

# **Immigration Consulting as a Profession: some observations**

## **Brief for the CIMM**

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### **Canadian Immigration Consultancy as a Profession (Shakuntala Soden)**

I have been a Regulated Canadian Immigration Consultant for just over three years (since March 2014). I took (what I believe to be) a fairly typical route: I immigrated to Canada and then decided to retrain because it was not easy to gain employment in my then area of expertise (lecturing in higher education). For me, immigration consulting is my third or fourth career as I have worked as an administrator in investment banks, then as a lecturer in higher education in the UK, followed by a short spell as an ESL teacher in Canada. This is by no means uncommon after immigrating. I always warn clients that while they need their professional skills and qualifications to enable them to immigrate to Canada, they have to be adaptable and flexible. This often means retraining in a field that may be completely different from anything they have worked in thus far.

I completed my Consultants Immigration Diploma program in 2013 and wrote the licensing exam in February, 2014. I joined our professional body, CAPIC, about 18 months after being granted my licence, and grew significantly in confidence and ability from that point onwards. I built up a network of RCIC friends, colleagues and contacts who were willing to share their knowledge and guidance. I reciprocate when I can on the CAPIC consultants' immigration forum and help other consultants wherever possible. I volunteer for the CAPIC BC Chapter and try to attend all the CPD events which are of a very high quality (in my opinion).

### **Immigration Consultants and (Immigration) Lawyers**

Among the other attendees on my Diploma program, there was at least one lawyer who wanted to offer immigration advice in his practice but he was aware that he did not possess the requisite knowledge without some additional training. Lawyers are not all immigration specialists. They are lawyers. While this enables them to practice immigration law without further training, logically I have to question whether they are all competent to do so. Furthermore, I was somewhat puzzled by the notion that lawyers are more likely to be honest than consultants. A causal link between the number of pages lawyers have to study on their code of conduct when compared to the number pages consultants must study is presented as

compelling “evidence” that this is true. This provides no support whatsoever for the likelihood that a person will be more honest if they are a lawyer. Indeed, one could argue that because a significant proportion of consultants are immigrants themselves, they have been vetted for criminal inadmissibility by IRCC before being permitted to immigrate and are therefore less likely to act unethically. Indeed, I would suggest that my example presents a more plausible argument than the first.

My goal as an RCIC is (and always has been) to conduct my practice as ethically as possible. I do not believe in charging extortionate fees and price my work accordingly. If a client is financially constrained, I never let that get in the way of assisting them. I will put a payment plan in place that works for both the client and myself. We work on trust: no client has ever not paid me although sometimes it takes a while for them to deliver!

In keeping with my philosophy of acting ethically and with a social conscience, I am also contracted to a Sponsorship Agreement Holder in order to coordinate their refugee applications. I am paid small hourly fee for this service and I work up to 40 hours per month. I completed the RSTP training course and our Refugee Unit was also further trained in-house by an RSTP trainer. As an RCIC the training was perhaps not as steep a learning curve as it might be for someone with no knowledge of immigration law or experience. Nevertheless, refugee applications are significantly different from those of other immigration classes and one needs to learn through experience as well as by training. I will be attending the SAH Conference in Edmonton at the end of May, followed by the CCR Consultation. Thus, I take my role and responsibilities seriously and ensure I am educated sufficiently to carry out my duties competently. I am grateful for having been given the opportunity to assist in this important work.

### **The role of Immigration Consultants working for lawyers and corporate lawyers (John Soden)**

A common theme has emerged from the CBA (Canadian Bar Association) and a number of its lawyer members (with some notable exceptions) that only lawyers and Paralegals should be authorized to provide advice and representation in respect of Canadian immigration matters. Apart from the obviously self-serving nature of this assertion there are other significant flaws in both its logic and efficacy.

Were this to be the case it would severely limit access to immigration legal services which in turn will create fee inflation. This may be good for lawyers but will ultimately encourage applicants to seek the services of unlicensed, unregulated and unscrupulous persons of whom there is no oversight or constraint. This would not only have the opposite effect to that which is intended but it would also have a negative impact on the work of IRCC, CBSA, IRB and IAD and is much more likely to bring the Canadian Immigration System into disrepute.

It should also be noted that many law firms employ RCICs to manage their immigration practices and in doing so rely on the specialist in depth knowledge and experience of Canadian immigration law that RCICs develop and provide. This suggests that lawyers and their clients find RCICs to be knowledgeable, diligent, honest and trustworthy and that they respect and value the work that RCICs do.

### **Lawyers, Consultants and ethics (John Soden and Harjit Grewal)**

It has been pointed out above that the appellation of “lawyer” does not automatically mean that person has any knowledge or experience of Canadian immigration law and practice, nor does it automatically mean that they will be diligent, honest and trustworthy. There are numerous examples of lawyers not only breaching their respective Law Society rules but also breaking the law. For your reference please see the links below:

<http://www.cbc.ca/news/canada/lawyers-misappropriated-millions-1.3981266>

<http://projects.thestar.com/broken-trust/>

<http://www.cbc.ca/news/canada/ottawa/law-society-questioned-over-slow-response-in-disbarring-lawyer-1.2634177>

<https://www.lawsociety.bc.ca/about-us/news-and-publications/news-archive/2016/law-society-suspends-vancouver-lawyer-catherine-sa/>

<http://www.vancouversun.com/Vancouver+immigration+lawyer+guilty+professional+misconduct/10995614/story.html>

### **What can happen when prospective immigrants DIY (Shakuntala Soden)**

There are several Expat forums where a DIY approach to immigration applications is heavily promoted: Consultants and lawyers are said to be likely to rip you off plus give you bad advice. The “experts” on the various forums will guide you for free. During my time as a member of one such forum (not as an immigration consultant, rather as an Expat in Canada), I have seen examples of good “advice” but on many occasions I have seen the wrong advice because people simply do not have the knowledge of Canadian immigration law. During the last month alone, I have noticed 3 Express Entry applications having been rejected as incomplete, leaving the Applicants’ dreams in tatters and sometimes they (and their families) are now out of status as well. The mantra of the forums is that there is no need for representation: people can simply do it themselves. As well, people often grumble on the forum that they requested immigration advice from a lawyer or a consultant but the lawyer/consultant would not give it to them without payment.

In our own practice we are regularly consulted by clients who have attempted to DIY to save money but have misunderstood what is required and found themselves without status or without Permanent Residence when a study of their documents and skills show that they could now have that status. Four or 5 real life examples spring to mind that have occurred in the last 18 months. We are also regularly consulted by people requesting quite complex immigration advice by email or on the phone, but as soon as a payment for services is mentioned, they do

not contact you again. Some will attempt to string you along, asking as many questions as they can so that they can DIY. Others will become aggressive when you do not answer their immigration questions. We are not mercenaries: if people are referred to us and their documents reveal they have little hope of immigration, we do not charge them a fee. We have a short conversation with them on the phone and suggest what they can do to improve their chances. A regularly occurring example of this would be someone who has been on an IEC Working Holiday Permit for almost two years but has been working in an unskilled position. They may only have high school education. Someone with these characteristics and only two months before their Work Permit expires will almost certainly not qualify for an economic program. We encourage young people like this to gain qualifications and skilled work experience so that they will be in better position to emigrate anywhere or even for employment purposes in their home country. We do not charge a fee for this kind of “parental” advice. We consider this to be a good example of acting ethically and responsibly by not promising someone something that cannot possibly be delivered.

### **The role of Canadian Immigration Consultants working abroad: the UK as a case study (Harjit Grewal)**

We believe that if there is no Immigration Consultants Regulator (and thus no RCICs), this will have the effect of giving more encouragement to ghost consultants both at home and overseas. Without a structured training plan, regulator, or requisite Errors and Omissions insurance, more and more members of the public will fall victim to ghost consultants and their inflated promises/false advertising. Others will be even less likely to seek professional advice (from lawyers because of cost) and may be encouraged to DIY with sometimes disastrous consequences.

In addition, those consultants practicing Canadian immigration law (legally) outside of Canada have invested a lot of time and effort raising awareness about the ICCRC so that the public can make an informed decision when seeking legal advice. One of us (Harjit Grewal) often receives calls from (UK) clients who have instructed ghost consultants, or spoken to ghost consultants,

and received a shockingly inaccurate picture of Canadian immigration, their eligibility and prospects of success.

All RCICs have invested heavily in their businesses financially, from the point of view of websites, social media presence, videos, memberships with various professional bodies and networking groups, marketing materials, office rent and so on. Many of us have also donated our valuable time at legal advice surgeries, community events, religious organizations and charities often on a Pro Bono basis to raise awareness about Canadian immigration law/programs. We all have invested time and effort in our practices. Our efforts and investment should not go to waste.

Some of us have also brought significant economic benefit to provinces that aspiring immigrants do not usually hear much about. The Province of Manitoba is one example. It is a province not widely known outside Canada. Immigrants are usually aiming for Ontario, BC or Alberta. One of us (Harjit Grewal) has had had ten Manitoba Entrepreneur applications approved in the past 10 months. Not one of these entrepreneurs had ever heard of Winnipeg or Manitoba until he publicized this program and raised awareness of it. Each Applicant has deposited \$100,000 into the Manitoba Development Corporation. Each Applicant as Entrepreneur intends to settle in Manitoba and invest \$250,000 to \$1,000,000 (well in excess of the minimum \$150,000). Yet Manitoba PNP's website seems to single out immigration consultants, with messages emblazoned across its application guides and website that it is not necessary to hire a consultant and that if a person follows the guide they will be able to self-file. Thus, we hope the federal government and provinces will recognize that consultants perform a valuable role in helping to drive investment into Canada through marketing Canada as a great destination to work, study or invest.

In the UK, the regulators are the OISC (Office of the Immigration Services Commissioner) and the Law Society/SRA which co-exist side by side. The OISC has been running for over 18 years now in the UK. Lawyers do not regard OISC members as being a threat: most law firms have an

OISC member in their office. OISC members often use the words “immigration lawyer or “immigration law firm” to describe their practice. The UK Visas websites does not discourage seeking legal advice and representation in the same way that Canadian Immigration websites do.

OISC was not perfect from the outset. But it has worked through any problems and continued for 18 years to become a professional organization. Sterling Immigration (Harjit’s firm) has its own caseworker at OISC who it can call or email to receive advice in relation to anything it is unsure of from an ethical or practical point of view. They are as professional and organized as the Law Society. It is possible that ICCRC needs to copy some elements of what OISC and MARA (Migration Agents Registration Authority in Australia) do and issue document templates to new advisers, work with new advisers to develop a fee range and also have different levels of membership. OISC has 3 levels. Sterling Immigration has a level 2 designation. Sterling Immigration hopes to move to level 3 next year so it can do Judicial Reviews and advocacy. Collectively, we believe that if the ICCRC adopts this type of approach you will see an even higher quality of immigration consulting. Moreover, consultants will only work on the type of files which they are licensed for (or seek co-counsel to gain experience), thereby avoiding situations where a new consultant is working alone on a complex LMIA or BC Entrepreneur application with potential issues. It took OISC time to develop along these lines and we believe ICCRC needs a similar timeframe to develop.