



Canadian Association of
Professional Immigration Consultants

L'Association Canadienne des
Conseillers Professionnels en Immigration

CAPIC's Submission on RCICs' Representation Before the Federal Court

July 2, 2024

Table of Contents

Background.....	4
Recommendations	9
Conclusion	10
Contact Us:.....	10

CAPIC's Submission on RCICs' Representation Before the Federal Court

CAPIC is the professional organization representing the interests of its members, Canadian immigration and citizenship consultants as defined in section 2 of the *College of Immigration and Citizenship Consultants Act*, SC 2019, c. 29, s. 292 ([the College Act](#)), including Regulated Canadian Immigration Consultants (RCICs) and Regulated International Student Immigration Advisors (RISIA). They are one group of authorized representatives alongside Canadian lawyers authorized by subsection 91(2) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 ([IRPA](#)) to provide Canadian immigration services and advice. While RISIAs are employees of the designated learning institutions (DLIs) they work for and are permitted to provide immigration advice about study permits and current immigration programs related to it, RCICs' immigration practice is full-scale.

CAPIC is the only association recognized by the Government of Canada as the voice of Canadian immigration and citizenship consultants, a major stakeholder consulting with federal and provincial governments and their respective departments on legislation, regulation, policy, and program improvements and changes. As a member-driven organization with membership restricted to authorized representatives who are Canadian citizens or permanent residents, CAPIC advocates for competency, ethical conduct, and consumer protection in the immigration consulting industry. CAPIC's mission is to lead, connect, protect, and develop the profession, serving the best interests of its nearly 5000 members who are immigration and citizenship consultants, mostly RCICs.

CAPIC is aware that the current review of the *Federal Courts Rules*, SOR/98-106 ([the Rules](#)) is to reflect technological advances and current procedures. This submission addresses one listed question in "Issue 4. Amend the Rules to reflect Jurisprudential developments" of the *Federal Court Rules – 2024 Global Review Invitation to Participate April 2, 2024* ([Invitation to Participate](#)):

- Should the Rules be amended to permit representation by a non-lawyer if the interests of justice so require (*Erdmann v. Canada*, 2001 FCA 138)? Should other amendments to the Rules be contemplated with respect to representation?

CAPIC submits that permitting RCICs' conditional representation before the Court is in the best interests of justice, including access to justice.

Background

1. RCICs' authorization

RCICs are federally regulated immigration and citizenship legal practitioners pursuant to the combined effect of three federal statutes: The College Act, IRPA, and the *Citizenship Act*, RSC 1985, c. C-29 (the [Citizenship Act](#)). Specifically, the College Act establishes the profession of immigration and citizenship consultants of which RCICs form the largest portion; paragraph 91(2)(c) of IRPA and paragraph 21.1(2)(c) of the Citizenship Act authorize RCICs to practice immigration and citizenship law for consideration.

RCICs with IRB designation are permitted to represent clients before the four Divisions of the Immigration and Refugee Board (IRB). The Immigration Appeal Division (IAD) of the IRB carries the powers, rights and privileges vested in a superior court pursuant to subsection 174 (2) of IRPA.

CAPIC is aware that section 119 of the Rules allows only lawyers to represent litigants before the Federal Court. CAPIC also acknowledges that subsection 91(10) of IRPA excludes superior court proceedings from its authorization. However, following the jurisprudence of the Court, allowing RCICs' representation before the Court will be the fruit of exercising the inherent power of the Court in applicable circumstances. Therefore, such representation does not frustrate subsection 91(10) of IRPA. Instead, the approach will reflect the paramountcy of Rule 3 of the Rules when applying other Rules.

2. The jurisprudence about non-lawyers' representation before the Court

In the Invitation to Participate, *Erdmann v. Canada*, 2001 FCA 138 ([Erdmann](#)) is presented as the precedent when considering the issue of non-lawyers' representation before the Court where Justice Sharlow acknowledged that "[an] argument might be made that the Court has the inherent jurisdiction to permit representation by a non-lawyer if the interests of justice so require." (at para. 11).

The "interests of justice" test application was developed by *Scheuneman v. Canada (Attorney General)*, 2003 FCA 439 ([Scheuneman](#)): "[T]his residual

discretion can only properly be exercised in the context of specific facts, including the suitability of the person who has agreed...to represent him [Applicant].” (at para. 5). *Deevy v. Canada (Minister of Social Development)*, [2006 FCA 115](#) (at para 3) re-affirmed the existence of such power.

Though some judges refuse to exercise such discretionary power of the Court, claiming that neither *Erdmann* nor *Scheuneman* determined the issue of permission of a non-lawyers’ representation, e.g., *Canada (Customs and Revenue Agency) v. Johnson*, [2003 FCT 568](#) (CanLII) at para 4, *Bautista v. Canada (Citizenship and Immigration)*, [2018 FC 669](#) at para 8, generally, both *Erdmann* and *Scheuneman* have been considered when determining the issue of non-lawyers’ representation before the Court.

In *Kennedy v. Canada*, 2012 FC 1050 ([Kennedy](#)), after citing both *Erdmann* and *Scheuneman* Justice Martineau stated:

[15] Such flexible and fact-specific driven approach is certainly consistent with the Judge’s duty to ensure a fair and equitable process in Court, and it reflects the paramountcy of Rule 3 FCR in the application of the other Rules:

<p>3. These Rules shall be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits.</p>	<p>3. Les présentes règles sont interprétées et appliquées de façon à permettre d’apporter une solution au litige qui soit juste et la plus expéditive et économique possible.</p>
--	--

In *Xanthopoulos v. Canada (Attorney General)*, 2019 FC 1609 ([Xanthopoulos](#)), such request was refused by Justice Lafrenière after a thorough examination of the information before him, including the appropriateness of the representative requested. The dismissal of the request was concluded on the rationale that the requested representative “probably would not assist the Court in dealing with the issues raised in his [Applicant] application...” (at para 30).

In *Neyedly v. Canada (Attorney General)*, 2020 FC 678 ([Neyedly](#)), the Applicant sought his father be permitted as his representative because his father assisted him with his tax return. Though the request was denied on the ground that the test was not met, the father was allowed to assist the Applicant with details in the proceeding (at para. 15).

The decisions show that the consensus about non-lawyers’ representation before the Court remains the interests of justice set out by *Erdmann*.

3. Non-lawyers' representation before federal and provincial courts

The research paper, "[Lawyers' Monopoly? Think Again: The Reality of Non-Lawyer Legal Service Provision in Canada](#)" by Lisa Trabucco from the Canadian Bar Foundation shows that some provincial and territorial statutes allow non-lawyers' representation before the provincial and territorial courts. Such provinces and territories include British Columbia, Manitoba, Northwest Territories, Nunavut, Ontario, Yukon, and Quebec.

The paper also shows that at the federal level, an agent like an accountant or bookkeeper, is allowed to represent appellants under the [Income Tax Act](#), RSC 1985, c. 1 (5th Supp.); the [Criminal Code](#), RSC 1985, c. C-46 also allows non-lawyers' representation in summary conviction offences if the imprisonment term is up to six months. (at p.471).

In addition, the [Native Courtworker Program](#) initiated in 1969 and still in operation today in all provinces and territories except three Atlantic Provinces: New Brunswick, Nova Scotia, and Prince Edward Island, specifically supplies courtworkers who are non-lawyers to present in the criminal courts to assist native (Indigenous) defendants.

The existence of non-lawyers' representation before both federal and provincial courts indicates that the interests of justice call for such representation.

4. The favourable factors for RCICs' representation in immigration and citizenship proceedings before the Court

(1) Jurisprudence

The jurisprudence confirms that there are times when non-lawyers' appearance before the Court is merited, either in the form of representation or assistance.

Lawyers' representation before the Court is built on the interests of justice because court proceedings are complex and court decisions have a significant impact on the lives of Applicants/litigants, plus lawyers are regulated, which is for public protection.

(2) The existence of non-lawyers' court representation

Non-lawyers, including regulated professionals and non-regulated professionals, already represent parties before courts at both the federal and provincial levels. The former include accountants and regulated paralegals and the latter bookkeepers, courtworkers and even family members and friends.

The matters the above-mentioned non-lawyers represent may be more complex than immigration and citizenship matters, e.g., criminal law.

Non-lawyers' representation is already carried out by various regulated professions and non-regulated individuals. It provides applicants with an option for representation and supports broader access to justice.

(3) The surge of judicial reviews in immigration matters

A CBC [report](#) posted on March 16, 2023 shows that immigration cases numbered 13,487, the champion of the past 30 years. The Statistics of the Court after the date of that report do not see any sign of a drop in the high numbers, which are in the thousands. The most recent [statistics](#) from January 1, 2024 to March 31, 2024 present a number of 5,620 commenced immigration and refugee proceedings. With no sign of backlog reduction on the end of Immigration, Refugees and Citizenship Canada (IRCC), the likelihood of such proceedings remaining on top of all other cases is high.

The past statistics of the Court also point to the fact that immigration proceedings always occupy the place with heavy traffic. Limited numbers of lawyers with the surging number of cases are disproportionate.

(4) RCICs' competency and suitability for judicial review representation

a. RCICs being a federally regulated profession based on public interest

RCICs are a profession established by Parliament through the College Act with its [coming into force](#) on December 9, 2020.

While lawyers are provincially regulated by the respective law societies, RCICs are federally regulated by the College of Immigration and Citizenship Consultants (the College, aka CICC), a public interest regulator, established by the College Act. The College's mandate stipulated in [s. 4](#) of the College Act echoes provincial/territorial law societies. Its existence shares the same nature with the law societies, which is in the public interest and for public protection.

The establishment of the College was after lawyers called for deregulating the immigration and citizenship profession leaving only lawyers authorized to provide immigration advice and representation. After extensive studies, Parliament [refused](#) that demand, acknowledging the need for the services of RCICs and identifying the risks of so doing. Parliament stated: "Clients continue to use consultants for a variety of factors such as language barriers, lower cost than lawyers and help with paperwork." Such a statement also holds true when it comes to immigration and citizenship judicial review proceedings before the Court.

b. RCICs' training

The vigorous training for RCICs has equipped them with skills and knowledge to practice Canadian immigration and citizenship laws. To become an RCIC, the first step is to complete the Graduate Diploma Program delivered by the faculty of law of Queen's University through its [Graduate Diploma in Immigration and Citizenship Law](#) or [DESS en réglementation canadienne et québécoise de l'immigration](#) by Université de Montréal. The admission requirements of the above programs for candidates are as strict and high as that of the Canadian law schools. The route for these graduate students to an RCIC resembles the path of a law student to a lawyer. In addition, to represent applicants/appellants before the Immigration and Refugee Board (IRB), RCICs must take further training and pass the IRB specialization exam.

c. The complexity of immigration and citizenship judicial review

The Court has recognized that IRB members have specialized knowledge in immigration and refugee matters. Though IRB is a quasi-judicial institution, the complexity of its proceedings is no less than the judicial review before the Court. The representation before the IRB of RCICs with the IRB designation proves RCICs' capability of representing before a specialized judicial body, including drafting and filing submissions and oral advocacy. The IRB and the Court apply IRPA and IRPR to decide the issues of law and observe the requirements of natural justice. Applying IRPA and *Immigration and Refugee Protection Regulations*, SOR/2022-227 (IRPR) and the requirement of natural justice is part of RCICs' practice. RCICs' rigorous legal training has equipped them to maneuver immigration and citizen matters.

It is also worth noticing that some immigration judicial review applications are relatively straightforward. For example, the assessing IRCC officer mistakenly refused a temporary resident visa application as an electronic travel authorization application. Another example is that the officer refused a humanitarian and compassionate application without assessing the mandatory factor of the best interest of child required by subsection 25(1) of IRPA. A further example could be ignoring the temporary resident permit application when that was included in the applicant's temporary residence application. The list goes on. Such errors are not rocket science. RCICs with their rigorous legal training and knowledge of the whole case can easily identify the issues caused by such errors.

When court proceedings such as summary criminal proceedings accept both regulated and non-regulated individuals who are not lawyers to represent parties

involved, it would be reasonable to allow RCICs with specific dedicated training who are legal professionals in a federally regulated profession to represent before the Court.

d. Disadvantage to parties who were represented by RCICs before the initiation of the Court proceedings

RCICs assist applicants at all stages before a judicial review is sought. Currently, when RCICs must tell a client where seeking judicial review is necessary, the client has two options: (i) To retain a lawyer who must know his/her case from scratch at his/her own cost, or (ii) to choose self-representation.

The first option gives the client no choice but to pay for an expensive service which could otherwise be avoided if his/her RCIC could continue to represent him/her. Legal Aid could be a solution to this, only if he/she is eligible for Legal Aid provided, not taking the limited capacity and waiting time of Legal Aid into consideration. The second option is rather risky for the client, which may not be a favourable situation for the Court as well.

Without a mechanism to allow RCICs' assistance with their clients before the Court, this adds unnecessary burden and stress to them, which goes contrary to Rule 3 of the Rules.

Allowing RCICs' representation before the Court has no negative impact on public protection. Instead, it is in the public interest and allows wider access to justice.

Recommendations

Based on the factors in the background section and our analysis, CAPIC's recommendations are as follows:

1. RCICs' conditional representation before the Court in immigration, refugee, and citizenship proceedings:
Allow RCIC's representation before the Court on the following conditions:
 - a. The regulator, the College of Immigration and Citizenship Consultants, creates a class of licensees that requires competency and skill set at Court proceedings.
 - b. The Court's discretionary power remains when assessing RCICs' suitability for being a representative before the Court.

2. RCICs' assistance in Court proceedings of immigration, refugee, and citizenship proceedings:
Allow RCICs' to assist applicants if applicants choose to do so.
3. Other amendments to the Rules be contemplated with respect to RCICs' representation.

Conclusion

Allowing RCICs' representation and assistance in immigration, refugee, and citizenship judicial review Court proceedings is aligned with the requirements of the interest of justice, and thus merits consideration.

CAPIC has a research team, including input from its members to support the mandate of leading and developing the immigration and citizenship consultant profession. Should further input be needed, CAPIC is willing and able to be of assistance.

Contact Us:

www.capic.ca

Hui Zhang: Stakeholders@capic.ca