Immigration Consultants of Canada Regulatory Council

Submission to the Senate of Canada Standing Committee on Social Affairs, Science and Technology – May 29, 2019

Introduction:

Maintaining an orderly and transparent process for the identification, assessment and admission of immigrants and refugee claimants is key to the attainment of Canada’s economic and humanitarian goals. Immigration and citizenship consultants, and international student immigration advisors, together with notaries in the province of Quebec and lawyers in all provinces and territories, play important roles in identifying and assisting prospective immigrants and refugee claimants to navigate the Canadian immigration and refugee determination processes.

Since 2011, Canadian immigration consultants have been regulated by the Immigration Consultants of Canada Regulatory Council (ICCRC). In 2015, the ICCRC assumed responsibility for oversight and accreditation of Canadian citizenship consultants and international student immigration advisors.

Division 15 of Bill C-97, tabled in the House of Commons in March of 2019, proposes enactment of the College of Immigration and Citizenship Consultants Act (the Act), a new federal statute that provides for the creation of a new self-regulatory organization with statutory powers to oversee immigration consultants, citizenship consultants and international student immigration advisors (the College). The Act also provides for ICCRC to transition seamlessly into the College, subject to approval by ICCRC’s voting members. ICCRC and its members support the Act wholeheartedly and, for the reasons set out below, recommend that the Senate of Canada Standing Committee on Social Affairs, Science and Technology support the Act.

In 2017, the House of Commons Standing Committee on Citizenship and Immigration released a report that identified several issues with immigration, immigration consultants and ICCRC’s oversight activities - *Starting Again: Improving Government Oversight of Immigration Consultants* (the CIMM Report). Since that time, ICCRC and its members have worked hard to address these issues. To date, these efforts have met with great success. The structure and additional regulatory powers provided for in the Act, if
enacted, will enable the College to build on these successes and become the effective, reliable regulator that the public deserves.

**ICCRC:**

The ICCRC is a corporation without share capital created in 2011 pursuant to Letters Patent issued under the Canada Corporations Act (now repealed). In 2014, ICCRC was continued by Articles of Continuance (Articles) issued under the Canada Not-for-profit Corporations Act (S.C. 2009, c. 23, as am.) (CNCA). The Articles were amended in 2015 to include references to citizenship consultants. The ICCRC is governed by a Board of 14 directors (nine elected from among ICCRC members, four elected “public interest directors” who are not ICCRC members, and a further public interest director appointed by the Board). As of November 21, 2019, the Board will be reduced to 12 directors (seven elected from among ICCRC members, four elected “public interest directors” who are not ICCRC members, and a further public interest director appointed by the Board).

The amended Articles set out the “purposes” of ICCRC as, *inter alia*:

(a) to promote and protect the public interest by governing and regulating the practice of individuals and firms as immigration and citizenship practitioners in accordance with the Articles and the by-laws, including

(i) Establishing, maintaining, developing and enforcing standards of qualification,
(ii) establishing, maintaining, developing and enforcing standards of practice,
(iii) establishing, maintaining, developing and enforcing standards of professional ethics,
(iv) establishing, maintaining, developing and enforcing standards of knowledge, skill and proficiency, and
(v) regulating the practice, competence and professional conduct of individuals and firms as immigration and citizenship practitioners;

(b) to promote and increase the knowledge, skill and proficiency of members of the Corporation and firms.

In addition to the Articles, authority for ICCRC’s activities also flows from the CNCA, which sets out the corporate powers and organizational structure applicable to ICCRC’s operations, including:

(a) a general power for the Board to make by-laws regulating its “activities or affairs” (s. 152);
(b) the ability to prescribe classes, conditions and rights appurtenant to membership (s. 154); and
(c) the power to discipline a member (s. 158).

**ICCRC’s Authority to Regulate:**
**Immigration and citizenship practitioners:** Specific recognition of ICCRC as the self-regulatory organization (SRO) for Canadian immigration and citizenship consultants is provided in subs. 91(1) of the *Immigration and Refugee Protection Act* (S.C. 2001, c. 27) (IRPA) and subs. 21.1(1) of the *Citizenship Act* (R.S.C., 1985, c. C-29), respectively. These subsections provide that the Minister of Citizenship and Immigration may designate a body whose members can represent or advise individuals for consideration under each statute. ICCRC has been designated as the only such body by regulation (SOR/2011 – 142, s. 2 and SOR/2015 – 124, s. 19).

Each statute provides that it is an offence to provide services for compensation without being a member of the ICCRC, a lawyer, or a Quebec notary. Each offence is punishable on indictment by a fine of up to $100,000 or up to two years in prison, or on summary conviction by a fine of up to $20,000 or up to six months in prison.

However, subs. 4(2) of IRPA grants sole authority to enforce these statutory provisions to the Canada Border Services Agency (CBSA). This authority is exercised by CBSA in concert with the Royal Canadian Mounted Police (RCMP) pursuant to a jointly developed “complementary approach” whereby the RCMP is responsible for immigration offences dealing with organized crime, human trafficking and national security, while the CBSA has the lead responsibility for the remaining immigration offences including: fraudulent documents, misrepresentation, counselling misrepresentation and general offences under IRPA (CIMM Report, at pp. 9-10).

**International student immigration advisors:** Specific recognition of ICCRC as a regulator of Canadian international student immigration advisors flows from an open letter dated May 24, 2013 from Citizenship and Immigration Canada (now Immigration, Refugees and Citizenship Canada) confirming their interpretation that s. 91 of the IRPA applies to international student advisors compensated by educational institutions who, if not lawyers or Quebec notaries, must then be members in good standing of the ICCRC.

**ICCRC’s Regulatory Regime:**

To fulfil its regulatory purpose, ICCRC has developed comprehensive regulatory regimes for immigration and citizenship consultants and international student immigration advisors akin to those imposed on other professions:

(a) Immigration and citizenship consultants must:

(i) graduate from an accredited Immigration Practitioner Program within three years prior to applying for ICCRC admission;

(ii) be a Canadian citizen, permanent resident of Canada, or a person registered as an Indian under the *Indian Act* (R.S.C., 1985, c. I-5);

(iii) meet the ICCRC official language proficiency requirement;

(iv) pass the appropriate ICCRC entry-to-practice examination;

(v) submit required documentation, including
1. police criminal records check;
2. statutory declaration certifying good character and good conduct;
3. proof of employment; and;
4. confirmation of good conduct and no objection from other applicable regulatory bodies, if any;
(vi) pay annual dues;
(vii) purchase/maintain prescribed professional liability insurance;
(viii) complete mandatory practice management education courses (9);
(ix) comply with annual continuing professional development requirements; and
(x) comply with annual reporting and compliance audit requirements.

(b) International student immigration advisors must:
(i) graduate from an accredited education program or demonstrate a minimum of three years’ experience;
(ii) be a Canadian citizen, permanent resident of Canada, or a person registered as an Indian under the Indian Act (R.S.C., 1985, c. 1-5);
(iii) pass the appropriate ICCRC entry-to-practice examination;
(iv) submit required documentation, including
   1. police criminal records check;
   2. proof of employment and employer’s liability insurance;
(v) pay annual dues;
(vi) comply with annual continuing professional development requirements; and
(vii) comply with annual reporting requirements.

Individuals who meet the above requirements for immigration and citizenship practitioners become voting “members” of ICCRC and are authorized to use the designation “Regulated Canadian Immigration Consultant” or “RCIC.”

Individuals who meet the above requirements for international student immigration advisors become non-voting “registrants” of the ICCRC and are authorized to use the designation “Regulated International Student Immigration Advisor” or “RISIA.” Note that ICCRC’s current Articles restrict it to only one class of “members,” hence the characterization of RISIAs as “registrants.”

In addition to the foregoing ongoing compliance requirements, RCICs and RISIAs must comply with the RCIC and RISIA Codes of Professional Ethics and ICCRC regulations governing various aspects of practice.

**CIMM Report:**

Following a study of the legal, regulatory and disciplinary frameworks governing and overseeing immigration, refugee and citizenship consultant and paralegal practitioners in Canada, the House of Commons Standing Committee on Citizenship and Immigration released the CIMM Report in June of 2017. The CIMM Report was critical of the activities of certain immigration and citizenship consultants,
and critical of the standards adopted by ICCRC and the way in which those standards were applied and enforced.

Specific problems noted in the CIMM Report included:

- Abuse and exploitation by immigration and citizenship consultants and paralegals.
- Fragmented enforcement due to shared responsibilities among ICCRC, CBSA and RCMP.

A key area of risk to the public noted was the existence, and oft-times fraudulent operation in Canada, of unauthorized practitioners (UAPs) – individuals who held out to the public as providing immigration and citizenship consulting services but were not authorized to do so by virtue of ICCRC membership or registration, or membership in a provincial law society or the Quebec Chamber of Notaries.

Enforcement of IRPA provisions against unauthorized practitioners currently falls to CBSA. However, the many difficulties in enforcement are further augmented by the reluctance of victims of unauthorized practitioners to identify themselves to CBSA by making complaints.

Other issues identified in the CIMM Report included:

- The need for more timely response by ICCRC to complaints about regulated consultants and a more robust complaints and discipline mechanism.
- The need for increased education and entry-to-practice standards for regulated immigration and citizenship consultants, including a practical experience component and tiered or specialized licensing for areas of practice requiring specialized skills. Representation of clients before the Immigration and Refugee Board (IRB) was identified as one such area.
- A need for increased public awareness campaigns targeted at high-risk communities, warning of the dangers of using unauthorized practitioners.
- The need for a mechanism through which a client could dispute fees charged by a practitioner.
- The lack of a compensation fund to compensate individuals who have suffered financial loss at the hands of an immigration consultant – either authorized or unauthorized.

CIMM Report Recommendations:

The CIMM Report advanced 21 recommendations including:

The creation of a government regulatory agency for immigration consultants with statutory powers of investigation and discipline “similar to those exercised by Canadian Provincial and Territorial law societies” and the authority to:

- set higher standards of training, education and experience;
- develop tiered or specialized licensing;
- create mechanisms for investigating and dealing with complaints and disciplinary matters for its members and be authorized to investigate and prosecute unauthorized practitioners;
- engage in public education about the profession; and
create a mechanism to deal with fee disputes between immigration consultants and their clients.

ICCRC Response to CIMM Report:

ICCRC responded to the criticisms in the CIMM Report by commencing new and expediting a number of ongoing initiatives aimed at raising the educational and other standards applicable to RCICs and RISIAs, and by reviewing and augmenting its complaints investigation and professional discipline processes. These actions included:

- Increasing the English or French language competency requirements for admission effective July 1, 2019.
- Development and implementation of a new, mandatory Specialization Program and credential for RCICs who represent clients before tribunals – to be implemented as of July 1, 2019.
- Transition of the current entry-to-practice educational requirement – the college-level “Immigration Practitioner Program” to a university post-graduate degree program – to be implemented as of July 1, 2019. On May 1, 2019, ICCRC announced the signing of agreements with the faculties of law of Queen’s University and Université de Sherbrooke to develop and offer this new program in English and French, respectively.
- Development and implementation of a new, mandatory practical experience program – to be implemented as of September 2020.
- Engagement of new, experienced individuals in the key senior roles of CEO, Professional Conduct, Education and Communications.
- Increased staffing of the ICCRC Professional Conduct Department, including additional in-house legal and investigative resources.
- Review and augmentation of ICCRC complaints and professional discipline processes to facilitate more timely resolution of complaints.
- Identification by the Board of Directors of obtaining agreement of all governments on the need for a regulatory body for immigration consultants established by Act of Parliament and formulation of a legislative plan as a strategic priority for ICCRC.

Why Statutory Authority?

ICCRC operations during the period 2011 – 2019 have highlighted significant weaknesses in the current ability of ICCRC to fully fulfil its public interest mandate. These include:

- Inability to compel membership/registration – as noted, enforcement of s. 91 of the IRPA and s. 21 of the Citizenship Act is currently restricted to CBSA and/or the RCMP. Statutory authority granted to other SROs regulating professionals typically makes it a specific offence, which may
be prosecuted by the SRO in the courts, for non-members to either “hold themselves out” as a member of the regulated profession, or to carry on (or offer to carry on) activities that are reserved to members of the profession. In some cases, SRO legislation creates offences for both. In the context of ICCRC, such provisions are key to addressing the issue of UAPs. Without them, ICCRC is restricted to, at best, issuing warning letters to UAPs advising of the requirement for membership, reporting UAPs to CBSA – which readily admits it does not have the resources to pursue UAPs on a comprehensive basis, and engaging in specific (“naming and shaming”) and/or general communications campaigns to attempt to advise the public of the existence of regulated practitioners and the dangers of relying on UAPs. A similar issue exists with respect to international student advisors. While there are over 1400 educational institutions in Canada designated to accept foreign students, there are only 163 RISIAs as of February 28, 2019. ICCRC is undertaking a project to communicate with all these institutions to advise of the registration requirement but can do little else.

- **Limited investigation/enforcement powers against members/registrants** – while the CNCA provides for discipline of members and allows the ICCRC to create by-laws outlining how these powers will be exercised, by-laws are binding on members only. Statutory authority granted to other SROs regulating professionals typically enumerates extensive powers of investigation that apply to both members and third parties, grant disciplinary and other tribunals the ability to subpoena documents and witnesses, and provide other procedural powers regarding the gathering of evidence which are, again, enforceable against third parties. These provisions are usually supported by a provision creating a statutory offence, which the SRO may prosecute in court, of “obstructing” the SRO in the fulfilment of these duties. Such provisions are essential to ICCRC in, for example, compelling evidence from agents and employers related to member activities that are not otherwise subject to the by-laws.

- **Restricted ability to enforce fines and cost awards against revoked members** – All professions view revocation of membership as the ultimate disciplinary sanction against members. However, most realize that this is a relatively blunt instrument and, in the case of ICCRC specifically, there is evidence showing that revocation may simply add to the number of UAPs. Attaching significant financial penalties and cost awards in addition to or in place of revocation in appropriate circumstances, supports the public and member perception of ICCRC as a public interest regulator and has a significant deterrent effect on other members as it underlines the “cost” of non-compliance. In extreme cases, financial penalties can also limit or remove a revoked member’s ability to continue operating as a UAP. Recovery of these amounts by ICCRC also ensures that recalcitrant members underwrite some of the costs of protecting the public from their misdeeds, rather than leaving the full financial burden to be borne by the compliant membership. These advantages are only obtained if it is possible for ICCRC to effectively pursue and collect amounts owing. Statutory authority granted to other SROs regulating professionals typically provides for disciplinary orders, including fines, cost awards and, in some cases,
compensation awards to injured complainants, to be enforced by the SRO through the courts, as if they were court orders.

- **Exemption from the CNCA** – the CNCA is a new statute (2014) and was designed to apply to a variety of not-for-profit corporations, particularly charities and incorporated member associations. Many of its provisions respecting member rights and corporate governance present operational challenges that are not appropriate for a regulatory organization that has protection of the public interest as its core mandate. Such challenges include the right provided under subs. 152(6) and s. 163 for any voting member to make a proposal to make, amend or repeal any by-law at an annual meeting. These provisions, in particular, have caused disruption to the operations of ICCRC in the past and continue to do so. Similarly, as a new statute, many of the provisions of the CNCA have not yet been subject to conclusive judicial interpretation. This leads to uncertainty, particularly in the context of the discipline process where it provides multiple opportunities for members subject to discipline to bring costly and time-consuming court challenges with a view towards delaying sanction and embarrassing the SRO. One direct example of this is s. 158 of the CNCA which provides ICCRC with the authority to discipline members. It is arguable that the wording of this section requires disciplinary activities to be performed by a committee/tribunal composed solely of members of the corporation and/or directors of the corporation. Virtually all SROs include public representatives (non-members) on such tribunals. This is a long-standing practice and seen as (1) key to ensuring that the public interest is actively represented and (2) necessary to overcome the perceived inherent conflict of interest that exists in the self-regulatory model. ICCRC has had public representatives on its disciplinary tribunals since inception. ICCRC is now defending two court actions brought by members subject to discipline who argue that such panels are improperly constituted pursuant to the CNCA. Statutory authority granted to other SROs regulating professionals typically exempts the organization from the CNCA or similar provincial legislation. Other provisions of the CNCA requiring that particular voting rights be accorded to classes of members have also prevented the ICCRC Board from adopting a firmer regulatory regime for RISIAs.

- **Other benefits of a federal statute specific to ICCRC** - Statutory authority granted to other SROs regulating professionals may provide other specific benefits to the organization. These include, without limitation:
  
  - Clear(er) definition of the individuals/activities that the SRO is responsible for overseeing, either in the statute itself or through the power to elaborate in by-laws and/or regulations;
  - Extraterritorial application – a federal statute can specify that the individuals/activities to be regulated are intended to be regulated whether carried on inside or outside of Canada. This will be of great assistance in addressing UAPs;
  - Clearer platform to support extension of solicitor/client or similar privilege to consultant/client relationship;
o Availability of straightforward procedures for dealing with privileged information in disciplinary proceedings (essential in cases where RCICs are employed by or associated with law firms);

o Enhanced organizational profile – a statutory organization may have periodic reporting obligations to the responsible minister and/or Parliament that will increase government/political visibility and accountability; and

o Enhanced organizational status – the status of statutory SROs is well-understood nationally and internationally. This will facilitate cooperation with government and other agencies, both at home and abroad. Such arrangements will be key to fostering memoranda of understanding leading to harmonization of federal and provincial rules applicable to immigration consultants, and other information-sharing agreements among Canadian governments, thus reducing duplicative regulatory burdens on members in Canada, and in addressing issues involving both members and UAPs operating in other jurisdictions.

Conclusion:

From its inception in 2011, ICCRC has been restricted by its corporate structure and lack of statutory authority from completely fulfilling its important public interest mandate. It was, in the words of one current government official “set up to fail.” Despite these impediments, this relatively young organization has made great strides in the qualification, regulation and oversight of Canada’s rapidly-growing immigration and citizenship consulting profession. The proposed College of Immigration and Citizenship Consultants Act directly addresses and cures these structural and other deficiencies and, if enacted, will enable the College to build on its recent successes and become the effective, reliable regulator that the public deserves.