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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 (Etotobicoke Centre, Lib.)): Good afternoon. 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 had Mr. David Arnold from the Australian High Commission scheduled, but I understand that an hour ago we unfortunately received a message that he had to stay on post. There will be a written submission. If there are any questions that have been prepared for this witness, please submit them. They'll be passed on to Mr. Arnold and responded to.

Before us today are Mr. Raj Sharma, managing partner, Stewart Sharma Harsanyi; and Mr. Lorne Waldman, barrister and solicitor, Lorne Waldman and Associates. Welcome, gentlemen.

Mr. Sharma, the floor is yours, for seven minutes.

Mr. Raj Sharma (Managing Partner, Stewart Sharma Harsanyi, As an Individual): Thank you, sir.

First of all, I'd like to say that it's an absolute honour and privilege to appear and participate in your study of the legal, regulatory, and disciplinary frameworks governing and overseeing immigration consultants in Canada.

By way of background, I am an immigration lawyer in Calgary. Before I went into private practice, I was a refugee protection officer with the refugee protection division at the Immigration and Refugee Board. That is Canada's largest administrative tribunal. As a former immigration hearings officer, now as an immigration lawyer, I've done hundreds of hearings, probably fewer than Mr. Waldman but still quite a few. My partner and I and our associates appear regularly before the Federal Court of Canada, which requires a review of the record below.

Over the years I've also had the opportunity to host a Punjabi language radio show in Calgary, and for obvious reasons, immigration is a matter that is very near and dear to my community. I've seen lawyers and immigration consultants at all three divisions of the IRB. I've seen their work, transcripts of their hearings, and their applications. I've seen first-hand the consequences of bad advice.

There are good lawyers and bad. There are bad consultants and good ones. In my opinion, very few consultants are competent

enough to represent and advocate for clients at the IRB. I've had the opportunity to review the briefs of the Canadian Bar Association and the Metro Toronto Chinese and Southeast Asian Legal Clinic. I share many of those concerns.

I disagree, however, with the CBA call to restrict representation for fees only to lawyers who are members of good standing of a provincial law society. There are two important concepts at play: access to justice and protection of the public.

I've had the opportunity to work with immigration consultants who have prior experience in immigration, including former immigration officers or CBSA officers, former lawyers, and others who know their limits. They do provide a valuable service. I don't think that lawyers automatically have a monopoly over all aspects of immigration law. The fact of the matter, however, is that ICCRC seems to favour promoting the easy entrance of consultants to the practice of immigration law over the protection of the public.

Right now, after getting admission to and passing a 320-hour online course—and this is what Ashton College's website says—the program gives students the opportunity to become part of this exciting field, without forcing them to be on campus. There are no courses on legal research, evidence, or administrative law principles. Once you complete this completely online course, you need to pass the ICCRC exams. By the way, even if you fail the skill exam, you still get three more kicks at the can. Anyone over 18 with a language proficiency test who passes this skills exam, on day one, can represent a refugee before the RPD.

To represent a refugee means knowing the substantive law in this area, terms like “state protection”, “internal flight alternative”, or exclusion clauses such as crimes against humanity, war crimes, or serious international non-political crimes. That same person can also, on day one, appear before the immigration division to represent a permanent resident being charged with a serious crime outside Canada. That requires an equivalency of a foreign charge with a Canadian criminal law. A loss at that division could result in the loss of status and removal without further appeal. That same person can represent a permanent resident at the immigration appeal division with a criminal conviction in Canada, or a permanent resident facing an allegation of misrepresentation, or a Canadian sponsor appealing against refusal by a visa officer to a family member overseas. There is no way that a six-month online course can give you grounding in the substantive law needed to be an effective advocate.

Look, we don't allow 16-year-olds to drive 18-wheelers. There needs to be a graduated licensing for consultants. Just because you can fill out a work permit doesn't mean you can appear, represent, and advocate for a refugee, a permanent resident facing criminal charges abroad, a permanent resident with a conviction inside Canada, or a Canadian looking to appeal against a refused visa to a family member.

We're relying on immigration consultants, individuals, to self-police, to restrict themselves when it is in their financial pecuniary interests to take on work, even work that they are not competent to do. They've paid thousands of dollars for the education, the skills exam, registration, insurance, marketing and advertising, and more. Obviously, they'll want a return on that investment.

• (1535)

My recommendation is to split the baby. In the United Kingdom, the legal profession is split between solicitors and barristers. Solicitors do transactional types of legal work. This is probably what 320 hours of an online course will allow for—a consultant to provide advice on and assist in completing immigration applications. Barristers represent clients as an advocate before a court or a tribunal. This requires training in evidence, ethics, court practice and procedure, and legal research. There's no way that 320 hours of an online course, and maybe a mock interview module, will allow for a consultant to practise competently before the IRB.

There should be a different process to license certain immigration practitioners or advocates to appear before the IRB. These individuals should either possess direct prior substantial experience, and/or prospective immigration advocates should be required to complete substantial legal courses, and undergo articles or train under the supervision of a lawyer, or a consultant who has the requisite experience.

Frankly, I think regulation has failed because the ICCRC sets up consultants to fail. They are knowingly or ignorantly—take your pick—arming their members with a knife and allowing them to go into a gunfight. Ultimately, it is the refugee claimant, the spouse separated from her partner for years, the permanent resident facing removal and loss of status from a country that he has called home for decades, who will pay the price.

Thank you for your time. I look forward to answering any questions you may have.

The Chair: Thank you, Mr. Sharma.

Mr. Waldman, the floor is yours for seven minutes, please.

Mr. Lorne Waldman (Barrister and Solicitor, Lorne Waldman and Associates, As an Individual): Thank you.

I just want to say that I hadn't discussed this with Mr. Sharma, but you'll be surprised to hear that our positions are very similar. I'm going to build on what Mr. Sharma just told you as I agree completely with him.

The problem with the immigrant consultant situation is that there's a perception that the regulatory body, the ICCRC, has not done enough to properly protect the public. There are still many instances of abuse, and there are many examples of incompetent representa-

tives. That applies to processing, but much more so to the examples Mr. Sharma gave of people who appear before the board.

It's important to note, as Mr. Sharma did, that it's not only a problem with consultants. There are incompetent lawyers. There were three lawyers in Ontario who have been recently disciplined due to incompetent representation of hundreds of Roma refugee claimants. I was an expert witness on two of the three cases, so I'm well aware of the problem and the scope of the incompetence. Two of the lawyers received six-month suspensions and one was disbarred. This is to say that the problem of incompetence is not one that's restricted to consultants.

Having said that, I agree with Mr. Sharma. A lawyer, before he is licensed, has to get an undergraduate degree, three years of law school, 10 months to one year of articling, and then pass a professional competence exam. It's far different from the 320 hours that you need to do before you can apply to write the consultant's exam.

I agree again with Mr. Sharma. The CBA recommends doing away with consultants. I have a broader perspective than Mr. Sharma, having been practising for close to 40 years. Before consultants were regulated, they existed, and if you tried to stop regulating, they will continue to exist. I think, given the choice between regulating and not, we're far better off regulating, but we have to regulate better.

How do we regulate better? In order to improve the regulations—and, again, I'm picking up on what Mr. Sharma said—the government must do more. The government has the power, in the regulations, to set proper minimum standards in place to ensure that anyone who is licensed as a consultant meets minimum standards of education.

I'm not going to tell you today what I think those would be, but I agree that they have to be far more than the 320 hours, especially if people are going to represent people at the Immigration and Refugee Board. Minimum standards of study have to be in place, followed by a period of practicum. A lawyer, before he or she can practise as a lawyer, has to do a period of articling. Consultants pass the exam, and the next day they can hang out their shingle. This is completely unacceptable.

How do we achieve this? We achieve this by enacting regulations. The immigration act, section 91, allows the government to promulgate regulations in relation to the ICCRC. I looked at the wording, and I'm not sure if in its current form the regulatory power is sufficient to allow it to put in place the type of regulation that I'm suggesting. We have to look at that more carefully. However, what I'm suggesting to you is that the government put into the regulations minimum standards of education, the minimum requirements, that a consultant spend a certain minimum period of practicum before he or she can be licensed.

We require this because, I agree with Mr. Sharma, the ICCRC has not put in place sufficient requirements to ensure that consultants are competent.

I also agree with Mr. Sharma that there's a fundamental difference between a consultant who does processing and a consultant who appears before the Immigration and Refugee Board. There should be different requirements of competence. There should be additional training required before a person represents someone before one of the tribunals of the Immigration and Refugee Board. All of this can be done by putting in place minimum requirements into legislation that any consultant would have to meet in order to become a member of the ICCRC.

In this way the government would ensure that any consultant is qualified. It wouldn't depend on the ICCRC alone to set the minimum qualifications, because—I agree with Mr. Sharma—the qualifications that are now set requiring an online course of 320 hours is not enough to protect the public.

• (1540)

Finally, I think the regulations should allow the government to also conduct audits, in addition to the enforcement powers of the ICCRC. The government should not be dependent on the ICCRC to deal with situations of abuse when CBSA or CIC becomes aware of a consultant who is doing illegal activities. It should be free to conduct audits and enforce the regulations to ensure proper representation.

Thank you.

The Chair: Thank you, Mr. Waldman.

The first round of questions goes to Mr. Anandasangaree.

• (1545)

Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.): Thank you, Mr. Chair.

Thank you both for joining us and sharing your perspectives.

I think one of the major challenges we are facing, apart from the regulated consultants, is the issue of ghost consultants and those who are effectively operating under the radar. I know that in Ontario, for example, the law society regulates those who are providing legal services, and if they're not licensed to do so, there are provisions for the law society to enforce against those people, as there are in the medical profession, as well as in dental practice.

What can we do to address the issue of those who are not licensed and who will probably never be licensed? What kind of enforcement mechanism should we use and what is the right authority? Is it the CBSA, or is the RCMP the right organization to do the enforcement, whether it's in Canada or outside?

I'll start with you, Lorne.

Mr. Lorne Waldman: The Immigration and Refugee Protection Act prohibits anyone who isn't licensed from providing paid legal services in the immigration context. The law already has in place provisions that would ensure that people who are acting as ghost consultants could be brought to prosecution, so it's really a question of enforcement.

The enforcement can be done. The ICCRC has no power to enforce, so it has to be done either by the RCMP or by the CBSA. I believe the CBSA now has a unit that engages in prosecutions. My experience is that the types of issues that arise for those consultants,

unless they are on a massive scale, are not the type that would generally be of interest to the RCMP.

If we're going to try to have more effective enforcement regarding ghost consultants, it's going to have to be done by the CBSA and I think the government is going to have to dedicate funds to that specific problem to ensure that sufficient attention is paid to prosecute those who act as ghost consultants.

Mr. Gary Anandasangaree: Thank you.

The Chair: Mr. Sharma, go ahead very briefly.

Mr. Raj Sharma: I think we'll never get rid of ghost consultants and there's a myriad of reasons why. First of all—and I'll try to translate this from Punjabi—ghost consultants suck the blood of their own. They victimize their own communities, whether the Chinese, Vietnamese, or Indian.

There are barriers for those individuals who might be vulnerable, aged, lacking in education, or having other impediments, and they're not going to come forward. Because they're not going to come forward, we're just not going to have prosecution even if we have sufficient resources for prosecution, which we don't. We, apparently, don't even have sufficient resources to combat marriage fraud.

We're not going to get rid of ghost consultants, and I would suggest—and I'll refer to the Metro Toronto Chinese and Southeast Asian Legal Clinic's brief on this matter as well as my experience on the radio—that we really need to reach out to the ethnic communities via their media, radio, etc., and talk about this pernicious problem of ghost consultants.

Prevention has to be the best sort of cure. I don't think after-the-fact exercises and prosecution of someone who's obviously a crook or a criminal is going to deter it.

Mr. Gary Anandasangaree: With respect to going forward, Mr. Sharma, you talked about graduated licensing. I know Mr. Waldman spoke about competencies and how what's required to do paperwork and fill out a sponsorship form may be different from what is required to do a PRAA or an H and C.

What are those boundaries, and where can we look for guidance regarding what is an appropriate division of work among consultants, paralegals, and counsel?

We'll start with you.

Mr. Raj Sharma: Thank you.

The line in the sand that's most readily discernible to me is that sort of U.K. split profession of solicitor transactional work versus the barrister representation and advocacy. That's a fairly clear line, I think. Let's start there.

•(1550)

Mr. Gary Anandasangaree: Based on what Mr. Waldman is saying, they are also lawyers who may be able to practise law but who may not have the competencies. How do you reconcile that? You're basically adding a third layer with consultants, whereas in the U.K. model both barristers and solicitors are members of the bar.

Mr. Raj Sharma: No, I'm not adding another level. I'm saying that consultants, as of right now, do not have the core competencies to practise or advocate at the IRB. What I would say is that the consultants should have a split profession.

I believe that we've had a unified tradition, with the barristers and solicitors, in the common law provinces of Canada anyway. That seems to be working fine, so I'm not proposing any change to the existing regulations or framework for lawyers.

Mr. Lorne Waldman: I think the way to approach this would be to ensure that in order to be a processing consultant you would need to meet certain minimal requirements in your studies. If you want, in addition to that, to be a consultant who appears before a tribunal, you would have to meet other standards. You would have to take courses in evidence. You would have to take a course in the charter. You would have to take a course in the legal ethics of appearing before tribunals. When I looked at the Ashton College curriculum, many of these things weren't there.

I would agree that a consultant who just graduates is not qualified. I think there would have to be a practicum. If a consultant wants to practise before the Immigration and Refugee Board of Canada, he should declare that. Then he should be required to have a practicum with either a lawyer or another consultant licensed to appear before the board, so as to ensure that when he goes before the board he's familiar with the process and the proceedings.

The Chair: Thank you, Mr. Waldman.

Mr. Tilson.

Mr. David Tilson (Dufferin—Caledon, CPC): Lawyers don't like consultants, and they don't like paralegals. I can, quite frankly, understand why. I think we need paralegals and I think we need consultants. All of the issues you're raising are good ones.

Paralegals, as I understand it, can only do certain things. They're restricted from doing all sorts of things. The committee is looking for recommendations from witnesses such as you so that we, in turn, can recommend changes to the government. In respect of consultants, you mentioned education. Are there certain things that, perhaps, they just don't have the training for, may never have the training for, and should be restricted from doing?

Mr. Sharma, perhaps we could start with you. Could you recommend to the committee what consultants should not do?

Mr. Raj Sharma: Let's say we get the 320 hours. I'm very mindful that lawyers may be perceived as being against immigration consultants. I don't want this to come across as self-serving in any way. I think access to justice is important. I think consultants provide a valuable service.

I agree with you that even paralegals are restricted. Paralegals, by the way, need two years of education, far more than 320 online hours.

Mr. David Tilson: I'm not talking so much about their education. I'm looking at what.... Paralegals, clearly, are restricted from doing certain things. I'm asking both of you what your recommendations are as to what they should not do. They will never have the qualifications lawyers have to do those things.

Mr. Raj Sharma: Based on the current regulatory framework, I do not believe that a consultant has the core competencies to represent any individual before any tribunal of the Immigration and Refugee Board of Canada. I do not believe they should be doing detention reviews at the immigration division, or determinations that someone is a member of a terrorist organization at the immigration division. I don't believe they should be representing refugee claimants at the refugee protection division.

I don't believe they should be doing appellate-level written advocacy at the refugee appeal division, and I don't believe they should be appearing before the immigration appeal division. That is a court of competent jurisdiction, and it is very much if not identical to a court.

Mr. David Tilson: That's an excellent answer.

Should the government pass legislation or recommend legislation to do what you have just said?

•(1555)

Mr. Raj Sharma: I believe that section 91 can be amended to the extent that it can allow immigration consultants, based on current framework, to do transactional level work within immigration: work permits, other applications for permanent residents, sponsorship applications, and that's it.

What I would propose then is another provision that will allow a different class of immigration consultants to appear before the IRB, and I want to be clear on this. The IRB actually is *maître chez lui*. It can control its own procedures. In fact, some tribunals have banned some consultants from appearing before them because we're not doing our job, the government is not doing its job to protect the public, and ICCRC is not doing its job, so the tribunal sometimes has to say they're not going to hear from this person anymore.

Mr. David Tilson: That's another story.

Mr. Waldman, do you agree with what Mr. Sharma has just recommended?

Mr. Lorne Waldman: Yes, if I understood it correctly. I think that there should be two levels of consultants, ones who are authorized to do processing, and they would need a lower level of education and a lower level of licensing, and then I think the legislation should authorize consultants to appear before the board, but only if they have a higher level of qualification. The way the situation is now, any consultant with a minimal education can appear anywhere, and that's unsatisfactory.

There are some very good consultants who appear at the Immigration and Refugee Board who do work that is as good as many of the lawyers I see, and I would be loath to say that they shouldn't be allowed to do that, but I believe that the educational requirements that are now in place are not sufficient.

I think the focus of any legislative regulatory change should be ensuring that the educational requirements... This is the point I was trying to make. The government has the power to impose on ICCRC minimal requirements so that a person who appears before the Immigration and Refugee Board has the minimal knowledge necessary to competently represent someone. The ICCRC is not doing that, but it has the power to do that. The government can insist that they do that.

Mr. David Tilson: Mr. Waldman, one of the complaints we have from witnesses who have come before us was that consultants charge thousands and thousands of dollars to essentially fill out forms—\$20,000, \$30,000, and up—which just absolutely shocks us. Lawyers, of course, can have their accounts assessed.

Perhaps you can familiarize us as to what can be done, or what is being done, or what should be done with these outrageous fees that some consultants are charging.

Mr. Lorne Waldman: What could be done, for example... The ICCRC should be doing this, but if they are failing to do it, what I'm suggesting to you is that you could put into the regulations, which authorize the ICCRC to be the supervisory body for consultants, requirements that they do their job, or you could actually put into the legislation a provision that allows a person who has been represented by a consultant to tax their bill. It would be the same process that would be applied to taxing the bill of a lawyer. I think that would be a good measure.

Mr. David Tilson: Should we have a system of tariffs?

Mr. Lorne Waldman: Another possibility is to have a system of tariffs, but that's more difficult because we have such a broad disparity in terms of what people charge and the complexity, but there has to be an ability to tax an account. Lawyers are cognizant of that. I've taxed lawyers' accounts and my accounts have been taxed, so I think there should be the same provisions applying to consultants.

The Chair: Thank you, Mr. Waldman and Mr. Tilson.

Ms. Kwan, you have seven minutes, please.

Ms. Jenny Kwan (Vancouver East, NDP): Thank you very much, Mr. Chair.

I thank both witnesses for your presentations. I very much welcome your comments and your positive suggestions on how to address the critical issue.

Mr. Chair, before I go into further questioning in this area, I would first like to move that the committee return to the debate that was adjourned on April 10, 2017, on my motion that 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 the RCMP officials be in attendance for at least one of the meetings; that the study be concluded 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.

I understand it is not a debatable motion, Mr. Chair, and I fully recognize that the committee members have rejected going forward with this, or at least holding a debate on this matter so we can make a determination, but it is imperative that we get on with it, so I am going to once again move that we return to the debate.

• (1600)

The Chair: Thank you, Ms. Kwan.

As you noted, it is a dilatory motion, so there is no debate nor are there amendments. We'll proceed to a vote.

Mr. David Tilson: Let's have a recorded vote, Mr. Chairman.

Ms. Jenny Kwan: I ask for a recorded vote, please.

Mr. David Tilson: I have a point of order, Mr. Chairman.

We're swamped with Liberals over there. There is an awful lot of Liberals. There are too many Liberals voting. I think most of them should leave.

The Chair: No, Mr. Kang is not voting.

The clerk will proceed with the vote.

(Motion negated: nays 5; yeas 4)

The Chair: Ms. Kwan, you still have six minutes and 43 seconds.

Ms. Jenny Kwan: Thank you very much, Mr. Chair. I appreciate it.

I think it's most unfortunate that we can't get on with a debate on the motion that I tabled, a motion that really calls for a study on the critical issue that's before us. If we don't do this, the fearmongering will continue, and it's not good for our country. It is not good for all of us together, in a multicultural society. I implore the government members to think about that, and maybe we can get on with it and do the work that is so very much necessary.

With that, I'll turn my attention back to the study at hand.

As I was saying, I thank both of the witnesses for their comments. I want to follow up with some specific questions.

First, given the situation we have with ICCRC, which frankly on all accounts is not doing its job—most certainly not doing its job properly—the issue has been raised by other witnesses of whether consultants should be self-regulated. I wonder if I could get Mr. Sharma to answer that question. Then I'll turn to Mr. Waldman on it.

Mr. Raj Sharma: I don't know why there is a presumption that self-regulation is or should be the default. In this regard, I'm going to refer to the Clementi report, which studied the regulation of the legal profession in the United Kingdom. That report came out some time ago. It was critical of lawyers regulating lawyers. I guess foxes sometimes shouldn't be guarding henhouses.

In this regard, I think we need a more consumer-centric model. A previous speaker, Mr. Richard Kurland, a lawyer from Vancouver, suggested that regulation can be done by the government. I see no good reason that immigration consultants require independence. There are strong arguments that the bar needs to be independent of the government, the executive. I see almost no justification for immigration consultants' being self-regulated. Indeed, that regulation can probably be done by the government or by using a consumer-centric model. Again, I would probably refer to the Clementi report and adopt its recommendations here.

Ms. Jenny Kwan: Thank you.

Mr. Waldman.

Mr. Lorne Waldman: I hear what Mr. Sharma's saying, and I agree that the regulatory model... This is now the second incarnation of a self-regulatory regime, and both of them have not, I believe, really been effective in regulating consultants. We need to look at other alternatives, but any alternative we look at has to protect to some extent the independence of the consultants. It's true that they're not lawyers, but they are representing people in an adversarial process, at least before the tribunals, so we have to make sure that any other type of regulatory regime protects that independence.

• (1605)

Ms. Jenny Kwan: Thank you very much. You're exactly right; this is the second iteration. To some degree, perhaps self-regulation should be earned. If you can demonstrate that your industry is doing an effective job, then government can consider the self-regulatory model, in which case I would argue that lawyers have done that.

I'll move on to another area: ghost consultants. This is a huge problem. We've heard it over and over again. Should government reject applications done by ghost consultants? Is there a provision or a way whereby we can mitigate the penalty against those applicants, not for the consultants but to provide protection for the applicants?

Mr. Raj Sharma: The government already rejects applications by ghost consultants if that IMM 5476 form has an individual who's not registered with ICCRC or is not a member of a provincial law society. The government won't process that, so that's already there. The reason they're ghost consultants is that their names don't show up anywhere on the forms.

What I would suggest is a more robust reconsideration regime. We have so many cases where applications are simply refused, where someone is prejudiced by ghost consultants or incompetent advice. I think there should be a mechanism to review an application. I don't think the default should be to simply reject an application. There should be a more thorough, robust reconsideration or review mechanism for certain applications.

Ms. Jenny Kwan: Thank you.

Let me bring it to the next level then. Along those lines, should government create a blacklist so that bad actors in that industry, people who have not delivered their service and so on, for those applications—again not for the person who's making the application for the application to be rejected—that consultant is not able to practice?

Mr. Raj Sharma: We created a blacklist for employers that weren't complying with the labour market impact assessment or

LMO regime, and that blacklist was a blank list for three or four years, so creating a list is only as effective as implementing it and enforcing it.

Ms. Jenny Kwan: Yes. I think that brings us to the question of enforcement, which you also highlighted in your presentation, Mr. Sharma, and the lack of enforcement, if you will, with respect to that.

I wonder if I can turn to Mr. Waldman for a minute and ask him to comment on those points that I've just made.

Mr. Lorne Waldman: In terms of the ghost consultants, I think it's very difficult to deal with them because we have no way of establishing that they're doing their job or what they're doing. I agree with Mr. Sharma when he said education of the community is crucial. I think more robust enforcement through CBSA when ghost consultants are discovered is as well. I think on that point, that's what we can do.

Ms. Jenny Kwan: Advertising outside of the country—

The Chair: Thank you.

You have two seconds. I don't think we'll get a question in.

Mr. Tabbara, you have seven minutes please.

Mr. Marwan Tabbara (Kitchener South—Hespeler, Lib.): Thank you, Mr. Chair. I'll be splitting my time with my colleague, Mr. Sarai.

My question is for both of you. You mentioned, Mr. Sharma, in your opening statements that anyone over 18 can pass an exam. The exam consists of six months and 320 hours and then they can represent a lot of their clients. My question to both of you is in regard to the U.K. system, how there's a tiered certification that has seven levels of advanced services that immigration consultants can give.

Mr. Waldman, you mentioned also a minimum standard of education. Perhaps you can elaborate on maybe how we can learn from the U.K. system, how we can require a certain level of education and certification for consultants to have in order to perform their services properly and provide better services to their clients.

•(1610)

Mr. Lorne Waldman: As I've said, I think that ICCRC should be doing it, but if they're not, the government could put into the regulations minimum standards. They could say that in order to be a member of the ICCRC and to provide these services, the consultant must have this education in these areas and this number of minimum hours and pass the exam. If the consultant wishes to do more complex work, like an interview, in addition he must study these following subjects and pass a second qualifying exam. If a consultant wishes to represent someone at the refugee board, a refugee claim, then he has to have...because in each one of these areas there's different information and different skills required.

What's happening now is that you pass the minimum threshold and you can do everything, and that's not acceptable. I think what we need to do is to match the service with the minimum educational requirements, and we can do that by insisting in the regulations that certain minimal thresholds are met before a person gets a licence.

Mr. Raj Sharma: I'm not saying that the current framework is akin to walking and chewing gum at the same time. It probably allows a consultant to do transactional-level work, application-level work. To get to that next tier, what we really need when we're talking about 320 hours... For example, I did an entire course on legal research when I went to law school. To get to that next level, we would need substantive legal courses in legal research, tribunal process and procedure, Canadian criminal law, administrative principles, oral and written advocacy, and probably conflicts of law. That's just off the top of my head, but it has to be well beyond six months.

If the paralegals are at two years, it would probably take about two years of substantive legal education to get to the point of tribunal representation or significant, direct, related experience.

Mr. Marwan Tabbara: I'll pass on my remaining time.

Mr. Randeep Sarai (Surrey Centre, Lib.): Thank you.

In the last few weeks we've been watching several witnesses, and I've identified two problems. We have one problem of competency, which you've both spoken about today. That's more to do with IRB hearings, tribunals, appeal divisions. For that I think an increased level of education, increased training, is probably the answer.

The second problem we have is fraudulent dealings, charging \$10,000, \$20,000, \$30,000 for LMIA's to say you're going to get a job, to bring somebody in. Those types of things are the ones that concern me the absolute most. The problem we have is ICCRC, even in its second formation as it is now—and we have had them here—doesn't seem to think there's a problem. It doesn't seem to think that any additional rules or regulations are needed. The model of the self-regulatory body does not seem to work for them.

What are your recommendations to prevent fraudulent practices, i. e., buying, selling LMIA's, etc., in this area, and how do you see a model that would effectively work similar to the law society for lawyers? With the law society, you get a complaint and it brings fear into a lawyer's mind, or at least a high level of concern. Therefore, the fraudulent practice levels among lawyers is very low. What we're seeing here and heard from the witnesses we've seen here is that it's

very high in ICCRC. How do you two recommend they bridge that gap?

I'll start with Mr. Sharma.

Mr. Raj Sharma: I think you have a hold on a lawyer when there's a disciplinary proceeding. To be a lawyer is a significant part of your identity. If the law society intervenes, there's that fear, that anxiety, and the public shaming or the risk of losing that licence, and that's significant. Nobody grows up dreaming to become an immigration consultant. The loss of that calling or that profession, I think, is less of a hold for positive behaviour.

In terms of the ICCRC regulations, I'll give you an example. I had someone who hired a licensed immigration consultant. The application for her sister was in Hong Kong, and the application was there for years. The consultant said it was delayed because the consulate in Hong Kong was asking for updated IELTS results.

Ultimately it was rejected, and then she came to me. In fact, the client had done an access to information request, and she obtained information. The notes seemed to suggest this application was denied six years ago by Hong Kong. I emailed Hong Kong and told them here was this email, here was the ATIP response, could they tell me whether their office sent this email requesting further language proficiency? Hong Kong responded within three days and told me they had never sent that email. That file was closed six years ago.

I took that and sent it to the ICCRC. I got a call from an investigator, and the investigator was incredibly speculative. He told me I couldn't prove the consultant did this. It could be someone on his staff. I replied of course I couldn't prove it, but you would have to take this to the next level, so this was my impression of the ICCRC.

As a final point, LMIA's are going to be \$15,000 or \$20,000, as long as you can get permanent residency out of them. Take the LMIA's out of PR.

•(1615)

The Chair: Thank you, Mr. Sharma. Perhaps we could continue that later.

Mr. Saroya, you have five minutes, please.

Mr. Bob Saroya (Markham—Unionville, CPC): Thank you, Mr. Chair, and thank you both, Raj and Lorne. Two fine lawyers are here, but we are attacking crooked consultants. I agree with both of you, in regard to what you have said so far.

The real issue is that the previous Conservative government tried to fix the issue, but they couldn't finish it and the problem still exists. We hear it every single day. Most of the MPs have at least two staff members looking for answers on a daily basis.

I think the problem is that we have consultants. They have the subconsultants. Then they have the ghost consultants in each city back in India, Pakistan, Hong Kong, and China. I even heard from somebody who said that consultant number so-and-so is looking to hire some people back home who can find some cases. Then he will go back two to three times a year, when he can fix the fix, right?

The crookedness has gone so far that I don't think ICCRC have the courage to fix it. It hasn't worked and it won't work, in my personal opinion. Is there any other way that these consultants could work under the lawyers? If there is a complaint against a lawyer, as Mr. Sharma said, they are ashamed, they are scared, and they're afraid to lose their living and their licences, yet nothing happens here.

I asked ICCRC a question a few months back. They said there were 300 complaints in one year. It's hard to buy this sort of argument from ICCRC, who claim that there were only 300 complaints in the entire year, when God knows how many complaints we get on a daily basis.

What can it be done? How can we fix it? Either they can work with the lawyers or there should be an absolutely separate body and the government should operate it. It should not be self-regulated.

Mr. Lorne Waldman: Perhaps I could provide an answer.

I think there are only two options really. I can sense a huge dissatisfaction about ICCRC and its ineffectiveness in terms of properly policing the consultant profession.

The first option is to change the model and to use a model that is not self-regulating. I think the second option would be to leave the model, but to include in the regulations, enforcement powers that CIC or CBSA could engage in independently of the ICCRC. What I'm suggesting is that you could put into the regulations the power to audit, the power to discipline, the power to suspend, and allow CIC to do that in circumstances where ICCRC does not.

That's the simpler solution than changing the model completely and going to some other form of regulatory model that alleviates some of the concerns. Allowing bills to be taxed through the regular legal process that's available to lawyers is something that needs to be considered, because as you've said, there is a huge abuse in that area.

• (1620)

Mr. Raj Sharma: You may wish to consider amending section 91. Basically, we're here because of *Mangat v. the Law Society of British Columbia* and that turned out to be a paramountcy issue. That's why doing federal legal work, like immigration, is allowed in the first place.

If you eliminate that, but allow the consultants to perhaps register with their provincial law societies, then the provincial law societies might be able to take jurisdiction over them, just like the Law Society of Upper Canada is taking jurisdiction over paralegals. That might be the other option.

I see where you're going, sir, and the option might be to force consultants to go through the provincial law societies.

Mr. Bob Saroya: How expensive would the system be if we put all these consultants under CIC, Mr. Waldman? Is it very expensive to set this thing up or is it not too bad?

Mr. Lorne Waldman: I think there would be some upfront expense for sure and then there would be an ongoing expense of administering the consultants. I would think it would run into the millions of dollars. It wouldn't be just a few hundred thousand dollars to run it because there is a large number of consultants that would have to be supervised and you would have to set up a structure to supervise them.

The Chair: Thank you.

Ms. Dzerowicz, you have five minutes, please.

Ms. Julie Dzerowicz (Davenport, Lib.): Thank you. I didn't expect to have time, but I'm delighted that I do.

I'm just going to continue with some of the questioning. I only have five minutes, so if you could, please respond as quickly as possible.

I'm just going to go back to the governance, and maybe start where you left off, Mr. Sharma. You suggested maybe we could have immigration consultants register with provincial law societies. If we were to do that, what would happen to the educational requirements, and what would happen with ICCRC?

Mr. Raj Sharma: ICCRC would be gone.

Ms. Julie Dzerowicz: It would be gone, so that would be an alternative system, and then educational requirements would...?

Mr. Raj Sharma: They would be set by the provincial law societies.

Ms. Julie Dzerowicz: What about the conflict? A lot of lawyers would love to see only them doing the immigration consulting, or would that just shake out...?

Mr. Raj Sharma: I'm sure certain lawyers didn't want paralegals to be providing legal work in Ontario either. They'll have to be cognizant that, again, lawyers don't have a monopoly on the delivery of all legal work in Canada.

Ms. Julie Dzerowicz: Okay.

Do you have anything to add, Mr. Waldman?

Mr. Lorne Waldman: I think it's a good idea. I think the government looked at this before, when the ICCRC was created. I recall some discussions along those lines. The problem is that there are a lot of provincial law societies that don't seem to be interested in regulating paralegals. You would have to see if they would be willing to take that on before you created that model.

Ms. Julie Dzerowicz: Would there be an access-to-justice issue? That would be one of my considerations if it ever went to something like registering with provincial law societies. You've stipulated this very clearly, and other witnesses have done this also. There are really two parts to this issue of immigration consultants. Just understanding what forms to fill out, and the basic admin is one part. The second part is dealing with complex cases or defending before tribunals.

Do you think access to justice would be impacted, as you suggested, in terms of provincial law societies?

Mr. Raj Sharma: I don't know. The CBA thinks that getting rid of consultants altogether will have no impact on access to justice. I think it will. I think it can. I think that lawyers.... There's access to justice, and the legal system is overburdened as it is right now.

Ms. Julie Dzerowicz: How could we address that?

Mr. Raj Sharma: By continuing to allow consultants to do immigration work, and not cutting them out of the equation.

Ms. Julie Dzerowicz: That means we would have them registered with the provincial societies.

In terms of section 91, one of the other things I came across is that some newcomer agencies or NGOs would say that they would love to be able to assist, just with basic forms as well, in terms of the administration. Section 91 is a little bit unclear around that. Because of the "for consideration," they become a little bit uncomfortable as to whether or not they're allowed to actually provide some advice.

I personally would love to allow some newcomer agencies in my community. A lot of them speak the same languages. I have the largest Portuguese community in the country. It just helps people understand, "These are the forms I'm supposed to be filling out. This is what I need to do." A lot of it is just basic stuff.

Do you see a problem with us amending it to make it clear, and allowing newcomer agencies or NGOs to do some of that basic stuff?

Mr. Raj Sharma: I'm not sure if that's an issue. I've been on the board of Immigrant Services Calgary. Settlement agencies do provide some sort of transactional or form-filling.... That service is also provided by church pastors and church groups. I haven't seen that as an issue.

Perhaps Mr. Waldman has greater insight on this.

• (1625)

Mr. Lorne Waldman: I've seen organizations express concerns to me about that, so I think it might be an issue. I think it would be good to clarify, but I think you have to be careful as to how you define the organizations that you're going to authorize to assist people with filling out forms. I think it can be done. It's just going to take careful legal crafting.

Ms. Julie Dzerowicz: One of the other things we've heard is that there's federal-provincial overlap around the regulatory regimes, around some of the regulations.

Have you guys heard about this, and what would you recommend in this area?

Mr. Raj Sharma: Are you talking about section 91, or the provincial law societies versus the ability to practise immigration law?

Ms. Julie Dzerowicz: I think it's more the immigration. I don't know exactly, to be honest. There just seem to be some interjurisdictional issues.

Mr. Raj Sharma: There are provincial nominee programs—

Ms. Julie Dzerowicz: Yes, the PNP.

Mr. Raj Sharma: —and they have their own blacklists, which they actually enforce.

For example, the Saskatchewan immigrant nominee program has done that. The provincial nominee programs seem to be far more responsive to this issue.

Ms. Julie Dzerowicz: Okay, but there is overlap at this moment so you think that we should try to eliminate that.

Mr. Raj Sharma: No. I don't think so.

The Chair: Thank you.

I would like to thank the witnesses for their insights before the committee today. We will now suspend for a couple of minutes to allow the next panel to assemble.

• (1625)

(Pause)

• (1630)

The Chair: The committee will now resume.

This afternoon on our second panel, we have Ms. Gabrielle Frédette Fortin, a regulated Canadian immigration consultant; and Mr. Robert Kewley, a retired Royal Canadian Mounted Police officer.

Welcome. The floor is yours, Ms. Fortin, for seven minutes.

[*Translation*]

Ms. Gabrielle Frédette Fortin (Regulated Canadian Immigration Consultant, As an Individual): Hello, Mr. Chair and honourable committee members.

My name is Gabrielle Frédette Fortin. I'm here today as an individual.

I'm one of the youngest regulated Canadian immigration consultants, or RCICs, in the profession. I believe I can speak to you today as a representative of this new generation of RCICs, who are looking to the future, focusing on the objectives, and learning what was done in the past, but without dwelling on it.

When I chose this profession, I quickly understood that I would have to deal with a rather negative label. I tolerate this label, but sometimes I defend my profession. Some criticisms are completely justified, while others seriously and unnecessarily damage the reputation of my profession and undermine the integrity of the immigration system.

People need to stop blaming us in this fight against unauthorized representatives, or those you call ghost consultants. The Immigration Consultants of Canada Regulatory Council, or ICCRC, has no power under the legislation to investigate or discipline these individuals. I also recommend that we immediately stop using the term “ghost consultant”, because it ridicules my profession and thereby undermines the integrity of our immigration system. We could just as easily use the term “ghost lawyer”, which designates unauthorized representatives who practice Canadian law illegally.

With all due respect, I'm asking the committee to pay particular attention to the recommendations made by my colleagues and the credible witnesses on the limits of the profession and on the regulatory body, as well as on how we can better protect the public together.

I'll focus on the following recommendation. The ICCRC and the regulatory body should develop a close relationship and work together on an ongoing basis, since that's how we'll manage to better protect the public. The committee's other priorities should be clearing up the ambiguity and preventing individuals from providing immigration advice without authorization under the Immigration and Refugee Protection Act. The government can pressure settlement agencies, international student recruiters, adoption agencies and human resources professionals to comply with the act. A regulatory body will help us protect newcomers from this scourge of unauthorized representatives.

First, let me tell you about the international student advisors case. It's a good example of the success resulting from this joint work and of how we can apply the rules to the groups mentioned previously.

At the time, Citizenship and Immigration Canada, or CIC—now IRCC—determined that international students constituted a group of vulnerable consumers. It was crucial that the students receive advice from qualified Canadian immigration professionals. CIC informed educational institutions about the issue and made it known that international student advisors shouldn't provide immigration advice to international students. The ICCRC and CIC worked together to reach a consensus and create a new professional designation, the regulated international student immigration advisor, or RISIA. Since the government funds these organizations, it's logical that they comply with the immigration legislation.

Settlement agencies help newcomers settle in Canada and integrate into their community. The agencies are largely funded by the government, most of the time directly by IRCC.

Some settlement officers are very competent and qualified. However, most of them don't have any immigration training. They work with vulnerable consumers, such as refugees and illegal immigrants. Since these officers don't have the training required to properly understand immigration issues and legislation, they can easily provide very harmful advice. This can lead to misrepresentation, the refusal of an application or even deportation.

IRCC could make a major difference by funding the ICCRC. The ICCRC could therefore create a professional designation that would provide a framework for the practice of these workers.

There's also the issue of international student recruiters. In 2012, the ICCRC contacted schools to warn them that international student

recruiters shouldn't prepare the students' immigration applications. It's quite common for recruiters to prepare the immigration application and for the student to submit it. The goal is to hide illegal activities. Since they're paid by an educational institution to recruit students, it constitutes an indirect compensation. This contravenes section 91 of the Immigration and Refugee Protection Act.

• (1635)

By ensuring that student recruiters operate under a regulatory body, we would help better protect these students, who are looking for an opportunity to study in Canada.

Human resources professionals often end up working on labour market impact assessments, or LMIA's, or on immigration cases. They lack training, and they're unable to establish the essential ties the way a qualified professional would establish them. These professionals can place foreign workers in very precarious situations. Employers such as Deloitte and the Cirque du Soleil work with immigration consultants, a practice that should be recognized and bolstered by the government.

We must give the regulated immigration consultant profession the respect it deserves. Immigration is an integral part of Canada's social fabric. I served my country as a military member, and I'll serve it again as a regulated Canadian immigration consultant. Each day, I help build Canada's future by promoting the country, protecting the public, and helping to ensure the integrity of the system.

Thank you.

The Chair: Thank you, Ms. Fortin.

[English]

Mr. Kewley, please, you have seven minutes.

Mr. Robert Kewley (Retired Royal Canadian Mounted Police, As an Individual): Mr. Chair, members of the committee, thank you for the opportunity to appear before you.

My name is Robert Kewley. I spent 26 years serving our country in the RCMP, including about 10 years investigating immigration fraud and other related cases. I was the director of complaints and discipline for ICCRC, in charge of the investigations and intake team from 2011 to 2015. In 2015, I took over the investigational team.

It is so easy for people to get off track in their thinking about unregulated or ghost consultants. Unfortunately, in my opinion, regulated consultants get tarnished in the public eye and with authorities, because all anyone hears is the word “consultant”. Before 2004, when the first regulator was set up, these consultants were on every street corner. There was no such thing as a ghost consultant. Once the Canadian Society of Immigration Consultants was formed, these consultants had to go underground.

In 2011 the government changed IRPA so that unless a consultant was a member of the new regulator, or a lawyer, it was against the law to provide services, advise individuals, or process immigration cases for a fee. With the appointment of the new regulator and this change to IRPA, we took the next step in the fight against ghost consultants. The new regulator became for consumers a contact point for complaints against ghost consultants. The ICCRC accepted the complaints and forwarded them to CBSA. The truth is that by having a regulator and this change to IRPA, we began to address the problem of ghost consultants.

We know that some ghost consultants saw the light and went the extra mile to finally become regulated member consultants. I think the increase in ICCRC membership confirms this. Having a regulator is crucial. On the issue of how the complaints and discipline process works at ICCRC, I believe you have already received this information, but I can go into specific details during questions. I can say now that the ICCRC complaints and discipline department does an excellent job overall regarding complaints about members. They do what they can about ghost consultants, but the problem is very clear. We have not gone far enough to have the impact that we all want on ghost consultants.

In 2011 CBSA was given the task of taking over ghost consultants and the problems on their own. CBSA is a professional, well-organized, dedicated group of individuals. I take my hat off to them in every regard. When I was in the RCMP dealing with immigration cases, we would wait until we had at least 10 complaints against an individual or consultant, and then the matter was reviewed. It didn't guarantee that the case would go any further than that. A decision had to be made as to whether prosecution in the case could be successful. The main focus was to deal with the major cases that would have had an impact in terms of deterrence and numbers of victims.

As an investigator, I've had the honour of co-operating with CBSA for a number of years. Communication is crucial, but credibility is also very important. There are areas where improvements can be made. ICCRC having ex-RCMP officers as investigators builds the credibility part. For the communication part, I believe more can be done, including regular cross-country meetings with the ICCRC investigating team and the local CBSA offices. We have found that our shared knowledge and experiences working as investigators with proven track records can help significantly. However, CBSA cannot be seen as a complete resolution here, as they must focus on high-level cases.

In my opinion, we should think about the next step toward a complete solution in battling ghost consultants. If, for example, ICCRC were given powers via statute to deal with these ghost consultants, then these investigators would bring to the table the evidence required to bring these villains to justice and finally make a serious impact in the battle to protect consumers.

•(1640)

There are solutions, but they require unique authority available under statute. I believe we also need investigators with credibility and experience who are respected by CBSA, to ensure co-operation in the fight to deal with the ghost consultants.

I believe that the average annual number of ghost consultant complaints would require two to three investigators dedicated to these complaints. From my experience, it involves a lot of work—interviews, preparation of briefs—so that we meet the standards, so that these cases can move forward through the judicial system, which is crucial. I think that tools such as cease and desist letters are a must, and prosecution of all offenders, not just the worst ones, is essential to get the job done.

I want to thank you for taking the time to listen to me today. Thank you very much.

•(1645)

The Chair: Thank you, Mr. Kewley.

Mr. Sarai, you have seven minutes, please.

Mr. Randeep Sarai: Thank you, both.

To reiterate what this committee has been seeing, I believe that most of the ICCRC members who have come here are not the people at issue. What we do see, though, from the witnesses we've heard, is that the complaint process has not been very effective. I don't think anybody has come here with a negative thought process about ICCRC members.

The witness before you stated that he, as a lawyer, told somebody at ICCRC in the complaints division that somebody six years ago had been told that his or her file had been denied. They kept charging the person and telling them that it was still happening and not checking. At the end, the investigator just said, "Oh, well, it could have been his or her staff, so we can't say." Try telling that to a law society. If a lawyer said, "Oh, I'm sorry, it was my staff", they would not stop at that. The buck doesn't stop with the staff. It stops at the lawyer.

We don't see any enforcement.

I'll start with you, Mr. Kewley. How do you see ICCRC getting out of this glut and showing effective enforcement, effective discipline to its existing members, in coming up with a positive solution on how to deal with ghost consultants?

Mr. Robert Kewley: With regard to ghost consultants before 2004, before there was any regulator, and even up to today, the number of ghost consultants out there has increased and nothing has been impacted. You need the tools to work with. We need seasoned investigators, people who know how to do an investigation. You can't just put anybody on the street to deal with these people. We have to get prosecution. We have to get the statutes out there so that it gives us the powers to take them in.

If you're looking at the witnesses, the victims, and God knows there are many of them, most of them are back in their own countries. You can't get them here. With the ones who aren't and are other status, they've gone underground. I spent 40 years in police work, 26 years in the RCMP, of which I spent 15 years in major crime—one homicide after another—and I'm telling you that you have to get out there and work. You have to collect the evidence. There's evidence out there.

Mr. Randeep Sarai: But ICCRC is in denial. They're not even stating that anything needs to be overhauled. They have very few recommendations, if any. Their status quo is that things are going well and they don't need to change anything.

Mr. Robert Kewley: That's one of the reasons I'm here today. I want to make it clear. There's a misconception out here on complaints about consultants.

There are definitely two sets of complaints. There are complaints against the regulated immigration consultants, and there are complaints against the ghost consultants. What's happening here is that it's getting mixed together, and the ICCRC, the regulator and so on, is taking a bad hit for it. They've always tried to work with CBSA, sending on these ghost consultant complaints.

As a matter of fact, I'm an investigator who was involved from day one. We were collecting evidence. We were going out to storefronts and everything where these ghost consultants were. We were talking pictures. We were confirming that there was an address. If there was a call centre there, we got in the position to record it. We could hear things happening. We sent this on to CBSA.

I'm not criticizing CBSA here. They're tremendous. They do a lot of work. What I'm saying is that there's a lot of effort put out there, but you have to focus. There are more problems with ghost consultants than with regulated consultant complaints. They are dealt with, and things are investigated—

Mr. Randeep Sarai: Maybe I can ask Ms. Fortin this.

The other issue we have is vulnerable clients. When clients are duped or led on a path that is either wrong or illegal, when they've come into this country and are put in a shoddy hotel or bunked with 10 or 15 other people and not given the job they were told about, when they are told to return money or pay more otherwise they will be returned, they're abused, obviously, and they're fearful of coming forward to place a complaint against their consultant—let's just say in this case an ICCRC consultant.

Can you recommend a mechanism that would allow individuals to come forward without fear and without jeopardizing their immigration application or status?

• (1650)

[Translation]

Ms. Gabrielle Frédette Fortin: The example here refers to an immigration consultant. However, I think it's very important to remember that the ICCRC has no power under the legislation to investigate or discipline unauthorized representatives. We work with the authorities. Complaint and discipline mechanisms can then be implemented. You asked witnesses whether they filed a complaint, and many of them answered that they did not, but that they heard about someone who did.

The mechanisms in place must be used. That's what I want to say.

[English]

Mr. Randeep Sarai: Do you know of ICCRC members being expelled or suspended from their memberships, and if so, do you have any idea how many?

[Translation]

Ms. Gabrielle Frédette Fortin: I have no idea. However, I know that people can be suspended or that their licences can be revoked. The process is in place, and all these options are available.

[English]

Mr. Randeep Sarai: Mr. Kewley, do you know the number of people who have been suspended or expelled from the ICCRC?

Mr. Robert Kewley: Since 2015 to date, my sole responsibility to ICCRC is investigations. We complete an investigation, and we send the investigational report on to the complaints and discipline section, which then, in turn, sends it to the discipline section, which then makes that.... I know that on the website on a regular basis there is noted—

Mr. Randeep Sarai: Do you know, sir?

I only have a few seconds left. Do you know how many have been expelled or how many have been suspended?

Mr. Robert Kewley: You know, it's like how many people were in courts when I was with the police, how many people were charged with theft.

The Chair: Thank you.

Mr. Robert Kewley: Well, you know they were, but—

The Chair: Thank you, Mr. Kewley.

You can always follow up with those numbers if you're able to access them.

Mr. Van Kesteren, you have five minutes, please.

Mr. Dave Van Kesteren (Chatham-Kent—Leamington, CPC): Thank you, Mr. Chair.

Thank you for the opportunity to be here. Do I have five minutes or seven minutes?

The Chair: You have seven minutes.

Mr. Dave Van Kesteren: I'm not a sitting member of this committee, but in taking just a quick glance around this room, I think maybe Mr. Tilson is the only one who isn't either from an immigrant family or an immigrant himself. I think that speaks to much of what our society is.

I say that and, Mr. Kewley, I think maybe I'll go to you. Isn't part of this problem the huge demand that we've seen on the immigration system? When I was a kid and my parents were immigrants, I don't think I remember hearing of refugees. The immigration process was such that my parents knew well in advance, as I'm sure yours did, Borys, that they were coming to this country and that was all—

The Chair: I just have a point of clarification, since it was mentioned. They were displaced persons, which today would be considered refugees.

Mr. Dave Van Kesteren: Okay. That's a very good point. This just proves my point. We didn't even call them refugees at that time.

The point is that today we have a huge flux of refugees, and we also have a huge group of individuals who enter the country through immigration, through another process. They come here, and they make application.

Isn't that really the biggest part of this problem? We talk about the shortfalls that we have in accommodating and helping these people, but isn't there just such a glut of individuals that need services that we've suddenly had this problem put upon us? Is that a fair analysis?

Mr. Robert Kewley: It is with respect to the number of immigrants who come here and who run into problems. If the number increases, that's going to spill over, but I still maintain that there are people out there. Criminals make a full-time job of being criminals. They're good at it. They know what's happening in the systems, and they try to beat the systems.

These ghost consultants out there have got it down to a science.

Mr. Dave Van Kesteren: Let me interject. I would suggest that most people who are going through the system, through the normal channels, probably wouldn't engage with a ghost consultant. Wouldn't they be more apt to—

• (1655)

Mr. Robert Kewley: They don't know. We're not just limited to Canada for these unauthorized representatives or ghost consultants. We have them in all countries around the world. They have offices and do seminars. They do lots of things. There's a big problem over there.

How does the judicial system in Canada work to go over there? It doesn't.

Mr. Dave Van Kesteren: That's a good point and, as I said, I have a default here. I'm not a sitting member, so I've probably missed much of the discussion.

I keep pictures of my constituents or those living in my constituency who are looking to gain entry. I do that to remind myself that I need to advocate for these people. Oftentimes, in all of these cases, they didn't go through the normal channels, but having spoken to them, I am impressed that they need my help.

I have found that many of them who have come to me have made their complaints. I'm going to shift over to you, Madame Fortin. I would say most in my riding have complaints with their lawyers. They have found that their services have been poor or haven't been adequate. Subsequently, they were given a deportation notice. I wonder if you want to respond to that. Again, I'm in southwestern Ontario. We have a lot of farm workers as well as refugees. There were a number from the Middle East who were seeking refugee status.

I'm hearing a lot of complaints about your profession, the consultants, but I'm going to give you a chance to have a backlash. Do you experience the same things that... Many people are having the same problems with lawyers, and the only problem I see is possibly that the consultants don't have the ability or the know-how on how to keep working the system, how to keep going back to the courts.

[Translation]

Ms. Gabrielle Frédette Fortin: I've heard from many witnesses to date. When the witnesses are lawyers, they blame the consultants, and when the witnesses are consultants, they blame the lawyers. I don't like this practice.

Here's my personal experience. I have a bachelor's degree in public affairs and international relations. At the end of the three-year degree, I wanted to become an immigration consultant. I didn't necessarily want to become a consultant. I had to choose between completing 500 hours of courses directly related to immigration over a year, and taking courses in private law over a year or a year and a half. However, the curriculum to become a lawyer didn't include any immigration courses.

[English]

Mr. Dave Van Kesteren: Do you handle a lot of refugee cases?

[Translation]

Ms. Gabrielle Frédette Fortin: No, it's not my specialty.

[English]

Mr. Dave Van Kesteren: Is it possible that some of the allegations are coming from refugees? Again, my experience has been that those who are refugees—and some are legitimate, and some jump the queue—make this their home. Their children are born here, so we work hard to get them.... They were successful, but only because they had lawyers who were able to keep going back to the system.

Is that where we're getting a bit of a crossover with immigration and refugees?

[Translation]

Ms. Gabrielle Frédette Fortin: I think the response doesn't necessarily coincide with the refugee crises. I think these complaints have always been made. I'm trying to explain who these complaints are coming from. The complaints are coming from insiders.

[English]

Mr. Dave Van Kesteren: Thank you.

The Chair: Ms. Kwan, you have seven minutes, please.

Ms. Jenny Kwan: Thank you very much, Mr. Chair.

I want to get this on the public record to be clear in terms of the “glut”, as my good colleague sitting next to me here might have mentioned, around the immigrant and refugee community. To be clear, the refugee community number for the immigration levels planned for this year is at about 40,000. That's within the context of 300,000 overall, so that is about 13%. This is the “glut”, if you're talking about that. Within the context of the international community, there are some 65 million refugees out there. Within the context of what Canada is doing in terms of our part, that is 0.00061538%, or less than 1%. This is just be clear and to get this on the record.

To turn to the issue around the situation we're faced with, whether you're a regulated consultant or an unregulated consultant, we are hearing from witnesses that there is a whole host of problems. The interest I'm wanting to focus in on is about the people who use these consultants and how they are penalized. Often for these people who make these applications, unbeknownst to them, there might be unregulated consultants out there, or even regulated ones who are not doing a very good job.

My first question was touched on in the previous presentation with the other witnesses. For the so-called ghost consultants, as it stands right now, the application is such that you don't make clear who your representative is. If the information with respect to the representative is wrong, it's the applicant who bears the brunt.

The Metro Toronto Chinese and Southeast Asian Legal Clinic made a recommendation that the responsibility for the information about the representative should lie with the representative, who should then sign a declaration as to its accuracy. If the representative is not an authorized representative, the application should not, on that account, be considered incomplete. Instead, the applicant should be informed that the government will not accept that person as their representative, but the application will still be processed and that any appropriate disciplinary measures should be pursued against the representative without penalizing the applicant.

On this issue, I'd like to ask both witnesses if they agree with this recommendation.

• (1700)

Mr. Robert Kewley: I think not. I think that probably part of it is resolved as far as regulated consultants go, because you have a "use of a representative" form that's submitted with the application or process, and it clearly states who the consultant involved is. It's easy to determine at that stage.

I think there's enough information out there in public media and social media such that the ICCRC is well known. I think that in these law areas, these church or different groups that help are well aware of it. There's a lot of information out there, and I think that can determine who the consultant is. If they are a ghost consultant and they submit an application to Immigration Canada, then it should be the responsibility.... How do we know everybody who submits an application? There should be some responsibility—

Ms. Jenny Kwan: I'm sorry, Mr. Kewley. I'm interrupting you for a minute because you're not answering my question.

Maybe I'll turn to Ms. Fortin.

[Translation]

Ms. Gabrielle Frédette Fortin: I've thought about this issue.

Regulating settlement agencies and the immigration work of all the people I mentioned earlier, even though they contravene section 91, and forcing all applicants to be represented would result in the representative's name and number being included on each immigration application in Canada. This would make a number of options available, including a representative who provides free services in settlement agencies, a consultant who provides a cheaper service than a lawyer, and a lawyer who provides a service for people with more resources. Everyone should be represented, and a number should be included on each application.

[English]

Ms. Jenny Kwan: Thank you very much.

Let me ask this question. The previous two witnesses we heard from suggested that there should be a graduated licensing system, that is to say, people who practise in this arena ought to have a certain level of competency before they are able to do that work. Would you agree with that suggestion?

[Translation]

Ms. Gabrielle Frédette Fortin: No, I disagree.

A lawyer who has just finished an internship won't represent a client at the Supreme Court. It's the same thing for me. I don't have much experience in the field, so I won't represent a client before the Immigration and Refugee Board of Canada. Lawyers don't have levels of practice, and I don't think we should have them. We should trust our good judgment. We also have a code of ethics to follow.

• (1705)

[English]

Ms. Jenny Kwan: I wish everybody would do that but so far, not so good.

Would you argue that 320 hours of online training, six months, is sufficient then?

[Translation]

Ms. Gabrielle Frédette Fortin: I didn't take that training. I completed 500 hours of training after obtaining my bachelor's degree in international relations.

[English]

Ms. Jenny Kwan: Okay, but should there be a minimum requirement then?

[Translation]

Ms. Gabrielle Frédette Fortin: Yes.

[English]

Ms. Jenny Kwan: What do you think that minimum requirement should be?

[Translation]

Ms. Gabrielle Frédette Fortin: I think IRCC already has plans to increase the number of hours of immigration consultant training. Currently, the training takes 500 hours. Since I took other legal training, I think I have the skills needed to do my job.

[English]

Ms. Jenny Kwan: The presenter before us indicated that was 320 hours of online training. But in any event, I guess it would be good to do some work around finding the facts around the case of competency and training, and then we can go from there.

Thanks very much, Mr. Chair.

The Chair: Thank you.

Ms. Zahid, you have seven minutes.

Mrs. Salma Zahid (Scarborough Centre, Lib.): Thank you, Chair.

Thanks to both the witnesses for coming today.

One of the biggest concerns I have heard all throughout this study is about the unregulated ghost consultants working here in Canada, and both of you have also raised this issue. They don't fall under the purview of the ICCRC. We heard earlier in our study, when the CBSA representatives were here, that they only have the resources to go after the most egregious offenders, so we have this wide open door for those ghost consultants.

It seems to me that there are few options on the table, having heard from all the witnesses on this study. I would like to get thoughts from both of you on that. Should we give the ICCRC more authority to allow them to go after non-registered consultants, given what we have heard about how they are functioning? I'm skeptical of that, but can it be reformed and improved?

The second thing is whether we replace this self-regulation model with a government regulator?

The third thing is that the Canadian Bar Association recommended restricting the field only to immigration lawyers registered with the law society. What do you think of these options and do you have any other solutions?

Perhaps I can start with Mr. Kewley and then go to Ms. Fortin about all these questions.

Mr. Robert Kewley: I definitely think that giving the tools, for example, some powers through statutes or other means so the investigators can go out and do a job, will make a big difference. I believe from my experience, and I'm an investigator at ICCRC, we do a tremendous job. I think that we are covering it with respect to regulated members. We're doing very well. I think that based on that we should keep the regulator, should expand on it, and give more powers to go.... I don't think there would be an abuse of powers if you get the right people. If, for example, you have trained ex-RCMP or police officers in there, who have spent their whole lives in investigations and know how to do them, then certainly going after ghost consultants.... It's not like a murder case. It's not the most difficult thing to do, but you need the authority to do it.

Mrs. Salma Zahid: Are you recommending that we give more responsibility for the unregistered, also, to the ICCRC?

Mr. Robert Kewley: Definitely. I think the problem is that we see all the solving and good work and showing of results on regulated consultants' complaints and so on, yet back before there was a regulator, and to today, there's such a backlog of these ghost consultants that we'll never.... What happened to the people back in 2001 who made complaints and never heard from anybody?

Mrs. Salma Zahid: You think this model of self-regulation is fine and we should give more power to the....?

Mr. Robert Kewley: I think that you have to understand it's a unique situation when you're talking about immigration, and I think it's a unique situation when you're talking about how they deal with clients and the different processes.

Mrs. Salma Zahid: I'd like to go to Ms. Fortin and get her opinion, if I can.

Ms. Fortin, what model do you think...?

[Translation]

Ms. Gabrielle Frédette Fortin: My opinion is about the same. We need to choose a model, a legal status, that would help the ICCRC support the fight against unauthorized representatives. We need to give more power to regulatory bodies. We need to stop using the term "ghost consultant".

In my presentation, I showed that, in many countries, ghost consultants aren't unknown individuals. The situation also exists here, in Canada. I think certain people are already contravening section 91 of the Immigration and Refugee Protection Act.

We can start by solving this problem. We can then create a solid and qualified team composed of people from the Canada Border Services Agency and the ICCRC, for example, who would have the necessary powers. It would then be possible to fight against unauthorized representatives.

• (1710)

[English]

Mrs. Salma Zahid: Thank you.

My next question is about the fees being charged by the immigration consultants, with a wide variance and often a lack of transparency in the relationship between the fees charged and the services provided. Would it make sense to explore a fee structure or a fee range for registered immigration consultants doing specific, defined services?

Mr. Robert Kewley: That's out of my realm or scope to comment on. I'm not involved in that at all.

Mrs. Salma Zahid: What about you, Ms. Fortin?

[Translation]

Ms. Gabrielle Frédette Fortin: I think it would involve spending energy on something that isn't essential. When people use a service, they must be diligent and consider one, two or three options. When one consultant charges too much, it's always possible to select another consultant.

On that note, I have a suggestion. The IRCC site has a registry of settlement agencies. I think the site should also have a public registry of immigration consultants.

[English]

Mrs. Salma Zahid: What about the variance in the fees that is happening right now? We have heard that there is a big variance in the fees that the different immigration consultants are charging.

[Translation]

Ms. Gabrielle Frédette Fortin: There are significant variances. I think it's a matter of supply and demand. One consultant may need more resources than another. Consultants are allowed to increase their prices. It doesn't matter. Clients can access the registry on the IRCC site, and they can consider other options if they think a fee is too high. One person may charge \$20,000 for an application, but clients still have other possibilities.

[English]

Mrs. Salma Zahid: Do you have any suggestions about reducing the activities of the unregistered foreign consultants? Should we enforce something where they should be registered with the Canadian immigration consultants?

The Chair: It's going to be a five-second suggestion.

[Translation]

Ms. Gabrielle Frédette Fortin: In the immigration field, all people whose work concerns section 91 should operate under a regulatory body.

[English]

The Chair: Mr. Tilson, you have five minutes.

Mr. David Tilson: That's the question I have. There are consultants who are completely outside the jurisdiction, people in different countries. There are foreign consultants who are retained by Canadian consultants, and then there are the consultants who simply do work in this country.

On the issue of fraud—which I think is in the area of what Mrs. Zahid was talking about—obviously, if there is immigration fraud that can be proven, we have jurisdiction over those who are in this country. Then we get to the next level, where a Canadian consultant hires a consultant in China, for example. Do we have jurisdiction? Does this country have jurisdiction to deal with that type of fraud, where someone is retained in another country?

[Translation]

Ms. Gabrielle Frédette Fortin: Is a Chinese consultant a regulated Canadian immigration consultant?

[English]

Mr. David Tilson: Yes.

[Translation]

Ms. Gabrielle Frédette Fortin: Therefore, the consultant must comply with the professional code, the code of conduct, all the organization's rules, and obviously, the Immigration and Refugee Protection Act.

[English]

Mr. David Tilson: Can they be charged with immigration fraud, Mr. Kewley?

Mr. Robert Kewley: If there is evidence to support that the consultant in Canada cohorted with the individual or consultant or whoever it is overseas and that an illegal act took place, then that consultant can be held accountable here in Canada. The consultant can be, because his practice—

• (1715)

Mr. David Tilson: A Canadian consultant can be, but do we have jurisdiction over, for example, a Chinese consultant?

Mr. Robert Kewley: What we've been doing, because we have that case—that happens on more than one occasion—is to work with the client or the victims and have them go to the local authorities. Now, I realize that in some countries that's a waste of time, maybe, or intimidating, but we have to follow procedure. Also, when we deal with CBSA on it, they have an overseas database in which they keep all the information we provide them from these people from

overseas. It goes out to the various visa offices, and what they do then is keep a record, and if the name keeps surfacing, then they blacklist the name, or whatever process they have—I'm not sure, but they do something. We are attempting to do as much as we can.

Mr. David Tilson: Do we have jurisdiction over someone in another—?

Mr. Robert Kewley: No. We have no jurisdiction outside of Canada.

Mr. David Tilson: Mr. Kewley, hold just a second. Do we have jurisdiction over a consultant in a foreign country who commits immigration fraud?

Mr. Robert Kewley: If he's a regulated immigration consultant, yes we do.

Mr. David Tilson: All right. What is immigration fraud?

Mr. Robert Kewley: It could be a number of things. Taking money and failing to provide service is one example. Falsifying documents to obtain money or whatever is another. There could be lots of ways.

Mr. David Tilson: Madame Fortin, how many ghost consultants are there? It's probably an impossible question, but let's try it anyway.

[Translation]

Ms. Gabrielle Frédette Fortin: I don't think they're ghost consultants. They're unauthorized representatives.

[English]

Mr. David Tilson: How many of those are there?

[Translation]

Ms. Gabrielle Frédette Fortin: Unauthorized representatives may be anywhere. There may be some here at the table. It's an ongoing issue.

[English]

Mr. David Tilson: Yes.

Some hon. members: Oh, oh!

[Translation]

Ms. Gabrielle Frédette Fortin: I'll provide an example to show that it's an ongoing issue. Someone in a basement in Russia can be an unauthorized representative. There are also some in Canada. I think settlement agencies that provide immigration advice, and that say they provide free services, when they receive millions of dollars from the government, are unauthorized representatives.

[English]

Mr. David Tilson: I have no other questions.

The Chair: Thank you.

Ms. Dzerowicz, take five minutes, please.

Ms. Julie Dzerowicz: Thanks so much.

Thanks so much, Mr. Kewley.

[Translation]

Thank you, Ms. Fortin.

[English]

I'll start off with Mr. Kewley.

Mr. Kewley, how many investigators are there right now at ICCRC? Are you the only one?

Mr. Robert Kewley: No. There are two of us.

Ms. Julie Dzerowicz: Is that enough to deal with all of the investigations that need to be under way?

Mr. Robert Kewley: Presently it is. If we take on the ghost consultant cases in the future—which I hope we do—then it's certainly not enough.

Ms. Julie Dzerowicz: Turning to a question Ms. Kwan asked in early March, we received some information from the Canada Border Services Agency. On average, 178 cases per year of suspected consultant offences are brought to the attention of CBSA, on which 36 investigations are opened. Out of 178, why do you think so few are opened per year? Can you garner an idea about why that's the case?

Mr. Robert Kewley: I think that the numbers alone from ICCRC sending cases on to CBSA are a lot higher than that. I would have to get back to you on the exact numbers. I think that out of a hundred and some cases, if they're dealing with possible prosecutions on 36, that's pretty good.

Ms. Julie Dzerowicz: Just so you know, 36 investigations are opened. Between 2011 and 2016 they've only had a “charges laid” rate from 6% to the highest, 33%. Every year is different: 32% in 2011, 6% in 2012, 15% in 2013. In the end, a small number of cases are opened, but in terms of actual charges being laid, the number is actually very small.

It may be unfair to ask you why that's the case, but maybe I can ask you what the difference is between the cases you investigate versus those of CBSA. Is it only that it's registered ICCRC investigators whom you focus on, and then for CBSA it's everybody else?

• (1720)

Mr. Robert Kewley: I can answer it because of my background in police. CBSA does immigration breaches, which are specific and Criminal Code cases. How they're investigated and how they're prosecuted, and the whole procedure in that whole thing takes a long time.

I would suggest that no case will get before the court within a year or two. Whereby with ICCRC, we regulate our members with respect to a code of ethics. We go after the members if they're in breach of that code of ethics. That's more...I can't say “civil”, but it's not criminal. The procedures are totally different. For example, in a criminal case CBSA needs physical evidence. In our cases, hearsay evidence can be accepted in certain phases.

Ms. Julie Dzerowicz: I have another question. If someone calls you and says, “Mr. Kewley, there is a person who's an immigration

consultant. He's charging a lot of money, and basically ripping off people.” Is there anything you can do, Mr. Kewley, to help investigate this? What do you do with that complaint?

Mr. Robert Kewley: First of all, we direct the person to fill out a complaint form, so we can get all the details and move forward. The first thing that happens when there's a complaint form filled out is that we check the person stated as the member, the consultant, against the records. If they're not a member, then that case has to be sent, based on what we have now, to CBSA. That's why we want to go after these ghost consultants. It's not happening and we need it.

Ms. Julie Dzerowicz: My last question is to Madame Fortin. This is a curiosity for me. How long have you been an immigration consultant?

[Translation]

Ms. Gabrielle Frédette Fortin: I've been an immigration consultant for a year and a half.

[English]

Ms. Julie Dzerowicz: Only a year and a half. What would be the top two or three reasons why people come to you as an immigration consultant? Is it that the forms are too difficult? Is it that they don't understand them? Is it that they have a complex case? What would be the top two or three reasons people come to you?

[Translation]

Ms. Gabrielle Frédette Fortin: We often work on a case-by-case basis. Clients need specific information for a particular situation. It can be difficult for someone who has no immigration training to answer the client, whereas consultants like me can quickly provide the correct answer. Above all, I provide immigration support.

[English]

Ms. Julie Dzerowicz: It's mostly for administrative reasons. They don't understand the forms they have to fill out, or what they need to do.

The Chair: Thank you.

[Translation]

Ms. Gabrielle Frédette Fortin: That has been my experience to date, but I've been a consultant for only a year and a half. Later, I want to handle more complex cases.

The Chair: Thank you, Ms. Frédette Fortin.

[English]

I'd like to thank the witnesses for providing their insights to the committee.

With that, the committee will suspend and go in camera to deal with one item of committee business.

[Proceedings continue in camera]

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