

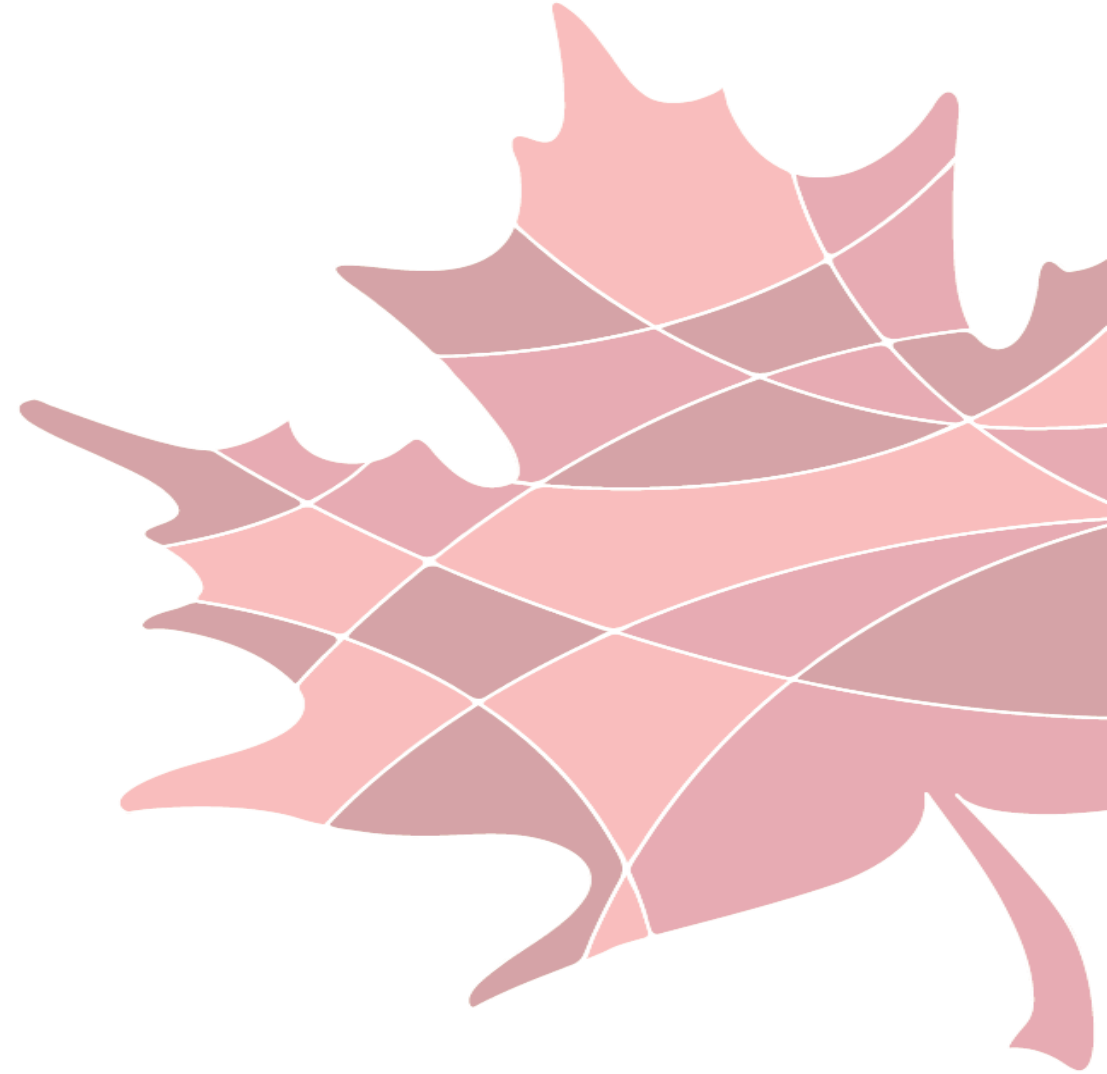
IRCC's Administrative Penalties and Consequences (APC) Regime

Technical Briefing

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Immigration, Refugees
and Citizenship Canada

Immigration, Réfugiés
et Citoyenneté Canada

Canada

Overview





Purpose

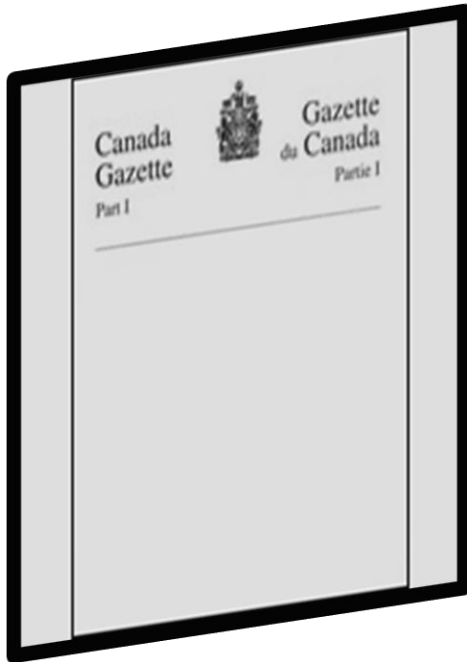
Outline Regulations



To outline the proposed *Administrative Penalties and Consequences (APC) Regulations* under the *Immigration and Refugee Protection Regulations (IRPR)* and *Citizenship Regulations*.

By doing so, to enable stakeholders to provide thorough and considered input through the *Canada Gazette*.

Public Input on Draft APC Regulations



- The draft APC regulations were published on Dec 21, 2024 in the *Canada Gazette Part I* and are open for public comment until Feb 4:

Canada Gazette, Part 1, Volume 158, Number 51:

- **IRPR: Regulations Amending the Immigration and Refugee Protection Regulations (Administrative Penalties and Consequences)**
 - **CIT Regs: Regulations Amending the Citizenship Regulations (Administrative Penalties and Consequences)**
- If you have comments on the draft regulations, we encourage you to provide them in writing through the *Canada Gazette*.
 - The intent is for the regulations to take effect later in 2025.



Background

CIMM Recommendations and the Introduction of the APC Regime



CIMM Report

In **2017**, the House of Commons Standing Committee on Citizenship and Immigration (CIMM) reviewed the immigration consultant framework.

Finding it inadequate, CIMM made **21 recommendations** regarding governance, investigations and enforcement and public protection.

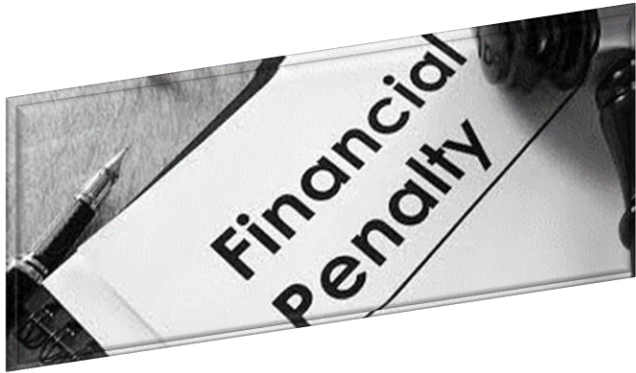


Amendments to IRPA / Citizenship Act

In 2019, amendments to the *Immigration and Refugee Protection Act* (IRPA) and the *Citizenship Act* (CIT Act) provided authority to establish the APC regime, to be implemented through amendments to the IRPR and Citizenship Regulations.



Understanding Administrative Penalties



Administrative Penalty

An administrative penalty is a **monetary penalty** that is imposed on those who **fail to comply** with requirements of a statute or regulation.

Administrative penalties are an enforcement mechanism issued by government departments and agencies (rather than the courts) and are designed not to be punitive but to **encourage compliance** with laws and regulations.

Administrative penalties are more straightforward and less impactful than criminal prosecution, making them an effective tool to encourage compliance when criminal charges may not be warranted.

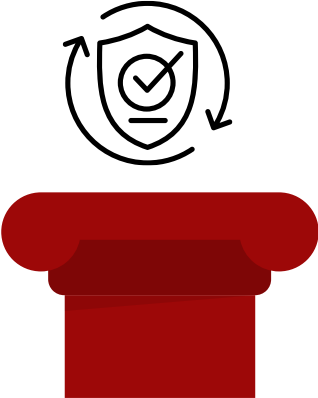
APC Regime in the Non-Compliance Framework

APCs would form **one component** within the broader approach towards non-compliance that is based on a continuum of distinct but complementary pillars, administered by **three main players**:



PROFESSIONAL DISCIPLINE

By regulators like law societies and the College of Immigration and Citizenship Consultants.



COMPLIANCE ACTIVITIES

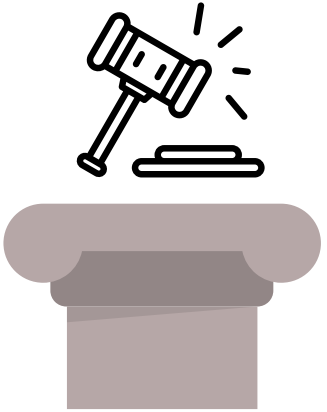
By IRCC through the APC regime.



CRIMINAL ENFORCEMENT

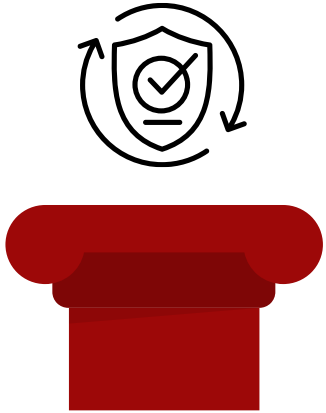
By the Canada Border Service Agency (CBSA) and the Royal Canadian Mounted Police (RCMP).

Criminal Enforcement



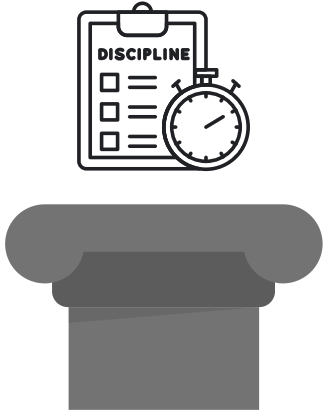
Criminal enforcement focuses on deterrence and punishment for serious offences, with higher penalties and more extensive consequences (including potential imprisonment) to protect public interest and maintain law and order.

Compliance: Administrative Monetary Penalties



Administrative Monetary Penalties focus on discouraging non-compliance with statutory regulations, offering a tool that is faster, more predictable, and proportionate to less severe infractions. These penalties are meant to address violations of regulatory compliance without the need for criminal prosecution.

Professional Discipline

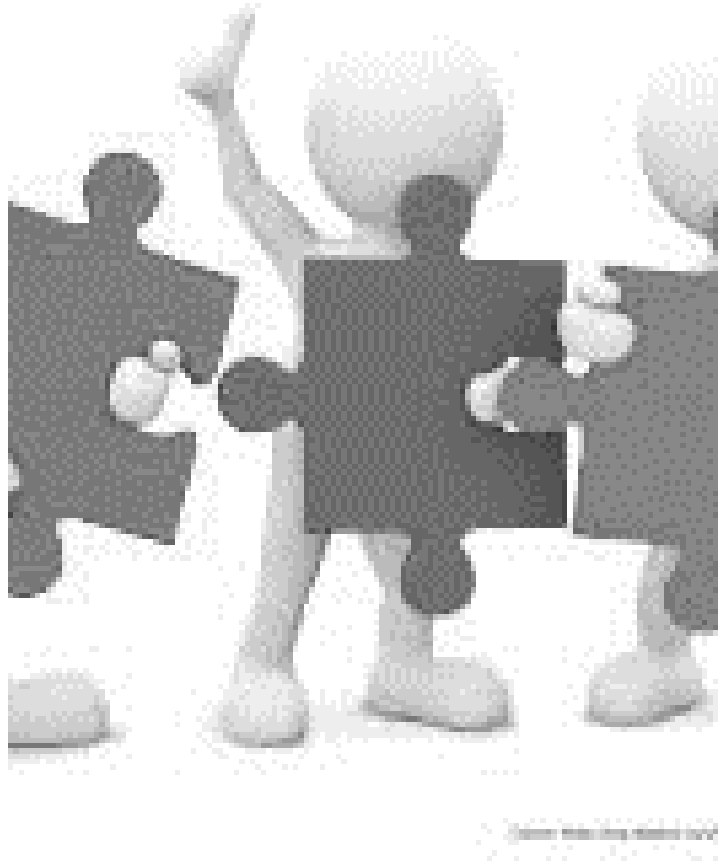


Regulators (e.g., law societies, College of Immigration and Citizenship Consultants) focus on ensuring that individuals meet the qualifications and ethical standards required to practise a profession. They oversee compliance with licensing requirements, professional conduct rules, and continuing education, with the goal of maintaining the integrity of the profession and protecting the public.



Rationale for the APC Regime

Why the APC Regime?



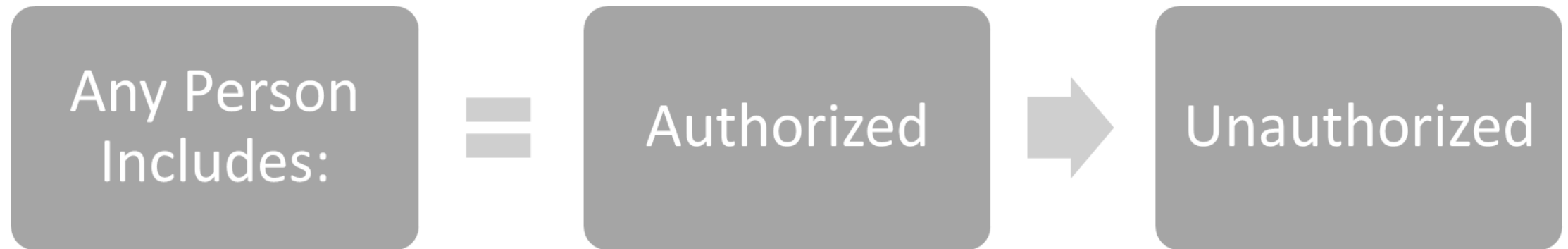
IRCC investigates fraud but currently lacks the authority to take direct action against those who commit violations while providing advice and representation.

By addressing misrepresentation and unauthorized representation in immigration advice, the APC regime reinforces accountability and preserves public trust.

The regime is distinct from disciplinary structures already in place for regulated immigration professionals.

Applicability to “any person”: Legislative Basis

IRPA and the Citizenship Act provide the authority, through regulation, to designate as violations contraventions of the Act or Regulations **by any person** providing advice or representation for consideration on an application, proceeding or expression of interest, and to issue monetary penalties and consequences against those who commit violations (IRPA-s 91.1 (1)-(4)) and CIT Act- s27(1)-27(5)).



Application to “any person”: Rationale

Ensuring Accountability

- Holds **all individuals** providing immigration or citizenship advice accountable
- Ensures consistent application of the law

Public Protection

- Deters **unauthorized or fraudulent advice** that could mislead or exploit applicants

Consistency in Enforcement

- Applies the same regulatory standards and penalties to **all individuals**, including legal professionals

Regulatory Integrity

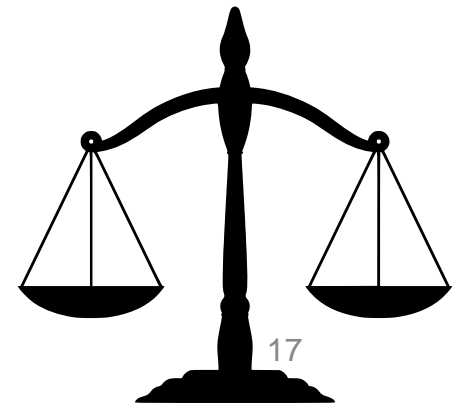
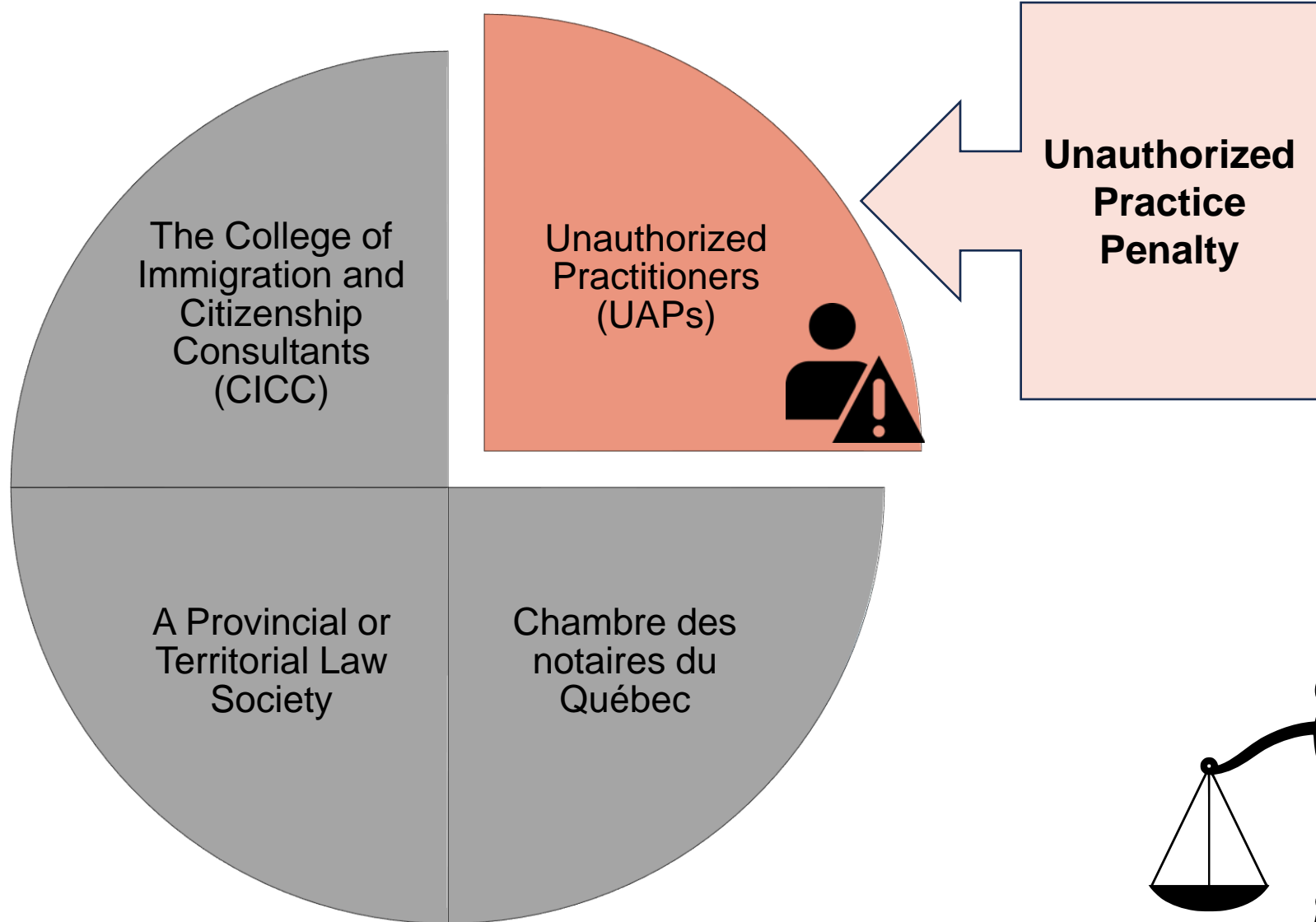
- Empowers **IRCC** to independently address violations, ensuring penalties for non-compliance

Promoting Compliance

- **Monetary penalties** act as a **deterrent**, encouraging better adherence to immigration laws

This framework ensures **public trust, fairness, and integrity** in the immigration and citizenship process.

Unauthorized Practitioners (UAPs)





Regulations

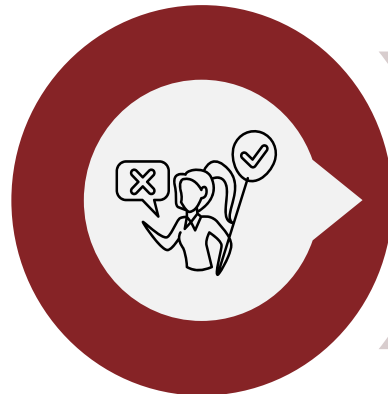
Violations (s.36/37 CIT Regs & s315.47/315.48 IRPR)

These violations were designated because they are already prohibited by legislation, are directly linked to the provision of immigration advice / representation and have significant negative impacts on program integrity.



Unauthorized Practice

Prohibit a person from advising / representing for consideration unless they are authorized under the IRPA or CIT Act.



Misrepresentation

Prohibit anyone advising / representing for consideration from knowingly misrepresenting or withholding information or advising others to misrepresent or withhold information.

APC Violations are Already Prohibited

APC violations mirror existing offences under the IRPA and CIT Act, to which all individuals are already subject



**Unauthorized
Representation & Advice**

IRPA s.91 (1-4) and CIT Act
s.21.1



**Counselling
Misrepresentation**

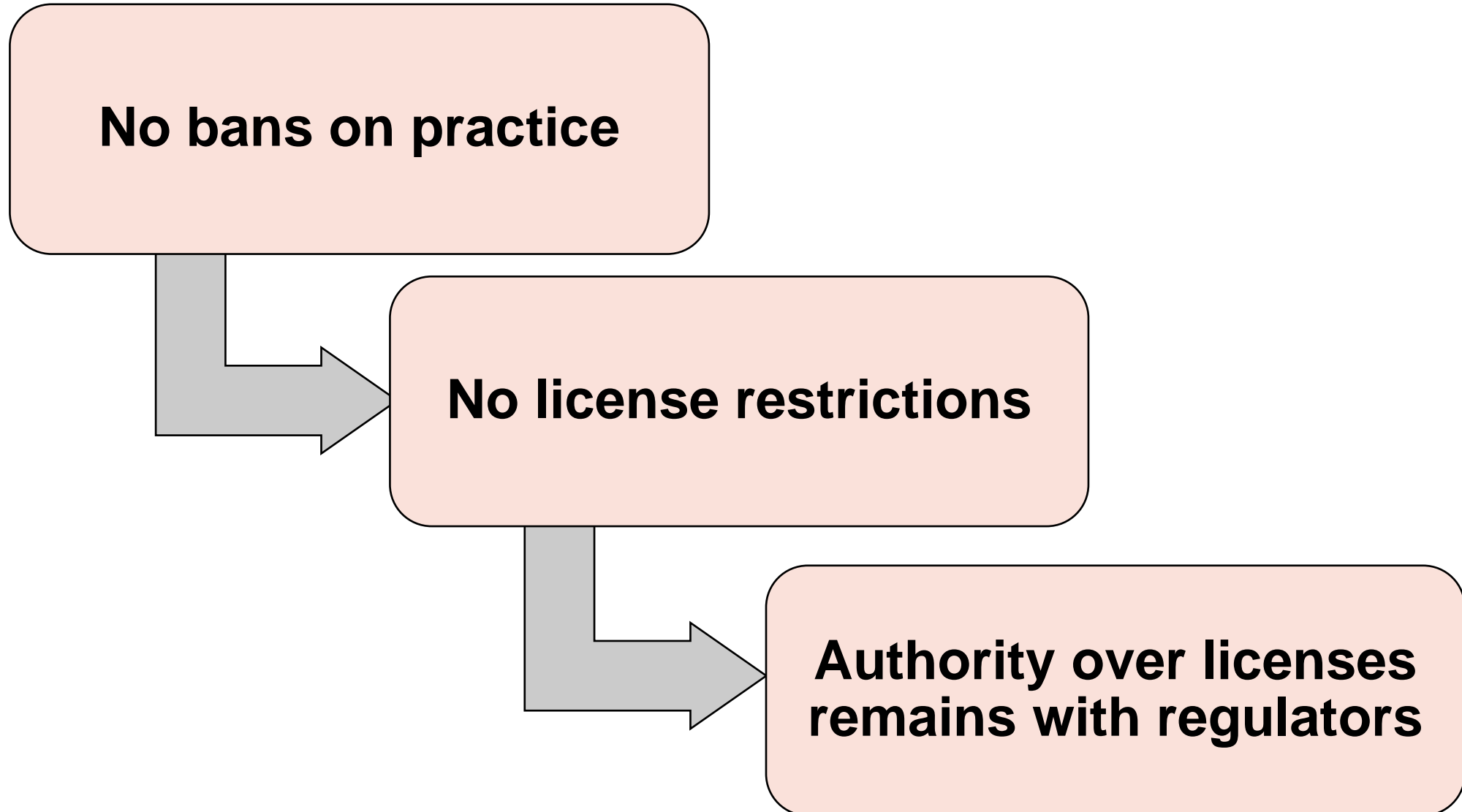
IRPA s.126 and CIT Act
s.29.2(1)



Misrepresentation

IRPA s.127 and CIT
Act s.29.2(2)

No Impact on Licensing



Inspections (s38 CIT Regs / s315.49 IRPR)

Purpose

Goal is to verify compliance with immigration and citizenship laws and regulations.

Reasonable Grounds to Suspect

Officers must have reasonable grounds to suspect a violation has occurred.

Documents Request Only

Will be used only to request documents—on-site investigations are not contemplated.

“Period and manner for responding”

Provides flexibility to deal with specific situations and different types of documents.

Penalty for Non-Compliance

Administrative Monetary Penalty

\$10,000 penalty for failure to comply with an Inspection.

One Penalty per Inspection

A single penalty is assessed for non-compliance, even if multiple failures occur during a single inspection.

Inspections: Reasonable Efforts to Comply



Reasonable Efforts to Comply:

Failure to submit relevant documents may be justified if the individual can demonstrate they made reasonable efforts to comply.



Assessment of Efforts:

IRCC will assess whether the individual took appropriate steps, such as responding in a timely manner, and actively working to resolve any obstacles to submission.



Documenting Efforts:

To justify non-compliance, individuals can provide evidence of their reasonable efforts, such as proof of attempts to obtain required documents.



No Penalty for Genuine Efforts:

If it is determined that the failure to submit was due to circumstances beyond control despite reasonable efforts, no penalties for failing to comply will be imposed.



Notice of Preliminary Finding (s39 CIT Regs / s315.5 IRPR)

IRCC officer with reasonable grounds to believe a person committed a violation can issue a **Notice of Preliminary Finding (NOPF)** to outline their concerns and provide an opportunity to respond.

Standard of Proof

- IRCC officer can issue NOPF if they have **reasonable grounds to believe** a violation occurred

No Requirement for Document Inspection

- Document inspection not required before issuing NOPF (though possible)

Not Made Public

- NOPF is sent only to the individual: it is not made public

Procedural Fairness Step

- Provides an opportunity to respond to concerns about a potential violation

Response Time

- Recipient is given 30 days to respond, and can request an extension

Notice of Preliminary Finding: Contents



Contents of the Notice of Preliminary Findings

- ✓ Name of the person;
- ✓ Relevant information and provisions for each potential violation;
- ✓ Preliminary concern and reasons;
- ✓ Penalty amounts (per violation and total);
- ✓ Adjustments for prior violations;
- ✓ Right to respond within 30 days; and
- ✓ Notice that their name and other information will be made public if they are found liable.

Notice of Violation (s41 CIT Regs / s315.52 IRPR)

- An IRCC officer can issue a **Notice of Violation (NOV)** after reviewing a NOPF and any submitted responses. The NOV is issued if it is determined, on a **balance of probabilities**, that a person committed a violation.
- The NOV would be issued by a different officer than issued the NOPF and document request.



Contents of Notice of Violation

- ✓ Name of the individual;
- ✓ Relevant facts and reasons for determination (these include high-level details of a violation, but would not identify a client);
- ✓ Adjustments for prior violations.
- ✓ Penalty amounts (per violation and total);
- ✓ Adjustments for prior violations;
- ✓ Right to request a review within 30 days;
- ✓ Obligation to pay penalties within 30 days unless a review is requested or a payment agreement is made;
- ✓ Payment method details; and
- ✓ Notice that public disclosure will follow if they are found liable (after review, if any).

Monetary Penalties (s43 CIT Regs / s315.54 IRPR)

A component of all administrative penalty regimes is the issuance of monetary penalties as a deterrent to non-compliance.

- The proposed regulations are explicit: the purpose is to encourage compliance with the provisions of the Act and these Regulations and not to punish.
- No administrative monetary penalty can be imposed for any acts or omissions that occurred prior to the date of issuance of a recipient's most recent NOV.

Monetary Penalties



The APC regime includes the following criteria in the assessment of monetary penalties:

Baseline amounts for violations



Impact of the violation: error in the administration of the Act

Financial advantage gained by the individual

Adjustment for prior violations

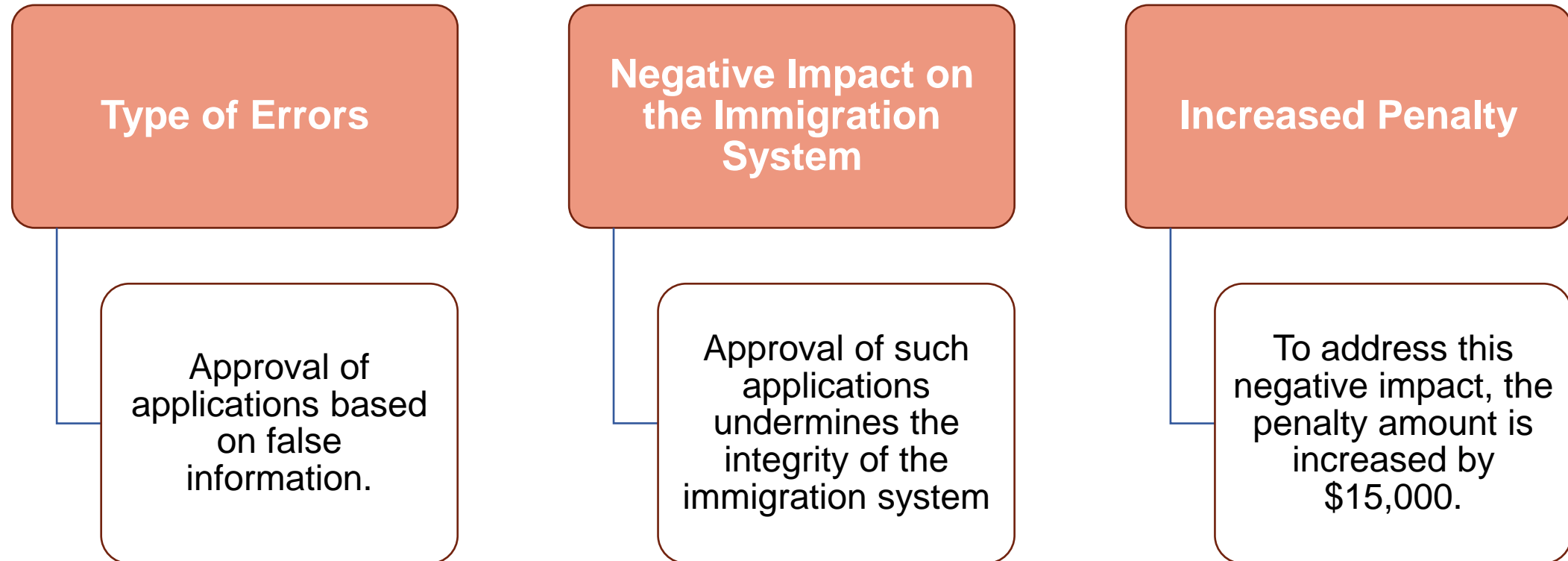
Non-compliance with a request for document inspection

Monetary Penalties: Baseline Amounts

Unauthorized Practice: \$5,000	(Counselling) Misrepresentation: \$15,000
 <p>The unauthorized practice penalty does not apply to licensed lawyers or consultants in good standing.</p> <p>This penalty applies only to individuals who are not authorized to provide immigration or citizenship advice.</p>	 <p>The counseling misrepresentation penalty applies to all individuals, including those involved in unauthorized practice (UAPs)</p>

While both acts have serious negative impacts, penalty amounts acknowledge that the act of counselling misrepresentation has a greater impact.

Monetary Penalties: Error in Administration of the Act



Monetary Penalties: Financial Advantage



Financial Advantage

Financial advantage refers to the money or benefits received by a person for committing a violation. Includes funds paid by a client to create fraudulent documents or engage in other illegal practices.



Challenging Assessments:

Individuals will have the opportunity to make submissions on this and other issues through the NOPF process, allowing them to challenge any assessment of financial advantage.

Monetary Penalties: Adjustment for Prior Violations

- AMP regimes aim to **encourage compliance**, hence the inclusion of a **reduction for first violations**.
- This adjustment helps motivate individuals to correct their behavior.

**First violation:
Penalty reduced by
50%.**

**Second violation: No
change in penalty.**

**Subsequent
violations: Penalty
increases by 50%,
since the individual
had an opportunity to
correct their actions.**

Monetary Penalties: Calculation

Penalties are issued per investigation, summed across all applications.

The formula for each application is:

(A)	+	B	+	C	x	D
Baseline Penalty		Error in Administration		Financial Gain		Adjustment for Prior Violations
<p>\$5,000 for unauthorized practice</p> <p>\$15,000 for misrepresentation</p>		<p>\$15,000 if it caused an error in the administration of the Act (e.g., approval based on false info).</p>		<p>Amount equal to any financial advantage obtained.</p>		<p>First violation: 50% reduction (× 0.5)</p> <p>Second violation: No adjustment (× 1)</p> <p>Third violation: 50% increase (× 1.5)</p>



- The above calculation is made for **each application** in the investigation for which there is evidence of a violation.
- **E- (non-compliance with document inspection)** Where applicable, this penalty is added per **NOV (maximum total of \$10,000)**
- Each penalty that is assessed is **added cumulatively (per application on which there is a violation) to a maximum amount of \$1.5m.**

Monetary Penalties: Sample Calculation 1

Scenario 1

It was determined that an **authorized representative counselled misrepresentation** on a temporary resident visa (TRV) application by providing fraudulent documents.

It was also determined that this induced an error because **the TRV application was approved** based on the false information.

There was also proof that the **client paid the representative \$10,000** for the fraudulent documents.

The representative **had not been** penalized under the regime previously

As part of the inspection, IRCC requested documents to confirm compliance, and the **individual did not comply**

$$\begin{array}{ccccccc}
 (& \mathbf{A} & + & \mathbf{B} & + & \mathbf{C} &) & \mathbf{X} & \mathbf{D} \\
 \text{Baseline Penalty (Misrep.)} & & & \text{Impact: Error} & & \text{Financial Gain} & & & \text{Adjustment for Prior Violations} \\
 & \mathbf{E} & & & \mathbf{X} & & & \mathbf{D} & \\
 \text{Non-Compliance with Doc. Request} & & & & & & & \text{Adjustment for Prior Violations} &
 \end{array}$$

$$= \left(\underset{\text{Baseline Penalty}}{\$15,000} + \underset{\text{Impact: Error}}{\$15,000} + \underset{\text{Financial Gain}}{\$10,000} = \underset{\text{Total}}{\$40,000} \right) \mathbf{X} \underset{\text{Adjustment for Prior Violations}}{0.5} = \underset{\text{Adjustment for Prior Violations}}{\$20,000}$$

$$= \underset{\text{Non-compliance with Doc. Request (per NOV)}}{\$10,000} \mathbf{X} \underset{\text{Adjustment for Prior Violations}}{0.5} = \underset{\text{Adjustment for Prior Violations}}{\$5,000}$$

$$\mathbf{\$20,000 + 5,000 = \$25,000 \text{ Final Penalty}}$$

Monetary Penalties: Sample Calculation 2

Scenario 2

On a **permanent resident application**, it was determined that there was a hidden **representative who was not authorized** (not a member of the College or Law society) and that they counselled misrepresentation on the application by advising the applicant to provide false information.

This **did not lead to** an error in the administration of the Act because the false information was noticed and the application was refused.

The representative had been **penalized once before** under the regime.

The process did not involve a document request.

$$\begin{array}{ccccccc} \text{(} & \mathbf{A} & + & \mathbf{B} & + & \mathbf{C} & \text{)} & \mathbf{X} & \mathbf{D} \\ \text{Baseline Penalty} & & & \text{Impact: Error} & & \text{Financial Gain} & & & \text{Adjustment for Prior Violations} \end{array}$$

$$\begin{array}{ccccccc} \text{(} & \$5,000 & + & 15,000 & + & \$0 & + & \$0 & = & \$20,000 & \text{)} & \mathbf{X} & 1 & = & \$20,000 \\ \text{=} & \text{Baseline Penalties} & & & & \text{Impact: Error} & & \text{Financial Gain} & & \text{Total} & & & & \text{Adjustment for Prior Violations} \end{array}$$

= \$20,000 Final Penalty

Review of the NOV (s47 CIT Regs / s315.58 IRPR)



30
days

- A recipient of a NOV can **request a review within 30 days** instead of paying the penalty.
- A reviewer, **appointed by the Governor in Council**, will assess liability and penalty based on the information available to the officer (no new evidence allowed).
- The **reviewer has the authority to cancel, confirm, or amend** the NOV in writing, with reasons.
- If amended, the penalty may increase or decrease.
- Following the reviewer's decision, Judicial Review (JR) is available.

Reviewer (s48 CIT Regs / s315.59 IRPR)



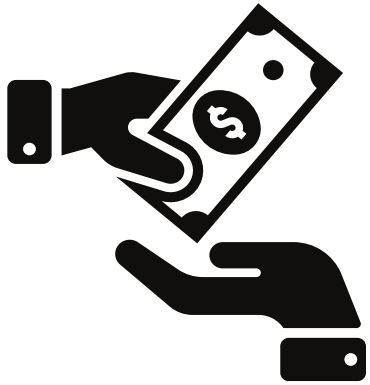
- Reviewer requires knowledge of the principles of administrative law and natural justice (please see link for all qualifications)
- The Government of Canada has posted the notice of appointment opportunity to fill this position: [GIC - Reviewer, Immigration, Refugees and Citizenship Canada \(njoyn.com\)](http://njoyn.com)
- To maintain unbiased decision-making, reviewers will be subject to the *Conflict of Interest Act* and will operate independently from IRCC.

Being Found Liable for a Violation



- An individual is determined to be liable for a violation when, following the issuance of a NOV:
 - 30 days (or, following a request for extension, any additional time allowed) elapses and they do not request a review of the NOV
 - If a review is requested, the reviewer determines that the individual is liable for the violation.
- When an individual is determined to be liable for a violation:
 - They must pay the administrative penalty they are issued
 - They are subject to the consequence of publication of their name, nature of violation, etc.

Payment (s46 CIT Regs / s315.57 IRPR)



If an individual is found liable for a violation, the administrative monetary penalty **must be paid within 30 days** unless the person, within those 30 days, enters into an agreement with the Minister respecting payment.

Recipients of penalties must contact IRCC to discuss potential agreements.

Consequence: Name Publication (s49 CIT Regs / s315.6 IRPR)



Those found liable for a violation are subject to the “consequence” of name publication.

IRCC will publish on its website the following details about those found liable for violations:

- ✓ Name
- ✓ Business / employer details (if applicable)
- ✓ Date of the Notice of Violation
- ✓ Date of the reviewer’s decision (if applicable)
- ✓ Violation type
- ✓ Penalty amount
- ✓ Payment status (i.e., whether the penalty has been paid)

For public protection purposes, this information will remain on IRCC’s website indefinitely.

Providing Comments and Next Steps

- ✓ We are accepting Pre-publication comments until Feb 4, 2025
- ✓ It is anticipated that the Regime will come **into force later in 2025**

For any comments or concerns on the content of the regulations, submit formally via *Canada Gazette*

Comment through:
Canada Gazette, Part 1,
Volume 158, Number 51:
Dec 21, 2024
[IRPR Link](#) or [Citizenship Regs](#) Link by **February 4, 2025**

This central platform ensures a **consistent, transparent,** and **predictable** approach to online regulatory consultations.



Thank you



Annex: APC Provisions in IRPA & the Citizenship Act

PROVISION	IRPA	CITIZENSHIP ACT
s91.1(1)(a) s27(1)(k.6)	(a) establish a system of administrative penalties and consequences — including of administrative monetary penalties — applicable to the violations designated in regulations made under paragraph (b) and set the amounts of those administrative monetary penalties.	27 (1) The Governor in Council may make regulations (k.6) establishing a system of administrative penalties and consequences — including of administrative monetary penalties — applicable to the violations designated in regulations made under paragraph (k.7) and setting the amounts of those administrative monetary penalties;
91.1(1)(b-c) 27(1)(k.7) and 27(1)(k.8)	(b) designate as a violation the contravention — including a contravention committed outside Canada — of any specified provision of this Act or of the regulations by any person who, directly or indirectly, represents or advises a person for consideration — or offers to do so — in connection with the submission of an expression of interest under subsection 10.1(3) or a proceeding or application under this Act; (c) prohibit acts in relation to the activity of representing or advising — or offering to do so — described in paragraph (b).	(k.7) designating as a violation the contravention — including a contravention committed outside Canada — of any specified provision of this Act or of the regulations by any person who, directly or indirectly, represents or advises a person for consideration — or offers to do so — in connection with a proceeding or application under this Act; (k.8) prohibiting acts in relation to the activity of representing or advising — or offering to do so — described in paragraph (k.7).
91.1(1)(d) 27(1)(k.9)	(d) provide for the power to inspect — including the power to require documents to be provided by individuals and entities for inspection — for the purpose of verifying compliance with the provisions specified in regulations made under paragraph (b).	(k.9) providing for the power to inspect — including the power to require documents to be provided by individuals and entities for inspection — for the purpose of verifying compliance with the provisions specified in regulations made under paragraph (k.7);
91.1(1)2 27 (3)	(2) Any regulation made under paragraph (1)(a) must provide that a person who is the subject of a notice of violation has the right to request, from a person appointed under subsection (3), a review of the notice or of the penalty imposed.	(3) Any regulation made under paragraph (1)(k.6) must provide that a person who is the subject of a notice of violation has the right to request, from a person appointed under subsection (4), a review of the notice or of the penalty imposed.
91.1(1)3 27 (4)	(3) The Governor in Council may, by order, appoint one or more Canadian citizens or permanent residents to conduct reviews in respect of notices of violation issued, or penalties imposed, under a regulation made under paragraph (1)(a) and to perform any other function conferred on them by a regulation made under that paragraph.	(4) The Governor in Council may, by order, appoint one or more citizens or permanent residents, as defined in subsection 2(1) of the Immigration and Refugee Protection Act , to conduct reviews in respect of notices of violation issued, or penalties imposed, under a regulation made under paragraph (1)(k.6) and to perform any other function conferred on them by a regulation made under that paragraph.
91.1(1)4 27 (5)	(4) A person appointed by order under subsection (3) holds office during good behaviour for a term that the Governor in Council may specify, by order, but may be removed for cause by the Governor in Council at any time.	5) A person appointed by order under subsection (4) holds office during good behaviour for a term that the Governor in Council may specify, by order, but may be removed for cause by the Governor in Council at any time.