

THE EXPLOITATION OF POTENTIAL IMMIGRANTS BY UNSCRUPULOUS CONSULTANTS

A Task Force Report

By A. Duff Mitchell

In 1981, 1047 claims for refugee status were filed by Indian nationals. Of the 400 that have been considered none have been accepted. "Unscrupulous travel agents", it seems, swindled hundreds of would-be immigrants, sometimes out of everything they owned, for information on how to exploit Canada's refugee policy to move here.

A prayer that a plea for refuge would be heeded has been sold as counsel for a refugee claimant's interview with a senior immigration officer.

For such "services" immigrants and refugees have paid thousands of dollars. The problem of the exploitation of potential immigrants by unscrupulous consultants mostly involves immigrants, but refugees, because they may be in particularly desperate situations, are also very vulnerable. So is our refugee determination system. The findings of an April 1981 report on this problem by the prolific Task Force on Immigration Practices and Procedures are summarized below.

A recent report on the exploitation of potential immigrants by unscrupulous consultants addresses the problem of immigration consultants who sell incompetent, fraudulent or inappropriate advice and other services for unduly large sums of money to gullible immigrants. The report makes a number of observations and recommendations, but it can barely conceal the fact that although the problem is readily identifiable, government responses are greatly constrained.

In the report the term "immigration consultant" is used to describe individuals other than lawyers or immigration officials who "hold themselves out as having expertise in immigration matters which will assist potential immigrants in their applications." "Unscrupulous immigration consultants" are those who make a practice of charging fees for incompetent services or unduly high fees for simple services, or who express misrepresentation and fraud in the extraction of fees. They might offer to facilitate the immigration process, to represent an applicant for refugee status, to bribe Canadian government officials, etc. They are able to operate by manipulating the vulnerability of the immigrant - his ignorance of Canadian laws and customs, his fear of deportation, and sometimes his trust in someone of his own language and culture.

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The Problem of Control

But the control of unscrupulous immigration consultants may be largely outside the scope of the *Criminal Code* and the *Immigration Act*. Very little, if anything, can be done by the Canadian government about unscrupulous consultants operating abroad, where most abuses occur. Their operations are beyond the surveillance of Canadian government personnel and their victims are largely unknown. They are subject only to the local laws and authorities.

Within Canada, consultants who express misrepresentation and fraud in the extraction of fees, or who provide incompetent services and/or charge unduly high fees for simple services, can in theory be prosecuted under the *Criminal Code*. The fact that sentences can be as severe as ten years' imprisonment can act as a general deterrent. But successful prosecutions are only likely in blatant cases of fraud. It is very hard to prove "incompetent services" and that fees are "unduly high". Moreover, unscrupulous consultants operate largely orally and in private. Their victims are often reluctant to bring charges for fear of deportation. The areas where the consultant's service is visible, such as representation before an adjudicator at an inquiry, are not usually where fraudulent conduct occurs. Thus criminal prosecutions are highly unlikely.

Short-term Efforts

In a discussion paper on the report, Employment and Immigration Minister Lloyd Axworthy identifies some current government efforts to control the activity of unscrupulous consultants.

Immigration officials are distributing a flyer abroad, warning prospective immigrants of the problem. They are examining with the RCMP, local police forces and provincial law and consumer protection societies, what steps might be taken to encourage successful prosecutions in Canada. They are exploring the possibility of developing community resources as alternative sources of advisory services, for example, through providing instruction to local ethnic agencies in immigration law, procedures and practices. And they are trying to collect information about the whole field of immigration consultants, unscrupulous or otherwise.

But these initiatives are not put forward as means by which the problem is going to be significantly reduced, because in the areas where exploitation is most extensive, i.e., abroad and in private, the instruments of government control continue to be weakest.

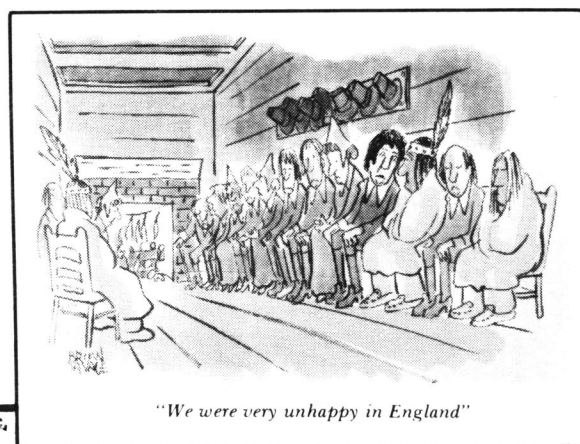
Long-term Possibilities

The report also examines several possible courses of long-term action. However, it becomes apparent that the more the government tries to control activities of unscrupulous immigration consultants, the more other problems arise. It would appear from a thorough reading of the report that the government recognizes that the cost of government action far outweighs any benefits that would be achieved.

For example, of the possible long-term solutions discussed, the one with the greatest potential for effectiveness would be setting up comprehensive licensing of immigration consultants. But to require all immigration consultants to meet standards of proficiency in order to obtain a license or else be subject to the *Immigration Act*. This would raise difficulties with respect to the constitutional power of the federal government, federal-provincial relations and obtaining House of Commons priority for such legislation. It would present the thorny problem of devising standards, especially since there is some question as to the appropriateness of the Canada Employment and Immigration Commission certifying the competence of individuals who could be acting as opponents of the Commission in adversary proceedings of a judicial nature. In addition, licensing would involve substantial cost. Even if these problems could be solved licensing would not address the problem of unduly high fees.

The report invites suggestions for other approaches. Copies of the full report are available from:

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