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The Ontario branch of the Canadian Bar Association / La division ontarienne de l'Association du Barreau canadien

Citizenship and Immigration

CITIZENSHIP AND IMMIGRATION SECTION / SECTION DE LA CITOYENNETÉ DE LA IMMIGRATION

Volume 9, No. 2
June/Juin 2006

In this Issue:

OBA • ABO

Border Presentation Practice Points

*Naseem Malik**

For those of us who practice in the area of business immigration law, the border is a very important venue for sending our clients to make applications for entry on a temporary basis for situations where a work permit is required and for consideration under a work permit exempt category. Understanding the dynamics of border or port of entry processing is a very useful part of any business immigration practitioner's skill set. Port of entry processing can be a seamless facilitative venture when things go smoothly and can be an extremely frustrating, stressful and negative experience if an application goes badly. It can result in your client being denied entry to the country, or unduly delayed in being issued the appropriate documentation by the Canadian Border Services Agency (CBSA). Misconceptions abound on behalf of applicants, their lawyers and the customs and immigration officers who make up the CBSA. Coming to grips with the pressures that these officers face will aid business immigration lawyers in helping reduce the probability of negative events from happening to their clients at the border. As a former immigration examining officer from Pearson Airport and a current business immigration lawyer, I have the luxury of seeing things from both perspectives. Most business immigration lawyers understand the law and do not need advice on how to improve their expertise. However there are ways to make improvements in the way that we all advise clients prior to making their application and how the actual application is handled.

Observations and Tips

1. In my opinion, the majority of the problems that occur in any formal application for entry to Canada in a business immigration case are based on misconceptions and misunderstandings either on behalf of the applicant and their legal counsel or the examining officer.

2. I have observed that there are those on both sides that see the business immigration process at port of entry as adversarial when it is more rooted in facilitative mutually beneficial cooperation. Some immigration officers see lawyers as the enemy and *vice versa* for lawyers and their perceptions of front line officers. The greater truth is that the majority on both sides are professional, well-educated and dedicated to their duties and responsibilities.

3. **Always prepare the client prior to sending them to the border.**

   It is a very good idea to have the client read the supporting documentation well in advance and encourage them to ask as many questions about the application and the process at port of entry. This will alleviate their possible apprehension about the event and will allow for a more credible presentation as they will be more confident and less nervous. It also places them in a better position to advocate on their behalf if they get an officer who

doubts the validity of some or all of the submissions in the support letter by assessing the verbal responses of the applicant to see if there are any inconsistencies between what the client states are the reasons for coming to Canada and what the letter purports. Understanding the process itself allows the client to avoid making mistakes like trying to apply for the permit at the primary inspection line (PIL), or being content to be erroneously admitted into the country at PIL, which eliminates their immediate ability to apply for a work permit without re-presenting themselves at the port of entry. This is particularly problematic if they are arriving via aircraft, and/or are far away from a land border.

4. **Have your contact information on the documentation**

   This is helpful for two reasons: first, it allows your client or the examining officer to contact you should there be additional issues or questions that need addressing during the application process. It makes the officer assessing the case aware that the application is being handled by a professional and can lead to the building of a positive reputation for the practitioner for presenting reputable clients with valid cases, which may lead to the development of a positive working relationship between the practitioner and the client and Canada Immigration. There are, of course, possible negatives that can occur when you engage in this practice of identifying counsel but in most circumstances the pros outweigh the cons.

5. **Send in requests in advance**

   While most port of entry managers will tell you that they cannot adjudicate cases in advance as this would fetter discretion from their officers, many are willing to entertain discussions about cases and will listen to hypotheticals and give you feedback. In some instances, where the law or the facts lead to a great deal of uncertainty whether a particular case can be handled at port of entry or whether the case has all the necessary criteria for consideration, checking in with either CBSA or CIC can be fruitful.

6. **Use the appropriate port of entry and understand the particulars on each office-culture just like Visa Posts**

   While this skill is primarily honed by trial and error it is always a good idea to assess where the best places are to have your client make their application for entry. Certain ports of entry have a more facilitative culture and in some instances some ports have more experience with business travellers and are more adept at processing those types of cases.

7. **Don't venue shop after a negative decision**

   If your client is refused entry at a particular port of entry, a good general rule of thumb is not to try the same application again at another location. There are exceptions to this general rule but most of the time a negative decision will be entered into the Immigration Computer in the Field Operations Support System (FOSS) and another port of entry will not look kindly on your client trying to "sneak" into Canada by attempting to circumvent the decision of the first office. It is best to try and resolve things with the first port by discussing the case with the officer concerned, or the supervisor.

8. **Attach law or policy as reference where necessary**

   Immigration officers, just like any other set of professionals, have varying degrees of competency and in some instances may not be fully aware of all aspects of the legislation or policy and gently pointing out the applicable sections in some circumstances can be helpful.

9. If you get a negative decision make sure both you and your client keep your cool. Getting into heated arguments with a CBSA officer is not going to further your client's cause.

10. Work permit exemptions still have to be proven, so preparing supporting documentation is handy.

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Message from the Chair

*Janet L. Bomza**

It's hard to believe that the 2005-2006 OBA year is reaching its end and that summer is only days away.

These last few months have been extremely busy for our Section Executive. The New Year commenced with a very practical, half-day Cross-Border Immigration Law program as part of OBA's 2006 Institute Conference. Mendel Green and Henry Chang shared valuable information on processing Canadian and U.S. work permits at the border. Lorne Waldman, Drew Porter and several others provided detailed guidance on preparing deemed rehabilitation applications, U.S. criminal waiver applications and strategies to simplify the cross-border entry process. We thank all who participated for their useful top 10 lists and generous precedents.

Our subcommittees continued their hard work bringing pertinent and timely issues to key officials at CIC, CBSA, the IRB, IAD, and Service Canada. In mid-May, our Section Executive once again participated in a joint CIC/OBA meeting with Irene Bader, Mike Finnerty, Cheryl Munroe, Joe Carelli and several others from RHQ, GTA East, West and Central. According to Mike Finnerty, the GCMS will be operative in early 2007. This new system promises to ensure that information concerning a client's file is more readily available and that a file's location and stage of processing is tracked more accurately. To review the minutes from the CIC/OBA meeting and each subcommittee meeting, please visit the OBA website. Updated contact telephone lists will be posted on the OBA website in the immediate future.

Hearings concerning Bill 14 (Schedule C) Regulating Paralegals will soon go before a Standing Committee and our Section's Bill 14 Subcommittee is busy planning strategies to ensure that our position is considered. A detailed overview of the developments of Bill 14 will be provided in the fall.

Thank you again to our Program Coordinator, Randy Hahn, who together with Sergio Karas, Lainie Appleby and Shoshana Green organized several captivating CLE luncheon programs these past few months. Luncheon topics such as "Processing TRP's", "Tax Issues for New Immigrants" and "US Immigration Issues" were well received and attendance was of maximum capacity on each occasion. Given the enormous time commitment associated with the position, I am pleased to announce that Randy Hahn has volunteered to return for a third term as our 2006-2007 Section's Program Coordinator.

On behalf of our Executive, I would like to thank each of you for your support, participation and contribution to our Section's OBA activities over the past year. Have a wonderful summer and we look forward to seeing you again in the fall.

Regards,

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Editor's Message

*Nan Berezowski**

In this edition of *Citizenship & Immigration*, the second of two to be published this year, the 2005-2006 Section Executive comments on legal and practice development pertinent to the Section membership and updates the Section membership on its work to date.

Having agreed to serve as the Editor of *Citizenship and Immigration* for a second term, I have recently had opportunity to reflect upon the purpose of the newsletter. I did this with particular reference to the high speed internet information transference that surrounds us all. In reviewing articles submitted for publication it occurred to me that our newsletter is *knowledge* as opposed to *information* based. What do I mean by *knowledge* vs. *information*? Consider Member-At-Large, Nassem Malik's feature article on border representation and you will see that Naseem not only provides readers with valuable information about border processing but that he also offers practice pointers, knowledge-based advice, the result of his experience as both an immigration officer and practitioner. Similarly, Section Vice-Chair, Sergio Karas' piece on residence obligations under the *Immigration and Refugee Protection Act* serves not only as an overview of the legislation and evolving case law but offers analysis as to how the immigration lawyer can best employ this information in his or her practice. Again a knowledge-based contribution.

On the subject of the Section's work to date, Chair, Janet Bomza summarizes the Executive's recent activities and reminds us that Ontario extends beyond the parameters for the Greater Toronto Area. Betsy Kane provides us with an update on the Section's work and resulting increased presence in Ottawa. Extending our focus chronologically, in his piece called *Happy Birthday Immigration Section*; Gary Segal offers insight into the Section's origins - its founding and subsequent merger with the Canadian (Ontario) Bar Association. Gary admits to a 'senior moment'; for in reviewing his old appointment diaries he realized that the Section was not yet quite 30 years old, he nonetheless provides many of us relative newcomers with a piece of Section history. Interestingly, a number of the Section's founding members, notably Gary Segal himself, remain active in both immigration practice and the OBA Citizenship and Immigration Section today.

For the upcoming 2006-2007 term we hope to increase the number of newsletter editions that go to print. To do this we will need an additional Editor as well as continued contributions. I would therefore encourage anyone on the Section Executive interested in working on the newsletter as an Editor to contact me. In addition, I would like to formally open the call for submissions (articles, commentaries, updates and case law reviews and analysis) to the Section membership. I ask that those interested in publishing their work in the newsletter contact me to discuss their ideas. The newsletter mandate will be to complement other forums - list server and Section lunch programs – with pieces that provide insight, overview and analysis.

In closing I thank those Executive members who contributed to this year's newsletters. As you read this edition please take a minute to consider the value, with reference to both information and knowledge transference, that the Section and its newsletter offers and consider my invitation to contribute in the future.

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The Residency Obligation under IRPA: Four Years Later

*Sergio R. Karas**

The *Immigration and Refugee Protection Act ("IRPA")*[1] states in section 28 that a permanent resident must, with respect to every five year period, be physically present in Canada for a total of 730 days, unless he or she is outside Canada and fits in one of the exemptions specifically provided for in the legislation.

The physical presence requirement and the objective standard set out in section 28 of the *IRPA* represent a change from the previous provisions set out in the *Immigration Act,*[2] which was in force until June 28, 2002. While the previous legislation emphasized a permanent resident's intention to abandon Canada as his or her place of residency, the current provisions provide an objective test, but as the caselaw developed in the last four years shows, a subjective element is still present in the evaluation of the resident's conduct, and it comes into play before a person can be stripped of permanent resident status. The current legislation introduces, for the first time, two new elements: the application of humanitarian and compassionate grounds relating to a permanent resident; and the consideration of the best interests of the child affected by the parent's loss of status, both of which must be taken into account prior to a final determination that a person has lost permanent residency in Canada. Surprisingly, there have been relatively few cases dealing with section 28 of the *IRPA*, and most of the decisions rendered seem to be strongly tied to the facts of each case.

Section 28 of the *IRPA* states as follows:

28. (1) A permanent resident must comply with a residency obligation with respect to every five-year period.

(2) The following provisions govern the residency obligation under subsection (1):

(a) a permanent resident complies with the residency obligation with respect to a five-year period if, on each of a total of at least 730 days in that five-year period, they are

(i) physically present in Canada,
(ii) outside Canada accompanying a Canadian citizen who is their spouse or common-law partner or, in the case of a child, their parent,
(iii) outside Canada employed on a full-time basis by a Canadian business or in the federal public administration or the public service of a province,
(iv) outside Canada accompanying a permanent resident who is their spouse or common-law partner or, in the case of a child, their parent and who is employed on a full-time basis by a Canadian business or in the federal public administration or the public service of a province, or
(v) referred to in regulations providing for other means of compliance;

(b) it is sufficient for a permanent resident to demonstrate at examination

(i) if they have been a permanent resident for less than five years, that they will be able to meet the residency obligation in respect of the five-year period immediately after they became a permanent resident;
(ii) if they have been a permanent resident for five years or more, that they have met the residency obligation in respect of the five-year period immediately before the examination; and

(c) a determination by an officer that humanitarian and compassionate considerations relating to a permanent resident, taking into account the best interests of a child directly affected by the determination, justify the retention

of permanent resident status overcomes any breach of the residency obligation prior to the determination.

In *Kuan v. Canada (Minister of Citizenship and Immigration)*,[3] Kuan became a permanent resident, returning to Taiwan with his family within five days of landing in Canada. While in Taiwan, he applied for returning resident permits on two occasions, as it was then possible to do, but was refused both times. Upon returning to Canada four years after landing, he was ordered removed on the basis that he had failed to comply with the residency obligation set out in section 28 of the *IRPA*. His appeal to the Immigration Appeal Division ("IAD") failed. In a lengthy decision, the IAD held that under the previous *Immigration Act*, permanent residents could justify extended physical absences by establishing that they did not have the requisite intention to abandon Canada as their place of permanent residence during the relevant period, but that opportunity no longer exists under the *IRPA*, which provides for a mathematical calculation of a permanent resident's obligation of physical presence in Canada. More important, in canvassing the possible existence of humanitarian and compassionate grounds, the IAD attempted to develop a test to examine the circumstances of each case, and noted that appropriate considerations in such evaluation included the appellant's initial and continuing degree of establishment in Canada; reasons for departure from Canada; reasons for continued or lengthy stay abroad; ties to Canada; whether reasonable attempts to return to Canada were made at the first opportunity and, generally, whether unique or special circumstances are present that may have prevented the appellant from returning. In that case, the IAD noted that Mr. Kuan returned to Taiwan to continue working in order to qualify for a Taiwanese pension, but also remained in Taiwan to work and study after qualifying for such pension, and he failed to demonstrate the existence of sufficient humanitarian and compassionate considerations to warrant special relief. The IAD also considered the best interests of the child, but held that they would not be affected negatively by the removal as they resided in Canada with their mother, who had not lost permanent resident status.

The IAD reached a similar conclusion in *Kroupa v. Canada (Minister of Citizenship and Immigration)*.[4] In that case, the appellants were citizens of the United States. The husband and wife couple became permanent residents in 1985 when the husband was employed in Canada. They returned to the United States in 1987 in order to look after a mentally ill daughter, and the husband remained employed by a U.S. company in Portland, Oregon. He visited Canada once or twice per month to assist his employer's Canadian subsidiary. Upon returning to Canada for a visit in 2002, they were issued removal orders on the basis that they had lost their permanent resident status. Their appeal to the IAD was dismissed. The appellant argued that he could avail himself of the exemption provided in section 28(a)(iii), as being employed on a full time basis by a Canadian business. The IAD held that the residency obligation set out in section 28 of the *IRPA* had not been met and specifically rejected the husband's argument, nothing that Mr. Kroupa remained employed by a U.S. company and that he only provided services periodically on behalf of his U.S. employer's parent company to their Canadian subsidiary, thus not falling within the scope of the said exemption. Despite the IAD's acknowledgment that the primary reason for the couple's return to the United States was to look after their mentally ill daughter, who was now an adult, the IAD noted that Mr. Kroupa continued to enjoy a comfortable professional life in the United States and his services to the Canadian corporation were only marginal and temporary in nature. Therefore, the IAD rejected his position that he could retain his permanent residence in Canada, and also held that there were insufficient humanitarian and compassionate considerations, as the couple's mentally ill daughter was already an adult and also lived in the United States.

In *Wong v. Canada (Minister of Citizenship and Immigration),*[5] the IAD reached a different conclusion. The appellant became a permanent resident in 1997 but returned to Hong Kong within one month of his arrival in Canada. He re-entered Canada in 2002 and was ordered removed on the basis that he had failed to comply with the residency obligation set out in the *IRPA*. The appellant did not contest his absence, but asked the IAD for discretionary relief. The IAD allowed the appeal and reiterated that the caselaw which had developed in the area of discretionary relief in sponsorship and removal appeals under the previous *Immigration Act* continued to be relevant under the *IRPA*, and that the appropriate considerations for such relief included those set out in *Kuan*.[6] In this case, the appellant had terminated his employment in Hong Kong prior to coming to Canada and returned there to dispose of his home and arrange his affairs, planning his relocation to Canada, which was complicated by the ongoing care of his elderly father, who was diagnosed

with cancer shortly after he returned to Hong Kong. Since the appellant was his father's primary caregiver until his father's death in September 2001, and even though he did not return to Canada immediately as he wished to observe the traditional mourning period, the appellant met the onus of demonstrating the existence of sufficient humanitarian and compassionate considerations to warrant granting special relief in light of all the circumstances of the case.

The consideration of special circumstances can also extend to those in existence prior to a resident leaving Canada. In *Thompson v. Canada (Minister of Citizenship and Immigration),*[7] the IAD considered an appeal brought by a permanent resident who had left Canada to give birth to a child. Ms. Thompson had become a permanent resident at age 14 in 1975, and had an affair with a Canadian citizen. In 1988, she returned to Trinidad to give birth to her child. However, the father of the child obtained a custody order in Trinidad allowing him to bring the child back to Canada. A year later, Ms. Thompson came to Canada to be near her child, but a departure order was made against her after it was determined that she had failed to meet her residency obligation. The IAD allowed her appeal, taking into account the best interests of the child. In considering the existence of humanitarian and compassionate considerations, the IAD noted that the appellant had lived a productive and law-abiding life in Canada before returning to Trinidad because of her pregnancy, and accepted her evidence that she only returned there in order to avail herself of the support of her close family members. The IAD accepted her evidence that she had made several attempts to rekindle her relationship with the Canadian father of the child and that she was hopeful to resolve that situation. The IAD noted that the child was doing very well in school in Canada and had re-established her bond with the appellant, and therefore the child could be affected negatively if the appellant returned to Trinidad.

A number of different arguments were advanced in *Angeles v. Canada (Minister of Citizenship and Immigration).*[8] In that case, the appellant was an airline employee, a citizen of the Philippines and a permanent resident of Canada for several years. However, during the relevant five-year period for the calculation of his residency obligation, the appellant had only spent 360 days in Canada. He was ordered removed for failure to meet his residency obligation. The IAD discussed his appeal, and he pursued a judicial review application at the Federal Court. In his judicial review application, the appellant impugned the IAD's decision to dismiss his appeal, advancing three distinct arguments to attack the IAD decision: first, he argued that he was deprived of the assistance of an interpreter; second, that the IAD breached the principles of fundamental justice by failing to ensure that he was properly represented by competent counsel; and third, that the immigration officer who made an adverse determination concerning his permanent resident status was obligated to consider humanitarian and compassionate grounds prior to making such determination. The court rejected all of the arguments advanced by the appellant. The court noted that a standard of patent unreasonable is to be applied in reviewing IAD decisions and that, based on the evidence on the record, the court was satisfied that the IAD had properly examined the relevant matters. The court agreed that the factors set out in *Kuan* concerning an individual's intention throughout the periods of extended absence from Canada are relevant factors to be considered in the assessment of discretionary relief, and that since the appellant had not demonstrated a clear intention to establish himself in Canada, while maintaining his domicile on a permanent basis in the Philippines with his wife and children whom he never attempted to sponsor, such relief could not be granted. The court noted that the appellant's intention "*to perhaps settle in Canada at some point in the future in the hope of improving his family's standard of living*"[9] was not sufficient to warrant special relief.

With respect to the appellant's argument that the immigration officer who made the initial determination of loss of status, was obligated to consider humanitarian and compassionate grounds the court held that he was not obligated to do so unless the appellant advanced those arguments. Having failed to do so, the appellant had not discharged the onus that fell upon him, and therefore the immigration officer had no obligation to explore them. This aspect of the decision confirms that it is the obligation of the person concerned to advance all humanitarian and compassionate considerations at the earliest possible opportunity.

One interesting aspect of *Angeles* is how the court dealt with the appellant's argument that the IAD was obligated to ensure that he had the assistance of competent counsel. In that case, the appellant had designated his sister to be his legal representative. The court determined that the appellant had been given every opportunity to secure legal counsel and that, having designated his sister to act as his representative,

he was responsible for that choice, notwithstanding the fact that it was apparent from the record that she had difficulty understanding and meeting the procedural requirements of the hearing at the IAD, and although her request for a postponement to allow for the proper production of documents was denied. The court noted that there was no evidence that the appellant or his representative ever indicated to the IAD that they had concerns about the retention of competent counsel, and cited with approval the decision in *Huynh v. Canada (Minister of Employment and Immigration)*,[10] where it was held:

> *"[…] That the applicant's story was not told or did not come out clearly may have been a fault of counsel or it may have been that the applicant did not properly brief counsel. As I understand the circumstances, counsel was freely chosen by the applicant. If counsel did not adequately represent his client, that is a matter between client and counsel".*[11]

The court dismissed the appellant's contention of lack of competent counsel and held that the IAD had no obligation to intervene regarding his choice of representative. The court's decision concerning this issue should serve as a warning sign to the public to carefully consider the competency of their representatives before engaging them in legal matters. It must be noted that this case was heard by the IAD prior to the amendments to the *IRPA* requiring that only licensed representatives may appear before immigration tribunals, but given the lack of appropriate education and training standards for non-lawyers, a similar result could ensue if an appellant attempts to argue that counsel was not competent. Such line of argument appears to have been foreclosed by the courts.

The consideration of humanitarian and compassionate grounds also arose in *Lello v. Canada (Minister of Citizenship and Immigration)*.[12] In that case, the appellant came from England to live in Canada in the 1960's with her husband and had a Canadian-born daughter. She returned to England but came back to Canada in the 1970's with her second husband for a short time. She returned again to Canada after the end of her second marriage but went back to England in 1983 to care for her ill parents. In 2003, the appellant decided to settle in Canada, where her daughter and her grandson were living, believing that she was still a permanent resident. The visa officer refused to waive her residency requirements on humanitarian and compassionate grounds, and determined that she was in breach of her residency obligation. At the IAD, the appellant argued unsuccessfully that humanitarian and compassionate considerations existed, based on the testimony that her daughter would have to seek social assistance to support herself and her son if the appellant was directed to leave Canada. The IAD interpreted that statement as a threat and dismissed the appeal. The Federal Court held that the IAD had applied the wrong test in its consideration of humanitarian and compassionate grounds, and that the IAD should have asked whether the daughter was able to sponsor the appellant and, if not, her failure to maintain the required number of days of physical presence in Canada should have been waived. Although the decision in this case was positive, it must be cautioned that the factual context appears to be very narrow in scope.

Having regard to the caselaw developed in the four years since the *IRPA* came into force, it is apparent that, while section 28 of the *IRPA* provides an objective test for determining whether a permanent resident has maintained his or her obligation to reside in Canada, the consideration of humanitarian and compassionate grounds continues to be a relevant factor that must be carefully canvassed before a permanent resident can be held to be in breach of the residency obligation. However, the onus rests with the applicant to ensure that all facts and arguments are presented at the earliest possible opportunity. The skilful presentation of humanitarian and compassionate considerations is crucial in the success of a challenge to a decision that a person is no longer a permanent resident of Canada.

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[1] S.C. 2001, c.27
[2] R.S.C. 1985, C.12 Section 24
[3] 34 Imm. L.R. (3d) 269
[4] 34 Imm. L.R. (3d) 55
[5] 35 Imm. L.R. (3d) 320
[6] Supra
[7] 35 Imm. L.R. (3d) 308
[8] 2004 F.C. 1257; 38 Imm. L.R. (3d) 308
[9] Supra para 13
[10] (1993) 65 F.T.R. 11 (Fed Ct. T.D.)
[11] *Angeles v. Canada*, Supra, para.15
[12] 45 Imm. L.R. (3d) 95

Happy Birthday Immigration Section

*Gary L. Segal**

Recently, I was thinking, that someone who was there should sit down and record for history and posterity how the Immigration Section of the Canadian Bar Association came into being. Unfortunately, I thought that this month May, 2006 was the thirtieth anniversary of the creation of the predecessor organization to the Immigration Section.

I guess I was having a senior moment, and a review of my appointment diary for 1976 failed to reveal the first meeting. A couple of hours spent looking through 1977 and 1978 was more successful.

On Tuesday, May 30, 1978, as a result of my invitation, a group of ten immigration practitioners met for the first time in the South Sitting Room of Hart House at the University of Toronto. I have had an opportunity recently to speak to several of the people who were at the meeting, and while my recollection is that there were ten people there, collectively we can only remember the names of nine. Thus, I apologize in advance, to the tenth person, if such a person existed, and who was at that meeting.

The lawyers in attendance that day, some twenty-eight years ago were, in no particular order, as follows:

- Marshall Drukarsh
- Don Greenbaum, Q.C.
- Mendel Green, Q.C.
- Cecil Rotenberg, Q.C.
- Carter Hoppe
- Steve Abrahams
- Mr. Mark of the law firm of Kan and Mark
- Charles Roach
- Gary L. Segal

I had called this meeting as a result of being contacted by Charles Roach, a well known civil rights lawyer, both then and now, who practiced both criminal and immigration law. Charlie felt that it was time that a group similar to the Criminal Lawyers Association be created for Immigration Lawyers in order to lobby the government on behalf of our clients for changes in the law.

At the first meeting, several names were suggested for the new organization including Canadian Immigration Lawyers Association, Canadian Immigration and Citizenship Lawyers Association, and the Association of Immigration Lawyers.

After some discussion the name chosen for the new association was the Association of Immigration Lawyers of Canada.

I was elected the first Chair and stayed in that position for a period of two years. Don Greenbaum, Q.C. was elected the first Vice-Chair. Marshall Drukarash was Secretary and at least initially the editor of the newsletter. Marshall was subsequently followed by Carter Hoppe as the newsletter editor.

Of course the name of the newsletter was "**The Ailment**."

I do not recall who was the first treasurer; however, I do know that we set fees for membership, opened a bank account and contacted Manpower and Immigration to open up the lines of communication both here in Ontario and in Ottawa.

I was followed in 1980 by Don Greenbaum, Q.C. who became the Chair of the Association with Mendel Green, Q.C. as the Vice-Chair. This happened at an annual meeting in May of that year. A couple of months later, perhaps in August or early September 1980, Don Greenbaum resigned as Chair and was replaced by Mendel Green.

Don resigned because the Minister of Immigration of the day, who I believe was Lloyd Axeworthy, appointed Don to head up a task force which was to hold hearings across Canada to obtain input for the preparation of a Green Paper by the federal government with respect to immigration reform. This was approximately four years after the *Immigration Act, 1976* had been presented to Parliament and approximately two years after that Act had been proclaimed in 1978. Don felt that there would be a potential conflict of interest if he remained as Chair of the Association when he was also being required under the Official Secrets Act to swear an oath of secrecy with respect to information that he would be provided by federal civil servants.

Mendel Green moved into the chairman's position in the autumn of 1980. Shortly thereafter, a discussion began within the association, initiated by Mendel, as to

whether or not a small group of Immigration lawyers in Ontario had sufficient clout to gain the attention of the Department of Manpower and Immigration, as it then was.

With the support of the majority of the members, Mendel was authorized to open discussions with the Canadian Bar Association with respect to a merger of the Association of Immigration Lawyers with the Canadian Bar Association with the objective of creating an Immigration Section of the CBA.

It is very important to note, historically, that this was not the creation of a section from members of the Canadian Bar Association who had an interest in immigration. This was a merger. Mendel negotiated, among other things, that our treasury, which I recall had something more than $1,000.00 at the time, was to be turned over to the Bar Association and that the CBA would be responsible for any outstanding Accounts Payable that we had at that time. Mendel reminded me a few days ago, that he also negotiated the fact that since we were an independent association merging with the CBA, we continued to have the right to deal directly with the press and the immigration department without first going through national council. Wonder where that went?

I asked Mendel if he had anything in writing to this effect still in his keeping. He laughed and he undertook to look for same.

At that time, the time of the merger, I believe we had 25 or 30 members, one of whom was the late Michael Berger of Montreal and possibly his partner at the time Ed Winston. Today the National Immigration Section and the various provincial chapters have approximately seven hundred members and conduct a major national CLE every year which is well attended and becomes better and better each year.

I just thought, being almost the 30th of May 2006, that the members might be interested in how it all started. All of which is respectfully submitted, Happy Birthday!!!

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Immigration Law Programming in Ontario and Outside the GTA

*Betsy Kane**

For immigration practitioners in Ottawa, spring 2006 has sprouted some quality immigration programming. Ottawa has a small but active immigration bar. A joint committee comprised of local Legal Aid Clinic lawyers (Michael Bossin, Chantal Tie, Laila Demirdache, and Laurie Joe) and myself organizes an annual immigration conference to meet the needs of immigration lawyers, government counsel and the local NGO community in our region.

On April 6th 2006 we held our annual Ottawa immigration law conference that is now in its 7th consecutive year. This year's conference was a sell out for the second year in a row. We had over 130 attendees and received accreditation by *Law Pro* for the first time. Speakers in 2006 included Ron Poulton, Carole Dahan, Mona Beauchemin, Barbara Casson, and Angus Grant. The conference was a great success and all of our speakers were well received. The demand for our conference in Ottawa continues to grow due to our policy of keeping the registration fees low so that local CLE programming is widely accessible. A big thank-you to Karen MacLaurin, Executive Director and Head Librarian of the County of Carleton Law Association (CCLA) for working behind the scenes in support of quality immigration programming in Ottawa.

On May 17th 2006, the OBA and the CCLA are jointly presenting the first ever program to be held in Ottawa on U.S. immigration services available in the capital. Keith Powell, Minister Counselor of Consular Affairs with the U.S. Embassy in Ottawa will speak on consular processing. Beverly Leifer, Port Director, Ottawa Preclearance and Customs and Border Protection Officer, Ed Cuddy, of U.S. Customs and Border Protection will canvass matters pertaining to preclearance services at the Ottawa International Airport. The bar is looking forward to this presentation. It has been long overdue. Thank-you to Randy Hahn and Joel Guberman for assisting with the contacts for this program.

On May 24th 2006, University of Ottawa professor and former Chairman of the IRB, Peter Showler, will be launching his new book *Refugee Sandwich, Stories of Exile and Asylum*, at the Nicolas Hoare bookshop. The book launch is expected to draw a large crowd from legal and government circles. To attend, please RSVP at (613) 562-2665 or via e-mail at: ottawa@nicholashoare.ca.

The Ottawa bar has an excellent rapport with CIC, the IRB, CBSA, The Department of Justice and the Federal Court. Government representatives frequently speak and attend our CLE programming. Immigration practitioners east of the GTA would value continuing joint CCLA and OBA programming in the field of immigration law in Ottawa.

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CALL FOR SUBMISSIONS

The OBA *Citizenship and Immigration* Editor invites Section Members to submit contributions for the next edition of the newsletter. Authors must be Section members; contributions should be relevant to the practice of immigration law in Ontario. Contributions can take the form of case law review, commentary or updates. Please send contribution ideas or materials to Nan Berezowski at nan@borderlaw.ca or call me at (416) 850-5112 to discuss.

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