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Canada Gazette, Part I, Volume 155, Number 20: Code of Professional Conduct for College of Immigration and Citizenship Consultants Licensees

May 15, 2021

Statutory authority

College of Immigration and Citizenship Consultants Act

Sponsoring department

Department of Citizenship and Immigration

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 processes. However, these individuals are sometimes the victims of unethical or fraudulent consultants, which may result in severe consequences, including delays to immigration applications, financial loss, and even permanent loss of immigration status. When consultants provide incompetent advice or engage in fraud or misrepresentation, the effect 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 for consultants via the *College of Immigration and Citizenship Consultants Act* (College Act). The purpose of the College, once established, will be 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 consultant would have 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 or Department) 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* (Code or Code of Conduct) would establish strong ethical and professional standards that all licensees of the College must abide by. Additionally, the Code would 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 new College will be a fundamentally different organization from the current Immigration Consultants of Canada Regulatory Council (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 would be held accountable in the context of the College's robust complaints and discipline regime. The proposal will entail incremental costs for the ICCRC (which is expected to continue as the new College) to implement

the new Code of Conduct, 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. Transition costs are expected to be negligible for the Government of Canada to implement the proposed Code of Conduct and consist of minor communications costs. Ongoing costs are also anticipated to be minimal, as the new Code of Conduct will retain a portion of the standards from the ICCRC's administered current Code of Ethics. However, the new Code of Conduct is broader in scope, and prescribes a number of new standards that are not present in the current 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, these costs 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 new Code, and costs associated with prohibiting consultants from charging or accepting referral fees. Benefits of the proposal include benefits to foreign workers as they will no longer be charged recruitment fees, as well as broader benefits to the public as the new Code of Conduct 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 has 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, which can have serious negative impacts on clients and jeopardizes 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, once established, is to regulate consultants in the public interest and to protect the public from unscrupulous and fraudulent consultants. The establishment of the College would be a significant improvement over the current regulatory regime, with a proposed 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 the same regulatory footing as members of other professional bodies such as doctors and lawyers. For example, the new College would have 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 or commonly referred to as "ghost consultants."

Background

Immigration and citizenship consulting landscape

Immigration and citizenship consultants who are members of the Immigration Consultants of Canada Regulatory Council (ICCRC) are authorized to provide, for a fee or other 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 ICCRC members operate within Canada, a portion of their members 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 fall under provincial/territorial jurisdiction.

While members of the ICCRC 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 ICCRC members 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 current regulator (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 and fraud 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 have difficulty in determining their rights as a client, knowing the difference between an authorized and unauthorized consultant, and knowing whether the services they are receiving from a consultant are 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 new College is meant to operate 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 of Immigration and Citizenship Consultants (College). Section 44 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 proposed Code of Conduct would be to **establish strong ethical and professional standards** by which all licensees of the College must abide and for which they would be **held accountable** in the context of the College's robust complaints and discipline regime.

The Code of Conduct would uphold the objective of the College Act of regulating consultants in **the public interest**. As per legislative requirement, the initial Code of Conduct is to be 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 would continue

to be developed in the public interest.

As the new regulator, through its complaints and discipline committees, the College would be able to hold its members accountable to, and ensure their compliance with, the Code of Conduct.

Description

The Code of Conduct (Code) would 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 would not be exhaustive of a consultant's professional conduct obligations. Rather, the Code would be interpreted in conjunction with the College's other governing documents, including the College Act, the regulations (forthcoming in 2022), and any new by-laws 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 would help guide the profession and consultants on how they are to conduct themselves ethically and professionally.

The Code would 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 would be divided into six parts:

1. Interpretation — would provide key definitions of terms used in the Code and outline the overall purpose and application of the Code.
2. General Standards — would specify what is deemed to be professional conduct and competence. This section would outline ethical principles, behaviour and attitudes that are expected on the part of consultants such as integrity and loyalty. The section would also outline the

obligations and duties of a consultant when there is a conflict of interest, including in the context of recruitment services. Finally, this section would identify the nature of competence for licensees, how to maintain competence, and the expectations of providing quality services.

3. Relationship to Clients — would outline the relationship consultants are expected to have with clients, including standards on maintaining a client's confidentiality; retaining services of a translator or interpreter when needed for the client; and requirements related to fees and fee disputes between the consultant and the client. This section would also outline the duties of a consultant when errors and omissions occur in respect of a client's case. Of note, this section would outline over 25 requirements that a consultant must include in written service agreements and would set 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 would also be required to inform their clients about the Code of Conduct and the College's complaints and discipline regime. These new requirements would 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 — would outline 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 — would outline a consultant's reporting requirements to the College and other necessary communications.
6. Marketing of Immigration or Citizenship Consulting Services — would outline 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 would apply specifically to the practice of immigration or citizenship consulting, the intention of other sections would be applied more broadly and to all activities undertaken by the licensee, regardless of

the service being provided and regardless of whether there is a payment for services. Consultants would be required to observe the Code in all of their professional dealings, including with prospective clients, business associates, colleagues, and employees. Consultants would also be required to not engage in conduct that is likely to discredit the profession 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 of Conduct 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 of Conduct 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 would hold licensees accountable for any wrongdoing through its complaints and discipline regime. Licensees would 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 an authorized consultant would have greater assurance that licensees are to follow and comply with a set of high professional standards and to behave ethically; these include duties of honesty, integrity, and respect. Prospective applicants would also know the value of working with a licensed consultant as opposed to taking risks with illegal, unauthorized actors.

Unlike the current regulator's Code of Ethics, the new Code of Conduct would be mandated by regulation and enforced under the new statutory

framework. As per the College Act, the College would also have the appropriate tools and authorities required to ensure compliance with the Code of Conduct, including through its complaints and discipline committees, the role of the Registrar, and the role of their investigators.

The Code of Conduct is also intended 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 would serve to better protect prospective applicants, it would also help meet Canada's wider needs to receive more quality applications and maintain the integrity of the immigration and citizenship system.

Regulatory development

Consultations

The primary impacted stakeholder is the **ICCRC** (i.e. the current regulator). In 2019, the majority of ICCRC members voted in favour to continue as the new College. The ICCRC is intended to transition to the new self-regulatory body in the form of the new College, and accordingly, they would be responsible for all aspects of transition, including the implementation of the Code of Conduct. As well, all **licensees** authorized by the ICCRC to provide immigration or citizenship consulting services, and **clients** who receive such services, would also be impacted by this proposed regulation. Some employers of foreign nationals working with consultants for recruitment services may also be impacted by this proposal.

Legal professionals are also interested stakeholders given that they share the landscape for the provision of immigration or 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; better articulating conflicts of interest similar to 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 for referral fees.

This initial feedback was taken into account for the drafting of the Code of Conduct. The intent is to formally consult and receive robust commentary from stakeholders at the time of prepublication in the *Canada Gazette*, Part I. IRCC will inform relevant stakeholders when prepublication is posted and available for comment.

As part of the policy design, the Department also looked at a variety of other self-regulated professions for their codes of conduct 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 current 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 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 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.

Modern treaty obligations and Indigenous engagement and consultations

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 proposed regulatory action.

Instrument choice

Under subsection 43(1) of the College Act, the Minister is required to establish the initial 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 would help ensure greater government oversight for the new regulatory body.

Although the ICCRC currently has a Code of Ethics in place, it does not have the authority to properly monitor or investigate alleged misconduct, nor does it have the necessary authorities to ensure compliance with professional standards. As evidenced in the 2017 CIMM Report, the limitations of the current regulator has 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 by-law 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 current Code of Ethics administered by the ICCRC continues to be in effect. The baseline is compared with the regulatory proposal to implement a new Code of Conduct as a ministerial regulation, to be prescribed by the Minister of IRCC and enforced by the College.

The proposal would entail incremental costs for the ICCRC to implement the new Code of Conduct. These costs include costs to modify governance documents and other administrative materials, costs to train officers, and communications costs, such as publishing the new Code on the future College website. These costs are expected to approximate \$0.1 million and would be incurred in 2021, the year the proposed Code of Conduct is scheduled to be implemented. Transition costs are expected to be negligible for the Government of Canada to implement the proposed Code of Conduct and consist of minor communications costs.

Ongoing costs as a result of the proposed ministerial regulation are expected to be minimal, as the new Code of Conduct will retain a portion of the standards from the ICCRC's administered Code of Ethics, and, as such, many elements of the new Code of Conduct are not considered to be incremental changes from the baseline scenario. However, the new Code of Conduct will be broader in scope and will prescribe a number of new standards which are not present in the current Code of Ethics. Some of these new elements may impose costs on employers and consultants.

First, the new Code of Conduct would prescribe that the consultant would be prohibited from charging recruitment fees to the foreign national client if the consultant also engages in labour recruitment services. Any fees for recruitment services would instead be charged to the employer of the foreign national. This is based on international principles for fair recruitment, with which the new Code aligns itself. For the most part, labour recruitment is provincially regulated, and many provinces have prescribed this type of fee prohibition into their regulatory frameworks. Therefore, this provision in the new Code of Conduct 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 uncommon practice.

Second, the new Code of Conduct would 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 new Code would also prescribe that consultants must provide a copy of the Code 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 existing Code of Ethics, there is no prohibition on accepting inducements, so such transactions can potentially occur with employers, medical professionals, and other individuals for referring clients. Under the new Code of Conduct, this practice would no longer be permitted, 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 of Conduct is expected to be minimal.

The new Code of Conduct would present many benefits which are expected to outweigh these costs.

First, there are corresponding benefits to foreign nationals residing in Canada with regard to the costs imposed by the additional requirements which are not in the current Code. Since consultants would be prohibited from charging recruitment fees to clients, there are benefits to foreign nationals residing across Canada and 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 new Code of Conduct, as per its requirements. This requirement would allow clients to have more transparency on how their affairs would be handled by the consultant and understand when a violation has occurred. In this context, clients and any person working with an authorized consultant would 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 would 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 of Conduct for Canadians is that by cementing the requirements of the current Code in the ministerial regulation, it would help protect the public from unethical and unscrupulous behaviour by consultants, while at the same time increasing public confidence in, and the overall integrity and reputation of, the consulting profession. This in turn would help ensure reliable and quality services are offered to clients. Moreover, the Code of Conduct 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 proposed regulation may impact Canadian small businesses. Since the new Code of

Conduct prescribes that consultants be prohibited from charging 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 would 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 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 would serve to complement provincial licensing regimes.

With regard to recruitment services, several provinces regulate the business of international labour 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 of Conduct is expected to have a neutral or positive effect on the implicated populations, as the Code of Conduct for consultants would 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 of Conduct will have a positive impact on applicants who engage the services of a consultant.

The Code would 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 18.1% 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, family status, and other diversity considerations. It is anticipated that the increased professionalism resulting from the establishment of the Code of Conduct, as well as the overall regulatory improvements through the new College, would 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 of Conduct that is enforced by the College would 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%) use an unspecified representative, approximately 12% use an authorized consultant, and 7% use 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 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. This suggests that clients from developing countries where the dominant language spoken is neither English nor French are more likely to use consultants, compared to clients from Western Europe and the United States. 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 of Conduct. 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 of Conduct 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 aspect of their work;
- 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 to take possession of original documents without a legitimate reason;
- 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 labour 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 of Conduct 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 would be a significant shift for existing consultants to adapt to, such provisions would 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 new College is to happen in stages. As per the College Act, the current regulator (ICCRC) is allowed to apply to continue as the College of Immigration and Citizenship Consultants, and the Minister of IRCC is to approve the application and set a date for continuance (i.e. opening date of the College). The College is anticipated to open in 2021.

As specified in the College Act, the College will be responsible for overseeing compliance and enforcement for the Code of Conduct. IRCC will work with the ICCRC as it transitions into the new regulator while minimizing disruption to authorized consultants and their clients. Public awareness activities will be undertaken to help newcomers and applicants protect themselves against fraudulent actors, understand the role of the new College, and understand the benefits of working with a licensed consultant.

As part of IRCC's implementation timeline, the Code of Conduct regulation is anticipated for fall 2021. Should there be any delays, the College will be able to operate with the current Code of Ethics until such time as the new Code is in place. The current regulator (and, by extension, the new 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 would be responsible for enforcing the Code of Conduct and ensuring compliance from all its licensees through its complaints and discipline process. As part of the implementation, the new College would be responsible for training and educating all licensees on the new Code of Conduct. Training and education would 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 would need to be revised or drafted anew by the College in order to align with the Code of Conduct. All external communications, including the online publication of the Code of Conduct on the College's website, would also be handled by the College. The new regulator may develop by-laws with additional requirements on matters already addressed in the Code of Conduct, such as record keeping, competency or education requirements, and confidentiality.

Similar to other self-regulatory professions, guidance material or a companion piece would need to be developed by the College to provide commentary on each of the provisions of the Code of Conduct. This would 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.

Contact

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PROPOSED REGULATORY TEXT

Notice is given that the Minister of Citizenship and Immigration, pursuant to subsection 43(1) of the *College of Immigration and Citizenship Consultants Act*^a, proposes to establish the annexed *Code of Professional Conduct for College of Immigration and Citizenship Consultants Licensees*.

Interested persons may make representations concerning the proposed

Code within 30 days after the date of publication of this notice. All representations must cite the *Canada Gazette*, Part I, and the date of publication of this notice, and be addressed to Alexis Graham, Director, Immigration Branch, Department of Citizenship and Immigration (email: alexis.graham@cic.gc.ca).

Ottawa, April 26, 2021

Marco E. L. Mendicino

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 who

(a) consults with a licensee and on whose behalf the licensee provides or agrees to provide immigration or citizenship consulting services; or

(b) having consulted with a licensee, reasonably concludes that the licensee has agreed to provide immigration or citizenship consulting services on their behalf. (*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 former client.

Purpose and Application

Purpose

2 The purpose of this Code is to establish 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 aspects of their work.

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 comply with all applicable legislation, including any regulations and by-laws made under the Act that relate to the professional conduct and competence of licensees.

Discrimination

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

Intimidation and coercion

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

- (a) applying undue pressure, directly or through a third party;
- (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; or
- (e) untruthfully asserting possible sanctions or administrative consequences.

Dishonesty, fraud or other illegal conduct

12 A licensee must not, in any aspect of their work, do anything or omit to do anything that they know or ought to know would assist in or encourage dishonesty, fraud or other illegal conduct.

Inducement

13 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 to

licensee; or

(b) 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.

Possession of original documents

14 (1) A licensee must not take possession of any of a client's original documents without a legitimate reason.

Temporary possession

(2) A licensee may take temporary possession of an original document of a client for the purpose of making copies or complying with a requirement in connection with a proceeding or application under the *Citizenship Act*, 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.

Return to client

(3) If a licensee takes possession of any of a client's original documents, the documents must be returned to the client as soon as there is no longer a legitimate reason to possess them.

Conflicts of interest

15 (1) Subject to sections 16 and 17, a licensee must not provide immigration or citizenship consulting services to a person 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 person in writing and the person 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 person, 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 represent that person without compromising

(a) their objectivity or the relationship of trust with a client; or

(b) their duty of confidentiality toward a client or former client.

Unauthorized behaviours

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

- (a) lending money to, or borrowing money from, a client;
- (b) undertaking any other transactions with a client, other than transactions in relation to the provision of immigration or citizenship consulting services, unless the transaction is fair and reasonable and the client has received independent legal advice from a lawyer authorized to practice in the jurisdiction where the transaction takes place; or
- (c) engaging in an intimate personal relationship with a client or a former client within one year after the day on which the service agreement is terminated.

Recruitment services

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

Conditions

(2) However, a licensee may provide both immigration or citizenship consulting services and 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 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 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 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 *recruitment services*

(3) For the purposes of this section, ***recruitment services*** means services that consist of

(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 any of the services referred to in paragraphs (a), (b) and (c).

Competence

Competence and diligence

18 (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 the official language of the client's choice;
- (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

19 A licensee who lacks the competence to provide the required immigration or citizenship consulting services must

- (a) decline to act; or
- (b) obtain the client's consent to retain, consult or work with another person who is competent and licensed to provide the services.

Maintaining competence

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

Delivering quality services

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

- (a) respect 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; and

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

Actions taken on behalf of client

(2) When acting on behalf of 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 on the client's behalf; and

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

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.

Opinion to be provided

22 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.

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, if known, date of birth and 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 description of the College's role as the licensee's regulator; and
- (e) a description of the purpose 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 potential 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 using credible sources:

(i) their full name,

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

(iii) their occupation or occupations, and

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

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

(c) if the client has entered into a service agreement with another licensee,

(i) ensure that the service agreement with that licensee has been completed or has been terminated in writing before completion, or

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

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 client's name and, if known, date of birth and their address, telephone number and email address, if any;

(c) the client's immigration status, if known;

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

(e) 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;
- (f)** an identification of the people who are likely to assist in the provision of immigration or citizenship consulting services;
- (g)** the client's instructions;
- (h)** an itemized list of the services to be provided, tailored to the needs of the client, that describes the nature of the services;
- (i)** estimated time frames for the delivery of the services;
- (j)** 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;
- (k)** an estimate of expected disbursements;
- (l)** an identification of any goods and services tax, harmonized sales tax or other tax or levy to be charged to the client;
- (m)** the terms of payment for fees and disbursements, including any interest payable on unpaid amounts;
- (n)** any advance payments to be made by the client and the licensee's refund policy;
- (o)** an explanation of any additional costs that the client may be required to pay;
- (p)** if applicable, a description of any conflict of interest or potential conflict of interest relating to the client;
- (q)** a statement that any original documents provided by the client to the licensee will be returned to the client as soon as there is no longer a legitimate reason for the licensee to possess them;
- (r)** the licensee's complaint-handling procedure;
- (s)** an indication of the official language in which the client chooses to receive the services;
- (t)** a statement that the licensee will obtain assistance, when necessary, including by retaining the services of an interpreter or translator;
- (u)** a description of the College's role as the licensee's regulator and an explanation of the College's complaints process;

- (v) 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;
- (w) confirmation that the licensee has provided a copy of this Code to the client;
- (x) 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;
- (y) instructions on how the client may
 - (i) if applicable, obtain online access to information regarding their application, expression of interest or proceeding, and
 - (ii) verify the Department of Citizenship and Immigration's online processing times related to applications, expressions of interest and proceedings; 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.

Obligation of confidentiality

25 (1) A licensee must keep confidential all information in relation to a client or former client, or a client 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 confidential client information, 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 accordance with the Act or any regulations or by-laws made 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 client information under subsection (2), the licensee must not disclose more information than necessary to respond to the specific basis for the disclosure.

Complaints

26 A licensee must, as soon as feasible, 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

27 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, as soon as feasible,

- (a) fully inform the client, the licensee's professional liability insurer and the Registrar of the error or omission;
- (b) recommend that the client obtain a lawyer's advice concerning any rights that the client may have arising from the error or omission;
- (c) provide confirmation to the Registrar that their 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.

Fees

28 (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

29 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, send an invoice to the client in accordance with subsection 30(1); and

(g) withdraw the invoiced amount from the client account as soon as feasible.

Invoice

30 (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

31 (1) Subject to section 32, a licensee may terminate a service agreement with a client before its completion only if reasonable notice is provided to the client and the termination

(a) is done for good reason; and

(b) will not result in serious prejudice to the client.

Non-payment of fees or disbursements

(2) A client's failure to pay the licensee's fees or disbursements as agreed constitutes a good reason for the purposes of paragraph (1)(a).

Mandatory termination of service agreement

32 (1) A licensee must terminate a service agreement with a client 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 the licensee knows or ought to know is dishonest, fraudulent or otherwise illegal; or
- (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.

Dishonest or illegal conduct

(2) If a client asks the licensee to act in a manner that is dishonest, fraudulent or otherwise illegal, the licensee must advise the client that the conduct is dishonest, fraudulent or otherwise illegal and that the conduct should not be pursued.

Actions required — termination of service agreement

33 (1) When a service agreement is terminated, whether before or on its completion, a licensee must, as soon as feasible,

- (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 before completion

(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 within three working days after the day on which the 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 as soon as feasible.

Office Administration and Management

Record keeping

34 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.

Compliance with Code

35 (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 those people do 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

36 If any of the following circumstances arise, a licensee must report the circumstances to the Registrar as soon as feasible:

- (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 practice;
- (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.

Response to College

37 A licensee must, as soon as feasible, respond fully to any communication from the College.

Communications with complainant

38 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.

Conduct of fellow licensee

39 (1) If a licensee suspects that a fellow licensee has engaged in conduct that is inconsistent with this Code, the licensee must, if possible, seek an explanation from their fellow licensee regarding the conduct.

Report to College

(2) If it is not possible to obtain an explanation of the conduct in accordance with subsection (1) or if, after having obtained an explanation, the licensee is of the view that their fellow licensee has engaged in conduct that is inconsistent with this Code, the licensee must report the conduct to the College as soon as feasible.

False, misleading or inaccurate public statement

40 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

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

- (a) their name, as registered with the College, and their registration number are prominently displayed or announced at or near the beginning of any advertisement for the services, in the language used in the advertisement; and
- (b) 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.

Client endorsement

42 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

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

Coming into Force

Registration

44 This Code comes into force on the day on which it is registered.

Footnotes

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

1 ICCRC *2020 Annual Report*
