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News

Headlines

Group set up to license and regulate consultants only
Lawyers can't join immigration group

By David Gambrill

Lawyers cannot be members in the forthcoming Canadian Society of Immigration Consultants (CSIC), incorporated in October 2003 for the purpose of licensing and regulating immigration consultants.

The chairman of CSIC, Benjamin Trister, a partner at Borden Ladner Gervais LLP, made the remarks at an Ontario Bar Association immigration law section meeting last week. He was addressing an ongoing debate about whether lawyers who provide immigration services might, for competitive reasons, wish to become members in CSIC.

The lawyers' fears are "extremely real," says Sergio Karas, secretary of the Ontario Bar Association's citizenship and immigration law section. "If Mr. Singh in India is trying to choose between Sergio Karas, barrister and solicitor, member of the Law Society of Upper Canada and the Canadian Bar Association, International Lawyers' Association, etc., and Joe Blow, immigration consultant, a member of the Canadian Society of Immigration Consultants, he's going to call me and he's going to say, 'Who are you?'

"'I'm a lawyer,'

"'Are you a registered member of the CSIC?'

"'No.'

"Then he's going to call Mr. Blow and he's going to say he's a member of a consultant organization that is approved by Citizenship and Immigration Canada. That's how [belonging to CSIC] is going to take the client from me."

Trister agreed "lawyers might get lost in the shuffle with branding." Nevertheless, a week, lawyers "can't be members of CSIC," he said.

Trister didn't rule out that there might be a new class of members created for lawyers but such a class would be CSIC members in name only. The designation would not be regulated, endorsed, or licensed by CSIC.

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"I should say lawyers are not eligible for membership in CSIC," Trister said last week from the law society's perspective, there's such a clear history of jurisdiction for the provinces regulating lawyers, we have no desire to regulate lawyers.

"If we allowed [lawyers] to become members, the law societies would freak out, so we're not going to do it. . . .

"It's just better for everybody if we keep the groups separate and make sure that Citizenship and Immigration Canada (CIC), CSIC, and the law societies constantly reinforce the message that you either have to be a lawyer or a member of CSIC."

Trister's comments addressed one of many concerns about the immigration consultants' regulatory organization expressed by a panel of immigration lawyers at the OBA meeting. Facing widespread skepticism, Trister outlined a number of things lawyers might see when government regulations concerning CSIC are published. The regulations are expected to be in place by early next year.

The creation of CSIC followed an advisory committee's report to CIC in May. The committee, co-chaired by Trister, recommended an organization be established to regulate immigration consultants. CIC endorsed the idea and gave \$1.2 million in budgetary support to create the new organization.

Lawyers from Gowlings have had a huge part in the creation of CSIC, said Trister. "If there are lawyers involved with creation of the organization, they will not be members," he said.

The foundation of CSIC is still in a state of flux, because the federal government has not yet published the regulations creating the new organization. Many details are yet to be worked out. Some of Trister's information last week came as news to lawyers on the panel who were discussing CSIC.

Still, some of the basic principles are now in place, Trister confirmed. For example, the regulations currently insist only Canadian citizens and permanent residents be allowed to be members.

"The reason for that is that if you are a citizen [or a permanent resident] and you do something wrong, we can get at you from a criminal perspective," said Trister.

However, even this seemingly simple requirement is currently under fire. "We've had a discussion about what we're going to do with American and Mexican lawyers," said Trister. "They have an argument that they've had access to the immigration market for Canada under NAFTA, we're precluded from closing it down?"

If CSIC has to include U.S. and Mexican lawyers or consultants, then what will happen with the CSIC policy that all of its members be required to carry errors and omissions insurance? Trister. He said few insurers will agree to insure consultants who aren't permanent residents.

Trister cited, but did not name, a reputable financial institution that has offered to provide individual consultant \$1 million in coverage for a base premium of about \$150. Regularly, CSIC is anticipated to cost an additional \$1,800.

Initially, individual consultants will file an intention to apply for a transitional membership.

CSIC. There is no way for a consultant organization to apply.

Consultants who register with CSIC will be required to pass a test based on rudimentary skills and knowledge. Sixty per cent of the test will be on a code of conduct that has been developed, and 40 per cent will be on substantive knowledge. A more complete test is required of candidates who apply for a full membership at a later date.

Police record checks will be required from all jurisdictions in which an applicant has worked more than six months over the past 10 years. A contract must be signed in which they agree to the arbitration model employed by CSIC, which is expected to have a staff of arbitrators.

Trister said he had "a certain sympathy" for arguments that immigration lawyers would be a better choice for the job than consultants. But an outright ban on immigration consultants never happened in his professional lifetime, he said.

"In the real world, we can at least apply standards where standards don't exist," said

Toronto immigration lawyer Jacqueline Bart and Karas presented a number of arguments for the creation of CSIC.

Karas said that in creating CSIC, the government should have at least referred to U.S. models for handling immigration consultants. Many state bars - including New York and California - aggressively prosecute immigration consultants for the unlicensed practice, she said.

In Canada, the minister of Justice should be responsible for cracking down on the unlicensed practice of law, said Karas. The ministry hasn't done so yet, not because of the absence of resources but because they haven't dedicated adequate financial resources to the task, he said.

Bart noted that in 2001, in the *Law Society of British Columbia v. Mangat*, the Supreme Court of Canada did not rule out Canada's jurisdiction to regulate the area.

"The minister chose to establish CSIC based on *Mangat*, however the court could have [concluded] that consultants' activities constitute unauthorized practice of law," said Karas. "It could have gone either way."

Bart said CSIC was not sufficiently independent from CIC. She criticized CIC's close operational and financial affiliation with CSIC, which would act as a "law-maker, sheriff, prosecutor and now the lawyer," for immigration consultants, she said.

"CSIC is now representing clients against CIC, the organization that created them, which is a bit anomalous," said Bart. "If you're going to regulate consultants, give the task over to the minister of Justice rather than keeping it within Citizenship and Immigration."

Karas and Bart worried that because of the CIC-CSIC affiliation, dishonest immigration consultants might tell potential clients they are officially endorsed by the Canadian government. Those who do will be disciplined by the CSIC, Trister assured.

Bart asked if CSIC would act only in the field of immigration and not in the field of
Trister said at the moment, CSIC only has the jurisdiction to act in the immigration

"The s. 91 [creating CSIS] is in the Immigration and Refugee Protection Act, so people
continue to do whatever they want on the citizenship side," he said.

Finally, many lawyers, including Trister, say the proposed four-year grandfathering
current immigration consultants to join CSIC is too long. It may lead to unscrupulous
consultants having four more years to provide shoddy immigration services, said K.

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