

## Immigration Consultants

Submissions of Mr. Ravi Jain  
May 8, 2017

### **Preface**

Please note that these additional submissions are being made in the personal capacity of Mr. Ravi Jain, and not in his capacity as a member and representative of the Canadian Bar Association's Immigration Law Section, who he had previously represented in his appearance before the House of Commons Citizenship and Immigration Committee on April 3, 2017.

## **Immigration Consultants – Additional Submissions**

In an effort to provide practical suggestions to the House of Commons Citizenship and Immigration Committee (“the Committee”), I am pleased to provide three specific recommendations to guide the Committee in implementing changes to the regulation of immigration consultants.

In response to the Committee’s concerns, I respectfully submit that there is no evidence that immigration lawyers are unaffordable. In fact, immigration law is unlike other areas of law in that the vast majority of immigration lawyers work in boutique practices or as sole practitioners with far less operational overhead than traditional firms. Moreover, they generally offer clients their services on a flat-fee basis, at a fraction of the cost other lawyers working on an hourly-fee basis in traditional firms would charge for comparable matters. Immigration lawyers are overwhelmingly attracted to this field due to a humanitarian impulse.

Many of the provincial law societies maintain referral services whereby individuals may obtain lists of lawyers who self-identify as practicing various types of law, such as immigration law. It is my suggestion that IRCC place links to these referral services on their website so that individuals seeking immigration representation may find a lawyer within their budget.

A lawyer is far more likely than a consultant to give honest advice to a client given lawyers swear an oath to conduct themselves honestly and with integrity and civility and swear not to pervert the law. The code of conduct for consultants is 8 pages long whereas for lawyers it is in the hundreds of pages (e.g. 142 pages in Ontario and 116 pages in B.C.). This honest advice ultimately lowers the overall cost to the client by dissuading him/her from pursuing unnecessary applications or appeals. Society benefits too as taxpayer dollars are not squandered when public funds are used to adjudicate unnecessary applications or appeals without merit. Licensed lawyers give this honest advice, and provide competent representation, as they have everything to lose owing to the effectiveness of Law Societies across Canada in prosecuting negligence. A typical lawyer’s education and training would include investment in a Bachelors degree of 4 years, a Law degree of 3 years, articling (an internship) lasting one year and then completion of the Bar Admissions course allowing the lawyer to be called to the Bar after completing this further testing.

I have been asked, in connection with my testimony, whether I believe immigration consultants should be permitted to perform limited services on simple matters. First, it is a mistake to single out immigration law. There is no suggestion that non-lawyers should conduct “simple” matters in corporate law, tax law, criminal law and family law, etc. Such thinking demeans the life-affecting work of immigration lawyers. Secondly, the reality is that there is no such thing as a “simple” immigration matter. For instance, fellow members and I have noticed that consultants have counselled their clients to refrain from disclosing important information such as family members, criminal history and medical conditions on visitor, work and student visas. Sometimes IRCC does not discover these misrepresentations which can put Canadians at risk. Sometimes these misrepresentations were completely unnecessary and following the consultant’s advice has later created major complications for family reunification. Also, seemingly straightforward parental sponsorship applications may involve a previously undiagnosed medical issue in the sponsored individual, necessitating lengthy submissions on admissibility. Furthermore, consultants have

counselled their clients to fabricate foreign work experience when filing Express Entry applications leading to fraudulent entry to Canada or a finding of misrepresentation. Finally, those filing humanitarian “H&C” applications or refugee claims are particularly vulnerable and this work can require significant legal research and argumentation. Limiting the scope of practice of immigration consultants to “simple” matters is illusory at best (given seemingly simple matters can become quite complicated) and accomplishes nothing in terms of protecting the public.

If only lawyers may practice immigration law, there will no longer be confusion as to who may provide legal counsel. I have heard from many individuals who have previously used “ghost consultants.” They say they were misled and confused as to who could provide them advice. These individuals are often told that in Canada, non-lawyer consultants are allowed to practice immigration law. This proposed amendment sends a clear message to all that only lawyers may advise for a fee - thereby deterring the long-standing problem of ghost advisors who assist without indicating that they have done so. Simply put, it is the most effective way of stopping the practice of ghost consulting in Canada and around the world.

Pragmatically, I suggest a 12-month transition period, during which individuals who have retained immigration consultants may seek proper representation from licensed lawyers. I propose that IRCC carry out a public information campaign (similar to that utilized in the implementation of the Electronic Travel Authorization program) in order to educate the public. Moreover, I suggest that all immigration forms contain a bolded statement at the top of the form in simple English or French stating that only lawyers may represent them for a fee and warning that if a non-lawyer has assisted for compensation, failure to disclose could result in a finding of misrepresentation and a 5 year bar from applying. Where there are visa-specific forms in certain countries, those forms could contain a similar statement in the native language(s) of the country. Clients of immigration consultants will not be prejudiced by these changes, but will instead have ample time to secure representatives licensed by a provincial law society, and will then receive high-quality representation at an affordable price.

Section 91 of the *Immigration and Refugee Protection Act* should also be amended to allow employees of community organizations who assist individuals with completing their immigration forms, and who derive a salary for this work from the organization *where these employees are supervised by a lawyer*. Currently, under a strict reading of section 91 of the *IRPA*, these employees could be prosecuted, as they are receiving consideration for their services. I respectfully submit that this is a result that was not intended by Parliament. Section 91 of the *IRPA* should provide a “carve out” for these individuals who assist very low income applicants when a lawyer is overseeing their work. Of course, I also concur with the CBA recommendation that s. 91 be amended to eliminate section 91(2)(c) and (5) which currently permit immigration consultants to represent individuals for a fee.

In sum, my recommendations are as follows:

**Recommendation 1: That section 91 of the IRPA be amended to prohibit immigration consultants from providing advice or representation. This amendment should include a 12-month sunset provision to permit individuals who have already obtained the services of an immigration consultant to find a licensed lawyer.**

**Recommendation 2: That IRCC launch an aggressive public education campaign detailing who may provide immigration advice and representation. This should include website-based links to provincial law society referral services, and simple explanatory language on forms.**

**Recommendation 3: That section 91 of the IRPA be amended to allow individuals in non-governmental, and community-based clinics to dispense immigration advice if supervised by a lawyer.**