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IMMIGRATION CONSULTANTS OF
CANADA REGULATORY COUNCIL
CRCIC
CONSEIL DE RÉGLEMENTATION DES
CONSULTANTS EN IMMIGRATION DU CANADA

BY EMAIL: Alexis.Graham@cic.gc.ca

June 14, 2021

Ms. Alexis Graham
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Dear Ms. Graham:

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

I am pleased to forward the comments of the Immigration Consultants of Canada Regulatory Council (Council) on the proposed *Code of Professional Conduct for College of Immigration and Citizenship Consultants Licensees* (Code) in response to the pre-publication for public comment of the Code and accompanying *Regulatory Impact Analysis Statement* in *Canada Gazette*, Part I, Volume 155, Number 20, on May 15, 2021.

Consultation Process:

These comments are based upon: (1) review of the Code by professional staff of the Council and the Council's Chair and Vice Chair, who are both practicing Regulated Canadian Immigration Consultants (RCICs); (2) an online survey of all Council members, to which over 250 members provided written responses; (3) questions received from members during English and French language informational webinars conducted by the Council on June 8 and June 9, 2021, respectively, in which over 600 members participated; and (4) discussions with members of the Council's Policy and Liaison Committee held jointly with representatives from the Canadian Association of Professional Immigration Consultants (CAPIC).

We have also had an opportunity to review a copy of the document: *Review of Proposed Code of Professional Conduct for College of Immigration and Citizenship Consultants Licensees* (June 14, 2021), prepared by CAPIC and are in substantial agreement with the comments raised therein.

General Comments:

We believe that the *College of Immigration and Citizenship Consultants Act* (Canada) (College Act) will lead to a comprehensive, nuanced legislative regime that will contribute greatly to the regulation of Canada's licensed immigration and citizenship consultants in the public interest. We appreciate the opportunity to participate in this process, both with respect to the Code and, in the future, as you move forward with the promulgation of the additional College Act Regulations and the evolution of the ensuing self-regulatory regime.

The Code, as drafted, is generally prescriptive. This provides welcome certainty in many areas. However, interpretation of prescriptive documents of this nature generally follows the principle that if a particular action is not specifically prohibited, then it is specifically permitted. Many such Codes adopt a more "principles-based" approach for this reason. As the Code will have the status of a Regulation, and therefore require government involvement to amend once finalised, we have identified several areas where, in our view, adding a reference to the by-laws of the College could provide the flexibility needed to administer the Code effectively in the public interest.

Similarly, while many aspects of the Code are quite detailed, there are a number of areas where the provisions include less definite wording along the lines of "as soon as feasible" or "for legitimate reasons." These terms are undefined and could lead to confusion and unintended results, particularly as such provisions will likely be considered most frequently in the context of adversarial discipline proceedings. In these instances, we are also of the view that references to the by-laws of the College are preferable to these indefinite terms.

In the alternative, the College could prepare an interpretive document to accompany the Code and provide guidance to licensees on general compliance with respect to those sections of the Code that include such less definite wording.¹ Many survey respondents indicated that more detailed guidance would be welcome in any event.

Regardless of the eventual approach chosen, we have identified these latter areas below, together with our more substantive comments on other individual provisions:

Specific Comments:

Section 1 – Interpretation – definition of "Client": Overall, there is general agreement with the definition of client provided in the Code. However, it is noted that, as the Code will apply to all College licensees (including Registered International Student Immigration Advisors (RISIAs)), the definition should specifically address circumstances where the licensee is an employee – either of an immigration consulting firm or designated learning institution (DLI) or is engaged and paid

¹ In offering this suggestion, the Council is cognizant of the enforcement limitations placed on such interpretive documents by the Ontario Court of Appeal in *Ainsley Financial Corp. v. Ontario Securities Commission* 21 O.R. (3d) 104, hence the Council's preference for by-law references.

by a firm seeking itself to hire foreign nationals as employees in Canada or to recruit students to attend a DLI.

Section 13 – Inducement: Lawyers, Chartered Professional Accountants and many other professions routinely pay and accept referral fees. In general, these professions require disclosure to the client of any such payments and the obtaining of specific client consent prior to acceptance of the engagement for service. We submit that such an approach is preferable in the context of immigration consultants, particularly in view of the prevalence of international agents. Referral fees would encourage companies working in related sectors (*e.g.* foreign worker recruitment and student advisors) to refer their clients to RCICs rather than attempt to complete the immigration work themselves or through an unauthorized practitioner. Moreover, referral fees would encourage RCICs to refer work to other authorized practitioners who may be better able to serve the client’s interests. We suggest that this provision be expanded to include an exception to the general prohibitions in subs. 13(a) and subs. 13(b) where the inducement is made in accordance with the College by-laws respecting agency relationships. This exception, paired with a reference to the by-laws, allows the College to tailor specific safeguards that protect clients and promotes access to competent professional services.

Section 14 – Possession of original documents: Improper retention of client documents is a serious issue underlying many complaints against Council members. Immigration consultants have long advocated for the institution of a “consultant’s lien” similar to a Solicitor’s Lien which would permit the retention of client files, including original client documents such as passports, permanent resident identity cards, *etc.*, until outstanding invoices are paid in full. The Council does not believe that such a lien is in the public interest. Introduction of the undefined term “legitimate reason” does little to underscore the seriousness of improper document retention and will lead to the development of an ever-increasing list of “legitimate reasons” as each difficult complaint is adjudicated. Accordingly, we propose that Section 14 be amended as follows:

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, provided that any original documents of a client must be returned to the client upon completion of the copying or compliance with the requirement for which the document was provided by the client, or otherwise in accordance with the by-laws.

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.~~

Section 16 – Unauthorized behaviours: Many Council members practice other vocations in addition to the provision of immigration consulting advice and services. In many cases they do so in business relationships with spouses or other family members. While it is impossible to contemplate all possible arrangements, the prohibition of both direct and indirect financial transactions may assist. Clients may seek legal advice from many avenues including from licensed paralegals in some provinces and notaries in the province of Quebec. Accordingly, we submit that subs. 16(a) and 16(b) should be amended as follows:

Unauthorized behaviours

16 The following behaviours . . .

- (a) directly or indirectly, lending money to or borrowing money from, a client;
- (b) directly or indirectly, 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

The above sections address financial harms that often arise in complaints against current Council members. The same is not generally true of advice and services provided to family members, including spouses. Provisions similar to subs. 16 (c) in modern healthcare regulation have been held consistently by the courts to prohibit professionals from providing regulated services of any kind to spouses. Many regulated health professions have applied for and received spousal exemptions. Given that many immigration consultants are themselves relatively recent immigrants to Canada, we question whether preventing licensees from providing services to their spouses was the intent of subs. 16 (c). If not, we recommend adding the following new provisions:

Spouses excepted

(d) Despite subsection (c) engaging in an intimate personal relationship with a client does not constitute a conflict of interest and the client could provide consent, if the client is the licensee's spouse;

(e) For the purposes of subsection (d), "spouse", in relation to a licensee, means,

(i) a person who is the licensee's spouse as defined in applicable family law legislation,
or

(ii) a person who has lived with the licensee in a conjugal relationship outside of marriage continuously for a period of not less than three years.

Subsection 18(2) – Nature of competence: Paragraph 18 (2) (d) dealing with competence in an official language is confusing and could be read to require that all College licensees be bilingual. We propose that it be amended to read as follows:

(d) be able to provide the services to the client in one of the official languages ~~of the client's choice~~;

Section 20 – Maintaining Competence: For greater clarity, we recommend that this section be amended to read as follows:

Maintaining competence

20 A licensee must maintain the level of knowledge and skills required under the Act and any regulations and by-laws made under the Act for the class of license that they hold.

Paragraph 21 (1) (a) – Delivering quality service: The term “respect” is not used elsewhere in the Code and implies something less than “compliance.” For greater clarity, we recommend that para. 21 (1) (a) amended to read as follows:

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

Paragraph 24 (2) (c) and subparagraph 24 (2) (c) (i) – Service agreement: Preconditions: A client will often make multiple attempts for Canadian immigration status. Licensees should be aware of previous unsuccessful attempts. The following amendments to para. 24 (2) (c) are proposed to require the licensee to obtain additional information about previous attempts and the results thereof:

(c) confirm whether ~~if~~ the client has entered into a service agreement with another licensee or other person, and

(i) if so, confirm ~~ensure~~ that the service agreement with that licensee or other person has been completed and the results thereof, or has been terminated in writing before completion, or

Section 26 – Complaints: As discussed, the phrase “as soon as feasible” is indefinite and capable of multiple interpretations. It is intended that the by-laws of the College will set out, *inter alia*, detailed timelines for licensees to respond to client complaints. Accordingly, we recommend that this section be amended to read as follows:

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 in accordance with the timelines provided in the by-laws.

Section 27 and subsection 27 (b) – Errors or omissions: As discussed, the phrase “as soon as feasible” is indefinite and capable of multiple interpretations. Clients may seek legal advice from many avenues including from licensed paralegals in some provinces and notaries in the province of Quebec. Accordingly, we recommend that this section be amended to read as follows:

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 cannot be readily corrected, the licensee must, ~~as soon as feasible~~ in accordance with the by-laws,

. . .

(b) recommend that the client obtain ~~a lawyer’s~~ legal advice concerning any rights that the client may have arising from the error or omission;

Section 28 – Fees: Current Council rules do not permit the acceptance of engagements by RCICs on a contingency fee basis. Engagements on this basis, subject to conditions, have been permitted for some time by various Canadian provincial law societies to promote access to qualified representation and the justice system. Several survey respondents have offered the view that public understanding and legal precedent around the use of such fee arrangements have advanced to the point where they should be permitted for RCICs, subject to conditions on the fee amount and the types of services to be provided.

Subsection 32 (1) (b) – Mandatory termination of service agreement: Professionals are held to a higher standard of conduct as evidenced by the Code. Accordingly, we suggest that subsection 32 (1) (b) be amended as follows:

(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 would constitute a breach of this Code or of a regulation or by-law under the Act;

Subsection 33 (1) – Actions required – termination of service agreement: Again, the term “as soon as feasible” is not defined and should be replaced with a reference to the timelines established in the College By-laws:

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~~ in accordance with the by-laws,

Section 36 – Mandatory reporting to College: The College by-laws will establish timelines for the reporting of matters required to be self-reported. Accordingly, we suggest that section 36 be amended to read as follows:

Mandatory reporting to College

36 If any of the following circumstances arise, a licensee must report the circumstance to the Registrar ~~as soon as feasible~~ in accordance with the by-laws:

New subsection 36 (d) – Mandatory reporting to College: While the complaints process has the ability to award monetary damages to an aggrieved party, dissatisfied clients often seek redress through civil actions. These should also be reported to the College as they may indicate misconduct that puts the public at risk. Accordingly, we suggest that a new subs. 36 (d) be added to read as follows (and the current subs. 36 (d) renumbered as subs. 36 (e)):

(d) the licensee is named as a defendant in any civil action arising from or relating to the licensee's professional affairs;

Section 37 – Response to College: The College by-laws will establish timelines for responses requested of licensees by the College. Accordingly, we suggest that section 37 be amended to read as follows:

Response to College

37 A licensee must, ~~as soon as feasible~~, respond fully to any communication from the College in accordance with the by-laws.

Section 38 – Communications with complainant: It is important that a client not be prejudiced notwithstanding the making of a complaint. Accordingly, it is proposed that s. 38 be renumbered as subs. 38 (1) and the following new subs. 38 (2) be added:

38 (2) If the complainant is a current client, the licensee must notify the College of their obligations to the client and continue to fulfill these obligations while adhering to any terms stipulated by the College.

Section 39 - Conduct of fellow licensee: Professional self-regulation requires that all licensees have a positive obligation to take responsibility for the ethical conduct of their fellows. However, the proposed requirement for a licensee to effectively investigate and determine whether another has breached the Code places too high an onus on the suspicious licensee. It is ultimately the role of the College to investigate and adjudicate licensee misconduct. There should also be

reasonable exceptions to this requirement and some guidance provided. Accordingly, we suggest that subs. 39 (1) and subs. 39 (2) be deleted and replaced with the following:

Conduct of fellow licensee

39 (1) If a licensee suspects that a fellow licensee has engaged in conduct that is inconsistent with this code or obtains any information raising doubt as to the competence, integrity or capacity to practise of such fellow licensee, the licensee must report the conduct or information to the College in accordance with the by-laws.

(2) For greater certainty, any licensee obtaining information regarding the following conduct on the part of another licensee must report such information to the College in accordance with the by-laws:

(a) the misappropriation or misapplication of funds of the client;

(b) a breach of undertaking or order of a court or of the College that has not been consented to or waived;

(c) a civil claim filed against the licensee by a client;

(d) the abandonment of an immigration or citizenship consulting services practice;

(e) participation in serious criminal activity related to a licensee's practice; and

(f) any situation where a licensee's clients are likely to be severely prejudiced.

Exception

(3) A licensee required to report information about a fellow licensee pursuant to subsections (1) need not do so where such reporting would result in:

(a) the breach of a statutory duty not to disclose;

(b) the reporting of a matter that has already been reported; or

(c) the reporting of a trivial matter.

Paragraphs 41 (1) (a) and (b) – Marketing of services: Council members have reported a number of instances where the widespread availability of a member’s registration number has facilitated identity theft by unauthorized practitioners. The Council is considering actions that it (and the College) may take to combat this misuse. The phrase “a high standard of professionalism” is unduly subjective. The College by-laws will include detailed advertising provisions. Accordingly, we suggest that para. 41 (1) (a) and (b) be amended as follows:

(a) their name, as registered with the College, and ~~their registration number~~ any other information required by the by-laws 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 interest of the public and consistent with the by-laws ~~a high standard of professionalism.~~

* * *

We appreciate the opportunity to provide the above comments and look forward to discussing them with you at your convenience. We also look forward to meeting with you further and supporting the bringing to fruition of this important public protection initiative. Please contact the undersigned directly should you wish further information or to discuss these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Murray', written in a cursive style.

John Murray

cc: B. Smith, IRCC
P. Christensen, IRCC