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Chair

Mr. Borys Wrzesnewskyj

Standing Committee on Citizenship and Immigration

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• (1530)

[English]

The Chair (Mr. Borys Wrzesnewskij (Etobicoke Centre, Lib.)): Welcome back.

Pursuant to Standing Order 108(2) and the motions adopted by the committee on October 4, 2016, and April 3, 2017, the committee will resume its study on immigration consultants.

We have with us today, from Matrixvisa Inc., Jacobus Kriek, director; as an individual, David Nurse, counsel at McInnes Cooper; and from the Alliance of Portuguese Clubs and Associations of Ontario, Mr. José Eustaquio, executive president.

I understand that LiUNA has two witnesses coming, but due to all of the cancelled flights into Ottawa today, they will be a bit late. We may see them arrive at the committee table. Hopefully, they'll have a chance to make opening remarks when they get here.

We will now begin with Mr. Kriek.

You have seven minutes. Go ahead, please.

Mr. Jacobus Kriek (Regulated Canadian Immigration Consultant and Policy Analyst, Matrixvisa Inc.): Mr. Wrzesnewskij and committee members, thank you for the opportunity to appear before you today.

The substance of much of the discussion to date has focused on the responsibilities of the ICCRC and whether or not those are being met. The ICCRC has a well-established system of handling complaints against its members. It has an investigation section, as well as complaints and discipline committees. Mr. Orr, who is from the IRCC department, also mentioned that a complaint against a member in good standing of the ICCRC will not have a negative outcome on a pending immigration case.

I would like to take this opportunity to mention that the federal government also has responsibilities to ensure the effective operation of the regulatory scheme. I will be discussing two key areas of federal responsibility that I believe should be brought to the attention of the committee: (a) provincial regulation of immigration consultants, and (b) the action taken against ghosts for the contravention of section 91 of the IRPA. Ghosts are people who are giving immigration advice without being a member of the ICCRC or a provincial law society. Many of these so-called ghosts are located inside and outside of Canada.

The first issue is provincial legislation.

In 2001, the Supreme Court, in the Mangat case, decided that provinces cannot have rules that conflict with federal rules, and that where two levels of government have incompatible regimes affecting immigration consultants, the federal scheme will prevail.

In 2013, the Province of Saskatchewan passed legislation to regulate the profession of immigration consulting, a profession that was already regulated by the federal government. Through its legislation, Saskatchewan requires federally regulated immigration consultants to also apply for registration with the province and to adhere to its own regulatory scheme, complete with statutes governing all aspects of a consultant's practice.

The issue is that Saskatchewan's requirements are in conflict with the requirements of the ICCRC. The Saskatchewan regulations do not govern only the provincial nominee program. The Saskatchewan government has taken over federal jurisdiction with respect to who may represent federal immigration applications such as labour market impact assessments, study permits, work permits, family sponsorships, and all federal permanent residence applications, excepting refugees. In any immigration application where the destination is listed as Saskatchewan, the Government of Saskatchewan has usurped federal jurisdiction and has enacted stiff penalties for any federally licensed consultant who is involved without also holding a Saskatchewan registration.

Hence, we have two regulatory regimes that are incompatible. Consultants are being forced to choose compliance with the federal scheme or compliance with a provincial scheme that has been aggressively enforced and where violations can be prosecuted in a court of law. The Supreme Court decision in Mangat would state that the federal regime takes precedence, yet Saskatchewan continues its actions.

Ideally, the federal government would use section 95 of the Constitution Act, 1867, to assert their paramountcy on matters concerning the regulation of immigration consultants. There is an urgent need for the federal government to clarify and enforce their jurisdiction with the provinces, and I would suggest that this could be best accomplished through the use of the annual federal-provincial agreements on immigration and, later, also through a federal statute.

The second issue is the potential lack of action taken about section 91 contraventions.

It is not possible to make general statements and conclusions about isolated cases; however, I am going to use two cases to demonstrate a potential problem.

On April 23, 2015, I submitted a complaint to the Canada Border Services Agency in Toronto about a ghost agent that accepted several thousand dollars from an Australian citizen. The ghost agent informed the Australian that the case would be signed off on by a lawyer in Toronto. I called the lawyer, who mentioned that she had never heard about the Australian citizen. Subsequently, I sent evidence of the immigration advice given and evidence of the contravention to the CBSA via email on more than one occasion. Also, the Australian citizen was in Toronto for a visit and was willing to speak to the CBSA. I'm not aware of any action taken by the CBSA. The Australian was never contacted by the CBSA. It seems as if the CBSA has ignored the complaint.

In another case, I reported a so-called ghost to The Law Society of Upper Canada, but they just mentioned that the ghost was not a member of the law society and they cannot act.

As a result of these two frustrating cases, I submitted two access to information requests to the CBSA and the Public Prosecution Service of Canada. Before providing the report about the outcomes of these two access to information requests, I should mention that from its inception until the third quarter of 2015 the ICCRC has reported 671 contraventions by ghosts to the CBSA. If the ICCRC reported 671 contraventions to the CBSA but the CBSA listed only 412 cases, it seems as if 259 cases are not being accounted for by the CBSA.

• (1535)

The Public Prosecution Service of Canada reported that on October 15, 2015, charges were laid in only 15 cases. The statistics presented here are 18 months old, but they show a potential and worrying trend of a lack of action by the federal government when contraventions of section 91 of IRPA are being reported by the ICCRC.

Another report by the ICCRC indicated that 1,115 contraventions by so-called ghost agents were also reported.

On March 6, 2017, Mrs. Zahid of this committee asked Ms. Jennifer Lutfallah, the director general of intelligence and compliance of the CBSA, if the CBSA had enough resources to investigate the offences. The response was there are sufficient resources, as 200 investigators are investigating immigration and customs offences, and 148 immigration cases are being investigated with respect to immigration consultants. It was not clarified how many of these 148 cases were of members in good standing of the ICCRC and how many were on ghost agents illegally providing immigration advice.

My advice is that the committee consider obtaining from the ICCRC updated statistics about reported ghost agents, the actions taken by the CBSA, as well as prosecutions by the Public Prosecution Service of Canada.

The Chair: Does that conclude your remarks?

Mr. Jacobus Kriek: Yes.

The Chair: Thank you.

We will then move to Mr. José Eustaquio.

Mr. José Eustaquio (Executive President, Alliance of Portuguese Clubs and Associations of Ontario): Good afternoon.

First and foremost, I want to thank the committee for giving me the opportunity to speak on behalf of the organization that I represent and the community that I'm so proud of.

The work that's been carried out predominantly by immigration consultants has affected the community that I represent vastly over a long period of many years. Though I understand that the regulation of the profession, and the professionals themselves, is at stake, I think it's important and applaud the fact that leadership has been taken to put some time and effort into trying find a resolution for many thousands of families who want to call this country home and who have unfortunately had negative introductions to the systems that we provide to legally make themselves proud Canadians.

In terms of offering solutions, I think education and communication are at the core. I understand that a lot of the education thus far of both legal and unscrupulous consultants has led to a lot of the issues confronting the individuals who apply for this type of service.

I do want to be careful with my comments going forward to differentiate between lawyers who are regulated by the province's bar association, and unlicensed consultants such as travel agents, etc., especially at the community level, who are not regulated by anyone; and those who are regulated Canadian immigration consultants. There are a number of issues.

Some lawyers may argue that they should be the only group to represent clients to Immigration and ESDC, but as we all know, those lawyers are not necessarily always competent in carrying out the work that's in front of them.

Ghost consultants, as they've been alluded to, include, for example, travel agents and community centres. A lot of the immigrants over the vast many years—I'm thinking of my own community specifically—have gone to services such as travel agents to do everything for them. Maybe it's to initially take care of their documentation, putting proper documentation in order with their homeland in the transfer of title and lands, or to do their income taxes on a regular basis. Lo and behold, all of a sudden there's an immigration need for a member of their family, and these same individuals who operate other businesses—that's their focus—become supposed immigration consultants.

They might be preparing these documents—and probably getting paid for the service in most cases—but in reality, when submitting them on behalf of these people, the fact is they do not have any jurisdiction and, obviously, they fall within the grey area of the law. Eventually, when things go really sour, that's when there's intervention by law enforcement such as the RCMP.

The competency of regulated consultants is probably the area that I'm more concerned about. It's not so visible today, but I remember a time on Dundas, College, and Bloor Streets, and in the more visible part of the community that I represent where, just like the sandwich shop signs that go up on a regular basis outside a restaurant promoting the daily specials, when a new immigration consultant would pop up almost every day because of the massive need and the influx of new individuals coming into this country.

Education has been very inadequate on all levels, and especially pertaining to those who require and are looking for the service. Some of these regulated consultants—and I call a lot of them unscrupulous—take advantage of the fact that a lot of these individuals just want to be sold a pipe dream of easy access to legalization, even though in most cases there has always been a concern about the time required and how much it costs to go through the system properly.

• (1540)

The complaints could be many. As a community leader operating a culturally based organization that represents a vast number of organizations—some 37—and thousands of families, we hear everything. Traditionally, we get to hear only about those situations that are grave and many times disheartening, in most cases when they're leading to a point of expiring with an individual being forced out of the country and deported.

[*Technical difficulty—Editor*] citizen, and my parents went through a process of legalizing themselves, because they had a vision that they wanted me and my brother to be raised in what I find to be the best country, Canada. Some of the stuff that's been going on is disheartening, because it really goes to the pulse and the heart of those who are weak. I think that for us as leaders in our communities, as elected officials, and as standing committees like this one, it's about time we took the time to look at a business. I think the immigration consulting business represents millions, if not billions, of dollars. It's clear that there needs to be a very firm hand on how the education process is happening and that responsible people have to have the proper accreditation to carry out this service. After all, they're representing our country.

The Chair: You have 20 seconds.

Mr. José Eustaquio: I appreciate the vision to finally take the lead on this, and there are many concerns.

Thank you.

The Chair: Thank you, sir.

Mr. Nurse, the floor is yours. You have seven minutes.

Mr. David Nurse (Counsel, McInnes Cooper, As an Individual): Thank you very much.

I would like to begin by thanking the committee members for the invitation to appear today. It is a privilege to have the opportunity. This is my second time before the committee, and I'm very pleased to be here.

As noted, I am counsel with the Atlantic Canadian firm McInnes Cooper. My work is focused primarily on economic immigration, primarily work permits and permanent residence applications. Prior to entering private practice in 2013, I served as the director of programs and corporate initiatives with the Nova Scotia Office of

Immigration for two years and as legal counsel to that provincial office for a number of years before that. That was my introduction to the world of immigration consultants.

Before jumping into my substantive comments, I would also note that I am here in my personal capacity, not as a representative of the Canadian Bar Association or my firm. I am presenting my own personal views based on my own personal experiences in my practice. I just want to make sure that's on the record.

As I said, with the Nova Scotia Office of Immigration and in my private practice I have seen the impact of consultants' work and what I would describe as the inadequate regulation and oversight of regulated consultants in Canada. My comments may echo some of those made by the CBA in its formal submission, which I have read. I will try to provide a more personal front-line perspective, or what it's like to deal with these issues on the front line on a day-to-day basis.

I have two principle points. In my view, Parliament's objective in regulating immigration consultants has not been met. As well, the regulation of consultants and the creation of this occupation through federal law is based on the fundamentally false premise that you can create an immigration law specialist from a non-lawyer in a few simple steps over several months. I believe that's simply wrong, and that has been borne out in my experience.

What were Parliament's objectives in regulating immigration consultants? This has been discussed at length and has been touched on in the recent submission of the Canadian Bar Association. The objectives cited were to increase efficiency of administrative processes and to facilitate access to competent representation and ultimately greater access to justice. I think those are laudable goals that we can all get behind, but in my view these goals have not been achieved.

I'll start with the issue of competent representation. I'm sure you're all aware of the many instances in the media where issues of fraudulent practices or counselling fraudulent practices are documented. I won't rehash them here. I'll only say that my own experience echoes these media reports. Despite the efforts to re-regulate consultants with the ICCRC to redress the inadequacies of the previous CSIC agency, it remains very much a wild west in Canada.

In my practice, I have had some positive experiences with consultants. A few bright and committed individuals appear to be doing it right. They are very conscientious in their work and with regard to the law. However, the vast majority of my experiences have been negative. In many cases over the past number of years in my work, I have been dealing with the fallout of incompetent advice or, worse, dishonest conduct by consultants that has left clients in very precarious situations.

I would say to you that the errors I see are not minor in nature, such as failing to include a specific document or missing a limitation period. I see instances of serious negligence and dishonesty where, if the individual were a lawyer, they would in my view warrant suspension or disbarment. Recent examples I can cite for you include consultants who are clearly lying to their clients, lying about applications that they claim to have submitted but can produce no evidence for, and openly charging immigrants for jobs and recruitment fees despite the rules against that. I'm not speaking here of ghost consultants, I'm speaking of regulated consultants.

• (1545)

I would also note that in my experience, clients are not getting access to justice through a less expensive or informal process. Although fees may in some cases be less than lawyers' fees, over the past number of years, many lawyers have published their fees and offer flat fee arrangements. I have found there to be a great deal of equivalency between the very good immigration consultants and lawyers.

To summarize, in my view, Parliament's objectives have not been met. We're not seeing greater access to justice, we're not seeing competent representation, and I cannot see how the endorsement of consultants by government has improved efficiency. In fact, I would turn it around and ask this question of the committee, namely, whether Parliament has actually facilitated the exploitation of foreign nationals and Canadians by unscrupulous and incompetent consultants. On several occasions, I have had clients cite the fact that a consultant is regulated and has an ICCRC number on their website and their business card as a reason they trusted them so much. They say that the Government of Canada has endorsed this consultant, so they must be safe. People rely on the consultant being regulated as a guarantee of competence and almost a type of insurance. Ultimately, it is the responsibility of Parliament to correct this problem, in my view.

• (1550)

The Chair: Twenty seconds, please.

Mr. David Nurse: Again, my second point is that in my view regulation is based on a false premise, that requiring very basic training in immigration law, policies and procedures, and imposing a code of conduct similar to that of lawyers is sufficient to give an individual a minimum level of competence to practise immigration law. That is not the case. I encourage the committee and the government to really start to look at fundamental change to the system and new options, as the current regime is not effective.

Thank you.

The Chair: Thank you, Mr. Nurse.

We now have with us Mr. Ottey and Mr. McMichael from LiUNA.

Gentlemen, the floor is yours.

Mr. Jason Ottey (Director, Government Relations and Communications, LiUNA Local 183): Hi, and good afternoon. My name is Jason Ottey. I'm with LiUNA Local 183, and my colleague Jason McMichael is also with LiUNA.

I just want to give you a little summary of what LiUNA is about, a little bit about the trades we represent, and why this issue is so

important to us. LiUNA represents more than 100,000 construction workers in Ontario. In the GTA, specifically under Local 183, we have more than 53,000 members, all working in various components of the trades. We're a multi-skilled trade union. Our membership literally built the city of Toronto, and is, in a large degree, a reflection of the multicultural makeup of the city. Our union was founded by newcomers to the city. Their background and their experiences are what shape LiUNA and the work that we do.

This issue of immigration consultants is one we routinely hear about from members, not only those who have completed the process and have been subject to some degree of abuse, but also those who are here now and trying to bring other family members. We hear day after day stories of tremendous amounts of money being spent to facilitate their applications to no avail. They are being taken advantage of. Even in speaking today and getting some information from our membership, there was fear of reprisal if they were to give specific details that would somehow colour their application. It was very hard to have a free discussion, which is why we're less focused on the immigration consultant role and more on changing the way the government views immigration to one that is less focused on immigration as an entitlement and more as an economic necessity. We have an increasing labour shortage in our market, specifically in the GTA. Immigration is going to be a necessary vehicle to solve that, and if the process is overly cumbersome and fraught with abuse, we will not be able to meet our labour market needs.

Our organization would like to see clear pathways that would limit the need for an immigration consultant. Obviously, in complex cases, there will be a need for somebody to help an applicant stickhandle that process, but in today's day and age, there should be clear lines and pathways where people can inform themselves of what the application process is. It should not take a 15,000 page document—I'm exaggerating—but rather something that is relatively streamlined and easier to complete, something they can actually process themselves, limiting the need for immigration consultants. There will always be a need in the more complex cases, and my colleague Jason can speak more to some of those issues, because he is a former immigration officer.

Mr. Jason McMichael (Director, Government and Community Relations, LiUNA Local 1089): Thank you.

Thank you to the committee for hearing us today.

As my colleague mentioned, my name is Jason McMichael. I'm the director of government and community relations for LiUNA local 1089. I'm also a former immigration officer, with 16 years' front-line experience in the immigration field, including six years as the first national vice-president of the union representing immigration officers.

We've heard the word "unscrupulous" used a number of times today. It has been my experience on the front line of our borders that the most unscrupulous cases are often not the ones that are extremely complex. They're ones that can be solved, as my colleague mentioned, or that should be able to be solved by the applicant's reaching out directly to the Canadian immigration department. It has been my experience that these cases of for-profit consultants, who are most often unscrupulous, are ones that could be very easily solved with a phone call.

It's certainly not my contention that the current legislation isn't doing enough. In fact, what I would suggest is that where we're lacking is enforcement of the current legislation. If the current legislation were more strictly enforced, perhaps we wouldn't have some of the issues we have. Furthermore, I think not-for-profit organizations like unions, for example, or perhaps some religious organizations in Canada, could potentially be unnecessarily hampered by dramatic changes to the legislation. As my colleague mentioned, we're trying to fill a genuine need in the workforce in Canada. Should we be unnecessarily hampered, it will have a direct effect on the Canadian economy if we're not able to help potential members get to Canada.

As mentioned, in my experience as a front-line immigration officer, the real issue hasn't been with the legislation around immigration consultants. The real issue has been with enforcement of that legislation. If we were to tighten up the enforcement of the legislation, perhaps you'd see less and less of the unscrupulous behaviour you heard about earlier today.

• (1555)

The Chair: Thank you, gentlemen.

We'll start with the first round of questions.

Ms. Dzerowicz, you have seven minutes.

Ms. Julie Dzerowicz (Davenport, Lib.): Thank you so much, Mr. Chair.

I want to give a heartfelt thanks to all the presenters for their excellent presentations. Thanks for your extraordinary efforts in getting here today. I know there were some plane delays because of the weather.

I'm going to focus a bit on the comments by Mr. Eustaquio and the two Jasons, Mr. Ottey and Mr. McMichael, today.

I'm delighted, Mr. McMichael, that you let us know that you were in the immigration system for a while. That is very helpful.

One of the key questions I always ask myself is, "Why do people use immigration consultants?" Part of me wonders if it's just because the process is so difficult. Is it because we only offer it in English and French? I just want your thoughts on the number one or two reasons.

Mr. Eustaquio, maybe I'm going to start with you. Why do you think members of the Portuguese community use immigration consultants? I figure that if we maybe could address some of that we could eliminate some people going to immigration consultants and some of these issues.

I'll start with you, Mr. Eustaquio; and then we'll go to Mr. Ottey and Mr. McMichael.

Mr. José Eustaquio: You've put the question. Obviously, when it comes to communities like the one I represent, everything seems to start with the question, "What do you feel comfortable with?" Language is paramount. Over the years—not so much in the last decade, but in the late 1990s and early 2000s—you would even hear of individuals back in Portugal attempting to create, through town hall meetings, access to immigration or work programs in Canada. I haven't heard so much of that in the last little while, because I think organizations like LiUNA have done a phenomenal job in trying to provide communication here across Canada, especially in the Toronto area with Local 183.

My community is very culturally based and very tight-rooted with traditions and culture. Our community centres... This has been brought up. These not-for-profit organizations are usually the first step of someone being recognized and welcomed to a neighbourhood and a community. When someone new comes to Canada, that's where they go.

They don't go there only to find and meet people—family members, people from their home town—but to access these community centres as a means of employment. Then they are looking for assistance to legalize themselves, which some of these unscrupulous consultants understand. They are smart. They're intelligent. They're at the street level, at the grassroots, so they know where to obtain those individuals.

The language, as MP Dzerowicz mentioned, is pivotal. This should always be provided in the language that people are comfortable with. The accessibility of or process to go by to get a lot of these applications properly in front of the legal sources for immigration seems to be very vague. That is where some of these people have done really well in obtaining a salary, a life, a job for themselves by providing these services.

They are making ridiculous amounts of money for a legal process that you and I can do on the Internet. For an application that normally costs about \$1,100, I've heard cases of some families paying \$18,000, \$20,000, or \$25,000. A lot of these people are just looking for the right news, and the right news is, "Yes, I can make you Canadian in a short period of time. I can make you legal." These broken promises have been alluded to in some of the presentations today. It's vastly dark, and it is so unfortunate that it's happening in a country like ours.

Hopefully that answers your question.

• (1600)

Ms. Julie Dzerowicz: Thank you.

Mr. Ottey and Mr. McMichael, go ahead.

Mr. Jason Ottey: It's a very good point. It's fundamental. The fundamental change has to come from a recognition that we actually do need immigration to grow our economy. If we look at it with the purpose of how to facilitate bringing these people in, that changes the nature of the interaction. Streamlining the processes and having more accessibility, as Mr. Eustaquio mentioned, are critical to that. Having it in a language that the applicant understands will assist with that.

There are so many different pathways for people to apply. That alone can be burdensome to an applicant. It would be helpful if there was a clearer line of demarcation as to what the application is for, how long the process could take, and what necessary documents are required in order to facilitate an application. That way, applicants would know from the beginning what is required of them.

On complex applications, I do think there will be a need for an immigration consultant or a lawyer to assist, because not all of them will be paint-by-numbers. You could apply a similar process to what it's like to get a building permit. In order to get a building permit, there is a lot of pre-work that is done in order to establish the necessary conditions for approval. That is a very rich ground for immigration consultants to play around, and I think they take advantage of that. The more we can make that information accessible and attainable to applicants, the easier it would be for them to apply on their own, therefore taking the need away from those less complex cases.

Ms. Julie Dzerowicz: I have a couple of other questions.

Mr. Eustaquio, your core recommendation is more about education and communication. I'd love to have a few more specifics on that. Is this about giving more education and communication through the Portuguese social community centres? Is it through workplaces like LiUNA that we provide more of that communication? Are there more specific recommendations that you have on that?

That's question number one—

The Chair: You have 20 seconds for an answer to that.

Mr. José Eustaquio: We are clearly identifying it. It's interesting that the stakeholders in front of this committee really represent the vast, diverse group of those who want to be new Canadians.

Communication is not only pivotal to highlight accessibility; communication is also very important to red flag those individuals who are shortchanging the system and are really only there for their personal gain and merit, not to assist those who want to legalize themselves.

The Chair: Thank you.

Mr. Tilson, you have seven minutes please.

Mr. David Tilson (Dufferin—Caledon, CPC): Thank you, Mr. Chair.

To Mr. Nurse, the committee has heard testimony that some consultants—and that's whom we're studying of course, not lawyers—are incompetent, poorly educated and, as you've said, in some cases, dishonest.

My understanding is that if you're a lawyer, you can report cases to whatever the provincial law society is, and the law society can take action.

There was a story in the *Toronto Star* of three lawyers. One was suspended for six months, or one year if he continued practising refugee law. Another was fined and disbarred. The third was suspended for five months and banned from practising refugee law for two years. The law society obviously has very strict procedures if there are complaints and an investigation.

To your knowledge, what happens with the consultants? What happens with the regulator? I don't hear of regulators taking very stiff action, as the law societies do.

• (1605)

Mr. David Nurse: Thank you for the question.

You're correct that the law societies generally do have the ability to take immediate action. I guess what I see as one of the distinctions between the law societies and ICCRC is that they are generally closer to the ground. Because they are provincially regulated, they seem to be able to keep a closer eye on the occupation ban than ICCRC is.

I've had very few instances in which I've actually made a complaint to ICCRC and spoken to their officers. I did have one instance when I was with Nova Scotia Immigration that was quite troubling. There was an issue. There was an ICCRC consultant who had an arrest warrant in Canada. There were a number of charges against the consultant, who was living outside Canada. My recollection is that the ICCRC investigator more or less said that the person was innocent until proven guilty. They could continue to advertise as ICCRC-licensed on their website and could continue to work until they came back to Canada to face these charges.

That was four or five years ago. I don't know how that ultimately was resolved, but generally, if you see a lawyer charged with any serious matter, particularly one warranting arrest, there is normally an immediate suspension and review. Then, they may be allowed to resume practice under conditions. I guess I'm not seeing the same news stories that you would be looking for about ICCRC taking serious action. I guess I see too much of what I would call substandard work out there in the community to have any degree of confidence in ICCRC effectively meeting its mandate.

Mr. David Tilson: Do you have any recommendations to the government, Mr. Nurse, as to what the ICCRC should be doing to address the allegations that have been made by many witnesses in these hearings?

Mr. David Nurse: I have a couple of things. Obviously, as the gentlemen with the union said, more enforcement would be good, but I think it's also perhaps time for the government to go back to first principles. Why is the government continuing to try to regulate this occupation? Are there alternatives? For example, has it looked at how accessible legal services are now in immigration versus 20 years ago?

Is there really a need, and could the need be met in a different way? For example, could the federal government work with the law societies and the provinces to create immigration paralegal certification that would still allow consultants to work and provide services to a wide range of clients in a variety of languages but bring that work under the supervision of lawyers, who are themselves under the supervision of their law societies?

I think that if I were going to encourage anything it would be to absolutely go back to the drawing board, because this is not working.

Mr. David Tilson: Somebody from the Canadian Bar Association came and told us to get rid of the consultants. My suspicion is that the consultants are kind of like paralegals, who are regulated much more than consultants, from what I understand.

I guess the question is, what's your position? Some people say, "I can't afford an immigration lawyer, but I might be able to afford a paralegal, or I might be able to afford an immigration consultant."

•(1610)

Mr. David Nurse: First of all, I'm not sure that I necessarily believe that price issue has been tested in 2017. I look at the number of lawyers practising immigration law in Nova Scotia, for example, now versus 15 years ago. You might have had one guy who was sort of an oddity 15 years ago. Now, we have 20 or 25 members in a variety of different practices, some with big firms....

Sorry. Am I out of time?

The Chair: No, please continue.

Mr. David Nurse: Just to finalize that, lawyers are doing more than they ever did to provide access to justice. Immigration fees are often offered on a flat-fee basis. There's an obligation to consider the means of the applicant, and also to look at pro bono work. I don't know if the federal government has asked that question. Is there a continuing need for this broad class of immigration consultants to be working in Canada and overseas, or could that work be taken up by the existing cadre of Canadian immigration lawyers, perhaps with additional support?

I don't think those fundamental questions are being asked.

The Chair: Thank you.

Mr. David Tilson: We're finished?

The Chair: The seven minutes is up.

Ms. Kwan, seven minutes please.

Ms. Jenny Kwan (Vancouver East, NDP): Thank you very much, Mr. Chair. I want to thank all the witnesses for their presentations.

Before I go to my questions, I'd like to just move this motion first, if I may, Mr. Chair.

I'd like to move that the committee return to the debate that was adjourned on April 10, 2017, on my motion, which reads as follows:

That pursuant to Standing Order 108(2), that the Committee immediately undertake a study of land arrivals at Canada's southern border, including: the impact of current realities at the border on safety and security of both refugees and Canadian society; the effective management of refugee claims at the border, within the context of Canada's international human rights obligations; and how to ensure an efficient and effective refugee determination process. That this study should be comprised of no less than five meetings; that IRCC department officials be in attendance for at least one of the meetings, that CBSA officials be in attendance for at least one of the meetings, and [that]...RCMP officials be in attendance for at least one of the meetings; that the study be [conducted] and that the Committee report its findings to the House prior to June 9, 2017; and that pursuant to Standing Order 109, the government table a comprehensive response thereto.

Mr. Chair, as you'll recall from our last meeting, I moved the motion to this effect, we began discussion of it, and Ms. Dzerowicz moved a motion to adjourn the debate. I think it is critical that we move forward with this study. I'd like to get the committee to make a

decision, one way or the other, whether or not we're going to study this work.

Mr. Chair, I know it's a non-debatable motion, and I would hope that we can resume debate and get on with this.

Mr. David Tilson: Agreed.

The Chair: Thank you.

As committee members are most likely aware, the motion to resume debate is a dilatory motion. It is not debatable or amendable. As such, it's put to an immediate vote.

Mr. David Tilson: A recorded vote, Mr. Chairman.

The Chair: A recorded vote.

The Clerk of the Committee (Ms. Erica Pereira): The motion that we have before us is that the committee resume debate on the motion moved on April 10, 2017.

(Motion negatived: nays 5; yeas 4)

The Chair: Ms. Kwan, you have six minutes and 50 seconds.

Ms. Jenny Kwan: Thank you very much, Mr. Chair, for that. It's unfortunate that the motion didn't pass. We need to get on with the work. Maybe the members of the government side will realize that sometime very soon.

With that in mind, I would like to turn my questions to the witnesses here on the issue of consultants. I'd like to ask the witnesses this question—a very basic question. Should consultants be self-regulated? We've heard a whole host of problems from people, from other witnesses, so I just have a basic question on that. A simple yes or no answer would suffice.

I'd just like to get a bit of rundown from everybody. Maybe we can start with Mr. McMichael and Mr. Ottey.

•(1615)

Mr. Jason McMichael: No, I don't believe they should be self-regulated.

Ms. Jenny Kwan: Thank you.

Mr. Kriek.

Mr. Jacobus Kriek: I believe they should be self-regulated. I'm a regulated Canadian immigration consultant. I've been practising for 15 years.

Ms. Jenny Kwan: Thank you. I'm just going to get a quick rundown from everybody.

We'll go to the people on the video conference.

Mr. Nurse.

Mr. David Nurse: No, I do not believe that would be prudent at this time.

Ms. Jenny Kwan: And last but not least, Mr. Eustaquio.

Mr. José Eustaquio: My answer too would be no.

Ms. Jenny Kwan: Thank you.

All right.

Mr. David Tilson: If not now, then when?

Ms. Jenny Kwan: On that issue, some people have suggested that perhaps this work should really be done only by lawyers. The suggestion was made that perhaps it should be done by legal aid or non-profit agencies, resettlement services, or immigration services types of organizations.

Now, there's a basic question in terms of cost. It is onerous for many people, so should there be a standard for the cost of the services? For example, for certain services to be performed, an individual could be charged x amount, whether by an immigration consultant or a lawyer and, of course, on the non-profit side, that work would be done free of charge, but the government would fund these agencies to do that work. Then those who could not otherwise have somebody represent them—because they couldn't afford it—would be able to get the services they need.

Could I get a quick round again from folks in the same order that we began?

Mr. Jason Ottey: Are you asking whether there should be a subsidy in addition to a standard fee?

Ms. Jenny Kwan: Yes, so for those who are paying a consultant or a lawyer, a standardized fee would apply, and then the government also, in recognition of those who couldn't otherwise afford a consultant or a lawyer, would fund legal aid or a non-profit agency to do this work.

Mr. Jason Ottey: My gut reaction to that type of proposal is that anytime you introduce a standardized fee, you're interfering with the natural functioning of the market, and I don't know whether or not the fee would actually reflect the quality of service being offered. I think you ultimately have to address what service is being offered and perhaps standardize that, and then say that if you are making this application, this is what's included in the body of work for this application.

Ms. Jenny Kwan: Thank you. That is what they do, for example, in legal aid, with work. So if you get a lawyer to represent you in court for a criminal charge, for a summary charge, x amount would be included for that charge, and that's a standardized fee, for example. I'm just trying to get a sense of how we might be able to approach this issue in terms of affordability.

Mr. Jason McMichael: In terms of affordability, I would offer that in order to make the process more accessible, we would need to ensure the availability of the actual front-line officers. The Canada Border Services Agency is vastly understaffed at the frontier, and the fact is, if there were more access to the folks on the front line, then there would be less need for some of the unscrupulous behaviour that we heard about earlier.

Ms. Jenny Kwan: I'll jump over to those on the video conference.

Mr. Nurse.

Mr. David Nurse: My answer has a couple of parts.

First, I would say that in my understanding, the unpaid work that, say, a church organization or another community group would do is not impacted by the regime now. People are allowed to get help from a family member, a friend, or a community group that's not compensated, and I think that's fine to continue, and as long as there's no financial motivation to overstep your area of knowledge or

competence, I don't see a lot of issues coming out of a situation in which someone in a church basement is giving someone terrible advice—

Ms. Jenny Kwan: Sorry, I'm just going to interrupt for a second.

You're absolutely right on the non-profit sector people doing that work. I'm talking about the paid sector. So for the consultants or immigration lawyers, should there be a standardized fee that would apply for services rendered?

• (1620)

Mr. David Nurse: My simple answer to that is no, because I think there's just so much variation among the individual cases that you could not fix a fair standard fee, even for a study permit or a work permit, because of the circumstances of the applicants. If they have past criminal convictions or other matters, I would say that there's no way to fairly fix that amount, and it would also be anti-competitive in my view. Just as a final point, I think things can be done on the legal aid side, encouraging lawyers to do more pro bono work. All of that would be positive.

The Chair: You have 20 seconds.

Ms. Jenny Kwan: Thank you for that. I guess we're going to run out of time.

In response to that, if you're relying on pro bono work, the reality is that there are not enough pro bono lawyers who would be able to take up this work. I expect that every MP sitting around this table is inundated with constituents who have issues with this. I don't think that pro bono lawyers somehow will step up and do all of this and fill the gap.

The Chair: Thank you, Ms. Kwan.

Ms. Zahid, for seven minutes, please.

Mrs. Salma Zahid (Scarborough Centre, Lib.): Thank you, Chair, and thanks to all the witnesses for coming and providing their important input for the study.

My first question is for Mr. Kriek. In one of your articles in the *National Post* on January 14, 2016, you said that little attention was given to ghost agents and that the public is being taken for a ride. I agree with that statement. They don't fall under the purview of ICCRC, and we have heard earlier in our study that the CBSA only has the resources to go after the most egregious offenders. So we have this wide open door for those ghost agents.

It seems to me there are few options on the table. Having heard from all the witnesses, I would like to get your recommendations. One recommendation is that the ICCRC be given more authority to allow them to go after the non-registered consultants. But given how it is functioning, another option is to replace the self regulation with a more government-regulated model. As you may have heard, earlier in the study the Canadian Bar Association recommended restricting the field to immigration lawyers registered with the law society.

What do you think of these different options? Do you have any better solution, or do you agree with one of these recommendations?

Mr. Jacobus Kriek: Obviously, I'm a regulated Canadian immigration consultant and I support the ICCRC completely, because I know that they investigate contraventions and take action against regulated members. Whether the ICCRC is closed, or a federal statute is established, irrespective of which model is used, if action is not taken against ghosts, none of it would really matter. If all consultants work for lawyers, as Mr. Nurse suggested, and the law societies don't take action, then ghosts will continue and the public will not be protected.

I took a matter to the Law Society of Upper Canada about a ghost agent and they said that the person was not a member and that they couldn't act in response. We need, on the one hand, as you suggested, to decide which regulatory model must be followed. But irrespective of which model will be followed in the future, action needs to be taken against ghost consultants. The research has shown, according to the access to information requests I've made—

Mrs. Salma Zahid: What do you suggest is the best way to make the ghost consultants accountable?

Mr. Jacobus Kriek: I believe the ICCRC should continue to regulate consultants on the one hand. On the other hand, it's vital that the federal government, through the RCMP and the federal prosecuting service, take action against ghosts. My stats show there's a real problem in taking action against ghosts.

There are a lot of articles in the media about consultants, but in many cases there is not a distinction made between ghost consultants and regulated consultants. At a meeting the CBSA reported that 148 consultants were being investigated. Nobody asked how many were regulated and how many were ghosts. Everybody is painted with the same brush.

To conclude, I believe the ICCRC has the tools and abilities to regulate its members. Secondly, there need to be resources given to the RCMP so they can enforce contraventions.

• (1625)

Mrs. Salma Zahid: Do you agree with the CBSA recommendation that it should be restricted to the lawyers registered with the law societies?

Mr. Jacobus Kriek: No, I don't.

Mrs. Salma Zahid: Do you have any other suggestions about what model from the other witnesses should be adopted?

Mr. Jason McMichael: Obviously there needs to be some level of regulation. I don't agree with the self-regulation model. I think it leads down the path that we're seeing now of greater potential for ghost consultants and unscrupulous behaviour by registered consultants, because of the lack of enforcement.

I believe there will always be a need for immigration consultants. However, if there were more government-led regulation of them, it

would certainly give more teeth to the enforcement side of the legislation.

Mrs. Salma Zahid: Mr. Nurse, what would you recommend?

Mr. David Nurse: I believe this needs to be taken back to first principles. The government needs to ask whether or not there's a continuing need in 2017 and the next decade for consultants to be regulated in the way they currently are.

I have not seen a lot of positive results from the current regime. I would very much encourage looking at alternatives, but I don't have any specific options I would impose on the committee today.

Mrs. Salma Zahid: My next question is for Mr. Ottey.

Witnesses for our study have indicated that vulnerable and abused clients are fearful of coming forward to make a complaint against a consultant because it might jeopardize the status their immigration application.

What would you recommend to mitigate these fears and encourage the individuals to come out?

Mr. Jason Ottey: There would need to be some degree of confidentiality and protection to prevent possible reprisals after a complaint. If there's a pending application by the person making the complaint, their application ought to be set aside and put on a separate track from the immigration consultant who is handling it.

Our members have told me of their fear that immigration consultants have contacts with so many different levels of the immigration process that it would be very easy for them to take a person's application and move it to the bottom of the pile. Even though that might not be the case, they feel that it's real. There needs to be some way to give them security that filing a complaint does not in any way jeopardize the process of their application. It would help if their application were segued off into a different process.

The Chair: Thank you.

Mr. Jason Ottey: That might encourage more upfront behaviour.

The Chair: Thank you.

I would like to thank our panellists who appeared before the committee.

The second part of our hearing will be in camera. I notice there are quite a few people in the audience here today. As the second panel will be in camera, I request that everyone not taking part in that hearing leave the committee room at this time.

Thank you.

With that, I'll suspend.

[*Proceedings continue in camera*]

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