



HOUSE OF COMMONS

3rd Session, 40th Parliament

CHAMBRE DES COMMUNES

3^e session, 40^e législature

NOTICE OF MEETING

**STANDING COMMITTEE ON
CITIZENSHIP AND IMMIGRATION**

Meeting No. 29

Wednesday, October 27, 2010

3:30 p.m. to 5:30 p.m.

Room 7-52, 131 Queen St.

(613- 943-9748)

AVIS DE CONVOCATION

**COMITÉ PERMANENT DE LA
CITOYENNETÉ ET DE L'IMMIGRATION**

Séance n° 29

Le mercredi 27 octobre 2010

15 h 30 à 17 h 30

Pièce 7-52, 131 rue Queen

(613- 943-9748)

ORDERS OF THE DAY

**Bill C-35, An Act to amend the
Immigration and Refugee Protection Act**

WITNESSES

3:30 p.m. to 4:30 p.m.

**Matrixvisa Inc. - Immigration Law and
International Recruitment**

Cobus (Jacobus) Kriek, Director

VIDEOCONFERENCE - WINNIPEG, MANITOBA

Government of Manitoba

ORDRE DU JOUR

**Projet de loi C-35, Loi modifiant la Loi sur
l'immigration et la protection des réfugiés**

TÉMOINS

15 h 30 à 16 h 30

**Matrixvisa Inc. - Immigration Law and
International Recruitment**

Cobus (Jacobus) Kriek, directeur

VIDÉOCONFÉRENCE - WINNIPEG, MANITOBA

Gouvernement du Manitoba

Fanny Levy, Acting Director
Manitoba Provincial Nominee Program

Fanny Levy, directrice intérimaire
Programme manitobain des nominations
provinciales

Dave Dyson, Executive Director
Employment Standards Division, Manitoba
Labour and Immigration

Dave Dyson, directeur général
Direction des normes d'emploi, Ministère du
Travail et de l'Immigration du Manitoba

4:30 p.m. to 5:30 p.m.

16 h 30 à 17 h 30

As an individual

À titre personnel

Selin Deravedisyan-Adam, Immigration
Consultant

Selin Deravedisyan-Adam, consultante en
immigration

La greffière du Comité
Julie Lalande Prud'homme (613-995-8525)
Clerk of the Committee

2010/10/25 3:08 p.m.

2010/10/25 15 h 8



Section Home

Français

Publications - October 27, 2010

Minutes

Options

[Back to committee meetings](#)

MINUTES OF PROCEEDINGS

Meeting No. 29

Wednesday, October 27, 2010

The Standing Committee on Citizenship and Immigration met by videoconference at 3:31 p.m. this day, in Room 7-52, 131 Queen St., the Chair, David Tilson, presiding.

Members of the Committee present: Josée Beaudin, Rick Dykstra, Nina Grewal, Robert Oliphant, David Tilson, Justin Trudeau, Tim Uppal, Alice Wong, Borys Wrzesnewskyj and Terence Young.

Acting Members present: Louis Plamondon for Thierry St-Cyr and John Rafferty for Olivia Chow.

In attendance: Library of Parliament: Daphne Keevil Harrold, Analyst; Anna Gay, Analyst.

Witnesses: Matrixvisa Inc. - Immigration Law and International Recruitment: Cobus (Jacobus) Kriek, Director. Government of Manitoba: Fanny Levy, Acting Director, Manitoba Provincial Nominee Program; Dave Dyson, Executive Director, Employment Standards Division, Manitoba Labour and Immigration. As individuals: Selin Deravedisyan-Adam, Immigration Consultant, Ideal Canada; Joel E. Tencer, Immigration Consultant and Member, Canadian Society of Immigration Consultants.

Pursuant to the Order of Reference of Thursday, September 23, 2010, the Committee resumed consideration of Bill C-35, An Act to amend the Immigration and Refugee Protection Act.

Cobus Kriek and Fanny Levy by videoconference from Winnipeg, Manitoba, made statements and, with the Dave Dyson, answered questions.

At 4:31 p.m., the sitting was suspended.

At 4:36 p.m., the sitting resumed.

Selin Deravedisyan-Adam and Joel E. Tencer by videoconference from Toronto, Ontario, made statements and answered questions.

At 5:20 p.m., the sitting was suspended.

At 5:21, the sitting resumed *in camera*.

At 5:33 p.m., the Committee adjourned to the call of the Chair.

Julie Lalonde Prud'homme

**BRIEF TO THE STANDING COMMITTEE ON CITIZENSHIP
AND IMMIGRATION
40 TH PARLIAMENT, 3RD SESSION
REGARDING BILL-C35**

25 October 2010

Cobus (Jacobus) Kriek
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Submitted via email to the Clerk, Ms Julie Lalande Pru'domme, at cimm@parl.gc.ca

Standing Committee on Citizenship and Immigration
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21 October 2010

Dear Mr. Tilson and Respected Committee Members

Bill C-35 will be the foundation of the federal government's efforts to ensure that the unregulated practice of immigration law is prevented and that the public is protected. In order to achieve this objective it is requested that the Committee consider the two following suggestions.

Suggestion 1: Amend Section 91

This is the wording in the existing Section 91 of Bill C-35:

Quote

91. (1) Subject to this section, no person shall knowingly represent or advise a person for consideration or offer to do so in connection with 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 member in good standing of (a) a bar of a province or the Chambre des notaires du Québec; or

(b) a body designated under subsection (5)

Unquote

The proposed amended to Section 91 could read as follows (**the underlined and bolded text** to be added)

Quote

*91. (1) Subject to this section, no person shall knowingly represent or advise a person for consideration — or offer to do so — in connection with a proceeding or application under this Act; **and no person shall induces, aids, abets or attempts to counsel, induce, aid or abet any person to directly or indirectly represent or advise for consideration***

if they are not a member in good standing of (a) a bar of a province or the Chambre des notaires du Québec; or (b) a body designated under subsection (5)

Persons who may represent or advise

*(2) A person does not contravene subsection (1) if they are a member in good standing of (a) a bar of a province or the Chambre des notaires du Québec; or
(b) a body designated under subsection (5)*

Unquote

If this change can be implemented it would ensure that any person providing assistance to a person to practice immigration law without being authorized to do so would be guilty of an offence. That would include (but not be limited to):

- a. Employees of CIC
- b. Employees of the CBSA
- c. Employees of Service Canada and HRSDC
- d. Authorized representatives

This change would also discourage a federal employee (inside or outside Canada) to communicate with an unauthorized representative about immigration cases – which I have seen happening during 2010.

Suggestion 2: Define “Advise....under the act”

A root cause analyses for reasons of the existence of the unauthorized practice of immigration law, would inter alia result in a finding that there are different definitions of “immigration advice” or “advise.....under the Act.”

Many discussions have focused on the lack of legislation to prosecute those that practiced immigration law without being authorized to do so. Unfortunately very little has been said about the issue of **what exactly** would constitute the unauthorized practice of immigration law.

To make matters worse, Citizenship and Immigration Canada’s (CIC) current interpretation of what is “appropriate” representation and appropriate practice of immigration law is contributing to the existence of the unauthorized practice of immigration law (according to my definition). An appropriate definition is presented further down as the logical person’s definition of what is “immigration advice” or “advise.....under the Act.”

The following is quoted from the existing Immigration manual Chapter IP 9 (<http://www.cic.gc.ca/english/resources/manuals/ip/ip09-eng.pdf>)

Quote

5.4. Other stakeholders

There are specialized areas in the immigration and refugee program where individuals may be providing advice to clients but not representing them in dealings with CIC, the CBSA or the IRB. The Regulations do not preclude this. As the regulatory amendments do not apply to citizenship applications,

educational agents or Human Resources and Skills Development applications for labour market options, certain functions are permissible by individuals who are not authorized. These individuals include **educational agents**, translators, shipping agents, facilitators for the Immigrant Investor Program, **recruiters for provincial nominees** and live-in caregivers, tour organizers and adoption agents. **This list is not complete as there are many individuals who receive payment for filling out forms and applications, translating documents, and dropping off and picking up documents.** However, as these **individuals do not meet the definition of an authorized representative**, there are functions that they cannot perform. These functions include making interventions on behalf of the applicant during processing, and requesting information about the progress of the application. In order to make interventions and request information on behalf of the applicant during application processing, these individuals must be members of one of the regulatory bodies.

Educational agents abroad

Educational agents, who are often engaged by Canadian educational institutions to assist their foreign students, charge a fee for all their services up to and including sending a signed study permit application to the Canadian embassy. **Under the Regulations, agents do not need to meet the definition of an authorized representative to provide services prior to the submission of the application.** However, agents who wish to represent students after their student applications have been submitted will need to be members of a Canadian provincial/territorial law society, the *Chambre des notaires du Québec* or the CSIC in order to conduct business with CIC and the CBSA.

Unquote

When a person is “filling out forms,” immigration advice will always be provided. Here are a few examples:

- a. Advice about the appropriate Immigration Class such as Investor Class, Federal Entrepreneur Class, Federal Skilled Worker Class, etc would precede the “completion of forms”. The “completion of forms” would only be possible after an analyses of the person’s experience, education and financial status.
- b. Advice about the correct choice of occupation to be included in the “forms”
- c. Advice on whether a conjugal type relationship is eligible for the partner to be included as a dependent during the “completion of the forms”

It is very obvious that completion of forms is not merely an administrative action, but requires in-depth knowledge of immigration law. Consumers cannot be protected if any untrained person can assist a member of the public to “complete immigration forms”

Black Law Dictionary’s definition of advice as : Guidance offered by one person to another on any matter.

In order to prevent the continued unauthorized practice of immigration law, it is suggested that the word “advise “ is clearly defined in the act. The suggested definition for immigration advice or “adviseunder this act) could be as follows:

Quote

Advice would be any guidance offered by one person to another on any immigration matter where profit is directly or indirectly a result of the advice. Specific cases (not limited to):

- a. Recruiters may not provide immigration advice or advise under the act***
- b. Education agents may not provide immigration advice or advise under the act***
- c. Recruiters for provincial nominees may not provide immigration advice or advise under the act***
- d. Assistance with the completion of forms is also immigration advice or advise under the act***

Unquote

Specific examples will prevent a misunderstanding of the intention of the law maker and is already being used as a technique in the case of Immigration and Refugee Protection Regulation 187 (2).

From personal experience it has become clear that the lack of a formal definition and clarity on what exactly “immigration advice“ or “advise...under this act” is, has resulted in several unauthorized third parties (so called “ghosts”) providing immigration advice. Here are a few examples:

Example 1

In the immigration publication, Lexbase of Oct 2008 (Lexbase Volume 19, Issue 10) the following was written by a CIC official at the Visa Office Bucharest:

Quote

Unauthorized representative for exotic dancers

Frederick Matern, Second Secretary (Immigration) Embassy of Canada, Bucharest, Romania - July 11, 2007

“There is an agent known to us, who arranges work permits for exotic dancers in Southern Ontario. I have been reviewing a few files in the course of an FC-1 application, and have noticed that CPC-V is allowing him to act on the IMM5476 forms of exotic dancers as a representative - "Unpaid-other". We know that he is earning money for assisting people on their immigration applications - he is an agent for exotic dancers and does not hide that. Even if money does not change hands between the foreign worker and himself for any immigration advice or services provided (which is by no means certain - as we know, money is routinely paid to employment agents by foreign workers in all fields), he is still "paid": he earns money for representing the client. He is not a CSIC member or a lawyer, and certainly not a "friend", relative, "NGO", "church", and so on. It has been a while since I worked on the consultant file, but I know that "Unpaid-other" was not meant to be a loophole for employment agents in general. ...I view this as a general operational coordination issue.”

Unquote

It is clear that employment agencies use the gray area (no formal definition of what is immigration advice) and the wording of Immigration Manual Chapter IP 9, as an opportunity or loophole to provide immigration advice.

Example 2

In the immigration publication Lexbase of Oct 2008 (Lexbase Volume 19, Issue 10) the following is written by a CIC official:

Quote

Recruiters - Minister's Office Warned of "Loan Sharks" and "Indentured Labour"

Logann McNamara, Minister's Office request – July 17, 2007 - Obtained under Access to Information

*"Analysis: Visa office contact with recruiters ranges from none whatsoever, to scheduled one-on-one meetings. Recruiters come in many guises: recruiting companies, employers, government agencies, family members, friends, etc. **Recruiters may or may not also provide immigration consulting services to their clients.** In many cases it is impossible to ascertain whether or not a recruiter is involved, as there is no requirement for applicants to disclose that they were "recruited". According to reports from the visa offices and HRSDC, there have been numerous incidents of recruiters presenting themselves as the employer on the application for an LMO and some cases of outright fraud. The labour shortage in Western Canada and a sharp increase in LMO applications to the Service Canada Centres have aggravated this issue. All four western provinces have laws restricting the activities of employment agencies and labour brokers. In recruiters must be licensed and are not permitted to charge fees to workers. In provincial law forbids private labour brokers altogether. However, it is not clear how effective provincial regulation can be in regulating the behaviour of overseas recruiters." "Recruiters have been violating provincial laws and HRSDC's terms for the low-skilled pilot by charging placement fees to workers. **Visa offices report numerous situations where recruiters have arranged LMO's that would only pay the applicant a wage at or near the provincial minimum and sometimes far too low for their destination in Canada, given the inflated cost of accommodation in some regions.***

Unquote

Once again recruiters are using the existing wording in IP9 to obtain Labour Market Opinions (LMO's) which is an application pursuant to Immigration and Refugee Protection Regulation 203 and thereby providing immigration advice or "advise.....under this act".

Within the media and within the federal government an enormous amount of discussion has taken place about 3rd party recruiters. Most of these discussions were about 3rd party recruiters

requesting money for finding work for low skilled workers. These discussions also focused on the **debt** these foreign workers face due to payments to these agencies. Unfortunately it was not mentioned that there are many ethical recruiters that comply with all relevant provincial laws. Furthermore very little attention was given in discussions about the practice of immigration law by recruiters (ethical or unethical recruiters).

In the current dispensation (Pre-BillC-35) it is completely acceptable and legal for a recruiter to:

- a. Assist in the choice of the appropriate immigration class and completion of the appropriate forms.
- b. Submit a request for Arranged Employment Opinion (AEO) pursuant to Immigration and Refugee Protection Regulation 82.
- c. Submit a request for Labour Market Opinion (LMO) pursuant to Immigration and Refugee Protection Regulation 203.
- d. Submit a request for a permanent residence visa in the Federal Skilled Worker Class.
- e. Submit a request for a permanent residence visa in the Provincial Nominee Class.
- f. Etc

These type of actions are actually described as approved and acceptable behaviour by an unauthorized representative in Immigration Manual Chapter IP 9.

CIC's definition (according to Immigration Manual Chapter IP 9) only requires a person to be an authorized 3rd party if inquiries are made after the initial submission. According to this definition some immigration work ("completion of forms" and the immigration advice that is implied) is acceptable to CIC.

There is a general misconception that the action of recruitment would give the recruiter a certain right to practice immigration law. Recruitment can be defined as "***Process of identifying and hiring best-qualified candidate (from within or outside of an organization) for a job vacancy, in a most timely and cost effective manner.***" It is an action that requires special skills; training and experience. It cannot be confused with providing immigration law advice. The practice of immigration law and recruitment of suitable individuals for jobs in Canada are two separate actions that each require separate training, education and expertise.

In the Government Gazette of 26 June 2010 (Part 1, .Vol 44, no 26, page 1670) it is once again confirmed that an immigrant could qualify for permanent residence once the person has an arranged offer of employment. The potential immigrant does not have to have experience in the list of 26 occupations, just a genuine job offer. Some would call a permanent job offer the "holy grail" in immigration to Canada. **It is therefore no surprise that a large number of individuals (inside and outside Canada, both ethical and unethical) are involved in obtaining genuine job offers (and some offers that are not genuine) for potential immigrants or temporary workers.**

Pre-Bill C-35, those that find these jobs (recruiters) are actually supported through the existing wording in Immigration Manual IP 9 and the lack of a formal definition of "immigration advice"

to formally practice immigration law without being regulated (Member of a Bar, Member of CSIC etc) .

To make matters worse the fact that recruiters are allowed to assist potential foreign workers with “completion of immigration forms” is serving as an affirmation to these foreign workers that recruiters may practice immigration law inside and outside Canada. On numerous occasions I have seen that foreign workers (that was assisted by recruiters overseas) arrive in Canada and believe the recruiter is authorized to practice immigration law. These foreign workers then contribute to the belief with fellow Canadians that the industry is not regulated. Essentially the wrong message is sent to the foreign worker before the foreign worker even arrives in Canada on a work permit.

It must be recognized that ethical recruiters that comply with provincial laws play an important and valuable role in the whole immigration process (for permanent or temporary entry).

However:

- Recruitment is a function related to human resources management, not immigration law.
- Recruiters are not trained in immigration law and the immigration activities of recruiters are not regulated to ensure protection of the public.

Respectfully yours



Cobus (Jacobus) Kriek on behalf of Matrixvisa Inc.
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