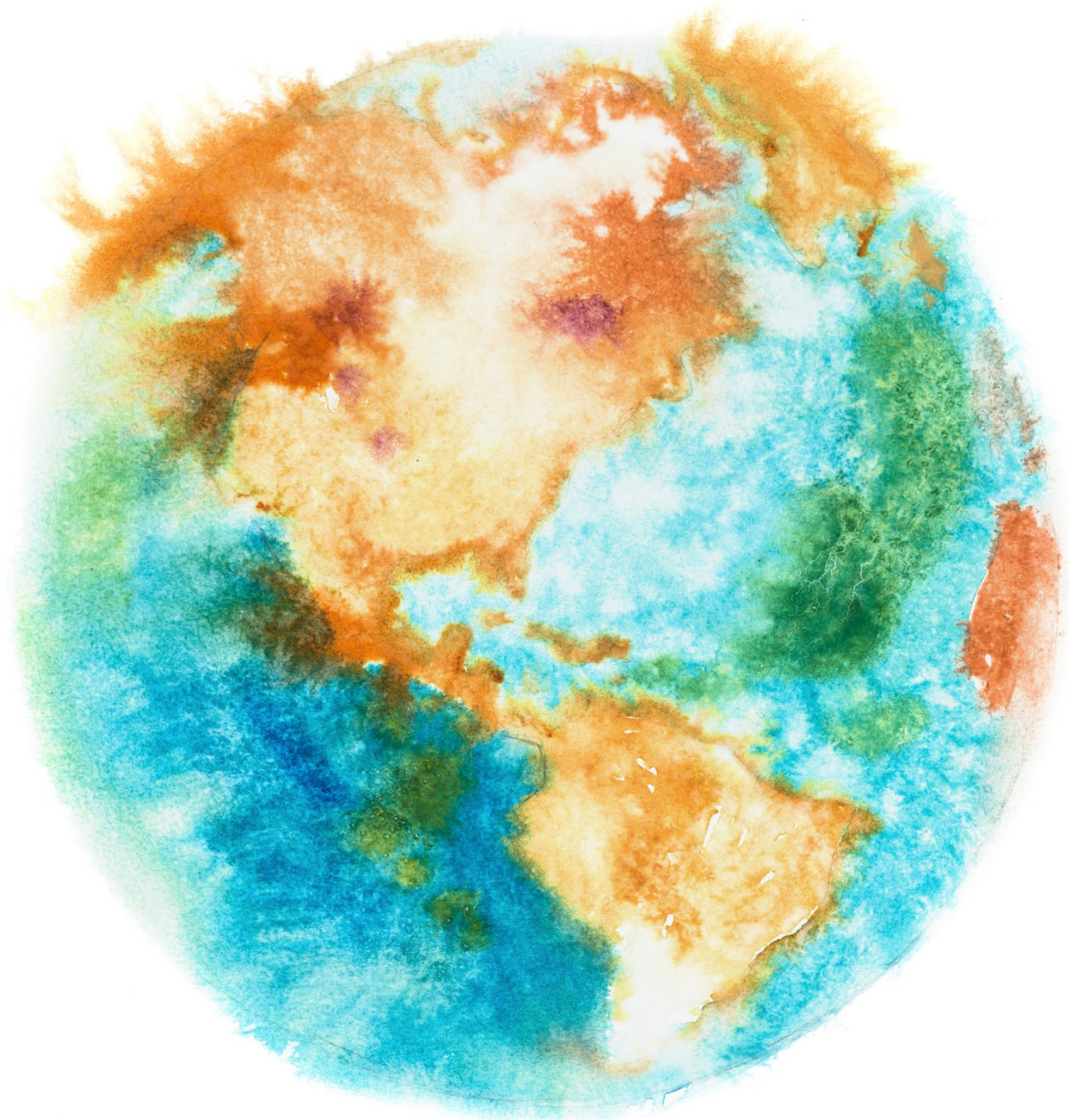


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The Unauthorized Practice of Immigration Law

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Those who require legal representation may be taken advantage of by fraudulent and dishonest actors. False advertising can deceive people into believing that they hired a licensed and capable representative. Foreign nationals who require assistance with immigration matters are part of a particularly vulnerable community; incompetent representation will jeopardize their immigration status. To remedy these concerns, legislation has been enacted to combat the scourge of unauthorized representatives.

Legislation

The *Immigration and Refugee Protection Act*¹ (*IRPA*) addresses representation for immigration matters in Section 91:

Representation or advice for consideration

91 (1) Subject to this section, no person shall knowingly, directly or indirectly, represent or advise a person for consideration — or offer to do so — in connection with the submission of an expression of interest under subsection 10.1(3) or a proceeding or application under this Act.

Persons who may represent or advise

(2) A person does not contravene subsection (1) if they are

(a) a lawyer who is a member in good standing of a law society of a province or a notary who is a member in good standing of the *Chambre des Notaires du Québec*;

(b) any other member in good standing of a law society of a province or the *Chambre des notaires du Québec*, including a paralegal; or

(c) a member in good standing of a body designated under subsection (5).

...

Penalties

(9) Every person who contravenes subsection (1) commits an offence and is liable

(a) on conviction on indictment, to a fine of not more than \$200,000 or to imprisonment for a term of not

more than two years, or to both; or

(b) on summary conviction, to a fine of not more than \$40,000 or to imprisonment for a term of not more than six months, or to both.²

Authorized representatives under the *IRPA* include licensed lawyers, licensed paralegals, notaries regulated by *Chambre des Notaires du Québec*, and members of the *Immigration Consultants of Canada Regulatory Council*. An unauthorized representative is a person outside of these groups who charges a fee for their services. Anyone who breaches s.91(1) of the *IRPA* commits an offence.

Licensed lawyers and paralegals are regulated under strict guidelines to preserve public confidence in the legal profession. The *Law Society Act*³ (*LSA*) is the governing statute for the *Law Society of Ontario (LSO)*, the regulatory body formerly known as the *Law Society of Upper Canada*. That statute authorizes the LSO's regulatory powers over legal professionals in Ontario. Under the *LSA* s.26.1, only LSO licensees who are not under suspension can practice law or provide legal services in the province. According to s.26.2 of the Act, those who breach s.26.1 may be fined up to \$25,000 for a first offence and up to \$50,000 for each subsequent offence. Section 26.3 of the Act enables the LSO to apply for statutory injunctions in the *Superior Court of Justice*. This remedy bars unauthorized representatives from practicing law or providing legal services. If an injunction is breached, an application can be made to sanction the offender with fines or imprisonment.

Case Law

A representative's authorization to practice law can impact procedural fairness. In *Domantay v Canada*,⁴ the applicant was a citizen of the Philippines and a former Catholic priest who had a daughter with one of his parishioners before he left the church and travelled to Canada. Domantay admitted that he had entered a fraudulent marriage with a Canadian citizen for immigration purposes. After that marriage ended in divorce, he remarried his parishioner in the Philippines

¹ *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*).

² *Ibid* at s 91.

³ *Law Society Act*, RSO 1990, c L8 (*LSA*).

⁴ 2008 FC 755.

and tried to sponsor her and their daughter. He listed his daughter as an accompanying dependent, but not as his own child. This was considered a misrepresentation under the *IRPA* s.40(1)(a):

Misrepresentation

40 (1) A permanent resident or a foreign national is inadmissible for misrepresentation

(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act.⁵

Domantay was excluded from Canada and a removal order was issued. His former counsel accepted a fee for representation services and delegated the Immigration Appeal Division (IAD) hearing of the application for stay of removal to an unauthorized representative. The appeal was denied because the IAD found that his abuse of the immigration system had more weight than any humanitarian and compassionate considerations. The applicant alleged that a denial of procedural fairness had occurred because the IAD allowed an unauthorized person to represent him. He submitted that the IAD must ensure that representatives are either authorized or unpaid under the “Policy for Handling IRB Complaints Regarding Unauthorized, Paid Representatives.” Because this policy post-dated the hearing, it was not considered. The court held that the information provided in Domantay’s affidavit was insufficient to establish prejudice. His evidence did not state whether he was aware of his representative’s qualifications, when he discovered that she was not authorized, if she had made any misrepresentation, or if he had paid for her services. It further held that the onus was on the applicant to choose his representative and that he had to establish that a duty owed to him was not met, which resulted in a breach of natural justice. The applicant appeared to have accepted the delegation to an unauthorized representative by his legal counsel. Therefore the court found no failure of the IAD verification obligations, and the appeal was dismissed.

Regulators are concerned with protecting the public from fraudsters who represent themselves as legal professionals. In *Law Society of Upper Canada v Augier*,⁶ the respondent was a clergyman who operated a law corporation out of his church premises. Augier had

never obtained a law license, but his company website suggested that it provided legal services. The respondent was found to have negotiated an estates matter and had acted in divorce and immigration proceedings. The Law Society sought a statutory injunction to stop the respondent from practicing law and from advertising himself as a lawyer. Goldstein J explained the necessity for statutory injunctions in relation to unauthorized representation:

“The Law Society has an important role in protecting the public from the activities of unlicensed and unregulated persons holding themselves out to be lawyers and paralegals. The [unlicensed] respondent, for example, is not required to carry professional liability insurance, keep books and records for inspection by the Law Society, or maintain a trust account for client funds that can be audited by the Law Society. Indeed, the Law Society would have no right or ability to carry out a spot audit or any other kind of check in relation to the activities of the respondent, as it would for a licensed legal professional. That is why the Law Society has a duty to seek remedies against unauthorized persons practicing law or holding themselves out as legal professionals.”⁷

This analysis provides the primary considerations for limiting paid representation to authorized representatives. The court held that the respondent practiced law and performed the work of a paralegal contrary to s.26.1 of the *LSA*. An injunction was granted and \$15,000 in costs were awarded to the Law Society.

Disbarred lawyers are another source of unauthorized representatives. In *Law Society of Ontario v Leahy*,⁸ the LSO sought a statutory injunction to stop a disbarred immigration lawyer from practicing law and providing legal services. The LSO tribunal revoked the respondent’s law license, and he did not appeal the decision. He continued to advertise himself as a qualified solicitor, and provided advice, drafted documents, and assisted clients with Federal Court cases. Leahy argued that the practice of immigration law was governed by the *IRPA* and by the *Federal Courts Act*.⁹ He asserted that the LSO had no authority over the provision of legal services or legal practice in immigration law. The court held this argument to be invalid because the LSO is authorized to regulate the practice of law in Ontario

⁵ *IRPA*, *supra* note 1, at s 40(1)(a).

⁶ 2013 OJ No 350.

⁷ *Ibid* at para 9.

⁸ 2018 OJ No 4113.

⁹ *Federal Courts Act*, RSC 1985, c F-7.

under s.26.1 of the *LSA*. Federal paramountcy was not a relevant consideration because there are no legislative inconsistencies between the *LSA* and the *IRPA*. Further, there are no practice exemptions for immigration law because the *IRPA* does not provide authorization for unlicensed persons to provide legal services. After his license was revoked, Leahy was no longer an authorized representative under the *IRPA*.

Leahy argued alternatively that his provision of services fell within the exceptions for other regulated professions, and for acting through a corporate vehicle in s.1.1(8) of the *LSA*:

Not practising law or providing legal services

(8) For the purposes of this Act, the following persons shall be deemed not to be practising law or providing legal services:

1. A person who is acting in the normal course of carrying on a profession or occupation governed by another Act of the Legislature, or an Act of Parliament, that regulates specifically the activities of persons engaged in that profession or occupation.

2. An employee or officer of a corporation who selects, drafts, completes or revises a document for the use of the corporation or to which the corporation is a party.¹⁰

The court held that Leahy was not acting as a professional governed by other legislation nor were his activities incidental to corporate duties. Leahy's actions were not authorized under the *IRPA* or the *LSA*. The application was allowed, and a permanent injunction was granted.

In *Benito v. Immigration Consultants of Canada Regulatory Council*,¹¹ Benito and his two sons were immigration consultants who applied for the judicial review of a decision by the disciplinary committee of the *Immigration Consultants of Canada Regulatory Council (ICCRC)*. The regulatory body had granted a motion to suspend Benito and his sons from the right to act as immigration consultants because of a pending investigation. Benito admitted that he continued to practice as an immigration consultant after he was suspended, and he never informed his clients that he had been suspended.¹²

¹⁰ *LSA*, *supra* note 3, at s 1.1(8)1, 1.1(8)2.

¹¹ 2019 FC 1628.

¹² *Ibid* at para 15.

There were allegations that the three Benito family members took part in an illegal immigration scheme. The alleged scheme involved transferring large sums of money to clients' bank accounts. Up to \$20,000 would be deposited into a client's bank account to be used as evidence that the client had sufficient funds to live and study in Canada. The purpose of this alleged scheme was to circumvent section 220 of the *IRPA* which requires that:

Financial resources

220 An officer shall not issue a study permit to a foreign national, other than one described in paragraph 215(1)(d) or (e), unless they have sufficient and available financial resources, without working in Canada, to

(a) pay the tuition fees for the course or program of studies that they intend to pursue;

(b) maintain themselves and any family members who are accompanying them during their proposed period of study; and

(c) pay the costs of transporting themselves and the family members referred to in paragraph (b) to and from Canada.¹³

The court dismissed the application for judicial review because the *ICCRC* investigation was ongoing, and it determined that the body's motion was not premature. It concluded that there was no breach of procedural fairness or fundamental justice within the disciplinary process that led to the committee's decision.

In *R v Codina*¹⁴ a disbarred immigration lawyer appealed her convictions for violating the *IRPA*. She owed \$30,200 in restitution and was sentenced to seven years imprisonment after being found guilty of four counts of unauthorized representation contrary to the *IRPA* s.91(1), and one count of counselling someone to make a misrepresentation contrary to the *IRPA* s.126:

Counselling misrepresentation

126 Every person who knowingly counsels, induces, aids or abets or attempts to counsel, induce, aid or abet any person to directly or indirectly misrepresent or withhold material facts relating to a relevant matter that induces or could induce an error in the administration of this Act is guilty of an offence.¹⁵

Codina provided immigration related services through a corporation called Codina International. In each of the five claims against her, payments were made to her

¹³ *IRPA*, *supra* note 1 at s 220.

¹⁴ 2020 OJ No 5766.

¹⁵ *IRPA*, *supra* note 1, at s 126.

corporation and none of the clients achieved their desired results. Codina challenged the validity of the charges. She argued that s.91(1) of the *IRPA* was *ultra vires* the federal government because the business of providing legal advice was regulated under the exclusive provincial jurisdiction of property and civil rights under s.92(13) of the *Constitution Act*.¹⁶ The court held that s.91(1) of the *IRPA* was valid federal legislation. Its authority flows from the criminal law power under s.91(27) of the *Constitution Act*. Section 91(1) of the *IRPA* enhances its overall integrity and promotes its purpose. The provision was created as a response to the dishonest and fraudulent conduct of unregulated representatives who advised clients in immigration matters. That section is concerned with the competence and honesty of representatives, and provides supervision and control over authorized individuals.

Codina also argued that s.91(1) and s.126 of the *IRPA* were unconstitutional and contrary to s.7 of the *Canadian Charter of Rights and Freedoms*:

“Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”¹⁷

The court held that the language in these sections of the *IRPA* was justifiably broad to protect vulnerable clients seeking access to programs and proceedings under the Act. The court was not persuaded by further arguments of alleged errors that were made at Codina’s trial, and the appeal was dismissed.

Codina tried to re-open her conviction and sentence appeals in 2021.¹⁸ She alleged that a miscarriage of justice had occurred, and she restated arguments from her conviction appeal. Alternatively, she argued for reopening because a new regulatory body that governed immigration consultants had been created. The court held that it had provided a comprehensive explanation as to why it dismissed Codina’s conviction appeal. The regulatory development on consultants was considered irrelevant to the charges because she was never an authorized immigration consultant. The application was dismissed.

In *Law Society of Ontario v Kopyto*,¹⁹ the LSO sought a permanent injunction against the respondent for providing legal services after he was disbarred. Kopyto

applied for a paralegal license after the *LSA* came into force. His application was rejected after a hearing determined that he failed to meet the good character requirement under the *LSA*:

Good character requirement

(2) It is a requirement for the issuance of every licence under this Act that the applicant be of good character.²⁰

The Law Society considered Kopyto ungovernable because he refused to follow the rules of the legal profession. Evidence showed that Kopyto provided legal services in three matters after he was denied a paralegal license and that he represented himself as someone that could provide services as a “legal agent.” He acknowledged that he would continue to provide services until prohibited by a court order. The court held that the respondent provided legal services and represented that he was capable of practicing law, and acted as an unauthorized representative and breached s.26.1 of the *LSA*. The court granted a permanent injunction against him.

Conclusion

Legislation that bars unauthorized representatives from practice has multiple purposes. When representation is restricted to a pool of regulated professionals, there are fewer opportunities for a miscarriage of justice. Unauthorized representatives’ errors can put a strain on the court system due to excessive appeals by applicants whose cases are refused. Statutory injunctions can prevent fraudsters from enriching themselves at the expense of vulnerable individuals. Disbarred immigration lawyers that attempt to continue to practice law do a disservice to the public. While they may believe that they are unduly bound by restrictive legislation, s.9.1 of the *IRPA* and s.26.1 of the *LSA* aim to protect vulnerable people who require guidance and advocacy for sophisticated matters. Immigration law is best interpreted by regulated professionals who have the authorization and expertise to undertake immigration matters.

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¹⁶ Constitution Act, 1867.

¹⁷ Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, s 7.

¹⁸ 2021 OJ No 932.

¹⁹ 2020 OJ No 48.

²⁰ *LSA*, *supra* note 3, at s 27(2).

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