Report of the Advisory Committee on Regulating Immigration Consultants

presented to the
Minister of Citizenship and Immigration

May 2003

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Table of Contents

EXECUTIVE SUMMARY 1

CHAPTER 1: INTRODUCTION 5

- A. **Introduction and Acknowledgments** 6
- B. **Membership** 6
- C. **Method of Operation** 7
- D. **History of the Issue** 8
  1. The Players 8
  2. The Problem 8
  3. Prior Efforts to Regulate 9
  4. Confirmed Need for Regulation 10

CHAPTER 2: LEGAL FRAMEWORK 11

- A. **Authority to Regulate** 11
  1. Are ss. 30 and 69(1) of the Act intra vires Parliament? 11
  2. Double Aspect Doctrine 12
  3. Application of the Paramountcy Doctrine 12
  4. Is s. 26 of the *Legal Profession Act* constitutionally inoperative to persons acting under ss. 30 and 69(1) of the Act and its Associated Rules and Regulations? 13
  5. Is there an operational conflict? 13
  6. Conclusion 13
- B. **Authority to Regulate Immigration Consultants under IRPA** 13
- C. **Defining "Counsel"** 14
- D. **Extraterritoriality of the Application of Federal Regulations Governing Registered Immigration Consultants** 14
  1. Introduction 14
  2. The creation and enforcement of laws regulating the practice of immigration consultants 14

CHAPTER 3: MODEL REGULATORY FRAMEWORK 17

- A. **Other Jurisdictions' Models: Analysis/Comparison** 17
- B. **Options for Canada** 23

CHAPTER 4: DETAILS OF MODEL 29

- A. **Who is going to be regulated?** 29
- B. **Prerequisites/Qualifications** 30
  1. DACUM 30
  2. Character 31
  3. Education/Testing 31
  4. Degrees of Qualification 32
  5. Continuing Professional Education 32
  6. Languages 32

C. Composition of Disciplinary Body 33
1. Execution of Awards 33
2. Constitution of a Disciplinary Body 34
3. Access to the Disciplinary Body 34
4. Conclusion 35
D. Code of Conduct 35
E. Offenses 42
F. Disqualification 43

CHAPTER 5: POWERS OF THE REGULATORY BODY 45
A. Authority to censor; fine; suspend/revoke licence; ban; refer to law enforcement authorities; investigate; compel authority to produce documents; refuse membership; etc. 45

CHAPTER 6: IMPLEMENTATION AND TRANSITION 47
A. Resources 47
1. Physical Plant 48
2. Staffing, Salaries of Board/Council Members, Registrar, Support Staff, Investigators and Hearing Employees 48
3. Compensation Fund 48
4. Operating Capital 49
B. Grandfathering 49
1. Setting the Bar: Minimum Standards for Entry 49
2. Timelines for Recertification 50

CHAPTER 7: ROLES AND RESPONSIBILITIES OF DEPARTMENTS AND AGENCIES 51
A. Activities to Promote Regulation to Clients 51
B. Protection of Clients 52
C. Interaction with Regulatory Body by Departments and Agencies 52
D. Federal/Provincial Schemes 53

CHAPTER 8: URGENT CALL TO ACTION 55
Appendix A. List of Submissions Received from Individuals and Organizations 56
Appendix B. DACUM Report 58
Appendix C. Background Documents 67

Executive Summary

RECOMMENDATION 1. The Committee recommends that the Minister exercise broadly the authority conferred by Parliament under Section 91 of the *Immigration and Refugee Protection Act* (IRPA), recognize the right to counsel of the persons referred to in Section 91, and ensure that such counsel are regulated with respect to the widest possible range of immigration proceedings and applications.

RECOMMENDATION 2. In order to bar an individual from practising as an immigration practitioner, the regulations should clearly define who may practise and what organizations are recognized as regulators for the purpose of the IRPA.

RECOMMENDATION 3. The Committee recommends the following definitions:

Counsel refers to a barrister or solicitor, or to a licensed immigration consultant.

Other Representative refers to a person who, without collecting any fee, remuneration or other benefit whatsoever, represents or advises a person who is the subject of a proceeding or application before the Minister, an officer or the Immigration and Refugee Board (IRB).

RECOMMENDATION 4. The Committee further recommends that Canadian embassies, consulates and high commissions deal only with those individuals who fall within Recommendation 3.

RECOMMENDATION 5. The Committee recommends that membership be denied to persons who cannot demonstrate to the regulatory body's satisfaction that their immigration consulting business is sufficiently linked to Canada to permit proper enforcement of the regulatory body's by-laws and rules of conduct.

RECOMMENDATION 6. The Chair of the Board should be elected by the board members. A mechanism should be set up to provide for ongoing communication between the Department, the Minister and the Chair to ensure that the regulatory body carries out its responsibilities in a manner that has the full support of the Department and the Minister.

RECOMMENDATION 7. The Committee recommends the creation of a statutory, self-regulatory body for the regulation of immigration consultants. Its Board should be appointed for an initial period of two years, with one third of its members from the consulting community.

RECOMMENDATION 8. The Committee recommends that, after an initial two-year start-up period for the regulatory agency, the composition of its board be, in the majority, immigration counsel as selected by their peers.

RECOMMENDATION 9. The Committee strongly recommends that the appointed board during its two-year term complete work on the development and implementation of the following:

1. a code of conduct
2. a complaint and discipline mechanism
3. a compensation fund
4. liability insurance
5. development and provision of bilingual services to the public
6. proper internal and external administrative procedures
7. location of office space
8. a budget development process
9. staffing
10. a national education program for the ongoing educational process necessary to this model

RECOMMENDATION 10. The Committee recommends that Citizenship and Immigration Canada compensate the Chair and board members at a rate commensurate with that of persons sitting as directors at similar size corporations until such time as the authority can sustain itself on membership fees.

RECOMMENDATION 11. By-laws changing the remuneration of the Chair and the board should be subject to the approval of the members.

RECOMMENDATION 12. The Committee recommends that Citizenship and Immigration Canada compensate the staff of the regulatory authority until such time as the authority can sustain itself on membership fees.

RECOMMENDATION 13. The Committee recommends that the start-up costs for the regulatory body be paid for by Citizenship and Immigration Canada. The costs of sustaining the regulatory body, however, should be paid for by fees charged to its members.

RECOMMENDATION 14. The process by which regulation takes place should be transparent. Applicants for registration should know the requirements they are expected to meet, as well as the time frame within which a decision on their application will be made. Decisions denying membership should be accompanied by reasons.

RECOMMENDATION 15. The complaints process should be simple and accessible to the public and available in a multilingual format.

RECOMMENDATION 16. The Committee recommends that members be required to carry a minimum of $1,000,000 in liability insurance.

RECOMMENDATION 17. The Committee recommends the establishment of a compensation fund for the victims of dishonest consultants.

RECOMMENDATION 18. Lawyers and their employees should be permitted to become members of the body regulating immigration consultants provided they comply with its conditions for membership; however, they should not be required to do so as a condition precedent to practising citizenship and immigration law.

RECOMMENDATION 19. The public should be able to determine, at no cost, whether a person is or is not a member of the regulatory body.

RECOMMENDATION 20. NGOs that offer services at no cost to immigrants and refugees should be exempt from regulation by the Regulatory Body.

RECOMMENDATION 21. NGOs providing immigration information, advice or representation should undertake appropriate steps and initiatives to examine their role, responsibilities and obligations regarding their work in this area. Part of this process could include examining all opportunities to upgrade the education and competence of their staff and/or representatives.

RECOMMENDATION 22. Intergovernmental bodies or other organizations operating overseas that charge fees to immigrants or refugees should be regarded as consultants and be subject to the authority of the Regulatory Body.

RECOMMENDATION 23. The Committee endorses the DACUM Chart, Analysis and Report appended to this report as an essential tool for determining occupational duties and professional requirements and using these as the basis to develop a curriculum.

RECOMMENDATION 24. It is recommended that all individuals applying for registration provide police certificates or similar evidence to substantiate that they do not have any bars to their eligibility.

RECOMMENDATION 25. The Committee recommends that an education program be established for those wishing to be registered, to be administered by the regulatory body through authorized education agents.

RECOMMENDATION 26. The Committee recommends that the regulatory body develop detailed levels of practice, which would permit consultants to apply for registration based on their level and area(s) of experience.

RECOMMENDATION 27. The Committee recommends the establishment of mandatory continuing professional education programs.

RECOMMENDATION 28. The Committee recommends that the regulatory body establish requirements for language proficiency in one of Canada's official languages, and develop language assessment based on third-party language testing.

RECOMMENDATION 29. The Committee strongly recommends creation of a disciplinary body, with attention to issues of independence of the body, access, safeguards with respect to confidentiality, and cost of use, inspired by complaint mechanisms that have been developed by provincial bar associations.

RECOMMENDATION 30. The Committee recommends adoption of a Code of Conduct, to be subject to ongoing review and modification, and proposes a Draft Code of Conduct for consideration as part of this Report.

RECOMMENDATION 31. The Committee recommends that penalty provisions be included in the IRPA to address unauthorized and improper practice. Proposals for such statutory provisions are included in this Report.

RECOMMENDATION 32. Guidelines should be developed concerning disqualification of a regulated consultant from being licensed, or for revoking an existing licence. The Committee recommends that the disciplinary body be accorded the discretion to consider disqualification for such causes as criminal conviction, personal bankruptcy, sanctions from the disciplinary body, and interruptions of practice for more than five years, on a case-by-case basis.

RECOMMENDATION 33. Consistent with the Committee's recommendation to establish an independent body under Section 91 of the IRPA, the Non-share Capital Corporation created under part II of the *Canada Corporations Act* would allow the regulatory body to establish the authority to censor; fine; suspend/revoke a licence; refer to law enforcement authorities; investigate; and refuse membership through the creation of corporate by-laws.

RECOMMENDATION 34. In view of requirements for resources, which include physical plant, staffing, a compensation fund and operating capital, the Committee recommends that the Minister of Citizenship and Immigration secure funding of $1.75 million for the creation of a new body to regulate the activities of consultants. The Committee further recommends that the Minister enter into discussions with the governing council of the new body to negotiate the terms of seeding and repayment requirements, should the Minister conclude that repayment of the seed capital is appropriate.

RECOMMENDATION 35. The Regulatory Authority should develop criteria for transitional provisions to allow for the licensing/certification of professional immigration consultants who are already in practice.

RECOMMENDATION 36. The Committee recommends that Citizenship and Immigration Canada and the Immigration and Refugee Board ensure widespread availability of accurate information about the regulation of immigration consultants by means of reviewing all information materials currently in use, developing new materials as required, and educating appropriate personnel. The Committee also recommends that accessibility be ensured by providing information through a series of meetings and the location of information/orientation officers both in Canada and overseas.

RECOMMENDATION 37. The Committee recommends that the regulatory body develop an ongoing program of outreach, information and orientation; and that it develop a mechanism for regular communication and interaction with lawyers' associations, Citizenship and Immigration Canada, the Immigration and Refugee Board, the RCMP and other appropriate agencies, in particular those in the education and justice sectors.

Chapter 1
Introduction

Issues related to the role, regulation and professional standards of persons working as Immigration Consultants both in Canada and abroad have long been of concern to a variety of constituencies – consultants themselves, lawyers, community organizations, and ethnocultural communities both large and small.

For many years, potential immigrants, refugees and asylum seekers have sought legal advice without always understanding the difference between lawyers, consultants and non-governmental organizations (NGOs).

Over the years various attempts have been made to address the problem of how, and by whom, Immigration Consultants should be regulated. Until now, these efforts have been unsuccessful. This has led to a situation where there are no set standards for the levels of education, the quality of services, or the accountability necessary to offer one's services as an Immigration Consultant.

The fact that certain consultants have abused the trust that their clients have placed in them has been detrimental to the profession as a whole. The creation of a Professional Body to regulate the exercise of their profession is a goal toward which many Immigration Consultants have been actively working.

Finally, this problem received the political attention it needed for a new initiative to be launched. The Minister of Citizenship and Immigration, the Honourable Denis Coderre, decided to make the regulation of Immigration Consultants a priority.

On October 3, 2002, the Minister named an Advisory Committee to "identify specific concerns and provide recommendations for his consideration." He announced that the Committee would "operate at arm's length from the Department of Citizenship and Immigration" and that its role would be "to identify the various problems within the immigration consulting industry — both in Canada and abroad — and to propose options to the Minister."

To accomplish this important and difficult task, the Minister appointed a number of people with extensive expertise in their fields — lawyers, immigration consultants, members of community groups and coalitions serving immigrants and refugees, and academics.

The variety of backgrounds and experience of the Committee members proved to be the key to their unique collective ability to produce a report that would reflect the concerns and needs of all the stakeholders. Most importantly, the public interest and the needs of immigrants and refugees would be kept at the forefront of the Committee's deliberations.

The Committee was given six months to complete its work. It must be noted that all Committee members served entirely in a volunteer capacity. This meant giving freely of valuable days and weeks toward a common goal. It meant making considerable efforts to rise above one's particular interests, listening to other points of view, learning a lot in a very short period of time, and trying to reach a consensus satisfactory to all.

This has been our achievement. After many meetings and discussions, the Advisory Committee has produced a consensus report. All of the findings and recommendations have the approval of all the Committee members. Our hope is that this will allow the Report to get immediate public support, and will give the Minister a clear road to implement the recommendations he charged us to produce.

The Committee, in its deliberations, came to some important conclusions. It also saw, very clearly, the limits of what it could recommend. It is not possible for us to regulate all the people in the world (and there are far, far, too many) who give advice about immigration to Canada or to other countries. We can and must, however, regulate with whom the Government of Canada will do business. We can and we do set standards for most professions, and the Committee is convinced that Citizenship and Immigration Canada (CIC), and other relevant departments, can limit their recognition of consultants and consultant organizations allowed to make representations both within Canada and abroad.

As Co-Chairs, it has been our privilege to work with an extraordinary group of people. All members brought their knowledge, wisdom, diligence and diverse experience to the table. Most importantly, they brought their sense of humour, an ability to listen and a willingness to accommodate the needs of others.

The Committee wishes to acknowledge its gratitude to the Minister for having entrusted them with this important work. We commend him for having the interests of the public at heart, and for wanting to deal with a long-standing problem in a very constructive way. We hope that this report will allow him to achieve his goals.

A. Acknowledgments

All the Committee members made a valuable contribution. The Report was written by the members themselves, either alone or in small teams. We wish to acknowledge the participation of several members of the IRB who contributed their expertise to the Committee. A particular vote of thanks must go to Sharryn Aiken, who undertook the difficult task of making consistent our various styles and editing our Report in a very short span of time.

The Committee was assisted in its work by the able support of Geraldine Reyes, and the skill and discipline of our administrative assistant, Maïté Murray. Contributions were also made by Victoria Cowling, Brian Dingle, Elizabeth Stokes and Lorne Waldman.

Respectfully submitted,

Benjamin Trister and Rivka Augenfeld, Co-Chairs

B. Membership

The Committee comprises 14 members from a variety of professional backgrounds in the immigration field. They are listed below.

Co-chairs:

Ms. Rivka Augenfeld, President of the Table de concertation des organismes au service des personnes réfugiées et immigrantes

Mr. Benjamin J. Trister, Chair of the Coalition for a Secure and Trade-Efficient Border's Security and Immigration Committee and a Past Chair of the Canadian Bar Association's National Citizenship and Immigration Law Section

Members:

Ms. Sharryn J. Aiken, Assistant Professor, Faculty of Law, Queen's University, and a past president of the Canadian Council for Refugees

Mr. Patrice M. Brunet, Lawyer and Associate of Brunet Lawyers, Montréal, Quebec

Mr. Ramesh Kumar Dheer, Immigration Practitioner and National President, International Association of Immigration Practitioners

Mr. Stephen Green, past Chair, Citizenship and Immigration Section of the Canadian Bar Association Ontario

Mr. Frank Marrocco, co-author of the *Annotated Immigration Act and Citizenship Act*

Ms. Christiane Ouimet, Executive Director, Immigration and Refugee Board

Mr. Charles Pley, Immigration Lawyer; former Visa Officer; Chair, College of Immigration Practitioners; and past President of the Organization of Professional Immigration Consultants

Ms. Nadja Pollaert, Coordinator, Committee to Aid Refugees

Mr. John Ryan, Immigration Practitioner, former Senior Immigration Officer, and immediate past President, Association of Immigration Counsel of Canada

Ms. Jill Sparling, Immigration Practitioner and former Immigration Officer, President of the Organization of Professional Immigration Consultants

Mr. Lawrence Woo, Chairman, United Chinese Community Enrichment Services Society

[**Mr. Francisco Rico-Martinez**, Co-Director, FCJ Hamilton House Refugee Project, resigned from the Committee on March 24, 2003.]

C. Method of Operation

The Committee held its first meeting on October 25, 2002. Minister Coderre attended this meeting to explain his goals for the Committee. During the same meeting, the Committee decided to extend an invitation to organizations, institutions and individuals with expertise or experience in immigration consulting to provide input to the Committee. The deadline set for submissions was January 15, 2003. Given that the regulation of immigration consultants has been a broadly debated topic for more than 10 years, that the members of the Committee have extensive experience as participants in this debate, that the Committee had a relatively tight time frame in which to provide its recommendations, and that the Committee was hesitant to expend public moneys on hearings across Canada, the Committee requested that non-governmental interested parties provide written submissions.[1] This invitation was posted on CIC's Web site.

Since the first meeting in October of 2002, the Committee has heard or received written submissions from 55 groups and individuals. These submissions dealt with a series of issues including, but not restricted to, the following: proposed regulatory body/structure/bylaws;[2] development of a code of conduct; education (content and standards); character requirements; mandatory professional liability insurance; disciplinary body; proposed enabling regulation and incorporation by reference; grandfathering; extraterritoriality; compensation fund for victims of criminal conduct; and other issues related to the activity of immigration consultants.

It is important to note that, with few exceptions, including the Quebec Bar Association,[3] comments received from the public fully supported the regulation of immigration consultants.

The Committee also held discussions with Citizenship and Immigration Canada (CIC), the Department of Justice (DOJ), the Immigration and Refugee Board (IRB) and the Royal Canadian Mounted Police (RCMP). All of these presentations were extremely helpful to the Committee. For example, the DOJ's comments formed the basis of the Committee's legal analysis of the basis and means for the regulation of immigration consultants. The IRB's presentation shed light on various professional standards and discipline issues. CIC's presentation gave the Committee comfort that the Department is open to the regulation of immigration consultants. The above having been said, the Committee was particularly moved by the RCMP's strong desire to see immigration consultants regulated.

This report also drew upon other materials gathered by the Committee. These materials, referred to in the Report, include relevant data from governmental and non-governmental sources, submissions from law societies and community organizations, and data gleaned from the processing of individual petitions.

As a result of the views expressed during the consultation period and with the full assistance and cooperation of the Government of Canada, the Committee is able to present recommendations in discharge of its mandate. The Committee wishes to thank the relevant departments of the Government of Canada and their officials, as well as members of non-governmental organizations, civil society and the bar associations for their contribution to its work. The Committee also wishes to acknowledge the financial support of the Organization of Professional Immigration Consultants, the Association of Immigration Counsels of Canada and the International Association of Immigration Practitioners for the preparation of a DACUM analysis.[4]

1. Please refer to Appendix A for a complete list of the individuals and organizations that delivered written or oral submissions to the Committee.

2. Please note that "regulatory body" and "regulatory authority" are used interchangeably in this report.

3. In its submission, the Quebec Bar Association stated: "While the initiative to regulate the practice of immigration law by non-lawyers appears to be commendable and necessary, we do not believe that the creation of a regulatory body presenting the same characteristics of regulating the professions, as currently done by the provinces, could be achieved, especially given the constitutional context …" Further, it concludes with the following: "[c]onsequently, the members of the Bar are, in our opinion, the only ones who can really offer quality legal services." (at p. 12)

4. Please see Section IV.B.1 for an explanation of the DACUM analysis.

D. History of the Issue

1. The Players

Beginning in the late 1980s and continuing to the present, there has been much discussion of the role of the immigration consultant and the need for a regulated professional body to oversee the activities of consultants.

The main groups involved in such discussions have been the Canadian Bar Association, the Law Society of British Columbia and the Law Society of Upper Canada.[5] Foremost among consultant organizations have been the Organization of Professional Immigration Consultants (OPIC) and the Association of Immigration Counsel of Canada (AICC). The International Association of Immigration Practitioners (IAIP), founded in 1999, has been vigorously advocating the need for regulation. More recently, the College of Immigration Practitioners of Canada (CIPC) was formed to actively advance the regulation of consultants.

All such parties have made repeated representations to the Senate and the House of Commons Committees on the need for regulation. All parties have met privately with MPs and Senators. All organizations have met privately with the various Ministers of Immigration as well as departmental officials on the need for such a body.

Along the way, other interested groups and individuals have proactively made private and public representations on the need for the regulation of consultants. A few have sought to restrict the ability of consultants to practice before the IRB. Many of these groups and individuals represented the NGO community, the RCMP, municipal politicians and trade associations.

However, it is the consultant groups, the CIPC and the Canadian Bar Association that were the first to publicly declare and promote the need for a regulated industry.

2. The Problem

For many years, there have been many concerns voiced about the conduct of immigration consultants both inside and outside of Canada. Although there are many consultants who conduct their work in an ethical manner, there are many who do not. These unethical consultants and their behaviour – often criminal – have been the subject of many media reports over the past years. This behaviour harms Canada's reputation abroad. It harms Canada's national security. It harms vulnerable applicants and it causes serious problems for Canada's economic self-interest. We know that some consultants are involved in people smuggling. We know that some immigration consultants use, or fabricate, fraudulent documents for aliens to enter this country. We know that some immigration consultants abuse their client's trust by promising the impossible and failing to deliver. We know that some immigration consultants charge exorbitant fees for their services.

And we know that some immigration consultants have little or no training, education or experience in immigration law, policies or procedures and yet hold themselves out to the unwitting applicant as immigration authorities.

Canadian laws have not been adequate to address the problem of unscrupulous or incompetent practitioners. When such consultants operate outside the country, their actions often go uninvestigated and unpunished, as they are outside the jurisdiction of Canadian law. Foreign police forces appear unwilling to deal with fraud perpetrated on the government of another country or indeed on their own citizens.

In the Committee's view, regulation is even more important today than it has been before in order to counter the very negative image that has been created for our immigration system. We must be vigilant in the protection of the integrity of our immigration system.

It may be asked why the profession cannot regulate itself. The answer is that absent a regulatory authority it can do so only on a voluntary basis. OPIC, AICC, the

5. The Quebec Bar Association also deserves mention for its constructive input in these discussions, both in the past and in the present context.

CIPC and IAIP are voluntary organizations. Their members abide by a code of conduct, and they have disciplinary and complaints procedures, but these are entirely voluntary. Despite the best of intentions, they have no ability to compel compliance. If one of their members transgresses the rules, there is nothing they can do except expel the person from the organization.

The only way to impose a code of behaviour on all consultants who deal with CIC is for the Government to move quickly to implement a national, self-governing framework for immigration consultants and then to deal only with consultants who are regulated.

3. Prior Efforts to Regulate

The main consultant organizations, AICC and OPIC, were formed to push for the regulation of immigration consultants. They believe that a national, self-governing regulatory framework for immigration consultants is necessary. Although both associations provide a wide range of services to their members, professional regulation remains the principal objective. As steps toward professional self-governance, both organizations have developed a code of conduct and standards of practice for members. Both organizations were responsible for the creation of the CIPC to move the issue of regulation forward. Both organizations have also had a code of ethics for many years. However, the strides these organizations have managed to achieve on their own are not enough. Membership in these associations is voluntary and there are hundreds of consultants in Canada and abroad who are not members of any association.

At the beginning of the 1990s, when the consultant organizations were being formed, the Canadian Bar Association recommended the creation of a self-governing regulatory regime for immigration consultants.

In September 1995, the House Standing Committee on Citizenship and Immigration strongly recommended the regulation of immigration consultants within a self-governing system.

Shortly after this, the consultant groups met with CIC officials concerning the need to regulate consultants. As a result of these meetings and at the urging of the Department, the CIPC was incorporated as the body that would negotiate the regulation of consultants. The Department signed a Memorandum of Understanding with the CIPC. Steps were also taken to hire Human Resources Development Canada (HRDC) to develop educational requirements for the job. The CIPC also provided the government with draft documents relating to discipline and standards of behaviour. Unfortunately, this project never got off the ground.

In 2001, in submissions to the Supreme Court of Canada in the *Mangat* appeal, counsel for the Attorneys General of British Columbia and Manitoba and for the Law Society of British Columbia, the Law Society of Manitoba, OPIC, AICC and the Attorney General of Canada agreed to the necessity of regulating immigration consultants. The representatives for the Attorney General of Canada advised the Court that consultants played an important role in the running of CIC's boards and tribunals.

Briefs were also prepared and delivered to the Senate Standing Committee on Science and Technology on Bill C-31 as well as on the need to regulate consultants.

In 2002, representations were again made to the House Standing Committee on Citizenship and Immigration on the Immigration and Refugee Protection Act (IRPA) as well as on the necessity to regulate consultants. This resulted in Committee recommendation 62 urging the regulation of consultants in line with its 1995 report. The government response was the current Ministerial Advisory Committee.

It is important to note that the authority to regulate already lies in section 91 of the IRPA, which authorizes the government to pass regulations to:

> …govern who may or may not represent, advise or consult with a person who is the subject of a proceeding or application before the Minister, an Officer or the (Immigration Appeal) Board.

In fact, the 1976 *Immigration Act* provided ample regulatory power to regulate immigration consultants. However, no action was ever taken during the life of that legislation.

4. Confirmed Need for Regulation

In October 2002, the Minister of Citizenship and Immigration, the Honourable Denis Coderre, announced the formation of the Ministerial Advisory Committee on Regulating Immigration Consultants, in order to identify specific concerns and provide recommendations for his consideration. The Minister stated:

> Some individuals seeking to immigrate to Canada place their trust with immigration consultants they hire to assist with the process … Unfortunately, there are people in the industry who take advantage of this trust for their own profit or who mismanage the process to their client's detriment. Practices like these are unacceptable and the advisory committee is a positive first step in working toward addressing them.

Chapter 2
Legal Framework

A. Authority to Regulate

The regulation of professions and the practice of law are normally within the scope of provincial jurisdiction. Immigration, however, is largely a matter of federal jurisdiction. It is necessary, therefore, to assess the ability of the federal government to regulate immigration consultants. The leading case in this area is *Law Society of British Columbia v. Mangat,*[6] in which the Supreme Court of Canada was asked to consider two questions:

(1) Whether ss. 30 and 69(1) of the former *Immigration Act*[7] (the "Act") were intra vires the federal Parliament; and

(2) Whether then s. 26 of the *Legal Profession Act,*[8] which prohibited a person, other than a member of the Law Society in good standing or a person listed in the exceptions, to engage in the practice of law, is constitutionally inoperative or inapplicable to persons acting under ss. 30 and 69(1) of the Act and its associated Rules and Regulations.

Gonthier J., for the Court, found the provisions of the Act to be valid and paramount over the provisions of the *Legal Profession Act.*

1. Are ss. 30 and 69(1) of the Act *intra vires* Parliament?

Section 30 of the Act provided:

Every person with respect to whom an inquiry is to be held shall be informed of the person's right to obtain the services of a barrister or solicitor or other counsel and to be represented by any such counsel at the inquiry and shall be given a reasonable opportunity, if the person so desires, to obtain such counsel at the person's own expense.

R.S., 1985, c. I-2, s. 30; R.S., 1985, c. 28 (4th Supp.), s. 9; 1990, c. 8, s. 51; 1992, c. 49, s. 19.

Similarly, s. 69(1) of the Act provided:

In any proceedings before the Refugee Division, the Minister may be represented at the proceedings by counsel or an agent and the person who is the subject of the proceedings may, at that person's own expense, be represented by a barrister or solicitor or other counsel.

To determine whether ss. 30 and 69(1) of the Act were intra vires Parliament, the Court engaged in a two-step analysis. The first step is to determine the pith and substance of the impugned provisions. The second step is to classify the essential character under one of the heads of power in the *Constitution Act,* 1867 to determine whether the provisions came within the jurisdiction of the enacting government. If they did, the provisions were valid.

a. What is the pith and substance of ss. 30 and 69(1) of the Act?

The Court first considered the legislative context of the Act, including its objectives, enunciated at s. 3, of the quasi-judicial nature of the hearings before the IRB and the make-up of the members of the Board. It then considered the subject matter of ss. 30 and 69(1). Section 30 created rights for every person with respect to whom an inquiry is to be held before the Adjudication Division to be:

6. [2001], 3 S.C.R. 113 ("Mangat").

7. R.S.C. 1985, c. I-2.

8. Then S.B.C. 1987, c. 25, s. 26; now S.B.C. 1998, c. 9, s. 15.

1. informed of the person's right to obtain the services of a barrister, solicitor or other counsel;
2. given a reasonable opportunity to obtain such counsel at that person's own expense; and
3. represented by any such counsel at the inquiry.

Section 69(1), by the same token, created the right for a person who is the subject of proceedings before the Refugee Division to be represented at the proceedings by a barrister, solicitor or other counsel at that person's own expense.

In finding that the matters referred to in ss. 30 and 69(1) of the Act were within Parliament's jurisdiction over the naturalization of aliens pursuant to s. 91(25) of the *Constitution Act,* 1867, Gonthier J. concluded that the pith and substance of the impugned provisions was the granting of certain rights to aliens in the immigration administrative process, including the right for said aliens to be represented in proceedings before the IRB by either barristers or solicitors or other counsel for a fee. Such rights are explicitly stated in s. 30 ("services") and implicitly included in s. 69(1) since representation includes such matters as document preparation and advice in relation to the proceedings. However, the Court indicated that the entitlement is limited to these activities; other services related to immigration were not in issue in this case. Indeed, Gonthier J. specifically cautioned against interpreting the decision as granting a broad right to practice law in all matters concerning aliens and immigrants without being a member of the Law Society.

b. Under what head(s) of power do ss. 30 and 69(1) fall?

The Court held that ss. 30 and 69(1) relate to the rights of aliens in the immigration process under s. 91(25) of the *Constitution Act,* 1867. Flowing from this jurisdiction over aliens and naturalization is the authority to establish a tribunal to determine immigration rights in individual cases as part of the administration of these rights and to provide for the powers of such a tribunal and its procedures including that of appearance before it. In order to make decisions about who is an alien and who ought to be naturalized, the Court was of the view that the federal government must be free to determine the nature and content of, and participants in, a fair procedure for making such determinations. However, the Court concluded that the subject matter of the impugned provisions also fell within the provincial jurisdiction over civil rights in province, pursuant to s. 92(13) of the *Constitution Act,* 1867, as they relate to legal representation and the practice of law.

Since the subject matter of the representation of aliens by counsel before the IRB has both federal and provincial aspects, the Court held that the federal and provincial statutes and rules or regulations would coexist insofar as there is no conflict between them. That is to say that Parliament and the provincial legislatures can both legislate pursuant to their respective jurisdiction and respective purpose.

2. Double Aspect Doctrine

Since a statute may fall under several heads of power under s. 91 or 92 of the *Constitution Act,* 1867, the constitutional difficulty arises when it may be characterized as coming within a federal as well as a provincial head of power. The double aspect doctrine states that when a court considers the federal and provincial features of the impugned rule to be of roughly equivalent importance so that neither should be ignored respecting the division of legislative power, the rule may be enacted by either the federal Parliament or the provincial legislature.

In this case, the Court determined that both the federal and provincial features of the impugned provisions were of equivalent importance so that neither should be ignored in the analysis of the division of powers. It held that Parliament must be allowed to determine who may appear before tribunals it has created, and the provinces must be allowed to regulate the practice of law. Having determined that there are both federal and provincial aspects to the subject matter of ss. 30 and 69(1) of the Act, the Court concluded that the sections were validly enacted by Parliament according to the double aspect doctrine.

3. Application of the Paramountcy Doctrine

In discussing the doctrines of paramountcy and interjurisdictional immunity, the Court concluded that the existence of a double aspect to the subject matter of ss. 30 and 69(1) favoured the application of the former, stating that the application of the latter might lead to the bifurcation of the regulation and control of the legal profession in Canada.

4. Is s. 26 of the *Legal Profession Act* constitutionally inoperative to persons acting under ss. 30 and 69(1) of the Act and its Associated Rules and Regulations?

Section 114(v) of the Act clearly provides that the Governor-in-Council may make regulations requiring any person, other than a person who is a member of the bar of any province, to make an application for and obtain a license from a prescribed authority before the person may appear before the IRB as counsel for any fee, reward or other form of remuneration. This reality demonstrates that Parliament contemplated a role to be played by non-lawyers in the immigration process. The fact that s. 114(v) of the Act only creates the possibility for the regulation of such persons reveals Parliament's primary intention to permit a class of people to be representatives and render services in that capacity, and its secondary intention to allow for the regulation of that class of people.

5. Is there an operational conflict?

The central assessment to be made in the application of the paramountcy doctrine is to ascertain whether there is an operational conflict between the federal and provincial legislation. A conflict in operation will exist where the application of the provincial law will displace the legislative purpose of Parliament. If there is no conflict, then paramountcy is of no relevance. The applicable test was enunciated in *Multiple Access Ltd. v. McCutcheon:* "one enactment says 'yes' and the other says 'no'; 'the same citizens are being told to do inconsistent things'; compliance with one is defiance of the other."[9]

In this case, the Court found a conflict between the two statutes: ss. 30 and 69(1) of the Act authorized non-lawyers to appear for a fee, whereas the *Legal Profession Act* prohibited them from doing so. Dual compliance with both statutes would be impossible without frustrating Parliament's intention. To require "other counsel" to be a member in good standing of the bar of the province or to refuse the payment of a fee would go contrary to Parliament's intention in enacting ss. 30 and 69(1) of the Act. As this case dealt with hearings before the Adjudication and Refugee Divisions only, Gonthier J. held that the *Legal Profession Act*'s prohibition on non-lawyers from collecting a fee to act as representatives and to provide services in that regard was inoperative to that extent. The Court further held that the provision of services meant document preparation and advice on matters relevant to the individual's case.

Having found the impugned provisions of the Act to be valid and paramount over the provisions of the *Legal Profession Act,* the Court granted a declaratory order that ss. 30 and 69(1) of the Act and its associated Rules and Regulations were intra vires Parliament. Gonthier J. further ordered that then s. 26 of the *Legal Profession Act* be inoperative to non-lawyers who collect a fee acting under ss. 30 and 69(1) of the former *Immigration Act* for the purposes of representation before the Adjudication and Refugee Divisions and the provision of services to that end.

6. Conclusion

It is the Committee's conclusion that the *Mangat* case supports the ability of the federal government to regulate immigration consultants.

B. Authority to Regulate Immigration Consultants under IRPA

Following *Mangat*, Parliament provided under s. 91 of IRPA that the regulations "may govern who may or may not represent, advise or consult with a person who is the subject of a proceeding or application before the Minister, an officer or the Board."

Section 91 of IRPA therefore envisions a broad range of matters ("a proceeding or application before the Minister, an officer or the Board") under which a right of counsel may exist, and that such counsel may be regulated. Currently, IRPA specifically provides for a right to counsel in proceedings before the Board (s. 167(1) of IRPA), and in the Immigration Appeal Division Rules. However, no provision has yet been made with respect to, for example, Port of Entry Examinations (where Immigration Officers now exercise summary powers to issue Exclusion Orders),

9. [1982], 2 S.C.R. 161, at 91, cited in *supra,* note 6 at para 69.

Admissibility Hearings and Detention Reviews, or with respect to applications for a visa to enter or remain in Canada.

By their very nature, applications and proceedings in an immigration context entail serious consequences that affect the rights and status of persons concerned, including the best interests of their children.

It is a matter of elemental importance for the protection of the public to ensure, in accordance with the principles of fundamental justice, the integrity of the conduct of immigration proceedings and applications. To achieve this it is essential to ensure a right of access to competent and regulated counsel. In this context, the scope of the right to counsel, and therefore in what matters immigration consultants may be regulated, remains inadequately defined.

RECOMMENDATION 1. The Committee recommends that the Minister exercise broadly the authority conferred by Parliament under Section 91 of IRPA, recognize the right to counsel of the persons referred to in Section 91, and ensure that such counsel are regulated with respect to the widest possible range of immigration proceedings and applications.

RECOMMENDATION 2. In order to bar an individual from practicing as an immigration practitioner, the regulations should clearly define who may practice and what organizations are recognized as regulators for the purpose of the IRPA.

C. Defining "Counsel"

RECOMMENDATION 3. The Committee recommends the following definitions:

Counsel refers to a barrister or solicitor, or to a licensed immigration consultant.

Other Representative refers to a person who, without collecting any fee, remuneration or other benefit whatsoever, represents or advises a person who is the subject of a proceeding or application before the Minister, an officer or the Board.

D. Extraterritoriality of the Application of Federal Regulations Governing Registered Immigration Consultants

1. Introduction

Since the first meeting of this Committee, a consensus has prevailed with the various stakeholders: any regulation or law that would aim to regulate the industry of immigration consultants would have to be enforceable.

The very nature of the practice of immigration law requires professionals to function in many jurisdictions at the same time. Very quickly, those professionals become educated regarding the application of the law of the land and its specific applications when they conclude a fee-for-service contract with a new client. But mostly, they learn about how short the hand of the law is, when it comes to contractual obligation enforcement, whether it be in their favour or not.

It is therefore fairly easy for unregulated consultants to shield their professional responsibility behind a foreign jurisdiction that would, at best, be difficult to access, and at worst, be grossly manipulated through personal local contacts of this individual.

2. The Creation and Enforcement of Laws Regulating the Practice of Immigration Consultants

Much effort may be invested in the development of sound legislation circumscribing the practice of immigration consultants. However, all this work will be futile without a sound policy with an aim to control consultants outside of the reach of Canadian law.

The Australian Migration Agents' Registration Authority (MARA) has deep concerns about this issue. After three years of operating its program, it states: "The lack of coverage of the scheme of the overseas practitioners is a major concern for the MARA. It is an anomaly in the system which weakens the credibility of the current scheme."[10]

10. In *The MARA Submission to the Review of the Migration Advice Industry 2001,* section 3.3.5.1.

Some options are available to address this concern. Two of these are the following.

Restrict the registration to Canadian citizens. Although this solution may, at first, seem sensible, it does not make sense as a sole requirement. Canadian citizenship does not confer accountability to the Canadian legal system and does not require any physical presence in Canada. There would be no consequence to the Canadian citizenship status of a defaulting consultant, who may remain abroad for an indefinite period of time.

As thousands of Canadian citizens currently live permanently outside of Canada, this criterion would actually be an invitation to abuse in singling out Canadian citizens to appear on the marquee, in order to provide legitimacy to fraudulent operations. Certainly, if Canadian citizenship were retained as a precondition of registration, it would have to be coupled with more coercive measures.

Restrict the registration to lawyers, barristers and solicitors. In the United States, the practice of immigration law is restricted to members of state Bars and NGOs.[11] When the question of illegal practice comes up, it is put in the hands of the appropriate bar association for action. The advantages of this option would be to make practitioners as accessible to regulators as possible and to restrict the access of non-regulated practitioners to the immigration system. We take it from the Minister's mandate to us that he believes that consultants have a positive role to play in Canada's immigration system. The Committee agrees.

Many consultants involved in Canadian immigration matters currently practice outside of Canada. This imposes inherent limitations on any attempt to investigate a complaint about misconduct that allegedly took place in a foreign country. The Committee therefore recommends that membership in the regulatory body be denied to persons who cannot demonstrate to the regulatory body's satisfaction that their immigration consulting business is sufficiently linked to Canada to permit proper enforcement of the regulatory body's by-laws and rules of conduct. Canadian embassies should be instructed to advise applicants in foreign countries that their counsel or representative as disclosed on the immigration application in question is, where such is the case, unlicensed by Canadian authorities. Embassies should then refuse to communicate with an unlicensed counsel or representative. We would also point out that disclosure of information under the *Privacy Act* and *Access to Information Act* is restricted to Canadian citizens, permanent residents and persons resident in Canada. Our concern in this regard is not, however, with respect to the disclosure of information, but rather that the regulatory body must always be able to effectively investigate complaints. We do not feel that effective investigation is possible when the consultants are carrying on their business in a foreign country and have no connection to Canada except that their clients want to live there.

RECOMMENDATION 4. The Committee further recommends that Canadian embassies, consulates and high commissions deal only with those individuals who fall within the definitions in Recommendation 3.

RECOMMENDATION 5. The Committee recommends that membership be denied to persons who cannot demonstrate to the regulatory body's satisfaction that their immigration consulting business is sufficiently linked to Canada to permit proper enforcement of the regulatory body's by-laws and rules of conduct.

11. There are also a few other minor exceptions, which are insignificant.

Chapter 3
Model regulatory framework

A. Other Jurisdictions' Models: Analysis/Comparison

The committee in its deliberations identified a need to examine models that currently exist in various jurisdictions as well as to consider possible additional models that may be workable in the Canadian context.

Three existing systems for regulating the activities of consultants were identified and studied: those of the United Kingdom, Australia and China. A fourth system adopted in the United States simply prohibits anyone other than a qualified lawyer from representing a client in front of the U.S. Bureau of Citizenship and Immigration Services.

The methodology used to examine the existing models included an examination of the models that currently exist internationally, their current form and their development over time from a consumer protection standpoint.

1. UK Model

a. How the Office of the Immigration Services Commissioner (OISC) came about

The *Immigration and Asylum Act 1999* (Part V) established a scheme to regulate immigration advisers in the United Kingdom. The Act set up the Office of the Immigration Services Commissioner (OISC) as an independent public body to ensure that immigration advisers are fit and competent and act in the best interests of their clients.

Since April 30, 2001, it has been a criminal offence for an adviser to provide immigration advice or services unless his or her organization is either registered with the OISC or has been granted a certificate of exemption by the OISC, or unless the organization is otherwise covered by the Act.

b. What the OISC does

The OISC is responsible for:

- regulating immigration advisers in accordance with the Commissioner's Code of Standards and Rules;
- processing applications for registration or exemption from immigration advisers;
- maintaining and publishing the Register of Advisers;
- promoting good practice by immigration advisers;
- receiving and handling complaints about immigration advisers; and
- taking criminal proceedings against advisers who are acting illegally.

c. Who the OISC regulates

Unless otherwise covered by the Act any person who provides immigration advice or services in the United Kingdom has to be regulated by the OISC. Advisers in the for- profit sector must register with the OISC and pay an annual fee. Advisers in the not-for-profit sector must apply to the OISC for a certificate of exemption. All advisers are required to display their certificates of registration or exemption. This, together with the OISC's "global tick" logo, shows that an organization has met the standards laid down by the OISC.

d. Who the OISC does not regulate

Not all immigration advisers are regulated by the OISC. Members of certain professional bodies (referred to in the Act as the "designated professional bodies") may give immigration advice without registering with the OISC, as may people working under their supervision. The designated professional bodies are:

- The Law Society;
- The Law Society of Scotland;
- The Law Society of Northern Ireland;

- The Institute of Legal Executives;
- The General Council of the Bar;
- The Faculty of Advocates; and
- The General Council of the Bar of Northern Ireland.

State educational institutions and their student unions, together with health sector bodies, are similarly not regulated by the OISC, although they are required to comply with the Commissioner's Code of Standards.

There is one other group not presently regulated by the OISC. Employers giving advice only to employees or prospective employees have been given a block exemption until December 31, 2003.

e. Complaints

One way in which the OISC will raise the standard of immigration advice is by investigating complaints about immigration advisers. The Commissioner can take complaints about any immigration adviser, including members of the designated professional bodies and others who are not regulated. All complaints will be considered and the appropriate action taken.

Complaints may be made by anyone: clients, other advisers or members of the public.

f. Registration Requirements

i. The regulatory scheme. Anyone providing immigration advice or services must apply to the OISC for registration or exemption unless they are outside the regulatory framework. Failure to do so can lead to criminal proceedings with the possibility of a fine or imprisonment or both.

ii. Immigration advice and services. The *Immigration and Asylum Act 1999* defines both "immigration advice" and "immigration services." Essentially, *immigration advice* means advice which relates to a particular individual and is about:

- a claim for asylum;
- an application for, or variation of, entry clearance or leave to enter or remain in the UK;
- UK nationality and citizenship or EU citizenship;
- admission to, or residence in, EU member states;
- removal or deportation from the UK;
- an application for bail under the Immigration Acts; or
- an appeal or application for judicial review about any of the above.

Immigration services covers the same ground as above, but relates to making representations on behalf of an individual before a court, tribunal or adjudicator, or corresponding with a government minister or department on behalf of an individual.

The Act applies only to people in the UK who are providing immigration advice or services "in the course of a business." Individuals giving advice to their relatives, for example, are therefore not covered by the Act. "Business" here covers both for-profit and not-for-profit organizations.

iii. Registration or exemption. An organization operating on a for-profit basis must pay the appropriate fee (£1,800 for a sole adviser, rising to £6,000 for an organization with 20 or more advisers) and must apply to register with the OISC. Other organizations may be able to apply for a certificate of exemption, for which no fee is payable. To qualify for exemption an applicant should normally be:

- a registered, exempted or excepted charity as defined by the *Charities Act 1993;* or
- a voluntary organization operating under a scheme of management or similar scheme; or
- a trust governed by a board of trustees.

In addition, the applicant should operate on a not-for-profit basis, with no payment being required for immigration advice or services except where:

- an application fee is required by the Home Office, the Foreign and Commonwealth Office or the Immigration Appellate Authority; or
- a Community Legal Service statutory charge applies; or
- a contribution to the Civil Legal Aid Certificate is required.

iv. Levels of activity. Immigration advice and services can be given at different levels of competence and expertise. Advisers may apply for registration or exemption at one of three levels. A brief outline is given below.

The description of "Level 0" helps advisers identify which activities are not covered by the regulatory scheme.

Level 0 – Signposting and information. No advice is provided and there is no ongoing relationship between the two parties. The only activity is the provision of basic information on which a person can act or the signposting of that person to an appropriate service provider. An organization that is functioning only at this level does not need to apply for registration or exemption.

Level 1 – General. Diagnosis of a client's need for specific immigration advice; basic administrative support; and some basic applications for entry clearance, leave to enter and variations of leave as specified. But should an application be refused, or any ongoing casework arise, the case is referred to a higher-level provider.

Level 2 – General casework. For immigration work this covers ongoing casework and includes paper appeals to the Immigration Appellate Authority (IAA) and applications for bail before an adjudicator. For asylum work it covers casework only.

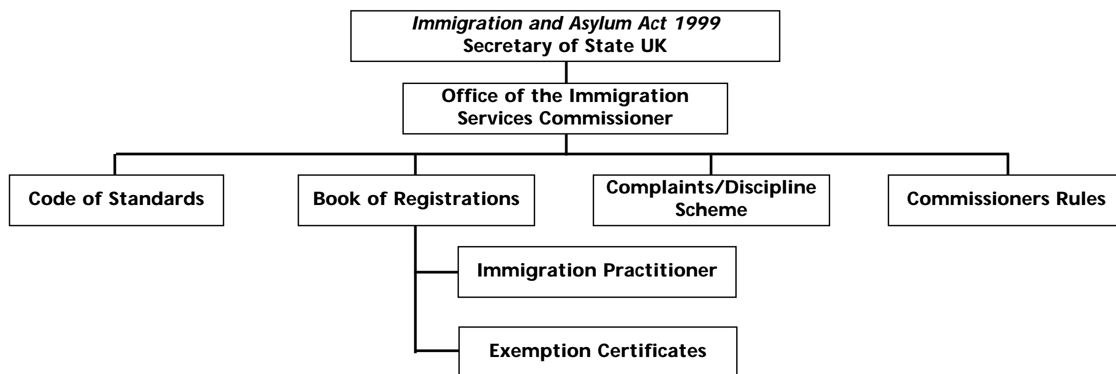
Level 3 – Specialist. This covers advocacy work before the courts and the IAA.

v. Categories of advice or services. The provision of immigration advice or services is divided into six categories:

1. Asylum;
2. An application for, or for the variation of, entry clearance or leave to enter or remain;
3. Unlawful entry into, or stay in, the UK, refusal of leave to enter or remain in the UK and removal or deportation from the UK;
4. Nationality and citizenship under UK law;
5. Citizenship of the European union, and admission to and residence in member states under community law;
6. An application for release from detention, i.e., temporary admission, adjudicator's bail or Chief Immigration Officer's bail.

There are many possible combinations of levels and categories.[12]

The UK Model



12. "About the OISC," The Office of the Immigration Services Commissioner, 10 March 2003 <http://www.oisc.org.uk/about_oisc/about_stm>.

2. Australian Model[13]

a. History

The migration advice industry in Australia has been subject to regulation for a relatively short period. Prior to the 1990s, it was largely unregulated. Following amendments to the Act in 1989, the application and decision-making processes for migration became more complex. The period following these amendments saw an increase in consumer complaints against migration agents. In September 1992 the migration advice industry was brought under full government regulation through the Migration Agents Registration Scheme (MARS). This initiative reflected the Government's concern over the level and nature of complaints made against incompetent or unscrupulous agents. The Government recognized that many consumers of migration agents' services were not able to make an informed choice about the quality of the migration advice they were purchasing and were thus vulnerable to exploitation. Ever since the implementation of industry regulation, only registered migration agents have been permitted by law to provide "immigration advice" as defined in the Act.

In June 1996 the Government commissioned a review of MARS. This was the first regulatory arrangement to be reviewed by the Commonwealth as a party to the Competition Principles Agreement. In line with that, the terms of reference of that review included reporting on "the appropriate arrangements for any regulation of the migration advice industry, including the prospects for enhanced self-regulation."

The MARS review was published in March 1997 and, after considering its findings, the Government decided that the migration advice industry should move towards voluntary self-regulation through a transitional two-year period of statutory self-regulation. Following amendments to Part 3 of the Act and subject to a Sunset Clause (s. 333 of the Act), statutory self-regulation commenced on March 21, 1998, for a period of two years until March 21, 2000, within which a review of the arrangements would occur. On March 21, 1998, the Minister for Immigration and Multicultural Affairs appointed the Migration Institute of Australia, Limited (MIA) as the Migration Agents Registration Authority (MARA) to administer the relevant provisions of the Act and to undertake the role of industry regulator.

The shift from government regulation involved fundamental change to the way the migration advice industry was regulated. It involved the establishment of the MARA and the assumption by the MIA (a private sector industry association) of what had been a Commonwealth Government oversight function. At the same time a rigorous and publicly defensible set of procedures needed to be developed and implemented in a short time frame and under the close scrutiny of Government, migration agents, consumer groups and the general public.

On April 1, 1998, the Regulations came into effect. The Regulations provide for:

(a) prescribed qualifications for initial registration as a migration agent;

(b) publication of notice of intention to apply for registration as a migration agent;

(c) publication of notice of cancellation or suspension of registration;

(d) persons who may make complaints;

(e) Continuing Professional Development (CPD) for migration agents;

(f) the Code of Conduct for Migration Agents; and

(g) the gazettal of notices of intention to apply for registration as a migration agent, a notices of cancellation or suspension of registration, and approved activities for CPD purposes.

Other components of the regulatory framework are:

(h) *Migration Agents Registration Application Charge Act 1997;*

(i) *Migration Agents Registration Application Charge Regulations 1998;* and

13. The Committee gratefully acknowledges the assistance of David Thomas Mawson, Executive Officer, Migration Agents Registration Authority; Leonard Christopher Holt, Vice President, Migration Institute of Australia, OAM; and Raymond John Brown, Immediate Past President, Migration Institute of Australia, in the preparation of this section of the report.

(j) the Deed of Agreement between the Minister (on behalf of the Commonwealth) and the MIA acting as the MARA outlining the arrangements – and performance standards – by which the MIA and Department of Immigration and Multicultural Affairs (DIMA) fulfil their respective functions. The current deed is dated December 14, 2000.

The review of the transitionary period of statutory self-regulation commenced in August 1999. This, like the current review, assessed the effectiveness of the statutory self-regulation framework and the capacity of the migration advice industry to move to full self-regulation. The review found that statutory self-regulation had achieved its objectives of improving consumer protection, competence and ethical standards in the migration advice industry but was not ready to move to full self-regulation, and recommended that the period of statutory self-regulation be extended. It also recommended that a further review of statutory self-regulation be undertaken during this period.

The Government endorsed these findings and decided to extend the period of statutory self-regulation for a further three years, until March 21, 2003, stipulating that a further review be conducted prior to that date:

> …to allow the industry to mature further and to develop its capacity to sustain a voluntary self-regulatory regime, the *Migration Act* should be amended to allow the current scheme of statutory self-regulation to be extended for at least three years until March 2003. A further review of statutory self-regulation should be undertaken within this period.

The Government of Australia has decided to lift the sunset date of March 21, 2003, and has extended the scheme indefinitely.

The Migration Institute of Australia Limited (MIA), as the Migration Agents Registration Authority (MARA), was appointed to regulate the migration advice industry in Australia on March 23, 1998.

The MIA, as MARA, was conferred with statutory powers to enable it to carry out the role previously undertaken by the then Department of Immigration and Multicultural Affairs through the Migration Agents Registration Scheme.

The Government recently published the *2001-02 Review of Statutory Self-Regulation of the Migration Advice Industry,* which made 27 recommendations on the regulation of the industry. The Government has endorsed all the Review's recommendations and the Department and the MARA will be implementing them through legislative and administrative changes.

These changes will improve professional standards in the industry, will increase the ability of the MARA to sanction unscrupulous agents, particularly those who lodge unfounded visa applications with no chance of success, and will extend the regulatory regime to migration agents assisting with Australian visa matters overseas.

The first recommendation to be implemented will be to ensure the MARA's future as industry regulator by removing the clause in the *Migration Act 1958* that would have meant that it ceased operation in 2003. The regulatory scheme will be reviewed again within five years.

b. Role of the MARA

The principal functions of MARA are:

- processing applications for initial registration and repeat registration as migration agents;
- monitoring the conduct of registered migration agents, who include lawyers and non-lawyers among their numbers, and the conduct of non-agent lawyers who provide legal assistance in immigration cases (but who do not provide immigration assistance);
- administering the complaint-handling mechanism that enables individuals or organizations dissatisfied with the service or conduct of a registered migration agent to lodge a complaint with MARA; and
- imposing disciplinary sanctions on migration agents for unethical practice, including enhanced powers to allow for the discretionary referral of complaints about agents who are also lawyers to the relevant professional bodies.

c. Migration Agents

Anyone who uses knowledge of migration procedures to offer advice or assistance to a person wishing to obtain a visa to enter or remain in Australia must register as an agent with MARA.

This includes lawyers and people who work for voluntary organizations and provide their advice free of charge.

Under the current scheme, the definition of "immigration assistance" has been extended to include giving assistance to people who are nominating or sponsoring prospective visa applicants.

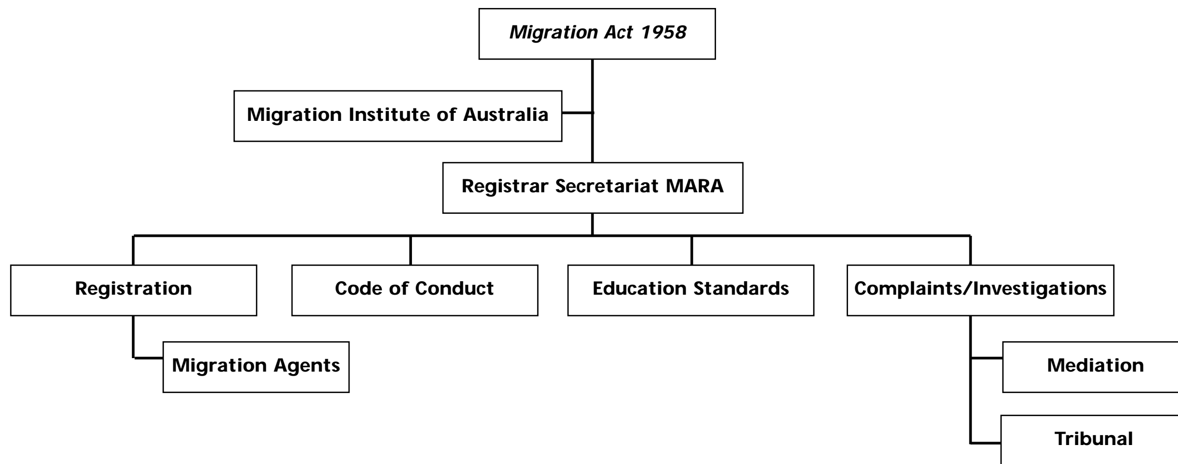
There are penalties ranging up to 10 years imprisonment for people who practice in Australia as unregistered agents.

Prospective agents are required to meet entry standards to gain registration and to abide by the Code of Conduct contained in the Migration Agents Regulations.

To be registered as a migration agent, an applicant must:

- be over 18 years of age; and
- be an Australian citizen or a permanent resident or the holder of a special category visa; and
- be a person of integrity or be otherwise a fit and proper person; and
- hold a degree in law (as prescribed by the Migration Agents Regulations 1998) conferred by an Australian tertiary institution; or
- be admitted as a barrister or solicitor to the High Court of Australia or the Supreme Court of a State or Territory; or
- possess a sound knowledge of migration law and procedure. (Sound knowledge can be demonstrated by a pass in the examination conducted by the MIA or successful completion of a course of study in migration law and procedures which is recognized by MARA).[14]

The Australian Model



14. *Review of Statutory Self-Regulation of the Migration Advice Industry: Discussion Paper,* Ch.4, The Migration Agents Regulatory Authority, Sydney, Australia, September 2001.

3. Chinese Model

Regulation for the Establishment of Entry and Exit Servicing Companies, which was instituted in December 2001, brought in regulations to control the activities of companies engaged in the exit and entry of Chinese nationals to foreign countries.

The scheme is overseen by the Chinese State Public Security Organ, which issues licenses to applicants who meet the following application criteria:

1. A registrant must hold a Chinese Residents "Houkou" (Family Book).
2. A registrant must possess no prior negative criminal or administrative law history.
3. A company must have a minimum of five staff members who are familiar with the Chinese laws, regulations and policies for exit and entry. They must also know the exit and entry laws, regulations and policies for counties of interest.
4. A Chief of Staff must have, as a minimum, a college-level education and the other staff should have qualifications in English, Law and Finance.
5. An applicant must have signed a cooperation agreement with a foreign company or institution knowledgeable in the entry and exit laws of the country of interest.
6. An applicant must post a security deposit of between 1,000,000 and 2,000,000 RMB with the Public Security Organ.

B. Options for Canada

It is necessary to regulate the immigration consulting industry in order to ensure adequate protection for those members of the public who resort to immigration consultants. Protection of the public demands that consultants be knowledgeable with respect to immigration matters, be persons of good character, be held accountable for unethical behaviour and maintain sufficient liability insurance for errors and omissions.

The Committee considered models of regulation in effect in other countries. The Australian model was considered in detail and a presentation with respect to that model was made to the Advisory Committee. The Committee also examined the United Kingdom approach, which is similar to Option 1, discussed below. The Committee believes that the three options identified below describe the alternatives. We provide our suggestion as to which option is preferable.

It is also important in assessing the options available to consider s. 91 of the *Immigration and Refugee Protection Act* (the Act), which, as stated above, provides as follows:

> The Regulations govern who may or may not represent, advise or consult with a person who is the subject of a proceeding or application before the Minister, an officer or the board.

Section 91 provides that the regulation-making power addresses two types of persons: (1) those persons who may represent, advise or consult with a person who is subject to the Act; and (2) those persons who may not represent, advise or consult with a person who is subject to the Act. The Committee believes that in order for any regulatory regime to be effective, the power must be given to the regulator or to Citizenship and Immigration Canada to enjoin permanently those persons who are not qualified to act as a representative of a person who is subject to the Act.

The three options identified below describe the alternatives that are available.

Option 1: The Establishment of a Commissioner of Consultants

This option envisions a person acting as a delegate of the Minister and in that capacity addressing the issues surrounding regulation as set out in the previous paragraph. It is not clear that s. 91 would permit the appointment of such a person. If s. 91 is not sufficient for this purpose, then an amendment to that section may be required.

The Committee is disinclined to recommend this option because it is inherently flawed. It is clear that the consultant stands in a fiduciary relationship with the client. An exhaustive legal analysis of this question is unnecessary for the purposes of this report. Suffice it to say that many of the clients who typically hire consultants are extremely vulnerable, in part because they are utterly unaware of the requirements of the Act and Regulations. Many of the persons who hire consultants are uneducated. Many others, while they may be educated, are unsophisticated and therefore cannot appreciate the way in which Immigration Officers and Visa Officers are expected

to exercise the power conferred on them by the Act and Regulations. The consultant must therefore be held to a very high standard in dealings with his or her client. The consultant will be required to act with the utmost good faith and to present the client's case as vigorously as is required. In individual cases this will result in conflicts between Immigration Officers and Visa Officers exercising their discretion with a view to enforcing the Act and Regulations and consultants representing as vigorously as they can the interests of the persons whom they are representing. There would be no appearance of fairness in such a conflict if it were also the case that the consultant was dependent for his license to practice, and therefore his livelihood, upon a Commissioner who reported to the same Minister as the Immigration or Visa Officer. Such a system therefore would be inherently and irrevocably flawed and is one that we therefore do not recommend.

This option would have an additional disadvantage. It would require the Minister to be responsible for all costs associated with its administration and any ensuing liability.

Option 2: Creation of a Non-Share Capital Corporation

The second option available is to pass a law creating a non-share capital corporation charged with the responsibility of regulating immigration consultants. Such a statute would be the source of jurisdiction for the corporation to regulate the activities of immigration consultants, for the purpose of protecting the Canadian public who pay for the services of such consultants. Such a model would permit consultants to function with the independence they require in order to preserve the integrity of their advice.

The statute would provide for the matters which are to be administered by the corporation under the direction of the Board, the composition of the Board of Directors and the method of their appointment, whether by election or by appointment by the Minister or both. Once the corporation was created, it would function independently of the Government and its by-laws would provide for the committees, which would carry out the corporation's mandate.

The major difficulty with this model lies in the fact that problems with the enabling statute can only be remedied by an amendment to that statute and the ability to pass such an amendment will be determined by many factors, including the legislative agenda of the government of the day. In short, we see a statutory incorporation model as inherently lacking the flexibility to respond immediately to perceived problems with its basic law. Liability would also be an issue here.

Option 3: The Section 91 (Statutory Self-Regulatory) Model

The Committee believes that s. 91 of the Immigration and Refugee Protection Act provides sufficient authority to create an independent and flexible regulatory body for immigration consultants. This is the preferred model.

A non-share capital corporation could be created using the existing provisions of Part II of the *Canada Corporations Act.* This non-share capital corporation would have as its object and purpose the regulation of immigration consultants. The regulatory body would have a Board of Directors, eventually elected by the members.

The first member of the regulatory body would be a representative of the Minister. As this person would have, at the creation of the regulatory body, the only vote, it would be agreed that this person would cause a Board to be appointed. The Board would be composed of nine persons, of whom one-third would have experience in self-regulation, one-third would represent the public and one-third would be practicing immigration consultants. The Board would then elect a chair.

RECOMMENDATION 6. The Chair of the Board should be elected by the board members. A mechanism should be set up to provide for ongoing communication between the Department, the Minister and the Chair to ensure that the regulatory body carries out its responsibilities in a manner that has the full support of the Department and the Minister.

The Board would be elected for a period of two years. At the conclusion of its first term, the next term of office be for a period of four years. The regulatory body's by-laws could provide that a majority of the directors be elected by those members who are members of the regulatory body. The remainder would come from members of the public appointed by the Minister to serve in the same manner as lay benchers with a view to enhancing consumer protection.

The principal advantage of the s. 91 model is that the regulatory body, by changing its by-laws, would be able to

respond immediately to problems associated with the governing of consultants. The only amendments required would be with respect to the by-laws of the regulatory body, and amendments to these by-laws would be within the control of the Board of Directors, subject to the approval of the Minister overseeing the Act.

Liability for the actions of the regulatory body, its employees and directors would rest with the regulatory body and its directors in accordance with corporate law principles. The Minister would be at arm's length from the regulatory body, with the result that the Department could criticize the regulatory body where deemed appropriate without being in the position of criticizing its own Minister.

The Board of Directors would be responsible for bringing about a regime that would properly regulate immigration consultants and would address the essentials of regulation referred to earlier. Given the composition of the Board as previously described, it is clear that the regulatory body and the consultants licensed by it would have the requisite degree of independence from the Minister, the importance of which is described earlier in this section. Such a regulatory body would be able to respond to new problems by enacting or amending by-laws, something which the Board of Directors would be able to do very quickly.

When the regulatory body was properly established, a regulation could be passed indicating that, other than members of Canadian law societies and qualified NGOs, only persons who are licensed by that regulatory body may represent, advise or consult with a person who is the subject of a proceeding or application before the Minister, an Officer or the Board. In this regard a regulation should also be passed providing that the Minister may apply for a permanent injunction to restrain any person who is not licensed by the regulatory body or otherwise entitled to practice from continuing to represent, advise or consult with persons who are the subject of proceedings before the Minister, an Officer or the Board. Such a provision is vital to ensure a properly regulated environment. Such a regulation would also be authorized by s. 91, because such a regulation would be concerned with who may not represent a person in an immigration matter, as is provided for by s. 91.

After considering the foregoing, the Committee has developed the following recommendations for a suitable regulatory system for Canada.

RECOMMENDATION 7. The Committee recommends the creation of a statutory, self-regulatory body for the regulation of immigration consultants. Its Board should be appointed for an initial period of two years, with one third of its members from the consulting community.

RECOMMENDATION 8. The Committee recommends that, after an initial two-year start-up period for the regulatory agency, the composition of its board be, in the majority, immigration counsel as selected by their peers.

RECOMMENDATION 9. The Committee strongly recommends that the appointed board during its two-year term complete work on the development and implementation of the following:

1. a code of conduct
2. a complaint and discipline mechanism
3. a compensation fund
4. liability insurance
5. development and provision of bilingual services to the public
6. proper internal and external administrative procedures
7. location of office space
8. a budget development process
9. staffing
10. a national education program for the ongoing educational process necessary to this model

RECOMMENDATION 10. The Committee recommends that Citizenship and Immigration Canada compensate the Chair and board members at a rate commensurate with that of persons sitting as directors at similar size corporations until such time as the authority can sustain itself on membership fees.

RECOMMENDATION 11. By-laws changing the remuneration of the Chair and the board should be subject to the approval of the members.

RECOMMENDATION 12. The Committee recommends that Citizenship and Immigration Canada compensate the staff of the regulatory authority until such time as the authority can sustain itself on membership fees.

RECOMMENDATION 13. The Committee recommends that the start-up costs for the regulatory body be paid for by Citizenship and Immigration Canada. The costs of sustaining the regulatory body, however, should be paid for by fees charged to its members.

The Committee feels that to require everyone to undergo strenuous, unilateral admission procedures at the onset would preclude consultants from being able to continue in their profession. Instead, the Committee feels that the regulatory authority should employ different processes to assess the ability and capabilities of each applicant in determining what standards individuals will be expected to meet prior to registration being granted. It is seen that some consultants may not achieve full registration for a number of years while others may be found to be fully qualified much earlier. To this end, the timely development of entry standards recognizing the above-noted principles and the development of a national educational program will be of the utmost necessity to achieve these goals.

The incoming board of the regulatory authority must recognize the special and logistical challenges facing this new authority in connection with the registration of immigration consultants, with the timely development of entry standards and with the development of a national educational program.

Regardless of which model is ultimately chosen, the Committee wishes to make the following general recommendations.

RECOMMENDATION 14. The process by which regulation takes place should be transparent. Applicants for registration should know the requirements they are expected to meet, as well as the time frame within which a decision on their application will be made. Decisions denying membership should be accompanied by reasons.

RECOMMENDATION 15. The complaints process should be simple and accessible to the public and available in a multilingual format.

Despite the best efforts of consultants, mistakes will be made. If a mistake cannot be rectified, then fairness requires that damages be paid. Liability insurance therefore should be mandatory for consultants regulated by the regulatory body to ensure that any persons who make an error or omission with respect to immigration advice will be able to compensate the members of the public whom they have damaged by reason of their bad advice.

RECOMMENDATION 16. The Committee recommends that members be required to carry a minimum of $1,000,000 in liability insurance.

Liability insurance, generally, does not cover intentional acts. Accordingly, members of the public who suffer financial loss as a result of the actions of dishonest consultants will only be able to look to those consultants for recovery. Obviously recovery in such situations is problematic to say the least. Accordingly, it is necessary to create a fund which will be administered by the regulatory body to compensate the victims of dishonest consultants.

It is also important to note that regulated immigration consultants will be providing services similar to those provided by those in the legal profession in Canada. All of the Law Societies across Canada provide compensation for persons victimized by dishonest lawyers. Accordingly, the regulatory body that regulates immigration consultants must do the same in order to ensure that the public is equally protected. When the regulatory body is being established, there will not be sufficient members to support such a fund. However, the creation of such a fund should be a goal of the regulatory body and it should insist that all members make an annual contribution in this regard. The Committee recommends that the Department make available to the regulatory body a fixed sum in the amount of $500,000 to pay claims that occur after the regulatory scheme is in place, but before the compensation fund has accumulated to an appropriate level. The initial compensation fund scheme would pay persons, not corporations. The maximum claim payable to any individual would be fixed initially at $5,000. This would allow for a compensation fund to be in effect from the commencement of the regulatory scheme, while at the same time limiting the regulatory body's liability in this regard.

RECOMMENDATION 17. The Committee recommends the establishment of a compensation fund for the victims of dishonest consultants.

Lawyers and their employees should be permitted to become members of the regulatory body provided they comply with its conditions for membership. Lawyers and their employees, however, should not be required to be members of the regulatory body because adequate public protection already exists for those members of the public who retain lawyers and interact with not only the lawyers, but their employees.

RECOMMENDATION 18. Lawyers and their employees should be permitted to become members of the body regulating immigration consultants provided they comply with its conditions for membership; however, they should not be required to do so as a condition precedent to practicing Citizenship and Immigration Law.

RECOMMENDATION 19. The public should be able to determine, at no cost, whether a person is or is not a member of the regulatory body.

Chapter 4
Details of model

A. Who is going to be regulated?

1. Non-Governmental Organizations

It has to be underlined that non-governmental organizations (NGOs) and immigration consultants operate from a different set of motivations in their work with immigrants and refugees.

NGOs are non-profit organizations, governed by a board of directors, with a specific social mandate to help immigrants and refugees. In addition to offering direct services, their aim is to defend the rights of immigrants and refugees in Canada by advocating for a just immigration and refugee system in Canada. NGOs are committed not only to working on behalf of individuals but also to a holistic approach, based on humanitarian values and human rights principles.

In fulfilling their mandate, NGOs will often provide immigrants and refugees with information and advice about Canadian immigration and refugee procedures. They may also on occasion represent them in certain proceedings. Requests for NGO assistance come most often from immigrants and refugees who do not have access or have only limited access to legal aid.

The relationship established between persons working for, or representing, NGOs and the immigrants and refugees they serve must be based on trust. By definition, NGOs should not charge for their services. Nevertheless, they must be concerned with issues of competence and accountability.

It is beyond the scope of this report to deal with all the issues related to the competence of NGOs doing various kinds of immigration work, especially since many NGOs do this work as an offshoot of their primary mandate.

RECOMMENDATION 20. NGOs that offer services at no cost to immigrants and refugees should be exempt from regulation by the Regulatory Body.

RECOMMENDATION 21. NGOs providing immigration information, advice or representation should undertake appropriate steps and initiatives to examine their role, responsibilities and obligations regarding their work in this area. Part of this process could include examining all opportunities to upgrade the education and competence of their staff and/or representatives.

Immigration consultants, on the other hand, work on a for-profit basis and are not governed by boards of directors nor guided by a social mandate. Whatever the personal motivation of the consultant, the relationship between consultant and client is fundamentally an economic one, where payment is received for services rendered.

Given the above-mentioned fundamental differences between NGOs and consultants, it is proposed that NGOs not be viewed or even considered in the same category with immigration consultants. It follows that NGOs should not be regulated as immigration consultants. Accountability rather lies with the NGO for the actions of their representatives.

In order to protect the integrity of the self-regulatory model for immigration consultants that this report is outlining, while excluding legitimate NGOs, we propose that, to be exempt from regulation as a consultant, NGOs be required to meet certain criteria.

Any organization that claims to be an NGO, but does not meet the criteria outlined below, may be in the purview of the Regulatory Body. As soon as an organization that presents itself as “not for profit” begins charging money for services or requests direct

donations for services, it should fall under the authority of the Regulatory Body.

It is proposed that to be exempt NGOs be required to satisfy at least seven of the following nine criteria:

1. The organization is a non-profit organization.
2. A board of directors governs the organization.
3. The organization is incorporated.
4. The organization has a social mandate to serve refugees and immigrants and defend their rights.
5. The organization is a member of a national, regional or provincial umbrella organization of organizations serving or advocating for refugees and immigrants.
6. The organization charges no fees of any kind for services related to advice, information or representation in immigration processes.
7. The representative of the NGO identifies him/herself to the refugee/immigrant and to any other parties involved in the process/services as a representative of the NGO.
8. The NGO has a public complaint mechanism available and accessible to clients.
9. The NGO promotes the professional development of its representatives providing services of advice, information or representation.

2. Intergovernmental Bodies

Intergovernmental bodies, such as the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM), are not NGOs. IOM provides a variety of services and travel arrangements for refugees and other migrants. In the last few years, IOM has been providing information and advice, in certain countries, to potential immigrants to Canada for a fee. IOM presents these fees as strictly "cost recovery," not for profit.

It is the opinion of the Committee that, as soon as fees are being charged, the same criteria regarding competence and accountability should apply as those imposed on consultants.

3. Referral organizations

IRPA and its regulations (subsection 150(1)) change the way in which CIC will now do refugee selection overseas. Generally speaking, it will no longer be possible for refugees to "self-refer." Government-assisted refugees must now be referred to CIC by designated referral organizations. The main referral organization is the UNHCR, which does not charge for service.

In certain regions CIC may contract with other organizations to do the work of processing and referring potential government-assisted refugees for resettlement in Canada. There is a strong possibility that these organizations may charge refugees fees on a "cost recovery" basis. This situation would be completely unacceptable to NGOs working with refugees and immigrants in Canada.

RECOMMENDATION 22. Intergovernmental bodies or other organizations operating overseas that charge fees to immigrants or refugees should be regarded as consultants and be subject to the authority of the Regulatory Body.

The Regulatory Body may decide to issue a special license, after examining the activity, competence and accountability of such an organization.

CIC should not do business with any organization that charges fees, without the approval of the Regulatory Body.

B. Prerequisites/Qualifications

1. DACUM

The Committee recognized the importance of having a coherent and credible basis for defining the profession of immigration consultant. This required defining the tasks that an immigration consultant must perform, and the skills, aptitudes and training necessary to accomplish those tasks. Once this essential first step was completed, the following could then be pursued:

- develop coherent entry requirements for the profession
- develop coherent grandfathering provisions
- establish minimum education and credentials requirements
- review, develop and validate a curriculum

Following an investigation of the best means to achieve this, the Committee decided it was important to pursue a DACUM for Immigration Consultants.

DACUM loosely stands for "Designing A CUrriculuM." It is a standardized, recognized process developed in Canada and recognized internationally for determining occupational duties and requirements of a profession (skills, education level, training), which then form the basis for developing a curriculum. It is the recognized standard procedure for defining what a person in a particular occupation does, and what skills and abilities are needed to perform those duties.

Attached to this report as Appendix B is the DACUM Report, including a "Gap Analysis" with respect to the Seneca College Immigration Practitioner Certificate Program referred to in this Report, and a DACUM Chart providing the specific tasks, skills, aptitudes and education credentials necessary to be an Immigration Consultant.

The Committee would like to express its appreciation to the underwriters of the DACUM, Egenuity Inc., the facilitator, and the participants who gave generously of their time. Once a regulatory authority is established, it will have a credible basis upon which to develop the necessary mechanisms and standards to regulate Immigration Consultants.

The Committee notes that the DACUM participants added elements to the General Description of the Job, namely that an "Immigration Counsel" is "based in Canada, who is a Canadian Citizen or permanent resident," and respectfully came to other conclusions with respect to those delimitations, as noted in this report. Except for this observation, the Committee has unanimously endorsed the DACUM Chart and Analysis and Report as essential tools for the regulatory authority, and makes them part of our submission to the Minister.

RECOMMENDATION 23. The Committee endorses the DACUM chart and Analysis and Report appended to this report as essential tools for determining occupational duties and professional requirements and using these as the basis to develop a curriculum.

2. Character

In developing a model for the regulation of consultants, the character of an individual who is providing advice to clients must be examined. An individual applying for registration must conform to a code of conduct established by the appropriate regulatory body.

Individuals receiving advice and assistance from consultants must feel confident that the consultant will act in their best interests. Those who are regulated should act in a manner that will bring respect to the profession and to the administration of the IRPA and its regulations.

Examination of the consultant's criminal past should also be performed, to determine whether or not the consultant is eligible to be registered within the regulatory framework. Individuals with personal histories involving fraud, violent crime, theft or other offences may be ineligible for registration due to character. Individuals would be eligible for registration despite a criminal conviction if they were able to demonstrate that they were rehabilitated.

RECOMMENDATION 24. It is recommended that all individuals applying for registration provide police certificates or similar evidence to substantiate that they do not have any bars to their eligibility.

3. Education/Testing

At the present time there is no national program to assist individuals in familiarizing themselves with the IRPA and its regulations.

Seneca College in Toronto and the University of British Columbia in Vancouver both run an Immigration Practitioner Certificate Program; however, the program is not mandatory and is not nationally mandated. This program was developed by Seneca College with the assistance of lawyers, consultants and a university professor familiar with the practice of Immigration Law. It consists of a full year of weekly lectures, which are broken down into the six major topics related to Immigration Law. Each student must complete a written exam at the completion of each module and obtain an overall average of 70 percent. The lecturers are leading practitioners in their fields. The program is presently not offered in both Canadian official languages or available on-line for students who cannot access the Toronto or Vancouver area. Both courses

are, however, managed by a single committee, which ensures that the programs are delivered in a similar manner to students in both Toronto and Vancouver. Both the Association of Immigration Counsel of Canada (AICC) and the Organization of Professional Immigration Consultants (OPIC) support the program.

The committee also had an opportunity to review the United Kingdom's educational system, which is overseen by the Office of the Immigration Services Commissioner (OISC). The UK approach seems to be a self-administered method of assessing one's competency. It requires individuals to demonstrate that they have the appropriate competence through in-house training, previous work experience or continuing legal education. There is not a national education program provided within the UK.

The Australian education requirements were also reviewed. In that country, individuals wishing to practice Immigration Law must demonstrate that they have sound knowledge of the immigration processes within Australia. Deakin University, the Migration Agents Regulation Authority and the Migration Institute of Australia offer core educational programs in order for individuals to develop and demonstrate sound knowledge, which would entitle them to become members of the Migration Agents Registration Authority of Australia.

A national program should be established to provide an educational program for those wishing to be registered. This program would be administered by the regulatory body, with various educational institutions applying to be authorized education agents. The program would be developed based on a DACUM. All individuals wishing to register would be required to complete the educational component in order to be registered.

RECOMMENDATION 25. The Committee recommends that an education program be established for those wishing to be registered, to be administered by the regulatory body through authorized education agents.

4. Degrees of Qualification

It was determined through many of the submissions that many individuals currently involved in immigration law restrict their areas of practice. These areas may include humanitarian and compassionate applications, economic class applications, work permits, refugee matters and settlement issues. The Committee therefore examined whether or not individual licensing could be available based on the level of activity and complexity of work that a consultant provides.

Levels of certification will ensure that the public recognizes that a consultant may have experience only in certain areas. Many consultants express concern that they do not wish to practice in certain areas of immigration law and thus should not be required to undertake any form of educational competent in that regard. Reference should be made to the UK model, which provides three levels of registration that a consultant can obtain.

RECOMMENDATION 26. The Committee recommends that the regulatory body develop detailed levels of practice, which would permit consultants to apply for registration based on their level and area(s) of experience.

5. Continuing Professional Education

Continuing professional education is an integral part of maintaining the standards of any profession. The regulatory body of consultants must establish continuing professional education programs, which will be a mandatory requirement for an applicant to remain registered. The regulatory body should examine the number of hours that applicants must accumulate in order to maintain their registration.

RECOMMENDATION 27. The Committee recommends the establishment of mandatory continuing professional education programs.

6. Languages

In order to represent a client appropriately and to maintain a professional code of conduct, a consultant's language ability must be examined. It must be recognized that representations are made on behalf of clients both orally and in writing, and such representations must be completed in a professional manner.

The Committee will strongly encourage the introduction of a language assessment as a prerequisite for registration. In order for there to be transparency, third-party language testing would be the most appropriate manner for the applicant to demonstration proficiency in one of Canada's official languages. It is recommended that the regulatory body examine what level of proficiency

should be required in order for an individual to be assessed. Applicants should also be able to establish proficiency in an official language by submitting evidence of their circumstances such as the fact they are living and working in an English or French environment.

RECOMMENDATION 28. The Committee recommends that the regulatory body establish requirements for language proficiency in one of Canada's official languages, and develop language assessment based on third-party language testing.

C. Composition of Disciplinary Body

Disciplinary bodies currently exist in various forms. Whether created by the law or by a consensual agreement among the parties, the function of a disciplinary body requires that it be mandatory on all parties to abide by its rules and final ruling, exclusive of any recourse under domestic law.[15]

The disciplinary body would receive all complaints strictly confidentially, and initiate a process where one or three individuals would hear the complaint and have the power to sanction the member in accordance with pre-defined rules. Again, it would be the task of the interim panel to formulate this procedure and enunciate the possible remedies in order to circumscribe the actions of the disciplinary body.

The creation of any disciplinary body must be carefully considered as the integrity of the disciplinary regulations themselves and the survival of the whole regulations rest upon these elements, which constitute its credibility.

Any flaw in the function of the disciplinary body, whether it be recognized by a domestic court or by its participants, will render null and void the foundation of the system and may bring us back to the drawing board.[16]

The creation of a regulatory authority requires the establishment of a permanent secretariat, which will provide general information (not legal advice), and coordinate a complaint resolution process through its duly constituted disciplinary body.

Ultimately, the disciplinary body will be empowered to distribute final awards and to enforce their execution.

1. Execution of Awards

Awards may take different forms. For example, they may take the form of the restitution of sums of money, exemplary damages, the suspension or expulsion of a member, or a reprimand.

In the analysis of the execution of awards, one needs to consider the particularities of our Canadian legal system.

If the federal government, through its legislation, allows the disciplinary body to award restitution of monies or exemplary damages, it will need to carefully analyse the implications surrounding the execution of such awards. The execution of awards for the recovery of monies may fall within the jurisdiction of provincial civil courts, thus creating a non-homogenous system with interpretations varying from one province to the next. Also, to be required to resort to provincial court systems to execute awards may seriously hamper the effectiveness of such a system, with a serious cost to the client.[17]

15. Although errors and omissions are generally understood to be reviewable by domestic tribunals under most legal systems.

16. In the 1970s, the International Olympic Committee (IOC) created and funded the Court of Arbitration for Sport (CAS) (based in Lausanne, Switzerland), which functioned as an arbitration court to decide on matters involving athletes, international sports federations or National Olympic Committees. In an important Swiss Federal Court decision pronounced in 1994, the CAS was found not to be sufficiently independent of the IOC, as it named most of its arbitrators, funded its operations and was considered as somewhat of a judicial arm of the IOC. As a result, the IOC immediately distanced itself from CAS in 1995 by creating a council of more independent legal sports experts, who in turn named and renewed the list of arbitrators with members who were more distanced from the IOC. Since 1996, the CAS has enjoyed an unchallenged reputation of an independent court, which has, on numerous occasions, ruled against the IOC (i.e. the *Rebagliatti* decision, Nagano O.G., 1998).

17. Recently, the federal government created a federal arbitration process in amateur sports. In the Nadine Rolland affair (summer 2002), two arbitration awards were issued, which seemed to contradict each other. In order to exercise her rights, Nadine Rolland was required to initiate injunctive proceedings simply to have her own arbitration award enforced (cost estimated at over $15,000). Only the provincial jurisdiction could enforce the arbitration award, although the proceedings were a creation of the federal government.

However, the suspension or expulsion of members would, in our view, be possible, should the federal government legislate on its conditions of admission and retention of certification.

The disciplinary body should be powerful in its sanctioning power. It should have power, *inter alia,* to suspend, expel, investigate, refuse and revoke membership. It should even go further by having the power to enforce awards that would order the restitution of monies and/or exemplary damages.

2. The Constitution of a Disciplinary Body

It is suggested the disciplinary body be independent of influence from, among others, the following bodies:

- IRB
- CIC
- Provincial Bar Associations and Law Societies
- Federal Court
- Parliament (including the Minister of Citizenship and Immigration)

The regulatory authority would oversee the composition and the functions of the disciplinary body and its administration, follow guidelines leading to the nomination of arbitrators, and periodically advise the Minister on necessary changes to its governing and functioning laws/regulations.

3. Access to the Disciplinary Body

The following issues are of paramount importance to the reliability of an effective disciplinary body: location of the client, status in Canada, cost of use, and rules of evidence.

a. Location of the client

Clients of the disciplinary body may often be located outside Canada.[18] In addition, such clients may come from an environment that does not possess the equivalent of disciplinary bodies; therefore, educating clients about the exercise of their rights will be very important.

It will also be crucial to ensure that the client does not perceive the use of the disciplinary body process as in any way hindering their chance to ultimately immigrate to Canada. This issue is very serious and should be at the core of a communication strategy from CIC.

Access to the disciplinary body process will necessitate comprehensive postings on CIC's Web site in a multilingual format, with hyperlinks to PDF-format complaint forms. Visa offices and Canadian embassies (including Foreign Affairs) will also require comprehensive education to be able to advise clients who wish to use the disciplinary body from any point in the world where Internet access is limited.

b. Status in Canada

Vulnerable clients without legal status in Canada would usually refrain from initiating a complaint against a professional. Understandably, they would fear being singled out and deported, before the disciplinary body process would commence. And even with a positive outcome, they would still fear that identifying themselves would begin an unstoppable process leading to their deportation.

For the disciplinary body to be effective, it would be required that safeguards be in place regarding the confidentiality of the parties, extending even to the final award. This argument cross-validates the requirement for a disciplinary body independent of CIC.

Failing to put these safeguards in place would render any disciplinary body inefficient, as a whole segment of the most vulnerable clients would *de facto* be excluded from its use.

c. Cost of use

In the majority of cases, the sums involved are not significant to bring forth in a regular court of law. These would very rarely be over $10,000 and, for the most part, would be under $5,000. These sums usually do not justify domestic court procedures and their associated costs. Under the current unregulated scenario, a neglectful consultant may accumulate a number of $5,000 legitimate claims, while never receiving a mere demand letter.

18. Whether registered consultants located outside Canada would also have access to the use of the disciplinary body still needs to be evaluated.

Therefore, cost of use must be free to the client and supported by the federal government. In order to minimize abuse, however, the disciplinary body may wish, in developing its rules, to take inspiration from some current provincial bar associations (e.g., that of Quebec), which allow fees to be contested within a 45-day period, after which the complaint is deemed non-receivable. Complaints relating to breaches of ethics are always receivable.

d. Rules of evidence

Requiring the client to appear in person to provide evidence would impede the efficiency of the disciplinary body. As most clients would not be prepared to bear the costs of travel, added to the difficulties of obtaining travel visas to Canada to provide evidence, flexibility in the approach to evidentiary rules will need to be addressed in the legislation.

However, the right to cross-examine and to dispute the alleged facts will need to be assured in order to prevent abuse of the system. Many solutions currently exist in the international commercial arbitration field, which should inform any legislation pertaining to this issue.

4. Conclusion

Federal legislators are expected to further analyse these issues, and to make them practical and impermeable to court challenges.

Disciplinary bodies currently exist with provincial bar associations, and they are generally accepted by the population as being fair and independent, with the purpose of protecting the public. It is strongly recommended that the operation of a federal disciplinary body be inspired by the century-old tradition of complaint mechanisms instituted by bar associations across the country.

RECOMMENDATION 29. The Committee strongly recommends creation of a disciplinary body, with attention to issues of independence of the body, access, safeguards with respect to confidentiality, and cost of use, inspired by complaint mechanisms that have been developed by provincial bar associations.

D. Code of Conduct

The Committee is proposing the following draft Code of Professional Conduct as a model code of professional conduct for Immigration Consultants. A code of conduct transcends the issue of regulatory framework, and can be effectively adopted regardless of the regulatory model ultimately selected.

A code of conduct is designed to establish the expected standards of professional conduct and competence, and to provide guidance to the profession, with the goal of protecting the public from unprofessional, improper or incompetent practice.

The Advisory Committee considered a wide range of available precedents, and borrowed and adapted concepts and wording from, in particular, the following resources:

- CBA Model Code of Conduct
- LSUC new Code of Conduct
- OPIC and AICC Codes of Conduct
- Intellectual Property Institute of Canada Code of Ethics
- MARA Code of Conduct (Australia)
- Canadian Association of Management Consultants Uniform Code of Professional Conduct
- OISC (UK) Code of Standards

We wish to emphasize that a code of conduct should be viewed as a living document. The above-noted precedents have themselves undergone significant revision over time. A code of conduct should be constantly reviewed, challenged and refined to best reflect the aspirations of the profession and the interests of the public.

RECOMMENDATION 30. The Committee recommends adoption of a Code of Conduct, to be subject to ongoing review and modification, and proposes a Draft Code of Conduct for consideration as part of this Report.

DRAFT

Immigration Consultants Regulatory Authority

Code of Professional Conduct

Part 1

Introduction

1.1 The Code of Professional Conduct (the Code) is intended to regulate the conduct of Immigration Consultants.

1.2 A person who wishes to practice as an Immigration Consultant must be accredited and registered by the Immigration Consultants Regulatory Authority (the Authority).

1.3 The Authority is responsible for administering the Code.

1.4 It is the duty of any person to whom the Code applies to comply with its provisions.

1.5 Persons who are not regulated by a designated professional body and who consult, represent or advise a person who is the subject of a proceeding or application before the Minister, an officer or the Board, when neither registered by the Authority nor explicitly exempted from registration, will be committing an offence under the *Immigration and Refugee Protection Act* (the Act).

Part 2

Definitions

"Designated Professional Body"

refers to any statutory governing body constituted by an Act of any provincial or territorial legislature to regulate the conduct of lawyers.

"Immigration Consultant"

refers to any person who consults, represents or advises a person who is the subject of a proceeding or application before the Minister, an officer or the Board, other than the following:

(a) a person who is authorized by a designated professional body to practice as a member of the profession whose members are regulated by that body;

(b) a person who works under the supervision of such a person; or

(c) a person exempted from registration.

"Immigration Consultants Regulatory Authority"

refers to the body designated by the Minister of Immigration pursuant to s. 91 of the *Immigration and Refugee Protection Act* [or subsequent provisions of IRPR pursuant to IRPA. 91] to establish standards and regulate the conduct of Immigration Consultants.

Part 3

Competence and Quality of Service

3.1 The Immigration Consultant owes the client a duty to be competent to perform any services undertaken on the client's behalf.

3.2 The Immigration Consultant should serve the client in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which Immigration Consultants generally would expect of a competent Immigration Consultant in a like situation.

Commentary

1. The Immigration Consultant will accept only assignments for which he or she is qualified and in which it is believed there may be real benefits to the client. The Immigration Consultant will recommend that other professionals be retained whenever their special knowledge and skills may be needed by the client. In particular, the Immigration Consultant has a positive duty to refer a client to a competent lawyer where the legal issues are complex and require an analysis and interpretation of the applicable law by a lawyer, or where the matter clearly requires representation by a lawyer, such as a proceeding before the Federal Court of Canada.
2. The Immigration Consultant shall not undertake representation of the client in any quasi-judicial proceeding such as proceedings before the Board unless the Immigration Consultant has been certified by the Authority as competent to do so.
3. The Immigration Consultant will keep his or her knowledge and skills up to date in compliance with Continuing Professional Development requirements established by the Authority.
4. The Immigration Consultant will act responsibly and with due diligence in the handling of a client's case and act within the bounds of the law to obtain the best results possible in the circumstances.
5. Numerous examples could be given of conduct that does meet the quality of service required by the second branch of the Rule. The list that follows is illustrative, but not exhaustive:
   - (a) failure to keep the client reasonably informed;
   - (b) failure to answer reasonable requests from the client for information;
   - (c) unexplained failure to respond to the client's telephone calls or correspondence;
   - (d) failure to keep appointments with clients without explanation or apology;
   - (e) informing the client that something will happen or that some step will be taken by a certain date, then letting the date pass without follow-up information or explanation;
   - (f) failure to answer within a reasonable time any communication that requires a reply;
   - (g) doing the work in hand but doing it so belatedly that its value to the client is diminished or lost;
   - (h) slipshod work such as mistakes or omissions in statements or documents prepared on behalf of the client;
   - (i) failure to maintain sufficient and proper reference materials, office staff, file management procedures, tickler or calendaring systems, and other systems and facilities adequate to the Immigration Consultant's practice;
   - (j) withholding information from the client or misleading the client about the position of a matter in order to cover up the fact of neglect or mistake;
   - (k) failure to make a prompt and complete report when the work is finished or, if a final report cannot be made, failure to make an interim report where one might reasonably be expected;
   - (l) self-induced disability, for example from the use of intoxicants or drugs, that interferes with or prejudices the Immigration Consultant's services to the client.

Part 4

Advising Clients

4.1 When advising clients, the Immigration Consultant must be both honest and candid.

Commentary

1. The Immigration Consultant has a duty to give the client a competent opinion based on sufficient knowledge of the relevant facts, sufficient appreciation and consideration of the applicable law, operational policies and practices, and the Immigration Consultant's own experience and expertise.
2. The Immigration Consultant should be wary of bold and confident assurances to the client, especially when the Immigration Consultant's employment may depend on advising in a particular way.
3. The Immigration Consultant must be aware of and refer clients in appropriate circumstances to services or benefits for which the client may be eligible, such as legal aid or legal clinic services.
4. When advising a client the Immigration Consultant must exercise due care and must never knowingly assist in or encourage any dishonesty, provision of misleading information, omission of any required relevant information, fraud, crime or illegal conduct, or instruct the client on how to violate the law and avoid punishment. The Immigration Consultant should be on guard against becoming the tool or dupe of an unscrupulous client, agent, or persons associated with that client or agent.
5. The Immigration Consultant owes a special duty and must exercise special care when dealing with a client seeking an immigration benefit where that client has also retained an agent, or where the agent has retained the Immigration Consultant on behalf of the person seeking the immigration benefit, and such agent acts as an intermediary between the client seeking the immigration benefit and the Immigration Consultant. In such cases, the Immigration Consultant must consider the client seeking the immigration benefit as the primary client. The Immigration Consultant has the responsibility to ensure that all representations made by the client, and all advice and representations to the client seeking the immigration benefit, including those proffered by the agent, are in compliance with the Code. Further, it must be clear to the client seeking the immigration benefit that any such agent, unless registered or exempted from registration by the Authority, is not an Immigration Consultant and is not authorized to provide consultations, representation or advice of his or her own accord with respect to a proceeding or application before the Minister, an officer or the Board.
6. The Immigration Consultant must advise the client promptly and fully regarding any error or omission that occurred in the matter for which the Immigration Consultant was retained. The duty includes recommending the client seek independent advice regarding any rights that may arise out of the error or omission. The Immigration Consultant shall further advise the insurer promptly regarding any potential claim arising out of the matter.

Part 5

Confidentiality

5.1 The Immigration Consultant has a duty to hold in strict confidence all information concerning the personal and business affairs of the client acquired during the course of the professional relationship, and should not disclose such information unless disclosure is expressly or impliedly authorized by the client, is required by law, or is otherwise permitted by this Code.

Commentary

1. The Immigration Consultant owes a duty of confidentiality to every client whether a casual or continuing client. The duty survives the professional relationship and continues indefinitely even after the professional relationship has terminated, and regardless of whether there are differences between the client and Immigration Consultant.
2. The Immigration Consultant is bound by his or her fiduciary obligation to the client and is forbidden from using confidential information for his or her own benefit, for the benefit of a third party, or to the disadvantage of the client.

3. Disclosure of confidential information may be permitted where expressly or impliedly authorized by the client, where the fee or conduct of the Immigration Consultant has been called into question by the client – and in such case only to the extent necessary to defend against such allegations, or where disclosure is necessary to prevent a crime, where there are reasonable grounds to believe a crime is likely to be committed, particularly where that crime would be a crime of violence.

Part 6

Impartiality and Conflicts of Interest

6.1 The Immigration Consultant shall not represent parties with potentially conflicting interests in an immigration matter, save after adequate disclosure to and with the consent of the parties, and shall not act or continue to act in a matter when there is or is likely to be a conflict of interest.

Commentary

1. A conflicting interest is one that would be likely to affect adversely the Immigration Consultant's judgment or advice on behalf of, or loyalty to a client or prospective client.
2. Conflicting interests include, but are not limited to, the actual or potential duties and loyalties of the Immigration Consultant and his or her professional associates, staff or partners, owed or possibly owed to lawyers or other professionals retained in a matter on behalf of the client, to third party agents who act as an intermediary between the client and the Immigration Consultant, and financial institutions or other parties or entities that may offer commissions, referral fees or other real or potential financial or other benefits to the Immigration Consultant for referring the client to them, or for receiving the referral to represent the client from them.
3. In particular, the Immigration Consultant should not enter into a business transaction with the client, or with a third party arising directly out of the relationship with the client (such as a facilitating financial institution for investor category applicants), unless the transaction is fair and reasonable and the terms are fully disclosed to the client in writing, and unless the client has a reasonable opportunity to obtain independent advice that would protect the client's interests, and that the client's consent was given to the transaction in writing.
4. This rule requires adequate disclosure to enable the client to make an informed decision about whether or not to have the Immigration Consultant act despite the existence or possibility of a conflict of interest.
5. Generally speaking, in disciplinary proceedings arising under this rule the Immigration Consultant will have the burden of showing good faith and that adequate disclosure was made in the circumstances and that the client's consent was obtained.

Part 7

Preservation of Clients' Property

7.1 The Immigration Consultant owes a duty to the client to ensure the safekeeping of the client's property in accordance with the law and with the same care of such property as a careful and prudent owner would when dealing with property of like description.

Commentary

1. With respect to the client's money paid on account of services to be rendered, the Immigration Consultant must maintain a proper trust account and adequate records to at any time promptly account for and if necessary deliver such property to the client.
2. It is generally improper for the Immigration Consultant to withhold from the client a visa or other valuable property held on behalf of the client as collateral for an unpaid debt.

Part 8

Immigration Consultant as Advocate

8.1 The Immigration Consultant must treat government officials, tribunals and other practitioners with courtesy and respect while representing the client resolutely, honourably and within the limits of the law.

Commentary

1. The Immigration Consultant as advocate must fearlessly raise every issue and advance every argument in advancing the client's interests, but must do so fairly and honourably, without illegality and in a manner consistent with the duty to treat government officials and tribunals with candour, fairness, courtesy and respect.
2. The scope of this duty is limited by the concurrent duty of the Immigration Consultant to not abuse the immigration or tribunal process by pursuing manifestly unfounded or spurious applications or claims.
3. The Immigration Consultant who appears as an advocate on behalf of a client should not swear his or her own affidavit and should not testify as a witness before an official or tribunal, save as specifically permitted by the Regulations or local practice, or as to purely formal and unquestioned matters only.

Part 9

Retainer Agreements and Fees

9.1 It is a mandatory requirement that the Immigration Consultant provide the client with a written retainer agreement or engagement letter that clearly states the matter and scope of services for which the Immigration Consultant is retained, fully discloses the fees being charged, such fees being fair and reasonable in the circumstances, any other remuneration being received as a consequence of the matter, and payment terms and conditions.

Commentary

1. Factors to be considered when determining whether a fee is fair and reasonable in the circumstances include: the nature of the services to be performed; the time required; the Immigration Consultants experience, ability and the degree of responsibility assumed; and the benefits that accrue to the client.
2. The Immigration Consultant must not receive hidden fees or commissions or other remuneration arising out of his or her representation of the client that have not been disclosed in full in writing and agreed to in advance by the client.
3. It is in the best traditions of the profession for an Immigration Consultant to reduce or waive a fee in the case of hardship or poverty, or where the client would otherwise effectively be deprived of professional advice and representation.
4. It is improper for the Immigration Consultant to suggest that he or she can "guarantee" a particular result for a client, and that term should not be used in describing the fees or services of the Immigration Consultant. However, contingent fees can be appropriate, where the terms are fully disclosed in writing and understood by the client.
5. The Immigration Consultant must issue receipts, proper statements of account and retain proper records for the safeguarding of, and timely reporting to the client with respect to, payments received or funds held in trust.
6. Breaches of this Rule and misunderstandings about fees and financial matters bring the profession into disrepute. The Immigration Consultant must try to avoid such conflicts and must be prepared to explain the basis of charges, especially if the client is unsophisticated or uninformed about the proper basis and measurement for fees. Further the Immigration Consultant is under a positive duty and should either in the retainer agreement or engagement letter, or upon an issue with respect to fees arising, advise the client in writing that a procedure exists for reviewing the account on behalf of the client by the Regulatory Authority.

Part 10

Advertising, Solicitation and Making Services Available

10.1 The Immigration Consultant shall make professional services available to the public in an efficient and convenient manner that will command respect and confidence, and by means that are compatible with the integrity, independence and effectiveness of the profession.

Commentary

1. The Immigration Consultant shall not engage in false or misleading advertising or representations, in particular regarding his or her qualifications, purported special access or influence, services, fees, processing times or programs or benefits available.
2. Use of the term "guarantee" when describing services or fees is inappropriate, and must be avoided. Wording such as "refund policy" or reference to contingent fee arrangements, if factual and supported in writing in a retainer agreement or engagement letter, may be appropriate.
3. The Immigration Consultant has a positive duty to promote the Authority and Code of Professional Conduct, and to prevent unregulated practice, and is encouraged where appropriate to educate the public at large regarding the Authority and the regulatory system and safeguards with respect to Immigration Consultants.
4. Former government officials must take special care to ensure representations regarding their qualifications and past employment are strictly factual, and must not promote the notion that they may have special access or influence since any suggestion of special access or influence regarding the immigration process brings the integrity of the immigration process into disrepute. Further, former immigration officials must abide by and ensure they are in compliance with the Government's own post-employment code.
5. The Immigration Consultant shall clearly distinguish his or her own credentials from those of a lawyer licensed to practise law in any province or territory, and shall not refer to any foreign credential or in any other way make representations that may reasonably lead to a misapprehension that the Immigration Consultant is a lawyer, provides legal services or has credentials as a lawyer when that is not the case.

E. Offenses

It will be necessary to include certain penalty provisions in the IRPA and/or IRPR. For example, there must be penalties for unauthorized and improper practice.

RECOMMENDATION 31. The Committee recommends that penalty provisions be included in the IRPA to address unauthorized and improper practice. Proposals for such statutory provisions are included in the Report.

Proposals for such statutory provisions follow.

1. Wrongful Use of Titles and Descriptions by Unregistered Persons

a. Restrictions on description as immigration consultant

[IRPA Section no.] (1) Except as provided in subsection (2) of this section, every person commits an offence, and is liable on summary conviction to a fine not exceeding $25,000, who, not being registered under this Act as a immigration consultant, uses or causes or permits to be used in connection with his or her business, trade, calling, employment, or profession

(a) The title “immigration consultant”; or

(b) Any title that includes the word “immigration”, or any words, initials, or abbreviations, that are intended to cause, or that may reasonably cause, any person to believe that the person using that title or any such words, initials, or abbreviations is a immigration consultant or is registered under this Act.

(2) Nothing in subsection (1) of this section shall apply with respect to a member in good standing of a provincial Bar Association in Canada,

b. Restrictions on description as specialist

[IRPA Section no.] (1) Except as provided in subsection (2) of this section, every person commits an offence, and is liable on summary conviction to a fine not exceeding $25,000, who, not being registered under this Act as a immigration consultant specialized in respect of [delineate specific branch of immigration law for which specialist designations are to be granted] designated by the [name of issuing body] under [insert section number], uses or causes or permits to be used in connection with his or her business, trade, calling, employment, or profession any words, initials, or abbreviations that are intended to cause, or that may reasonably cause, any person to believe that the person using any such words, initials, or abbreviations is a specialist, or is registered as a specialist under this Act, in respect of that branch of immigration law.

(2) Nothing in subsection (1) of this section shall apply with respect to a member in good standing of a provincial Bar Association in Canada duly registered as a specialist in immigration law.

2. Annual Retention Certificates in Respect of Registered Persons

a. Immigration Consultants to hold annual retention certificates

[IRPA Section no.] (1) Except as provided in subsection (3) of this section, no immigration consultant shall be entitled

(a) To have his or her name retained on the register; or

(b) To practice as a immigration consultant in any year, whether in the service of the Crown or otherwise,

unless he or she is the holder of an annual retention certificate issued by the [name of issuing body] in respect of that year.

(2) Every immigration consultant commits an offence, and is liable on summary conviction to a fine not exceeding $50,000, who practices as an immigration consultant in contravention of this section.

(3) Nothing in subsection (1) or subsection (2) of this section shall apply with respect to any person holding a [temporary or provisional certificate] certificate for the time being in force under section [insert section no.] of this Act.

F. Disqualification

A system that would aim to regulate professionals would require rules to disqualify those who would either discredit other professionals or provide poor advice.

Briefly, these are some of the reasons why a regulated consultant would be disqualified from being licensed, or why an existing licence would be revoked:

1. Criminal conviction. If committed outside of Canada, an analogy with our domestic legal system could be used, as if the offence had been committed in Canada (much like the grounds of inadmissibility found in IRPA). Only through application to the regulatory body could the professional be granted a licence again. A pardon would be required if convicted under Canadian law; another mechanism would need to apply if the conviction was under foreign law (applying the same general principles as for the Canadian pardon – i.e. time lapsed since the infraction)

2. Personal bankruptcy. Until liberated from bankruptcy, the professional cannot hold a valid licence.

3. Sanctions from disciplinary body. Of course, any sanction taken by the disciplinary body against the professional would apply, and if this sanction disqualifies the professional, either temporarily or permanently, then this would constitute grounds for such interruption of practice. Such sanctions may disqualify the individual for repeated small offences, or single more important ones. These would have to be defined by the regulatory and disciplinary rules.

4. Interruption of practice for more than five years. Meeting the qualification standards anew would be required if the professional ceased practising immigration law for more than five years.

RECOMMENDATION 32. Guidelines should be developed concerning disqualification of a regulated consultant from being licensed, or for revoking an existing licence. The Committee recommends that the disciplinary body be accorded the discretion to consider disqualification for such causes as criminal conviction, personal bankruptcy, sanctions from the disciplinary body, and interruptions of practice for more than five years, on a case-by-case basis.

Chapter 5
Powers of the regulatory body

A. Authority to censor; fine; suspend/revoke licence; ban; refer to law enforcement authorities; investigate; compel authority to produce documents; refuse membership; etc.

RECOMMENDATION 33. Consistent with the Committee's recommendation to establish an independent body under Section 91 of the IRPA, the Non-share Capital Corporation created under part II of the *Canada Corporations Act* would allow the regulatory body to establish the authority to censor; fine; suspend/revoke license; refer to law enforcement authorities; investigate; and refuse membership through the creation of corporate by-laws.

We note, however, that while a by-law could compel members to produce documents this may need to be a delegated authority established in regulations. In addition, in order to bar an individual from practicing as an immigration practitioner, the regulations would have to clearly define who may practice and what organizations are recognized as regulators for the purpose of the IRPA. This would of course require the Minister to designate provincial and territorial bar associations in addition to the body created under Section 91.

Chapter 6
Implementation and transition

A. Resources

Success or failure of regulation will in large measure depend on the proper funding of the regulatory authority from the outset. The Committee in its deliberations identified four key areas that would have to be adequately financed in order to ensure the efficient establishment and operation of a viable consultant regulation scheme:

1. Physical Plant: fixtures, information technology tools, leased space, telephone systems, office equipment, etc.
2. Staffing: salaries of Board/Council members, registrar, support staff, investigators and hearing employees
3. Compensation Fund
4. Operating Capital

The Committee in its deliberations recognized that since the actual number of consultants that will be governed and therefore actively contributing to the body via their registration fees is currently unknown, it would not be possible to speak in exact terms.

However, given the example of the Australian experience it was decided that an examination of estimated expense would be valuable.

The Migration Agents Registration Authority (MARA) was established in an incremental way over a period of some 10 years, first beginning with the scheme being completely staffed, resourced and controlled by the Department of Immigration and Multicultural Affairs. With the creation of the Statutory Self-Regulated body in 1998, the Migration Agents Registration Authority originally based its estimates on a total of 800 initial Migration Agents being licensed under the scheme. In reality, MARA actually received more than 3,000 applications, far exceeding its original estimate. (It should be noted that MARA initially set the standards of entry at a very low level, which, in part, accounted for the larger than expected number of registrations.)

The Statutory Self-Regulation Scheme was initially funded with a grant from the Crown of $350,000 (Australian) to pay for costs associated with the establishment of the scheme, in addition to in-kind contributions made by the Department of Immigration and Multicultural Affairs in the form of IT support/development and the contribution of the salary and benefits of permanently seconded DIMA officers to the Authorities Secretariat staff.

Currently the Migration Agents Registration Authority supervises the activities of 3,895 Migration Agents and has an annual budget of $1.868 million (Australian) (2001 figures).

In the Canadian context, statistically we have a population that is double the size of Australia's and each year we accept more than double the number of immigrants. The Committee therefore felt it was reasonable to assume that the actual number of consultants who would seek registration with the new governing body would number between 1,600 and 3,000. This number will be affected by the ability of unregulated consultants to meet the Committee's recommended standards for entry into the profession.

In addition such factors as the costs associated with registration, mandatory errors and omission insurance and contributions to a compensation fund may also affect the number of registrants, who up until now have not been required to pay these costs as a part of doing business.

Initially the Committee foresees the need to have, in addition to the Board, the appointment of a registrar, who will be the chief administrative officer and be responsible for the day-to-day management of the Canadian authority. He/she will be responsible to the Board for the implementation, execution and

ongoing administration of the authority and the policies of the Council.

The Committee estimates that the body will initially require five to seven staffers who will be responsible for providing registrar secretariat services, complaints investigation and processing.

Contingencies should be made for the growth of the body in terms of staffing and physical plant as the body comes on line.

Physical plant

The Committee recommends that funding be provided for the initial lease of office and outfitting of an office for 10 staffers with the ability to expand as the registration function begins and expands. (However, the Committee believes that any expansion would be paid for from registration revenues that would be flowing to the body.) This will require the expenditure of monies prior to the governing body's receipt of income from registration fees.

Allowances should be made for the purchase of computer, telecommunications and office equipment. It is also foreseen that the registration authority will require the development of a registration database mechanism, accounting systems and day-to-day secretarial support systems.

In terms of a lease it is estimated that initially there will be a requirement for office space of between 5,000 and 8,000 square feet to allow for expansion, document storage and meeting areas. CB Ellis research shows that January real estate leasing prices for Class A office space in the Toronto Region averaged $24.07 (Canadian dollars) per square foot. Increasing vacancy rates and a negotiated long lease may reduce this price as the market is declining. This would require an annual leasing cost of $120,000 to $192,000 depending on the size of office chosen (exclusive of taxes). A portion of the leasing cost would need to be paid prior to the receipt of income by the governing body. The balance would be paid while income was being received. Given our estimate of a requirement for an initial six months of operating capital, the body would require at least 50 percent of the lease costs as seed funding.

An additional amount of $250,000 is estimated for fixtures, computers, office equipment, telephone equipment, IT development and support. It must be recognized that this amount would have to be largely dispensed prior to the receipt of any revenues by the governing body.

The Committee estimates that the body would require between $310,000 and $346,000 for this component.

Staffing, salaries of Board/Council members, registrar, support staff, investigators and hearing employees

The Committee recognizes the need to provide initial funding for the authority to allow its operation for a period of six months until revenue is realized from the receipt of fees paid by consultants seeking registration. This funding would pay for salary costs associated with compensation of members of the Governing council and eight staff members (including the registrar).

While the actual salary amounts paid will vary with function we believe that the salary and benefits costs will be substantial and can be notionally set at $50,000 per employee. This would put the annual salary expense in the neighborhood of $400,000.

Funds needed to support the Board would be limited in that they could be paid on a per diem basis. The compensation should be at a level equivalent to that paid directors of corporations of similar size. Given that this Committee has proposed a governing council of at least 12 members, the fees related to the function of the board will be substantial, as there will be a requirement for a period of intense meetings establishing the authority.

We can therefore not estimate the monies required on seeding for the Board. However they could easily exceed $300,000.

Compensation fund

This Committee has recommended the creation of a fund to protect the public and compensate individuals who have been the victims of fraud or other criminal activities of registered/licensed consultants after the commencement of the regulatory body.

This fund is separate and apart from the mandatory $1,000,000 Errors and Omissions Insurance policy that the Committee recommends that registered/licensed consultants have as a condition of registration.

The Committee recognizes that Errors and Omissions insurance policies cover only good faith errors and omissions made by the insured practitioner and do not cover criminal actions such as fraud. As such the Committee believes that there is a need to establish a fund that would be built up over time to a level deemed actuarially sound through a levy on each registered/licensed member.

The amount of the compensation fund would be decided by the governing body in consultation with Actuaries who could analyse the risks associated with such a fund and provide advice on the creation and administration of such a fund.

The Committee recommends that the governing body administer the fund and establish the policies related to what type of claim the fund would cover and any limits on the amounts paid out by the fund. Given the extent of liability the Committee recommends that damages paid by the fund be narrowed to only those damages actually paid out of pocket by the complainant. This will ensure the financial stability of the fund.

The Committee recommends that the Minister initially provide an infusion of $500,000 in order to establish the fund from the outset of the authority. This amount could be in the form of a grant or a loan, allowing the body to either repay the amount or some portion of it over an agreed period of time that would be financially sound given the demands on the governing body. The terms would be a topic of negotiation between the Minister and the Board.

Operating capital

The Committee recognizes the need for the existence of operating capital to pay for expenses of the new governing body for at least the first six months of its operation. This would include telephone, printing, stationery, office supplies, travel expenses, utilities, public relations, advertising, maintenance, translation, and human resources activities.

The Committee believes that these expenses would be larger at the commencement of the scheme in part due to the public relations and registration activities that would have to be undertaken by the authority before any income was realized from registration/licensing income.

The Committee had difficulty quantifying the amount of money required for this component as associated costs would largely depend on the level of public relations, number of publications and forms to be created, and the actual cost of delivering a registration program.

In the Committee's view these costs could easily reach as high as $750,000 over the first year of operation.

RECOMMENDATION 34. In view of requirements for resources which include physical plant, staffing, a compensation fund, and operating capital, the Committee recommends that the Minister of Citizenship and Immigration secure funding of $1.75 million for the creation of a new body to regulate the activities of consultants. The Committee further recommends that the Minister enter into discussions with the governing council of the new body to negotiate the terms of seeding and repayment requirements, should the Minister conclude that repayment of the seed capital is appropriate.

B. Grandfathering

1. Setting the Bar: Minimum Standards for Entry

The Committee has received various submissions as to the minimum standard of entry for individuals to become eligible for registration. We have examined both educational requirements as well as practical work experience. It was felt that in order to provide credibility to the regulatory body, all applicants for registration must complete the minimum educational component established by the regulatory body. The rationale for this is to establish a national standard. The Committee also recognizes that many individuals have been practicing in the immigration field for years and thus, they could be exempted from the necessity of attending the educational program but would be required to complete all examinations developed within the educational component

In certain circumstances to be determined by the Regulatory Authority, an exemption from the requirement to take an examination may be made available to veteran or otherwise demonstrably highly qualified immigration consultants. If the Regulatory Authority establishes credible criteria and determines it to be appropriate in the circumstances, an examination requirement may be

replaced for example by a challenge interview before a certification panel of the Regulatory Authority.

2. Timelines for Recertification

The Regulatory Authority will be required to establish transitional provisions to allow for the licensing/ certification of professional immigration consultants who are already in practice. As discussed above, these "grandfathering" or transitional provisions must establish a credible standard for licensing/certification, but should be implemented over a reasonable period of time and with an emphasis on fairness and accessibility to existing practitioners.

RECOMMENDATION 35. The Regulatory Authority should develop criteria for transitional provisions to allow for the licensing/certification of professional immigration consultants who are already in practice.

Chapter 7

Roles and responsibilities of departments and agencies

A. Activities to Promote Regulation to Clients

Implementation of the regulation of immigration consultants should be accompanied by an active outreach program by the relevant agencies inside Canada to immigrants and refugee communities and outside Canada to potential immigrants and refugees. In particular, Citizenship and Immigration Canada, as well as the Immigration and the Refugee Board, should use this opportunity to do the following.

1. Review all information materials currently in use regarding the Canadian immigration and refugee system to develop more comprehensive plain language materials, ensuring that the regulation of immigration consultants is included (e.g. the CLEO materials).

2. Review all the immigration and refugee forms currently in use to ensure that information on the regulation of immigration consultants is included, particularly the different measures available to protect the applicant. CIC/IRB information kits should also be amended to inform applicants about the differences between an NGO, a lawyer and an immigration consultant suggested in this report, in a clear and understandable manner.

3. Amend application kits to clearly state that CIC/IRB will not deal with a third-party practitioner who is not a member of a recognized regulatory body or NGO. The information kits should clearly indicate that the third-party representative will only be dealt with if he or she is a Canadian citizen, or permanent resident of Canada and a member of a recognized professional body or NGO (in keeping with the *Privacy Act*). This information should also be prominently displayed on CIC, IRB and DFAIT Web sites, and posted in all public areas of CIC/IRB offices and embassies abroad.

4. CIC/IRB officers should be directed to not deal with any practitioners unless they meet the aforementioned criteria being recommended by the Committee.

5. Educate staff about the complaint and discipline mechanisms of the various professional bodies and encourage employees to make these bodies aware of a problem should they encounter a practitioner who has not acted properly.

6. CIC/IRB should make available though their offices, Web sites and application kits information provided by the Regulatory Body on access to the complaint mechanism, errors and omissions insurance and the compensatory fund.

7. Information materials in a plain language format as well as all the forms mentioned above should be translated and made available in all the languages served inside or outside Canada.

8. Ensure easy access to all the materials and forms in a multilingual, plain language format on CIC and IRB Web sites, as well as in all their different offices/branches in Canada and corresponding Canadian offices overseas.

9. Organize a series of training meetings with CIC/IRB public relations units to explain the Consultant Regulation System and the ways in which it may be accessed by stakeholders. Special emphasis should be placed on developing strategies to communicate with and inform applicants, both in Canada and overseas, about the existence and availability of the regulatory body's complaint mechanism as well as the differences between a lawyer, a consultant and an NGO.

10. Ensure greater accessibility to CIC and the IRB. If CIC offices and Canadian embassies (especially in non-western countries) were more accessible, people would not have to request legal and information services from non-governmental sources (including consultants). We strongly recommend the location of an accessible information/ orientation officer at all CIC and IRB offices in Canada as well as in every Canadian embassy or office overseas. These officers should have the mandate to protect users of Canadian immigration and refugee processes, services and/or programs by explaining upon request the following: the Canadian system and how to access it; the regulation of immigration consultants, particularly the measures in place to protect service users; and the differences between a lawyer, a consultant and an NGO.

11. Assist the regulatory body with investigations of complaints made against practitioners, through the sharing of information (pursuant to the *Privacy Act*), the investigation and, if necessary, the prosecution of referred cases involving serious IRPA violations by the Minister of Justice and the RCMP.

RECOMMENDATION 36. The Committee recommends that Citizenship and Immigration Canada and the Immigration and Refugee Board ensure widespread availability of accurate information about the regulation of immigration consultants by means of reviewing all information materials currently in use, developing new materials as required and educating appropriate personnel. The Committee also recommends that accessibility be ensured by providing information through a series of meetings, and the location of information/orientation officers both in Canada and overseas.

B. Protection of Clients

In keeping with the overall goal of creating a system to regulate immigration consultants that protects vulnerable applicants and enhances public confidence in the safeguards offered by Canada's Immigration system, the Committee feels that CIC and the IRB should also consider the appointment of an Ombudsman to receive and investigate complaints made against CIC/IRB. This would allow for a clear, transparent complaint and recourse process for CIC and IRB clientele separate and apart from that offered by the Consultant regulatory body, and would further enhance the public's confidence in the integrity of Canada's Immigration system. The Committee supports the creation of such an office.

The Advisory Committee is aware that any part of any stage of the immigration and refugee process in Canada or overseas could be the subject of a criminal investigation. In most instances, the principal witness in this kind of investigation is also the victim of the crime. The victim may also be at risk of being removed from the jurisdiction, which in many cases, results in charges being withdrawn for insufficient evidence. To avoid this, we recommend the creation of a witness protection program. This program will provide, depending on the case and the evaluation of risk for the witness, either a temporary or permanent immigration status as is suggested in the *United Nations Protocol on Human Trafficking.*[19]

C. Interaction with the Regulatory Body by Departments and Agencies

In many instances and in different roles, consultants and lawyers work together, giving rise to the possibility that some abuses will occur in law offices, and that more than one regulated body will have jurisdiction in the same matter. As well, a disciplinary measure invoked against a member of one regulatory body might have implications within the other regulatory body's jurisdiction. Therefore, the regulatory bodies must coordinate and interact with the Canadian bar and provincial lawyers' associations, particularly in terms of disciplinary measures against members of either or both regulatory bodies.

In their roles as advisor, counsel and legal representative, immigration consultants may appear before CIC, the IRB or both. Thus any decision of the regulatory body must be enforceable within CIC, the IRB or both. To ensure that

19. Art. 7 of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,* GA Res. 55/25 (January 8, 2001) states: "… each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking to remain in its territory, temporarily or permanently, in appropriate cases."

the decisions of the regulatory body are enforceable within their respective jurisdictions, there should be ongoing interaction between the regulatory body, CIC and the IRB. This will enhance the protection of the public.

The Committee believes that a broad and ongoing program of outreach, information and orientation will be a key element in protecting immigrants and refugees from abuse. Refugees and immigrants require information about their rights and responsibilities, as well as the recourses available to protect themselves. In order to implement the above-mentioned outreach and orientation program, the regulatory body must interact inside Canada with Citizenship and Immigration Canada as well as with the Immigration and the Refugee Board. To implement the outreach and orientation and information program outside Canada, the regulatory body must interact very closely with Citizenship and Immigration Canada and Foreign Affairs and International Trade Canada.

Regarding enforcement of the law, mechanisms should be developed to facilitate the exchange of information (and referral of cases where the regulatory body has determined that there has been an IRPA violation) between CIC, the IRB and the RCMP, as well as other relevant local enforcement authorities.

RECOMMENDATION 37. The Committee recommends that the regulatory body develop an ongoing program of outreach, information and orientation; and that it develop a mechanism for regular communication and interaction with lawyers' associations, Citizenship and Immigration Canada, the Immigration and Refugee Board, the RCMP and other appropriate agencies, in particular those in the education and justice sectors.

D. Federal/Provincial Schemes

The Committee recognizes that the provinces have the constitutional jurisdiction to license consultants carrying on business in the province. It is not our task to comment on the advisability of provincial regulation in the area of immigration consultants. Suffice it to say that provinces have shown no inclination to proceed in this area. Should a province wish to regulate consultants, we ask it to act in a way that facilitates the adoption of a national standard to ensure that the public is uniformly protected across Canada. We also wish to make it clear that should a province regulate immigration consultants, every effort should be made by the federal regulator to respect and complement the provincial scheme and thereby avoid costly and most likely ineffective multiple regulation.

Chapter 8
Urgent call to action

The Advisory Committee believes it has fulfilled the Mandate that it received from the Minister of Citizenship and Immigration, the Honourable Denis Coderre. We have identified the issues, studied the problems, and examined various options. We have made a series of recommendations which we believe can be implemented by the Minister and by the Department.

The Committee took seriously the urgency that the Minister has given to this issue. We now call upon the Minister to move quickly to his Plan of Action and Implementation.

Our recommendations cannot be implemented at no cost. They will not all bring results in the short term. To accomplish our common goals, there must be a willingness on the part of the Government to commit the financial and other long-term resources that are essential for success. There must be a commitment to seeing this process through to completion.

We are confident that the Minister will find the support necessary, and that the regulation of Immigration Consultants will become a reality in the very near future.

Appendix A

SUBMISSIONS RECEIVED BY THE ADVISORY COMMITTEE ON REGULATING IMMIGRATION CONSULTANTS[20]

Metro Toronto Chinese and Southeast Asian Legal Clinic (Avvy Yao-Yao Go, Clinic Director), Letter (organization's submission), 22 October 2002 (16 pages)

The Law Society of British Columbia (Richard C. Gibbs, President), Letter (organization's submission), 29 October 2002 (2 pages)

Canadian Bar Association - National Citizenship and Immigration Law Section, Document (organization's submission), November 2002 (46 pages)

Mohammad Asrshed K. Mangatt, Fax (individual submission), 20 November 2002 (6 pages)

Norrie De Valencia (Vancouver Anglican Diocese of New Westminster), Fax, 26 November 2002 (2 pages)

Eastern News (Masood Khan), Fax (individual submission), 27 November 2002 (7 pages)

Avatar Canada Immigration Consultancy (Russel Monsurate), E-mail (individual submission), 27 November 2002 (1 page)

Immigration Law Consultancy Bureau (Sudhir Saha), Letter (individual submission), 28 November 2002 (4 pages)

John Gruetzner (Intercedent), E-mail (individual submission), 28 November 2002 (4 pages)

Kiyumars Sadighi, E-mail (individual submission), 28 November 2002 (1 page)

Cansure Immigration (Col. J.S. Gill), E-mail (organization's submission), 29 November 2002 (1 page)

InvesCanada Corporation (Nicolas Nour), E-mail (individual submission), 29 November 2002 (2 pages)

International Association of Immigration Practitioners (Ramesh Dheer), Document (organization's submission), 29 November 2002 (20 pages)

Citizenship and Immigration Canada (Johanne DesLauriers, Selection Branch), Oral presentation, 2 December 2002

Immigration and Refugee Board of Canada (Krista Daley), Oral presentation and accompanying document, *Conduct of Persons in IRB Proceedings*, 2 December 2002 (3 pages)

Department of Justice (Gary Dubinsky and Ursula Kaczmarczyk), Oral presentation, 2 December 2002

Egenuity Inc. (Marilyn-Anne Welsh), PowerPoint Presentation on DACUM Proposal and accompanying documents, December 2, 2003 (see Appendix B)

Peter T. Lam Associates (Peter T. Lam), Letter (individual submission), 2 December 2002 (2 pages)

Seneca College of Applied Arts and Technology (Barbara S. Silver, Program Coordinator), Document and Background Material (organization's submission), 2 December 2002 (6 pages)

Federation of Law Societies of Canada (Francis Gervais), Letter, 3 December 2002 (5 pages)

Berto Volpentesta (Sidhu & Vopentesta), E-mail (individual submission), 3 December 2002 (2 pages)

Satvindersingh Chane, E-mail (individual submission), 8 December 2002 (1 page)

Better Business Bureau (Abraham Matthews), E-mail (organization's submission), 15 December 2002 (1 page)

Menouar Benchohra, E-mail (individual submission), 15 December 2002 (2 pages)

Jonathan Fon and Associates (Jonathan Fon), Letter (individual submission), 15 December 2002 (6 pages)

United Nations High Commissioner for Refugees, Canada (Michael Casasola and Pat Marshall), Various Letters, December 2002; February 2003

20. The organizations and individuals are listed in order of the date of their submission and/or presentation to the Committee.

Daniel A. Dye, E-mail, 23 December 2002 (2 pages)

Alauddin Talukder, E-mail, 26 December 2002 (5 pages)

Parshotam Lal Kapila, Letter, 30 December 2002 (1 page)

Mary Trumpener, E-mail (individual submission), 30 December 2002 (1 page)

CCG Canadian Commercial Group Ltd. (Hassan Al-Awaid), Fax (organization's submission), 8 January 2003 (3 pages)

IMG International Immigration Group Inc. (David J. Kim), Fax, 9 January 2003 (9 pages)

Association of Immigration Counsel of Canada (Gerd Damitz, National President and Joe Kenney, National 1st Vice-President), E-mail (organization's submission), 9 January 2003 (10 pages)

Canadian Association of Chinese Professional Immigration Consultants (Tony Luk), Letter (organization's submission), 10 January 2003 (7 pages)

Hand in Hand Immigration Limited (Stuart Bennett), E-mail (organization's submission), 10 January 2003 (3 pages)

Deepak Kohli, E-mail (individual submission), 10 January 2003 (3 pages)

Pablo Santa Maria, Letter (individual submission), 10 January 2003 (10 pages)

Nayan Kumar Kar, E-mail (individual submission), 11 January 2003 (2 pages)

Louise Trudeau, Fax (individual submission), 13 January 2003 (1 page)

Noureddine Haije, Fax (individual submission), 14 January 2003 (1 page)

Farrol Consulting Inc. (Aileen J. Farrol), E-mail (organization's submission), 15 January 2003 (10 pages)

Phil Mooney, Agency Partner of Can-Am Immigration, E-mail (individual submission), 15 January 2003 (4 pages)

IMG International Immigration Group Inc. (M. Woods and David J. Kim), Fax (organization's submission), 15 January 2003 (5 pages)

Project Genesis (Richard Goldman), Fax (organization's submission),15 January 2003 (3 pages)

VRV Van Reekum Veress Immigration Consulting (M. Lynn Gaudet, Senior Immigration Consultant and Policy Analyst; Herman Van Reekum, Founding Partner; Peter A. Veress, Founding Partner; Peter Atkins, Managing Partner), Letter (organization's submission), 15 January 2003 (14 pages)

Rhonda Williams (Canadian International Immigration Consultants), E-mail (individual submission), 15 January 2003 (4 pages)

Canadian Council for Refugees, E-mail (organization's submission), 16 January 2003 (2 pages)

Godwin Chan, E-mail (individual submission), 16 January 2003 (2 pages)

Fiducie Desjardins, Immigrant Investor Program (Marc Audet and Deborah Olive) (organization's submission), 17 January 2003 (2 pages)

Quebec Bar Association (Claude G. Leduc), Letter and Brief (organization's submission), 21 January 2003 (13 pages)

International Organization for Migration (Richard E. Scott), E-mail (organization's submission), 21 January 2003 (20 pages)

South Asian Women's Community Centre and McGill Centre for Research and Teaching on Women (Laila Malik), E-mail (organization's submission), 22 January 2003 (14 pages)

Royal Canadian Mounted Police (Inspector Steve J. Martin, Sgt. David Fudge, Corporal Louise Savard, Corporal Sharon Paine), Oral presentation and accompanying text, 24 January 2003 (6 pages)

Tom Denton, E-mail, 18 February 2003 (3 pages)

Refugee Lawyers' Association of Ontario (Raoul Boulakia, President), Letter (organization's submission), 18 February 2003 (3 pages)

Appendix B

Gap Analysis and a **DACUM Chart of Immigration Counsel**

of the **Immigration Practitioner Certificate Program**

Prepared by Egenuity Inc

for **The Advisory Committee on Regulating Immigration Consultants**

The Advisory Committee on Regulating Immigration Consultants appointed by the Honourable Denis Coderre, Minister of Citizenship and Immigration, asked Egenuity Inc., hereafter referred to as "the consultant," to conduct a DACUM for the purpose of identifying the duties, tasks, knowledge, skills and attitudes required for successful immigration counsels/consultants. The DACUM was conducted on February 20 and 21, 2003 with a panel of nine practitioners, representing a broad spectrum of professionals in the immigration field. The resulting chart was sent to an additional 25 workers in the field for verification. Adjustments were made to the chart, which was then approved by the original panel and officially adopted. (See attached chart) The committee further asked the consultant to compare the competencies, skills, knowledge and attitudes identified in the DACUM chart with the goals, objectives, curricula and assessments in Seneca's Immigration Practitioner Certificate Program. The purpose of the assessment of Seneca's program is to qualify it as a potential standard for accreditation in the College of Immigration Practitioners, a self-regulating body designed to set standards for the profession. Membership in the College would be based on a pre-determined set of educational, experiential and ethical requirements. In addition, the committee asked the consultant to investigate accreditation models and consider such approaches as grandfathering, graduated licensing and mentoring.

About the Immigration Practitioner Certificate program

This post-diploma program was established in 1997 in recognition of the need to create a respected standard for Immigration Counsel, Consultants and Practitioners that would:

- meet the educational requirements for membership in professional organizations;
- help practitioners to become more knowledgeable about the practice of immigration, including the application of relevant statutes and case law;
- underscore the importance of and be able to put into practice the ethical standards and considerations required to protect the public, clients, and the immigration delivery system;
- develop the required skills for effective professional practice and office management with respect to immigration.

The program was formulated in consultation with the Organization of Professional Immigration Consultants, the Association of Immigration Counsel of Canada, Professor William H. Angus, Osgoode Hall, and Stephen W. Green, past chair of the Citizenship and Immigration Executive Section of the Canadian Bar Association of Ontario.

Admission Requirements

Admission to the program requires a post-secondary diploma or degree or two years' documented related work experience, and an Immigration Skills Assessment, available at Seneca's test centre.

Intended Audience

Registrants come from a variety of backgrounds, variously identified as:

- Immigration counsels/consultants/practitioners who are already working in the field; a group that includes lawyers and graduates from a variety of universities and colleges;
- programs, former government immigration officers, and those with no post-secondary education or training, but considerable practical experience;

- Interest learners, such as doctors, educators and community workers whose jobs involve some degree of interaction with immigrants and agencies;
- Those either training for a first-time career or switching careers.

It is interesting to note that Seneca usually asks registrants during the introductory session whether they are currently working in the field. Fewer than 25 percent answer in the affirmative, but midway through the introductory course (IPL 101) that number rises to approximately 50 percent. No explanation was forthcoming for this phenomenon. The program is well-subscribed. Enquiries about the program are steady throughout the year.

The program is offered at Seneca's Newnham Campus through the School of Continuing Education and through the extension department of the University of British Columbia (UBC). Under the terms of the licensing agreement, UBC is provided with class materials, agendas and evaluation instruments. Graduates of the UBC program receive a joint Seneca/UBC certificate.

Program Contents

The program of six modules, each divided into seven classes plus exam, begins in September of each year and can be completed within a calendar year.

ILP 101	Basic Principles of Immigration Law and Policy
ILP 201	Selected Immigrants
ILP 301	Family Class, In-Canada Applications and Appeals
ILP 401	Convention Refugees
ILP 501	Temporary Status
ILP 601	Immigration Enforcement and Professional Practice Management

Each module is conducted by at least one practicing immigration practitioner. Wherever possible, Seneca endeavours to have one lawyer and one consultant team-teach the session to achieve balance and perspective for the varied audience.

As part of the program's commitment to achieving the stated goals, every module devotes time to identifying ethical considerations in the practice of immigration counselling and addresses an immigration professional's obligations to clients, the public and colleagues.

Gap Analysis

The consultant requested and was provided with course outlines and curriculum binders for each of the modules. These were examined in detail and consultations were conducted with the program chair, program assistant and former students. However, the main focus of the review was to match up the competencies, knowledge, attitudes and skills identified in the DACUM with the stated outcomes of the Immigration Practitioner Certificate and the methods of evaluation used to measure the achievement of those outcomes.

While the curriculum binders were very comprehensive in terms of objectives, class agendas, class readings, case studies, tests and final exams, they did not provide a clear picture of methodology. Barbara Silver, Chair of the program, provided further information. Ms. Silver stressed that the program was necessarily dynamic, responding to feedback from students and to frequent changes in legislation and interpretation of the legislation. A binder and Internet resources, developed by faculty members and Seneca program personnel, form the bulk of required study materials. Binders are revised at least once a year, and class topics may be amended in response to late-breaking events. Students are provided with the binders as part of their registration fee. Binders are clearly divided into weekly sessions, with an agenda, list of required readings and information about assignments. Assignments are handed out a week in advance. On average, an assignment is expected every second week throughout the module. Instructors usually use the last class as a review and summary in preparation for the final exam.

Final exams consist of three sections: True/False items, multiple choice items, and short answer. In-class, unmarked activities include case studies, role plays, mock interviews, form completion, etc. The study guides and agendas provided with the binder stress the importance of coming to class prepared to discuss the readings, and the importance of taking notes, since information covered in the classes may not be included in the binder. Orientation sessions and introductory classes, as well as individual teachers inform the classes that students should expect to work with an experienced immigration practitioner post-

graduation for a period of one to two years (if they have not already done so), before having the necessary skills to operate independently.

Overall, the consultant's opinion is that this is a comprehensive, well-structured and carefully monitored program that covers the knowledge identified by the DACUM and most of the competencies. There is always room for improvement, as acknowledged by Seneca, and it is extremely open to constructive criticism that can enhance the program and its standing in the community. Given the compactness of the program, some skills are not covered in as much detail as might be desired, such as Internet search techniques. Classes are conducted in traditional classrooms not computer labs; however, the importance of acquiring both traditional and electronic research skills is stressed. The whole area of managing a business is given comparatively little time, yet it was identified as the most important non-core activity in the DACUM.

Participants in the program are expected to have a high level of English reading, comprehension and writing skills, as was clearly and repeatedly identified by the DACUM panel. Registrants are required to demonstrate their competency in language, before acceptance into the program. Ms. Silver indicated that compliance with this requirement is a contentious issue with prospective students, but that Seneca has found a high correlation of failure with poor communication skills. Oral skills are perhaps not given the same level of practice or evaluation, as might be desired, given the time constraints. It is hard to see how this might be ameliorated given the number of students in the class and the limited time. Ms. Silver did indicate that Seneca invites practitioners with excellent communication skills to lead a class, so that they can model desirable traits and behaviour to the classes. Those who have fallen short of this goal may not be invited to teach again. Ms. Silver also indicated that a field placement component would help to assess a student's competency level. At the present time, there is no mandatory field placement component.

The consultant identified some weakness in the writing of instructional outcomes. There were instances where measurement would be difficult given the subjective nature of the verb chosen to describe the activity. For instance, it is hard to measure someone's "understanding" unless you quantify how that understanding would manifest itself in observable actions and behaviours. These were discussed briefly with Ms. Silver, who is more than capable of adjusting the learning outcomes after consultation with the faculty. We also discussed some desirable approaches to adult education. The consultant noticed that non-marked self-tests were not in evidence. Adult learners, particularly those with some expertise in the subject, like the opportunity to check their prior knowledge against the curriculum. This helps to focus their learning on areas of weakness. It also provides practice in the type of evaluation that is likely to be used in marked tests. Ms. Silver indicated that UBC does not allow quizzes to be used in its courses, but since no marks were assigned to the suggested activity, she could not see a problem with self-tests and intends to discuss it with the faculty.

Each subject has approximately three assignments. By matching the assignments to the outcomes, the consultant determined that in most cases they were designed to test the outcomes. Most required higher order learning attributes, such as synthesis of learning. Since the DACUM panel had frequently stressed the need to be able to strategize, these assignments are appropriate. A few of the assignments seemed to be vulnerable to "construct by committee," but that interpretation may be due to the consultant's lack of knowledge of the subject area. Without monitoring the actual classes, the consultant is hard-pressed to determine how many instructors use constructivist learning techniques in class exercises to further develop strategizing skill. The final exams appear to balance knowledge testing (from the readings and cases) with critical thinking in the mini cases or scenarios.

Ms. Silver and the consultant discussed Prior Learning Assessment (PLA) and challenge exams for those registrants who felt they already possessed the knowledge, skills and attitudes delineated in the outcomes. Seneca College has well-developed PLA procedures, as mandated by the Ministry of Training, Colleges and Universities. Up to 70 percent of the program can be challenged and the mechanisms are in place, such as challenge exams, guides to portfolio development and assessment of external credentials. Ms. Silver indicated that very few registrants took advantage of the process, despite being apprised of the opportunity during the orientation sessions. This may be because preparing the portfolio for evaluation by the college takes considerable time and effort. Combined with the fee for a challenge exam, and the ongoing need for

updating knowledge and skills, it may be perceived as more practical to take the courses.

Surveys conducted by the college indicate a high level of participant satisfaction with the overall program. There were criticisms of individual faculty members. In many cases, the criticisms pointed to a lack of teaching experience. Since faculty members are drawn from the field to ensure relevancy and currency, it is unlikely that they will have knowledge of adult learning theory and practice. The consultant did note that Seneca provided specific feedback to faculty members, as well as handouts on teaching techniques and professional development opportunities.

The consultant asked if there were any plans to expand the program or offer it in alternative modes. Ms. Silver indicated that there have been enquiries about offering the program in Montréal, in French, and there have also been requests for an on-line version. Ms. Silver indicated that the college was reluctant to develop the program in an on-line environment without external, long-term funding, which would address the need for continuous quality control, maintenance and updating of the material. Given the constant revisions to the print material and its volume, the consultant feels that a blended e-learning approach would be more practical; the binders would still be produced, but class materials, activities, exercises, discussion groups and self-tests could all be delivered on the Web. Ms. Silver also indicated that now that Continuing Education has video conferencing capacity, there may be opportunities to link a variety of locations to offer the program across the country. It is assumed that the greatest demand would be in the major urban centres of Toronto, Vancouver and Montréal. Again, start-up funding and training of faculty in video conferencing techniques would be issues. A limited pilot might be the way to proceed. The advantage of video conferencing would be that classes could be recorded and streamed for those students who could not attend at designated video-conference sites, and who had access to high-speed Internet.

Ms. Silver and the consultant agreed that there were opportunities for Seneca to work together with the College of Immigration Practitioners and/or various professional associations to offer just-in-time professional development activities in response to sudden changes in legislation or procedure. Ms. Silver feels that there is a sufficient critical mass of graduates to form an alumni group.

Time constraints make this report necessarily brief. Between the finalizing of the DACUM and the submission of this report, there were a scant 10 days to complete the analysis. However, the consultant has every reason to believe that Seneca College is prepared to work with the College of Immigration Practitioners to ensure that the program offered at Seneca/UBC will fulfil a significant part of the educational standards for entry into the College.

Licensure and Accreditation

In addition to conducting the DACUM and Gap Analysis, the consultant conducted research in the area of accrediting and licensure. At the conclusion of the DACUM process most of the members of the panel voluntarily remained to discuss licensing and standards for admittance into the College. The following synthesis of the panel's inputs and the consultant's findings is presented for discussion.

Graduated Licensing

Several practitioners expressed their concerns to the consultant about the prospect of long-term workers in the field being penalized by academic credentials and/or accreditation examinations that would be required by the college to gain membership. Overall, however, the panel and other respondents agreed that standards are required both to regulate the profession and to dispel damage done by those who operate within the community without the appropriate knowledge, skills and ethical standards. There was much discussion about "grandfathering." Grandfathering is a provision exempting persons or other entities already engaged in an activity from rules or legislation affecting that activity. Generally grandfathering is implemented in a specified period prior to licensing in order to allow for the establishment of standards; the accrediting of certificate, diploma or degree programs; and the development of procedures and processes for assessment of potential members. NOCA, the National Organization for Competency Assurance, an organization that sets quality standards for credentialing organizations, does not support grandfathering, once a licensing or accrediting body has been established.

Graduated licensing is an alternative to grandfathering that would recognize the contribution of those practitioners who have been operating as valued and highly respected members of their field, without formal credentials. A period of five years would be granted during which time the College would make every effort to support practitioners to upgrade their credentials and/or gain experience.

Three levels of membership were suggested:

Student membership: Granted at a reduced premium to any student in a duly recognized program of study (see below).

Associate membership: Granted at a reduced premium to any applicant who can prove that he/she is actively engaged in the acquisition of academic credentials and/or experience. Associate membership could also be granted to those applicants with acceptable credentials/experience who are only active in a specific area of operation, for example, Family Class, Expert Workers, Overseas, etc. The panel suggested that the associate membership in the latter case would name the area of specialization. Associate membership would also be granted to those applicants who had completed a recognized education program, but have not completed the required work experience.

Full membership: Granted to those applicants who had met all the educational and experiential standards (see below).

The consultant also found examples of honorary memberships, which could be granted through a nomination process to practitioners who have demonstrated outstanding contribution and commitment to the field, but who do not possess the qualifications for associate or full membership. Honorary memberships do not carry voting rights.

Suggested Standards for entry into the College

The criteria suggested below are a compilation of approaches collected from participants in the DACUM, conversations with other professionals and research into similar organizations.

1. Successful completion of the Seneca College/ University of British Columbia post-diploma program, and two years work experience under the supervision/ mentoring of a college-accredited practitioner OR
2. Successful completion of a College-approved university degree or college diploma of which at least four courses are substantive immigration/refugee courses and two years' work experience under the supervision of a College-accredited practitioner OR
3. A College-approved law degree of which at least four courses are substantive immigration/refugee courses and one year's work experience under the supervision of a college-accredited practitioner OR
4. A College-approved law degree of which at least two courses are substantive immigration/refugee courses and the completion of at least two of the six courses offered by Seneca College/UBC or equivalent approved courses and one year's work experience under the supervision of a college-accredited practitioner OR
5. At least five years' work experience and proof of enrolment in any College-approved courses, with a five-year deadline to successfully complete or be granted equivalency through challenge exams, Prior Learning Assessment portfolio assessment AND
6. Successful completion of an accreditation examination AND
7. Proof of ethical practice.

Much discussion and input from all stakeholders will be needed to come to a fair and representative set of standards. Concern was expressed that any accreditation exam prepared by the College not be unnecessarily exclusive, or based primarily on theoretical knowledge. A balanced approach to knowledge, skills and attitudes was seen as optimum. Several people suggested a nomination process, written exam, and assessment of the applicant's qualifications and experience by a body of peers.

Participants and respondents also expressed concern that little could be done to regulate non-Canada-based consultants, or those Canada-based consultants who have brought ill repute upon the profession, if membership in the College is to be voluntary. Examples of licensing organizations perceived to have "teeth," such as the Ontario College of Teachers were cited as desirable.

In conclusion, all the participants in the DACUM process expressed satisfaction at having had the opportunity to reflect upon their profession. The process allowed them to step back from their individual concerns and consider the common duties, tasks, knowledge, skills and attitudes required of a successful immigration counsel. In addition, they gave freely of their personal time to comment on licensure and accreditation. From the consultant's perspective, the panel exhibited all the qualities one would hope for: commitment, cooperation, consensus building and respect for each other and their profession.

DACUM for Immigration Counsel

DACUM

The DACUM analysis was conducted in Toronto on February 20 and 21, 2003, by Marilyn Welsh of Egenuity Inc. The panel consisted of nine individuals who met the pre-determined criteria of working professionals with a minimum of two years' experience in the field.

Participants

Julia Brodyansky

Lucy Cardoso

Clement Ching

Dawn Moore

Russell Monsurate

Alan Nutbrown

Elda Paliga

Alain Sousa

Mark Varnam

Description of job

An Immigration Counsel is a professional, based in Canada, who is a Canadian citizen or permanent resident, and who assesses, advises and represents individuals, groups and entities in the immigration process by strategizing, preparing and presenting oral/written submissions and supporting documents, and advocating on behalf of clients with government bodies.

Attitudes/Characteristics

Responsive
Ethical
Honest
Empathic
Confident
Goal-Oriented
Entrepreneurial
Focused
Patient
Open
Warm-Hearted
Professional
- -Knowledge
- -Standards
- -Upgrading
- -Appearance

Assertive
Compassionate
Attentive to Detail
Diplomatic
Energetic
Culturally Sensitive
Straightforward
Trustworthy
Flexible
Resourceful
Intuitive
Persistent
Quick-Thinking
Positive

Knowledge

Immigration Acts/Regulations
Operational Memoranda
Canadian Government/Culture
Criminal Code
Rules of Evidence
International Conventions
Immigration Journals
Public Policy
Administrative Law
All Relevant Legislation
Immigration Manuals
Procedures
Practices

Skills

Problem Solving
Critical Thinking
Fluency in English and/or French
Communication Skills
- -Written/Oral/Presentation/Non-Verbal

Computer Literacy
- -Word Processing/Internet/Spreadsheet/Data

Entrepreneurial
Small Business Operation
Project Management
Research
Time Management
- -Ability to Prioritize/Delegate

Coping Mechanisms
Other Language (Optional)
Life Skills
Networking
Crisis Management

DACUM Chart – Immigration Counsel

DUTY **TASKS**

Assess prospective Clients for Eligibility A	Pre-screen clients A-1	Schedule client interview/ Meeting A-2	Develop/ adapt/ customize question-naires A-3	Interview (face-to-face, e-mail, phone) prospective clients A-4	Collect information from prospective client A-5	Determine eligibility A-6	Inform client of eligibility A-7	Advise clients of immigration options A-8	Discuss terms and conditions with client A-9	Obtain approval of agreement from client A-10	Obtain instructions from client A-11		

Prepare Case and Counsel Client B	Create file B-1	Obtain signed Contract/ Authoriz-ation to Disclose B-2	Prepare/ Adapt/ customize list of required documents and forms B-3	Request and obtain required documents and/or forms B-4	Develop case strategy B-5	Check documents and forms for completion B-6	Repeat process until document-tation is complete B-7	Revise strategy as necessary B-8	Obtain required signatures B-9	Liaise with 3rd parties/ entities Individuals B-10	Consult relevant sources and references B-11	Review completed file(s) with client(s) B12	Prepare and file submission A-12 ok

Manage Case and Counsel Client C	Monitor the progress of the case C-1	Document progress of case C-2	Follow up with Gov. bodies and comply with additional requests C-3	Identify problems and amend strategy accordingly C-4	Inform client at significant stages of process C-5	Prepare/ inform client regarding interview and hearings C-6	Respond to changes in law/client situation and receive permission to proceed C-7	Liaise with 3rd parties/ entities Individuals C-8	Provide or arrange for orientation/ settlement services C-9				

Represent clients at tribunals/ hearings/ Reviews/ Inquiries D	Prepare applications & narratives D-1	Conduct research D-2	Identify & analyze Issues D-3	Collect evidence & supporting documents D-4	Prepare oral/ written submissions D-5	Prepare client for & witnesses for hearing D-6	File and present evidence/ testimony D-7	Cross examine client/ witnesses D-8	Rebut opposition arguments D-9	Prepare and deliver closing oral/ written submissions D-10	Counsel client once decision is rendered D-11	Prepare/ present appeals D-12	

Perform/ manage office activities E	Establish/ monitor office procedures E-1	Manage human resources E-2	Respond to written/ oral/ electronic commun-ication E-3	Manage files E-4	Apply project manage-ment techniques E-5	Perform/ manage accounting practices E-6	Record/ report financial data E-7	Review/ purchase/ maintain office equipment/ technology and supplies E-8					

* Duty D was added during the verification phase of the DACUM. It has been approved by the original panel. It should be noted that the panel estimated, later confirmed by AICC and OPIC, that no more than 20 percent of registered immigration counsels regularly perform this duty. This low percentage has a bearing on education materials and prior learning assessment/accreditation mechanisms.

Upgrade professional skills and knowledge contin-uously F	Be a member of a profes-sional immi-gration association F-1	Maintain and upgrade reference material F-2	Attend educational workshops/ seminars/ courses F-3	Read newsletters/ journals/ other publications F-4	Network F-5								

Market services G	Prepare/ distribute print/ audio-visual/ electronic media G-1	Out-source market activities G-2	Prepare/ deliver presentations seminars nationally/ inter-nationally G-3	Collect and present testi-monials in a variety of formats G-4	Write/ publish immigration articles G-5	Perform pro-bono work G-6	Promote business through social functions/ activities G-7						

Conduct Research/ analysis/ verification H	Review case law H-1	Review relevant acts and regulations H-2	Review immigration manuals/ guidelines/ OMs H-3	Analyze research Findings H-4	Request verification from reliable sources H-5	Compile data H-6	Study statistical data H-7	Perform information searches H-8	Apply research to cases, etc. H-9				

Advocate for change in legis-lation policy/ procedures/ practices/ guidelines I	Present papers/ Proposals/ recommen-dations to Parlia-mentary Committee of Canada (CIC) I -1	Participate in government committees and working groups I-2	Present professional interests/ positions to politicians I-3	Write articles/ press Releases I-4	Participate in media interviews I-5								

Appendix C

BACKGROUND DOCUMENTS REVIEWED BY THE ADVISORY COMMITTEE ON REGULATING IMMIGRATION CONSULTANTS

I. Reports and Submissions

Standing Committee on Citizenship and Immigration, *Ninth Report: Immigration Consultants: It's Time to Act,* December 1995

Metro Toronto Chinese and Southeast Asian Legal Clinic, *Submission Re Paralegal Practice Review,* 10 February 2000

College of Immigration Practitioners of Canada, *Submission to the Hon. Peter Cory: A Framework for Regulating Paralegal Practice in Ontario,* 10 March 2000

Hon. Peter Cory, *A Framework for Regulating Paralegal Practice in Ontario,* 9 June 2000

Centre for Spanish Speaking Peoples and the Metro Toronto Chinese and Southeast Asian Legal Clinic, *Joint Submissions on A Framework for Regulating Paralegal Practice in Ontario,* 9 August 2000

College of Immigration Practitioners of Canada, *Letter and Submission to the Hon. Denis Coderre regarding pursuit of a self-regulatory model and need to immediately pursue development of a National Occupational Standard (NOS),* 8 May 2002

Immigration and Refugee Board, *Range of Disciplinary Sanctions;* and *Annex A: Review of Sanctions for Selected Disciplinary Models,* 25 November 2002

II. Material from Other Jurisdictions

Australian Law Reform Commission, "Penalties, Policy, Principles and Practice in Government Regulation" 7-9 June 2001

Department of Immigration and Multicultural Affairs (Australia), *Review of Statutory Self-Regulation of the Migration Advice Industry:* Discussion Paper, September 2001

Migration Agents Registration Authority (Australia), *Submission by the Migration Agents Registration Authority to the Review of Statutory Self-Regulation of the Migration Advice Industry,* 11 October, 2001.

Wendy Ayotte, *Supporting Unaccompanied Children in the Asylum Process* (Save the Children, United Kingdom), November 1998

Office of the Immigration Services Commissioner (United Kingdom), *Annual Report and Accounts, Incorporating the Commissioner's Report on Regulation by Designated Professional Bodies of Their Members,* 23 July 2002

__________. Complaints Scheme, October 2000

__________. The Commissioner's Rules, October 2000

__________. Code of Standards, October 2000

__________. Guidance on Competence, May 2002

III. Cases

Law Society of British Columbia v. Mangat, [2001] 3 SCR 113 (Judgment and Intervener Attorney General of Canada's factum)

Iraj Rezaei v. Minister of Citizenship and Immigration [2002] FCT 1259

IV. Other Documents

Citizenship and Immigration Canada and College of Immigration Practitioners of Canada, Memorandum of Understanding, November 1999

Law Society of British Columbia, Media Release, (following the Supreme Court of Canada's decision in "*Mangat*"), 18 October 2001

College of Immigration Practitioners of Canada, Media Release, "CIPC Applauds Supreme Court of Canada's Decision", 18 October 2001