be built over a five-year period. So when you are focused in on \$1.2 million, I'll say that an actual fund that's going to provide the necessary protection—and remember, this only came in to 2008—is going to have to be in the order of closer to \$4 million, given the number of people it's covering and in fact the impact of what Bill C-35 is going to mean, given that there's now a new offence. This means, most probably—and hopefully, if CBSA does what they're going to do—that there are going to be increased convictions and prosecutions of members, potentially, and therefore more payouts from the fund.

It's really a question of risk in terms of what the fund has to be, how big the fund has to be, and how that's built up over time.

[Translation]

Mr. Thierry St-Cyr: Actually, it would be in the consulting industry's best interest not to start from scratch. I agree with you that we must increase that fund and that \$1 million is not enough. Perhaps we should go up to \$4 or \$5 million.

However, I don't see why it would be in the consulting industry's interest to start back at square one by starting a separate fund. In my opinion, it goes without saying that the fund should be transferred to the new body, if necessary, so that it takes over the one million that's already there. Obviously, I understand that the responsibilities also have to be transferred. We cannot transfer the funds and leave the responsibility to the former body.

I am not sure whether my colleagues see the matter in the same way. Some might see a potential threat if the association wanted to waste the fund already accumulated.

Anyway, whether it is your association or another one, we are still talking about the interests of the consulting industry. It would not be in the interests of any of your members to start a turf war or to squander the money in the fund and bring it down to zero.

[English]

Mr. John Ryan: Monsieur St-Cyr, I agree with you. The \$37 million that's already been invested by members to build up CSIC, with all the warts it currently has, seems to me to be an investment, as is the investment fund. I agree with you: I'm not very comfortable with the fact that we're looking at starting at square one. I think the current problems—that may or may not exist—with CSIC certainly can be fixed, rather than throwing out the baby with the bathwater.

[Translation]

Mr. Thierry St-Cyr: In her opening remarks, Ms. Gracey very clearly stated that the funds would instead be repatriated to the parent corporation to cover any costs associated with the wind down of its operations. I have to think that this is not completely accurate. There would always be the possibility of an agreement in the industry's interest.

[English]

Mr. John Ryan: Anything is possible, Monsieur St-Cyr. Negotiations with the Province of Quebec to be a support for their regulatory system...it all comes as a result of negotiation and compromise. I'm not saying that's beyond the realm of possibility, but certainly there are details that will have to be worked out, depending on what the government decides to do.

The Chair: Thank you.

Dr. Wong.

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

Thank you for coming today to offer your views.

My question is focused more on IMMFUND, so maybe Ms. Gracey can shed light on that. As you mentioned, your organization was created by CSIC and you cover instances of criminal wrongdoing by CSIC members. Do you cover only those members? Or do you also look at other crooked immigration consultants?

Ms. Holly L. Gracey: We actually only will cover the criminal wrongdoings of a CSIC member at this time. CSIC itself can regulate

only its members, so IMMFUND will only be responsible for providing compensation to CSIC members' victims, for lack of a better term. At this point in time, it's restricted to only those who have been convicted criminally, but certainly as the fund matures and grows we're hoping to widen the exposure and coverage as well.

Mrs. Alice Wong: Thank you.

Let's look at another area now. CSIC's own annual report indicates, as you also indicated in your presentation just now, that there have been numerous cases of complaints against CSIC's members, together with disciplinary actions. However, it also states that since the creation of IMMFUND, there have been no claims filed against the fund. Can you explain this? These two don't seem to agree with each other.

• (1705)

Mr. John Ryan: Yes, absolutely. CSIC, as you know, was created in 2004 as the result of a delegation of powers of the Governor in Council to CSIC to educate, accredit, and discipline its members. That's CSIC's power, CSIC's mandate, and that's in the public interest.

From 2004 to 2008, CSIC essentially was fighting an uphill battle, because the Government of Canada chose at that time to give a four-year hiatus to anyone who had an application in front of the government if they were a consultant: they could continue to practise without having to register with CSIC. So really, immigration regulation has only been in place, I would argue, since 2008.

As part of a contribution agreement that we signed with the Government of Canada, we were committed to establish a compensation fund. With everything else we had to roll out in the regulator, it simply was not possible to start establishing that compensation fund until 2008, so the fund itself has only been in place since 2008. However, I must say that a full errors and omissions policy on every member, which is mandatory, has been in place since 2004 for members of CSIC.

I think it's important that the committee understand that full-blown regulation, as limited as it is, post application being received by the minister, has only been in place since 2008. In fact, it just came into effect around the time that the standing committee issued its last report.

Mrs. Alice Wong: Okay. So that's the reason you gave.

I'll give my time to Mr. Dykstra.

Mr. Rick Dykstra: Thank you.

One of the other areas that we pursued a little bit is the whole aspect of searching, seeking out, and giving authority to the body that will take the place of CSIC's mandate once regulations are passed and once they've gone through process. I wonder if you could just comment briefly on what your thoughts are on this process taking place prior to the applicant filing an application versus after.

Mr. John Ryan: Having been a member of the minister's advisory committee on the regulation of consultants—one of the 15 members, including the treasurer of the law society—that recommended initially this model to the minister, I can tell you, Mr. Dykstra, that I'm very happy the government has listened to us, finally, as over the last six years we've been asking for a specific penalty with respect to immigration consulting.

We at the regulator have been fighting an uphill battle because people have not had to be a member of CSIC. So we've had an involuntary system where you've had good consultants, who have decided that they're going to go through competency testing and are going to prove that they're good consultants, honest consultants, and were willing to pay the freight, while their competitors just around the corner were allowed to trade, advertise, and continue to do so with the blessings, in many cases, of the CIC and the department.

We're very happy with that aspect of the bill, so I want to congratulate the government on that.

Secondly, the other frustration we had was with the exchange of information. We want to congratulate the government as well on the fact that you finally got around the Privacy Act where you can actually share information with the regulator.

Mr. Rick Dykstra: Well, you've.... I appreciate that. That was actually my next question. It's the whole component that the minister—he or she—can request information from the designated body when necessary.

You also, then, would agree in terms of the authority that the minister is provided under the act to designate a body whose members may represent, advise, or offer to do so for a fee in connection with a proceeding or application under the act?

Mr. John Ryan: I think the one concern we have with this, Mr. Dykstra, is the issue of the judge and the representative and the role that representative performs in front of the minister. Our members have to represent their clients in front of the minister, much in the same way as a lawyer would have to represent them in front of a judge.

The provincial government has dealt with this. We've recommended in the CSIC submission we made to this committee a slight adjustment in what you're trying to do, which I think will provide for.... In fact, we welcome being accountable, but we think the accountability has to be along a different line, specifically so that.... The members appear before the immigration minister, which essentially creates, in my view, a question of independence and a question of undue influence on the members.

It would be much better, in our view, that CSIC report to the justice minister, potentially, or to another minister of the crown so that they can be held accountable, report to standing committees, annual reports.... Whatever the accountability mechanisms, I think you're going to find CSIC will be very supportive of that.

We do have some concerns, though, Mr. Dykstra, about the regulator being beholden with just a change in a *Canada Gazette* notice: today you're the regulator and tomorrow you're not. It creates instability, it creates doubt in the marketplace, and it devalues the hard-working immigration consultants who have gone through the process that is saying they're competent.

• (1710)

Mr. Rick Dykstra: I don't disagree with that. I think there's a point here that's important to make, because the sixth change in this bill is that the newly designated body actually may suspend a person. It clarifies in terms of what you may be able to do in terms of revoking or suspending the membership of a person.

So in some respects, I suppose that's counter to what you're saying, in the sense that the clarification will actually provide the new regulated body more jurisdiction in terms of being able to enforce the recommendations it makes.

Mr. John Ryan: Well, I think it certainly is going to strengthen the regulatory body, and it's going to hold consultants more accountable. It's also going to force consultants who are outlying right now, who are acting as ghost consultants, to start paying their fair share in terms of providing consumer protection and taking on the insurances, taking on the various protection mechanisms in favour of their clients, which they don't do now.

On that point of view, we support the government.

The Chair: Thank you, Mr. Ryan.

Mr. Wrzesnewskyj.

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

Mr. Ryan, could you provide us with a list of the other members of the advisory board along with the other information you're going to be providing us with for Friday?

Mr. John Ryan: I can give you a copy of the executive summary and the report, which includes all of that information.

Mr. Borys Wrzesnewskyj: That would be tremendous.

Mr. Janzen, how many immigration consultants does the Mennonite Central Committee of Canada have?

Mr. William Janzen: None. Do you mean in terms of certification by CSIC?

Mr. Borys Wrzesnewskyj: No, not certification. How many people are working the field as consultants to help people come to Canada on behalf of your council?

Mr. William Janzen: Okay. In terms of staff who get paid by the organization, that would be fewer than 10, and then there are others who we try to resource, people who do it on their own.

Mr. Borys Wrzesnewskyj: So you have staff. Are those staff also fieldworkers or are they just office staff who help with different processes?

Mr. William Janzen: They are in different parts of Canada—

Mr. Borys Wrzesnewskyj: Okay.

Mr. William Janzen: —and there are some in Latin America, too.

Mr. Borys Wrzesnewskyj: Okay. So how many people would you have outside of the country as fieldworkers and how many would you have in Canada?

Mr. William Janzen: There would be only two outside of Canada who are staff, and there would be I think fewer than 10 in Canada. But they wouldn't necessarily do this work on a full-time basis. Some of it would do it....

If I could just add to this, one of the reasons why MCC has given me this consultancy one day per week is to resource other people who work on their own so that they have accurate information. They're not staff at MCC, because MCC doesn't want to enlarge staff for this work more than necessary. Those people work on their own, and they charge modest fees for their services.

Mr. Borys Wrzesnewskij: How many of those types would be involved with your organization? So they're non-staff, but they're out there—

Mr. William Janzen: There are about a dozen, about half a dozen in Canada and half a dozen outside, maybe a little more. There may be eight or ten outside of Canada.

Mr. Borys Wrzesnewskij: In the last 10 years, how many people have you brought into Canada? What would be the breakout in terms of family class and worker class?

Mr. William Janzen: These people have brought a lot of people into Canada as citizens. The citizenship law, especially as it was before it was amended in 2009, was pretty generous in allowing earlier people to claim citizenship, so the main way was through citizenship. Now—

Mr. Borys Wrzesnewskij: Because we don't have a lot of time, how about some raw numbers?

Mr. William Janzen: Do you mean over the last 10 years?

Mr. Borys Wrzesnewskij: Yes, for your central committee, approximately.

Mr. William Janzen: Five thousand.

Mr. Borys Wrzesnewskij: So you're doing a tremendous amount of good work and obviously we don't have concerns that people are being abused.

• (1715)

Mr. William Janzen: I expect it's a little more than 5,000.

Mr. Borys Wrzesnewskij: Yes, and people aren't being abused, but you've raised an important issue here, which is that people basically appear to be doing this because of goodwill and because of ties to communities in Latin America and other places. Has the central committee approached CSIC to see if they would consider a different type of certification in those cases for religious organizations that do this type of work? If you have, what has been the response?

Mr. William Janzen: I did make an overture like that, but it was maybe three years ago, and there didn't seem to be any openness to it. There's only one category and that seemed to be it.

Mr. Borys Wrzesnewskij: So there was no open-mindedness to the type of good work that the Mennonite Central Committee is doing?

Mr. William Janzen: I mean, we have rotten apples, too; that's only human, you know. Still, I think we have our own fair bit of professional development and controlling systems within us, yes.

Thank you.

Mr. Borys Wrzesnewskij: If the fees were not exorbitant, would the central committee be willing to go through a certification process as well?

Mr. William Janzen: I think so, yes. I cannot speak definitively.

Mr. Borys Wrzesnewskij: Thank you.

The Chair: Thank you.

Monsieur St-Cyr.

[Translation]

Mr. Thierry St-Cyr: I will continue along the same lines.

If I understand correctly, the cost issue is a decisive factor. If the incomes of the people you work with are much lower, it will be increasingly difficult for them to pay higher fees.

You told us about the possibility of creating categories for consultants. I have trouble seeing how we could draft that and include it in a piece of legislation. My understanding is that you would like us to grant the authority to the new regulatory body to issue restricted licences, to restrict the practice of some consultants. Is that what you are asking us to do?

[English]

Mr. William Janzen: Yes. I think, Monsieur St-Cyr, you did understand correctly. I think if one inserted that one word in proposed subsection 91(1), then it would be less categorical—the word “prohibited”. I can read this for you. What I'm suggesting is that in subsection 91(1), where it says, “Subject to this section, no person shall knowingly represent or advise a person for consideration...in connection with”, there I'm suggesting “a prohibited proceeding or application under this Act”.

That would mean, then, that the minister or the regulatory body would have a list of some actions, or applications, or proceedings that would be “prohibited”, and there might be multiple lists for, as you say, some restricted licences. I think that one word, “prohibited”, could give the minister the authority to be a little more flexible. It might not result in more flexibility, but at least there would be a little more authority to be flexible.

[Translation]

Mr. Thierry St-Cyr: Okay.

We could look at the legislation, but you are saying that a person would not have the right to give advice other than the kind that the association has approved.

But the text states that, if you are a member of the new association, you will have the right to give advice.

So there is no reason to believe that the current wording is not permissive enough or that it is too restrictive. Ultimately, in a scenario where we could break up the categories, it would still be rather permissive.

[English]

Mr. William Janzen: I'm not a professional lawyer.

[Translation]

Mr. Thierry St-Cyr: Neither am I.

[English]

Mr. William Janzen: When I read proposed subsection 91(1) as it stood, it seemed to me that it did not allow that flexibility.

[Translation]

Mr. Thierry St-Cyr: That means it is designed to include a general prohibition. We first prohibit people from giving advice for a fee.

Then, we include exceptions to this general prohibition, allowing the members of the Canadian Society of Immigration Consultants to do so. Therefore, if you are a member of the society, you can practice in all areas.

You would like to implement a system that compartmentalizes the general scope of practice.

• (1720)

[English]

Mr. William Janzen: It would seem to me that one could be a class A member, a class B member, or a class C member. It would take a little bit of work to identify those clearly, but it's quite doable.

[Translation]

Mr. Thierry St-Cyr: One of the concerns I've expressed throughout this study and many witnesses have also expressed is related to the resources available to people to help them find out whether the person they are dealing with is accredited to do the job.

We are currently telling people to go on the website and check whether the person is accredited by the Canadian Society of Immigration Consultants. It really is simple. They are either a consultant or not. The same goes for an engineer, a lawyer and so on.

What can we do to help people find out the right information? Does that not become somewhat complicated in terms of transparency? The people think they are dealing with a consultant authorized to work with refugees, when, in reality, that consultant is only authorized to take care of tourist visas. Isn't that procedure a little risky?

[English]

Mr. William Janzen: I referred at one point to the internal transparency system that already exists, which could be strengthened. For example, at the end of an application form, there's a question: did someone assist you in filling in this application form? There, the person could be required to respond whether they are class A or class B or class C.

An hon. member: [Inaudible—Editor]

The Chair: No, no, I'm sorry, sir.

Mr. Dykstra.

Mr. Rick Dykstra: Thank you, Mr. Chair.

I'll actually give you the chance to respond to that, Mr. Janzen.

Mr. William Janzen: Thank you.

If the committee were interested, I think it would be doable, and I appreciate that there is at least some interest in exploring whether it would be. Government officials would obviously have to respond and provide very concrete answers, but it seems to me that, given the

internal transparency system that already exists, if a person who helped someone else fill in that application form misrepresented himself or herself, they would be found out so quickly that I doubt one would dare to do that.

Mr. Rick Dykstra: The only problem, Mr. Janzen, is that a lot of people are doing that. That's why we had to introduce the legislation.

I understand your issue, and I wanted to pursue this a little bit further, because I realize, and many of us realize, the good work that the organization obviously does. But within the context of the bill, it actually does allow and extends to individuals offering advice if they are members in good standing of a provincial or territorial bar, the Chambre des notaires du Québec, or a member of a body designated by the Minister of Citizenship and Immigration. It also allows not-for-profit organizations or individuals who are friends or family of the individual to assist them in the process.

So it does provide for some exemptions. One option would be to fall within one of those guidelines. You wouldn't be charging a fee to any of those folks you would be helping, but if you are a not-for-profit organization, you would in fact be able to assist individuals or families.

There's another option, and I don't think it's necessarily a bad one. Why are you opposed to becoming a registered organization or a registered consultant who would report to the newly formed regulator body. Why not just become a member of it and continue to do the work you're doing?

Mr. William Janzen: On the second question, I've thought about that from the perspective of the individuals who are doing the work and are not staff of MCC but on their own. For them, the cost of membership, the fees, and the costs of professional development run close to \$5,000, and the people say they're not making enough to make it worthwhile to do that.

Plus, they say they are helping people with certain limited immigration needs, and on those needs they try to become well-informed. For them to become really competent in, say, helping a refugee claimant appear before the Immigration and Refugee Board is just beyond them, and they throw up their hands.

As an organization, maybe we could. Maybe that's another option that could be considered somehow.

• (1725)

Mr. Rick Dykstra: I guess what I'm suggesting is that the bill does allow for some of that work to take place. It would have to be on a not-for-fee basis and someone obviously would have to be very closely related to the individual or family doing it, but it does allow for that extended type of assistance to take place.

The other is.... While I know there are costs involved, with what we're facing in the system we have now, perhaps not to the extent that you may see within the organization but certainly to the extent that CSIC sees currently, we have to make these changes and we need to ensure that we have a broader and a tighter system.

Mr. Ryan would probably like to respond to that.

Mr. John Ryan: Mr. Dykstra, I think Mr. Janzen and the regulator are not that far apart, quite honestly, and there is a public protection mandate. The law societies have part-time lawyers; they have lawyers who practice within corporations. So it's not beyond the realm of possibility that CSIC would entertain.... I remember the conversation from three years ago. Quite frankly, with 1,800 members, we have a limited \$9 million budget to deliver a public protection mechanism. There was a real concern at CSIC at the time that we would not be able to have those graduated things.

But certainly, once Bill C-35 comes in, I think there is an opportunity again to have that conversation, because obviously the number of people—the base of consultants paying into the public protection mechanism—would be much greater, and therefore we can start looking at a graduated or restricted scope of practices, which I think Mr. Janzen is proposing. I don't think we're too far apart on that.

Mr. Rick Dykstra: Going back to the pieces of the bill, Mr. Ryan—and Ms. Gracey, if you want to jump in, feel free—one of the parts we haven't had a lot of discussion about or presentations on from a witness perspective, is the final part of the bill, which proposes an extension of the time to institute proceedings by way of summary conviction with respect to certain offences under the act, from six years to five years—

Mr. Justin Trudeau: That's six months.

Mr. Rick Dykstra: Thank you. Mr. Trudeau was correct this time.

Voices: Oh, oh!

Mr. Rick Dykstra: Yes, so it's six months to five years after the day on which the substance of the proceedings arose. I wonder if you could comment on that.

I mean, obviously as an organization that's been involved in this, we're extending the timeframe wherein you can actually pursue an individual or an organization that does in fact move against the law or is acting in an unethical manner. Could you just comment on the timeframe, and also on the penalties, which will become mandatory?

Mr. John Ryan: One of the things we've seen in CSIC is that when you start doing investigations and you start then moving into hearings and appeals, the process itself becomes extremely long. That's just the administrative process in front of the regulator. In one case, one of our investigations that's finally now coming to a tribunal decision has taken two years, so I agree that the lengthening of the timeframes.... Five years, I would say, may not be enough.

Also, quite frankly, on the criminal conviction side, if you look at the criminal prosecutions that are going on right now, they are becoming quite protracted.

Mr. Rick Dykstra: Versus a summary...? Yes.

One of the other parts—and we talked a little bit about this in the last round of questioning—is the whole issue that you had concerns about, which was whether or not some of the framework of it might be better at Justice. The bill does authorize the Governor in Council

to make regulations providing for the disclosure of information relating to ethical or professional conduct of a representative to the body responsible for governing or investigating complaints concerning that conduct.

It would seem to me that this is clearly a bridge between what you're not able to do now and what you will be able to do after the bill passes, and that in fact it doesn't need the approval or the sanction of the minister. That, in fact, will be done obviously through the Governor in Council. It gives you that direct authority versus having to ask for it anywhere else.

Mr. John Ryan: We agree. We're currently going through the process of applying to be an investigative body under the Privacy Act so that we can exchange information with the government about members who have done things that are unscrupulous. We can't get at them because the government can't tell us about it, so it's been wholly frustrating with respect to that.

Now, there is a provision that the head of government can release information, but that hasn't worked very well. So certainly this aspect of the bill is very good.

• (1730)

Mr. Rick Dykstra: This gets into the discussion around the issue brought up by some of the previous witnesses who have come before you, and it certainly has been a question asked by the opposition. That is the issue around how the body is actually formed: whether that be a statutory direct body, or one that has itself tied to regulation but has itself obviously tied to the ministry and reporting directly to the minister.

Mr. John Ryan: This is an issue that has been confused by many members of the committee. Statutory self-regulation is really an act that empowers the body to have certain powers, competencies, etc., similar to the MARA, to the Migration Act. It empowers. There's a whole section inside the act that creates a statutory self-regulatory body.

What we have in Canada is a self-regulation, part II, Canada Corporations Act. I saw that the committee had recommended this in the last thing. Well, that's already what you have in CSIC. The new body, whether it be CSIC under the current process, or a new body, will still be a part II Canada corporation, so you're still talking about regulation by inference. There is a body of law with the Federal Court of Appeal, the Federal Court, and the Supreme Court that now supports the government's ability to do that in terms of regulation by inference, in terms of delegating the authority to a private corporation.

Mr. Rick Dykstra: Well, I—

The Chair: I'm sorry. We've run out of time, Mr. Dykstra.

Ms. Gracey, Mr. Ryan, and Mr. Janzen, thank you very much for your presentations and for answering the questions. We appreciate it your coming here today.

This meeting is adjourned.

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