



June 14, 2021

Via email: alexis.graham@cic.gc.ca

Alexis Graham
Director, Social Immigration Policy and Programs
Immigration Branch
Immigration, Refugees and Citizenship Canada
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Alexis Graham:

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

I write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) to comment on and suggest improvements to the IRCC's proposed Code of Professional Conduct for College of Immigration and Citizenship Consultants Licensees (Code of Conduct) as published in the Canada Gazette Part I on May 15, 2021.¹

The CBA is a national association of over 36,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Section has approximately 1,200 members across Canada practising in all areas of immigration and refugee law.

The CBA Section is pleased that the regulatory impact analysis statement (RIAS) recognizes that the unethical conduct and incompetent service of some consultants and their ineffective self-regulation have seriously harmed immigration applicants and the integrity of the Canadian immigration system. We also appreciate that the RIAS has described the problem as "a recurrent issue over the past decades" exacerbated by the heightened vulnerability of applicants with "limited or no proficiency in English or French, those with less knowledge of Canada's regulatory and immigration system and those with fewer connections to Canada." The RIAS mentions that "advocates of the legal profession have called for more effective regulation similar to that of law societies" for consultants. More accurately, the failure of self-regulation of consultants has led the CBA Section to conclude that protection of the public requires that only lawyers or Quebec notaries in good standing with their regulatory bodies should give advice and representation on immigration matters.² Consultants should be supervised by lawyers or Quebec notaries in all activities relating to immigration applications and related proceedings.

¹ Canada Gazette, Part I, Volume 155, Number 20: [Code of Professional Conduct for College of Immigration and Citizenship Consultants Licensees](#)

² CBA Resolution, [Protecting the Public from the Practice of Immigration Law by Immigration Consultants](#) (2019)

Notwithstanding our view that consultants should not practice independently, we welcome IRCC's efforts to prescribe a comprehensive Code of Conduct and establish rigorous standards for ethics and competence by which all licensees of the College of Immigration and Citizenship Consultants must abide. The proposed Code of Conduct intends to better protect the public with stricter rules including a prohibition on charging recruitment fees to immigration application clients, a requirement to enter into written service agreements, which must contain an enumeration of services provided and estimates of all fees and costs, and the obligation to give clients a copy of the Code of Conduct and information on how to file a complaint against the consultant if a problem arises.

The CBA Section proposes revisions and additions to strengthen the Code of Conduct and solidify its key provisions. Our comments are organized in relation to particular sections of the draft Code of Conduct. In the Appendix, we have proposed precise wording for all sections that have been significantly revised.

Section 1(1)(a). The definition of "client" should be expanded to include a person who receives a consultation from a licensee regardless of whether an agreement for further consulting services is made subsequently. Although section 23 refers to a "potential client" with whom a licensee has an initial consultation, there is no justification for differentiating a "client" from a "potential client", especially since all other rules in the Code of Conduct refer to a "client". In an initial consultation, a licensee gives advice which could impact the client's decisions and actions and potentially have life-changing consequences. Licensees should be subject to the same requirements and prohibitions, and recipients of their service should benefit from the same protections, even if an initial consultation does not lead to an agreement for further service.

We also recommend adding a definition of "client document". We have seen some consultants refuse to give former clients copies of documents that the consultant submitted on behalf of the client (e.g. submission letters or forms) or received on behalf of the client (e.g. correspondence with government departments). Defining client document will clarify licensees' obligations under section 14(3) of the Code of Conduct to return certain documents to clients.

Section 7. The duty of civility should be particularized to require civil, courteous and respectful conduct towards all persons with whom a licensee deals in the course of their consulting work such as government decision-makers, tribunal members and staff, clients, lawyers, and any third parties involved in a client's immigration matter.

Section 11. This section should also prohibit advising a client to intimidate or coerce someone, which is consistent with codes of conduct for lawyers. In section 11(a), the reference to "directly or through a third party" should be changed to "directly or indirectly", as this captures a wider range of situations in which undue pressure can be applied. We also propose adding to the enumerated list of examples situations where a licensee threatens to initiate proceedings with a criminal or quasi-criminal charge or to make a complaint to an administrative regulatory body. This would be consistent with lawyers' codes of conduct.

Section 12. The prohibition against "dishonesty, fraud or other illegal conduct" should be corrected to remove "other" in relation to "illegal conduct". This correction is necessary because not all dishonesty and fraud are technically illegal, but all expressions of deceit and fraud must be interdicted.

Section 13(a). The word "to" before "licensee" should be deleted.

Section 14. Section 14(3) should be amended to require that a licensee must return client documents to the client or another person as ordered by the client or where the Code of Conduct requires the return of client documents. For original documents, licensees should also be required to return documents as soon as there is no longer a legitimate reason to possess them.

Section 15(1) and other sections requiring similar consent of a client. The reference to "free and informed" should be replaced with "fully informed and voluntary." This suggested wording is more consistent with the language used in codes of conduct for lawyers.

Section 15(2)(a). “Relationship of trust” should be changed to “relationship of trust and duty of loyalty”. Codes of conduct for lawyers require both trust and loyalty to remain even if there is consent to a conflict.

Section 17. The definition of “recruitment services” in section 17(3) should be broadened to encompass enrolling a client in a Canadian educational institution. Separate prescriptive provisions on recruitment and referral services for Canadian educational institutions are needed to complement the existing provisions on recruitment services to employers. The rules should mandate disclosure of any referral fees received from an educational institution, require the client’s fully informed and voluntary written consent to proceed with the service where the licensee also has dealings with the educational institution, and prohibit directly or indirectly charging fees to clients for academic enrollment or the application for a study permit. The Code of Conduct needs to place conditions and restrictions on licensees’ dealings with academic institutions in Canada because consultants often work with educational institutions to recruit international students and handle applications for study permits.³

A stand-alone provision should be created to prohibit receipt or payment of any financial or other reward for the referral of clients to anyone who is not a licensee. Any referral fees received from or paid to another licensee must be disclosed to the client. These requirements are consistent with the rules on referral fees by which lawyers must abide.

Section 18(2). The requirement for the nature and scope of licensees’ competence must be strengthened to reflect the knowledge and skills needed to offer advice and representation in immigration matters pursuant to section 91 of the *Immigration and Refugee Protection Act* (IRPA) and s. 21.1 of the *Citizenship Act*, which permits consultants to engage in the practice of immigration law without supervision. We recommend codifying these additional competencies:

- In-depth knowledge of immigration case law including the legal tests, principles, concepts, criteria and requirements set out in jurisprudence rather than in immigration legislation. For example, the test and factors for humanitarian and compassionate consideration, assessment of children’s best interests, defences to misrepresentation, and decision-maker’s obligations to maintain procedural fairness are all set out and expounded in jurisprudence and not in legislation.
- Thorough knowledge of Canada’s legal agreements with other countries that include labour mobility provisions.
- Strong ability to investigate facts, identify issues, ascertain a client’s objectives, consider possible options and advise clients on appropriate courses of action.
- Proficiency in legal research and application of the law to the facts of a client’s matter.

Section 19. This section should be amended to explicitly oblige licensees to decline to act where the client’s matter involves areas of law other than immigration and refer the client to a lawyer or Quebec notary practicing in the relevant domains. Immigration matters frequently intersect with other areas of law such as employment, criminal, constitutional, tax, family, and, in the current context of the pandemic, public health. Lawyers are in the best position to give appropriate advice and serve the client’s interests in these situations as their training allows them to competently handle matters that engage multiple areas of law.

Section 21(3). The requirement for the licensee to keep the client informed should be made more comprehensive by requiring that licensees notify clients when documents are submitted or received on the client’s behalf from the government or other third party in relation to the client’s matter. A licensee should also be required to provide the client with a copy of all documents or information submitted on the client’s behalf.

³ See media reports of international students recruited by consultants and charged exorbitant fees to be enrolled at Canadian private colleges. See, for example: Globe and Mail, Kathy Tomlinson, [The foreign students who say they were lured to Canada by a lie](#) (2019).

Section 33(1)(a). The requirement to return client documents should be amended to be more consistent with the language in codes of conduct for lawyers by requiring delivery “to or to the order of the client.” This requirement should also refer to client documents as defined in section 1.

Section 41. We are particularly concerned about the draft rules on marketing activity as this is an area where immigration applicants have often been misled in the past both by regulated and ghost consultants. The public needs to understand precisely whom they are hiring and that their chosen service-provider is permitted to represent them by law. Of particular concern is any action that expressly or implicitly suggests that a licensee is a lawyer, a law firm or is otherwise able to provide services beyond immigration or citizenship consulting services. Some consultants suggest that they are a law firm, implying that they can provide legal advice on all matters. Some consultants advertise their services without identifying who the registered consultants are. Canadian law societies impose restrictions on partnerships with non-lawyers and have explicit rules on naming law firms to ensure that members of the public do not inadvertently conclude that a non-lawyer is a lawyer. Immigration consultants must be subject to similar rules. These restrictions would be in the public interest and would benefit licensees by allowing them to distinguish themselves from unregulated or ghost consultants. The revised section 41 would deal with these issues:

- Licensees must not represent or imply they are a lawyer by virtue of having graduated from one of the new consultant programs offered through the Faculties of Law of Queen’s University and the Université de Montreal.⁴
- Licensees’ membership in the College must be stated prominently in any advertisement and description for services in any media (including print publications, Internet, store-front signs).
- Licensees must not advertise or represent that their venture is a “law firm.”
- Licensees must not advertise that they are “specialists” or “experts” in immigration law. A similar prohibition exists for lawyers in all Canadian provinces and territories, unless a lawyer has been certified as a specialist by their law society. As providers of legal services directly to the public, consultants should be subject to the same advertising restrictions.
- Licensees must specify in all marketing that their services are limited to "immigration and/or citizenship consulting services" governed by the IRPA and *Citizenship Act*.

The CBA Section appreciates the opportunity to comment on the proposed Code of Conduct for licensees of the College. We are confident that our recommendations will assist the Minister in advancing the stated objectives of the Code of Conduct and its enabling statute: to establish comprehensive and strong standards for all aspects of licensees’ consulting activity, to protect the recipients of their services, and to regulate licensees effectively in the public interest.⁵ We would be pleased to discuss and elaborate on our recommendations and offer additional insights. As members of a regulated profession concerned with the practice of law, we would value an opportunity to be consulted as regulations and bylaws under the *College of Immigration and Citizenship Consultants Act* are developed.

Yours truly,

(original letter signed by Nadia Sayed for Mark Holthe)

Mark Holthe
Chair, Immigration Law Section

⁴ Queen’s University, “[Graduate Diploma in Citizenship and Immigration Law](#)”.

In email correspondence to the CBA Section in October 2020, the program’s academic director explained that although the program is administered through the Faculty of Law, the credential is conferred by the university’s School of Graduate Studies. Therefore, it would be a misrepresentation for someone completing this program to advertise that they are graduates of a Canadian law school.

⁵ *College of Immigration and Citizenship Consultants Act*, S.C. 2019, c. 29, s. 292.

APPENDIX A: Proposed wording for select provisions of the Code of Conduct

Marketing of services

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

client document includes

- (a) documents created before the retainer, provided by the client or sent from a third party,
- (b) documents prepared by the licensee for the client's benefit or protection and paid for by the client;
- (c) documents prepared by a third party and sent to the licensee (other than at the licensee's expense),
- (d) documents sent to the licensee by third parties, and
- (e) documents sent by the licensee to the client.

Intimidation and coercion

11 A licensee must not, in any aspect of their work, intimidate or coerce, or advise a client to 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; or
- (e) threatening to:
 - (i) initiate or proceed with a criminal or quasi-criminal charge; or
 - (ii) make a complaint to an administrative or regulatory body.

Inducements

13 (1) A licensee must not

- (a) offer any inducement to any organization or person for recommending the licensee to a client or referring a client or client matters to the licensee; or
- (b) accept any inducement from any organization or person for recommending to a client or referring a client to the organization or person.

Conduct of client 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 connection with a proceeding, application, or submission of an expression of interest under the *Immigration and Refugee Protection Act*, or in connection with a proceeding or application under the *Citizenship Act*.

Delivery to client

3) A Licensee must deliver to or to the order of the client,

- (a) in the case of all client documents, a copy of or the original document,
 - (i) upon demand by the client, or

- (ii) as required in the Code; and
- (b) in the case of the client's original documents, as soon as there is no longer a legitimate reason to possess them.

Recruitment services

Conditions

17 (2) However, a licensee may also provide recruitment services to a client who is a foreign national if the licensee:

- (a) before providing those services,
 - (i) advises the client that they are not obligated to receive both services from the same individual; and
 - (ii) discloses to the client the fees the licensee is receiving from;
 - (A) an employer for recruiting the client to work for the employer; or
 - (B) an educational institution for recruiting the client to enroll with the institution;
- (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) complies with all applicable legislation governing the provision of recruitment services; and
- (e) demonstrates honesty and candour towards the client and commitment to the client's cause, including by providing the client,
 - (i) before they begin working in Canada, with
 - (A) a copy of their employment contract; and
 - (B) accurate information regarding the work that they will be doing, and their wages, benefits and working conditions; or
 - (ii) before they begin studying in Canada, with
 - (A) a copy of their enrollment contract; and
 - (B) accurate information regarding the studies they will be doing, and their tuition and all services or benefits that the educational institution will be providing.

Definition of recruitment services

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

- (a) in respect of a client seeking or obtaining,
 - (i) employment for a client; or
 - (ii) enrollment in an educational institution for a client;
- (b) in respect of any person, assisting or advising them with respect to seeking or obtaining,
 - (i) employment for a client, or
 - (ii) enrollment in an educational institution for a client;
- (c) assisting or advising an employer or another person with respect to hiring a client;
- (d) assisting or advising an educational institution with respect to enrolling a client; and

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

Nature of competence

18 (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
 - (i) the *Immigration and Refugee Protection Act* and the *Citizenship Act* ;
 - (ii) related regulations and ministerial instructions;
 - (iii) related programs and policies; and
 - (iv) relevant case authority;
- (b) have in-depth knowledge of Canada's agreements with other countries that include labour mobility provisions;
- (d) have a strong ability to investigate facts, identify issues, ascertain a client's objectives, consider possible options and advise clients on appropriate courses of action;
- (e) have 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;
- (f) meet any applicable provincial competency requirements in relation to the provision of immigration or citizenship consulting services;
- (g) be able to provide the services to the client in the official language of the client's choice;
- (h) be able to deliver the services to the client using technology that is appropriate and effective; and
 - (i) maintain a good working knowledge of the regulations and by-laws made under the Act that relate to professional conduct and the competence of licensees, and of any related policies, procedures and guidelines of the College.

Obligation if not competent

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

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

(2) When a client matter requires the interpretation of or application of any law, Act of Parliament, or a provincial or territorial law, or foreign or international law or legislation, other than the *Immigration and Refugee Protection Act* and *Citizenship Act*, the licensee must:

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

(c) refer the client to another person who is competent and licensed to provide the services.

21 (3) The licensee must in a timely manner provide 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) providing a copy of the documents or information that were submitted or received.

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

- (a) deliver to or to the order of the client every client document in the licensee's possession;

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;

41 (1) Any marketing activity undertaken or authorized by a licensee must:

- (a) specifically identify their name, membership with the College, and registration number, as registered with the College, and ensure those details are prominently displayed or announced at or near the beginning of any marketing for the services, in the language used in the marketing; and
- (b) clearly communicate that the licensee's services are limited to immigration or citizenship consulting services "under the *Immigration and Refugee Protection Act* and *Citizenship Act*.

Content of marketing activities

(2) Any marketing activity undertaken or authorized by a licensee must not:

- (a) be false, inaccurate or unverifiable;
- (b) be reasonably capable of misleading the recipient or the intended recipient;
- (c) guarantee the success of an application, expression of interest or proceeding;
- (d) imply the licensee has a relationship with:
 - (i) the Government of Canada,
 - (ii) any provincial or territorial government, or
 - (iii) anyone employed by them;
- (e) hold out or represent that the licensee is a lawyer or operating as a law firm; or
- (f) be contrary to the best interests of the public.

Specialization

(3) In any marketing activity, a licensee must:

- (a) not use the title "specialist" or any similar designation suggesting a recognized special status or accreditation; and
- (b) take all reasonable steps to discourage use, in relation to the licensee by any person, of the title "specialist" or any similar designation suggesting a recognized special status or accreditation.