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› [June 22, 2022](#)

Code of Professional Conduct for College of Immigration and Citizenship Consultants Licensees: SOR/2022-128

Canada Gazette, Part II, Volume 156, Number 13

Registration

SOR/2022-128 June 10, 2022

COLLEGE OF IMMIGRATION AND CITIZENSHIP CONSULTANTS ACT

The Minister of Citizenship and Immigration makes the annexed *Code of Professional Conduct for College of Immigration and Citizenship Consultants Licensees* under subsection 43(1) of the *College of Immigration and Citizenship Consultants Act* ^a.

Ottawa, June 9, 2022

Sean Fraser

Minister of Citizenship and Immigration

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Code of Professional Conduct for College of Immigration and Citizenship Consultants Licensees

Interpretation

Definitions

1 (1) The following definitions apply in this Code.

Act

means the *College of Immigration and Citizenship Consultants Act*. (*Loi*)

client

means a person or entity that

- (a) has entered into a consultation agreement or service agreement with a licensee;
- (b) consults with a licensee who provides or agrees to provide immigration or citizenship consulting services to them; or
- (c) having consulted with a licensee, reasonably concludes that the licensee has agreed to provide immigration or citizenship consulting services to them. (*client*)

Conflict of interest

(2) For the purposes of this Code, a conflict of interest exists if there is a substantial risk that a licensee

- (a) may improperly further their private interests or another person's interests, resulting in a material compromise to the licensee's ability to fulfill their professional obligations to a client; or
- (b) cannot fulfill their professional obligations to a client without materially compromising the licensee's ability to fulfill their professional obligations to another client or a former client.

Purpose and Application

Purpose

2 This Code sets out the standards of professional conduct and competence that must be met by licensees of the College.

Application

3 This Code applies to licensees, including in respect of any *pro bono* immigration or citizenship consulting services offered or provided by them.

General Standards

Professional Conduct

Standards of profession

4 (1) A licensee must uphold the standards of the profession and perform their professional obligations honourably and with integrity.

Conduct unbecoming

(2) A licensee must not engage in conduct that is likely to discredit the profession or jeopardize the public's confidence and trust in the profession.

Duty of loyalty

5 A licensee must be loyal to their clients, including by avoiding conflicts of interest and by being committed to their clients' cause.

Duty of honesty and candour

6 A licensee must be honest and candid when advising their clients.

Duty of civility

7 A licensee must be courteous and civil in all of their professional dealings.

Relationship of trust

8 A licensee must foster a relationship of trust with their clients, including by not taking advantage of their clients' vulnerabilities.

Compliance with applicable legislation

9 A licensee must demonstrate law-abidance through compliance with all applicable legislation, including the Act and any regulations and by-laws made under the Act.

Discrimination

10 A licensee must not, in any of their professional dealings, engage in a discriminatory practice within the meaning of the *Canadian Human Rights Act*.

Intimidation and coercion

11 A licensee must not, in any of their professional dealings, intimidate or coerce any person, including by

- (a)** applying undue pressure, directly or indirectly;
- (b)** making physical or verbal threats;
- (c)** engaging in any form of harassment, including sexual harassment;
- (d)** using their knowledge about social and cultural norms to exploit a situation;
- (e)** untruthfully asserting possible sanctions or administrative consequences; or

(f) threatening, without reasonable grounds, to file a complaint with law enforcement authorities alleging a contravention of a federal or provincial law, initiate a criminal proceeding or make a complaint to an administrative or regulatory body.

Dishonesty, fraud or illegal conduct

12 A licensee must not, in any of their professional dealings, knowingly assist in or encourage dishonesty, fraud or illegal conduct.

Inducement

13 (1) A licensee must not

(a) offer an inducement to any organization or person for recommending the licensee to a client or referring a client to the licensee; or

(b) solicit or accept an inducement from any organization or person for recommending the organization or person to a client or referring a client to the organization or person.

Non-application

(2) Paragraph (1)(a) does not apply in respect of an inducement offered to an agent who solicits clients for a licensee if the licensee registers the agent's name with the College in advance.

Fee

(3) A fee referred to in paragraph 17(3)(d) or 18(3)(d) is not an inducement for the purposes of paragraph (1)(b).

Original documents

14 (1) A licensee must not take possession of any of a client's original documents unless the possession is for one of the following purposes and the documents are returned to the client as soon as that purpose has been achieved:

(a) making copies;

(b) complying with a legal requirement or a requirement of a government authority; or

(c) a purpose to which the client has consented in writing.

Client documents

(2) A licensee must, at the request of the client, deliver to the client any documents or information in the licensee's possession that pertain to the client's application or expression of interest or to a proceeding in which the client is a party.

Conflicts of interest

15 (1) Subject to sections 16 to 18, a licensee must not provide immigration or citizenship consulting services to a client if doing so would or could result in a conflict of interest unless the licensee has disclosed the nature and extent of the conflict to the client in writing and the client provides free and informed consent in writing.

Duty to avoid conflict

(2) Despite subsection (1), a licensee must not provide immigration or citizenship consulting services to a client, even with their consent, if doing so would result in a conflict of interest, unless the licensee has reasonable grounds to believe that they are able to advise and represent that client without compromising

- (a)** their objectivity or the relationship of trust with any of their clients; or
- (b)** their duty of confidentiality towards any of their clients or former clients.

Unauthorized behaviours

16 (1) The following behaviours constitute a conflict of interest to which a client cannot consent:

- (a)** a licensee directly or indirectly lending money to, or borrowing money from, a client;
- (b)** a licensee directly or indirectly undertaking any transactions with a client that are not in relation to the provision of immigration or citizenship consulting services; or
- (c)** a licensee having an intimate personal relationship with a client or a former client within one year after the day on which the service agreement is completed or terminated before its completion, unless the client is the licensee's spouse at the time that the immigration or citizenship consulting services are provided or has cohabited with the licensee in a conjugal relationship for a period of at least one year before the services are provided.

Interpretation — paragraph (1)(b)

(2) A client may consent to the behaviour referred to in paragraph (1)(b) if the transaction is fair and reasonable and the client has confirmed to the licensee in writing that they have received independent advice in respect of the transaction.

Definition of *employment recruitment services*

17 (1) For the purposes of this section, ***employment recruitment services*** means any of the following services:

- (a)** seeking or obtaining employment for a client;
- (b)** assisting or advising any person with respect to seeking or obtaining employment for a client;
- (c)** assisting or advising an employer or another person with respect to hiring a client; or

(d) referring a client to another person who offers the services referred to in any of paragraphs (a), (b) or (c).

Conflict of interest — employment recruitment services

(2) A licensee is in a conflict of interest if they provide both immigration or citizenship consulting services and employment recruitment services to a client who is a *foreign national*, as defined in subsection 2(1) of the *Immigration and Refugee Protection Act*.

Conditions

(3) However, a licensee may provide both immigration or citizenship consulting services and employment recruitment services to a client who is a foreign national if the licensee

(a) before providing those services, advises the client that they are not obligated to receive both services from the same individual and obtains the client's free and informed consent in writing to proceed;

(b) ensures that the service agreement clearly differentiates between the immigration or citizenship consulting services and the employment recruitment services that will be provided to the client;

(c) does not directly or indirectly charge a fee or disbursement to the client for any employment recruitment services;

(d) discloses to the client the fees that the licensee is receiving from an employer for recruiting the client to work for the employer;

(e) complies with all applicable legislation governing the provision of employment recruitment services; and

(f) demonstrates honesty and candour towards the client and commitment to the client's cause, including by providing the client, before they begin working in Canada, with a copy of their employment contract and accurate information regarding the work that they will be doing and their wages, benefits and working conditions.

Definition of *student recruitment services*

18 (1) For the purposes of this section, ***student recruitment services*** means any of the following services:

(a) seeking or obtaining enrollment for a client at an institution that provides education or training to international students;

(b) assisting or advising any person with respect to seeking or obtaining enrollment for a client at an institution that provides education or training to international students;

- (c) assisting or advising a representative of an institution that provides education or training to international students or any person with respect to admitting a client to such an institution; or
- (d) referring a client to another person who offers the services referred to in any of paragraphs (a), (b) or (c).

Conflict of interest — student recruitment services

(2) A licensee is in a conflict of interest if they provide both immigration or citizenship consulting services and student recruitment services to a client who is a *foreign national*, as defined in subsection 2(1) of the *Immigration and Refugee Protection Act*, unless the licensee is providing those services in their capacity as a salaried employee of an institution that provides education or training to international students.

Conditions

(3) However, a licensee may provide both immigration or citizenship consulting services and student recruitment services to a client who is a foreign national if the licensee

- (a) before providing those services, advises the client that they are not obligated to receive both services from the same individual and obtains the client's free and informed consent in writing to proceed;
- (b) ensures that the service agreement clearly differentiates between the immigration or citizenship consulting services and the student recruitment services that will be provided to the client;
- (c) does not directly or indirectly charge a fee or disbursement to the client for any student recruitment services;
- (d) discloses to the client the fees that the licensee is receiving from an institution that provides education or training to international students for recruiting the client to study at that institution;
- (e) complies with all applicable legislation governing the provision of student recruitment services; and
- (f) demonstrates honesty and candour towards the client and commitment to the client's cause, including by providing the client with accurate information regarding
 - (i) the institution they will be enrolled in, which includes providing a copy of their enrollment agreement, if any,
 - (ii) their program of study,
 - (iii) the tuition fees and the institution's refund policy, and
 - (iv) the services, support and benefits that the institution will be providing.

Competence

Competence and diligence

19 (1) A licensee must fulfill their professional obligations competently and diligently and must refrain from providing any immigration or citizenship consulting services that they are not competent to provide or that are beyond the scope of their licence.

Nature of competence

(2) To fulfill their professional obligations competently, a licensee must

(a) have the knowledge and experience necessary to provide the required immigration or citizenship consulting services and offer sound and comprehensive advice to a client, including in-depth knowledge of the *Immigration and Refugee Protection Act* and the *Citizenship Act* and any related programs and policies;

(b) have the oral and written communication skills necessary to protect a client's interests and present a client's case firmly and persuasively and within the limits of the law, including the ability to

(i) make clear and cogent oral and written representations in legal proceedings,

(ii) identify the salient points in an argument and respond to them effectively in the course of a hearing, and

(iii) know when it is appropriate to apply for an adjournment of a hearing and argue effectively for it;

(c) meet any applicable provincial competency requirements in relation to the provision of immigration or citizenship consulting services;

(d) be able to provide the services to the client in at least one of the official languages of Canada;

(e) be able to deliver the services to the client using technology that is appropriate and effective; and

(f) maintain a good working knowledge of the regulations and by-laws made under the Act that relate to the professional conduct and competence of licensees and of any related policies, procedures and guidelines of the College.

Obligation if not competent

20 (1) A licensee who lacks the competence to provide the required immigration or citizenship consulting services must

(a) decline to act; or

(b) with the client's consent, obtain assistance from another individual who is authorized to provide representation or advice under section 91 of the *Immigration and Refugee Protection Act* or section 21.1 of the *Citizenship Act* and who is competent to provide those services.

Requirements — services of another

(2) If a licensee obtains assistance from another individual to provide the required immigration or citizenship consulting services,

(a) the terms of the arrangement, as well as the name of the other individual who will be providing the services and the scope of the services, must be disclosed to the client in writing; and

(b) any fees or disbursements in relation to the services provided by the other individual are subject to subsection 31(3).

Maintaining competence

21 A licensee must maintain the level of knowledge and skills required for the class of licence that they hold.

Delivering quality services

22 (1) When providing immigration or citizenship consulting services to a client, a licensee must

(a) comply with the applicable deadlines and timelines for an application, expression of interest or proceeding;

(b) conduct the client's affairs in an efficient and cost-effective manner;

(c) communicate with the client in a timely and effective manner;

(d) demonstrate cultural sensitivity;

(e) obtain assistance, when necessary, including by retaining the services of an interpreter or translator; and

(f) if applicable, provide instructions and guidance on how the client may access online information regarding their application, expression of interest or proceeding, including any associated processing information.

Actions taken when representing client

(2) When representing a client in respect of an application, expression of interest or proceeding, the licensee must ensure that all the necessary documents and information are, as applicable, properly prepared, signed and submitted.

Keeping client informed

(3) The licensee must provide timely information to the client in writing concerning the status of their case, including by

(a) notifying the client when a document or information has been submitted or received on the client's behalf; and

(b) on request, providing a copy of the documents that were submitted or received.

Interpreter or translator

(4) A licensee who retains the services of an interpreter or a translator must

(a) instruct the interpreter or translator to

(i) accurately translate what is said, with no additions or modifications, and

(ii) keep the information confidential; and

(b) take reasonable measures to ensure that the interpreter or translator

(i) is certified by an organization that is legally authorized to certify interpreters or translators, as the case may be, for the languages in question, or

(ii) if no certification process is available, is fluent in reading, writing or speaking the client's language, depending on the client's needs.

Relationship to Clients

Initial consultation

23 (1) Before a licensee has an initial consultation with a potential client with respect to the provision of immigration or citizenship consulting services, the licensee must enter into a written consultation agreement with that potential client.

Content of consultation agreement

(2) The consultation agreement must include the following information:

(a) the licensee's name, registration number, address, telephone number and email address;

(b) the potential client's name and contact information, including their address, telephone number and email address, if any;

(c) the fee for the consultation or, if the consultation is provided *pro bono*, a statement to that effect;

(d) a brief description of the College's role as the licensee's regulator; and

(e) a description of the purpose and scope of the consultation.

Copy of agreement

(3) The licensee must keep a copy of the signed consultation agreement for their records and provide a copy to the client.

Service agreement

24 (1) A licensee must enter into a written service agreement with a client before any immigration or citizenship consulting services are provided or, if there was an initial consultation, before any additional immigration or citizenship consulting services are provided.

Preconditions

(2) Before entering into a service agreement with a client, a licensee must

(a) confirm the following information in respect of the client, seeking corroboration of the information if possible:

(i) their full name,

(ii) their home address and their personal telephone number and email address, if any, and

(iii) their business address, telephone number and email address, if applicable;

(b) provide the client with a draft of the service agreement; and

(c) verify whether the client has entered into a service agreement with another individual who is authorized to provide representation or advice under section 91 of the *Immigration and Refugee Protection Act* or section 21.1 of the *Citizenship Act* and, if so,

(i) confirm that the service agreement with the other individual has been completed or has been terminated in writing before completion and, if applicable, confirm the outcome of the completed service agreement, or

(ii) obtain clear instructions from the client on the scope of the service agreement, if the client wishes to engage the services of both the licensee and the other individual.

Content of service agreement

(3) The service agreement must include the following information:

(a) the licensee's name, registration number, address, telephone number and email address;

(b) the information referred to in subparagraphs (2)(a)(i) to (iii);

(c) a summary of any preliminary advice given to the client by the licensee;

(d) a statement that the licensee endeavours to provide quality immigration or citizenship consulting services and to adequately supervise any person who assists in the provision of those services;

(e) the names of the people who are likely to assist the licensee in the provision of immigration or citizenship consulting services;

- (f) the client's instructions;
- (g) an itemized list of the services to be provided, tailored to the needs of the client, that describes the nature of the services and their scope;
- (h) estimated time frames for the delivery of the services;
- (i) an estimate of fees, including the hourly rate and the anticipated number of hours, or an agreed fixed fee or, if the services are provided *pro bono*, a statement to that effect;
- (j) an estimate of expected disbursements;
- (k) any goods and services tax, harmonized sales tax or other tax or levy to be charged to the client;
- (l) the terms of payment for fees and disbursements, including any interest payable on unpaid amounts;
- (m) any advance payments to be made by the client and the licensee's refund policy;
- (n) an explanation of any additional costs that the client may be required to pay;
- (o) if applicable, a description of any conflict of interest or potential conflict of interest relating to the client;
- (p) a statement that any original documents provided by the client to the licensee will be returned to the client as soon as the purpose for which the licensee took possession of the documents has been achieved;
- (q) a statement that the licensee has an obligation of confidentiality under this Code and a description of the manner in which the licensee will maintain the confidentiality of the client's information and documents;
- (r) the licensee's complaint-handling procedure;
- (s) the official language of Canada in which the services will be provided;
- (t) a statement that the licensee will provide timely information related to the status of the client's case;
- (u) a statement that the licensee will obtain assistance, when necessary, including by retaining the services of an interpreter or translator;
- (v) a description of the College's role as the licensee's regulator and an explanation of the College's complaints process;
- (w) an explanation that the College may require the production of documents in accordance with the Act and any regulations or by-laws made under the Act;
- (x) a statement that the licensee has provided a copy of this Code to the client;

- (y) an explanation of what will happen to the client's file if the licensee becomes incapacitated or is otherwise unable to continue providing services under the agreement; and
- (z) any other terms agreed to.

Copy of agreement

(4) The licensee must keep a copy of the signed service agreement for their records and provide a copy to the client.

Amendments to agreement

(5) Any amendments to the service agreement must be agreed to by the client and the licensee in writing.

Non-application of sections 23 and 24

25 Sections 23 and 24 do not apply to a licensee who is a salaried employee of an institution that provides education or training to international students or an organization that represents such an institution if the following conditions are met:

- (a) the licensee, in their capacity as an employee of the institution or organization, provides immigration or citizenship consulting services to the institution or organization, employees of the institution or organization or current or prospective students of the institution;
- (b) no fees are payable to the licensee by the employees or current or prospective students of the institution or organization in respect of the services;
- (c) the licensee only provides advice — not representation — in connection with the submission of an expression of interest under subsection 10.1(3) of the *Immigration and Refugee Protection Act* or a proceeding or application under that Act or under the *Citizenship Act*;
- (d) the licensee discloses to the institution or organization and the employees or current or prospective students to whom the services are provided that the licensee is regulated by the College and is subject to this Code, but that the obligations set out in sections 23 and 24 do not apply;
- (e) the licensee provides information about the College's complaints process to the institution or organization and the employees or current or prospective students to whom the services are provided; and
- (f) the licensee provides information about the licensee's or their employer's complaints-handling procedure to the current or prospective students to whom the services are provided.

Exemption from application of sections 23 and 24

26 The College may exempt a licensee from the application of sections 23 and 24 if the College is satisfied that the following conditions are met:

- (a) the licensee is a salaried employee of an organization other than an institution or organization referred to in section 25 and, in that capacity, provides immigration or citizenship consulting services to the organization or its employees;
- (b) the primary business of the organization is not the provision of immigration or citizenship consulting services;
- (c) no fees are payable to the licensee by employees of the organization in respect of the services;
- (d) the licensee discloses to the organization and the employees to whom the services are provided that the licensee is regulated by the College and is subject to this Code, but that the obligations set out in sections 23 and 24 do not apply;
- (e) the licensee provides information about the College's complaints process to the organization and the employees to whom the services are provided; and
- (f) the licensee is not providing employment recruitment services to the organization or the employees.

Opinion to be provided

27 If a licensee is of the opinion that a client's proposed application, expression of interest or proceeding is futile, unfounded or has little or no hope of success, the licensee must

- (a) provide the client with a written opinion that sets out the licensee's reasoning; and
- (b) if, despite the opinion, the client wishes to pursue the matter, obtain written acknowledgement from the client of the risks of doing so.

Obligation of confidentiality

28 (1) A licensee must keep confidential all information in relation to a client or former client, or a client's or former client's business affairs, that was acquired in the course of their professional relationship with that client and take the measures that are necessary to maintain the confidentiality of that information indefinitely.

Disclosure of confidential information

(2) A licensee must not disclose any information referred to in subsection (1), or allow such information to be disclosed, unless the disclosure is

- (a) authorized by the client;
- (b) required or authorized by law;
- (c) required to comply with a subpoena or warrant issued or an order made by a court, person or body with jurisdiction to compel the production of information, or to comply with rules of court relating to the production of records;

- (d) required by the College in the exercise of its powers under the Act;
- (e) made to a person who is assisting the licensee in the provision of immigration or citizenship consulting services to the client;
- (f) necessary to collect an outstanding account; or
- (g) required in the context of judicial or administrative proceedings to defend the licensee or a person who is assisting the licensee in the provision of immigration or citizenship consulting services against allegations that the licensee or the person has
 - (i) committed an offence involving a client's affairs,
 - (ii) committed a violation involving a client's affairs in respect of which administrative penalties and consequences may be imposed,
 - (iii) engaged their civil liability for an act or omission in relation to a client's affairs, or
 - (iv) engaged in conduct that is subject to investigation by the College or a law society of a province or the Chambre des notaires du Québec.

Scope of disclosure

(3) If a licensee discloses confidential information under subsection (2), the licensee must not disclose more information than necessary to respond to the specific basis for the disclosure.

Complaints

29 A licensee must promptly respond to any complaints made to the licensee by a client in respect of the immigration or citizenship consulting services provided or in respect of any person assisting the licensee in the provision of those services.

Errors or omissions

30 (1) If a licensee is responsible for an error or omission, in respect of a client's case, that results or may result in prejudice to the client and that cannot be readily corrected, the licensee must

- (a) promptly and fully inform the client, the licensee's professional liability insurer and the Registrar of the error or omission;
- (b) promptly recommend that the client obtain legal advice concerning any rights that the client may have arising from the error or omission;
- (c) promptly provide confirmation to the Registrar that the licensee's professional liability insurer has been informed of the error or omission; and
- (d) determine if it is appropriate to continue providing immigration or citizenship consulting services to the client.

Interpretation — liability insurance

(2) If a licensee is covered by an employer's liability insurance in respect of the error or omission, the reference in paragraph (1)(a) and (c) to the licensee's professional liability insurer is to be read as a reference to the employer's liability insurer.

Fees

31 (1) All fees charged to a client by a licensee for immigration or citizenship consulting services must be fair and reasonable in the circumstances.

Disbursements

(2) Any disbursements charged to a client by a licensee for immigration or citizenship consulting services must not exceed the actual amount of the disbursement.

Additional fees or disbursements

(3) If any fees or disbursements will exceed the estimates or fixed amounts agreed to in the service agreement, or if any new disbursements arise, a licensee must

- (a) inform the client of the additional fees or disbursements; and
- (b) obtain the client's agreement in writing.

Unnecessary increases — fees or disbursements

(4) A licensee must not undertake work that unnecessarily increases fees or disbursements.

Advance payments

32 A licensee who receives an advance payment from a client for immigration or citizenship consulting services must

- (a) hold the funds in trust in a client account, opened by the licensee, at a financial institution that is approved by the College;
- (b) on receipt of an advance payment, provide the client with a receipt that clearly indicates the amount of the advance payment and deposit the funds into the client account;
- (c) refrain from depositing any funds not belonging to a client into the client account;
- (d) maintain separate records of deposits and withdrawals for each client;
- (e) use the funds held in the client account only for the purpose for which they were paid to the licensee;
- (f) before withdrawing funds from the client account, invoice the client in accordance with subsection 33(1); and
- (g) not later than 30 days after the day on which the client is invoiced under paragraph (f), withdraw the invoiced amount from the client account.

Invoice

33 (1) A licensee may invoice a client only once they have provided immigration or citizenship consulting services to the client or have made disbursements on the client's behalf.

Description of services and disbursements

(2) Every invoice issued by the licensee must contain a full description of the services and disbursements to which the invoice relates.

Receipt

(3) When a payment is received from a client, the licensee must provide the client with a receipt that clearly indicates the invoice to which the payment relates.

Termination of service agreement

34 Subject to section 35, a licensee may terminate a service agreement before its completion only if reasonable notice is provided to the client and the termination

- (a) is done for good reason, such as the client having
 - (i) deceived the licensee,
 - (ii) failed to give adequate instructions to the licensee,
 - (iii) failed to follow the licensee's advice on a significant point, or
 - (iv) failed to pay the licensee's fees or disbursements as agreed; and
- (b) will not result in serious prejudice to the client.

Mandatory termination of service agreement

35 (1) A licensee must terminate a service agreement before its completion if

- (a) the client no longer wishes to receive the services from the licensee;
- (b) the client, despite advice provided in accordance with subsection (2), asks the licensee to act in a manner that is dishonest, fraudulent or illegal or that would not meet the standards of professional conduct and competence that are established by this Code or would contravene a provision of a regulation or a by-law made under the Act;
- (c) the continued provision of the services would place the licensee in a conflict of interest, unless the licensee obtains the client's consent in accordance with section 15; or
- (d) the licensee lacks the competence to continue serving the client and fulfilling their professional obligations and does not obtain assistance from another individual in accordance with paragraph 20(1)(b).

Dishonest or illegal conduct

(2) If a client asks the licensee to act in a manner that is dishonest, fraudulent or illegal or that would not meet the standards of professional conduct and competence that are established by this Code or would contravene a provision of a regulation or a by-law made under the Act, the licensee must advise the client of that fact and that the conduct should not be pursued.

Referral to other licensee

(3) If a service agreement is terminated in accordance with paragraph (1)(c) or (d), the licensee must, if possible, refer the client to another individual who is authorized to provide representation or advice under section 91 of the *Immigration and Refugee Protection Act* or section 21.1 of the *Citizenship Act* and who is competent to provide the immigration or citizenship consulting services.

Actions required — completion or termination

36 (1) When a service agreement is completed or terminated before its completion a licensee must, not later than 30 days after the day on which the service agreement is completed or terminated,

- (a) if the licensee is in possession of any of the client's documents or anything else that belongs to the client, return them to the client;
- (b) provide an accounting of all funds received from the client;
- (c) issue a final invoice to the client for any amounts owed by the client for services rendered and disbursements made; and
- (d) refund to the client any funds held in trust on the client's behalf that are in excess of the invoiced amount.

Actions required — termination

(2) If the service agreement is terminated before its completion, the licensee must also

- (a) provide the client with all information in the licensee's possession that may be required in connection with the client's file;
- (b) cooperate with a successor representative, if any, to minimize expense and avoid prejudice to the client; and
- (c) if the licensee is listed as the client's representative with any department or agency of the government of Canada or of a province, provide notice that they are no longer representing the client to that department or agency
 - (i) in accordance with the department or agency's procedures, or
 - (ii) if no procedures exist, in writing within 10 days after the day on which the service agreement is terminated.

Transfer of file

(3) If a client requests that their file be transferred to another representative, the licensee must, even if there are payments outstanding, deliver all documents relating to the client's file to that representative not later than 10 business days after the day on which the transfer request is made.

Delay

(4) If it is, for reasons beyond the licensee's control, not feasible to deliver the documents within the time frame referred to in subsection (3), the licensee must advise the client and the other representative of the delay and deliver the documents not later than 30 days after the day on which the transfer request is made.

Office Administration and Management

Record keeping

37 A licensee must maintain a reliable system of office administration in relation to the immigration or citizenship consulting services that they provide and keep and preserve records in accordance with the by-laws made under the Act.

Compliance with Code

38 (1) A licensee must ensure that a person who assists in the provision of immigration or citizenship consulting services

- (a)** is of good character;
- (b)** is provided with a copy of this Code and is familiar with its contents; and
- (c)** does not carry out any acts that, if carried out by the licensee, would contravene this Code.

Professional responsibility

(2) A licensee must supervise and assume professional responsibility for any work done by a person who assists in the provision of immigration or citizenship consulting services and ensure that the level of supervision is adequate for the type of work in question.

Delegation

(3) For greater certainty, a licensee may delegate certain aspects of their work to a person who is not a licensee but must ensure that the person does not provide representation or advice in contravention of section 91 of the *Immigration and Refugee Protection Act* or section 21.1 of the *Citizenship Act*.

Relationship to the College and Other Persons

Mandatory reporting to College

39 If any of the following circumstances arise, a licensee must report the circumstances to the Registrar not later than 30 days after the day on which they arise:

- (a) the licensee becomes bankrupt or insolvent;
- (b) the licensee is suffering from a physical or mental health problem or an addiction, verified by a health care professional, that limits the licensee's capacity to practise;
- (c) the licensee is charged with or found guilty of an offence under an Act of Parliament;
- (d) the licensee is subject to disciplinary or remedial measures — imposed by a tribunal, a regulatory body, an employment or human rights board or a similar body — in relation to any aspect of their professional affairs;
- (e) the licensee is named as a defendant in a civil action arising from or relating to the licensee's professional affairs;
- (f) the licensee has discovered that an error was made with respect to the use or attribution of funds held in trust in a client account; or
- (g) the licensee is subject to a formal complaint or a disciplinary or remedial measure by an employer in relation to the provision of immigration or citizenship consulting services.

Response to College

40 A licensee must respond fully to any communication from the College in which a response is specifically requested and must do so promptly or, if a time for responding is specified in the communication from the College, within that time.

Communications with complainant

41 (1) A licensee must not communicate directly or indirectly with a person who has made a complaint to the College about the licensee, or with the superior of such a person, unless

- (a) the College has consented to the communication in writing; and
- (b) the licensee complies with any terms stipulated by the College.

Current clients

(2) If the complainant is a current client and steps have not been taken to terminate the service agreement with that client, the licensee must continue to fulfill their obligations to the client but must only communicate with the client as permitted under subsection (1).

Conduct of fellow licensee

42 (1) If a licensee suspects on reasonable grounds that a fellow licensee has engaged in conduct that is more than trivially inconsistent with this Code or obtains any information that raises a material concern as to the competence, integrity or capacity to practise of a fellow licensee, the licensee must promptly report the conduct or information to the College.

Reportable conduct

(2) Without limiting the generality of subsection (1), information regarding any of the following occurrences must be reported to the College:

- (a)** a fellow licensee misappropriates or misapplies funds belonging to a client;
- (b)** a fellow licensee fails to comply with an order of a court or a decision made under subsection 68(1) or 69(3) of the Act;
- (c)** a client files a civil claim against a fellow licensee in relation to conduct that is likely to discredit the profession or jeopardize the public's confidence and trust in the profession;
- (d)** a fellow licensee abandons their immigration or citizenship consulting services practice;
- (e)** a fellow licensee participates in serious criminal activity related to their practice; and
- (f)** any situation in which a fellow licensee's clients are likely to be severely prejudiced.

Exceptions

(3) A licensee is not required to report conduct or information to the College under subsection (1) if

- (a)** doing so would result in the breach of a duty of confidentiality that is imposed by or under an Act of Parliament or of the legislature of a province; or
- (b)** the licensee knows that the matter has already been reported to the College.

False, misleading or inaccurate public statement

43 A licensee must not make a false, misleading or inaccurate public statement about another licensee, the College or any staff or person whose services are retained by the College.

Marketing of Immigration or Citizenship Consulting Services

Marketing of services

44 (1) A licensee who markets immigration or citizenship consulting services must ensure that

- (a)** their name, as registered with the College, is prominently displayed or announced at or near the beginning of any advertisement for the services, in the language used in the advertisement;
- (b)** any written advertisement for the services includes the Internet address of the College's online public register of licensees; and
- (c)** the marketing is in the best interests of the public and is consistent with a high standard of professionalism.

False, misleading or inaccurate representations

(2) In marketing immigration or citizenship consulting services, a licensee must not

- (a) make false, misleading or inaccurate representations;
- (b) guarantee the success of an application, expression of interest or proceeding; or
- (c) imply that the licensee has a relationship with the Government of Canada or a provincial government.

Client endorsement

45 A licensee may use an endorsement by a client or former client in the marketing of their immigration or citizenship consulting services only if the endorsement

- (a) was actually given by a client or former client;
- (b) is true and accurate; and
- (c) has been reviewed and approved for public use by the client or former client in writing.

Identifying marks of College

46 A licensee may use the College's name, logo or other identifying mark only as permitted by the College.

Transitional Provision

Inconsistency with Council by-laws and regulations

47 In the event of an inconsistency or conflict between this Code and any by-laws of the Immigration Consultants of Canada Regulatory Council, or any regulations made by that Council's board of directors, that remain in effect by virtue of paragraph 85(7)(o) of the Act, this Code prevails to the extent of the inconsistency or conflict.

Establishment and Coming into Force

Registration

48 This Code is established and comes into force on the day on which it is registered.

REGULATORY IMPACT ANALYSIS STATEMENT

(This statement is not part of the Code.)

Executive summary

Issues: Individuals seeking to come to Canada or become citizens often rely on the advice and expertise of immigration and citizenship consultants to help them navigate immigration and citizenship processes. However, these individuals are sometimes the victims of unethical or fraudulent consultants, which may result in severe consequences, including delays to

immigration and citizenship applications, financial loss, and even permanent loss of immigration status. When consultants provide incompetent advice or engage in fraud or misrepresentation, the effects on individual lives and the integrity of Canada's immigration system can be far-reaching. These effects can have an impact on Canadian citizens, permanent residents and foreign nationals, and can be particularly egregious when the victims are vulnerable due to language and cultural barriers.

In 2019, the Government of Canada introduced new measures to strengthen the regulation of immigration and citizenship consultants, including the establishment of a strengthened self-regulatory regime under the College of Immigration and Citizenship Consultants, with statutory authority grounded in the *College of Immigration and Citizenship Consultants Act* (*College Act*). The College transitioned from the Immigration Consultants of Canada Regulatory Council (ICCRC) to become the official regulator for immigration and citizenship consultants on November 23, 2021. The purpose of the College is to regulate consultants in the public interest and to protect the public from unscrupulous and fraudulent consultants. More specifically, these measures would help to ensure that any person who chooses to use a licensed consultant has access to quality immigration and citizenship advice, and that those who are providing the services operate in a professional and ethical manner, with disciplinary measures in place should fraud or misrepresentation occur.

Description: Under subsection 43(1) of the *College Act*, the Minister of Immigration, Refugees and Citizenship Canada (IRCC) has the authority to prescribe a code of professional conduct for licensees of the new College of Immigration and Citizenship Consultants (College). The proposed *Code of Professional Conduct for College of Immigration and Citizenship Consultants Licensees* (the Code) will establish strong ethical and professional standards that all licensees of the College must abide by. Additionally, the Code will be structured in such a way for both consultants and clients to understand the standards and obligations of a consultant in their professional capacity.

Rationale: The College is a fundamentally different organization from the ICCRC, with expanded authorities necessary for the regulation of a profession and additional levers for government oversight to ensure strengthened regulatory outcomes. Consequently, a comprehensive and more prescriptive set of standards is necessary to establish strong and ethical professional standards that all licensees of the College must abide by and for which they will be held accountable in the context of the College's robust complaints and discipline regime.

This will entail incremental costs for the College to implement the Code, including costs to modify governance documents and other administrative materials, costs to train officers, and communications costs. These costs are expected to approximate \$0.1 million. The new Code will retain a portion of the standards from the previous ICCRC's Code of Ethics. However, the

newly implemented Code is broader in scope, and prescribes a number of new standards that were not present in the ICCRC's Code of Ethics. Some of these new or modified elements may impose costs for employers of foreign nationals and consultants. Due to a lack of available data, costs to employers and consultants are discussed qualitatively later in this document and include costs to prohibit consultants from charging recruitment fees to foreign national clients, costs to provide certain employees of consultants with a copy of the Code, and costs associated with prohibiting consultants from charging or accepting referral fees. Benefits of the regulation include benefits to foreign workers as they will no longer be charged recruitment fees, as well as broader benefits to the public as the Code will help protect the public from unethical and/or unscrupulous behaviour by consultants, while increasing public confidence in, and the overall integrity and reputation of, the consulting profession.

Issues

The role and regulation of consultants have been a recurrent issue over the past decades. Some unscrupulous or fraudulent consultants take advantage of newcomers or applicants' lack of knowledge of Canadian laws and regulations, resulting in serious negative impacts on clients and jeopardizing the integrity of Canada's immigration and citizenship system. This especially impacts different population groups such as those with limited to no proficiency in English or French, those with less knowledge of Canada's regulatory system and immigration system, and those with fewer ties and connections to Canada. Immigration challenges experienced by women and men can also vary based on a number of factors, including sexual orientation, country of origin, disability, family status, and other diversity considerations.

Some clients may be vulnerable to fraud or negligence, or forced into situations of extreme vulnerability. As a result, their opportunities as immigrants to Canada may be permanently compromised, and they may suffer severe financial hardship.

For example, if an authorized consultant submits falsified documents to IRCC, the client's ability to immigrate to Canada may be permanently affected due to the consultant's illegal behaviour. Such fraudulent behaviour may also result in the client sustaining significant financial losses from fees paid for the consultant's services, potential lost wages, the sale of property in their home country, and loans taken to finance the immigration process.

However, consultants can provide a valuable service to clients by helping to navigate complex application processes and forms. Reasons cited by clients for using a consultant include language barriers; costs that are sometimes lower than those for lawyers; and clients' lack of time or ability to complete required immigration or citizenship paperwork.

The purpose of the College is to regulate consultants in the public interest and to protect the public from unscrupulous and fraudulent consultants. The establishment of the College is a significant improvement over the former regulatory regime, with a mandate to regulate consultants in the public interest and an array of new tools and authorities. The *College Act* enables the statutory self-regulation of immigration and citizenship consultants, putting licensees on a similar footing as members of other professional bodies such as doctors and lawyers. For example, when compared with the former regime, the College has greater oversight and discipline over its own members; enhanced investigative powers to better address professional misconduct; power to compel witnesses to appear before the Discipline Committee; and the ability to deter the activities of unauthorized practitioners (commonly referred to as “ghost consultants”).

Background

Immigration and citizenship consulting landscape

Immigration and citizenship consultants who are members of the College of Immigration and Citizenship Consultants are authorized to provide, for consideration, advice and representation under section 91 of the *Immigration and Refugee Protection Act* and section 21.1 of the *Citizenship Act*. Essentially, licensed consultants are authorized to provide clients with advice; to support or help them navigate application processes for Canadian immigration/citizenship; and to represent clients on immigration or citizenship applications by communicating with the Department on the client’s behalf. This includes personalized guidance on which immigration program(s) best suit(s) their needs, help with questions on application forms, and advice on navigating the overall application process. While the majority of licensees of the College operate within Canada, a portion of them also operate abroad (as per ICCRC’s *2020 Annual Report*, 216 consultants out of 6 744 are abroad).

Consultants may also provide ancillary services (e.g. translation, obtaining certification of personal documents), while some may provide other related services that do not fall solely under the scope of federal regulation, such as recruitment-related services (e.g. working with an employer to match a client to a particular job), which generally falls under provincial/territorial jurisdiction.

While licensees of the College are authorized to provide advice and representation, some unlicensed fraudulent actors illegally provide such services. These unauthorized (or “ghost”) consultants are unlicensed and usually not declared on IRCC application forms. Given that their activities are often concealed and/or undeclared, such “ghost” consultants often go undetected by federal departments. Moreover, if they operate overseas, Canada has no jurisdiction, making it challenging to combat the issue internationally. For added clarity, this is not in reference to licensees of the College working abroad, but fraudulent actors who are not authorized to provide advice and representation.

Regulatory bodies

Since 2004, two different bodies have regulated consultants. The first regulator of immigration and citizenship consultants was the Canadian Society of Immigration Consultants (CSIC). A 2008–2009 review by the House of Commons Standing Committee on Citizenship and Immigration (CIMM) recommended that a new regulatory body be established under a statute. Consequently, the ICCRC was established in 2011. However, the ICCRC was not set up under a statute, as was recommended by the CIMM. Instead, the ICCRC was created under the *Canada Not-for-profit Corporations Act*, which is not designed to govern a profession.

Therefore, neither the CSIC nor the ICCRC was established by statute, as is the norm for professional self-regulation in Canada, including for doctors, lawyers, and accountants.

Calls for reform and government response

In light of persistent issues with the consultants industry, in June 2017, the CIMM published another report entitled *Starting Again: Improving Government Oversight of Immigration Consultants*. CIMM studied the framework governing immigration and citizenship consultants and found it inadequate.

The Committee identified various examples of misconduct by bad actors (both authorized and unauthorized) including fraud, forging signatures, charging exorbitant fees, misleading clients with false promises, and services not being rendered. Further, the Committee found that certain types of immigrants are particularly vulnerable to exploitation, particularly those with “precarious” immigration status (e.g. temporary residents) who are likely to pay thousands of dollars to consultants for false promises of getting permanent residency. Language barriers (limited to no proficiency in English or French) and limited knowledge of the immigration system were other factors linked to why individuals relied on consultants to navigate the immigration system, and which placed individuals at a greater risk of exploitation by unscrupulous consultants or other bad actors. Due to these barriers, many of these individuals had difficulty in determining their rights as a client, knowing the difference between an authorized and unauthorized consultant, and knowing whether the services they were receiving from a consultant were legitimate. The Committee made 21 recommendations focusing on three areas of concern: (1) weakness in governance; (2) insufficient resources for investigations and enforcement; and (3) lack of public awareness and the need to better service clients. The CIMM recommended that a government office be established to regulate consultants.

In response to the CIMM findings, the Government of Canada announced in 2019 a new governance regime, including the establishment via statute of a strengthened self-regulatory body for consultants in the form of the College of Immigration and Citizenship Consultants. The *College of Immigration and Citizenship Consultants Act (College Act)* received royal assent in June 2019, as part of the *Budget Implementation Act* and came into force on December 9, 2020. The College officially

opened on November 23, 2021, becoming the official regulator for immigration and citizenship consultants. The College operates at arms' length from the Government, with strong oversight from the Department of Immigration, Refugees and Citizenship Canada (IRCC).

As part of this oversight, the *Code of Professional Conduct for College of Immigration and Citizenship Consultants Licensees* is to be prescribed by the Minister of Immigration, Refugees and Citizenship pursuant to subsection 43(1) of the *College Act* and will be enforced by the College. Section 44 of the *College Act* requires a licensee to meet the standards of professional conduct and competence prescribed by the Code. A licensee who fails to meet those standards commits professional misconduct or is incompetent.

Objective

The objective of the Code is to **establish strong ethical and professional standards** by which all licensees of the College must abide and for which they will be **held accountable** in the context of the College's robust complaints and discipline regime.

The Code of Conduct will uphold the objective of the *College Act* of regulating consultants in **the public interest**. As per legislative requirement, the Code is established by the Minister of Immigration, Refugees and Citizenship, providing for strong governmental oversight over the new regulatory body. Any subsequent changes would be made by the College's Board of Directors — comprised by a majority of Public Interest Directors — and would require the Minister's approval. Accordingly, any future amendments of the Code will continue to be developed in the public interest.

Description

The Code of Conduct (Code) will establish the standards of professional conduct and competence that must be met by all registered licensees of the College, both for paid and *pro bono* services.

The Code is to be read in conjunction with the College's other governing documents, including the *College Act*, the regulations (in development), and any new bylaws developed by the College that relate to conduct of licensees. Any additional companion document, guidelines, commentary, or policies and procedures developed by the College about the Code will help guide the profession and consultants on how they are to conduct themselves ethically and professionally.

The Code will be structured in a way for consultants, clients, and the general public to understand the standards and obligations expected of an immigration or citizenship consultant. Provisions are also set out to help ensure that information about professional standards and obligations of the consultant is easily accessible to the client and transparent. While the Code outlines overarching

ethical principles that are fundamental to governing conduct, it also provides a comprehensive and detailed set of professional practice requirements and responsibilities with which all consultants are required to comply.

The Code is divided into six parts:

1. Interpretation — provides key definitions of terms used in the Code and outline the overall purpose and application of the Code.
2. General Standards — specifies what is deemed to be professional conduct and competence. This section outlines ethical principles, behaviour and attitudes that are expected on the part of consultants such as integrity and loyalty. The section also outlines the obligations and duties of a consultant when there is a conflict of interest, including in the context of recruitment services. Finally, this section identifies the nature of competence for licensees, how to maintain competence, and the expectations of providing quality services.
3. Relationship to Clients — outlines the relationship consultants are expected to have with clients, including standards for maintaining a client's confidentiality; retaining services of a translator or interpreter when needed for the client; and requirements related to fees and disbursements. This section also outlines the duties of a consultant when errors and omissions occur in respect of a client's case. Of note, this section outlines over 25 requirements that a consultant must include in written service agreements and sets out specific details that must be shared with the client, including a list of the services to be provided and a clear outline of all costs or fees. Consultants will also be required to inform their clients about the Code and the College's complaints and discipline regime. These new requirements will provide clients with more transparency on how their affairs are to be handled by the consultant and on how to lodge complaints should any concerns arise.
4. Office Administration and Management — outlines a consultant's obligations for record-keeping and protection of clients' documents as well as the adequate supervision of any person assisting in the provision of immigration and consulting services.
5. Relationship to the College and Other Persons — outlines a consultant's reporting requirements to the College and other necessary communications.
6. Marketing of Immigration or Citizenship Consulting Services — outlines the parameters for consultants with respect to advertising and promoting their services, including how consultants must not engage in misleading or false advertising.

While some sections apply specifically to the practice of immigration or citizenship consulting, other sections will apply to all activities undertaken by the licensee, regardless of the service being provided and regardless of whether there is a payment for services. Consultants will be required to observe the Code in all of their professional dealings, including with prospective clients, business

associates, colleagues, and employees. Consultants will also be required to not engage in conduct that is likely to discredit or jeopardize the public confidence and trust in the profession. This is consistent with other codes of conduct for professionals of self-regulated bodies.

The Code incorporates gender-based analysis plus (GBA+) considerations to help counter unscrupulous behaviour and to help mitigate situations where a person can be exploited. This includes prohibition against discriminatory behaviour; prohibition against intimidating or coercing a person; requirements to retain quality interpretation and translation services as needed by the client; demonstrating cultural sensitivity when delivering services to a client; greater transparency with service agreements; providing adequate information on the complaints and discipline process should a problem occur; and a requirement for consulting fees to be fair and reasonable (further information on GBA+ considerations reflected below).

By setting high standards to which all licensees of the College must adhere, the Code is intended to strengthen the reputation of and increase public confidence in the consulting profession. With a codified set of standards in regulations and more effective tools and authorities at its disposal, the College will hold licensees accountable for any wrongdoing through its complaints and discipline regime. Licensees will also be subject to any regulatory activities the College undertakes to maintain these standards (e.g. audits, training, reporting). In this context, clients and any person working with a licensee will have greater assurance that they will follow and comply with a set of high professional standards and behave ethically; these standards and behaviours include duties of honesty, integrity, and respect. Prospective applicants will also know the value of working with a licensed consultant as opposed to taking risks with illegal, unauthorized actors.

Unlike the previous Code of Ethics under the ICCRC, the new Code will be mandated by regulation and enforced under the statutory framework of the *College Act*, which gives the tools and authorities required to ensure compliance with the Code, including through its investigators, registrar and complaints and discipline committees.

The Code of Conduct will also help to inform and educate consultants, clients, and the general public about what is expected of licensees regarding their ethical behaviour, professional obligations, roles and responsibilities, and maintaining competencies. Increased awareness of these standards can help deter consultants from engaging in wrongdoing. While this will serve to better protect prospective applicants, it will also help meet Canada's wider needs to receive more quality applications and maintain the integrity of the immigration and citizenship system.

Regulatory development

Consultation

The primary impacted stakeholder is the College of Immigration and Citizenship Consultants, which bears responsibility for transitioning from the previous regulator (i.e. the ICCRC), as well as the implementation of the new Code. As well, all **licensees** authorized by the College to provide immigration or citizenship consulting services, and **clients of licensees** (e.g. prospective visitors and prospective immigrants) who receive such services, are also impacted by this regulation. Some employers of foreign nationals and education institutions working with consultants for recruitment services may also be impacted by this proposal.

Legal professionals are also interested stakeholders given that they also provide immigration and citizenship advice and representation. Advocates of the legal profession have called for more effective regulation similar to that of law societies to better protect the public from unscrupulous and fraudulent actors.

Provinces and territories are also interested stakeholders given their role in the Canadian immigration system. In addition to federal regulation of consultants, several provinces have their own regulation regarding who is authorized to represent or advise a person with respect to a provincial immigration matter. Given the intergovernmental linkages, provinces and territories have an interest in the regulation of consultants and have raised the need for an effective regulator that can adequately discipline consultants for misconduct or incompetence.

Following the royal assent of the *College Act* in June 2019, IRCC engaged with stakeholders to discuss the new governance regime for consultants and to seek their early views on all regulations, including for the Code of Conduct ministerial regulation. IRCC received both verbal and written feedback from stakeholders on the broader set of regulations (i.e. both for the College's regulations and for the Code of Conduct regulation).

Initial feedback from stakeholders addressed the need to have a more prescriptive set of standards detailed in the Code of Conduct. Some issues included addressing recruitment activities undertaken by consultants and the interaction of consultants with employers; more clearly articulating conflicts of interest, following the examples of other regulated professions; defining the responsibility of consultants for the actions of their employees or agents; prohibiting the use of misleading or deceptive marketing or advertising; and restrictions on referral fees.

This initial feedback from stakeholders was taken into account for the drafting of the Code of Conduct. In addition, IRCC formally consulted and received robust commentary from stakeholders at the time of prepublication in the *Canada Gazette*, Part I (described below).

As part of the policy design, the Department also looked at the codes of conduct of a variety of other self-regulated professions and conducted a comparative analysis between the Federation of Law Societies of Canada Model Code of Conduct, the Quebec Code of Ethics of Notaries, and the

ICCRC Code of Professional Ethics. The analysis allowed the Department to assess existing gaps within the ICCRC Code of Professional Ethics and determine key components necessary to develop a code.

As well, the Department engaged with the Australian Department of Home Affairs regarding their Code of Conduct for Australian Registered Migration Agents, which has undergone an independent review to address concerns about the scope and content of their Code. Although, unlike in Canada, the Australian government directly manages immigration consultants, significant parallels and key lessons were drawn from their experience and integrated into the Department's draft Code.

Finally, the Department contracted a leading expert on regulatory governance in Canada, with knowledge of professional codes of conduct for self-regulated professions. Part of the expert's work included outlining best practices; providing support in determining key elements to include in the Code; providing reviews and feedback on the draft versions developed by the Department; and providing a final report which included the expert's input and recommendations.

Summary of comments received following prepublication in the *Canada Gazette*, Part I

This regulatory proposal was prepublished in the *Canada Gazette*, Part I, on May 15, 2021, for a 30-day consultation period. During this time, 27 written submissions were received with over 300 comments from various stakeholders and the public, including provincial governments, education-related organizations, members and associations from the consulting profession, the College, and lawyer professional associations.

Stakeholders generally expressed support for the new College and the development of a new Code of Professional Conduct. A number of stakeholders raised potential gaps and requested clarity around language used in specific provisions. IRCC has carefully considered these comments as part of the final revisions of the Code of Conduct; based on the number of comments, a thematic summary is provided below.

Regulated International Student Immigration Advisors (RISIAs) and other similar licensees

Stakeholders from the student advising profession and education sector addressed how the scope of work for RISIAs is different from other licensees. Unlike other licensees, RISIAs do not directly receive payment from the clients/students they serve and are not authorized to provide the full scope of consulting services, such as representing clients on applications. In this context, commenters suggested that RISIAs should be exempted from certain proposed requirements in order to reduce their administrative burden.

While the Code of Conduct applies to all licensees of the College, RISIAs and other licensees working in similar circumstances will be exempted from sections 23 and 24 (completing a consultation agreement or service agreement with the student) in light of their unique operating environment and business model.

Similar exemptions have also been made for licensees whose primary business is not immigration or citizenship consulting services; however, these licensees will be required to follow a list of conditions before being exempt from these obligations.

New student recruitment section

Based on comments from the consulting profession, the legal profession, and the education profession, the Code of Conduct has been revised to include a new section on student recruitment (section 18). Similar to the initial recruitment section (section 17), the provisions set out obligations for a licensee to follow if they engage in a dual role providing both immigration or citizenship consulting services and student recruitment services to a client. This is to explicitly articulate expectations of professional conduct for consultants who are also acting as student recruiters. Specifically, when engaging in student recruitment services, a consultant must fulfill a number of conditions, including

- not charge a fee or disbursement to the client for student recruitment;
- advise that the client is not obligated to receive both services from the consultant ;
- get free and informed consent from the client to proceed;
- provide information about the client's study and about the institution providing education or training; and
- disclose any fees they collected from the institution providing education or training.

Employment recruitment

To help distinguish between the labour-related recruitment and student recruitment sections, all references in section 17 of the Code have been revised to read "employment recruitment."

With respect to comments from stakeholders on this section of the Code of Conduct, some provincial governments expressed concerns the proposed provisions may conflict with provincial laws and requirements for recruitment services. However, given that nothing in the *College Act* or the Code affects, or is intended to affect, the application of a provision of a provincial Act or regulation, no changes were made.

Concerns were also expressed about permitting licensees to engage in both consulting and recruitment services to the same client, claiming that this could lead to a conflict of interest and that subsections 17(2) and 17(3) of the Code should be revised or retracted entirely.

While employment recruitment is primarily under provincial jurisdiction, the government recognizes that clients who are seeking recruitment services may often also be seeking immigration advice and representation. The current provisions under subsections 17(2) and 17(3) of the Code acknowledge client demand for these dual services and provide for specific measures that licensees must follow to better protect the client, while at the same time stipulating that they

must comply with all applicable (provincial) legislation governing the provision of recruitment services. These provisions also provide the College with the appropriate levers to discipline licensees who may be engaged in unethical recruitment. Prohibiting licensees from providing recruitment services can potentially increase the risk of clients seeking these dual services with ghost consultants. In this context, no further changes are made for subsection 17(2) of the Code.

Inducements and use of “agents”

Multiple submissions from the consulting profession were made commenting on how prohibiting inducements could impact the legitimate practice of providing compensation or commission to those who provide marketing services or solicit clients on behalf of the licensee and are registered with the College as “agents.” In some instances, stakeholders also advocated for allowing referral fees to be paid between consultants and between consultants and other professionals.

In response, the Code of Conduct has been revised to clarify that inducements provided to these agents are not to be captured by this section. However, the Code continues to prohibit all inducements (which includes referral fees), including those between licensees and between licensees and other professions. This is to help ensure that any referral made for a client by a licensee is done in the best interest of the client and not for financial gain.

Consultation agreements and service agreements

Stakeholders from the consulting profession suggested that requiring personal information from the client too early in the process could lead to lack of trust from clients, and that the requirements were too cumbersome. Some commenters also requested more clarity on the specific timing for developing and signing such agreements, while others expressed the desire to eliminate consultation agreements altogether, with the justification that they are an unnecessary barrier to establishing a relationship with the potential client and that other professions do not require consultation agreements.

To best protect the client, consultation agreements and service agreements remain a requirement. These agreements are crucial to maintaining a clear record of the purpose of the consultation and for informing the client of the consultant’s ethical, professional, and contractual obligations. Similarly, the collection of information for these agreements is intended to help ensure licensees are doing their due diligence and validating information with their client. However, some adjustments were made to provide more flexibility to the licensee, such as adding phrases of verifying information “if possible” or “if applicable” and requiring less personal information from the client where it is not necessary.

To support licensees in applying these agreements, the College will continue to provide guidance to help inform licensees on how to develop such agreements in an efficient way. These matters will be addressed outside the of the Code, for example, in guidance material developed by the College.

Changes to specific phrases

Some stakeholders recommended a more detailed definition of phrases such as “in any aspect of their work” or “as soon as feasible” in order to reduce subjectivity and to minimize confusion.

These comments were taken into consideration, which led to changes to specific sections. For example, for the section stating that licensees must be courteous and civil, the phrase “in any aspect of their work” has now changed to “in all their professional dealings” to clarify that a licensee’s conduct is to be captured more broadly, beyond the services that are being provided to just the client. Additionally, some sections that initially required a licensee to complete something “as soon as feasible” have now changed to “promptly,” and in some instances, specific timelines were also included (e.g. 30 days).

The College’s guidance will provide more contextual information, interpretation, and direction on how licensees should be applying these sections of the Code of Conduct.

Conduct of a fellow licensee, reportable conduct

Some stakeholders expressed concern that the sections related to reporting misconduct of a fellow licensee put too much responsibility on a licensee and could veer into investigative work. Some recommendations included providing more details that could better guide licensees on when to report misconduct. These sections have been revised to provide more precision regarding the circumstances in which a licensee is to report any misconduct by a fellow licensee.

Marketing — licence registration number

The primary concern voiced by stakeholders from the consulting profession on paragraph 44(1)(a), which sets out the obligation for licensees to publish their registration number in their advertising materials, was that unauthorized practitioners could impersonate a licensee and use their information to defraud clients.

While all identifying information of the College’s licensees is already in the public domain and required under the Code to be provided to clients, the concern about stolen identity of licensed consultants is a serious matter that can have wider impacts to Canada’s immigration and citizenship system. In this context, changes were made to the Code by removing the requirement to reference the registration number and instead requiring the inclusion of a direct link to the College’s online Public Register. This will help ensure that clients are directly accessing the licensee’s registration and contact information. Clients will also always have the option to contact the College directly if they wish to validate a licensee’s information from an advertisement.

Conflict of laws for College bylaws and regulations

Some commenters from the consulting profession noted differences between what is in the Code of Conduct versus what was in the College’s bylaws and regulations. The transitional provisions of the College Act (section 83 to section 88) provide that the bylaws and regulations that were in force

at the time of the opening of the College remain in force until new Governor-in-Council regulations and/or new College bylaws are in place. Consequently, there may be instances where aspects of existing bylaws and regulations overlap with aspects of the new Code of Conduct. The Code has been revised to clarify that if there is a conflict between the College's existing bylaws or regulations and the Code of Conduct, the Code's provisions shall prevail.

OTHER COMMENTS

Comment on the Regulatory Impact Analysis Statement, and a lack of emphasis on "ghost representatives"

Several commenters expressed the view that the overall narrative of the original regulatory impact analysis statement gave the perception that all consultants were bad actors engaged in unscrupulous behaviour. Further, some raised the concern that not enough focus was given towards "ghost representatives," who, they felt, often represent a larger proportion of misconduct, fraud, and incompetence than licensees.

The purpose of the Regulatory Impact Analysis Statement (RIAS) is to specifically address the regulatory impacts of the Code of the Conduct, which only applies to licensees of the College. In this context, all references to misconduct and unethical behaviour are intentionally specific to licensed consultants. While the RIAS has acknowledged the broader challenges of ghost representatives, the government response to these issues is out of scope for the purpose of this analysis.

Contingency billing

Some stakeholders from the consulting profession requested the inclusion of contingency billing, which would permit licensees to offer the same type of flexible payment arrangements that immigration lawyers and paralegals are permitted to offer. Specific references to contingency billing have not been included in the Code as there is limited information and analysis to determine how clients of immigration and citizenship consultants might be impacted.

Further guidance

Other concerns expressed were not regulatory in scope or were related to clarification through examples or case scenarios. For requested areas of clarification, the College intends to address these matters outside the regulations, for example, in publicly available guidance material.

Modern treaty obligations and Indigenous engagement and consultation

In accordance with the *Cabinet Directive on the Federal Approach to Modern Treaty Implementation*, an assessment of modern treaties was undertaken on this initiative. The assessment did not identify any modern treaty implications or obligations by the regulatory action.

Instrument choice

Under subsection 43(1) of the *College Act*, the Minister is required to establish the Code of Conduct by regulation. The decision for establishing a self-regulatory body under federal statute and a code of conduct regulation was determined early on in the policy design of the new governance regime. In particular, the findings of the 2017 CIMM Report — *Starting Again: Improving government oversight of Immigration Consultants* — provided detailed information on the inadequacies of the current regulatory framework, including the challenges and deficiencies due to the current regulator not being under a stand-alone statute.

Enshrining ethical and professional standards through regulation is the best authoritative instrument at IRCC's disposal, as that will help ensure greater government oversight for the new regulatory body.

Although the ICCRC had a Code of Ethics in place, it did not have the authority to properly monitor or investigate alleged misconduct, nor did it have the necessary authorities to ensure compliance with professional standards. As evidenced in the 2017 CIMM Report, the limitations of the previous regulator led to multiple cases of alleged misconduct of consultants that were not effectively investigated or disciplined, resulting in a negative impact for vulnerable clients.

Establishing a Code of Conduct as a government regulation is consistent with other professional self-regulatory bodies. Many self-regulatory bodies use a regulation or bylaw as their instrument of choice for establishing a code of conduct. Such codes are enforceable by their respective regulators via a statutory framework.

Regulatory analysis

Benefits and costs

An important first step in developing a cost-benefit methodology is establishing a baseline scenario against which options may be measured. For this analysis, the baseline is a scenario where the Code of Ethics administered by the ICCRC was in effect. The baseline is compared with the regulatory proposal to implement a new Code of Conduct as a ministerial regulation, prescribed by the Minister of IRCC and enforced by the College.

There are anticipated incremental costs for the College to implement the Code. This includes costs to modify governance documents and other administrative materials, costs to train officers, and communications costs, such as publishing the Code on the College website. These costs are expected to approximate \$0.1 million and will be incurred in 2022, the year of implementation of the Code.

Ongoing costs as a result of the ministerial regulation are expected to be minimal, as the Code will retain a portion of the standards from the previously administered Code of Ethics, and, as such, many elements of the Code are not considered to be incremental changes from the baseline

scenario. However, the Code will be broader in scope and will prescribe a number of new standards which are not present in the previous Code of Ethics. Some of these new elements may impose costs on employers and consultants.

First, the Code will prescribe that the consultant is prohibited from charging recruitment fees to the foreign national client if the consultant also engages in employment recruitment services (otherwise known as labour recruitment). Any fees for recruitment services will instead be charged to the employer of the foreign national. This is based on international principles for fair recruitment, with which the Code aligns itself. For the most part, employment recruitment is provincially regulated, and many provinces have prescribed this type of fee prohibition into their regulatory frameworks. Therefore, this provision in the Code can potentially present costs to employers for a subset of regions in Canada where recruitment fees are not prohibited. These regions include Newfoundland, Prince Edward Island, New Brunswick, and the Northwest Territories. Data is not available on the extent to which recruitment fees are charged to clients in Canada; however, anecdotal evidence exists and suggests it is not an uncommon practice.

Second, the Code will mandate that all employees of consultants who may assist in the provision of immigration or citizenship consulting services must have a copy of the Code and be familiar with its contents. The Code will also prescribe that consultants must provide a copy to their clients. This condition is not currently prescribed under the baseline scenario, and, as such presents an incremental cost for consultants. This effort is anticipated to be minimal, as the Code will be available online, and therefore in most instances employees and clients will be able to access the Code with the web link.

Lastly, there may also be costs to consultants associated with the proposed provision that consultants be prohibited from charging or accepting inducements. In the previous Code of Ethics, there was no prohibition on accepting inducements, so such transactions would potentially occur with employers, medical professionals, and other individuals for referring clients. Under the Code, this practice will no longer be permitted (with limited exceptions), which may represent a cost for some consultants in the form of foregone income. However, it is important to note that as the practice of collecting inducements is not condoned for many professional bodies, the impact of this new requirement in the Code is expected to be minimal.

The Code will present many benefits which are expected to outweigh these costs.

Foreign nationals residing in Canada will benefit by the additional requirements which were not in the ICCRC Code of Ethics. The new Code of Ethics will prohibit consultants from charging employment recruitment fees to clients, benefiting foreign nationals who work with consultants, in particular in the regions where this is not already prohibited, specifically Newfoundland, Prince Edward Island, New Brunswick, and the Northwest Territories.

Similarly, employees of consultants would also benefit from increased awareness of consultants' roles and responsibilities, as they will now be provided with a copy of the Code, as per its requirements. This requirement allows clients to have more transparency on how their affairs will be handled by the consultant and understand when a violation has occurred. In this context, clients and any person working with an authorized consultant will have greater assurance that licensees are to follow and comply with a set of high professional standards and ethical behaviour, including duties of honesty, integrity, and respect. Prospective applicants will also know the value of working with a licensed consultant as opposed to taking risks with illegal, unauthorized actors.

Regarding the prohibition of the charging or accepting of inducements, this standard will help ensure that consultants are working in the best interest of the client in an objective manner, with no real or perceived conflict of interest.

More broadly, the primary benefit of the Code for Canadians is that by cementing the requirements of the current Code in the ministerial regulation, it will help protect the public from unethical and unscrupulous behaviour by licensed consultants, while at the same time increasing public confidence in, and the overall integrity and reputation of, the consulting profession. This in turn will help ensure reliable and quality services are offered to clients. Moreover, the Code will benefit Canadians by serving as a guide and educational tool for consultants, clients, and the general public regarding the responsibilities of consultants to their clients.

Small business lens

Analysis under the small business lens concluded that the regulation may impact Canadian small businesses. Since the Code prescribes that consultants be prohibited from charging employment recruitment-related fees to foreign nationals, employers may be impacted in regions where this practice is not already prohibited, as consultants in these regions may charge employers these fees instead. There is no data available regarding the extent to which foreign nationals are currently charged recruitment-related fees; it is therefore not possible to estimate the extent to which small businesses may be impacted. However, it is reasonable to assume that small businesses would face a greater relative cost than larger businesses if they were to be charged these fees, and may therefore be deterred from soliciting services from consultants.

One-for-one rule

The one-for-one rule does not apply, as there is no incremental change in the administrative burden on business.

Regulatory cooperation and alignment

The Code of Conduct regulation will not directly relate to any domestic or international agreements or obligations. Several provinces have their own regulation regarding who is authorized to represent or advise a person with respect to a provincial immigration matter. All provincial and

territorial licensing regimes require that individuals be federally authorized consultants or lawyers as a prerequisite for obtaining a province-specific licence. Therefore, the Code of Conduct regulation will serve to complement provincial and territorial licensing regimes.

With regard to recruitment services, several provinces regulate the business of international employment recruitment, including prohibiting charging fees to job seekers. The Code of Conduct complements existing provincial regulatory frameworks by setting standards for licensees who also provide recruitment services.

Strategic environmental assessment

A preliminary scan conducted in accordance with the *Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals* concluded that a strategic environmental assessment is not required.

Gender-based analysis plus

The gender-based analysis plus (GBA+) considered the effects on IRCC clients who rely on the use of representatives, including permanent resident applicants who are in-Canada asylum seekers; clients applying through the family reunification stream; and clients applying through the economic stream. The Code is expected to have a neutral or positive effect on the implicated populations. The Code will ultimately help to protect all IRCC clients, including the hundreds of thousands of IRCC clients from all over the world who apply to its immigration or citizenship programs each year, as well as the licensed consultants who will be obligated to adhere to the new standards for professional conduct. These standards will help to ensure that applicants have access to quality immigration and citizenship advice and expertise, and that those who are providing services operate in a professional manner. The increased professionalism brought about by the Code will have a positive impact on applicants who engage the services of a consultant.

The Code will have a particularly positive impact on clients who are vulnerable due to language or cultural barriers and who rely extensively on consultants for navigating the application process. The Code includes requirements for providing quality interpretation and translation services as needed by the client and providing more accessibility to information about the rights of the client and obligations of the consultant.

In general, IRCC internal data shows that men and women have a similar uptake in the use of immigration consultants. For instance, in 2016, 16.9% of females and 18% of males who used a representative (i.e. appointed someone to act on their behalf when communicating with IRCC) for their permanent resident application process had specifically used an authorized consultant (as opposed to a lawyer, for example).

The immigration challenges experienced by women and men can vary based on a number of factors, including sexual orientation, country of origin, disability, economic status, family status, and other diversity considerations. It is anticipated that the increased professionalism resulting from the establishment of the Code, as well as the overall regulatory improvements through the new College, will benefit all clients.

Permanent resident applicants

For permanent resident applicants, IRCC's internal data illustrates that male and female clients had a similar uptake of various kinds of representatives. For instance, in 2018, 35% of females and 32% of males used a representative. Of those clients who used a representative, the most common type was unspecified, used by 79% of females and 76% of males. The second most common type was authorized consultants, with use by 14% of females and 15% of males, followed by lawyers, with use by 7% of females and 8% of males.

In-Canada asylum seekers

In-Canada asylum seekers are a vulnerable population due to their precarious immigration status and their willingness to pay money to secure a permanent pathway. According to IRCC internal data, this group is more likely than overseas refugees to use a representative (21%), of which approximately 75% use an unspecified representative, 10% use an authorized consultant, and 15% use a lawyer. Asylum seekers are the only type of client who were more likely to use a lawyer than a consultant, likely due to the availability of legal aid and legal clinics in certain Canadian jurisdictions, which will assist asylum seekers for no cost. However, it is anticipated that strengthening the regulatory regime and having a new Code that is enforced by the College will ultimately help protect this especially vulnerable group.

Clients applying through the family reunification stream

According to IRCC internal data, clients applying through the family reunification stream are the most likely to use a representative, with 47% declaring a representative. Of those who use a representative, the majority (81%) did not specify what kind of representative they used a, approximately 12% used an authorized consultant, and 7% used a lawyer. The higher use of representatives in this stream may be due to the fact that applicants already have a sponsoring family member living in Canada and this person may also be acting as their representative.

Clients applying through the economic stream

In the economic stream, almost a third (28%) of applications indicate the use of a representative; however, the type of representative is very similar to that in the family reunification stream (75% unspecified, 18% authorized consultant and 7% lawyer).

Top countries using consultants

According to internal IRCC data, the Philippines, India, China, Pakistan and Iran are among the top 10 source countries for permanent residence applications, and applicants from these countries are more likely to use immigration consultants than lawyers; whereas applicants from France, the United Kingdom and the United States are more likely to use lawyers. While improvements to the regulation of consultants will benefit all clients, they will have a proportionally greater benefit on clients from countries who are more likely to employ consultants.

GBA+ considerations were incorporated as part of the development of the Code. Provisions were primarily developed with the assumption that an inherent power imbalance could materialize in the relationship between the client and the consultant, which could put the client at risk. Causes could include lack of proficiency in English or French, limited to no knowledge of the Canadian immigration system or regulatory system, and potentially paying a large amount of money to secure permanent resident status, all of which result in depending entirely on the consultant to navigate the immigration system. In this context, the intent of the Code is to prevent behaviours and actions on the part of the consultant that could exploit or take advantage of the client.

Examples from the Code include the following:

- a provision that the licensee foster a relationship of trust with clients, including one that does not take advantage of their clients' vulnerabilities;
- a provision that licensees not engage in discriminatory behaviour in any of their professional dealings;
- a provision that licensees not intimidate or coerce any person, including through sexual harassment or verbal or physical threats;
- a requirement for licensees to retain quality interpretation or translation services, as needed by the client;
- a comprehensive list of pertinent information that must be included in a service agreement with a client, including transparent information on fees and disbursements and a description of the services being provided;
- a provision to ensure licensees do not take possession of original documents without a specific reason as outlined in the Code;
- provisions on conflict of interest and avoiding conflicts of interest for licensees;
- provisions on certain unauthorized behaviours with the client, such as borrowing and lending money, or engaging in intimate relationships;
- provisions on licensees providing a dual role of consulting services and recruitment services to a client;
- provisions describing the requirement for quality services to a client, including demonstrating cultural sensitivity;

- requirements that the licensee provide the client with a copy of the Code and information on the College's complaints and discipline process should a concern or problem arise; and
- a requirement that fees charged to a client be fair and reasonable.

Although meeting these standards will be a significant shift for existing consultants to adapt to, such provisions will ultimately help ensure that consultants are fulfilling their fiduciary role to the client by always acting in the client's best interest.

According to the ICCRC's annual reports, immigration and citizenship consulting as a profession has become a growing field over the last number of years, with its membership increasing to 6 744 members in 2020.¹ In terms of demographics, consultants comprise men and women almost equally, with the majority operating in all regions of Canada (majority in Ontario and British Columbia) and others working in 44 countries overseas. According to the *2020 Annual Report*, those overseas were most present in India, China, United Arab Emirates, and the United States. Almost 60% of consultants had been practising for 5 years or less, almost 37% for 5 to 15 years, and only 3% for 15 years or more.

Working to further professionalize this evolving industry would have positive benefits for men and women who make up almost equal proportions of the profession. The codifying of ethical requirements and professional responsibilities alongside a robust complaints and discipline regime to enforce the Code will provide a strong framework for guiding this profession that has a large number of recently credentialed members.

Implementation, compliance and enforcement, and service standards

Implementation

While the *College Act* came into force in December 2020, full implementation of the College is to happen in stages. As per the *College Act*, the previous regulator (ICCRC) applied to continue as the College of Immigration and Citizenship Consultants, and the Minister of IRCC approved the application and set a date for continuance (i.e. opening date of the College) of November 23, 2021.

As specified in the *College Act*, the College will be responsible for overseeing compliance and enforcement for the Code. IRCC has been working with the College as part of its transition to be the new regulator while minimizing disruption to authorized consultants and their clients. Public awareness activities were also undertaken by IRCC and the College to help newcomers and applicants protect themselves against fraudulent actors by providing online guidance material for understanding the role of the new College, and understanding the benefits of working with a licensed consultant.

Since the College opened in November 2021, it has been operating with the Code of Ethics. Starting from the effective date of the new Code of Conduct, the College will be responsible for overseeing the transition from the Code of Ethics to the new Code of Conduct.

As set out in the *College Act*, the College will be responsible for enforcing the Code and ensuring compliance from all its licensees through its complaints and discipline process. As part of the implementation, the new College will be responsible for training and educating all licensees on the new Code. Training and education will also extend to key regulatory actors of the College (e.g. complaints and discipline committee members, other committee members, the registrar, investigators). As well, all previous guidelines, policies and procedures will be revised or drafted anew by the College in order to align with the Code. All external communications, including the online publication of the Code on the College's website, will also be handled by the College. The new regulator may develop bylaws with additional requirements on matters already addressed in the Code, such as record keeping, competency or education requirements, and confidentiality (to be enforced by the registrar).

Similar to other self-regulatory professions, guidance material or a companion piece is intended to be developed by the College to provide commentary on each of the provisions of the Code. This will provide both consultants and clients with contextual information and guidance on how the College intends to interpret and apply the Code of Conduct.

Compliance and enforcement

As set out in the *College Act*, the College is responsible for overseeing compliance and enforcement for the Code of Conduct.

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Footnotes

a S.C. 2019, c. 29, s. 292

1 ICCRC *2020 Annual Report*
