

Operational Bulletin 317 – June 30, 2011

Coming Into Force of Bill C-35, *An Act to Amend the Immigration and Refugee Protection Act (Authorized Representatives)*

Summary

Bill C-35, *An Act to Amend the Immigration and Refugee Protection Act (IRPA)*, comes into force on June 30, 2011. The Bill strengthens the rules governing those who provide immigration advice or representation for a fee or other consideration. Instructions are given to the field on how to process applications during the 120 day transitional period which accompanies the coming into force of this legislation.

Issue

The purpose of this Operational Bulletin (OB) is to provide guidance on the coming into force of Bill C-35, *An Act to Amend the Immigration and Refugee Protection Act (IRPA)*, along with related amendments to the *Immigration and Refugee Protection Regulations (IRPR)*.

Background

Bill C-35 makes several important changes to the *IRPA*:

- It creates a new offence by extending the prohibition against representing or advising persons for consideration—or offering to do so—to all stages in connection with a proceeding or application under the *IRPA*, **including before a proceeding has been commenced or an application has been made**, and provides for penalties in case of contravention.
- It includes the recognition of paralegals who are members in good standing of a provincial or territorial law society as authorized representatives, under paragraph 91(2)(b).
- It provides the Minister with the authority to make regulations to designate or revoke the designation of a body responsible for the regulation of immigration consultants under subsection 91(5).
- It gives the Minister the authority to provide for transitional measures, by regulation, in relation to the designation or revocation of the body responsible for regulating immigration consultants under subsection 91(7).
- Facilitates information sharing with regulatory bodies regarding the professional and ethical conduct of their members under subsection 91(6).

Instructions

For the purposes of this OB, the following issues are addressed:

1. Designation of the Immigration Consultants of Canada Regulatory Council (ICCRC) and associated transitional provisions with regard to immigration consultants.
2. Lawyers, paralegals, and members of the *Chambre des notaires du Québec*.
3. Other third parties authorized to represent and advise on immigration matters

Bill C-35 also deals with other important issues, including information sharing and gathering measures. These issues will be clarified in an upcoming update to manual chapter IP 9, or in a further OB if necessary.

Throughout this OB, a “representative” is defined as a person who is authorized to represent or advise an applicant for consideration. A “consultant” is a specific type of representative, one who is a member in good standing of a body which has been designated by the Minister as the regulator of immigration consultants.

1. Designation of the ICCRC and associated transitional provisions with regard to immigration consultants

Pursuant to subsection 91(5) of the *IRPA*, the Minister has designated the Immigration Consultants of Canada Regulatory Council (ICCRC) as the governing body for the regulation of immigration consultants. The Canadian Society of Immigration Consultants (CSIC) is no longer the governing body.

Members in good standing of the ICCRC are therefore recognized as persons who may represent or advise an applicant, for consideration, under paragraph 91(2)(c) of the *IRPA*.

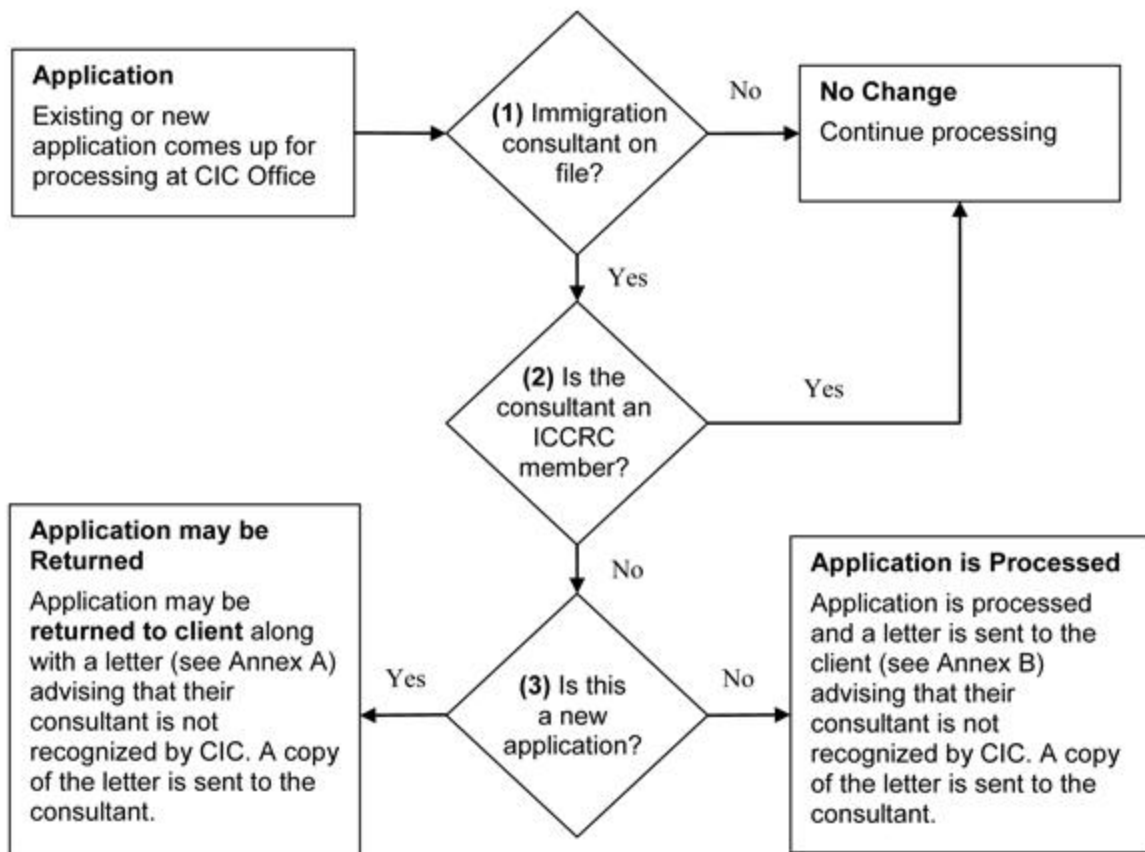
As a transitional measure, the Minister has indicated by regulation that all members in good standing of CSIC on June 30, 2011 are also, temporarily, deemed to be members of the ICCRC. This measure will last for one hundred and twenty (120) days, until October 28, 2011. The transition period is in place for the following reasons:

- To provide operational continuity for authorized immigration consultants and their clients.
- To give CSIC members time to register with the ICCRC and become members in good standing of the new governing body.
- To give the ICCRC time to bring their operations on-line.

On October 29, 2011 the transition period will end, and CSIC members who were in good standing on June 30, 2011 must have formally registered with the ICCRC to continue to be recognized.

From October 29, 2011 onwards, only immigration consultants who have formally registered with the ICCRC and been recognized by that body as members in good standing will be recognized as authorized to represent or advise clients as immigration consultants by Citizenship and Immigration Canada (CIC).

Figure 1: Processing Immigration Applications during the Transition Period (June 30, 2011 to October 28, 2011)



During the transition period, the process shown in the previous flowchart should be followed for all immigration applications, both for those already on file and for new applications received by CIC after Bill C-35 comes into force on June 30, 2011.

Step 1: Is there an Immigration consultant on file?

Review the application to determine whether the applicant has retained an immigration consultant. This should be indicated by the presence of a "Use of Representative" (IMM 5476) form. This section of the OB is concerned with immigration consultants only; other paid representatives, such as lawyers, are not impacted by this procedure.

As part of the changes introduced by Bill C-35, any representative who receives consideration to provide advice or representation at any stage of an application or proceeding must be recognized by CIC. If a representative is paid to represent or advise the applicant *at any stage* in the immigration process, then this must be disclosed in the application package with the submission of an [IMM 5476](#) form.

If there is no consultant on file, or if there is a representative who is not impacted by the change from CSIC to the ICCRC (if, for example, there is a paid representative but he or she is a lawyer), then no special processing measures are required.

Step 2: Is the consultant a member of the ICCRC?

During the transition period between June 30, 2011 and October 28, 2011, a consultant who was a member in good standing of CSIC at the coming into force of the Bill on June 30, 2011 is deemed to be a member of the ICCRC. Such a consultant should be recognized by CIC during the transition period. As well, consultants who have applied to the ICCRC and have been accepted as members in good standing should also be recognized by CIC.

The ICCRC's membership list will be posted on their website at www.iccrc-crcic.ca/home.cfm. The ICCRC membership list should contain all deemed members during the 120-day transition period, as well as all other members in good standing.

If the consultant is listed on the ICCRC's website as not being a member in good standing for cause (i.e. if the consultant has been suspended or struck from the rolls for unethical behaviour) then the consultant is no longer a member in good standing of the ICCRC and should not be recognized by CIC.

When the transition period ends on October 29, 2011, only members who have formally applied to the ICCRC and have been recognized as members in good standing will be recognized as immigration consultants by CIC.

Step 3: Is this a new application? Was it received after Bill C-35 came into force?

If the application was received by a CIC office after Bill C-35 came into force, i.e. after June 30, 2011, and the consultant is not recognized, then the application may be returned to the client's attention along with "Advisory Letter A." A copy of the letter should also be sent to the consultant.

If it is not possible to return the application to the client (if, for example, no mailing address can be found for the client), then the application should be returned to the consultant, along with both copies of the letter.

If the application was received by CIC prior to the coming into force of Bill C-35, then processing should continue while the consultant's status is clarified. In this case, "Advisory Letter B" should be sent to the client, requesting that they clarify their consultant's status, with a copy sent to the consultant.

If the client responds to such a letter stating that their consultant is not an authorized consultant, or if there is no response at all, then CIC should no longer deal with the consultant. In such a case, the application should proceed as per section 7.7 of manual chapter IP 9.

2. Lawyers, Paralegals, and members of the *Chambre des notaires du Québec*

Bill C-35 amends section 91 of the *IRPA* to, among other things, recognize paralegals as authorized to act as paid representatives if they are a member in good standing of a Canadian provincial/territorial law society. Thus, paralegals regulated by a law society should be treated in the same manner as Lawyers and Quebec notaries, as outlined in section 5.2 of manual chapter IP 9.

At the time of writing this OB, only the Province of Ontario's law society, the Law Society of Upper Canada, (www1.lsuc.on.ca/LawyerParalegalDirectory/index.jsp) admits paralegals as members.

If a paralegal is not a member in good standing of a law society, and is not a member in good standing of the ICCRC, then they should not be recognized by CIC as authorized to act as a paid representative.

No transition measures or special processing are required for applications involving paralegals.

3. Other third parties authorized to represent and advise on immigration matters

In general, if a person is providing services which do not involve advising or representing the applicant then he or she are not required to be authorized. Examples of services falling into this category would include:

- Directing someone to the CIC website to find information on immigration programs;
- Directing someone to the CIC website to access immigration application forms;
- Directing someone to an immigration representative;
- Providing translation services;
- Providing medical services (i.e. medical exams, DNA testing); and
- Making travel arrangements.

However, if a person is providing advice or representation to a client for consideration, then he or she must be authorized. Examples of such actions would include:

- Explaining and provide advice on someone's immigration options;
- Providing guidance to a client on how to select the best immigration stream and completing the appropriate forms;
- Communicating with CIC / Canada Border Services Agency / Immigration and Refugee Board on someone's behalf;
- Representing someone in an immigration application or proceeding;
- Representing someone in an Arranged Employment Opinion or Labour Market Opinion application; and
- Advertising that they can provide immigration advice.

Unpaid third parties, such as family members and friends, will also still be allowed to act on behalf of an applicant without being authorized.

Further guidance with respect to "advice" and "representation" will be included in an upcoming IP 9 manual chapter update.

Subsection 91(4) of the *IRPA* also authorizes entities which have signed agreements or arrangements with CIC to provide services to assist persons on immigration

matters. Entities, or people acting on their behalf, may assist clients, but only if such assistance is consistent with their agreement / arrangement with CIC.

Examples of groups which would fall into this category would include the International Organization for Migration, or certain service provider organizations *which are specifically fulfilling their contractual obligations by providing advice or representation*. If their contract or agreement with CIC does not provide for the provision of advice or representation to clients, then the group or entity is not authorized to do so, and should not be recognized by CIC in this manner.

Contact

For further information on the procedures outlined in this OB, please contact Operational Management and Coordination Branch at OMC-GOC-Immigration@cic.gc.ca.

Annex A – Notice to Client: Representative cannot be verified, new file

[To be used when returning an application under R10 during the transition period when the representative indicates that they are recognized on the Use of a Representative (IMM 5476) form, but their membership cannot be verified with that regulatory body]

Dear

This letter refers to your application for ----, which was received at (office) on (date). The Use of a Representative ([IMM 5476](#)) form in your application indicates that you have hired an individual to represent you, but unfortunately we cannot confirm this individual's status. Therefore, we regret that we will not be able to process your application.

According to the *Immigration and Refugee Protection Act IRPA*, Citizenship and Immigration Canada (CIC) will only conduct business with representatives who have been recognized under subsection 91(2) of the *IRPA*.

To be a recognized representative, the person you have *paid* to assist you must be a member in good standing of a Canadian provincial or territorial law society, the *Chambre des notaires du Québec* or the Immigration Consultants of Canada Regulatory Council (ICCRC).

If you choose to resubmit your application, you must either use the services of an authorized representative, or an unpaid representative, or apply without anyone's assistance.

If the representative you have identified is a member in good standing with a Canadian provincial or territorial law society, the *Chambre des notaires du Québec* or the Immigration Consultants of Canada Regulatory Council (ICCRC), please resubmit

your application with documentation that provides evidence of this and inform us as soon as possible.

To learn more about the types of individuals who may represent you, visit our Web site at www.cic.gc.ca . If you are in Canada, you can also contact the Call Centre toll free at 1-888-242-2100.

You are not obliged to hire a representative for immigration matters. The Government of Canada treats everyone equally, whether they use the services of a representative or not. If you choose to hire a representative, your application will not be given special attention nor can you expect faster processing or a more favourable outcome.

Yours sincerely,

(Officer's Name, Title)
(copy to representative)

Annex B – Notice to Client: Representative cannot be verified, existing file

[To be used during the transition period when an existing application comes up for processing from an immigration representative who is not a member in good standing of the ICCRC]

Dear

This letter refers to your application for ----, which was received at (office) on (date). The Use of a Representative ([IMM 5476](#)) form in your application indicates that you have hired an individual to represent you, but unfortunately we cannot confirm this individual's status.

According to the *Immigration and Refugee Protection Act*, Citizenship and Immigration Canada (CIC) will only conduct business with representatives who have been recognized under subsection 91(2) of the *IRPA*.

To be a recognized representative, the person you have *paid* to assist you must be a member in good standing of a Canadian provincial or territorial law society, the *Chambre des notaires du Québec* or the Immigration Consultants of Canada Regulatory Council (ICCRC).

According to the information available to us, your representative is not currently a member in good standing of any of these organizations. As a result, CIC will not conduct business with this representative and all future communication related to your application will be directed to you.

If the representative you have identified is a member in good standing with a Canadian provincial or territorial law society, the *Chambre des notaires du Québec* or the Immigration Consultants of Canada Regulatory Council (ICCRC), please submit documentation that provides evidence of this and inform us as soon as possible.

To learn more about the types of individuals who may represent you, visit our Web site at www.cic.gc.ca. If you are in Canada, you can also contact the Call Centre toll free at 1-888-242-2100.

You are not obliged to hire a representative for immigration matters. The Government of Canada treats everyone equally, whether they use the services of a representative or not. If you choose to hire a representative, your application will not be given special attention nor can you expect faster processing or a more favourable outcome.

Yours sincerely,

(Officer's Name, Title)
(copy to representative)