

TAB 1

Interviews and Initial Consultations – Building the Case

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CONTINUING PROFESSIONAL DEVELOPMENT

PRACTICE TIP SHEET: Interview and Initial Consultations, Betsy Kane, C.S.
Capelle Kane Immigration Lawyers Professional Corporation (Ottawa)

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Verifying Identity:

Luckily in the field of immigration and citizenship law, our primary documents are always passports, life event certificates, educational credentials and immigration documents. Thus on every initial consultation, our firm obtains as much of this primary documentation both for the purposes of verifying identity and understanding and documenting the facts and the legal issues. In our office, clients are asked to bring all primary documentation with them at the time of setting an appointment. Additionally, we ask that all correspondence and background materials (including copies filed immigration applications), be brought to the consultation, or better yet sent to our offices days before the meeting with the lawyer. By receiving the materials in advance, the lawyer has ample time to review the file, conduct any on-line or telephone status verifications on pre-existing files, as well as conduct background research on the client, their employers or other related background information.

Initial Consultation:

Prior to the consultation, the prospective client is triaged by the office manager to determine the nature of the issues, the documentation required, whether there is urgency and whether the matter is within our competencies. The triage process is also a procedure to determine whether we are prepared to take on the file as it is presented.

As a practice, we do not take all immigration cases that are presented to us. We maintain a roster of lawyers within Ottawa, Ontario, across Canada and the USA, to whom we refer clients where we are not suited to assist with the issues. At our firm, lawyers vet all inquiries. I believe this is the most efficient way to properly screen clients and assess their needs.

In our office, the initial consultation is a time to become familiar with clients, their concerns, and their documentation. It is the opportunity to learn about our services and our abilities to assist with their legal issues. The initial consultation is designed to instill confidence in the client in regard to our expertise and our experience with the matters at hand. Our office employs a less formal law office environment. None of our lawyers are attired in suits or skirts, unless the lawyer is appearing at a hearing or at off-site client meetings. This down-to-earth atmosphere also serves to relax the client and make them feel at ease during the initial intake interview. Our firm has found that the less formal environment enhances our client relationships and offers reassurance to our clients when they

are required to disclose personal details or problematic issues. We find that the relaxed approach that we employ is key to a successful intake interview. My partner enjoys bringing our dog to the office on occasion. I do not like the practice, but many clients seem to love it and look forward to seeing the dog on their next visit. This is an example of how the environment in the office can set the tone and basis for a good solicitor-client relationship.

For less sophisticated or young clients, we always confirm the confidential nature of our discussions so that they are aware of the Canadian concept of solicitor-client privilege. With newcomers to Canada, it is very important to lay this foundation at the outset of a meeting/matter because the concept can be a foreign one in many other countries and cultures.

Conflict of Interest: (Joint Retainers with Employees & Employers)

Being in a small firm, checking for conflicts of interest is generally a pretty easy task, as all lawyers usually know the others' file/clients. However, it does happen particularly in a small city like Ottawa, where conflicts do arise. A recent example are cases where lay-offs in the technology sector have affected our ability to continue to act, where laid off employees are those holding work permits which our firm facilitated on behalf of their terminating employer. In these scenarios, we had been retained by the employer to act jointly for the employer and employee (foreign worker); the conflict arises once the lay-off decision has been made by the employer (this can happen before the employee is notified). In this instance, when the foreign worker contacts us in regard to their status following lay-off, we usually provide the client some preliminary advice to offer them reassurance that they are not personally reportable to CIC/CBSA or HRSDC or removable from Canada.

I then confirm that I have acted for their employer and thus have limited ability to assist them if these are the employer's (our client's) instructions. Often times, employers who have terminated foreign workers, provide for an exit consultation with our firm, to provide as much support as possible in the transition period after lay-off. This is part of the lay-off package. In this instance, we can counsel the clients on amending their temporary status to visitor status with proof of the lay-off including the letter of termination and Record of Employment. In this case, we recommend a visitor extension for 6 months (equivalent to usual visitor visa/admission). We advise the client to initially seek a six-month visitor record for their change in status to allow them to wind up their affairs in Canada or search for a new Canadian employer. An alternate solution, if the foreign workers have applications for permanent residence status, we must assess whether the application can still proceed in light of the change in circumstances (arranged employment) and whether CIC or the PNP must be notified of the change in circumstances and the loss of arranged employment. If the permanent residence application does not hinge on arranged employment, as in the CEC class or skilled workers on the designated occupations list, the foreign worker can seek

an amendment of their status in Canada to that of visitor, pending completion of their permanent residence application by the visa office outside Canada.

Consultation Follow Up:

In all cases where there is a pre-existing file or incident with CIC/CBSA or the police, we automatically prepare an application for an ATIP request to be filed following the consultation. We explain to the client the reasons for the ATIP request that are, in part, as follows:

1. To verify all information provided by the client;
2. To check for CIC's rationale in rendering their interim or final decision on the matter;
3. To determine what information CIC/CBSA is privy to, if this is a concern for the client;
4. To determine if there has been a misrepresentation that is verifiable on the record.

We explain the terms of the consent to the disclosure and the ATIP procedure and processing times. In rare occasions, the client will refuse to allow for the ATIP request to be filed. This can be evidence in and of itself.

Once the ATIP disclosure has been received and reviewed, I usually contact the client to discuss the disclosure and offer my advice, comments in connection with the information, which is found in the disclosure. Often times, the disclosure is provided to client post-consultation for their files and review.

Questioning Style:

Once I have had an opportunity to review a file in advance of a client meeting, I have generally laid out in my mind the type of questions and the questioning style that is required to elicit the necessary information during the interview. Naturally, my demeanor is different if I am interviewing a young international student who has only been in Canada a short time verses a senior executive seeking an intra-company transfer. Where the questioning style will really change is in cases where the client is clearly dishonest, evasive or appears untrustworthy in some respects. Good examples are where a person is seeking to retain their residency having worked for their own numbered company whose gross revenues are less than \$10K CAD or in a citizenship case where a residency questionnaire is required and the passport has been lost or is empty/clean (i.e. no customs stamps documenting travel?).

Generally, my questioning style is very direct which can be characterized with closed or narrow questioning including probing questions. Once I am able to determine the issues, I then usually move on to more open-ended questions

about the clients goals, background in terms of family, employment history and ties with their home country or other third countries.

The Rules of Professional Conduct in Rule 2.02 (5) speak to Dishonesty and Fraud by a Client. The commentary for this provision states that:

“ A lawyer should be on guard against becoming the tool or dupe for an unscrupulous client or persons associated with this clients”.

As a new practitioner in 1994, I was servicing a sophisticated client (a Canadian born accountant) who tried to have me become party to a serious misrepresentation in a spousal sponsorship matter. The client had been specifically seeking a new lawyer who he thought he could dupe with a large retainer. The client was sleazy and as I later learned, was engaging in actions that were criminal in nature. I refused to represent him. I documented everything in a reporting letter and sent him the invoice for the legal opinion. He then threatened not to pay my bill and tried to intimidate me. I knew exactly what he was trying to do and I walked away from the client, despite needing the money. He eventually paid but was very upset that I had reported to him, in writing, the facts that he presented to me and the case law that supported my legal opinion. I thought I had learned well from this matter and swore I would never let myself get into a situation like this again.

Fast-forward 15 years later. This past summer, I was consulted by an individual who was a permanent resident of Canada, holding an Iraqi passport and who informed me that he was transferred by his Canadian employer to set up a sales office of a high technology company in Asia. He had never worked with an immigration lawyer before and was seeking to renew his PR card from inside Canada. The basis for the application was the fact that he was employed abroad for a Canadian company. He had presented me with his original employment agreement, transfer agreement, proof of ties with Canada, investments. Everything looked great to apply for and receive a new PR card under the physical presence exemption for employees transferred abroad.

As I was completing the PR card renewal application, I had some questions regarding the corporate structure of the company in Canada and in Asia. The client authorized me to speak with his employer in Canada and so I called the President and Legal Department. I started talking about my need for documentation with various people at the company. It did not take long to learn that someone who no longer worked at the company and had been let go for not strictly following company policy had furnished the corporate records of the transfer, which the client had provided to me. The lawyers for the Canadian employer contacted me and told me point blank that the company did not authorize the materials I had been provided with. Furthermore, that my client had not been assigned by the Canadian company abroad. The corporate lawyers informed me that I was being provided with untruthful information and that the tax

records of the Canadian company did not sync with employment records that I had been provided.

The company representatives then contacted my clients and informed him of this bad news. In the course of preparing the PR card application, I had requested a new letter from the company setting out the corporate relationship between the Canadian and Asian companies and the client's employment history. The client believed the Canadian company would just rubberstamp what had been issued by the former employee. The corporate counsel refused to provide the letter that was needed for the PR card application. I then informed the client of what had transpired in my discussions with his employer, and the fact that I could not file the PR card application based on a Canadian employer transfer. I also advised on the consequences of misrepresentation.

The client was not happy, but in this case understood the ramifications for himself and his status. In this matter, the client was rushing me to file the application. I refused to be rushed into filing the application, as the urgency was his and not mine. As a practice tip you should know that in a lot of cases, it is a real RED FLAG that something is amiss when the client is seeking to have you rush an application, drop your other clients in order to service them. I have experienced this on several occasions during my career. You should be mindful that the client who wants you to rush everything is often times not a good client to begin with. The exception to this observation would be in work permit applications where there is a genuine urgent business need.

To Quote or Not Quote a Flat Fee Structure:

At our firm, we try to offer a flat rate fee structure wherever possible. Our retainer agreements clearly provide that the fee structure is subject to change due to any surprises that have not been disclosed at the outset of the relationship. The fee structure is also reviewable in cases of unexpected developments that could not be foreseen.

In certain types of cases, a flat fee structure does not work. These scenarios are where there is an inadmissible or potentially inadmissible client who needs their inadmissibility dealt with by an application for a TRP, Application for Criminal Rehabilitation, submissions on admissibility or deemed rehabilitation or other case-specific problematic issues.

My advice is to **NEVER** quote a fee on criminal inadmissibility issue until you have seen all police records, court records, fine payment forms, confirmation of community service, or other confirmations pertaining to fine and sentence. I also recommend speaking with the local courthouse staff and getting the final reporting letter of the criminal lawyer involved in the matter. In DUI cases, always ask the client to get a copy of the full license history from the Ministry of

Transportation. They often have helpful information in them to enable you to assess the matter.

In litigation, medical admissibility, misrepresentation, non-bona fides and security cases, offering a flat rate is next to impossible.

Free Consultations:

Our office does not offer free consultations, despite the fact that this is the norm in our industry. Our firm believes that the free consultation is a recipe for disaster, as our experience has been that any adequate consultation takes a minimum of one hour to conduct from start to finish. Furthermore, as experienced counsel, we are not prepared to give away our time or expertise.

Many law firms offer on-line assessment for PR status and other options for status in Canada. As a small firm, our office does not have the staff to offer this service in a quality fashion. As such, as a risk management practice, we have chosen not to offer free consultations in any circumstances. Clients seeking free consultations are referred to the Lawyer Referral Service and the Yellow Pages for information on how to obtain a free-no obligation consultation. Since I entered private practice, I have never offered free consultation as there is always the obligation to document advice provided to the public whether they have paid for it or not.

Referring Agents – No Thank You

As immigration lawyer, we are constantly bombarded by individuals and companies who are offering us a high volume of good quality clients should we choose to partner with them. Again, as a risk management practice, our firm has never entered into a partnership or referral arrangement, with any third party. In our assessment, there has never appeared to be more advantages than disadvantages to this type of arrangement. In the era of ghost consultants, unlicensed consultants and unscrupulous agents in ethnic communities, our firm is not prepared to enter these type relationships. As you may know from reading Lexbase, CIC is more actively monitoring ghost consultants at visa offices around the world.

You must be very careful before you agree to associate with referring agents. If you choose to do so, you must be very careful in documenting your relationship with this agent and your respective and distinct roles in each immigration application. You must ensure that the agent is not providing legal advice under your name or law firm letterhead. As CIC seeks to expand Canada's foreign student program, look out for agents who are involved in foreign student recruitment. This is a burgeoning area for third party agents.

Many of our colleagues have excellent relationships with agents around the world. I admire these colleagues and have always wondered how they are able to monitor their actions, on behalf of their Canadian law firm, abroad. It appears that many lawyers go abroad to vet, meet and service clients. If the lawyer actually has offices and staff abroad, this is a totally different scenario that may lend itself to the practice of working with referring agents.

Over the last 16 years, I have met with a few people who have offered to work with our firm. I found that I had never been inclined to take it past the initial meeting.

Reporting Letters- Make Them Work For You

I want to say one thing about reporting letters. In addition to the reporting to the client, I use the letter to highlight deadlines and BF dates. This way when you open a file years later, the most important issues are summarized in the reporting letter. This is a very helpful practice tip that works for me.

Betsy Kane, February 15th 2011.

This Practice Tips Sheet is prepared for the Law Society of Upper Canada Program, *Effective Advocacy for Immigration Lawyers*. Reproduction of this material, in whole or in part, is subject to the written consent of Betsy Kane, Capelle Kane Immigration Lawyers Professional Corporation.



APPLICATION FOR TEMPORARY RESIDENT VISA MADE OUTSIDE OF CANADA

1 UCI/Client ID	2 I want service in	3 Visa requested	OFFICE USE ONLY Validated
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PERSONAL DETAILS

1 Full name (as shown on your passport or travel document)				
Family name			Given name(s)	
2 Nick names/Alias				
Family name			Given name(s)	
3 Sex	4 Date of birth	5 Place of birth		
	YYYY MM DD	City/Town	Country	
6 Citizenship				
7 Current country of residence:				
Country	Status	Other	From	To
			YYYY-MM-DD	YYYY-MM-DD
8 Previous countries of residence: During the past five years have you lived in any country other than your country of citizenship or your current country of residence (indicated above) for more than six months? <input type="checkbox"/> No <input type="checkbox"/> Yes				
Country	Status	Other	From	To
			YYYY-MM-DD	YYYY-MM-DD
			YYYY-MM-DD	YYYY-MM-DD
9 Country where applying: Same as current country of residence? <input type="checkbox"/> No <input type="checkbox"/> Yes				
Country	Status	Other	From	To
			YYYY-MM-DD	YYYY-MM-DD
10 a) Your current marital status		b) (If you are married or in a common-law relationship) Provide the date on which you were married or entered into the common-law relationship		Date
				YYYY-MM-DD
c) Provide the name of your current Spouse/Common-law partner				
Family name			Given name(s)	

FOR OFFICE USE ONLY - DO NOT WRITE IN THIS SPACE

Application Name	Date of Birth
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PERSONAL DETAILS (CONTINUED)

11 Have you previously been married or in a common-law relationship? <input type="checkbox"/> No <input type="checkbox"/> Yes Provide the following details for your previous Spouse/Common-law Partner:			
Family name	Given name(s)		
Type of relationship	From YYYY-MM-DD	To YYYY-MM-DD	

PASSPORT

1 Passport number	2 Country of issue	3 Issue date YYYY-MM-DD	4 Expiry date YYYY-MM-DD
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CONTACT INFORMATION

1 Current mailing address - All correspondence will go to this address unless you indicate your e-mail address below. - Indicating an e-mail address will authorize all correspondence, including file and personal information, to be sent to the e-mail address you specify. - If you wish to authorize the release of information from your application to a representative, indicate their address below and on the IMM5476 form.						
P.O. box	Apt/Unit	Street no.	Street name			
City/Town	Country		Province/State	Postal code	District	
2 Residential address Same as mailing address? <input type="checkbox"/> No <input type="checkbox"/> Yes						
Apt/Unit	Street no.	Street name			City/Town	
Country		Province/State	Postal code	District		
3 Telephone no. <input type="checkbox"/> Canada/US <input type="checkbox"/> Other Type Country Code No. Ext.				4 Alternate Telephone no. <input type="checkbox"/> Canada/US <input type="checkbox"/> Other Type Country Code No. Ext.		
5 Fax no. <input type="checkbox"/> Canada/US Country Code No. Ext. <input type="checkbox"/> Other				6 E-mail address		

DETAILS OF VISIT TO CANADA

1 a) Purpose of my visit	b) Other						
2 Indicate how long you plan to stay <table style="display: inline-table; border: none;"> <tr> <td style="width: 15%; padding: 5px;">From YYYY-MM-DD</td> <td style="width: 15%; padding: 5px;">To YYYY-MM-DD</td> </tr> </table>	From YYYY-MM-DD	To YYYY-MM-DD	3 Funds available for my stay (\$CAD)				
From YYYY-MM-DD	To YYYY-MM-DD						
4 Name, address and relationship of any person(s) or institution(s) I will visit:							
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; padding: 5px;">1</td> <td style="width: 30%; padding: 5px;">Name</td> <td style="width: 65%; padding: 5px;"></td> </tr> <tr> <td style="padding: 5px;"></td> <td style="padding: 5px;">Relationship to me</td> <td style="padding: 5px;">Address in Canada</td> </tr> </table>		1	Name			Relationship to me	Address in Canada
1	Name						
	Relationship to me	Address in Canada					
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; padding: 5px;">2</td> <td style="width: 30%; padding: 5px;">Name</td> <td style="width: 65%; padding: 5px;"></td> </tr> <tr> <td style="padding: 5px;"></td> <td style="padding: 5px;">Relationship to me</td> <td style="padding: 5px;">Address in Canada</td> </tr> </table>		2	Name			Relationship to me	Address in Canada
2	Name						
	Relationship to me	Address in Canada					

Application Name	Date of Birth
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EDUCATION

Have you had any post secondary education (including university, college and apprenticeship training)? ☐ No ☐ Yes

If you answered yes, give full details of all post secondary education you have had.

1	From	Field of study	School/Facility name	
	To	City/Town	Country	Province/State
	YYYY MM			
2	From	Field of study	School/Facility name	
	To	City/Town	Country	Province/State
	YYYY MM			
3	From	Field of study	School/Facility name	
	To	City/Town	Country	Province/State
	YYYY MM			

CURRENT OCCUPATION

Give full details of your present job. If retired, not working or student, please indicate.

1	From	Activity/Occupation	Company/Employer/Facility name	
	To	City/Town	Country	Province/State
	YYYY MM			
	YYYY MM			

BACKGROUND INFORMATION

You must complete this section if you are 18 years of age or older.

1	<p>a) Within the past two years, have you or a family member ever had tuberculosis of the lungs or been in close contact with a person with tuberculosis? <input type="checkbox"/> No <input type="checkbox"/> Yes</p> <p>b) Do you have any physical or mental disorder that would require social and/or health services, other than medication, during a stay in Canada? <input type="checkbox"/> No <input type="checkbox"/> Yes</p> <p>c) If you answered "yes" to question 1a) or 1b), please provide details and the name of the family member (if applicable).</p> <div style="border: 1px solid black; height: 100px; width: 100%;"></div>	
2	<p>a) Have you ever previously applied for any Canadian visas (e.g. Permanent Resident, Student, Worker, Temporary Resident (Visitor), Temporary Resident Permit)? <input type="checkbox"/> No <input type="checkbox"/> Yes</p> <p>b) Have you ever been refused any kind of visa to travel to Canada? <input type="checkbox"/> No <input type="checkbox"/> Yes</p> <p>c) Have you ever been refused admission or been ordered to leave Canada or any other country? <input type="checkbox"/> No <input type="checkbox"/> Yes</p> <p>d) If you answered "yes" to question 2a), 2b), or 2c) please provide details.</p> <div style="border: 1px solid black; height: 100px; width: 100%;"></div>	

Application Name	Date of Birth
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BACKGROUND INFORMATION (CONTINUED)

3	Have you ever committed, been arrested for or been charged with any criminal offence in any country?	<input type="checkbox"/> No	<input type="checkbox"/> Yes
4	a) Have you ever been in a military, militia or civil defense unit or the police?	<input type="checkbox"/> No	<input type="checkbox"/> Yes
	b) If you answered "no" to question 4a) and military service is mandatory in your country and you did not serve, please explain why you did not serve. Then proceed to question 5)		
5	Have you ever been employed by a government in a security-related capacity?	<input type="checkbox"/> No	<input type="checkbox"/> Yes
6	Have you ever held a position of authority in any government, or judiciary or a political party?	<input type="checkbox"/> No	<input type="checkbox"/> Yes
7	Have you ever in periods of either peace or war, been involved in the commission of a war crime or crime against humanity, such as: willful killing, torture, attacks upon, enslavement, starvation or other inhumane acts committed against civilians or prisoners of war, or deportation of civilians?		
	<input type="checkbox"/> No	<input type="checkbox"/> Yes	
If you answered "yes" to any of questions 3 to 7 above, or upon request of a visa officer, you MAY BE REQUIRED to fill out IMM 5257 Schedule 1.			

I consent to the release to Citizenship and Immigration Canada (CIC) and Canada Border Services Agency (CBSA) of all records and information for the purpose of processing my request that any government authority, including police, judicial and state authorities in all countries in which I have lived may possess about me. This information will be used to evaluate my suitability for admission to Canada or to remain in Canada pursuant to Canadian legislation.

I declare that I have answered all questions in this application fully and truthfully.

Signature of Applicant or Parent/Legal Guardian's for a person under 18 years of age.

Date: YYYY-MM-DD

**IMPORTANT NOTE:**

This application must be signed and dated before it is submitted.

Do not forget to include: your passport, photos, the fees, your signature.

The information you provided in this application is collected under the authority of the *Immigration and Refugee Protection Act* and will be used to maintain a record of applications and sponsorship undertakings for the purpose of the administration of the Act. It will be retained in the Personal Information Banks CIC PPU 053 or CIC PPU 054 or CIC PPU 055 depending on the type of application made. The information may be shared with other organizations such as the Canada Border Services Agency (CBSA), the Royal Canadian Mounted Police (RCMP), the Canadian Security Intelligence Service (CSIS) and foreign governments in accordance with subsection 8(2) of the *Privacy Act*. In accordance with the *Privacy Act* and the *Access to Information Act* individuals have the right to protection of and access to their personal information. Details on these matters are available at the Infosource website (<http://www.infosource.gc.ca/>) and through the Citizenship and Immigration Canada Call Centre. Infosource is also available at Public Libraries across Canada.