



CODE OF PROFESSIONAL CONDUCT FOR COLLEGE OF IMMIGRATION AND CITIZENSHIP CONSULTANTS LICENSEES

INTERPRETATION GUIDE

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

INTERPRETATION GUIDE

This interpretation guide is intended to provide clarification and guidance, with reference to current best practices, to Regulated Canadian Immigration Consultants (RCICs) and Regulated International Student Immigration Advisors (RISIAs) (collectively licensees), on the *Code of Professional Conduct for Licensees of the College of Immigration and Citizenship Consultants* (Code, or Code of Professional Conduct). This guide should be read in conjunction with the Code. Note that guidance has not been provided for all Code provisions. Additional guidance may be developed and included herein in the future.

FOREWORD

This foreword sets out the fundamental principles of professionalism that underlie the provisions of the Code and govern licensees' responsibilities to the public, to their regulator and to their colleagues.

Professionals must understand the characteristics of a profession, and the requirements that professional status places on the professional. These requirements include both written rules that must be followed, and the behaviour and approach expected of those who provide professional services to the public.

Characteristics of a profession

Providing services for compensation does not, by itself, make one a "professional."

The concept of "professionalism" has been developed over time and is the subject of considerable legal scholarship, amplified and refined by court decisions. This work has identified the following characteristics that must be present before a vocation or calling can be considered a "profession":

- Professionals acquire an identified skill through education and/or training;
- Professionals apply the skill through personal service to assist others (clients) for compensation;
- Professionals maintain an essential objectivity while providing services;

- Professionals accept that personal interests must be subordinate to client interests and the public interest generally;
- Professionals belong to an established professional body that sets and maintains standards for entry and membership in the profession, and assures the public of the continued competence of these individual professionals and the competence and ethical standards of the profession as a whole; and
- Professionals follow a code of ethical conduct, established and enforced by the professional body, having as its primary goal, the protection of the public.
- In addition to these characteristics, there is also an understanding and acceptance on the part of all professionals of an ongoing duty to promote and support the development of their profession and peers.

The Code of Professional Conduct embodies the practical application of these fundamental characteristics of a profession and serves as a guide to the profession and as a source of assurance of the profession's concern for the public it serves.

Professionals voluntarily assume these ethical principles which are intended to protect the public and achieve orderly and courteous conduct within the profession itself.

Fundamental Principles Governing Conduct

The Code is derived from and promotes the following fundamental principles of professionalism:

Professional Behaviour

Public trust and respect are fundamental to a profession's ability to serve the public. Therefore, licensees must act, at all times, in a way that will maintain this trust and respect. This includes treating members of the public, the regulator, and other licensees with courtesy, and avoiding public statements and actions that will reflect poorly on colleagues and the profession.

Every licensed professional is a representative of the profession as a whole. Self-regulation is a privilege granted to professions on the understanding that the profession will govern itself in the public interest. Individual behaviour that departs from expected professional standards damages the reputation of the profession and undermines the public trust essential to its success.

Duty of Good Faith

Clients rely on professionals because of their specialized skills and knowledge. While the agreement between a professional and a client creates a contractual obligation to perform the agreed-upon services, this reliance also gives rise to the professional's duty to act in good faith, in the client's best interests, and to put the client's interests ahead of those of the professional. This duty may be increased when the relationship is particularly unequal due to a client's individual circumstances.

Integrity

Professionals must conduct professional dealings in an honest and straightforward manner. This includes following applicable legal requirements and professional standards and performing services with diligence and care. Where services are performed by others, the professional must ensure that employees and agents acting under their authority are appropriately trained and supervised.

Objectivity

To exercise sound professional judgment, the professional must view a client's circumstances objectively, free from any conflict of interest, bias, or undue influence. Early identification of real or perceived conflicts helps to establish the relationship of trust necessary to provide effective professional services. Where a conflict exists, the professional must use recognized means to mitigate its impact. In conflicts where mitigation is inadequate, the professional must decline to act.

Competence

The public seeks and trusts a professional's advice because of their specialized skills and knowledge. To maintain this trust, the professional must gain and maintain the skills and knowledge required to provide the services offered to the standards required by the profession.

Confidentiality

Client information obtained by the professional while providing services must be kept confidential and not disclosed without proper authorization. It must be used only for the purpose for which it was provided and must not be used for the personal advantage of the professional or anyone else.

Principles Governing the Responsibilities of Firms

Firms through which licensees provide professional services also have a responsibility to maintain the profession's reputation for competence and integrity. The way firms conduct their affairs and provide services affects the public perception of the profession as a whole. Firms must also be accountable to the profession and the public. Accordingly, licensee firms are subject to the Code in the same manner as licensees. Firms also are responsible for implementing policies and procedures designed to ensure that the licensees provide professional services in a manner that complies with the standards of conduct and competence prescribed in this Code.

Services provided by a firm are carried out by licensees who are expected to comply with the Code and other standards of practice of the profession. Where the firm has not done all that it could be reasonably expected to have done to ensure that such licensees and other employees do comply with professional requirements, both the firm and the licensee share accountability for a failure to comply with the rules. Steps expected to be taken by firms in this regard include:

- implementation of policies and/or procedures which are consistent with the Code and College By-laws;
- implementation of adequate quality control procedures;
- implementation of procedures to receive, record and resolve complaints by clients and others in a fair and expeditious manner; and
- implementation of procedures to prevent the condonation or concealment of misconduct.

These fundamental principles should be considered in conjunction with the various statutory, Code and By-law requirements applicable to RCICs and RISIAs. It is equally important to recognize that, in the context of professional regulation, the written rules are intended merely to establish a *minimum* standard of professional conduct. Professionals must seek to comply with both the spirit *and* the letter of applicable professional standards in all of their dealings.

Application of the Code

The Code of Professional Conduct applies to all licensees irrespective of the professional services provided. As noted, licensees are responsible for ensuring that services provided by non-licensees under their supervision are provided in compliance with the Code.

Licensees not engaged in the practice of immigration or citizenship consulting advice or services must observe the provisions of the Code, except where the clear wording of a Code provision makes it clear that the provision applies only to the practice of immigration and citizenship consulting, or otherwise exempts the activity from the application of the Code.

The term "professional services" also applies to licensees who are not engaged in the practice of immigration and citizenship consulting. This includes those activities where the licensee's associates or the public are entitled to rely on the licensee's membership in the College as giving the licensee particular competence and requiring due care, integrity and an objective state of mind.

Licensees are responsible to the College for compliance with these rules by others who are either under their supervision or share with them proprietary interest in a firm, agency or other enterprise. In this regard, a licensee must not permit others to carry out on the licensee's behalf acts which if carried out by the licensee would place the licensee in violation of the rules.

Licensees and prospective licensees who reside outside Canada continue to be subject to the rules of professional conduct of the College. Should the rules in two or more jurisdictions conflict, a licensee will, where possible, observe the higher or stronger of the conflicting rules and, where that is not possible, they will consider and apply the ethical conflict guidance set out above and elsewhere in this Interpretation Guide.

Interpretation of the Code of Professional Conduct

The provisions of the Code are to be read in light of the foreword and of any applicable provisions of the By-laws of the College.

INTERPRETATION

Definitions

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

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

client means a person or entity that

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

Interpretation

The definition of “client” as a person or an entity is new and was not in the previous RCIC Code of Professional Ethics; however, it has been defined in Council regulations.¹ A client is an individual who reasonably concludes, based on a subjective belief, that the licensee has agreed to provide or has provided the service, regardless of whether a written agreement was signed or not. Once a person has satisfied the criteria of one of the subsections 1(1)(a), 1(1)(b) or 1(1)(c), they are considered a client. It is not a requirement under subsections 1(1)(b) and 1(1)(c) to enter into a consultation agreement or a service agreement to qualify as a client. Also, subsection 1(1)(c) does not automatically qualify an individual as a client. There must be objective evidence to demonstrate that the person had a reasonable expectation that the licensee agreed to provide services. For example, while only one spouse may be paying the licensee for a spousal sponsorship application, both spouses can reasonably expect that the licensee will provide them services and that they are the licensee’s clients.

¹ Pursuant to s. 85(7)(o) of the Act, the By-laws and Regulations of the Immigration Consultants of Canada Regulatory Council (Council) remain in effect until replaced by Government Regulations promulgated under the Act and new College By-laws made by the College Board of Directors. It is anticipated that these Government Regulations and College By-laws will be completed in 2024. This Interpretation Guide will be updated to reflect these new instruments when they are in force.

Clients of licensees who simply share an office with other licensees but do not operate as a firm, are not clients of those other licensees. Licensees working in these shared office spaces should clarify that there is no affiliation with those other licensees and that clients should not expect to receive services from those other licensees. A client of a licensee working for a firm is the client of that firm.

Providing general information to an individual does not necessarily make them a “client”. However, when the information provided becomes personal, deals specifically with the individual’s circumstances and includes services that could be provided, it is likely that a client relationship may exist. The definition of client does not change any current practices.

“Consulting” and “consulting services” includes all immigration and citizenship services a licensee may provide, including advice and representation.

The Act (s.10) deems the “members” of the College to be the licensees. All RCICs and RISIAs are now “licensees” of the College.

Conflict of Interest

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

(a) may improperly further their private interests or another person’s interests, resulting in a material compromise to the licensee’s ability to fulfill their professional obligations to a client; or

(b) cannot fulfill their professional obligations to a client without materially compromising the licensee’s ability to fulfill their professional obligations to another client or a former client.

Interpretation

This definition of conflict of interest is new and should be read in conjunction with sections 5, 15, 16, 17, and 18 of the Code.

When an individual’s business/firm or family relationships, friendships or social factors could compromise their judgment, decisions, or actions, it is considered a conflict of interest. In addition, it is important to note that a conflict of interest could arise at any time in a client-consultant relationship.

Family may include an individual’s father, mother, stepfather, stepmother, foster parent, brother, sister, stepbrother, stepsister, spouse, common law partner, child (including child of a common law partner), stepchild, ward, father-in-law, mother-in-law, or relative permanently residing with the individual.

Types of conflict of interest can include:

- any action/decision that could result in financial gain, social or cultural advantage;
- any action/decision that could benefit an individual such as special consideration by persons of influence, disclosure of information that advances a position, or referral to another business where the licensee has a financial interest;
- any action/decision that involves a person getting or giving a “deal” on property, merchandise, etc. that would compromise the individual’s values and beliefs (turning a blind eye to a transaction); or
- any action/decision that could put an individual at an advantage in their professional status such as disclosure of confidential information, non-disclosure, or critical information, or competing interests outside of the profession.

Performing two different (dual relationship) roles may knowingly or unknowingly expose the licensee to a conflict of interest. Some examples include, but are not limited to:

- a licensee who holds 2 licences (*e.g.*, holding a real estate licence and a College licence) and who provides those other services to a client;
- a licensee selling a vehicle to a client;
- a licensee renting accommodation to a client;
- a licensee providing employment to a client;
- a licensee providing investment advice or products to a client; or
- a licensee entering into a personal/romantic relationship with a client.

Section 15 of the Code outlines how a licensee can manage that conflict, by disclosing the conflict to the client and then obtaining the client’s free and informed consent in writing outlining that the client intends to continue working with the licensee despite the conflict. However, the section prohibits licensees from providing immigration/citizenship consulting services when to do so may compromise the licensee’s duty of objectivity or client confidentiality (s. 15(2) of the Code) – even if the client is willing to consent to receiving those services, notwithstanding that a conflict exists.

Section 16 of the Code sets out certain conflicts that are considered too serious to be resolved by disclosure and consent, except in the circumstances discussed therein. Sections 17 and 18 of the Code describe additional circumstances raising conflicts of interest and certain mitigation strategies applicable to employment recruitment and student recruitment services, respectively.

Purpose and Application

Purpose

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

Application

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

Interpretation

The Code seeks to set minimum standards of professional conduct and is applicable to all licensees acting in various capacities.

Specific inclusion of *pro bono* services underscores that the public seeks advice and services provided by regulated professionals because they trust them to provide competent and ethical advice which meets professional standards. Professionals have a duty to provide advice and services that meet the standards of the profession whether it is provided for compensation or on a *pro bono* basis. These standards are described in more detail in sections 4 through 20 of the Code.

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.

Interpretation

The standards of the profession are the model against which licensees are evaluated. They go beyond simply what licensees must do or not do. Professional standards consist of duties, behaviours, attitudes, levels of competence, and ethical principles. These standards must be followed when providing any services, whether for compensation or on a *pro bono* basis.

Cross-reference this section with the Foreword – Fundamental principles governing professional conduct.

Key points – acting honourably and with integrity:

- is critical for anyone entrusted to provide professional immigration services;
- comes with the responsibility given to licensees in return for the privilege to provide immigration services;
- is important, as conduct reflects on the entire profession;
- is necessary for upholding the integrity of the Canadian immigration system;
- is essential for establishing trust with clients, community, government, and other licensees;
- means that neither personal nor client interest can overtake the duty to perform obligations honourably and with integrity.

Example: counselling a client to misrepresent information on their application, although it may further the client's interest, undermines trust in the licensee and the profession generally.

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.

Interpretation

Conduct unbecoming can include conduct undertaken by a licensee while acting in either a professional or personal capacity. Whether conduct negatively impacts the reputation of the profession and the public's confidence and trust in it will be measured on an objective standard, i.e., would a reasonable person, learning of the conduct, be less inclined to have confidence in or trust a licensee?

The general standards included in this part of the Code (ss. 5-22) collectively illustrate the conduct expected of licensees and inform the definition of "conduct unbecoming".

Specific actions that could constitute "conduct unbecoming" include:

- taking advantage of a person's vulnerability due to age, inexperience, lack of education or ill health to the detriment of that person;
- being dishonest, committing fraud, breaching the client's trust;
- committing a criminal act or other statutory offence, demonstrating the licensee's lack of trustworthiness or mental or emotional instability.

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.

Interpretation

This section is new. It requires an additional commitment from the licensee to be invested in the client's cause, to advocate for the client and to act in the client's best interest, including in situations where the client's interest may conflict with those of the licensee.

Note that section 15 of the Code does allow the licensee to provide services where certain conflict of interest situations exist, provided the licensee has been transparent and has disclosed the nature and extent of the conflict to the client in writing and the client provides free and informed consent *in writing*.

Note also that section 16 of the Code sets out certain situations where a conflict of interest cannot be resolved by mere disclosure and consent. In these situations, and subject to the limited exemption provided in section 16(2), the licensee must decline to act for the client.

This section must be cross-referenced with section 6 of the Code – Duty of honesty and candour.

Duty of honesty and candour

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

Interpretation

Licensees have a positive obligation to be honest, transparent and candid when advising clients. This includes fairly and objectively assessing a client's needs and suitability for any available, applicable immigration programs, and providing an honest and straightforward opinion as to the client's chance of success as early as possible.

This duty applies as soon as the licensee begins advising the client, before a service agreement is even signed. Licensees should not propose immigration programs, for which the client has no objective chance of success. If there are risks or delays inherent to the program, those must be fully outlined to the client so they can make an informed choice. Moreover, licensees should propose the most efficient and cost-effective strategy for their clients, not the strategy from which the licensee has the most to gain financially or with which the licensee is most comfortable. In situations where the licensee is not sufficiently familiar with the requirements of a particular program (*e.g.*, investor class or refugee determination) or lacks the time and capacity to properly serve their client, a licensee needs to be upfront with their client about

their own limitations and offer the client the opportunity to meet with another, suitable authorized representative.

A licensee should carefully reflect on how their personal and financial interests influence their thinking and ensure that the professional advice they provide serves their client's best interests, not purely their own. All professionals struggle with the decision of whether to accept and take on a client whom they realistically cannot assist. This is a particularly difficult issue in the immigration context because of the desperate circumstances in which a number of clients find themselves. Nonetheless, licensees are expected to fairly outline to their clients the realistic prospects of a successful application and the licensee's limits in being able to change those prospects.

While a certain degree of uncertainty on the outcome is inherent to every immigration program, licensees should not use that as an excuse to either accept clients who have no prospect of success or to downplay the serious risk of a refusal. This duty also applies throughout the application process to afford the client the opportunity to withdraw without incurring unnecessary fees.

Duty of civility

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

Interpretation

Civility is required in all professional dealings with the courts, the Immigration and Refugee Board of Canada, government officers or officials, clients, other licensees, agents and the College as the regulator.

This requirement is clearly intended to be broad and encompass all dealings conducted in the capacity of a licensee, including dealings with professional colleagues and other business dealings arising from the licensee's work, and dealings with any other people that a licensee may encounter in the course of day-to-day work (*e.g.*, landlords, service providers and suppliers).

This obligation applies to licensee communications, written, digital, online or in person, and particularly to communications between licensees and the public, and between licensees and the College. A licensee must always act professionally.

Cross-reference this obligation with the Foreword – Fundamental Principles Governing Conduct, and s. 4(1) of this Code.

Relationship of trust

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

Interpretation

This section is new and should be read in conjunction with section 5 – Duty of loyalty, and section 6 – Duty of honesty and candour of the Code. It is inappropriate for a licensee to seek personal or business advantage by exploiting the vulnerabilities of a client, including, but not limited to:

- age
- culture
- economic status
- immigration status
- communication abilities (oral and written)
- gender
- mental health status
- country of origin
- disabilities.

Clients rely upon licensees from the outset of the client-licensee relationship because of the licensee's special knowledge and skills. This reliance may increase when a client is especially vulnerable due to other factors or circumstances. In these cases, the licensee must take extra steps to avoid the perception, on the part of the client or others, that the licensee is exerting undue influence over the client's decisions. These extra steps could include providing the client with additional explanatory materials (in the client's language of choice), obtaining, explaining and documenting additional client consent to individual steps occurring throughout the immigration application process, engaging another authorized representative to provide a second opinion and including it in the file, or, with the client's express consent, providing information to another person (*e.g.*, a family member) who will assist the client to understand and provide clear instructions to the licensee.

Compliance with applicable legislation

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

Interpretation

It should go without saying that licensees must comply with all applicable laws. This includes the *Immigration and Refugee Protection Act*, the *Citizenship Act*, the *College of Immigration and Citizenship Consultants Act* and any other legislation impacting a licensee in the course of business, including any College By-law and other College obligations imposed under the

College Act. This includes all requirements that relate to professional conduct and the competency of licensees (e.g., Continuing Professional Development and Annual Renewal requirements).

A licensee should consult with a lawyer or other legal professionals as necessary to ensure compliance with all applicable legislation.

Discrimination

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

Interpretation

This section references the federal *Canadian Human Rights Act* as the guide to ensure licensees do not engage in discriminatory practices.

The *Canadian Human Rights Act* sets out the following prohibited grounds of discrimination:

- a) Race
- b) National or ethnic origin
- c) Colour
- d) Religion
- e) Age
- f) Sex
- g) Sexual orientation
- h) Gender identity or expression
- i) Marital status
- j) Family status
- k) Genetic characteristics
- l) Disability
- m) Conviction of an offence for which a pardon has been granted or a record suspension has been ordered.

A discriminatory practice includes a practice based on one or more of the above prohibited grounds of discrimination or arising from a combination of prohibited grounds. Refusing to provide immigration or citizenship consulting services to a client based on any of the above grounds is discriminatory.

Intimidation and coercion

- 11** A licensee must not, in any of their professional dealings, intimidate or coerce any person, including by
- (a) applying undue pressure, directly or indirectly;
 - (b) making physical or verbal threats;
 - (c) engaging in any form of harassment, including sexual harassment;
 - (d) using their knowledge about social and cultural norms to exploit a situation;
 - (e) untruthfully asserting possible sanctions or administrative consequences; or
 - (f) threatening, without reasonable grounds, to file a complaint with law enforcement authorities alleging a contravention of a federal or provincial law, initiate a criminal proceeding or make a complaint to an administrative or regulatory body.

Interpretation

This section is new and provides examples of the types of intimidation and coercion that can occur directly or indirectly. Reliance on the licensee's expertise by the client places, or may be perceived to place, the licensee in a position of power and influence over the client. Licensees have a positive obligation to ensure that this unequal balance of power is not misused to exert any inappropriate power or influence over the client in any of their professional dealings. Examples of this could include:

- Providing clients with unrealistic deadlines or insisting on quick decisions;
- Clients can be easily intimidated by the overwhelming information involved in immigration processes, the authority of the government officials and the courts, and the technical language used by these institutions. Coercion occurs when a client feels forced into a decision or action. However, when a client has misrepresented their situation, used fraudulent documents, or committed any other illegal activity, it is the licensee's obligation (s. 12 of the Code) to explain to the client the ramifications of proceeding under these circumstances and if the client decides to proceed, the licensee must terminate the service contract.
- Sexual harassment is any unwanted comment, gesture, or action that is sexual in nature that makes someone feel afraid, embarrassed, uncomfortable or ashamed.
- Defying or ignoring a cultural or social norm may intimidate the client. It is imperative for the licensee to be aware and sensitive to cultural and social norms within specific cultural or social groups and not inadvertently or intentionally use these as a form of coercion or intimidation of a client.

- Language that may be perceived as too familiar or too formal can also be seen as a type of intimidation and/or coercion.

A licensee must never use the immigration process, the justice system or the regulatory body to threaten to file a complaint against a client. If a client has contravened a law or violated a rule set by an administrative authority or regulatory body, the licensee must report the client, if required or authorized by law (s. 28(2)(b) of the Code), if required to comply with a subpoena (s. 28(2)(c) of the Code), or if required by the College in the exercise of its powers under the Act (s. 28(2)(d) of the Code) and terminate the service agreement.

Dishonesty, fraud or illegal conduct

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

Interpretation

When a licensee is employed or retained and asked to do anything the licensee knows, or ought to know is dishonest, fraudulent or otherwise illegal the licensee must:

- Advise the client that the proposed conduct would be dishonest, fraudulent or illegal and should be stopped; and
- If the client still intends to pursue the course of conduct, withdraw from the matter and/or terminate the service agreement.

This section should be cross-referenced with subsection 35(1)(b) of the Code that requires a licensee to terminate their service agreement with the client if the client asks the licensee to act in a manner that the licensee knows or ought to know is dishonest, fraudulent, or otherwise illegal.

Inducement

- 13 (1)** A licensee must not

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

Non-application

- (2)** Paragraph (1)(a) does not apply in respect of an inducement offered to an agent who solicits

clients for a licensee if the licensee registers the agent's name with the College in advance.

Interpretation

An inducement is any benefit or advantage (including, without limitation, a gift, favour, bribe, benefit, bonus, monetary payments or commission) granted directly or indirectly to any organization or person that is prohibited under the Code.

A licensee must not give or receive 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.

When a client refers another client to a licensee and receives a discount in fees, it is an inducement.

Inducements for referrals and/or recommendations compromise the objectivity of the person providing the referral. When others are motivated by the potential for financial gain and refer clients to licensees who are simply willing to pay them the largest fee, it creates a conflict of interest. Also, the lack of transparency can undermine the client's trust as the client may not be aware of the true reason for the referral and/or the competency of the licensee being referred.

There is a difference between acceptable forms of marketing and client referrals. Licensees are not prevented from engaging in advertising their services (i.e., online or in print) or making reasonable expenditures on promotional items of nominal value, or public informational activities that may result in the referral of clients.

Acceptable marketing activities include those where:

- the licensee's firm is being specifically and directly promoted;
- the entity that the licensee is paying for that promotion is in the business of advertising; and
- the regular consumer would recognize the promotion as paid advertising.

Subsection 13(2) of the Code allows for an inducement to be provided to an agent who solicits clients for a licensee only if the licensee provided the College with the agent's information in advance and the information is validated by the College. The licensee will be required to pay to the College a registration fee, and an annual fee for maintaining the agent's registration (Agents Regulation, ss. 14.1(d) and 15.1). The College will conduct a verification process to approve the agent before the agent may provide any services on behalf of the licensee. The intention is to permit licensees to contract with international agents for referrals of potential clients in those international jurisdictions, not domestic agents. There is no need to identify domestic agents in Canada as section 20(2) of the Code allows a licensee to contract with

another individual to obtain assistance to provide immigration and consulting services. Any services a licensee requires within Canada should be individual contracts with service providers.

Licensee must ensure that any agent and/or individual contract for providing immigration or citizenship consulting services on behalf of a licensee must comply with section 38 of the Code – Professional Responsibility.

A licensee must supervise and assume all responsibility for any services provided by an agent or by contract, and ensure they are provided in compliance with the Code.

Fee

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

Interpretation

This section is new. There is a difference between a recruitment fee and an inducement fee.

An inducement fee (s. 13 of the Code) is paid to an organization or person for recommending/referring the licensee to a client or referring a client to a licensee.

A recruitment fee is the fee paid by the employer to the licensee for recruiting a client to work for the employer (s. 17(3)(d) of the Code) or providing student recruitment services (s. 18(3)(d)). These fees are not considered inducement fees. However the licensee must disclose to the client/student any fees the licensee is receiving from the employer or institution for recruiting the client/student.

Fees are part of the service agreement that is signed by the licensee and the client. However, if the licensee is advertising/promoting a reduction in fees as an incentive for the client to engage the licensee and there is no referral involved and no third party, it does not fall under the category of inducement.

Original documents

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

- a) making copies;
- b) complying with a legal requirement or a requirement of a government authority; or
- c) a purpose to which the client has consented in writing.

Interpretation

The best practice for licensees is to not possess any original client documents, including digital and paper copies as well as the client's online account and login information.

Clients can bring original documents to the licensee for copying; however, the licensee should not keep the original documents. A licensee working with an agent must supervise and assume responsibility for any work done by the agent (s. 38 of the Code) which includes copying and returning original documents for clients out of the country.

Improper retention of clients' documents is a serious issue that has led to many complaints against licensees.

Client documents include:

- Documents created before the retainer/service agreement, provided by the client or from a third party;
- Documents prepared by the licensee for the client's benefit or protection and paid for by the client;
- Documents prepared by a third party and sent to the licensee (other than at the licensee's expense);
- Documents sent to the licensee by a third party; and
- Documents sent by the licensee to the client.

Where a licensee requires original client documents for the purpose of providing professional services, the client should be provided with the reason the original document(s) needs to be retained by the licensee and the date the document(s) will be returned to the client, in writing.

Client documents

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

Interpretation

In addition to taking possession of original documents for the purpose of copying, licensees may take temporary possession to facilitate the submission of applications or processing before the Immigration and Refugee Board of Canada (IRB).

When licensees temporarily possess any original documents from a client, the licensee must obtain the client's consent in writing and must return the original documents upon completion of the requirement for which the document was provided by the client, or otherwise in accordance with the by-laws.

Section 4 of the Client File Management Regulation makes no reference to "original" documents. All documents in the licensee's possession are copies.

Conflicts of interest

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

Duty to avoid conflict

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

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

Interpretation

This section of the Code further restricts the ability of licensees to provide services where there is a real or potential conflict of interest. Prior to this, licensees could simply disclose the conflict and seek the consent of their client. Licensees must now also have reasonable grounds to believe that their objectivity, relationship of trust, and duty of confidentiality towards the client would not be compromised. This requires introspection on the part of the licensee.

The licensee must not provide immigration or citizenship consulting services unless the conflict of interest is disclosed, and the person must give free and informed consent in writing. To meet this standard, the licensee must fully explain the conflict and the client's consent must be provided voluntarily.

Licensees should note that the term "conflict of interest" is broadly defined in section 1(2) of the Code and includes specific behaviours and activities listed in sections 16 and 17 of the Code.

Immediate family means an individual's father, mother, stepfather, stepmother, foster parent, brother, sister, stepbrother, stepsister, spouse, common law partner, child (including child of a common law partner), stepchild, ward, father-in-law, mother-in-law or relative permanently residing with the individual (definition under s. 1.1(ii) of By-law 2021-2). Licensees have a duty to disclose any potential conflicts of interest to clients and/or employers.

Examples of types of conflicts of interest may include:

Business: licensee acts as an investment advisor to the client;

Personal: licensee is in a personal/romantic relationship with the client;

Material: licensee sells property, vehicles, etc. to the client;

Professional: dual relationships – licensee performs two roles that conflict with each other (real estate agent and immigration representative).

The onus is on the licensee, not the client, to determine whether a conflict of interest exists.

Unauthorized behaviours

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

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

Interpretation

This is a new requirement which prohibits certain relationships that create serious conflicts of interest by their very nature. These conflicts are considered so serious and difficult to mitigate that the Code prohibits licensees from providing services under these circumstances. Note that a "direct" conflict is one involving the licensee, whereas an "indirect" conflict is one where the benefit arising from the conflict may flow to a related party to the licensee or the client or, where the conduct may be performed by a related party to the licensee or the client.

Examples of a direct conflict include the sale of a property to a client by a licensee acting for the client, where the licensee is also a realtor and receives a commission from the purchase; or hiring of the client by the licensee as an employee. Examples of an indirect conflict could include a licensee suggesting that a client provide a loan or gift to the licensee's spouse or other close family member or investing in a corporate entity owned or controlled by the licensee.

Other notes to consider: The direct or indirect use of a client's property, vehicle or other monetary services or items is considered borrowing from a client.

A client directly or indirectly using a licensee's property, vehicle or other monetary services or items is considered lending to a client.

In situations where circumstances require a licensee to pay application fees on behalf of a client, the licensee is required to document the payment and the agreed date the client will reimburse the payment. The payment is not considered to be a loan.

Entering a payment plan with a client for payment of the licensee's professional fees would not be considered a loan provided the payment plan is agreed to in writing as part of the service agreement and includes an explanation of all services and any other fees, such as any related interest.

A licensee must obtain acknowledgement in writing that the client has received independent legal advice stating that the transaction referred to in subsection (b) is not a conflict of interest. "Other transactions" may include, but are not limited to, rental of property, event and/or airline tickets, or entertainment and meals.

A licensee should not represent a client or enter a service agreement with any person who they are involved with in an intimate relationship.

Spouses are the exception to section 16(1)(c). A spouse of a licensee means a person who has lived with the licensee in a conjugal relationship outside of marriage continuously for a period of at least one year before any services are provided.

Interpretation — paragraph (1)(b)

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

Definition of *employment recruitment services*

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

- (a) seeking or obtaining employment for a client;
- (b) assisting or advising any person with respect to seeking or obtaining employment for a client;
- (c) assisting or advising an employer or another person with respect to hiring a client; or
- (d) referring a client to another person who offers the services referred to in any of paragraphs (a), (b) or (c).

Conflict of interest — employment recruitment services

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

Interpretation

A licensee must clearly state the services that will be provided to the client in the service agreement and identify any conflict of interest (s. 24(3)(o) of the Code). A licensee cannot provide immigration or citizenship consulting services AND employment recruitment services to a client who is a foreign national unless the conditions in section 17(3) of the Code are fully met.

Note that the definition in section 2(1) of the *Immigration and Refugee Protection Act* defines “foreign national” as “a person who is not a Canadian citizen or a permanent resident, and includes a stateless person”. A “permanent resident” is defined in the same section as “a person who has acquired permanent resident status and has not subsequently lost that status under section 46”.

Some provinces have licensing requirements for individuals or businesses involved in the recruitment and placement of foreign nationals. A licensee must comply with the applicable provincial legislation, if any, in order to provide employment recruitment services.

Conditions

- (3)** However, a licensee may provide both immigration or citizenship consulting services and employment recruitment services to a client who is a foreign national if the licensee
- a) before providing those services, advises the client that they are not obligated to receive both services from the same individual and obtains the client’s free and informed consent in writing to proceed;
 - b) ensures that the service agreement clearly differentiates between the immigration or citizenship consulting services and the employment recruitment services that will be provided to the client;
 - c) does not directly or indirectly charge a fee or disbursement to the client for any employment recruitment services;

- d) discloses to the client the fees that the licensee is receiving from an employer for recruiting the client to work for the employer;
- e) complies with all applicable legislation governing the provision of employment recruitment services; and
- f) demonstrates honesty and candour towards the client and commitment to the client's cause, including by providing the client, before they begin working in Canada, with a copy of their employment contract and accurate information regarding the work that they will be doing and their wages, benefits and working conditions.

Interpretation

A licensee can provide immigration or citizenship consulting services AND employment recruitment services to a client (acting in a dual role/capacity) if the following conditions are met:

- The licensee informs the client that there is no *obligation* to have both services provided by the same licensee or firm;
- The client provides free and informed consent to the dual services in writing;
- There is no direct or indirect fee or other cost charged to the client for any employment recruitment services, including any increase to the usual fees charged for immigration consultancy services (*e.g.*, work permit fees);
- The licensee informs the client of the exact fee (if any) the licensee is receiving from the employer for recruiting the client;
- The licensee complies with all applicable legislation regarding employment recruiting services;
- Before the client begins working in Canada, the licensee provides the client with a copy of the employment contract; and
- Accurate information regarding the work, wages, benefits and working conditions expected of the client.

Pursuant to section 9 of the Code, a licensee must demonstrate law compliance with all applicable legislation, including the Act, and any regulations and by-laws made under the Act. In addition to meeting the conditions in section 17(3) of the Code, a licensee must also comply with the applicable provincial legislation, if any, especially given that some provinces prohibit licensees from providing both immigration or citizenship service AND employment recruitment services to a foreign national.

Definition of *student recruitment services*

- 18 (1)** For the purposes of this section, *student recruitment services* means any of the following services:
- (a) seeking or obtaining enrollment for a client at an institution that provides education or training to international students;
 - (b) assisting or advising any person with respect to seeking or obtaining enrollment for a client at an institution that provides education or training to international students;
 - (c) assisting or advising a representative of an institution that provides education or training to international students or any person with respect to admitting a client to such an institution; or
 - (d) referring a client to another person who offers the services referred to in paragraphs (a) (b) or (c).

Interpretation

This is a new, broader definition intended to clarify that student recruiting activities performed by licensees are within the regulatory ambit of the College and may only be performed with the provision of immigration services if certain conditions are met.

Note that section 18(2) of the Code provides a clear exemption for licensees employed directly by educational institutions.

Section 17(2) of the Code should be cross-referenced to section 15 of the Code – Conflicts of interest

Conflict of interest — student recruitment services

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

Interpretation

The prohibition against a licensee providing both immigration and student recruitment services, except under the prescribed conditions, is intended to address abusive circumstances where a licensee's interests may, or may be seen to, conflict with those of the student/client due to the payment of recruitment fees or inducements to the licensee from an employer or

other third party. To address this real or perceived conflict, the Code requires that the conditions set out in section 18(3) be observed. These conditions require, among other things, disclosure of the existence and amount of any fees the licensee is receiving from the employer or third party and notice to the student/client that they are not obligated to receive both services from the same licensee and must consent in writing should they wish to do so.

This written consent requirement is an important protection for licensees as, in many cases, express client consent (evidenced in writing) will mitigate a real or perceived conflict of interest. Note, however, that the Code requires the consent to be “free and informed” to be valid. While there is much case law on the meaning of this legal term, “free” consent generally requires that the giver not be subject to pressure or undue influence, including threats or intimidation; and “informed” consent generally requires that the giver have a full understanding of any facts and context necessary to understanding the advantages and disadvantages of giving or withholding the consent. These are high standards to meet. Licensees are cautioned to err on the side of providing more, rather than less, information, and engage in well-documented discussions with any client where consent is sought under this exemption.

Additional conditions include:

- (1) provision of a detailed service agreement that expressly discloses and describes each of the individual services (*e.g.*, immigration and student recruitment that will be provided);
- (2) disclosure of any recruitment fees paid to a licensee by an employer or educational institution for recruiting clients or students to work for that employer or study at that educational institution;
- (3) provision of detailed information about the educational institution, its services, processes, fees and the proposed student’s course of study; and
- (4) compliance with applicable provincial and other legislation impacting recruiting activities.

Finally, subsection 18(3)(c) of the Code prohibits the licensee from charging any fees or disbursements attributable to the recruiting process to the client/student. This last requirement clearly indicates that the regulatory regime implemented by the Code intends the licensee to provide any recruitment services (as distinct from immigration services) for the account of the employer or educational institution, and not the client/student.

Conditions

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

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

Interpretation

As per section 13 of the Code, an inducement fee is paid to an organization or person for recommending/referring the licensee to a client or referring a client to a licensee while a recruitment fee is the fee paid by the employer to the licensee for recruiting a client to work for the employer. An inducement fee is prohibited.

Licensees may perform a dual role by providing recruitment services and immigration and/or citizenship services. In these cases, a copy of the employment contract for licensees who are also recruiters must be provided to the client (ss. 17(3)(f) of the Code).

A licensee can provide both immigration or citizenship consulting services AND student recruitment to a client who is a foreign national if:

- the client is advised they are not obligated to receive all of the services from the same licensee;
- the client consents in writing to receive all of the services from the same licensee;

- the service agreement clearly defines the differences between each of the services;
- no fees, either directly or indirectly, are charged for any student recruitment services;
- the licensee discloses the fees received from an educational institution for recruiting the client to study at that learning institution;
- the licensee complies with all applicable legislation pertaining to student recruitment;
- licensee provides accurate written information and a copy of the student's enrollment agreement, program of study and tuition fees as well as the refund policy of the learning institution and the support and benefits that it will provide.

Competence

Competence and diligence

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

Nature of competence

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

- (a) have the knowledge and experience necessary to provide the required immigration or citizenship consulting services and offer sound and comprehensive advice to a client, including in-depth knowledge of the *Immigration and Refugee Protection Act* and the *Citizenship Act* and any related programs and policies;
- (b) have the oral and written communication skills necessary to protect a client's interests and present a client's case firmly and persuasively and within the limits of the law, including the ability to
 - (i) make clear and cogent oral and written representations in legal proceedings,
 - (ii) identify the salient points in an argument and respond to them effectively in the course of a hearing, and
 - (iii) know when it is appropriate to apply for an adjournment of a hearing and argue effectively for it;
- (c) meet any applicable provincial competency requirements in relation to the provision of immigration or citizenship consulting services;
- (d) be able to provide the services to the client in at least one of the official languages of Canada;

- (e) be able to deliver the services to the client using technology that is appropriate and effective; and
- (f) maintain a good working knowledge of the regulations and by-laws made under the Act that relate to the professional conduct and competence of licensees and of any related policies, procedures and guidelines of the College.

Interpretation

Competence to perform a particular professional service includes two aspects – knowledge and skills, and personal capacity. Knowledge and skills are determined by formal qualifications, including licensing, and experience.

For example, licensees who have not obtained the “Class L3 – RCIC-IRB – Unrestricted Practice” licence before July 1, 2023, will not be competent to represent clients in matters before tribunals of the Immigration and Refugee Board of Canada (IRB) after that date, and must refer a client needing these services to a licensee with the RCIC-IRB qualification.

In other circumstances, a licensee who is technically permitted to perform a particular service under the terms of their licence, may still lack the experience or specific knowledge (and therefore the competence) to do so. Many trial lawyers, for example, would not attempt to do a real estate transaction, though technically permitted to do so under law society rules. Immigration consultants who specialize in specific areas of practice, should be wary of undertaking tasks in unfamiliar areas. Likewise, a new licensee should take time to consider whether they have the requisite skills and experience to carry out each new matter they propose to take on. Where a client file raises complex issues that may be beyond the skills and experience of the licensee, it may be prudent, or necessary, to engage more experienced co-counsel or refer the file to another licensee.

Issues of physical or mental capacity can also render a licensee “incompetent” to provide services. Section 38.1 of the By-law describes a licensee as incapacitated if, by reason of physical or mental illness, condition, or disorder, they are incapable of meeting their obligations under the by-laws, Regulations or Code of Professional Conduct.

The By-law allows the College to investigate a licensee if information has been received suggesting the licensee is incapacitated (s. 38.2 of the By-law). Following an investigation, the Fitness to Practise Committee can make a determination of the licensee’s capacity (s. 38.3 of the By-law) and an examination by a physician or psychologist can be ordered. Should the licensee refuse to be examined, their licence is suspended until they comply. If the licensee is determined to be incapacitated the Fitness to Practise Committee may by order:

- suspend the licensee’s licence;
- impose restrictions or conditions on the licensee’s right to practise; or
- make any other order, other than revoking the licensee’s licence, that the Fitness to Practise Committee considers necessary to protect the public interest.

The official languages referenced in subsection 19(2)(d) of the Code are English and French. A licensee must be competent to provide services to a client in one of Canada's official languages. If the licensee is unable to provide services in the official language of the client's choice, the licensee should refer the client to another licensee or authorized representative who is competent to provide services in that language.

Obligation if not competent

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

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

Interpretation

With the client's consent, a licensee who lacks the particular competence to provide specific services but overall is a competent consultant can obtain assistance from another authorized representative who has the specific competence.

For example, licensees who hold a Class L3 – RCIC-IRB – Unrestricted Practice licence and licensees who are also paralegals licensed by the Law Society of Ontario are competent to represent clients before IRB tribunals (paralegals can practise before IRB tribunals under their paralegal licence).

Cross-reference to service agreement requirement (ss. 24(3)(e) of the Code) to name those who may assist on a file.

Requirements — services of another

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

- (a) the terms of the arrangement, as well as the name of the other individual who will be providing the services and the scope of the services, must be disclosed to the client in writing; and
- (b) any fees or disbursements in relation to the services provided by the other individual are subject to subsection 31(3).

Maintaining competence

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

Interpretation

A licensee is required to maintain the level of knowledge and skills under the Act and any regulations and by-laws made under the Act for the class of licence they hold as determined by the College.

Section 10 of the College By-law describes the classes of licences as follows:

- a) Class L1 – RCIC – Conditional Practice;
- b) Class L2 – RCIC – Restricted Practice;
- c) Class L3 – RCIC – IRB – Unrestricted Practice;
- d) Class L4 – RISIA – Conditional Practice; and
- e) Class L5 – RISIA – Unrestricted Practice.

This obligation to maintain an adequate level of knowledge and skills includes the College's mandatory requirements to complete the New-Licensee Mentoring Program, to complete the applicable Practice Management Education (PME) courses, to satisfy the annual Continuing Professional Development (CPD) requirements, as well as complete any other additional trainings prescribed by the College.

Only licensees who have been issued a Class L3 – RCIC-IRB – Unrestricted Practice licence on or after July 1, 2023, and licensees who are also paralegals licensed by the Law Society of Ontario have the knowledge and skills to represent clients before IRB tribunals.

Delivering quality services

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

- (a) comply with the applicable deadlines and timelines for an application, expression of interest or proceeding;
- (b) conduct the client's affairs in an efficient and cost-effective manner;
- (c) communicate with the client in a timely and effective manner;
- (d) demonstrate cultural sensitivity;

- (e) obtain assistance, when necessary, including by retaining the services of an interpreter or translator; and
- (f) if applicable, provide instructions and guidance on how the client may access online information regarding their application, expression of interest or proceeding, including any associated processing information.

Interpretation

The wording in this section requires a licensee to use “best efforts” and reflects the high standards of service expected of a licenced professional.

The licensee **MUST** meet deadlines, operate in a cost-efficient manner, communicate effectively with the client, be culturally sensitive, retain a translator or interpreter if necessary and guide the client through the pertinent online information.

Quality service means dealing with clients transparently in a respectful helpful way and providing a professional experience. To provide quality service a licensee must fully understand the client’s needs and communicate with the client regularly using the most appropriate and accessible means of communication for each client.

Quality service means:

- Reliability – dependability to perform the promised services accurately and on schedule;
- Responsiveness – ability to listen to clients, willingness to help, efficiency; and
- Flexibility/adaptability – ability to change directions, overcome obstacles.

Licensees are expected to meet all deadlines. The licensee should develop a service agreement with the client that is cost-efficient and outlines the process and expected timelines for the delivery of services.

All services provided by the licensee must foster a relationship of trust (s.8 of the Code) and not take advantage of the client’s vulnerabilities. Demonstrating cultural sensitivity that respects the client’s race, ethnic origin, colour, religion, age, sex and all of the other prohibited grounds of discrimination as described in section 10 of the *Canadian Human Rights Act* will promote the delivery of quality services.

In some cases, clients may be able to access online information regarding their application, expression of interest or proceeding. Licensees are required to inform clients if they can access their information online and to instruct the clients on the process. Delivering quality services also requires the licensee to walk the client through the necessary steps and to be available to answer any questions or concerns.

A licensee is required to obtain the services of a translator or interpreter when needed or requested by the client and is obligated to conduct their due diligence to help to ensure the quality of these services. This should be included in the service agreement.

Actions taken when representing client

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

Interpretation

It is the licensee's responsibility to make sure all client documentation is correct, is filled in completely, is signed by the client and is submitted prior to the due date in the prescribed format. Licensees should have the documentation completed as early as possible before the date it is to be submitted. Missing information should be identified well in advance of submission deadlines so that steps may be taken to obtain the required documentation in a timely manner.

The licensee must confirm with the client the date and time the documentation was submitted, and explain how the client can access their file through the IRCC online Portal.

Keeping client informed

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

- (a) notifying the client when a document or information has been submitted or received on the client's behalf; and
- (b) on request, providing a copy of the documents that were submitted or received.

Interpretation

It is the licensee's responsibility to ensure all the documents are gathered and prepared properly with no missing information, signed by the relevant parties and submitted using the prescribed process before the deadline.

In cases where a client may request a change in a document or a deviation from the process (*e.g.*, the client wants to keep the original document and submit a copy), it is ultimately the licensee's responsibility to ensure the process is followed and to explain to the client the importance of following the precise instructions. Although the licensee takes direction from the client, it is the licensee's professional obligation to advise and inform the client of the correct process and the consequences of not following that process.

In order to demonstrate to the client that the licensee is providing services in a timely and efficient manner it is important that the licensee keeps the client informed of all progress occurring in the client's case. This can be done in writing, digitally, by telephone or in person depending on the needs of the client. When done by telephone, the licensee should ensure that adequate notes are entered in the client file.

The client should be told as soon as possible when their documents have been submitted, what documents were submitted, when a response is expected to be received and what to expect next. The client should be able to access any documents in their file.

Delivering quality reliable services provides a foundation of trust (s.8 of the Code) in the client/licensee relationship.

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.

Interpretation

This section expands on the obligation of licensees to engage and retain interpreters and other service providers. Interpretation or translation services are not required unless they are needed or requested by the client. However, when the licensee retains the services of an interpreter or translator the licensee must give the interpreter or translator clear instructions that the translation must be exactly as expressed by the client and that all information is confidential.

The expectation is to retain services from a certified interpreter or translator. When there are no interpreters or translators with formal qualifications available, a licensee must exercise due diligence to confirm the person acting as an interpreter or translator is fluent in reading, writing, and speaking the client's language. Licensees are encouraged to document the selection process used and qualifications of any interpreters and translators engaged for the client file.

The licensee may ascertain the interpreter or translator’s fluency in reading, writing, and speaking the client’s language by use of a third party in situations where the licensee is:

- unable to confirm the interpreter or translator is certified by an organization;
- there is no certification process available (remote areas); or
- the client has provided their own translator or interpreter.

The service agreement must include a description of the translation or interpretation services, if any, to be utilized in connection with the client matter.

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.

Interpretation

A consultation agreement must be entered into whether:

- a fee is charged, or not; or
- the consultation does or does not result in a service agreement.

The purpose of the consultation agreement is to provide greater transparency and protect both the licensee and the client. The requirement to enter into a written consultation agreement is not intended to capture exploratory discussions, intake calls or purely marketing activities. A licensee is obligated to provide an honest and objective opinion of the client’s situation and possible outcomes. This should be discussed at the initial consultation or as soon thereafter as the information obtained by the licensee permits.

The licensee must keep a copy of the signed and dated consultation agreement for their records and must provide a signed copy to the client. Consultation agreements can also be digital agreements. A written or digital signature demonstrates the client’s consent but does not imply an obligation for the client to proceed beyond the initial consultation. In any event, a copy of the signed agreement must be provided to the client.

Providing generic information or answers to yes or no questions is not an initial consultation. However, once the information becomes personal and/or individual documents are assessed, or services that can be provided are described, it is considered an initial consultation even if it does not result in a service agreement.

Content of consultation agreement

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

- (a) the licensee's name, registration number, address, telephone number and email address;
- (b) the potential client's name and contact information, including their address, telephone number and email address, if any;
- (c) the fee for the consultation or, if the consultation is provided *pro bono*, a statement to that effect;
- (d) a brief description of the College's role as the licensee's regulator; and
- (e) a description of the purpose and scope of the consultation.

Interpretation

The Code, especially the following sections of the Code, adds many new requirements to the Council's Retainer Agreement Regulation:

- 23(2)(d) – the initial consultation agreement must contain a description of the College's role as the licensee's regulator. A client can be directed to the College website for the description of the regulatory role;
- 23(2)(e) – the purpose and the scope of the initial consultation. The goal of the consultation agreement and a description of the services included and not included fall under the purpose and scope of the consultation;
- 23(3) – a copy of the agreement must be provided to the client. A copy of the agreement can be provided digitally or a paper copy.

The initial consultation agreement must be entered into, whether or not a fee is charged or whether the consultation does, or does not, result in a service agreement. The consultation agreement in the Code is part of the Initial Consultation (s. 23 of the Code). The Retainer Agreement is replaced in the Code by the Service Agreement (s. 24 of the Code). The College Retainer Agreement Regulation is still applicable, with the exception of those sections that are not in compliance with the provisions of the Code.

The Initial Consultation Agreement does not need to be a formal or lengthy agreement but must be a written agreement in either English or French and must be dated and signed by the client and the licensee. Where the client is not physically present to sign the Initial Consultation agreement, a signature, including a digital signature, can be obtained through a mutually agreed upon method. This stage does not include exploratory discussions with a potential client nor general information about immigration processes.

Note: Sections 23 and 24 of the Code do not apply to a licensee who is a salaried employee of an entity or organization and who, in that capacity, provides immigration or citizenship

consulting services ONLY to that entity or organization or its employees and meets the following conditions:

- the primary business of the entity/organization is not the provision of immigration or citizenship consulting services;
- no fees are payable to the licensee by any employee of the entity/organization who receives services;
- the licensee disclosed to the entity/organization and any employees to whom the services are provided that the licensee is regulated by the College and is subject to the Code of Professional Conduct, but the obligations set out in sections 23 and 24 of the Code do not apply; and
- the licensee provides information about the College’s complaints process to the entity/organization and any employee to whom the services are provided.

The role of the licensee in this context is to represent the employee on behalf of the employer, with respect to submission of an application, proceeding or expression of interest under *Immigration and Refugee Protection Act* or the *Citizenship Act*.

The fact that the licensee is a salaried employee and is not paid by the employee receiving services negates the need for the provisions of the Consultation and Service Agreement with respect to fees.

Licensees requesting this exemption from sections 23 and 24 of the Code will be required to identify their employers to the College and confirm that the nature of the employer’s business meets the requirements to support the exemption.

Copy of agreement

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

Service agreement

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

Interpretation

This section is included in the Retainer Agreement Regulation and a service agreement **MUST** be entered into for all services a licensee undertakes whether for a fee or *pro bono*. Licensees must enter into a service agreement with a client before any immigration or citizenship consulting services are provided. A service agreement can be in written or digital form. In any event, a copy of the signed agreement must be provided to the client.

A service agreement is not required when a licensee is a salaried employee of an entity whose primary business is not the provision of immigration services and is employed to assist the entity and its employees with immigration services.

The Code does not include provisions for the client to appoint a designate to act on their behalf when dealing with the licensee.

Section 24(3)(e) of the Code allows a licensee to identify people who are likely to assist in the provision of immigration or citizenship consulting services.

In the case where two licensees are jointly sharing work on a file, both licensees should be identified in the service agreement with a description of the services each licensee will provide to the client (s. 24(3)(e) of the Code).

In the service agreement, licensees should outline what will happen with the client's file and what steps a client should take in the case of the licensee's unplanned absence, which includes contacting the College (as per the Planned or Unplanned Absence from Immigration/Citizenship Consulting Practice Regulation). Licensees should also consider identifying whom they have appointed as their designate.

Preconditions

- (2)** Before entering into a service agreement with a client, a licensee must
- (a) confirm the following information in respect of the client, seeking corroboration of the information if possible:
 - (i) their full name,
 - (ii) their home address and their personal telephone number and email address, if any, and
 - (iii) their business address, telephone number and email address, if applicable;
 - (b) provide the client with a draft of the service agreement; and
 - (c) verify whether the client has entered into a service agreement with another individual who is authorized to provide representation or advice under section 91 of the *Immigration and Refugee Protection Act* or section 21.1 of the *Citizenship Act* and, if so,
 - (i) confirm that the service agreement with the other individual has been completed or has been terminated in writing before completion and, if applicable, confirm the outcome of the completed service agreement, or
 - (ii) obtain clear instructions from the client on the scope of the service agreement, if the client wishes to engage the services of both the licensee and the other individual.

Interpretation

Before entering a service agreement with a client, the licensee should confirm whether the client has entered into a service agreement (formal or informal) with any other licensee or any other person. If there has been a prior agreement, the licensee must confirm with the client that the service agreement has been completed or terminated in writing before its completion, and the results are disclosed to the licensee.

If the client wants to have the licensee and the other individual provide immigration or citizenship consulting services, the licensee must get clear instructions on the scope and services provided by each individual to include in the service agreement.

Licensees should be made aware of any other previously unsuccessful attempts the client has made for Canadian immigration status. Corroboration of client information (s. 24(2)(a) of the Code) should be done wherever possible by requesting proof of identity documents such as birth registration, passport, employment records, financial statements, health insurance and/or rental agreements. Community and/or family members can also verify a client's information such as name, address and country of origin.

Content of service agreement

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

- (a) the licensee's name, registration number, address, telephone number and email address;
- (b) the information referred to in subparagraphs (2)(a)(i) to (iii);
- (c) a summary of any preliminary advice given to the client by the licensee;
- (d) a statement that the licensee endeavours to provide quality immigration or citizenship consulting services and to adequately supervise any person who assists in the provision of those services;
- (e) the names of the people who are likely to assist the licensee in the provision of immigration or citizenship consulting services;
- (f) the client's instructions;
- (g) an itemized list of the services to be provided, tailored to the needs of the client, that describes the nature of the services and their scope;
- (h) estimated time frames for the delivery of the services;
- (i) an estimate of fees, including the hourly rate and the anticipated number of hours, or an agreed fixed fee or, if the services are provided *pro bono*, a statement to that effect;

- (j) an estimate of expected disbursements;
- (k) any goods and services tax, harmonized sales tax or other tax or levy to be charged to the client;
- (l) the terms of payment for fees and disbursements, including any interest payable on unpaid amounts;
- (m) any advance payments to be made by the client and the licensee's refund policy;
- (n) an explanation of any additional costs that the client may be required to pay;
- (o) if applicable, a description of any conflict of interest or potential conflict of interest relating to the client;
- (p) a statement that any original documents provided by the client to the licensee will be returned to the client as soon as the purpose for which the licensee took possession of the documents has been achieved;
- (q) a statement that the licensee has an obligation of confidentiality under this Code and a description of the manner in which the licensee will maintain the confidentiality of the client's information and documents;
- (r) the licensee's complaint-handling procedure;
- (s) the official language of Canada in which the services will be provided;
- (t) a statement that the licensee will provide timely information related to the status of the client's case;
- (u) a statement that the licensee will obtain assistance, when necessary, including by retaining the services of an interpreter or translator;
- (v) a description of the College's role as the licensee's regulator and an explanation of the College's complaints process;
- (w) an explanation that the College may require the production of documents in accordance with the Act and any regulations or by-laws made under the Act;
- (x) a statement that the licensee has provided a copy of this Code to the client;
- (y) an explanation of what will happen to the client's file if the licensee becomes incapacitated or is otherwise unable to continue providing services under the agreement; and
- (z) any other terms agreed to.

Interpretation

Some of the content of this section is contained in the Retainer Agreement Regulation. The following is new content that was not in any previous regulations and is now required content of the service agreement:

- (a) the licensee’s name and registration number;
- (c) a summary of any preliminary advice given to the client by the licensee;
- (d) a statement that the licensee endeavours to provide quality immigration or citizenship consulting services and to adequately supervise any person who assists in the provision of those services;
- (e) identification of people who are likely to assist in providing consulting services – section 20(2) of the Code allows the licensee to engage third parties (lawyers, paralegals, etc.) to assist in aspects of immigration or citizenship services;
- (f) the client’s instructions – the licensee needs to clarify with the client their instructions to the licensee and the client’s expectations of the services that are to be provided. The instructions to the licensee should be given verbally and in writing;
- (g) services and their scope – the licensee must provide an itemized list of services that describes services that are included and those that are not included;
- (h) estimated timeframes for the delivery of services – licensees are required to provide an estimated timeframe for the delivery of services, not a guaranteed date by which services will be delivered or completed. The service agreement should allow for timeframes that are uncertain and out of the control of the licensee such as government processing and approvals;
- (i) the service agreement assumes hourly billing as the default; any other billing arrangement must be specified in the service agreement – contingency billing is prohibited as per the Retainer Agreement Regulation;
- (j) and (k) disbursements include fixed fees that need to be paid by third parties such as government application processing fees or courier fees versus professional fees. Some disbursements are predictable and can be included in the service agreement and others are not. The client must be informed of unexpected disbursements related to professional services and/or government required fees. The licensee must also advise the client of the factors within their control and outside of their control that may impact fees and/or estimated timeframes. Any additional fees or disbursements are subject to subsection 31(3) of the Code;
- (l) interest on unpaid amounts is new and is not current practice;
- (m) any advance payments must be identified, including any retainer fees – cross-reference with section 32 of the Code;
- (o) if applicable, a description of any conflict of interest or potential conflict of interest relating to the client – cross-reference with section 15 of the Code;

- (p) a statement that any original documents provided by the client to the licensee will be returned to the client as soon as the purpose for which the licensee took possession of the documents has been achieved – cross-reference with section 14 of the Code;
- (q) a statement that the licensee has an obligation of confidentiality under the Code and a description of the manner in which the licensee will maintain the confidentiality of the client’s information and documents;
- (r) the licensee’s complaint-handling procedure; this should include reference to the College’s complaint process in the event the licensee and the client cannot resolve a complaint;
- (t) statement that the licensee will provide timely information related to the status of the client’s case, recognizing that some areas are out of the licensee’s control, and will provide quality services as described in section 22 of the Code;
- (u) a statement that the licensee will obtain assistance, when necessary, including by retaining the services of an interpreter or translator – paying for the services of an interpreter or translator is the responsibility of the client. However, the licensee must confirm that the individual providing the services is fluent in reading, writing, and speaking the desired language and can accurately translate the information as per section 22(4) of the Code;
- (v) a description of the College’s role as the licensee’s regulator and an explanation of the College’s complaints process – this should be a template that is mandatory in all service agreements;
- (w) an explanation that the College may require the production of documents in accordance with the Act and any regulations or by-laws made under the Act;
- (x) confirmation that the licensee has provided the client with a digital or paper copy of the Code, or a hyperlink to the Code. For clients who require translation services in a language other than English or French, the licensee may be required to provide a translated version of the Code;
- (y) an explanation of what will happen to the client’s file if the licensee becomes incapacitated (s. 38 of the By-law) or, is otherwise unable to continue providing services under the agreement. The licensee should provide the client with instructions on how the client may:
 - obtain online access to all client information regarding their application, expression of interest or proceeding, and
 - verify the Department of Citizenship and Immigration’s online processing times related to application, expressions of interest and proceedings; and
- (z) any other terms agreed to.

According to this section, the service agreement must include all of this information in writing. This is an onerous list that requires the licensee or the College to prepare some documents that are mandatory in all service agreements such as:

- statement regarding returning original documents (p);
- licensee’s complaint-handling procedure (r);
- statement regarding the services of an interpreter or translator (u);
- description of the College’s role as the licensee’s regulator and an explanation of the College’s complaints process (v);
- explanation of the requirements under the Act and the regulations and by-laws made under the Act (w);
- confirmation that the licensee has given a copy of the Code to the client, which could be done by providing a link to the website or a hard copy of the Code (x);
- instructions to the client for online access of their immigration/citizenship information (y).

The service agreement should be written in clear language at a reading level that makes the text understandable for the client. Any acronyms or unfamiliar words should be defined or spelled out for the client. The licensee should go through each item of the service agreement with the client to answer any questions the client might have and to ensure the client understands the agreement. The service agreement should include:

- the description of the work that the licensee will do on behalf of the client;
- the description of the work that the licensee will not do;
- the identification of others within the licensee’s organization or business that may provide immigration/citizenship consulting services and the description of what services they will provide;
- the amount that the client will pay in advance and the amount to be paid upon completion of services;
- any advance payments required and the licensee’s refund policy;
- the services to be provided and costs of other professionals that may be required (lawyers, translators, interpreters, etc.);
- the types of applications required and the cost of each application;
- the estimated number of hours dedicated to preparation, submission, monitoring, and ongoing communication with the client; and
- the payment schedule.

The licensee must keep a digital and/or paper copy of the service agreement and must provide the client with a copy. Any changes requested to the service agreement by the licensee or the client must be agreed to by the client and the licensee in writing (s.24 (5) of the Code).

It is expected that the College will provide a standard service agreement template in due course.

Copy of agreement

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

Amendments to agreement

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

Non-application of sections 23 and 24

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

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

Interpretation

Licensees who are salaried employees of an educational institution or another organization that provides academic, professional, vocational or other educational training are not required to enter into an initial consultation agreement (s. 23 of the Code) or a service agreement (s. 24 of the Code) provided that the licensee:

- is a salaried employee and does not get paid by the employees or prospective students;
- only provides advice, not representation;
- discloses to the organization and the employees/students that the licensee is regulated by the College and by the Code of Professional Conduct;
- provides information about the College’s complaint process (College website); and
- provides information about the employer’s complaint process (employer’s website).

Exemption from application of sections 23 and 24

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

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

Interpretation

Licensees who are salaried employees in a business that does not provide immigration or citizenship consulting services to the public as a primary business, but only provides such services to the organization or its employees, are not obligated to enter into an initial consultation agreement (s. 23 of the Code) or enter into a service agreement (s. 24 of the Code), provided that the College is satisfied that the conditions in this section have been met.

Businesses and organizations that meet these criteria will be required to provide the necessary information to the College and the College will confirm if they are exempt from sections 23 and 24 of the Code.

Opinion to be provided

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

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

Interpretation

This is a new requirement that supports section 6 of the Code that requires the duty of honesty and candour. A licensee is obligated to provide an honest, objective opinion, whether positive or negative, of the client's situation and possible outcomes. This should be discussed at the initial consultation and the opinion should be provided as soon as the licensee has determined that the client has little chance of success so as to minimize the client's investment in a futile effort. If the client declines to proceed, any unearned fees or excess funds should be returned to the client promptly.

Obligation of confidentiality

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

Disclosure of confidential information

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

- (a) authorized by the client;
- (b) required or authorized by law;

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

Interpretation

Subsections 28(2)(d) and 28(2)(e) of the Code allow confidential information to be disclosed when it is required by the College under the Act and when the information is disclosed to someone who is assisting with immigration/citizenship consulting services to the client.

Subsection 28(2)(d) empowers the College to request disclosure of client information without reference to the By-law.

Confidential information that is authorized to be disclosed to a specific person does not permit “blanket” disclosure of all information, but only the information specific to the need for disclosure for that individual and that situation. Information may not be disclosed to a third party except as specifically authorized by the Code.

Any disclosure of confidential information, including digital information, authorized by the client or otherwise, should be authorized in writing or digitally and should be included as a mandatory section of the service agreement.

Information can be disclosed when there are allegations against a licensee or a person assisting the licensee that:

- an offence or violation involving a client’s affairs has occurred and;

- administrative penalties or consequences could be imposed for such an offence or violation, or;
- the licensee or person assisting the licensee has engaged their civil liability for an act or omission in respect to a client’s affairs, or;
- the College is investigating the conduct of the licensee or the person assisting the licensee.

Scope of disclosure

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

Interpretation

Confidential information that is authorized to be disclosed to a specific person does not permit “blanket” disclosure of all information, but only the information specific to the need for disclosure. Information may not be disclosed to a third party. Licensees should not assume that general authority to act on a client’s behalf constitutes implied consent for the use of a client’s confidential information. A licensee must obtain the client’s written consent for all disclosures of client information unless the Code provides otherwise.

Complaints

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

Interpretation

The term “promptly” indicates the immediacy of the situation. Client complaints can undermine public confidence in the profession and must be addressed by the licensee in a timely manner. For the purposes of the Code, “promptly” generally means as soon as practical and no later than 30 calendar days following the request.

Client complaints must be dated and documented. Licensees’ responses to client complaints must also be documented either electronically or by paper copy. A copy of the response must be kept in the client file and a copy provided to the client within 30 calendar days.

Errors or omissions

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

- (a) promptly and fully inform the client, the licensee’s professional liability insurer and the Registrar of the error or omission;

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

Interpretation

The term “promptly” has been used in this section to underline the immediate need to rectify an error or omission. For the purposes of the Code, “promptly” means as soon as practical and no later than within 30 calendar days.

The term “promptly” holds a licensee accountable to an immediate timeframe. It is best practice to act immediately to inform the client, recommend they obtain legal advice, provide confirmation to the Registration Department and to determine if it is appropriate to continue providing services to the client.

Errors and omissions must be dated and documented promptly. Responses to clients must also be documented with an electronic or paper copy provided to the client and included in the client’s file.

Interpretation — liability insurance

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

Fees

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

Disbursements

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

Additional fees or disbursements

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

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

Unnecessary increases — fees or disbursements

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

Interpretation

This is a new requirement for licensees to provide the client with a clear and accurate description of the work they will do, how much it will cost, the necessary advance payments, refund policies and fees of other professionals that may be required.

The number of estimated hours required by the licensee for preparation, submission, monitoring, and ongoing communication with the client should be listed and provided to the client. There should be no hidden fees and the estimated hours should be fair and reasonable to reflect the work required and the experience of the licensee and any other professionals that may be required.

Fair and reasonable fees should reflect the following:

- the time and effort required by the licensee to deliver the services;
- the level of difficulty of the services expected;
- any special skills or services to be provided;
- whether the desired outcome was achieved;
- the fees authorized by statute or regulation;
- the level of experience and skills of the licensee;
- the estimate or range of fees included in the service agreement; and
- the client’s consent to the fees.

The service agreement signed by the licensee and the client is required to include the estimate of disbursements (s. 24(3)(j) of the Code) and an explanation of any possible additional costs that may be required (s. 24(3)(n) of the Code). The client’s signature on the service agreement acknowledges consent to the described fees.

Should any additional increase in fees occur, the licensee will inform the client, if possible before the fees are incurred, and obtain the client’s consent in writing. If the additional fees

are a result of factors outside of the licensee's control, the licensee must provide an explanation to the client in writing and the client must confirm and consent to the increased fees.

Advance payments

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

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

Interpretation

This section contains elements of the Client Account Regulation and explicitly requires the licensee to issue receipts that clearly indicate the amount the client has paid to the licensee in advance (retainer) and instructs the licensee to deposit the advance payment into the client account.

Advance payments must be deposited into the client account within 14 business days. A licensee must provide the client with a receipt of the advance payment indicating the date, amount of payment, services for which the payment applies and an estimate of the date the services will be rendered. The receipt must clearly itemize other fees for services such as translation, interpretation or expert services that are part of the advanced payment. The licensee must invoice the client for approval prior to the licensee withdrawing any funds from the client account.

Delivering quality services (s. 22 of the Code) requires the licensee to provide services in an efficient, timely and effective manner. Invoices and receipts must be itemized and must describe the services rendered on behalf of the client to demonstrate good accounting practices and transparency of costs and services.

The College will develop a list of approved financial institutions to be made available to licensees and the public.

Invoice

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

Description of services and disbursements

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

Receipt

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

Interpretation

Current practice requires licensees to invoice (digitally and/or paper copies) clients following the provision of immigration or citizenship consulting services. The client's invoice must include:

- name of client;
- itemized list of services rendered;
- date(s) the services were rendered/completed; and
- the total professional fees payable to the licensee for those rendered services.

The Code has a further requirement for the licensee to provide the client with a receipt that clearly indicates the services to which the payment relates. Licensees must provide a client with a receipt for the original advance (retainer) payment. A receipt must also be provided each time the licensee withdraws from the client account to pay for specific services described in the service agreement.

Termination of service agreement

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

(a) is done for good reason, such as the client having

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

Interpretation

The licensee is authorized to terminate a service agreement before its completion if reasonable notice is given to the client. Notice is not considered reasonable notice if the termination of the agreement has a negative or prejudice effect on the client’s immigration or citizenship status. The licensee should keep detailed records regarding the steps taken and the reason for the termination of the service agreement.

Avoiding prejudice to the client, or the perception of prejudice, should be the licensee’s primary concern when considering terminating the service agreement.

A licensee should make all efforts to terminate the contract in between deadlines and services and should ensure the client has information to access the status of their documentation on their online account.

Mandatory termination of service agreement

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

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

Interpretation

A licensee who breaches the Code, the Act, or a regulation or by-law, or a licensee who lacks the competence to continue to practise must terminate a service agreement with a client. A licensee can lack the competence to fulfill their professional obligations due to issues such as business cessation, insolvency, suspended or revoked licence, or health or personal issues. It

must be noted that College By-laws do not prohibit licensees from continuing to serve clients in all cases of insolvency (s.37 of the By-law) or incapacity (s.38 of the By-law).

When a licensee terminates a service agreement as a result of a conflict of interest or lack of competence, when possible, the licensee should refer the client to another licensee. The licensee should not receive a referral fee.

Dishonest or illegal conduct

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

Interpretation

A licensee has an obligation to comply with all applicable legislation (s.9 of the Code) and a duty of honesty (s.6 of the Code) and must advise the client of the obligation for the licensee to comply with the Code. If the client insists on proceeding in a dishonest, fraudulent or illegal manner, the licensee must terminate the engagement.

Referral to other licensee

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

Interpretation

This section recognizes that it is not always possible to refer a client to another person. There are factors outside of the control of the licensee such as remote location, timing of the termination of the service agreement, or the client requiring specific services that cannot be rendered. If it is not possible for a licensee to refer the client to another individual authorized to provide representation, the licensee can still terminate the service agreement.

The intent is for the licensee to make best efforts to refer the client to another competent person who is authorized to provide immigration or citizenship consulting services.

Actions required — Actions completion or termination

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

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

Interpretation

When a service agreement is terminated, the licensee must, within 30 calendar days of the completion or termination of the service agreement, return all documents (digital and paper), all funds and any other items belonging to the client. The licensee must also return and delete any login information that would allow the licensee to access the client's online I account.

The licensee should also provide the client with a copy of the full submission package for any application that may be in progress.

A final invoice of disbursements and monies owed for services must be provided. Any unearned fees or excess funds in the client account must be returned to the client within 30 calendar days following the termination of the service agreement.

Actions required — termination

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

- (a) provide the client with all information in the licensee's possession that may be required in connection with the client's file;
- (b) cooperate with a successor representative, if any, to minimize expense and avoid prejudice to the client; and
- (c) if the licensee is listed as the client's representative with any department or agency of the government of Canada or of a province, provide notice that they are no longer representing the client to that department or agency
 - (i) in accordance with the department or agency's procedures, or

- (ii) if no procedures exist, in writing within 10 days after the day on which the service agreement is terminated.

Interpretation

This section allows the licensee to provide another representative with a client's information within 10 business days following the termination of the service agreement. This includes all digital and paper files and documents.

Transfer of file

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

Interpretation

The Code requires a client's file to be transferred no later than 10 business days after the day the transfer was requested. Since the Code takes precedence over College regulations, the current provision in the Client File Management Regulation stating 14 calendar days for a licensee to transfer a client's file to the client and 30 calendar days to transfer a client's file to the client's designate no longer applies.

Delay

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

Interpretation

This provision allows the licensee to delay the transfer of a client's file for 30 days after the transfer was requested in appropriate circumstances.

A transfer may only be delayed for reasons beyond the licensee's control and may include, but not be limited to issues such as inability to locate the representative, or inability to verify the contact information of the transferee. Outstanding payments do not constitute a reason to delay a transfer of the client's file.

Office Administration and Management

Record keeping

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

Interpretation

A system of office administration supports compliance to client file management standards such as confidentiality, record keeping, record retention and best practices related to office administration.

Section 80(1)(u) of the Act relating to by-laws requires the College to make by-laws “respecting the keeping and preservation of records by licensees”. Until such time as the College has done so, the Council’s Client File Management Regulation, together with the provisions of the Code, provide guidance to licensees.

Record keeping is critical to tracking the progress of tasks detailed in the service agreement. All actions, communications and contacts on behalf of the client should be recorded in the client’s file immediately after they occur. The date, time and action and/or outcome should be identified and the date for any follow-up action.

Client files/records must be maintained in a secure environment that is only accessible to the licensee.

Files must not be kept open or unattended in offices or public places and must not be discussed in public.

Particular attention should be given to the security of any digital records. Digital files must be protected by strong private passwords and only accessible to the licensee. Files must be kept up to date and retained for 6 years following the completion of immigration or citizenship consulting services.

Compliance with Code

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

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

Professional responsibility

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

Interpretation

This section does not specifically reference agents; however, it is applicable to agents and/or employees and provides direction for a licensee working with a person who is not a licensee.

Ultimately the licensee is responsible to supervise and to assume professional responsibility for any individual who assists in providing services for the licensee's client.

Delegation

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

Interpretation

When a licensee enters into a service contract with another service provider to assist in the provision of immigration or citizenship consulting services, the licensee is responsible for the professional conduct of the contracted service provider. A copy of the Code of Professional Conduct is a mandatory part of the service contract and must be provided digitally or in paper form by the licensee to the individual providing the services.

This section does not specifically reference agents; however, it is applicable to agents and/or employees and provides direction for a licensee working with a person who is not a licensee.

A licensee is required to supervise any work done by a person who assists them in the provision of immigration or citizenship consulting services. The expectation is that the licensee ensures the person complies with the Code of Professional Conduct and provides the same quality of service delivery that the licensee would provide to their client. This applies to any person who assists the licensee – staff, agents, professionals.

Relationship to the College and Other Persons

Mandatory reporting to College

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

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

Interpretation

A licensee must self-report to the College any of the circumstances described in this section promptly, but no later than 30 calendar days from the time the situation arises.

Response to the College

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

Interpretation

When the College communicates with a licensee in any way (digitally, paper, telephone, College Bulletin), the licensee is obligated to respond promptly, within 30 calendar days.

If the College has requested a response within a specific time, the licensee must respond within the time requested by the College.

If the licensee is unable to provide a complete response within the above timeline for a valid reason, the licensee should notify the College as soon as possible and request an extension.

Communications with complainant

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

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

Current clients

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

Interpretation

This section prohibits a licensee from communicating with a complainant in any way unless the College has consented to the communication and the College has provided the licensee in writing with terms of the communication. This section is intended to prevent licensees from intimidating or pressuring clients to withdraw complaints.

Subject to the College's specific consent, this prohibition of communication also applies to licensees who still have a service agreement with the client.

Conduct of fellow licensee

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

Interpretation

Behaviours and/or actions by the licensee that do not involve clients or the provision of immigration and citizenship services but are public enough to jeopardize the reputation of the profession (s. 4(2) of the Code) and undermine the public confidence and trust in the profession must be reported to the College.

Issues outside of the professional workplace that must be reported include, but are not limited to, breaches of family court orders, failure to make spousal payments, addictions, driving while intoxicated and many more actions that demonstrate conduct unbecoming and do not uphold the standards in the Code.

Reportable conduct

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

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

Exceptions

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

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

Interpretation

Professional self-regulation requires that all licensees take responsibility for the ethical conduct of their fellows. Public trust and respect are fundamental to the ability of the profession to serve the public. Self-regulation is a privilege granted to professions on the understanding that the profession will govern itself in the public interest.

A licensee must report to the College any conduct of a fellow licensee that is more than trivial or unimportant and is inconsistent with the Code.

The threshold for reporting the competence, integrity or capacity of a fellow licensee is a subjective assessment based on reasonable grounds that raises a material, significant or important concern.

Licensees have a positive obligation and professional duty to report incidents of suspected misconduct and a duty to stand behind such reports. This is necessary to prevent abuse of the reporting requirement. Reporting cannot be done anonymously or without reason to believe a fellow licensee has breached the Code.

The licensee must report a fellow licensee to the College, either in person or in writing. The following conduct must be reported:

- misappropriation or misapplication of funds of the client;
- breach of an undertaking of an order of a court or of the College that has not been consented to or waived;
- civil claim filed against the licensee by a client;
- abandonment of an immigration or citizenship consulting services practice;
- participation in a serious criminal activity related to a licensee's practice;
- situation where a licensee's clients are likely to be severely prejudiced.

A licensee does not have an obligation to report if doing so would result in:

- the breach of a statutory duty not to disclose;
- the reporting of a matter that has already been reported; or
- the reporting of a trivial matter.

False, misleading or inaccurate public statement

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

Interpretation

Public statements can be verbal, digital or posted on any form of social media, including blogs, discussion boards and podcasts.

A conversation in a public space, including online chat rooms, is not a private conversation and therefore there is no expectation of confidentiality.

Marketing of Immigration or Citizenship Consulting Services

Marketing of services

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

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

- (c) the marketing is in the best interests of the public and is consistent with a high standard of professionalism.

False, misleading or inaccurate representations

- (2)** In marketing immigration or citizenship consulting services, a licensee must not
- (a) make false, misleading or inaccurate representations;
 - (b) guarantee the success of an application, expression of interest or proceeding; or
 - (c) imply that the licensee has a relationship with the Government of Canada or a provincial government.

Interpretation

This section prohibits a licensee from self-promoting services that cannot be guaranteed. Licensees cannot promise the success of proceedings or applications. They cannot make statements in marketing or advertising that are not factual or accurate and will mislead the public and clients into believing the licensee's immigration or citizenship consulting services are superior to others or that the licensee has a preferential relationship with the federal or provincial government with respect to these matters. Marketing and advertising should seek to protect the consumer, be transparent and clearly identify the licensee.

Client endorsement

- 45** A licensee may use an endorsement by a client or former client in the marketing of their immigration or citizenship consulting services only if the endorsement
- (a) was actually given by a client or former client;
 - (b) is true and accurate; and
 - (c) has been reviewed and approved for public use by the client or former client in writing.

Identifying marks of College

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

Interpretation

A licensee must be a licensee "in good standing" to use the identifying marks of the College as per sections 4.2 and 4.3 of the Logo Use and Associated Trade-Marks Regulation and section 11 of the College By-law.

Licensees who have had their licence suspended or revoked are not entitled to use the identifying marks of the College. Licensees in good standing are permitted to use the RCIC, RCIC-IRB or RISIA insignia, as appropriate, while they remain in good standing.

Transitional Provision

Inconsistency with Council by-laws and regulations

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

Establishment and Coming into Force

Registration

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

Interpretation

The Code of Professional Conduct came into force and effect on June 10, 2022.