

What Does it Mean to be a *Regulated* Immigration Consultant?

By Roxanne McInnis Jessome, RCIC

The definition of a *regulated profession* is that the profession has a governing or regulatory body that is sanctioned by the law to govern or regulate a profession. In the context of Canadian immigration consultants, the profession is regulated by the Immigration Consultants of Canada Regulatory Council (“ICCRC”). The ICCRC was created in 2011 and appointed by the Minister of Citizenship and Immigration, by operation of Bill C-35 and the creation and enactment of S. 91(5) of *IRPA*, as the designated regulatory body of Canadian immigration consultants. The ICCRC took over regulation of Canadian immigration consultants from the Canadian Society of Immigration Consultants (“CSIC”), who were the first regulatory body of Canadian immigration consultants, created in 2004. Regulated Canadian Immigration Consultant (“RCIC”) is the professional designation given to Canadian immigration consultants who are authorized or licensed to practice by the ICCRC.

The ICCRC is a not-for-profit corporation established under the *Canada Not-for-profit Corporations Act* (“CNCA”). Corporations operating under the CNCA are non-share capital corporations, meaning they are composed of members rather than shareholders. As a non-share capital corporation, the ICCRC is financed solely by capital raised from annual membership fees, entry to practice examination fees and fines to members. The ICCRC receives no regular funding from the federal government.

It is important to note that RCICs are **federally** regulated as a profession unlike most other regulated professions which are provincially regulated. There are only three federally regulated groups of professionals in Canada including immigration consultants. The other two are insolvency (bankruptcy) trustees and aviation occupations such as pilots and air traffic controllers. There is another important distinction between RCICs and other federally regulated professions in that RCICs are the only **fully self-regulated** profession amongst these three federally regulated groups of professionals.

Professional Self-Regulation

Certain professions are regulated to serve the public interest by providing **consumer protection** where transactions take place between professionals and consumers.

Self-regulation is when an occupational group has an agreement with government to formally regulate the activities of its members. As a condition of delegation of regulatory powers, the regulatory body is required to apply these powers in a manner that is guided by the public interest.

Professional self-regulation is a regulatory model which enables government to have some control over the practice of a profession and the services provided by its members but without having to maintain the special in-depth expertise required to regulate a profession that would be required under direct regulation.

Self-regulation is an exceptional privilege. The reason why professions are given this privilege is that governments trust professionals to be able to put aside their self-interest in favour of promoting the

public interest. The trust that governments put in the ability of professional regulatory bodies to put the public interest first is not absolute, however. There are several mechanisms that governments have introduced to keep professional regulatory bodies honest—ministerial accountability, increasing the number of government appointed members on councils and boards, and introducing agencies that have oversight over some aspects of the operations of the professional regulatory bodies.

In the context of immigration consultants, although the ICCRC has a statutory requirement to report on its activities directly to the Minister of Citizenship and Immigration, there are no government-appointed members of the ICCRC Board of Directors. However, under S. 91(5) of *IRPA*, the Minister has the power to revoke the designation of the ICCRC as the regulatory body of immigration consultants in Canada. This Ministerial power is not to be taken lightly and was created due to many reports of poor governance, unfair practices and abuse of power by the previous regulator, CSIC. The creation of the ICCRC is the “second chance” given to Canadian immigration consultants to correctly and fairly self-regulate this profession by creating and enforcing the highest standards for entry to and continued practice of Canadian immigration consultants, thus ensuring protection of consumers utilizing the services provided by RCICs.

Why Are Immigration Consultants Regulated?

Due to the complex nature of the legal work performed by immigration consultants in Canada, the Federal Government determined that immigration consultants must be regulated for the following reasons:

- The public does not have the capacity to evaluate the competence of their representative (before it may be too late to do so)
- There is an imbalance in the power of the representative and that of those who receive services
- When the consequences of the actions of incompetent or unethical representatives are serious

It is not whether the profession ‘deserves’ to be a recognized as a profession that concerns government; rather, it is whether the public needs protection that will motivate a government to regulate a profession.

Types of Regulation

There are three levels of regulation: registration, certification, and licensure.

Registration is the least involved form of regulation. Here the requirement is for professionals to be listed on a sanctioned register.

Certification is essentially the stamp of approval given to an individual for meeting pre-determined requirements. Certification is often associated with monopoly use of a specific title or professional designation (“protection of title”). This model protects the public by providing information about the qualifications of designation holders so that the public can make an informed decision about who they want to receive services from.

Licensure is one of the most restrictive forms of professional regulation. Specifically, licensure provides an occupational group with monopoly control over who can practice a profession. Only those individuals who have met specific requirements to enter a profession are issued a “license” to practice the profession or to perform certain “controlled acts.” Entry requirements are generally quite detailed and often include attaining specified educational requirements and completion of some form of licensing examination.

RCICs are included in the last group of regulated professions, requiring *licensure* to practice as Canadian immigration consultants. The ICCRC determined the requirements for entry to practice, “licensing”, and continued practice of RCICs.

Responsibilities of the ICCRC as the Regulator of Immigration Consultants

Although professional regulation has some benefits for the profession, its essential reason for existing is to protect the public, not to enhance the status of the profession. The primary purpose behind all regulatory body activity is to protect the public from incompetent or unethical practitioners and to ensure the effective provision and access to professional services, not to forward the interests of the profession and its members.

Professional regulatory bodies are required in law to protect and promote the public interest by regulating the practice of the profession. The fundamental mission of professional regulatory bodies is to minimize and mitigate the risks to the public that may arise from the practice of the profession.

Regulatory bodies:

- define criteria for registration with and certification by the professional regulatory body,
- provide guidance to members in the form of codes of ethics, rules of professional conduct and standards of practice,
- maintain a public register which contains information about individuals registered with the professional, and
- investigate complaints about members and discipline members as required.

The By-Law of the ICCRC provides the “rules” under which the above tasks are accomplished. As allowed by the By-Law, the ICCRC creates, amends and enforces the Code of Professional Ethics and several Regulations that govern all aspects of this profession including entry to practice (becoming licensed), continuation of practice (maintaining a license), and education, language and experience standards of RCICs. This also includes complaints and disciplinary processes and procedures against RCICs for breaches of the By-Law, Code of Professional Ethics and Regulations. In other words, the ICCRC’s duty is to “police” the profession of immigration consulting in Canada to ensure the consumer is always protected from unlawful and/or unethical conduct by an RCIC and that RCICs continually meet high standards of professional practice.

It is **very important** to understand that the ICCRC has no statutory (legal) authority to investigate, impose sanctions upon, or seek judicial enforcement against non-RCICs. ICCRC cannot pursue "ghost consultants" who are not authorized to practice! ICCRC's job is to ensure the public is protected from unethical or unlawful practice of RCICs who are members of the ICCRC. Only the CBSA and RCMP have the legal authority to investigate and prosecute individuals who are not Authorized Representatives as defined by S. 91(2) of *IRPA*.

Differences Between a Professional Association vs. Professional Regulator

We have learned that the government gives legal authority to a professional regulator to act as “the enforcer” and/or “police” of a profession to ensure protection of consumers using the services of its members. This is very different from the purpose of a professional association whose role is to serve the interests of its members. Professional associations serve member interests in many ways including:

- providing networking opportunities
- publishing information of interest to members
- conducting research
- staging conferences, seminars and workshops
- negotiating preferential rates for members for various products and services
- lobbying government to influence policy in furtherance of the interests of their members

There are some overlaps of activities of associations and regulators but these overlaps are quite instructive. For instance, both professional regulators and professional associations will offer professional development activities, but, they will do so for very different reasons. Professional associations will offer professional development activities to help members advance their careers; professional regulators will offer professional development activities because they remedy a specific knowledge or skills gap which poses some risk to the public. The activity may be similar, but the reasons for engaging in the activity are very different.

Regulated professionals are required by law to be members of their regulatory body while membership of a professional association is voluntary unless the regulator is also the association. There are some professions where the regulator and the professional association are one and the same but that is not the case for RCICs. The Canadian Association of Professional Immigration Consultants (“CAPIC”) is the professional association of RCICs. If you think of ICCRC as the member’s “police”, then think of CAPIC as the member’s “union”. **ICCRC’s purpose is to serve the best interests of the consumer while CAPIC’s purpose is to serve the best interests of RCICs.** For more information about CAPIC, please view their website at www.capic.ca.

Roxanne McInnis Jessome has been a practicing immigration consultant since 2009 and is a member in good standing with the ICCRC. She owns and operates Join Canada, an immigration consulting practice and employs 2 RCICs in her firm. She is an instructor and Course Lead of the Certificate in Immigration Laws, Policies and Procedures program at the University of British Columbia. Roxanne is a regular guest speaker for CAPIC and IMEDA CPD seminars covering various topics of immigration law. She hails from Cape Breton, Nova Scotia and has lived in the Greater Vancouver area for over 20 years. You can reach Roxanne by telephone at 604-465-8200 or by email to roxanne@joincanada.com.